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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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[REDACTED]

FILE: [REDACTED]  
[SRC 04 225 53661]

Office: VERMONT SERVICE CENTER

Date: OCT 06 2009

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:

[REDACTED]

**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).

Perry Rhew  
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 found that the applicant was ineligible for TPS because he had ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, the applicant states that he falsely stated that he was a member of the Salvadoran military as a sergeant between 1985 and 1987.

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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). In addition, an alien described in section 208(b)(2)(A) of the Act shall be ineligible.

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 denied the application because he determined that the applicant had participated in the persecution of a person or a group.

The applicant testified under oath during his NACARA interview that he served in the El Salvador military as a sergeant in the Atonal Battalion from 1985 to 1987. The applicant also stated that during this period he was stationed in San Salvador base and was assigned to train recruits and that the mission of the Atonal Battalion was to combat guerrillas. The applicant also stated that he was never sent to combat because of a knee injury and that he was released from the military after one year because of the knee injury. The applicant stated that he had left his military papers in El Salvador. After this interview, the applicant recanted his testimony and stated that his testimony about serving in the military was not true and he was sorry that he had lied during the interview. The director determined that the applicant admitted under oath that he served in the El Salvador military Atonal Battalion which was notorious for its human rights violations during the war. Country conditions reports show that during the applicant's tenure (1985 -1987), members of the Atonal Battalion were engaged in numerous human rights violations, including captures, torture, disappearances, extrajudicial executions, and indiscriminate military attacks.

On appeal, the applicant states that because he received bad advice from the notary who had prepared his TPS application, and he falsely stated that he was a member of the Salvadoran military. According to the applicant, he was only 15 years old at the time and was still in school at the Instituto Politecnico Santa Lucia. However, the applicant has offered no evidence to support this claim. The applicant is seeking to set aside his sworn testimony based simply on his unsupported claims. Therefore, the applicant has not overcome the basis for the director's decision.

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.