



U.S. Citizenship  
and Immigration  
Services

M-1

[Redacted]

FILE:

[Redacted]

Office: Nebraska Service Center

Date:

JUL 8 2004

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

prevent clearly identifiable  
invasion of personal privacy

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn by the Director of the Nebraska Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador. The director approved the application for TPS under section 244 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1254; however, the director subsequently withdrew the applicant's TPS on January 22, 2004, when it was determined that the applicant was not, in fact, eligible for TPS at the time such status was granted. This determination was based on the finding that the applicant had ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.

On appeal, counsel reasserts the applicant's claim of eligibility.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. *See* 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS if the Secretary of the Department of Homeland Security (or if in immigration proceedings, the Attorney General) finds that the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. *See* INA § 244(c)(2)(B)(ii), referring to INA § 208(b)(2)(A)(i), as amended.

The record reveals that on July 20, 2001, the director approved the application for TPS. Upon subsequent review of the applicant's Form I-589, Application for Asylum and Withholding of Removal, filed in 1993, it was determined that the applicant had been ineligible for TPS at the time it was granted because, while he was an Army officer in El Salvador, he had participated in the persecution of individuals on account of race, religion, nationality, membership in a particular social group, or political opinion.

Specifically, the applicant admitted that on November 15, 1989, he was one of two officers who accompanied a military unit that had been ordered to carry out the political assassination of [REDACTED] the president of the Central American University (UCA). The applicant admitted that the motives for this mission were purely political and that the ultimate result of their assignment was the murders of Fr. Ellacuria and five other Jesuit priests, the priests' cook, and the cook's daughter. The applicant states that he did not agree with the order and that he did not fire his weapon or otherwise actively participate in the murders; however, the applicant also admits that, for various reasons including self-preservation and concerns for the safety of his own family, he did not openly oppose this mission or attempt to stop it, nor did he take actions to remove himself from the mission.

The director determined that the applicant was not eligible for TPS and withdrew the applicant's Temporary Protected Status on January 22, 2004.

On appeal, counsel asserts that the applicant is still petitioning the 7<sup>th</sup> Circuit Court of Appeals to reverse the Board of Immigration Appeals' (BIA) denial of the appeal of his application for asylum.

In a personal statement submitted in support of his application for asylum, the applicant stated that he did not agree with the order to assassinate Fr. Ellacuria and that he accompanied the raid on the UCA under duress. The applicant's counsel, therefore, concluded that the applicant had not "participated" in the persecution.

We disagree with counsel's conclusion. First, the applicant's actions on the night of the murders amount to assisting and/or otherwise participating in persecution. If the action or inaction of an alien "furthers...persecution in some way," that alien is barred from TPS for assisting in persecution. *Matter of Rodriguez-Majano*, 19 I&N Dec. 811, 815 (BIA 1988). Proof that an alien's conduct aids in persecution "in some small measure" establishes that the alien assisted in persecution. *Matter of Fedorenko*, 19 I&N Dec. 57, 69 (BIA 1984). Since the applicant accompanied the battalion assigned to assassinate the Jesuits as one of the highest-ranking officers present, dressed in camouflage makeup and fatigues, and brought a weapon plus extra ammunition with him, his involvement strengthened the battalion's presence and deterred outside interference. Therefore, his actions assisted in the persecution of others on account of their political opinion (imputed or otherwise) and/or religion.

Second, once it has been determined that an alien assisted or otherwise participated in persecution on account of one of the five protected grounds, the law does not require further inquiry into the voluntariness of the alien's action. There is no duress defense to involvement in persecution. *See Fedorenko v. U.S.*, 449 U.S. 490, n.35 (1981) (recognizing that the statute does not contain a voluntariness exception and that this interpretation of the statute "was in accordance with the plain language of the statute.") Therefore, although the applicant was ordered to accompany the battalion instructed to eliminate these individuals, he, nevertheless, carried out the mission and his involvement amounted to assisting or otherwise participating in persecution.

Finally, the respondent need not have had the same intent as others involved in the persecutorial acts. Neither the Act nor case law makes any allowances for an alien's motivations and intent behind his assistance or participation in the specified persecution. A person need not act out of personal motivation or beliefs to be acting as a persecutor. Cooperation or support to an organization that is acting to persecute others is sufficient to qualify an individual as a persecutor. *See Maikovskis v. INS*, 773 F.2d 435, 445-47 (2<sup>nd</sup> Cir. 1985). "It is the objective effect of an alien's actions which is controlling." *Matter of Rodriguez-Majano*, 19 I&N Dec. 811, 815 (BIA 1988). Furthermore, the plain language of the law mandates a literal interpretation of INA § 208(b)(2)(A)(i), and the omission of an intent element compels the conclusion that the law applies to all those who assisted with, or participated in, the specified persecution.

Counsel asserts on appeal that the applicant had petitioned the 7<sup>th</sup> Circuit Court of Appeals to review the BIA's dismissal of the appeal regarding his asylum application. Counsel concludes that the AAO "should wait for the Seventh Circuit to reach a final determination [of eligibility]" before adjudicating the appeal for TPS. However, the adjudication of the application for TPS is not dependant upon the outcome of the application for asylum. It is noted that both the Immigration Judge and the BIA found that the applicant had assisted in persecution.

The burden of proof is on the applicant to establish that he meets the eligibility requirements for TPS under section 244 of the Act. The applicant has failed to meet this burden. Neither counsel's statement nor the evidence provided on appeal overcomes the applicant's admitted participation in persecution. Consequently, the director's decision to withdraw the applicant's Temporary Protected Status will be affirmed.

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