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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 25 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 office that originally decided your case. 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 office that originally decided your case 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 record reveals that the applicant filed a TPS application during the initial registration period on May 13, 2008. The Director, Vermont Service Center, approved that application on October 22, 2008.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

The director withdrew TPS 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 his appeal should be sustained because the government has failed to meet its burden of proof.

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 to an Asylum Officer on December 19, 2007, that he had served in the El Salvadoran military in the Third Infantry Brigade, Battalion “Ponce.” from November 1985 to 1990. According to the applicant, he served primarily in San Miguel and his highest rank was sub-sergeant. The applicant also stated that his duties included providing security on the base and occasionally being involved in combat, but that he never guarded prisoners of war. The applicant denied having been part of any operations against civilians and said that he never used his weapons against anyone to threaten them. When asked, during the asylum interview, if he saw any human rights violations, the applicant responded, “not really,” and when asked if he ever helped any group that used violence aimed at overthrowing the government, the applicant answered “not really.” The director stated that credible country conditions reports indicate that the Third Infantry Brigade was involved in numerous indiscriminate attacks and other human rights abuses during the period in which the applicant served. The director determined that based on the applicant’s statements, and reports on the human rights abuses committed against civilians by his unit in the time and location in which he served, the applicant’s activities at least involved material assistance to persecutory activities. The director also determined that the applicant offered no explanation of any opposition to human rights abuses, or other factors that might mitigate personal culpability. The director concluded that, in the absence of a credible explanation to the contrary, the evidence suggests that the applicant would have at least been aware of human rights abuses that were committed by elements of his unit. Therefore, the applicant was determined to be ineligible for TPS, and the applicant’s TPS was withdrawn by the director on October 20, 2009.

On appeal, counsel states that the applicant’s appeal should be sustained because the government has not met its burden of proof. According to counsel, United States Citizenship and Immigration Services (USCIS) must present evidence that the applicant participated in or assisted with

persecution. Counsel also states that the director's decision does not specify what "credible country conditions reports" that were researched when evaluating the applicant's application. In addition, counsel states that the applicant's activities did not constitute persecution but were incidental to the goals of a civil conflict. According to counsel, in *Matter of Rodriguez-Majano*, 19 I&N Dec. 811, 815 (BIA 1988), the court found that the respondent did not assist or participate in persecution when he received military training and accompanied the guerillas on "propaganda Trips" during which he "covered [the guerillas] with his weapons as they burned cars." Counsel states that the court explained that these activities are normal within a civil war, and that "harms which may result incidentally from behavior directed at another goal, the overthrow of a government or, alternatively, the defense of that government against an opponent is not persecution." Contrary to counsel's contention, in the instant case, as discussed above, country conditions reports indicate that the applicant's unit, Third Infantry Brigade, was not involved in "propaganda trips" but was involved in numerous indiscriminate attacks and other human rights abuses. Consequently, *Matter of Rodriguez-Majano* is not applicable in this case.

Moreover, contrary to counsel's contention, 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. In addition, although not listed in the director's decision, USCIS records indicate that the El Rescate database was used in evaluating the application. No evidence was provided by the applicant that could establish that he did not persecute or assist in the persecution of others. In fact, the applicant's answers to specific questions regarding human rights violations, "not really," indicates that he was aware at least to some degree of the persecution of others. Therefore, the director's decision to withdraw the applicant's TPS will be affirmed.

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.