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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

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U.S. Citizenship
and Immigration
Services



M₁

DATE: **SEP 07 2011** Office: CALIFORNIA SERVICE CENTER 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 California 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 California 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) 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 withdrew the applicant's TPS because it was determined that the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel for the applicant submits a brief disputing the director's findings.

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. 8 C.F.R. § 244.14(a)(1).

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 – (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.

In support of his asylum application filed on November 2, 2004, the applicant provided the following statement, in pertinent part:

On March 10, 2001, as I was coming from Port au Prince, I drove in front of the College Michelet Duvert, owned by Danny Duvert, a very prominent member of Espace de Concertation and KID. As I approached the school, I heard gunshots being fired and I noticed that several men were standing in front of the college. I asked my ride to stop his car so I could inquire about the situation. At that time, [REDACTED] who is an employee at the Mayor's office, informed me that Deputy Melchior Antoine asked them to go see about a meeting that Espace de Concertation was holding at the College Michelet Duvert. When they arrived at the college, they met a hostile crowd that fired their guns at them. As a result of the fire exchange, [REDACTED] a fellow security agent, suffered a gunshot wound, [REDACTED] from Espace de Concertation was apprehended while his partner had the time to escape. In those days, the Lavalas government had adopted a system of zero tolerance. This system allowed anyone to arrest a criminal caught in flagrante delicto. Hence, [REDACTED] was arrested by the security agents and taken to our local police station.

When I arrived at [REDACTED] I encountered some agents that I worked with accompanying a handcuffed [REDACTED] to the police station. I decided to go along with them. [REDACTED] was a lieutenant in the disbanded military of Haiti. [REDACTED] was held at our local prison in Arcahaie for 2-3 weeks so that he could give the names of the people that were involved in a meeting so the police could make a determination as to who fired the shot. After two weeks, he was then taken to the National Penitentiary in Port au Prince where he spent the next two years. He was never tried for any crime and his detention angered many people across the nation. Because I was involved with the arrest of [REDACTED] I along with several of my co-workers would receive threats from the townspeople in Arcahaie.

After the departure of Aristide, [REDACTED] was released from jail.

The applicant testified to an Asylum Officer on November 29, 2004, that he worked as a security agent from February 2001 to February 2004 for the Lavalas mayor of [REDACTED]. The applicant testified that he received training to use a weapon, but never fired a weapon while working for the mayor. The applicant testified that he was informed of a meeting of the Espace de Concertation and KID political group and that four security agents were ordered by the Lavalas deputy, [REDACTED] to attend the meeting. The applicant testified that one of the security agents was shot at the meeting, that he saw three security agents arriving at the police station with [REDACTED] a former lieutenant in the Haitian army, and an opposition party member. The applicant testified that he went with the security agents in order to find out what was going on and that he and the other agents left [REDACTED] at the police station where he was held for two or three weeks. The applicant testified that [REDACTED] was then sent to the National Penitentiary where he remained until Aristide left Haiti.

A notice was issued on December 21, 2004, which advised the applicant of his testimony given on November 29, 2004, and of the intent to deny his asylum application. The applicant was advised of the arrest of [REDACTED] who was sent to the National Penitentiary for approximately three years without a trial, and of his involvement in that arrest, which occurred three months before President Aristides's June 2001 speech on 'zero tolerance'.¹ The director determined that the arrest and subsequent detention of [REDACTED] without trial for approximately three years, constituted persecution on account of his political opinion. The director concluded that the applicant has assisted or otherwise participated in the persecution of [REDACTED] by voluntarily involving himself in the arrest.

The Director, California Service Center, in issuing his decision to withdraw the applicant's TPS, determined that the evidence in the record indicated that the applicant had ordered, incited, assisted or otherwise participated in the persecution of others on account of race, religion, nationality, or membership in a particular social group or political opinion.

On appeal, counsel asserts that the only reason the applicant was present during the arrest of [REDACTED] is because the arrest occurred near his home. Counsel, asserts, in pertinent part:

At that time security agents did not have any authority to arrest people under "Zero tolerance." The applicant was naïve and was not thinking rationally or clearly. He did not detain anyone or cause any bodily harm to anyone. In addition, the judicial system is beyond his control he does not have any say in when his trial is to be held. He did not agree with the political turmoil in Haiti, he did not want any part of it, but simply wanted out.

By his own admission, the applicant voluntarily involved himself in the arrest of an opposing political member. The applicant's behavior was culpable to such a degree that it is deemed to have assisted or participated in the persecution of others. *Matter of Rodriguez-Majano*, 19 I&N Dec. 814-815 (BIA 1988).

The director's decision was based on the applicant's testimony at his asylum interview and supplemented with documentation. The statute is clear that an alien is ineligible for TPS even if he or she was not a primary persecutor, but only "assisted, or otherwise participated in" persecutory activities. Accordingly, the AAO will affirm the director's decision that the applicant is ineligible for TPS under sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(i) of the Act.

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.

¹ See <http://www.hrw.org/wr2k2/americas7.html>