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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

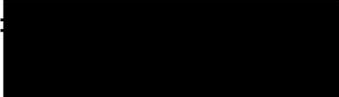


U.S. Citizenship
and Immigration
Services

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DATE: JUL 28 2011 Office: CALIFORNIA 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

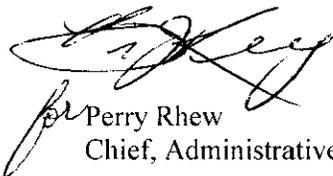
ON BEHALF OF APPLICANT:


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 Nebraska Service Center. 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 Nebraska Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant claims to be a citizen of Haiti 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 after determining that the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, the applicant puts forth a brief disputing the director's findings. The applicant submits documentation in support of his appeal.

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.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on November 24, 2009, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. The applicant indicated that he was employed by the Haitian National Police from 1995 to 2005. The applicant indicated that in 1996 he became the Chief of Post and was in charge of 30 officers, and he was responsible for issuing assignments to the officers. The applicant indicated that his next post was called [REDACTED] [REDACTED] "which is a force that was in charge of bringing peace, and if there were bandits or any crime being committed we would arrest them."

The applicant testified to an Asylum Officer on December 16, 2009, that he worked as a police officer with [REDACTED] November 7, 1995 to September 9, 2005. The applicant testified that he worked in radio communications from November 10, 1995 to November 1996. The applicant testified that in 1996 he became the [REDACTED] and had 30 officers under his charge and was responsible for dispatching them to various locations. The applicant testified that he did not persecute, harm, shoot or torture anyone while he was a police officer and [REDACTED]. The applicant testified that he never gave orders to shoot people, "but sometimes when you go places to intervene the people have guns and once they start to shoot at us we have to defend ourselves and this is what they showed me to do at training." The applicant testified that he arrested individuals on December 5, 2004 in Gonaives in Rue Lozama "and the officer who there before me had already beaten up a person." The applicant testified he took that injured individual to the hospital, reported the police officer and that officer was transferred to another post.

On February 23, 2010, the case was administratively closed by the immigration judge in order for the applicant to apply for TPS.¹

The director, in denying the application, determined that because the applicant was a police officer in Haiti from 1995 to 2005, and the fact that he was a [REDACTED] he could be classified as a persecutor under the statute. The director noted that country conditions and human rights reports indicate poor human rights records by the Haitian National Police. The director, noted, in pertinent part:

According to one report, Police officers used excessive and sometimes deadly force in making arrests or controlling demonstrations. Also, Police mistreatment of suspects at the time of arrest during detention remained common in all parts of the country.... The applicant appears to have been involved with the beatings of people in a period of bloody and brutal repression of the populace. His activities during this period form the basis of this finding that the applicant was a persecutor of others.

¹ Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

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.”

The Board of Immigration Appeals 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. *Matter of Rodriguez-Majano*, 19 I&N Dec. 811, 814-815 (BIA 1988).

Based upon the applicant’s statement and testimony, the applicant’s conduct during his time in the police force appears to have been consistent with the duties of a law enforcement officer. Therefore, the applicant’s employment in the Haitian National Police is insufficient, by itself, to invoke the persecutor bar. To be statutorily ineligible for TPS, 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 “ordered” or “incited” 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.

In the instant case, there is no evidence that the applicant personally ordered or “assisted or otherwise participated” in any persecutory activities. To reach such a conclusion would be through a guilty by association link to the Haitian National Police, 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 deny TPS based on ineligibility under section 208(b)(2)(A)(i) of the Act will be withdrawn.

The director noted in his decision that the applicant’s earlier TPS application [REDACTED] had been denied for firm resettlement in the Bahamas from 2005 to 2009.² However, in the instant case, the director did not make a specific finding on this issue and, therefore, it was not a basis for the denial of the current application.

Therefore, the case will be remanded to the director for further adjudication of the application. The director may request any additional evidence that she considers pertinent to assist with the determination of the applicant’s eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director’s decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.

² No appeal was filed from the denial of the application.