



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[WAC 01 237 51526]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 06 2007

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, Chief
Administrative Appeals Office

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 he 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 is a minor child who indicated on his Form I-821, Application for Temporary Protected Status, that he was a citizen of Guatemala. In support of his application, the applicant submitted a copy of a Guatemalan birth certificate, with English translation, indicating that he was born in Asuncion Mita, Jutiapa, Guatemala, to [REDACTED] and [REDACTED]. The director concluded that the applicant had failed to establish that he was a national of a foreign state designated by the Attorney General and denied the application on June 24, 2002.

On appeal, counsel for the applicant asserts that the applicant is eligible for TPS because he is a dual citizen of Guatemala and El Salvador. In support of this assertion, counsel submits an affidavit from the applicant's father, [REDACTED], stating that, although his son was born in Guatemala, he is a national of El Salvador by virtue of the fact that the applicant is his son and that he, the father, is a national of El Salvador. The applicant's father further states that the applicant lived with him and his wife in El Salvador from 1990 to November 2000, when he departed El Salvador for the United States. The applicant's father provided a photocopy of a Salvadoran birth certificate, with English translation, indicating that he, the father, [REDACTED] was born in Santa Ana, El Salvador, on June 8, 1964, to [REDACTED] and [REDACTED]. [REDACTED] a translation of a Guatemalan marriage certificate, with English translation, indicating that [REDACTED], a national of El Salvador, and [REDACTED], a national of Guatemala, were married in Asuncion Mita, Jutiapa, Guatemala, on November 11, 1991; a baptismal certificate from Cristo Rey Catholic Church, Santa Ana Diocese, El Salvador, indicating that [REDACTED] was baptized on January 4, 1989; a Salvadoran "Certificate of Academic Performance," with English translation, indicating that the applicant completed sixth grade on November 16, 2000, and was promoted to seventh grade; a Salvadoran kindergarten diploma, dated November 27, 1994; and, California school and immunization documents indicating the applicant's presence and residence in the United States since January 10, 2001.

In *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), the United States Court of Appeals found that the Service (CIS) reasonably interpreted the term "PRC national" in the CSPA (Chinese Student Protection Act) to exclude Chinese dual nationals who did not declare citizenship of the PRC (People's Republic of China) when they entered the United States, and that treatment of PRC dual nationals, depending on whether they entered under a PRC passport or a passport of a different country, was reasonable. The Court states that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay

in the United States. Thus, a dual national CSPA principal applicant must have claimed PRC nationality at the time of his or her last entry into the United States.

In *Chevron USA, Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837, 842-843 & n.9 (1984), the district court held that the practice of binding an alien to his/her claimed nationality "promotes the congressional policy of insuring that an alien will be able to return, voluntarily or otherwise, to his/her country of origin if requested to do so and provides for consistency in the enforcement of law, especially given the large numbers of nonimmigrant foreign nationals who visit the United States each year."

Additionally, the Board of Immigration Appeals, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), concluded that although an alien may hold the phenomenon of dual nationality, an alien may only claim one citizenship at a time for purposes of immigration matters within the United States. As explained in *Ognibene*, clearly, it is not the prerogative or position of the United States to require a dual national alien nonimmigrant to elect to retain one or another of his nationalities. Equally as clear, the national sovereignty of the United States is acceptably and reasonably exercised through section 214 of the Act in holding that a dual national alien nonimmigrant is, for the duration of his temporary stay in the United States, of the nationality which he claimed or established at the time that he entered the United States.

The Board, in *Ognibene*, further held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel, in GENCO Op. 84-22 (July 13, 1984), reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he enters the United States must be regarded as his sole nationality for the duration of his stay in the United States." (Emphasis in original).

Additionally, the General Counsel, in GENCO Op. 92-34 (August 7, 1992), concluded that the Service may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. The General Counsel explains that "TPS is not a provision designated to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety. See id. 244A(b)(1)(A), (B), and (C), 8 U.S.C. § 1254(b)(1)(a), (b), and (c)."

As stated previously, the applicant indicated on his Form I-821 that he is a citizen of Guatemala. The filing of this application was the applicant's first contact with CIS. 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 when he filed his TPS application. The nationality the applicant claimed and/or established at the time he first came into contact with CIS was that of Guatemalan. Therefore, this citizenship must be regarded as his operative nationality during this proceeding.

Further, counsel has not provided any evidence to establish that the applicant is a dual citizen of Guatemala and El Salvador. 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. As the applicant has not demonstrated that his "operative nationality" is that of a TPS-designated country, the director's decision to deny the application will be affirmed, as a matter of discretion.

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.