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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **MAR 30 2010**

[EAC 09 015 74848]

[REDACTED]-consolidated therein]

IN RE:

Applicant:

[REDACTED]

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

IN BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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 or reopen, 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 the applicant failed to establish he was eligible for late registration. The director also denied the application because it was determined that the applicant had participated in the persecution of a person or a group.

On appeal, counsel asserted that the applicant never stated that he was in the Fifth Infantry Brigade. Counsel asserted even if the applicant served in the Fifth Infantry Brigade or FESAC during the time the abuses were recorded in the database, it did not prove that the applicant participated in any one of the abuses.

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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Section 244(2)(B) of the Act (Aliens ineligible) 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 – (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 first issue to be addressed is whether the applicant is ineligible for TPS under sections 244(2)(B) and 208(b)(2)(A) of the Act.

The record reflects that the applicant filed a Form I-589, Application for Asylum and Withholding of Deportation, on April 15, 1996. At Part C, item 3, the applicant indicated that he was a member of the Fifth Infantry Brigade. On January 11, 2006, the applicant was interviewed in connection with his asylum application. According to the Record of Sworn Statement, taken at the time of his asylum interview, the applicant testified that he served in the military from August 1986 to September 1988 and referred to the special forces unit in which he served as “FOSAT”. The applicant indicated that he trained two months with the special forces in La Union in addition to the three months of regular training.¹ The applicant indicated that he served under [REDACTED]

¹ The director inadvertently noted that the applicant had three months of special forces training.

██████████ in San Vicente. The applicant indicated that his day-to-day responsibilities were to infiltrate the FMLN guerillas in order to get information regarding the guerillas' locations, weapons, etc, and report the information back to the army. The applicant indicated that he took part in combat many times, but was not aware if he had killed anyone and he did not take anyone prisoner.

In response to the Notice of Intent to Deny issued on February 13, 2009, the applicant indicated: 1) he served as a soldier in a unit of the special forces named ██████████; 2) his commanding officer was ██████████; 3) his duties were to infiltrate the "FLMN" rebel groups and learn of their locations and combat abilities, and helped to fight off the "FLMN" rebel groups when they attacked his unit's locations; 4) he was involved in combat many times; 5) he did not interrogate people; 6) he was in the military from August 1986 to September 1988; 7) he voluntarily enlisted in the army; and 8) the army and special forces provided his training at La Union, El Salvador.

The director, in denying the application on June 25, 2009, noted, in pertinent part:

In addition, you testified that you belonged to a Special Forces unit called ██████████. Although no such name is named in the database, there is a record of a special forces unit with the phonetically similar acronym, ██████████ which stood for ██████████ ██████████. This unit is described in the database as a death squad.

The El Rescate Database indicates that the FESAC unit had committed serious abuses during the time period when, and in the location where the applicant had served. The database reflects that ██████████ served as the Colonel of the Fifth Infantry Brigade in San Vicente in 1988, and the brigade has been implicated in 60 abuses in San Vicente from August 1986 to September 1988.

The director determined that there was ample evidence to suggest that the applicant had participated in the persecution of guerillas and/or civilians on account of actual and/or imputed political opinion. The director concluded that the applicant was present in the area documented as locations where human rights abuses took place.

On appeal, counsel put forth a Freedom of Information Act (FOIA) request and indicated that a brief would be submitted after she had examined the evidence. On November 16, 2009, the FOIA request was processed; however, more than four months later, no additional correspondence has been presented by counsel or the applicant.

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.

By his own admission, the applicant was an armed member of a special forces unit that took part in combat on many occasions, and his duty was to infiltrate the guerillas groups and notify the

army of the guerillas' activities. Therefore, the applicant is not eligible for TPS based on section 244(2)(B) and section 208(b)(2)(A) of the Act as a person who ordered, incited, assisted, or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group or political opinion. Consequently, the director's decision to deny the application for TPS will be affirmed.

The second issue to be addressed is whether the applicant has established eligibility as a late registrant.

The record reveals that the applicant filed his initial TPS application on October 14, 2008.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant filed a Form I-589, Application for Asylum and Withholding of Deportation, on April 15, 1996. On January 11, 2005, the applicant was interviewed for purposes of determining his NACARA eligibility. On September 5, 2005,² the applicant filed a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)). On January 11, 2006, the applicant was first interviewed in connection with his asylum application. On August 24, 2006, the applicant was found to be ineligible for special rule cancellation of removal because he was barred as a persecutor pursuant to section 241(b)(3)(B)(i) of the Act. On May 2, 2008, a Form G-56, General Call-in Letter, was sent to the applicant's address of record, which informed him of his scheduled asylum interview on May 22, 2008. On May 22, 2008, a notice was issued to the applicant informing him that his Form I-589 was denied as he failed to appear for the scheduled interview. On June 4, 2008, a Form I-862, Notice to Appear was issued, and the next scheduled individual hearing before the Immigration Court is set for April 14, 2010.

Accordingly, the applicant has established that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). However, the applicant is ineligible for TPS pursuant to section 244(2)(B) and section 208(b)(2)(A) of the Act as discussed above.

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.

² The applicant initially filed a Form I-881 on August 8, 2005; however, it was rejected as the correct fee was not included.