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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 06 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the California Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
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 Haiti who is seeking Temporary Protected Status 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 that she is a national or citizen of Haiti.

On appeal, the applicant asserts that she is a citizen of Haiti as both her parents are Haitians.

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 temporary protected status (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 owing permanent allegiance to a state.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant was born on June 3, 1977, in Bahamas. On April 25, 2001, a Form I-130, Petition for Alien Relative, was filed on the behalf of the applicant. Accompanying the Form I-130 was: 1) a biographical page of the applicant's U.S. visa issued on November 27, 1997, which listed the applicant's nationality as Bahamian; 2) a Form I-94, Arrival-Departure Record, which indicated the applicant was admitted into the United States on April 20, 1999, as a nonimmigrant visitor. The applicant claimed Bahamas as her country of citizenship on the Form I-94; and 3) a copy of a biographical page of her father's passport, which lists Haiti as his nationality.

On June 22, 2010, the applicant was requested to submit evidence to establish that she is a citizen or national of Haiti. The applicant was informed that she could provide a copy of the biographical pages of her passport, a copy of both sides of her national identity card, a naturalization certificate, a voter's identification document with photograph, a copy of her birth certificate issued by the appropriate civil authority showing timely registration, date and place of birth, and parents' names accompanied by her photo identification. The applicant, in response, only provided a copy of her Bahamian birth certificate.

The director noted that the U.S. Citizenship and Immigration Services (USCIS) records clearly reflect that the applicant is a citizen of Bahamas by birth and that the applicant had been ordered removed<sup>1</sup> to the Bahamas as the designated country because she is a citizen of the Bahamas. The

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<sup>1</sup> On July 15, 2009, a removal hearing was held and the applicant was ordered removed *in absentia*.

director determined that the applicant had not submitted sufficient evidence to establish nationality with a designated foreign state. Accordingly, on August 17, 2010, the director denied the application.

On appeal, the applicant asserts that she "is a native citizen of Haiti." The applicant asserts that her parents are both Haitian and as evidence she was enclosing their birth certificates.

However, none of the documents submitted on appeal (copies of her children's birth certificates, social security cards, employment authorization cards and Forms I-797C, Notice of Action, a medical bill, a diploma, a telephone billing statement and an additional affidavit, addressed to the Commonwealth of Bahamas, from her parent regarding the omission of the father's name on the applicant's birth record) were the birth certificates of the applicant's parents.

The United States Court of Appeals, in *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9<sup>th</sup> Cir. 1997), 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."

In *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), the Board of Immigration Appeals 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 added].

Although the issue of dual nationality is not at question in this proceeding, the record is clear in establishing that the applicant elected to present herself as a national and citizen of Bahamas to the United States government at the time of her entry into the United States.

Bahamas 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. Accordingly, as the applicant has not demonstrated that her "operative nationality" is that of a TPS-designated country, the director's decision to deny the applicant's TPS status will be affirmed.

An alien applying for TPS has the burden of proving that 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.