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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 18 2005

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: Self-represented

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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant, claiming to be a native and citizen of El Salvador, is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director noted that the applicant was apprehended by the Border Patrol in Tucson, Arizona, on October 25, 2000; at that time she used the name of and claimed to be a native and citizen of Guatemala. The director further noted that the applicant filed her TPS application on May 29, 2001, using the name of and claimed that she was born in El Salvador. Because the applicant failed to comply with the request of January 22, 2002, to submit a sworn statement explaining these discrepancies, the director denied the application.

The applicant filed an appeal and that appeal is now before the AAO.

On March 11, 2004, the director requested that the case be remanded to the VSC. Accordingly, the appeal will be remanded to the director for further processing in accordance with her request.

It is noted for the record that the nationality the applicant claimed and/or established at the time she first came into contact with the Service (now, the Department of Homeland Security) was that of Guatemala. It is further noted that in removal proceedings on March 13, 2001, an immigration judge ordered the applicant removed from the United States to Guatemala. Therefore, it appears that the applicant's "operative nationality" was not that of a TPS-designated country as held in GENCO Op. 92-34 (August 7, 1992). *See, also, Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983); *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded to the director for further consideration and action.