U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: DETROIT, MICHIGAN Date: AUG 31 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 District Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 244(c) of the Immigration and Nationality Act (INA), and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for Temporary Protected Status (TPS) 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 his application that he is a citizen and national of Lebanon. In support of his application, he submitted a photocopy of his passport issued by the Republic of Lebanon, indicating that he is a national of that country. He also submitted a photocopy of a Permit To Re-Enter the Republic of Liberia issued by the Liberian Ministry of Justice with a validity date of April 3, 2000, to April 3, 2001.

The District 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 his TPS application on November 21, 2003. The applicant filed his appeal from that decision on December 29, 2003.

On appeal, counsel submits a brief statement.

The issue in this case is whether the applicant has submitted sufficient evidence to establish his identity as a national of Liberia.

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. Acceptable evidence may consist of a passport; a birth certificate accompanied by photo identification; and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint. 8 C.F.R. § 244.9(a)(1).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Bureau. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

In support of his application, the applicant submitted a photocopy of a Permit To Re-Enter the Republic of Liberia issued by the Liberian Ministry of Justice. On appeal, the applicant does not provide any additional evidence to establish his Liberian nationality.

In *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), the United States Court of Appeals found that the Service reasonably interpreted the term "PRC national" in the Chinese Student Protection Act (CSPA) to exclude Chinese dual nationals who did not declare citizenship of the People's Republic of China (PRC) when they entered the United States, and that the Service's 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 claimed nationality "promotes the congressional policy of insuring that an alien will be able to return, voluntarily or otherwise, to his or 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)."

The applicant entered the United States as a nonimmigrant visitor for pleasure (B-2) on May 9, 2000, using a passport issued by the Republic of Lebanon and indicated on his Form I-94, Arrival/Departure Record, that he was a citizen of Lebanon. Additionally, his visa, issued by the United States consul in Monrovia, Liberia, on December 17, 1999, shows his nationality as Lebanese.

The District Director is correct in her findings that the applicant claimed to be a national and citizen of Lebanon throughout these immigration proceedings. The nationality the applicant claimed and/or established at the time he first came into contact with the United States government at the American Embassy in Monrovia, Liberia was that of Lebanese. He continued to present himself as a national of Lebanon when he applied for admission into the United States at Detroit, Michigan on May 9, 2000. Therefore, this nationality must be regarded as his operative nationality during these proceedings.

Lebanon 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 District Director's decision to deny the application will be affirmed, as a matter of discretion.

The record of proceeding reflects that a Notice to Appear (Form I-862) was issued on January 9, 2003, based on the applicant's failure to depart from the United States after his authorized temporary stay had expired. He is currently under Removal proceedings with the Immigration Court in Detroit, Michigan with a scheduled hearing date on June 13, 2008.

An alien applying for TPS 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.