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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



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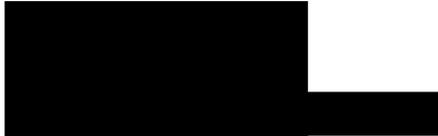
Office: CALIFORNIA SERVICE CENTER

FILE:

OCT 19 2011

IN RE:

Applicant:



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

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, Department of Homeland Security (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. § 1254a.

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).

On October 3, 1995, the applicant, under the alias [REDACTED] filed a Form I-589, Application for Asylum and Withholding of Removal. At the time of her master/individual hearing on November 7, 1996, the applicant presented her original Bahamian passport issued on October 17, 1991, her Bahamian naturalization certificate issued on August 28, 1991, and her Bahamian marriage certificate for a marriage that occurred on January 10, 1985. The Form I-221, Order to Show Cause, dated February 25, 1997, indicates the applicant to be a native of Haiti and a citizen of Bahamas. On July 15, 1997, a removal hearing was held and the applicant was granted voluntary departure from the United States on or before June 1, 1998, with an alternate order of removal to Bahamas to take effect in the event that the applicant failed to depart as required.

The applicant indicated on her TPS application that she was a citizen of Haiti. However, in support of this application, the applicant submitted a copy of her current Bahamian passport, which was issued under her married name [REDACTED] on January 28, 2009, and her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on August 4, 1993, as a citizen of Bahamas.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant was also admitted into the United States as a Bahamian citizen on September 4, 1992, November 22, 1992, April 7, 1993 and June 1, 1993.

The director concluded that the applicant had failed to establish that she was a national of a foreign state designated by the Secretary and denied the application on June 30, 2010.

On appeal, the applicant submits a copy of her birth certificate with English translation and page one and the biographical page of a Haitian passport, which was purportedly issued on March 15, 2002, and expired on March 15, 2007.

The Haitian passport submitted by the applicant has been determined to be fraudulent as: 1) the passport numbers on page one and the biographical page, which were purportedly attached do not correspond; 2) the passport number on the biographical page has been purportedly blurred; and 3) USCIS records reflect that the passport number on page one was utilized by another individual to obtain admittance into the United States.

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.

Title II, Article 14 of the 1987 Haitian Constitution provides that a Haitian who took another citizenship by naturalization may recover her Haitian nationality by meeting all the conditions and formalities imposed on aliens by the Law. The applicant has not provided any credible evidence establishing that she met the conditions and formalities.

The United States Court of Appeals, in *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th 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 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.

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.