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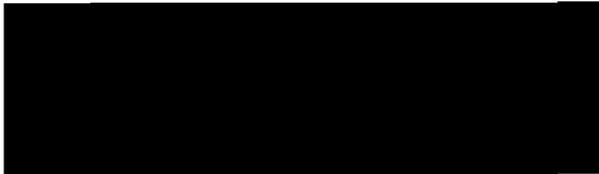
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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APR 01 2010

FILE: [REDACTED]
[EAC 08 240 70017]

Office: VERMONT SERVICE CENTER

Date:

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).

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 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 he joined the [REDACTED] in 1984 where he served for approximately six years. According to the applicant, he was not an officer in the [REDACTED] and did not know of any massacres and never persecuted anyone.

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 244(2)(B) of the Act (Aliens ineligible) states:

“(B) Aliens ineligible – An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or
- (ii) the alien is described in section 208(b)(2)(A).”

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 – (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 director determined that the applicant was not eligible for TPS because he had ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, the applicant states that he joined the [REDACTED] in 1984 where he served for approximately six years. According to the applicant, he was not an officer in the [REDACTED] and did not know of any massacres and never persecuted anyone. The applicant states that he actually helped people and has never threatened anyone with death and has no personal knowledge of what [REDACTED] did prior to his entry or when he was not present.

The applicant testified to an Asylum Officer that he had served in the El Salvadoran military as a member of the [REDACTED]. United Nations High Commission for Refugees (UNHCR) reports that the [REDACTED] was involved in a number of massacres during the early 1980s and that it was composed of “the most aggressive military units during the war, as is reflected in the high rate of human rights violations attributed to them.” The persecutor bar applies even if the applicant did not personally commit the persecutory act, so long as the applicant 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 has failed to provide any evidence to overcome the basis of the director’s decision. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that a Federal Bureau of Investigation fingerprint results report indicates that the Los Angeles, California Police Department arrested the applicant on February 12, 1995 for “F Spouse Beating.” The final disposition for this arrest is not included in the record, nor was the final court dispositions requested. It is also noted that the applicant has failed to declare on his applications that he has ever been arrested. United States Citizenship and Immigration Services (USCIS) must address these arrests in any future proceedings.

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.