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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 09 115 74629]

Office: VERMONT SERVICE CENTER

Date: FEB 19 2010

IN RE: Applicant: [REDACTED]

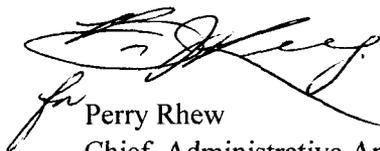
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 claims to be 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 has never been involved in or acquiesced to any human rights violations, nor was he aware of any such violations during his military service.

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 February 9, 2007, that he had served in the El Salvadoran military from October 1972 to 1975 and from 1981 to 1995. The applicant testified that he began his service as a private and retired in 1975 as a 2nd class sergeant and when he returned to service in 1975 his rank was a 2nd class sergeant of the 2nd Infantry Brigade in Santa Ana. According to the applicant, as part of his duties, he was in charge of 36 men and he was responsible for organizing and training them in combat tactics and the use of military weapons. The applicant also testified that he fought against and was also involved in the interrogation of suspected guerrillas, but that he did not mistreat the guerrillas he interrogated and did not have any knowledge of the interrogation procedures used by his superiors. In addition, the applicant stated that for three or four months he was in command of the Fonseca Battalion in Union City. According to the El Rescate Database, human rights abuses are attributed to the 2nd Infantry Brigade of Santa Ana during the timeframe that the applicant served. The applicant testified that he was involved in combat against the guerrillas, as well as being involved in the interrogation of suspected guerrillas. 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. 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 he had never been involved in or acquiesced to or was he aware of any human rights violations during his military service; however, he has no means of corroborating this claim. Therefore, as the applicant has not overcome the basis for the denial, the director's decision is 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.