

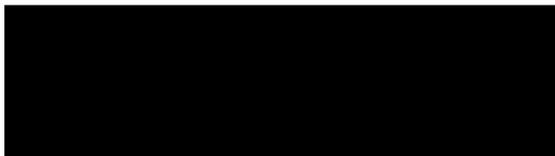
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

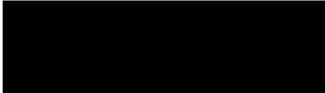
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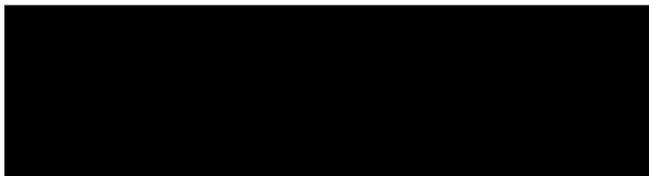
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

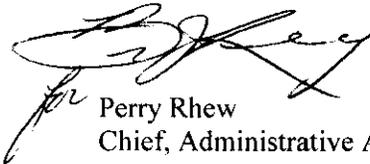
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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 Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 withdrew the applicant's TPS after determining that the applicant had ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel asserts that the El Rescate Database, which served as the basis for the denial of the application, was not provided to applicant. Counsel asserts that there is no evidence that the applicant engaged in persecution of others. Counsel asserts, "[a]t most, the database shows that human rights abuses were committed in El Salvador, not that [the applicant] engaged in persecution of others. Further, there is no reference in the letter of this database that stands for the proposition that the harm inflicted against others were 'on account' of an imputed or actual political opinion."

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.

Along with his Form I-589, Application for Asylum and Withholding of Removal, the applicant provided an affidavit dated October 9, 1990, indicating he was recruited in the El Salvadoran military in June 1985 and was discharged in February 1988. The applicant indicated that he saw many combat situations.

The applicant testified to an Asylum Officer on June 14, 2006 that he had served in the [REDACTED] from the end of 1984 to January 1988 in [REDACTED]. The applicant testified that he attained the rank of corporal in 1986, he wore a uniform, carried an M-16 and his day-to-day duties consisted of patrolling La Union. The applicant testified that his unit would patrol through the forest and would interrogate the villagers without intimidation to request them to provide information about guerillas. The applicant testified that he was involved in combat in southern [REDACTED] in 1986 and 1987. The applicant testified that he did not mistreat any prisoners and was not involved in any human rights abuses.

The director, in denying the application, noted, in pertinent part:

A review of the country conditions material reveals that your unit committed serious abuses at the time when, and in the locations where, you served. The El Rescate Database refers to 39 incidents, included capture, torture, indiscriminate military attack, and extra judicial killing, perpetrated by the [REDACTED] in [REDACTED] from December 1984 until January 1988. The database also lists 14 abused by [REDACTED] in Morazan during the same period.

The director determined that there was sufficient evidence to suggest the applicant had participated in the persecution of guerillas and civilians on account of actual and/or imputed political opinion, and the applicant's testimony that he did not participate in human rights abuses was not credible. The director concluded that the applicant was not eligible for TPS because he was an alien described in section 208(b)(2)(A)(i) of the Act.

In *Matter of Rodriguez-Mejano*, 19 I&N Dec. 811, 814-15 (BIA 1988), it was held that if an applicant's action or inaction furthers persecution in some way, he or she is ineligible for relief. However, mere membership in an organization, even one which engages in persecution, is not sufficient to bar one from relief. Therefore, the applicant's membership in an El Salvadoran military unit is insufficient, by itself, to invoke the persecutor bar

In *Miranda-Alvarado v. Gonzalez*, 449 F.3d 915, 927 (9th Cir. 2006), the court held that "determining whether a petitioner 'assisted in persecution' requires a particularized evaluation of both personal involvement and purposeful assistance in order to ascertain culpability . . . [m]ere acquiescence or membership in an organization is insufficient to satisfy the persecutor exception."

While the El Rescate Database has been cited as evidence that persecutory acts were committed by the applicant's unit in La Union, it did not specifically link the applicant to these acts. Section 208(b)(2)(A)(I) of the Act specifies that an alien must have "ordered, incited, assisted or otherwise participated in the persecution of any person . . ." There is no evidence in the record that the applicant had been actively or directly involved in any persecutory activities. While "assist[ing] or other partipat[ing]" in persecutory activities would require less direct involvement by the applicant, there is no evidence to link the applicant to persecutory activities, at this more attenuated level.

The applicant's testimony reflects that he was a relatively low-ranking soldier (corporal) in the [REDACTED]. While vaguely identified "country conditions reports" have been cited as evidence that persecutory acts were committed by the [REDACTED] during the applicant's army time in the area he served, and the "El Rescate" database specifically identified the [REDACTED] in some of the incidents, that hardly links the applicant personally to any such acts. The applicant testified that he did not witness any human rights violations, and that he did not mistreat nor was he responsible for any prisoners (and thus would not have relinquished any prisoners to higher authorities and an uncertain fate). In the instant case, there is no evidence that the applicant personally "assisted or otherwise

participated” in any persecutory activities. To reach such a conclusion would be through a guilty by association link to the Destacamientos Militar No.3, which has been cited as committing such abuses. However, this would not fall within the purview of section 208(b)(2)(A)(i) of the Act. Accordingly, the director’s decision to withdraw TPS based on ineligibility under section 208(b)(2)(A)(i) of the Act will, itself, be withdrawn. The director’s initial decision of March 5, 2007, approving the application for TPS, will be reinstated.

ORDER: The appeal is sustained.