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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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 October 21, 2007. The Director, Vermont Service Center, approved that application on August 23, 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 the applicant's 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 the mere fact that the applicant was a member of the Salvadoran military for a period of time and thereafter a member of the National Police should not in and of itself result in a finding that he engaged in persecution of others.

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 November 7, 2002, that he had voluntarily served in the El Salvadoran military in Sonsonate from 1976 until he was discharged on January 31, 1978. The applicant further stated that following his discharge from the Army, the applicant joined the National Police and after six months training, his initial duty involved guarding embassies and consulates in Sal Salvador. According to the applicant, after one year he was transferred to the National Police's motorized patrol and that during the last six years he was in El Salvador he was assigned to the National Police's Intelligence Unit. The applicant testified that he served the last four years in the National Police as a detective. The applicant stated that his job as a detective required him to find out where the guerrillas were. According to the applicant, once he put a place under surveillance that he suspected was involved in guerilla activity, he would inform his sergeant, who would call in a search and seizure team to enter the place and make arrests. The applicant also stated that from April 1983 to November 1983 he was assigned to the interrogations unit and that all interrogations he was involved in were monitored by the International Red Cross or by Amnesty International. The applicant testified

that nobody was tortured during these interrogations and the National Police had to charge suspected guerrillas within 15 days, or else they were required to release them.

Religious Issue Committee (RIC) databases indicate the National Police was heavily involved in the counterinsurgency and was implicated in a series of human rights violations, including killings, kidnappings, torture and illegal detentions. Therefore, the applicant was determined to be ineligible for TPS, and the applicant's TPS was withdrawn by the director on March 9, 2010.

On appeal, counsel states that the mere fact that the applicant was a member of the Salvadoran military for a period of time and thereafter a member of the National Police should not in and of itself result in a finding that he engaged in persecution of others. The applicant, in response to a Notice of Intent to Deny, submitted a statement in which he claimed that there were always members of the Red Cross, Amnesty International, other human rights organizations and the United States military present during the interrogations. The applicant also indicated that all of the interrogations were video-taped to insure that prisoners were not being mistreated. However, RIC databases include information that indicates that anyone who was a member of the National Police during the period from 1978 to 1983 would have a high probability of committing serious human rights abuses as a matter of policy that existed at that time. In addition, the database indicates that from 1980 to 1984, detainees could be held for up to 90 days under Decree 50, which was in effect from 1984 until early 1987. In addition, while it is true that the International Committee of the Red Cross was granted some access to prisoners between 1982 and 1987, it was only on the eighth day of their detention, which allowed the National Police a week to interrogate the individuals. Amnesty International also reports that physical and psychological torture continued to be practiced by National Police during the initial phases of prisoner detention. Furthermore, the applicant testified that even though he did not torture anyone, he encountered individuals who apparently had been mistreated prior to his seeing them. 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. Therefore, the director's decision to withdraw TPS is 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.