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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 08 173 70062]

Office: VERMONT SERVICE CENTER

Date: **JAN 07 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 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 determined that the applicant was ineligible for TPS because the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel for the applicant states that the denial of the application for TPS is baseless and completely without cause.

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.

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.

Pursuant to a notice dated December 3, 2008, the applicant was provided the opportunity to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. In response, the applicant submitted evidence that established continuous residence and continuous physical presence.

However, the director determined that the applicant had participated in the persecution of a person or a group.

The applicant testified to an Asylum Officer on March 13, 2008, that he had voluntarily served in the El Salvadoran military as a member of the Security Base Battalion of the Air Force in Ilopango, Department of San Salvador from 1987 to 1988. According to the applicant's testimony, he received combat training and was involved in arresting and questioning civilians suspected of guerilla associations. The applicant also testified that he always let these civilians go and did not know what happened to those who did not cooperate. According to the El Rescate Database, during the timeframe that the applicant served, the Air Force in the Department of San Salvador perpetrated numerous human right abuses, including captures and extrajudicial killing of civilians. The director determined that in light of the country conditions information provided, it appears highly unlikely that the applicant was not aware of and did not participate in persecution acts from 1987 to 1988. According to the director, the applicant was present in the areas documented as locations where human rights abuses took place. 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. Therefore, the applicant was determined to be ineligible for TPS.

On appeal, counsel states that there is nothing specifically or indirectly naming the applicant or his unit as abusers at a time he was confirmed to be present and no burden was shifted to the applicant to prove a negative. However, the applicant has the burden of proving by a preponderance of the evidence that the ground does not apply. The applicant has failed to provide any evidence to establish that he is not ineligible for TPS because he 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.

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.