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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
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Services

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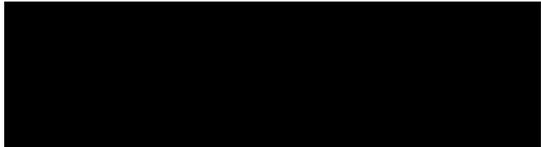
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DATE: Office: VERMONT SERVICE CENTER FILE: 

IN RE: **JAN 12 2012**
Applicant: 

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

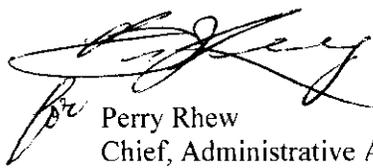
ON BEHALF OF APPLICANT:


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,


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 (AAO) 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 it was determined that the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel submits a statement from the applicant disputing the director's findings.

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– (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 applicant testified to an Asylum Officer on May 23, 2006, that he had served in the El Salvadoran military from 1985 to 1987 as a common infantry soldier with Quinta Brigada de Infanteria Batallon Tehuacan in the San Vicente region and that his commanding officer was [REDACTED]. The applicant testified that his duties consisted of seeking, finding and engaging the enemy guerrillas. The applicant testified that guerrillas were probably killed in these operations and on one occasion, he saw his lieutenant shoot/kill two wounded guerrillas.

When asked why the lieutenant shot the guerillas, the applicant testified, "he didn't want to take live prisoners." The applicant testified that he was discharged from the military in 1987 after receiving a combat wound and subsequent rehabilitation.

On June 29, 2011, the director issued a Notice of Intent to Deny, which advised the applicant that his application contained conflicting information at Part 4, relating to his military service. Specifically, the applicant answered "no" to the questions, at Part 4, items: 1) 2q(i), "[h]ave you EVER served in, been a member of, assisted in or participated in any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, rebel group, guerrilla group, militia, or insurgent organization?"; 2) 2r, "[h]ave you EVER been a member of, assisted in, or participated in any group, unit, or organization of any kind in which you or other persons used any type of weapon against any person or threatened to do so?"; and 3) 2t, "[h]ave you ever received any type of military, paramilitary, or weapons training?" The applicant was advised that these answers contradicted the statements made on his asylum application and of his testimony made at the time of his asylum interview. The applicant was advised to submit a detailed explanation why he answered no to the three questions above.

Counsel, in response, asserted that the applicant thought the three questions referred to training and membership in a military or para-military group that he freely joined, not one where he was forced to join and participate in. Counsel stated that the answers to the three questions should be "yes". Counsel asserted that the applicant never engaged in combat against guerillas. Counsel provided a copy of a declaration from the applicant, who asserted that he was forced to join the military and enlisted in February 1985. The applicant asserted, in pertinent part:

When I completed basic training, I was assigned to the Los Ceros de la Campana base also in San Vicente. It was our job to secure the area in order to stop the guerillas from engaging in terrorist activities and other criminal acts in the villages in the area. I was only in the area for approximately 15 days.

Thereafter, I was transferred to the 5th Brigade in San Vicente. We would be instructed on the new area where we were going and we would be transferred there to secure the area. My mission was the same; to secure the area. Many times we would go long stretches of time without finding anyone in the mountains. My military service lasted from 1985 until 1987.

It is noted that although the applicant's declaration was dated August 1, 2011, it is same declaration that was initially submitted with his asylum application.

In issuing his decision on September 15, 2011, the director noted that according to the El Rescate Database, country conditions indicate that during the timeframe that the applicant served, Quinta Brigada de Infanteria, perpetrated numerous human rights violations. The director noted that the applicant indicated that on one occasion he saw his lieutenant shoot and kill two wounded guerillas. The director determined that although the applicant did not shoot and kill wounded guerillas, the persecutor bar applies even if he 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 director concluded, in pertinent part:

In light of the country conditions information provided by the El Rescate Database, and your own testimony relating to the incident described above, it appears high unlikely you did not participate in prosecutorial acts from 1985 to 1987. You were present in the areas documented as locations where human rights abuses took place, and even witnessed such an event. As such, you have the burden of proving by a preponderance of the evidence that the ground does not apply. Based on the evidence of record, you appear to be barred as a persecutor.

On appeal, the applicant asserts that he served in the El Salvadoran military during the civil war in the 1980s and that he was involved in several fights between the guerillas and his unit. The applicant asserts that during these fights he would fire his weapon which was provided by the government of El Salvador, that he did not know if he injured any guerillas, that he never participated in any torture or killings of individuals who had surrendered, and that he never saw such activities by other soldiers or officers.

The applicant revises his statement to indicate that he never stated to the interviewing officer that he engaged in or witnessed any atrocities. The applicant asserts, "I recall stating that I heard a Sargent [sic] shooting at someone or something about a mile from my position of one of the fire fights. I did not see what he shot at or who he shot at. I know that in several of our engagements many guerillas were killed."

It is noted that at the time of his asylum interview, the applicant gave detailed descriptions of his military service and provided the name of the lieutenant who shot the wounded guerillas. It was only after he was denied TPS based on the determination that the applicant appeared to be barred as a persecutor that the applicant revised his testimony. The AAO notes that no supporting evidence was submitted on appeal on which to base a different determination on this issue.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to provide any evidence to overcome the director's decision to deny the TPS application. Therefore, the director's decision to deny the application for TPS is affirmed.

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.