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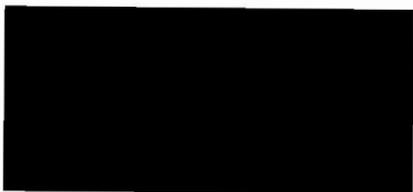
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: NOV 28 2008
[WAC 08 100 51827, appeal]
[WAC 06 103 70012]

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:



INSTRUCTIONS:

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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

The applicant is a native and citizen of El Salvador who was granted TPS on April 28, 2006. The director subsequently withdrew the applicant's status on January 25, 2008, when it was determined that the applicant had participated, either directly or indirectly in the persecution of others.

On appeal, counsel states:

The Center Director erred in his decision dated January 25, 2008 denying the Form I-821 submitted in the above-referenced case. The Center Director erroneously made a finding that the applicant, in the course of his asylum interview on January 30, 2007, "disclosed that [he was] recruited into a Civil Defense unit in El Salvador from May 1990 until December 1991, during which time [he] carried out orders to execute certain individuals suspected of being a member of a guerilla group."

This finding is not true. The applicant did admit to being forcefully recruited into a Civil Defense unit from May 1990 until December 1991, but he never admitted, nor is it true, that he carried out orders to execute certain individuals suspected of being a member of a guerilla group. The applicant never executed guerilla members, nor was he present when guerilla members were executed.

Pursuant to Matter of [REDACTED] 19 I&N Dec. 811 (1988), mere membership alone in a group that engages in persecution is not sufficient to bar one from relief as one who participated in the persecution of another on account of one of the five protect grounds.

The CSC Director withdrew the applicant's TPS following the regulations at 8 C.F.R § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and

- (f) (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
- (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Section 244(c)(2)(B)(ii) of the Act provides that an alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien is described in section 208(b)(2)(A) of the Act which specifies exceptions to the conditions for granting asylum. An alien is ineligible for TPS if he 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. Section 208 (b)(2)(A)(i). An alien is also ineligible for TPS if there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States. Section 208 (b)(2)(A)(iii).

In his Form I-589, Application for Asylum in the United States, that he filed on August 16, 1993, the applicant stated:

In May 1990, I was stopped by the civil defense as I was out shopping for our mother with my little brother. They took me to the precinct in Chapeltique and found that my records said that I had failed to present my self before for recruitment. After sending me for training the military stationed me on the road in Chapeltique to stop the buses and interrogate the passengers. If people did not have ID we were under orders to shoot and kill them on the spot on the assumption that they were guerrillas. If they came from a certain place and no-one else on the bus knew them, we were ordered to shoot and kill them on the assumption that they were

guerrillas. I know that I have been forced to kill many people who were perhaps innocent civilians.

At his asylum interview on January 30, 2007, the applicant confirmed, under penalties of perjury, that the above statement was true and correct to the best of his knowledge and belief.

On appeal, counsel argues the applicant did admit to being forcefully recruited into a Civil Defense unit from May 1990 until December 1991, but he never admitted, nor is it true, that he carried out orders to execute certain individuals suspected of being a member of a guerilla group. Counsel's assertion that the applicant never executed guerilla members, nor was he present when guerilla members were executed is supported by the record only if the persons executed by the applicant were all innocent civilians and none were guerilla members. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988).

Counsel states that pursuant to *Matter of [REDACTED]* 19 I&N Dec. 811 (1988), mere membership alone in a group that engages in persecution is not sufficient to bar one from relief as one who participated in the persecution of another on account of one of the five protected grounds. In *[REDACTED]* which was an El Salvadoran case, it was held that regardless of whether the respondent aided the guerrillas' voluntarily or not, the only harm or injury he may have inflicted arose as the natural consequence of civil strife and the harm resulting from such generalized civil strife is not persecution. The respondent in that case was engaged only in military activities of a type normal in such conflicts. That is not the case in this matter. The execution of persons who did not have ID or who came from a certain place and were not known by other persons on a bus on the assumption that they were guerrillas can not be considered a normal military activity of a type normal in a conflict. The applicant in this case admits he had probably killed persons who were innocent civilians. The applicant is ineligible for TPS due to his record of persecuting persons on account of membership in a particular social group or political opinion. Section 208 (b)(2)(A)(i). Consequently, the director's decision to withdraw TPS is affirmed.

The applicant states "I know that I have been forced to kill many people who were perhaps innocent civilians." The killing of innocent civilians, even during a civil conflict under the circumstances outlined above, constitutes a serious nonpolitical crime. It is determined that there are serious reasons for believing that the applicant has committed the serious nonpolitical crime of the killing civilian(s) in El Salvador prior to his arrival in the United States on January 15, 1992. Section 208 (b)(2)(A)(iii). **The director's decision to withdraw TPS is affirmed for this additional reason.**

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status 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.