



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 27 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she is a national of a foreign state designated by the Attorney General and eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

Is a national of a foreign state designated under section 244(b) of the Act;....

The applicant indicated on her Form I-821, Application for Temporary Protected Status, that she was a dual citizen of Guatemala and El Salvador. In support of her application, the applicant submitted a copy of her Guatemalan birth certificate. According to this document, the applicant [REDACTED] was born in Obrajuelo, Agua Blanca, Jutiapa, Guatemala, on September 4, 1976. Her father's name is listed as [REDACTED], and her mother's name is listed as [REDACTED]. The applicant also submitted a copy of a Salvadoran birth certificate indicating that [REDACTED] was born to [REDACTED] a Salvadoran, and [REDACTED] also a Salvadoran, in San Jeronimo, Matapan, Santa Ana, El Salvador, on March 2, 1953. The applicant also submitted an untranslated document in the Spanish language, "Constitution Explicada, Republica de El Salvador." Since no English translation was provided, this document will not be given consideration in this matter pursuant to 8 C.F.R. § 103.2(b)(3).

On February 26, 2003, the applicant was requested to submit evidence of identity and evidence of her nationality and her husband's nationality. In response, the applicant provided the following evidence of her nationality and her husband's nationality:

1. a California License and Certificate of Confidential Marriage showing that the applicant, a citizen of Guatemala, and Oscar Palacios, also a citizen of Guatemala, were married in Los Angeles, California, on September 5, 1998;
2. a photocopy of the biographic pages of the Guatemalan passport of the applicant's husband, [REDACTED];
3. a photocopy of the biographic pages of the applicant's Guatemalan passport;
4. the applicant's Guatemalan "Consular ID Card," valid until September 18, 2007;
5. the California birth certificate of the applicant's son, [REDACTED] indicating that both the applicant and her husband are citizens of Guatemala;

The director determined that the applicant is a citizen of Guatemala. The director, therefore, concluded that the applicant had failed to establish that she was a national of a foreign state designated by the Attorney General and denied the application on July 30, 2003.

On appeal, counsel states that the applicant provided all evidence requested in the Notice of Intent to Deny in a timely fashion.

The record shows that the applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation, on November 5, 1995. The applicant indicated on the Form I-589 that she was a citizen of Guatemala, and stated that she first entered the United States without inspection at San Ysidro, California, on December 21, 1990. It is noted that the applicant stated on the Form I-589 that both her father, [REDACTED] and her mother, [REDACTED] were Guatemalan citizens.

The record also contains a Form G-325A, Biographic Information, submitted with the applicant's Form I-589. The applicant states on this form that she is a native and citizen of Guatemala, and that her father [REDACTED] and her mother [REDACTED] are both citizens of Guatemala.

The record indicates that the applicant was served with a Form I-221, Order to Show Cause and Notice of Hearing, on February 23, 1996, ordering the applicant to appear for a deportation hearing before an Immigration Judge in Los Angeles, California, on June 14, 1996. The applicant failed to appear for her hearing, and was ordered deported in absentia.

On July 16, 1996, the District Director, Los Angeles, issued a notice ordering the applicant to appear at the Los Angeles District Office to be deported to Guatemala on August 19, 1996. The applicant failed to appear as ordered.

The applicant's request for asylum and withholding of deportation was denied by the Asylum Office in Anaheim, California, on September 30, 1996.

On September 25, 1996, the Service issued a Form I-221, Order to Show Cause and Notice of Hearing, ordering the applicant to appear for a deportation hearing before an Immigration Judge in Los Angeles, California, on December 4, 1996. The applicant failed to appear for her hearing on that date. The Immigration Judge administratively closed the proceeding, but ordered that the Order to Show Cause remain open.

While the applicant, in this case, entered the United States without inspection, the director is correct in his findings that the applicant claimed to be a national and citizen of Guatemala throughout these immigration proceedings. The nationality the applicant claimed and/or established at the time she first came into contact with the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] was that of Guatemalan. On subsequent filings before the Service, including her deportation proceedings, the applicant continued to present herself as a Guatemalan. Further, the applicant has indicated on the Form I-589 and the Form G-325A that her father is a citizen and national of Guatemala. These statements contradict her claim that her father is a citizen of El Salvador. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Guatemala is not a designated foreign state under Section 244 of the Act. The applicant, therefore, does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act. The director's decision to deny the application will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.