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

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FILE:



Office: Detroit, Michigan

Date: MAY 08 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** Approval of the application was withdrawn by the District Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The district director determined that the applicant failed to establish that he was a national of a foreign state designated by the Attorney General, and therefore, withdrew the approval of the application.

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 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 director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

The applicant indicated on his application that he was a citizen of Liberia. However, in support of his application, the applicant submitted a copy of a passport issued by the republic of Lebanon, indicating that he is a citizen of that country. 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 withdrew his TPS on November 18, 2003. The applicant, through counsel, filed his current appeal from that decision on December 19, 2003.

On appeal, counsel asserts that TPS was previously granted to the applicant and was improperly withdrawn without his consent. However, counsel does not submit a separate brief or evidence to support his argument.

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 a photo identification; and/or any national identity document from the alien's country of origin bearing a photo and/or fingerprint. 8 C.F.R. § 244.9(a)(1).

The burden of proof is upon the applicant to establish that she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Citizenship and Immigration Services (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 her 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 photocopies of his Liberian birth certificate and Lebanese Passport.

In *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9<sup>th</sup> 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 on December 2, 2000, as a visitor for pleasure (B-2) 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, 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 a citizen of Lebanon. He continued to present himself as a citizen of Lebanon when he applied for admission into the United States at Detroit, Michigan on December 2, 2000. Therefore, this citizenship 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 withdraw the approval of the application will be affirmed, as a matter of discretion.

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.