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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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Date: Office: NEBRASKA SERVICE CENTER

JUL 27 2011

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

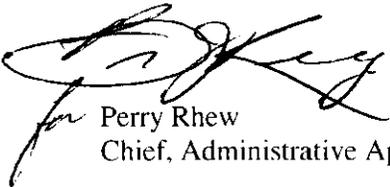


INSTRUCTIONS:

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 Nebraska 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 Nebraska 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, Nebraska Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti 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 it was determined that the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, the applicant asserts that he did not persecute anyone while living in Haiti. The applicant states that he was 15 years old, attending school and living with his family in Cape Haitien, Haiti.

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 Secretary 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.

Section 244(c)(2)(B)(ii) of the Act provides that an alien shall not be eligible for TPS under this section if the Secretary finds that the alien is described in section 208(b)(2)(A) of the Act.

Section 208(b)(2)(A)(i) of the Act states, in pertinent part:

- (A) In general – Paragraph (1) shall not apply to an alien if the Attorney General determines that that – (i) 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.

During his exclusion proceedings on January 12, 1996, which was conducted through a Creole interpreter, the applicant, under oath, testified that he worked for [REDACTED] member from November 1991 to December 1994. The applicant testified that he had an identification card that designated him to be [REDACTED]. The applicant testified that his job consisted of reporting to [REDACTED] individuals who were talking against him [REDACTED] or were [REDACTED] supporters and that [REDACTED] would beat them up. The applicant testified that he also informed [REDACTED] of individuals who were bothering him and he knew that [REDACTED] would subsequently beat them up.

In denying the TPS application, the director noted that the persecutor bar applies even if the applicant did not personally commit the persecutory act, so long as the applicant 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. The director determined that in light of the country's conditions at the time, the events detailed above, and the fact that the applicant was still present in Haiti when they occurred, it was unlikely that he was unaware of, or did not participate in, the persecutory acts. Therefore, the applicant was determined to be ineligible for TPS.

On appeal, the applicant asserts, "I have never met, heard of, spoke of; or read about any such person named [REDACTED], nor anyone of his liking. I have never worked for this person either directly or indirectly through any other means of contact or displacement at all." The applicant asserts that in November 1991, he had just turned 15 years of age and was still under the supervision of his elder family members "who I can assure you have not, do not, and never have taken part in such despicable crimes of human exploitation." The applicant asserts, in pertinent part:

I went to a lawyer recommended by a Haitian man who knows my father. This lawyer prepared my asylum application and any written statements along with the I-589. I did everything he told me to do. He then represented me in Immigration Court. I knew nothing about the process.

At the time of court, I was not speaking English as a second language very well at all. I was told to agree with whatever was placed in front of me and that agreeing would make it better for me and my status in the United States in the long run.

Any spoken word or signed documentation that says that I agreed to any of the above statements helping or providing for [REDACTED] and his Business Operations I assure you now as an adult is untrue and coaxed upon me to say so, just to shuffle me through the process of endless red tape and humiliation.

However, during his exclusion proceedings the applicant had the opportunity to retract the statements made on his Form I-589. At the beginning of the proceedings, the applicant, through a Creole interpreter, swore before the court that any testimony given would be the nothing but the truth. The transcript of hearing dated January 12, 1996, reflects that the immigration judge asked the applicant several times about his activities with [REDACTED] and the applicant never denied knowing this individual; rather he provided further information about [REDACTED] that was not initially mentioned on his Form I-589.

The director based her evaluation and decision on the applicant's own testimony taken during his exclusion proceedings, not what was listed on his asylum application. It is only after he was denied TPS based on the determination that he had assisted in the persecution of others, that the applicant declares confusion as to how these claims of assisting in persecution became part of the record. The applicant has failed to provide any evidence to overcome the director's findings. Therefore, the director's decision to deny the application for TPS is 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that on January 12, 1996, the applicant was ordered excluded and deported from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On February 21, 1997, the BIA dismissed the appeal.

ORDER: The appeal is dismissed.