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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

M₁

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUN 01 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 (AAO) 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 is not ineligible for TPS because he is not a persecutor.

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 Secretary 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(c)(2)(B)(ii) of the Act provides that an alien shall not be eligible for TPS under this section if the Secretary finds that the alien is described in section 208(b)(2)(A) of the Act.

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 that he had served in the El Salvadoran military as a member of the Salvadoran army's Tercera Brigade de Infanteria in La Union beginning in 1982. The applicant stated that after seven months he was promoted to corporal and was often sent to Morazan department to support the infantry because it was the guerillas sanctuary. According to the applicant, from 1986 through 1987, he joined the Batallon de Infanteria de Marina as a corporal and was assigned to the third section of the second company, the [REDACTED] 12 de Octubre. The applicant testified that he patrolled in the southern part of Usulután near the [REDACTED]

[REDACTED] and fought the guerillas and sometime captured prisoners that would be turned over to superior officers. The applicant testified during November 3, 2008 removal proceedings that he joined the Salvadoran army sometimes in 1983, that he did not kill guerillas but that his unit captured guerillas. According to the applicant, after his deportation from the United States to El Salvador, he joined a marine infantry battalion which he referred to as the "battalion of hunters." The applicant stated that he was trained in both ground and sea combat, that he never interrogated any prisoners, but that he captured prisoners and turned them over to his superiors.

According to El Rescate Database, country conditions indicate that during the timeframe that the applicant served in the Batallon de Infanteria de marina, this unit perpetrated numerous human rights violations, particularly in the area of Jiquilisco in which the applicant served. Therefore, the director determined that the applicant was ineligible for TPS.

On appeal, the applicant states that he is not ineligible for TPS because he is not a persecutor. Counsel contends that the applicant's TPS application was erroneously denied because the

applicant was not a persecutor, nor was he involved in any way of persecutory acts committed by other military members during his military service. However, 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. No evidence was provided by the applicant that could establish that he did not persecute or assist in the persecution of others. In addition, according to counsel, the applicant has not testified before a TPS adjudicator regarding his military service and as such, "the director should heed the opinions of the Asylum Officer and the Immigration Court" when the applicant was not found to be subject to the persecutor bar. However, according to the June 1, 2007 Assessment to Refer, the officer indicated that the "[a]pplicant may be barred for having assisted in the persecution of others on account of political option." Therefore, counsel's argument is specious and with out foundation. Consequently, the applicant is ineligible for TPS.

Finally, the record reflects that in a removal proceedings held on November 18, 2008, the Immigration Judge (IJ) denied the applicant's applications for asylum and cancellation of removal. The applicant was granted voluntary departure until January 20, 2009. On November 25, 2008, the applicant filed a motion to reconsider. On December 15, 2008, the motion was denied by the IJ. On January 14, 2009, the applicant appealed the IJ's decision of December 15, 2008, to the Board of Immigration Appeals that is currently pending.

An alien applying for TPS 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.