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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
and Immigration
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[REDACTED]

FILE: [REDACTED]
[EAC 08 276 70071]

Office: VERMONT SERVICE CENTER

Date: SEP 01 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).

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, the applicant states that his TPS application was denied in error. According to the applicant, the allegations regarding his case are incorrect.

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.

The applicant testified to an Asylum Officer on May 21, 2004, that he had voluntarily served in the El Salvadoran Army's 3rd Company, Battallon Canas of the Quinta Brigade in San Vicente, El Salvador from June 1984 to June 1987. The applicant further testified that he obtained the rank of sub-sergeant and commanded 35 to 40 soldiers that engaged in combat on a daily basis. The applicant stated that he and those in his command never committed human rights violations, but acknowledged that the military did commit human rights violations and that he may have been a participant. However, according to El Rescate, the Quinta Brigade committed 81 human rights violations in San Vicente during the applicant's service in the military, seven of which are attributed to the Battallon Canas. Country conditions and the applicant's own testimony that he participated in indiscriminate military attacks led the director to conclude that the applicant ordered, incited, assisted, or otherwise participated in the persecution of another person on account of race, religion, nationality, membership in a particular social group or political opinion. Therefore, the director determined that the applicant had the burden of proving, by the preponderance of the evidence that this ground of ineligibility for TPS did not apply to him. According to the director, no evidence was provided by the applicant that could establish that he did not persecute or assist in the persecution of others. Therefore, the applicant was determined to be ineligible for TPS.

On appeal, the applicant states that his application for TPS was erroneously denied and that he is prima facie eligible for TPS. According to the applicant, the allegations made by the Service regarding his case are incorrect and Section 208(b)(2)(A)(i) of the Act does not apply to his case. However, the applicant has not provided any information to overcome the basis for denying his TPS application on this ground. 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.