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

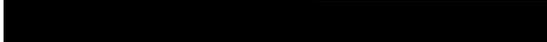


U.S. Citizenship
and Immigration
Services

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DATE: **MAR 26 2012** 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 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 withdrew the applicant's TPS because it was determined that the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel cites federal case laws including, *Miranda-Alvarado v. Gonzalez*, 449 F.3d 915, 927 (9th Cir. 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."

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.

At the time the applicant filed his re-registration application, he answered 'yes' to the question, "[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?"

In response to a Notice of Intent to Withdraw TPS dated November 17, 2010, which requested the applicant to submit answers to the questions outlined in the notice regarding his military service, the applicant submitted a declaration. The applicant indicated that he was a soldier and a corporal in the El Salvador army from January 1, 1981 to January 30, 1983, he was trained to use the M-16, G-3 and M-60 weapons, trained in combat and calisthenics, he served in the Fourth Detachment, Third Company of Commandos and his commanding officer was [REDACTED]. The applicant indicated that he was engaged in combat approximately 20 times and that "[e]ach of these times my unit was fired upon first by guerillas. We returned fire in self-defense." The applicant indicated that he did not participate in any interrogations.

The applicant indicated that he was a policeman with the El Salvador National Police from February 1983 to November 1984 and his commanding officer was [REDACTED]. The applicant indicated he was trained in traffic inspections, writing accident reports, defense and arrest training, investigative techniques, calisthenics, M-16 rifle and 9MM pistol. The applicant indicated that he did not participate in any combat and never fired his weapon while on duty.

The applicant indicated that he was a student at [REDACTED] from February 1986 to August 1986, where he took courses in law, police work and SWAT training. He was trained to use the M-16, 9MM, HK MP-5 and AK-4 weapons at the school's campus in [REDACTED] by the school's instructors. The applicant indicated that his commanding officer was [REDACTED] and that he did not participate in any combat.

In issuing his decision on April 18, 2011, the director noted that according to the [REDACTED]: 1) country conditions indicate that during the timeframe that the applicant served, the Fourth Detachment perpetrated numerous human rights violations; 2) the [REDACTED] perpetrated numerous human rights violations in 1986; and 3) his commanders, [REDACTED] and [REDACTED], are listed as human rights violators. The applicant indicated that he did not participate in human rights abuses during his military and police 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. The director concluded, in pertinent part:

In light of the country conditions information provided by the [REDACTED] it appears highly unlikely that you were not aware of and did not participate in persecutorial acts from 1981 to 1983, or in 1986. In light of the country conditions information provided by the [REDACTED] it appears highly unlikely that you were not aware of and

did not participate in persecutorial acts from 1983 to 1986. You were present in the areas documented as locations where human rights abuses took place. As such, you have the burden of proving by a preponderance of the evidence that the ground does not apply.

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).

A review of the entire record does not establish that the applicant had participated in persecutory activities. While the [REDACTED] has been cited as evidence that persecutory acts were committed by the Fourth Detachment, and his commanding officers, it did not specifically link the applicant to these acts. 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 "assisted or otherwise participated" in any persecutory activities. To reach such a conclusion would be through a "guilty by association" link to the Fourth Detachment and [REDACTED] in which he served under his commanding officers, who 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 withdraw TPS based on ineligibility under section 208(b)(2)(A)(i) of the Act will, itself, 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 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.