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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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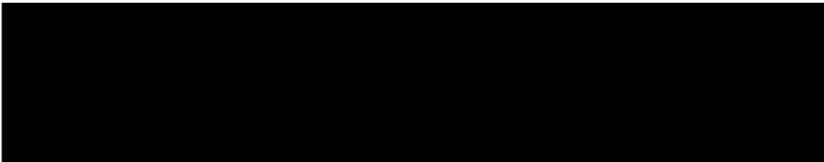


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAY 07 2009**  
[EAC 08 136 70321]

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 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 denied the application because he determined that the applicant was ineligible for TPS because the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel for the applicant states that the applicant never stated that he ordered, incited, assisted or otherwise participated in the persecution of others.

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.

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 interview in connection with his asylum application, the applicant stated that he served as a member of the National Guard during the years of 1984 and 1985 in San Salvador and San Vicente. The applicant further testified that he never personally harmed anyone. The director pointed out however, that the persecution bar applies even if the applicant did not personally commit the persecutory act, so long as he ordered, incited, assisted, or otherwise participated in the persecution of others. The director therefore determined that the applicant was not eligible for TPS and denied the application.

On appeal, counsel states that the applicant never stated that he ordered, incited, assisted, or otherwise participated in the persecution of others. According to counsel, the director's conclusion based on the applicant's statements is not only incorrect but also irresponsible. Counsel contends that a member of an organization can not be found guilty of persecution based solely on his membership. While membership alone may not establish that the applicant is guilty of persecution, and the applicant denied personally mistreating any guerillas, suspected guerillas, or other individuals, he served as a member of the National Guard which was known to have carried out serious human rights abuses. The applicant also indicated that he would turn individuals over to his superior who would then interrogate them and sometimes send them to National Guard Headquarters. 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 persecuted 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.