U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 2 1 2013 Office: VERMONT SERVICE CENTER

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. .

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Ron M. Rosenberg
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 withdrew the applicant's TPS because it was determined that the applicant had ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, the applicant through counsel asserts that the director's decision was erroneous and that he is not a persecutor under 208(b)(2)(A)(i) of the Act, nor has he committed, ordered, incited, assisted, or otherwise participated in the commission of torture.

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 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

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 and/or Section 212(a)(3)(E)(iii)(5)(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.

Section 212(a)(3)(E)(iii)(5)(a) of the Act states in pertinent part:

(iii)COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS-Any alien who, outside of the United States, has committed, ordered, incited, assisted or otherwise participated in the commission of-

> (I) any act of torture, as defined in section 2340 of title 18, United States Code; or
>
> (II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Prosecution Act of 1991 (28 U.S.C. 1350 note), is inadmissible

The director withdrew the applicant's TPS because he determined that the applicant had participated in human rights violations, and was, therefore, barred from TPS as a persecutor. The applicant filed a motion for reconsideration and submitted various documents in an attempt to overcome the withdrawal of his TPS. The request to reopen the previous decision was granted and the director issued a new decision on September 6, 2011. In that decision, the director found that the brief and affidavit the applicant had submitted with his motion contradicted the testimony that he gave during his January 17, 2001 NACARA interview, as well as his Application(s) for Asylum and Withholding of Removal, Form I-589, filed on June 6, 1988 and October 4, 1995, respectively. The director determined that evidence of record established that the applicant was not eligible for TPS in accordance with Section 244(C)(2)(B) of the Act because he is an alien described in Section 208(b)(2)(A)(i) of the Act, and because of his contradictory testimony "on various occasions" regarding his duties as a police officer. The director stated that "at a minimum" the applicant "participated or assisted in the persecution of others on account of their political opinion," and found the applicant ineligible for TPS. The director noted that the burden of proof is upon the applicant to establish by a preponderance of the evidence that the persecutory bar does not apply to him.

A review of the record indicates that at his NACARA interview on January 17, 2001, the applicant testified that he had been a member of the Salvador military, assigned to the Artillery Battalion from 1976 until 1978. For a six-month period from 1976 to 1977, he was a soldier with the Artillery Battalion in [redacted] He stated he never was in actual combat but he was trained on the use of "various weapons and the use of bombs." From 1977 to 1978, he was promoted to the rank of a "cabo" and again was assigned to the Artillery Battalion. According to the applicant, his duties included training young soldiers on the use of bombs and weapons.

After leaving the military, the applicant testified that he became a plain-clothes police "agent" in the from 1979 to 1984 and that he conducted investigations throughout the country of individuals who were "against the government." These individuals, according to the applicant's statements were thought to be guerrilla members or guerrilla sympathizers.

According to the United Nations High Commission on Refugees *(UNCR)*[1] *The Policía Nacional* (National Police), the *Policía de Hacienda* (Treasury Police), and the *Guardia Nacional* (National Guard) were the three principal internal security forces in El Salvador prior to their being dismantled and replaced by the *Policía Nacional Civil* (National Civilian Police, PNC) under the United Nations-sponsored peace accord of January 1992. The reports indicate that the Salvadoran military and the three security forces were directly responsible for gross human rights violations throughout the period in question, killing 42,171 people during the six peak years of violence from 1978 through 1983 (Stanley 1996, 3). The state violence began to escalate between 1977 and 1979, and continued to intensify through 1980 and 1981, with government killing rising to nearly 12,000 in 1980 and peaking at more than 16,000 in 1981, according to the report.

To determine whether an applicant "assisted or otherwise participated in" persecution, the adjudicator should ask: "did the [applicant's] acts further the persecution, or were they tangential to it?" *Miranda-Alvarado v. Gonzales,* 449 F.3d 915, 928 (9th Cir. 2006). The U.S. Supreme Court case of *Federenko v. United States,* 449 U.S. 490 (1981) has provided guidance in interpreting the persecutor base. Following the *Federenko* decision, lower courts have expanded the persecutor bar so that personal involvement in killing or torture is no longer necessary for a finding that an alien assisted in persecution. For example, the second circuit court of appeals held that "[P]ersonal involvement in killing or torture *is not necessary* to impose responsibility for assisting or participating in persecution. *Ofusu v. McElroy,* 98 F.3d, 694, 701 (2nd Cir. 1996) (emphasis added). The seventh circuit found that the atrocities committed by a unit may be attributed to the individual based on his membership and apparent participation. *Kalejs v. INS,* 10 F.3d 441, 444 (7th Cir. 1993), cert. denied, 510 U.S. 1196 (1994). Similarly, the Board of Immigration Appeals (BIA) has held that mere membership in a persecutory organization does not qualify a person as a persecutor unless the person's action or inaction furthered the persecution in some way. The BIA instructs the court not to look at the subjective intent of the alien, but at the "objective effects of the alien's actions." *Matter of Rodriquez-Marjano,* 19 I&N Dec. 811, 815 (BIA 1988).

In this case, the applicant has testified under oath that he conducted investigations against persons who were "against the government" or were thought to be guerrillas or guerrilla sympathizers. He stated that following the completion of his investigation, these individuals might be arrested and turned over to other officers for interrogation. In addition, the applicant admitted that he was aware that some of the individuals he turned over for interrogation might be beaten or sent to Mariona Prison. As noted by the director, this testimony corresponds to his June 6, 1988 asylum affidavit and information provided on his asylum application, Form I-589, submitted on October 4, 1995, in which the applicant stated that his duties included investigating guerrillas and guerrilla activities. At

[1] http://www.refworld.org/

his December 4, 2008 Removal Proceedings Hearing, the applicant testified that his duties as a police officer included providing security, guarding the border, and investigating criminals, and that he did not investigate those who were against the government. At a December 18, 2008 hearing, the applicant contradicted previous statements. He testified that he "arrested only one person during his five years with the police force, a man who was breaking windows during a civil disturbance, and that he did not know what happened to that man."

The asylum officer who interviewed the applicant was called in to testify at the hearing. The Immigration Judge found that the "respondent's [applicant's] testimony directly contradicted the notes the asylum officer took," and a reasonable explanation for the contradictions was not provided. The applicant questioned the integrity of the officer's contemporaneous notes regarding the question of the applicant's duties as a police officer and "knowledge that prisoners were beaten." The Immigration Judge stated that the record indicates that the asylum officer was well-trained and the recipient of awards for quality, and that she conducted the interview and took notes in the manner required by USCIS, and which was her routine practice. The court placed significant weight on her notes and testimony regarding the applicant's statements to the officer, including testimony regarding his duties as a police officer, arresting guerrilla sympathizers and those who were "against the government." The applicant's testimony was found to be not credible by the Immigration Judge who indicated that the applicant's testimony during his "NACARA interview and in court were completely different and cannot both be accurate." The Immigration Judge also noted that the Department of State Country condition reports state that human rights abuses were committed by security forces of El Salvador and the "report clearly indicates that the and the army were part of those security branches."

The applicant appealed the decision to the Board of Immigration Appeals (BIA) and on October 15, 2010, the BIA issued a decision finding that the applicant's testimony during his removal proceedings was not credible and that the applicant was not "candid regarding the material question" of whether he "may have participated in human rights violations in El Salvador." The Board rejected the applicant's argument that "the inconsistencies between his testimony during his NACARA interview and his testimony before the Immigration Judge can be explained by interpretation errors." The Board determined that there is no indication that the applicant "struggled to understand the immigration official during this interview." The BIA also stated that the immigration officer's notes meet the "minimum standards of *Matter of S-S-*, 21 I&N Dec. 121, 124 (BIA) (1995) in that they 'contain a meaningful, clear, and reliable summary of the statements' made by the [respondent] (the applicant) at the interview." The Board also stated that the applicant was "confronted with the inconsistencies and given an adequate opportunity to explain them, but he was properly found not to have provided a satisfactory explanation."

On motion for reconsideration of the withdrawal of his TPS, the applicant submitted an affidavit in which he again stated that he never investigated guerrilla activities and that he "never arrested, interrogated or harmed a guerrilla fighter in any other way. Counsel stated the applicant's duties were "typical of legitimate law enforcement procedures throughout the world and does not transform the applicant into a persecutor." He states that the applicant testified at his NACARA

hearing that he only spent a "small portion of time" doing investigation" and during that time he investigated "criminals not guerillas."

On appeal, counsel asserts that the applicant's statements on his asylum application that his job duties involved "investigating guerillas" is significantly less probative of his experience in the than his own translated verbal testimony. In addition, counsel states that the affidavit was "written in English," a language the applicant "does not speak" and the translator did not identify him/herself or certify that he/she was actually capable of translating. Counsel states that by the term "against the government" the applicant meant individuals who destroyed things like electric poles and plants and roads. The applicant has not submitted credible evidence to overcome his own statements and to establish that the persecutor bar does not apply to him. The applicant's statements throughout these proceedings have been inconsistent regarding his duties with the These inconsistencies are material to the applicant's claim in that they have a direct bearing on his eligibility for TPS.

Therefore, based on a complete review of the record, it must be concluded that by his own admission, the applicant was involved in the investigation and subsequently provided information that led to the interrogation and arrest of innocent civilians based on their political opinion. The AAO finds that the grounds for withdrawal have not been overcome.

The applicant has the burden of proving by a preponderance of the evidence that the persecutor bar does not apply to him. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. In this case, the applicant has failed to establish that he did not assist in the persecution of others. The applicant has not overcome the basis of the director's withdrawal of his TPS; therefore, the director's decision 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.

ORDER: The appeal is dismissed