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U.S. Citizenship and Immigration Services

[redacted]

MAY 17 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
[WAC 01 239 58265]

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

The director denied the application because the applicant failed to establish his nationality.

On appeal, the applicant submits a statement and additional evidence.

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

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 244.3;

(e) Is not ineligible under § 244.4; and

(f) (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or

(2) During any subsequent extension of such designation if at the time of the initial registration period:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

(g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The record shows that the applicant arrived at Los Angeles International Airport, Los Angeles, California, on February 24, 1998, aboard Mexicana Airlines Flight MX 902 from Guatemala City, Guatemala, via Mexico City, Mexico. The applicant, who was a sixteen-year-old minor at that time, presented himself for inspection with two Guatemalan passports in the same name, a valid passport and an expired passport containing a valid nonimmigrant B-1/B-2 visitor's visa that was issued in Guatemala City, Guatemala, on October 6, 1998. The passports showed the applicant's name as The Immigration Inspector referred the applicant for secondary inspection based on a suspicion of fraud.

During the secondary inspection, the applicant admitted under oath before an officer of the United States Immigration and Naturalization Service (INS) that he was not the person whose name appeared on the Guatemalan passports he presented at the primary inspection station. The applicant gave his true name as and stated that he was a Guatemalan citizen born in Jutiapa, Guatemala, on January 14, 1981. He further indicated that his parents and were also Guatemalan citizens. He admitted that the Guatemalan passports he presented at the primary inspection station had not been issued to him by the government of Guatemala, but rather had been obtained for him by his father. The applicant indicated that his father was supposed to arrive in the United States either later that same day or the next day. He admitted that he was aware that he was not the same person whose name appeared in both passports, The applicant was detained pending a removal hearing before an Immigration Judge.

On March 31, 1998, the INS, now Citizenship and Immigration Services (CIS), received a letter from who identified herself as the applicant's sister, requesting that she be allowed to post a bond for her brother. She stated that she was a lawful permanent resident and provided a photocopy of a Form I-551, Resident Alien Card, with her registration number, Ms provided a photocopy of a Salvadoran birth certificate indicating that was born t and n Ahuachapan, El Salvador, on January 14, 1982.

On April 29, 1998, the Immigration Judge ordered that the applicant be removed from the United States. INS officers obtained a provisional travel document from the General Consulate of El Salvador in Los Angeles, California, recognizing the applicant as " a native and citizen of El Salvador. On May 13, 1998, the applicant was removed to El Salvador via United Airlines Flight #865.

According to the applicant's Form I-821, Application for Temporary Protected Status, he reentered the United States without inspection on June 6, 1998, near Douglas, Arizona. The applicant identified himself on the Form I-821 as a native and citizen of El Salvador. He submitted with the application a photocopy of a Salvadoran birth

certificate indicating that was born t

On January 11, 2004, the service center director issued a Notice of Intent to Deny. The director noted that the applicant had initially applied for admission to the United States as a citizen of Guatemala. The director further noted that the applicant admitted under oath that he was a Guatemalan citizen who was born in Aldea El Coco, Jutiapa, Guatemala. The service center director requested that the applicant provide additional evidence to establish his true identity and nationality. In response, the applicant provided a photocopy of the biographic page of a Salvadoran passport issued to by the Salvadoran consulate in Los Angeles, California, on January 22, 2004.

The director denied the application on March 11, 2004, because the applicant had not provided sufficient credible evidence to establish his nationality. Specifically, the director stated:

> In this case, the applicant failed to provide any explanation regarding the discrepancy created by his previous claim to being a native and citizen of Guatemala. Without a further explanation, a copy of an El Salvadorian birth certificate and a newly issued El Salvadorian passport are insufficient evidence of nationality, in light of the fact that the applicant has previously submitted fraudulent documents.

On appeal, the applicant states:

> I honestly am Salvadoran, but the reason why I have [a]ppeared as Guatemalan is because I submitted paper to get a [v]isa as a Guatemalan, but [m]y real nationality is Salvadoran.

The applicant submits a photocopy of the second photocopied Salvadoran birth certificate that was initially submitted with the application, a photocopy of the biographic page of a Salvadoran passport previously submitted in response to the Notice of Intent to Deny, and a "Carnet de Identificacion Personal" issued t on of

Although the applicant claims to be a native and citizen of El Salvador, there are discrepancies and apparent alterations in the documents he has submitted to corroborate his claim. The Salvadoran birth certificate submitted by Ms. March of 1998 identifies the newborn child as not as It is noted that this version of the birth certificate was issued on March 24, 1998. The applicant submitted a photocopy of a different version of the same birth record with his Form I-821. This version was issued on July 8, 1998. There are discrepancies in these two versions of the same birth record. Specifically, the newborn child is identified in the second version submitted with the application o last name given]."

While the first version of the document provided by Ms. n March 1998 bears an original signature of the issuing official in El Salvador and an original seal, the signature and seal on the second version are photocopied. Furthermore, although the information contained in the second version of the birth record is essentially the same as that provided in the first version, the text of the second copy of the birth record has been

significantly altered. The certification at the top of both documents indicates that the birth record has been reproduced word for word, "literalmente." If the text contained in the two versions of the birth record has been copied literally word for word from the original birth record book in El Salvador, the two versions of the record should be identical. The applicant has not provided any explanation for these discrepancies in the two versions of his birth record in El Salvador.

The provisional travel document issued to the applicant on May 11, 1998, by the General Consulate of El Salvador in Los Angeles, California, indicates that the document was issued on an emergency basis at the request of the INS based on the INS identification of the applicant's nationality as Salvadoran. It does not state that the document was issued based on a verification of the applicant's true nationality through examination of original birth records in El Salvador. Although the applicant has provided a photocopy of a page that is purportedly the biographic page of his Salvadoran passport, he has not provided the original document to corroborate his claim of Salvadoran nationality. The only other document provided by the applicant to establish his nationality is a "Carnet de Identification Personal" purportedly issued to Once again, the applicant has not provided the original identification card, and the photocopy contains irregularities that raise questions as to its authenticity. The lines on which the names of the applicant, his parents' names, and his place and date of birth are listed, are broken and uneven. It appears the original information may have been altered and the lines redrawn by hand. Without forensic examination, it is not possible to make a final determination as to the authenticity of the documents submitted by the applicant in support of his claim of Salvadoran nationality; however, the apparent alterations and discrepancies noted above raise questions regarding the authenticity of these documents. Doubt cast on any aspect of the applicant'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 applicant 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). Additionally, as previously stated, that applicant has previously stated under oath that he is a native and citizen of Guatemala, and that both of his parents are also Guatemalan citizens.

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 CSPA (Chinese Student Protection Act) to Exclude Chinese dual nationals who did not declare citizenship of PRC (People's Republic of China) 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 <u>sole</u> nationality for the duration of his stay in the United States." (Emphasis in original).

In view of the foregoing, it is concluded that the applicant has not provided sufficient credible evidence to establish that he is a national of a TPS-designated country. As the applicant has not demonstrated that he is a national of a TPS-designated country, the director's decision to deny the application will be affirmed.

The director also noted that the applicant was previously deported to Guatemala. This statement of the director is withdrawn as the applicant was removed to El Salvador on May 13, 1998.

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.