2007 WL 5338940 (DHS)
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
Detroit, Michigan

IN RE: Applicant: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254
On Behalf of Applicant: [IDENTIFYING INFORMATION REDACTED BY AGENCY]
File No. [IDENTIFYING INFORMATION REDACTED BY AGENCY]
August 22, 2007

*1 DISCUSSION: The application was denied by the District Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.
Section 244(c) of the Immigration and Nationality Act (INA), and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for Temporary Protected Status (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 applicant indicated on her application that she was a citizen of Liberia. However, in support of her application, the applicant submitted a copy of a passport issued by the Republic of Lebanon, indicating that she is a national of Palestine. 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 her TPS application on June 17, 2004. The applicant filed her current appeal from that decision on August 26, 2004.

On appeal, counsel asserts that she was born in Liberia and had lived there all her life until she came to the United States. Counsel further claims that she is not a citizen of Lebanon, and only carries a Lebanese passport because it is a travel document given to Palestinians living in Liberia.
The issue in this case is whether the applicant has submitted sufficient evidence to establish her identity as a national of Liberia.

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 photo identification; and/or any national identity document from the alien's country of origin bearing 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 Bureau. 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 her application, the applicant submitted a copy of a Liberian birth certificate and a copy of a Lebanese Passport. On appeal, the applicant does not provide any additional evidence of her nationality.
*2 In Chee Kin Jang v. Reno, 113 F. 3d 1074 (9th 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].

*3 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 as a nonimmigrant visitor for pleasure (B-2) on June 11, 2002, using a passport issued by the Republic of Lebanon and indicated on her Form I-94, Arrival/Departure Record, that she was a citizen of Palestine. Additionally, her visa, issued by the United States consul in Monrovia, Liberia, shows her nationality as Palestinian.

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 she first came into contact with the United States government at the American Embassy in Monrovia, Liberia was that of Palestine. She continued to present herself as a national of Palestine when she applied for admission into the United States at Detroit, Michigan on June 11, 2002. Therefore, this nationality must be regarded as her operative nationality during these proceedings.

Palestine 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 her "operative nationality" is that of a TPS-designated country, the district director's decision to deny 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.

Robert P. Wiemann
Chief
Administrative Appeals Office
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