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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



M1

DATE: **JUN 22 2011** Office: CALIFORNIA SERVICE CENTER

FILE: 

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 director denied the application because the applicant failed to establish that she is a national of a foreign state designated by the Secretary 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.

On appeal, the applicant asserts that Bahamian law states “if a child is born after the year of 1973 that he or she have the right to be their parent Nationality, my parent are Haitian and since I was born in 1991 I am know as Haitian not Bahamian.”

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 owing permanent allegiance to a state.

On December 21, 2010, the applicant was requested to submit evidence establishing her nationality and identity. The applicant, in response, submitted:

- An extract from Registrars of Birth Act from the National Archives of Haiti with English translation, which reflects that the applicant was born in Nassau, Bahamas on March 17, 1991.
- A copy of the biographical page of her Bahamian passport issued on April 20, 2010.
- A Florida Certification of Immunization dated June 30, 2010.
- A copy of her Form I-94, Arrival-Departure Record, which reflects she was admitted into the United States on May 6, 1996, as a citizen of the Bahamas.

According to the Constitution of the Commonwealth of the Bahamas, Bahamian-born individuals of foreign heritage do not automatically acquire citizenship. However, U.S. Citizenship and Immigration Services records reflect that the applicant first entered the United States as a nonimmigrant visitor on May 6, 1996, with a Bahamian passport. The applicant continued to maintain her Bahamian citizenship as her current passport was issued on April 20, 2010.

It is noted that according to Title II, Articles 13a and 15 of 1987 Haitian Constitution, Haitian nationality is lost by naturalization in a foreign country and dual Haitian and foreign citizenship is not recognized under any circumstances.

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 different treatment of PRC dual nationals, depending on whether they entered under PRC passport or passport of 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, 842-43 & 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), 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 entered the United States must be regarded as his sole nationality for the duration of his stay in the United States." (Emphasis in original).

Further, 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. § 1254A(b)(1)(A), (B), and (C)."

The record is clear in establishing that the applicant elected to present herself as a citizen of Bahamas at the time she entered 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 application for this reason will be affirmed.

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.