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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:

[REDACTED]

OFFICE:

TEXAS SERVICE CENTER

DATE:

SEP 09 2009

SRC-06-164-50285

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the Director, Texas Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that on February 3, 1990, the applicant filed an application to adjust status from temporary to permanent resident under the legalization program pursuant to section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a. On April 4, 2006, the Director, Texas Service Center, denied the application because the applicant failed to show that he continuously resided in the United States during the requisite period.<sup>1</sup> On November 2, 2006, the Director terminated the applicant's temporary resident status because his application for adjustment to permanent resident status was denied.

On appeal, the applicant furnished a copy of his Social Security Statement as evidence of his residence in the United States during the requisite period.

During the adjudication of the applicant's appeal, information came to light that adversely affects his eligibility for temporary resident status. The record reveals that in 1981 the applicant filed a Form I-589, Request for Asylum in the United States, with the former Immigration and Naturalization Service (INS). The applicant stated on his Form I-589 that he is a national of El Salvador and served in the Salvadoran army as a lieutenant. The applicant stated that on December 31, 1979, he was detained and interrogated by leftist groups. The applicant stated that on May 7, 1980, he was arrested at the [REDACTED] and taken to [REDACTED]. The applicant claims that he was detained for two days and interrogated by a Salvadoran infantry unit. The applicant indicated that an ex-member of the [REDACTED] ordered his detention. The applicant claims that he was politically persecuted by leftist groups that belong to an organization named FAPU.

The applicant furnished various newspaper articles with his Form I-589, including a May 12, 1980 edition of the Salvadoran newspaper, *El Independiente*. This newspaper includes articles that refer to the May 7, 1980 arrest and detention of a number of right-wing military and civilian figures headed by [REDACTED]. These individuals were arrested at [REDACTED] for allegedly plotting to overthrow the government of El Salvador. The article lists the applicant's name, [REDACTED] as among those who were arrested.

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<sup>1</sup> An alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty days, and the aggregate of all absences has not exceeded ninety days between the date of approval of the temporary resident application, Form I-687, and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his control, the return to the United States could not be accomplished within the time period(s) allowed. 8 C.F.R. § 245a.3(b)(2).

The AAO notes that journalists, analysts and human rights monitors have focused on the May 7, 1980 incident because during the arrests evidence was found that linked [REDACTED] and his associates to the March 24, 1980 assassination of San Salvador Archbishop [REDACTED] an advocate for human rights opposed by right-wing conservatives in El Salvador.

The assassination of [REDACTED] was a principal focus of the Commission on the Truth for El Salvador (Truth Commission). The Commission was mandated by the January 16, 1992 United Nations brokered peace agreements that ended the war in El Salvador. The Commission examined the human rights violations that occurred during the 12 year war, which spanned from 1980 to 1992. The violations were discussed in a report entitled, *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador*.<sup>2</sup>

The Commission's report noted that [REDACTED] had become a well-known critic of violence and injustice and, as such, was perceived in right-wing civilian and military circles as a dangerous enemy. The Commission referred to the May 7, 1980 raid and arrests on the San Luis estate of 12 active and retired military personnel and 12 civilians, including [REDACTED]. The Commission noted that those arrested were formally accused of plotting to overthrow the Government by means of a *coup d'état*. Documents seized during the raid included important pieces of information related to the assassination of [REDACTED]. The Commission listed the applicant's name, [REDACTED], as among the individuals who were arrested on May 7, 1980. The Commission concluded that [REDACTED] ordered the assassination of [REDACTED] and gave instructions to members of his security service, acting as a "death squad," to organize and supervise the assassination.<sup>3</sup>

In order to be eligible for temporary resident status, an applicant must establish that he has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion. Section 245A(a)(4)(C) of the Act, 8 U.S.C. § 1255a(a)(4)(C). The aforementioned Truth Commission report, articles from *El Independiente* newspaper, and the statements on the applicant's Form I-589 indicate that the applicant was linked to military forces that assassinated or assisted with the assassination of [REDACTED] on account of his political opinion as an advocate for human rights. The AAO, therefore, finds the applicant to be ineligible for temporary resident status based upon his possible involvement in persecutory activities.

On June 24, 2009, the AAO issued a notice to the applicant informing him that it was the AAO's intent to dismiss his appeal. The applicant was granted 30 days to provide substantial evidence from credible sources addressing, explaining, and rebutting the findings described above.

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United States Institute of Peace, *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador*,

[http://www.usip.org/library/tc/doc/reports/el\\_salvador/tc\\_es\\_03151993\\_toc.html](http://www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_toc.html) (March 15, 1993).

<sup>3</sup> *Id.*

In rebuttal to the AAO's notice of intent to dismiss, counsel asserts that the applicant's implication in the assassination of [REDACTED] is based on a report whose validity and motives continue to be in question. Counsel states that as a person in the military, the applicant was prohibited from practicing politics. Counsel notes that implying the applicant's involvement in such a despicable act with highly political motives is questioning his good moral character and military integrity.

Counsel furnished a police report under the applicant's name from El Salvador. The report is written in Spanish without an accompanying certified English translation. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Counsel also furnished an affidavit from the applicant, dated July 16, 2009. The applicant states in his affidavit that after his military training he joined the navy and became [REDACTED]. The applicant states that he was stationed at a naval base in the city Union for three and a half years. He states that he would travel every weekend to San Salvador by car during his time off. He states that May 7th is the Day of the Soldier in El Salvador. The applicant states that on that date he was at a barbecue. He states that he never thought that he would find himself in bad company and plotting against the government was distant from his thoughts. The applicant states that he fears returning to El Salvador because the government would falsely accuse him of being involved in something he was never a part of.

The AAO notes that the applicant's affidavit fails to provide substantial evidence from credible sources addressing, explaining, and rebutting the AAO's finding that he was possibly involved in persecutory activities. Further, the applicant's claim that he was a navy lieutenant who was attending a barbecue on May 7th is contradictory to the information he provided on his asylum application. According to the applicant's asylum application, he served in the Salvadoran army as a lieutenant and was arrested on May 7, 1980 and detained for two days. The United Nations mandated Commission on the Truth for El Salvador listed the applicant's name as among the individuals who were arrested on May 7, 1980 for plotting to overthrow the Government by means of a *coup d'état*.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The absence of probative documentation and the inconsistencies noted in the record seriously detract from the credibility of the applicant's claim. Therefore, the AAO finds that the applicant has failed to overcome the intended basis for the dismissal of his appeal.

As previously stated, in order to be eligible for temporary resident status, an applicant must establish that he has not assisted in the persecution of any person or persons on account of race,

religion, nationality, membership in a particular social group, or political opinion. Section 245A(a)(4)(C) of the Act, 8 U.S.C. § 1255a(a)(4)(C). The Attorney General [now Secretary, Department of Homeland Security] shall provide for termination of temporary resident status granted to an alien if it appears to the Attorney General [Secretary] that the alien was in fact not eligible for such status. Section 245A(b)(2)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(2)(A).

Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he is eligible for temporary resident status as required by 8 C.F.R. § 245a.2(d)(5). Therefore, the AAO affirms the termination of the applicant's temporary resident status.

**ORDER:** The appeal is dismissed. This decision constitutes a *final notice of ineligibility*.