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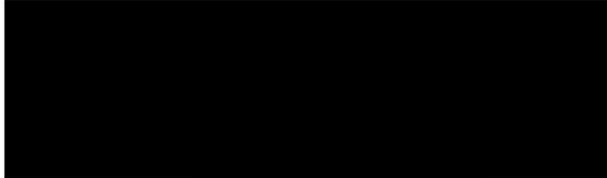
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



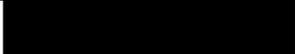
U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 04 2010**

[EAC 08 169 70082]

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 initially denied the application as abandoned because the applicant failed to establish his identity and failed to submit requested court documentation relating to his criminal record.

On motion, counsel for the applicant submitted proof of his identity and the requested court documentation; however, the director 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 states that the applicant did not persecute others as per the regulation.

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.

The director denied the application because he determined that the applicant had participated in the persecution of a person or a group.

The applicant testified to Immigration and Naturalization Service [now U. S. Citizenship and Immigration Services (USCIS)] officers on April 14, 1988 and on August 14, 1995 and also testified in front of an Immigration Judge at the Executive Office of Immigration Review. In each instance, the applicant testified that he served as a member of the Salvadoran Army's Battalion of Infantry of Immediate Reaction from February 1983 to February 1985. The applicant further testified that he saw soldiers beat, rob and kill innocent people for no reason, as well as observing abuse and rape of women. According to counsel, the applicant was equipped at the time with an M-16 military issue assault weapon and was part of the same unit committing these crimes. The applicant also states that he did not participate in the acts, but also admitted that he did nothing to prevent these atrocities. According to the Resource Information Center (RIC), country conditions indicate that during the timeframe that the applicant served, the Battalion Arce committed numerous human rights violations in and around San Miguel. The applicant denied participating in human rights abuses during his military service. However, the director determined that 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, counsel states that the applicant did not persecute others as defined in the regulation, and that he never participated in the atrocities attributed to the Battalion.

As determined by the director, 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. The applicant has stated that he was a member of the Salvadoran Army's Battalion of Infantry of Immediate Reaction from February 1983 to February 1985, and that he saw soldiers in the unit beat, rob and kill innocent people for no reason, that he was armed with an M-16 military issue assault weapon, and that he had observed abuse and rape of women, but he did nothing to prevent these atrocities. While the applicant claims that he did not participate in these acts, the applicant has not submitted any evidence on appeal to establish that he had not 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 burden of proof is upon the applicant to establish that he or she meets the above requirements. No evidence was provided by the applicant that could establish that he did not persecute or assist in the persecution of others. Applicants shall submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b). The applicant has not met this burden.

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.