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

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FILE:



Office: Vermont Service Center

Date: **JAN 22 2008**

[EAC 02 065 56070]

INRE:

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wilman, Chief
Administrative Appeals Office

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

The applicant is stated to be a 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 record reflects that the applicant's initial TPS application was filed December 10, 2001. The director denied the application on July 17, 2002, because the applicant failed to establish that she is a national of a foreign state designated by the Attorney General and eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.c. § 1254. The director determined that the applicant is a citizen and national of Guatemala and that country has not been so designated under section 244 of the Act.

The applicant indicated on her application for TPS that she was born in Guatemala, and that she is a citizen of El Salvador. The applicant asserted that she is eligible for TPS as a national of El Salvador because her father was born there. In support of her application, the applicant submitted a photocopied document, purported to be an English translation of a portion of the text of the constitution of El Salvador, pertaining to the granting of citizenship. The director concluded that the applicant had failed to establish that she was a national of a foreign state designated by the Attorney General and denied the application on July 17, 2002.

The applicant asserts on appeal that she is eligible for TPS because she is a dual citizen of El Salvador and Guatemala. In support of her assertion, the applicant submits a photocopy of her Guatemalan birth certificate and her father's birth certificate which reflects that he was born in El Salvador on April 18, 1954.

Section 244(c) of the Act, and the related regulations at 8 *c.P.R.* § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

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;....

Pursuant to section 244(c) of the Act, an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, may be granted TPS in the United States. Further, 8 C.F.R. § 244.2(a) provides that an alien who 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, may, in the discretion of the director, be granted TPS. Section 101(a)(21) of the Act defines the term "national" to mean a person owning permanent allegiance to a state.

As noted above, the applicant indicated on her TPS application that she was a citizen of El Salvador, and claims derivative El Salvadoran citizenship by virtue of her parentage as indicated by her father's birth certificate which shows that her father is a native of El Salvador. The director, however, erroneously concluded that the applicant is a citizen of Guatemala by virtue of her birth in Guatemala, and is not a citizen of El Salvador. It is noted that while the applicant claims to be a citizen of El Salvador, and has submitted

her father's El Salvadoran birth certificate, she has not submitted any official documentation from El Salvador to establish that her father was a citizen of that country at the time of the applicant's birth.

It is also noted that the applicant has not submitted sufficient evidence to establish her nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, she has not submitted a national identity document from her country of citizenship bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1)

The director's denial of the application will be withdrawn; the application will be remanded, and the director shall re-issue the request for evidence to afford the applicant an opportunity to submit the evidence to establish her eligibility for TPS, including evidence to establish her identity and citizenship. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to El Salvadorans.

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 case is remanded to the director for further action consistent with the above and entry of a new decision.