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**U.S. Citizenship
and Immigration
Services**

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OCT 31 2006

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 089 80077]

IN RE:

Applicant:

APPLICATION:

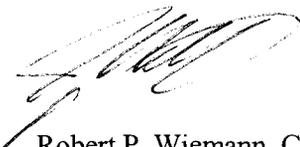
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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

The applicant filed his initial TPS application with Citizenship and Immigration Services (CIS) on July 3, 2000, under receipt number SRC 00 262 53637. The Director of the Texas Service Center denied the application on January 23, 2001, because he found the applicant had failed to establish his identity and nationality. Specifically, the director noted that the applicant was previously admitted to the United States at Miami, Florida, on October 31, 1996, as a nonimmigrant B-2 visitor. The applicant presented himself for inspection at that time with a Guatemalan passport bearing a United States nonimmigrant B-2 visitor's visa issued to the holder of the passport in Guatemala City, Guatemala, on December 1, 1995. The director concluded that, since the applicant had previously claimed to be a Guatemalan citizen, his current claim to be a Honduran citizen could not be accepted. The applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 28, 2004, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on November 21, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

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

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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 initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on December 28, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 CIS. 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 his own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

On appeal, the applicant states that he is a citizen of Honduras, Nicaragua, and Guatemala. The applicant explains he is a citizen of Nicaragua because father, [REDACTED] (deceased), and his mother, [REDACTED] were Nicaraguan citizens by birth. He states that he is a citizen of Guatemala because his parents subsequently became naturalized citizens of Guatemala. Finally, the applicant states that he is a citizen of Honduras because he was born in Honduras when his parents resided in that country. The applicant asserts that he qualifies for TPS as a citizen of Honduras. He submits the following evidence:

1. a photocopy of Honduran passport No. 161371 issued to the applicant on December 13, 1983, indicating that the applicant was born in Tegucigalpa, Honduras, on June 8, 1983;
2. a photocopy of a Honduras birth certificate with English translation indicating that the applicant was born in Honduras, on June 8, 1983;
3. a photocopy of a Nicaraguan national identity card with English translation indicating that [REDACTED] was born in Managua, Nicaragua, on December 15, 1957;
4. a photocopy of a Nicaraguan national identity card with English translation indicating that [REDACTED] was born in Managua, Nicaragua, on August 10, 1952;
5. a photocopy of a Nicaraguan marriage certificate with English translation indicating that [REDACTED] and [REDACTED] were married in Managua, Nicaragua, on April 19, 1975;
6. a photocopy of a Nicaraguan birth certificate with English translation indicating that [REDACTED] was born in Managua, Nicaragua, to [REDACTED] and [REDACTED] on August 10, 1952;
7. a photocopy of a Nicaraguan birth certificate with English translation indicating that [REDACTED] was born in Managua, Nicaragua, on December 15, 1957.

The applicant has previously submitted a photocopy of Guatemalan passport No. [REDACTED] containing a United States nonimmigrant B-2 visa issued to the holder of the pasport in Guatemala City, Guatemala, on December 1, 1995.

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 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 Director of the Texas Service Center is correct in his finding that the applicant claimed to be a national and citizen of Guatemala when he first entered the United States as a nonimmigrant B-2 visitor on October 31, 1996. The nationality the applicant claimed and/or established at the time he first came into contact with the Service (now CIS) was that of Guatemalan. Therefore, this citizenship must be regarded as the applicant’s operative nationality during these proceedings.

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 application also must be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.