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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

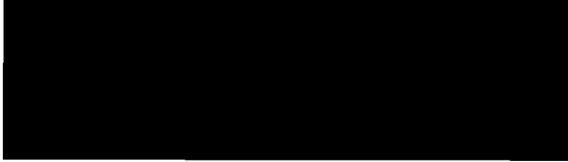
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DATE: **JUN 23 2011** Office: VERMONT SERVICE CENTER FILE 

IN RE: Applicant: 

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

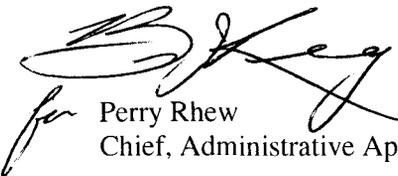
ON BEHALF OF APPLICANT:


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.

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 Vermont 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,


for 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 case will be remanded for further consideration and action.

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 after determining that the applicant was ineligible for TPS because the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel asserts that the applicant has stated in his 2005 and 2007 declarations that he never engaged in torture, never detained anyone for questioning and never shot at the civilian population. Counsel cites federal case law including, *Miranda Alvarado v. Gonzalez*, 449 F.3d 915, 927 (2006), which 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 of membership in an organization is insufficient to satisfy the persecutor exception.” Counsel also cites *Matter of Rodriguez-Majano*, 19 I&N Dec. 811 at 814-815 (BIA 1988), which held that “mere membership in an organization, even one which engages in persecution, is not sufficient to bar one from relief, but only if one’s action or inaction furthers that persecution in some way.”

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.

In an affidavit notarized September 17, 1987, the applicant indicated that he joined the El Salvadoran army at the age of 17 and remained in the army for five years. The applicant also indicated, “I have seen people die in the hands of both the government and the guerrillas” and “I have seen great abuses.”

In a statement dated December 18, 1987, the applicant indicated, “In five years I participate in many combats against the subversives.”

The applicant testified to an Asylum Officer on March 31, 2005, that he served in the military from 1980 to 1985 in the Marine Infantry in La Union, El Salvador. The applicant indicated that his day-to-day duties consisted of defending bridges and escorting public transportation, and that he participated in combat operations, where he fought against guerrillas to retake buildings/installations. The applicant indicated that he never interrogated, mistreated or arrested anyone, and he did not see anyone else in his military unit arresting, interrogating or mistreating anyone.

At the time of his interview conducted on July 2, 2007, the applicant indicated that he was in the military in November 1990 through September 1985. The applicant indicated that he held the rank of sergeant for five years and that he was assigned to the unit called “Marine Infantry” in La Union, El Salvador. The applicant indicated that he served on a ship, led security on land, and escorted and guarded U.S. military officers who were in the area. The applicant indicated that he wore a uniform, carried an M-16 and his duties included combat against guerrillas. The applicant indicated that he would often stay on board a ship, and at other times he helped rebuild bridges that were blown up by guerrillas and restored electricity. The applicant indicated that he never interrogated, arrested, harmed or persecuted anyone and never saw other soldiers harm or persecute civilians. The applicant indicated that he heard stories of mistreatment of others.

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

While your unit, Marine Infantry, does not appear to be named as a unit known to have participated in human rights violations, several other units in the Department of La Union are listed among those committing human rights violations. Violations reported in La Union include killings, captures, torture, and indiscriminate military attack. You testified that you were not aware of any human rights violations by the military in general. This is inconsistent with your sworn affidavit filed in 1990. This is also inconsistent with country conditions showing many violations by the military throughout the country, and especially in La Union.

The director determined that the applicant's testimony did not appear to be credible based on his inconsistent statements and, therefore, he was not eligible for TPS because it appeared that he was an alien described in section 208(b)(2)(A)(i) of the Act.

On appeal, counsel asserts, in pertinent part:

Mere membership in the Salvadoran Navy is insufficient to make Respondent a persecutor. What Respondent did was far from assisting in persecution, especially considering that no reports exist of any human rights violations being committed by his unit. He participated as a soldier helping preserve the peace and protect bridges and high ranking officials. He did not participate in informing on guerrilla members or civilians, arresting them or torturing them. Respondent did not testify that any individuals he came in contact with were persecuted, and the record does not contain any evidence that they were indeed persecuting in any way.

* * *

Even though he participated in combat against the subversives and in battle against the guerrilla in order to defend a bridge. Respondent was simply carrying out his standard military duties.

A review of the entire record does not establish that the applicant had participated in persecutory activities.¹ While the El Rescate Database has been cited as evidence that persecutory acts were committed by other units in La Union, it neither linked the applicant nor his unit 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 "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 "assisted or otherwise participated" in any persecutory activities. To reach such a conclusion would be through a "guilty by association" link to the other units in La Union, which have 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. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following

¹ At the time the applicant filed his asylum application in 1987, he was assigned alien registration number A28024458, which has since been consolidated into A94119264.

completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

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