



U.S. Citizenship
and Immigration
Services

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[Redacted]

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FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 02 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 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, counsel for the applicant states that the director erred in his decision because it failed to establish that the persecution alleged to have been committed by the applicant was on account of race, religion, nationality, membership in a particular social group or political opinion.

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 Secretary, 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 record reflects that the applicant stated that he had served in the El Salvadoran military as an Agent for the National Guard from 1990 to November 30, 1992. According to the applicant, he was based in the central region of El Salvador but patrolled the Departments of Cucatlan, La Libertad, La Paz, and San Salvador. The applicant engaged in battle against the guerillas several times. His responsibilities as an agent included searching for guerillas. He and his team were given a list of people who were suspected guerillas and they would take the list and search for the individuals and arrest them. The applicant also guarded individuals but stated that he was unsure whether they were civilians or guerillas. The applicant also testified that in one instance, he and seven other soldiers went to Santa Maria De Ostuma, Department De La Paz to find a dangerous guerilla named El Enano. The applicant and his team burst into El Enano's home, but he was not there. The team found his brother instead and decided to attack him and beat him severely over a four-day period, making him vomit. The applicant testified he was not involved in the beating. He also testified that he witnessed this type of beating four times and insisted that he did not participate. According to the applicant, sometimes his team would just beat the suspected guerillas, other times they would take the suspects to the base and hand them over to officers. He stated that he does not know what the officers did to the suspects. The applicant said that he tried to stop his team from beating a suspect once, but was not able to do so and that he did not report the beatings to anyone because no one could do anything about it. The director determined that the applicant was ineligible for TPS because he had failed to establish that he had not taken part in any violation.

On appeal, counsel states that the director erred in his decision because he failed to establish that the persecution alleged to have been committed by the applicant was on account of race, religion, nationality, membership in a particular social group or political opinion and not because they were in armed conflict. Counsel also contends that the director erred in finding beatings alone to be persecution. However, the fact that the applicant testified that he witnessed beatings several times of "suspected guerillas" indicates more likely than not, that this was the basis of the beatings. The applicant does not testify that he ever saw the beating of other individuals. Furthermore, according to Encarta Webster's College Dictionary: 2nd Edition, persecution means "the subjecting of an individual to cruel or unfair treatment." An unsolicited and unwarranted beating clearly falls into the category of cruel or unfair treatment. Counsel also claims that it was not established that the individuals were detained or beaten due to any protected ground under the Act, rather than the simple fact that they were in armed conflict with the applicant's military unit. It is noted however, that the specific individual case, recounted by the applicant was not a uniformed combatant. Therefore, counsel's argument is specious and without foundation. In addition, counsel claims that the applicant should not be held culpable for the actions of others. 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. Consequently, the director's decision to deny the applicant for TPS 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. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.