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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
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 08 171 70217]

Office: VERMONT SERVICE CENTER

Date: SEP 9 - 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 and 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 and was inadmissible to the United States as an alien who ordered, incited, assisted or otherwise participated in persecution of others.

On appeal, counsel for the applicant states that the applicant has met all the regulatory requirements for a grant of Temporary Protected Status, and he asserts that the applicant is neither inadmissible nor deportable under the relevant statutory provisions.

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

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with United States Citizenship and Immigration Services (USCIS) on March 19, 2008.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The director determined that the applicant's request for suspension of deportation/special rule cancellation of removal pursuant to section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) was referred to an Immigration Judge as the applicant appeared to be barred from relief under section 240A(c)(5) of the Act (persons who ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group or political opinion.) Therefore, the director denied the TPS application because he determined that the applicant is an alien described in Section 208(b)(2)(A) of the Act as well as Section 212(a)(3)(E)(iii) of the Act.

On appeal, counsel states that the applicant is eligible for TPS, and asserts that there is no clear evidence in the record that the applicant had arrested anyone, participated or observed others being arrested or being mistreated, nor had he had anything to do with taking prisoners.

On February 1, 1996, the applicant filed an application for asylum with the Immigration and Naturalization Service (INS), now USCIS. The applicant was interviewed on November 30, 2004 in connection with his asylum application, and was interviewed on January 12, 2005 and May 31, 2005 for purposes of determining his NACARA eligibility.

During his asylum interview, the applicant stated that he did not see combat and that his only duty, other than processing shipments of food and clothing, was to alert the guerillas when the enemy approached. Country reports establish that during the time the applicant served in Chalatenango, it was one of the most highly conflictive areas in El Salvador's civil war.¹

The applicant stated on his asylum application that he had been forced to join the guerilla movement when he was sixteen years old. During his asylum interviews, the applicant stated that he had been a member of the guerilla movement in El Salvador from the time of his forced inscription in January 1986 until he deserted in December 1988. The applicant variously referred to the guerilla organization as FMLR, FPL or RN. At the interview on January 12, 2005, he was asked three times if the RN and the FPL were the same organization as FMLR. He finally stated they (these acronyms) were just different names for the same organization. He subsequently described the RN faction, of which he was a member, as being at the lowest end of the chain of command of the guerilla movement in El Salvador.

The applicant stated that after a training period of six months, he was assigned to a radio station with 50 other individuals, in Chalatenango, El Salvador, where his duties included the distribution of food and clothing and handling of radio communications. The applicant stated that he was issued a radio and a G-3 firearm. He further stated that he would be notified by radio of the arrival of food and clothing shipments that "came from the rich people" and that he fired in the air on approximately 15 occasions to warn his comrades that the "enemy" was approaching. The applicant did not provide a clear response when he was asked three times at his asylum hearing what he did when the army came to the radio communications station. That interview was terminated when the interpreter was unable to keep up with the applicant's long, unclear explanations. He denied participating in combat

¹ Country Studies/Area Handbook Series, U.S. Department of army, 2004-2005, <http://countrystudies.us/el-slavador/37.htm>.

and asserted that he never fired at any individual and was not aware of any human rights abuses committed by other guerillas.

A review of the applicant's November 30, 2004 Record of Sworn Statement and the interviewing officers' notes taken during his interview, reflect that the applicant frequently failed to directly respond to questions regarding his specific duties and his actions in Chalatenango. As such, his denial of any knowledge of any human rights abuses committed by the guerrillas is questionable.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On appeal, counsel cites case law which he asserts demonstrate that the applicant has not participated or assisted in the persecution of others. The applicant fails to provide any evidence or documentation to overcome the director's finding. By his own admission, however, the applicant was an armed member of a guerilla unit, and he took direct action to notify his comrades in his chain of command that an "enemy" was approaching their station. Therefore, the applicant is not eligible for TPS based on his inadmissibility under section 212(a)(3)(E)(iii) and section 208(b)(2)(A) as a person who ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group or political opinion.) 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. Here, the applicant has not met this burden.

ORDER: The appeal is dismissed.