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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



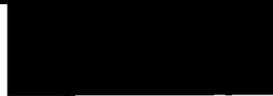
U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 05 2010**

[EAC 09 135 71225]

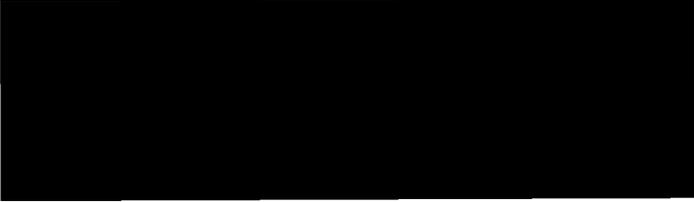
IN RE:

Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 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 did not prepare his statements in the original asylum application and they are therefore repudiated.

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 244(2)(B) of the INA states:

- (B) Aliens ineligible. An Alien shall not be eligible for temporary protected status under this section if the Attorney General finds that:
 - (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States or
 - (ii) the alien is described in section 208(b)(2)(A)

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:

Two files were created for the applicant [REDACTED] under the name of [REDACTED] when the applicant applied for asylum in August 1995 and [REDACTED] under the name of [REDACTED] when the applicant applied for asylum in March 1996. Taking into account all of the evidence of record, including fingerprint comparisons, USCIS concluded that [REDACTED] and [REDACTED] are the same person.

The applicant submitted a signed affidavit on June 12, 2009 in which he indicated that he served in the El Salvadoran Army as a soldier from May 1986 to May 1988 for [REDACTED] of the 5th Infantry Brigade, under commanding officer [REDACTED] in San Vicente, El Salvador. The applicant admitted to participating in several combat missions against the guerrilla group [REDACTED] (FMLN). The applicant also stated that he did not persecute any person because of race, religion, color or membership in any group. However, the applicant provided the following statements in his two asylum applications: ([REDACTED]) “I was rapidly trained in anti-terrorist activities and later I started to be part of the anti-terrorist unit.” “I actively participated in different actions against FMLN.” ([REDACTED]) “I beaten, tortured, in every way some of these criminal people in the police questionaries (sic) because if I disobey my superior officers my superior officers punished me with my own death.”

According to the Resource Information Center (RIC), country conditions indicate that during the timeframe that the applicant served, the army perpetrated numerous human rights violations in San Vicente under the command of [REDACTED] in the Quinta Brigada de Infanteria. 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.

According to the director, no evidence was provided by the applicant that could establish that he did not persecute or assist in the persecution of others. Therefore, the applicant was determined to be ineligible for TPS.

On appeal, the applicant states that the statements in his original asylum application were not prepared by him and are therefore repudiated. According to the applicant, he denies that he ordered, incited, assisted or otherwise participated in the persecution of any person at any time. However, the applicant submitted signed affidavits detailing his participation in such activities. No other individual is listed as the preparer of this information. Consequently, the applicant's claim lacks credibility.

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.