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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUN 03 2009
[EAC 08 046 73644]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because he found the applicant inadmissible due to having participated directly or indirectly in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

On appeal, counsel for the applicant states that the applicant never committed human rights abuses. The applicant also submits evidence in support of this claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state 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.

During the applicant's asylum interview, the applicant stated that he had had been a soldier with the Salvadoran Military from 1986 to 1989, during which time he had many encounters with guerillas. The director determined that credible evidence reveals that the Salvadoran Army engaged in many civil rights violations from 1986 to 1989. The director concluded that it appeared that the applicant had participated, either directly or indirectly, in the persecution of others and therefore, denied the application.

Counsel contends that the legal standards used in the denial were erroneous. According to counsel, the applicant submitted evidence that should have created a *prima facie* case that should have resulted in the granting of TPS. Counsel argues that testimonial and documentary evidence in the record was "augmented by new and arbitrary information, not subject to contemporaneous rebuttal" that was used to deny the application. However, the new information was actually statements from the applicant made during his asylum interview. Therefore, counsel is seemingly questioning the applicant's own veracity.

The applicant also submits a statement from [REDACTED] Bishop of the Casa Episcopal Diocesis De Chalatenango in El Salvador. According to [REDACTED], it would not be fair to assign guilt to a corporal for the high level decisions and actions of others. [REDACTED] also states that if the applicant had been responsible for war crimes, human rights violations or persecutions of others, he would have been prosecuted. However, [REDACTED] does not know the applicant personally and can not affirm what the applicant's military service entailed. In addition, the applicant fails to provide any other evidence or documentation to overcome this finding on appeal. Consequently, the applicant is not eligible for TPS based on his inadmissibility under section 212(a)(3)(E)(iii) and section 208(b)(2)(A). Counsel claims that the statement provided by [REDACTED] indicates that the applicant is of high moral standards. However, in his statement, [REDACTED] merely states that the applicant was part of the unit and that the unit has since disbanded. According to the applicant, he participated in capturing guerillas and would turn them over to another department that took them to jail. Courts have held that "assisting in the persecution of others" within the meaning of INA 208(b)(2)(A)(i) includes arresting or detaining persons the applicant believes would be prosecuted on account of a protected ground. As such, the applicant has the burden of proving by a preponderance of the evidence that the ground does not apply. The applicant has failed to meet this burden. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.