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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: FEB 04 2013

Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:  
[Redacted]

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,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

Ron M. Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The matter 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 denied the application after determining that the applicant is ineligible for TPS because the applicant is an individual described in Section 208(b)(2)(A)(i) of the Act as an alien who ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel for the applicant asserts that Section 208(b)(2)(A)(1)(B) of the Act does not apply to the applicant because while the applicant joined and fought for the Salvadoran army during its war with the guerrillas, the applicant did not participate in the persecution of others. Counsel stated, [REDACTED] purported statement admitting to killing other individuals, which is the basis of his TPS denial, should be viewed in the context of a child soldier expressing favorable sentiments at the casualties of his enemy combatants, especially when those enemy combatants were responsible for the deaths of his parents.”

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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.

At his Credible Fear interview on November 17, 1999, the applicant stated that he joined the El Salvador military in February 1987 because he was afraid of the guerrillas who killed his parents. The applicant stated that he remained in the military until he deserted the military in January 1988. The applicant stated that he served as a soldier with no leadership position and that during his tenure in the military, he participated in combat during which he killed some guerrillas. In response to the asylum officer's question whether he killed other individuals, the applicant states "Yes. I got revenge at those people who killed my parents while in the military." At the same interview, the applicant stated that he has never hurt anyone on account of their race, religion, nationality, political opinion, or membership in a particular social group. At the conclusion of the interview, the asylum officer found the applicant's testimony to be credible. The officer found that the applicant has a credible fear of persecution if he returns to El Salvador and also found that the applicant is not subject to any persecutor bar.

At his asylum interview at a later date, the applicant stated that he served in the El Salvador military for one year, that he did not harm anyone while serving in the military, but that he killed people "when it was my life or their life to defend myself."

Based on the applicant's testimony about his service in the El Salvador military, on July 17, 2011, the director found the applicant ineligible for TPS under section 244(2)(B) of the Act and denied the application because "it appeared that the applicant was an alien described in section 208(b)(2)(A)(i) of the Act."

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A review of the entire record does not establish that the applicant participated in the persecution of others on account of a protected characteristic, and therefore should not be barred from receiving TPS in the United States.

The persecutor bar applies to individuals who "ordered, incited, assisted, or otherwise participated in the persecution of others." *See* INA § 208(b)(2)(A)(i); 8 C.F.R. § 208.13(c). Therefore, for the persecutor bar to apply, it need not be established that the applicant actually committed acts of persecution; rather, the bar will apply if the applicant "ordered, incited, assisted, or otherwise participated in the persecution of others." In *Matter of A-H-*, the Attorney General provided interpretive tools for construing the series of verbs in the persecutor bar and summarized principles identified in existing precedent:

To 'incite' means 'to move to a course of action: stir up: spur on: urge on' or 'to bring into being: induce to exist or occur.' *Webster's Third New International Dictionary of the English Language Unabridged* 1142 (2002). To 'assist' means 'to give support or aid: help.' *Id.* At 132. And to 'participate' means 'to take part in something (as an enterprise or activity) usu. in common with others.' *Id.* At 1646. Case law teaches that (1) these terms are to be given broad application, *see, e.g. Kulle v. INS*, 825 F.2<sup>nd</sup>

1188, 1193 (7<sup>th</sup> Cir. 1987); (2) they do not require direct personal involvement in the acts of persecution, *See, e.g. Ofosu v. McElroy*, 98 F.3d 694, 701 (2<sup>nd</sup> Cir. 1996); (3) it is highly relevant whether the alien served in a leadership role in the particular organization, *See, e.g. Kalejs v. INS*, 10 F.3d 441, 444 (7<sup>th</sup> Cir. 1993); and (4) in certain circumstances statements of encouragement alone can suffice, *See, e.g. United States v. Koreh*, 59 F.3d 431, 440 (3<sup>d</sup> Cir. 1995). It is appropriate to look at the totality of the relevant conduct in determining whether the bar to eligibility applies. *See e.g. Hernandez v. Reno*, 258 F. 3d 806, 814 (8<sup>th</sup> Cir. 2001).

231 I&N Dec. 774, 784-85(A.G. 2005) (footnotes omitted).

To determine whether an applicant “assisted or otherwise participated in” persecution, the adjudicator should ask: “did the [applicant’s] acts further the persecution, or were they tangential to it?” *Miranda-Alvarado v. Gonzales*, 449 F.3d 915, 928 (9<sup>th</sup> Cir. 2006). The BIA has held that mere membership in a persecutory organization does not qualify a person as a persecutor unless the person’s action or inaction furthered the persecution in some way. Therefore, it is the objective effect of an alien’s action which is controlling. *Matter of Rodriquez-Marjano*, 19 I&N Dec. 811, 815 (BIA 1988).

In this case, the applicant admitted that he was a member of the Salvadoran military for one year during the period February 1987 through January 1988. He indicated that he participated in combat during that period in which he may have killed some guerillas. However, there is no evidence in the record that the applicant belonged in a unit of the Salvadoran military that was known to persecute individuals. There is no evidence in the record to demonstrate that the applicant engaged in acts that are persecutory in nature, or that he assisted or otherwise participated in the persecution of others. The applicant in essence testified that he performed his duties as a soldier during an armed conflict.

In *Matter of Rodriquez-Marjano*, 19 I&N Dec. 811, 815 (BIA 1988), the BIA held that some acts directly related to civil war are not persecution. For example,

harm which may result incidentally from behavior directed at another goal, the overthrow of a government or, alternatively, the defense of that government against an opponent, is not persecution. In analyzing a claim of persecution in the context of a civil war, one must examine the motivation of the group threatening harm.

*Id* at 815.

But the BIA also indicated that some acts, if completed on account of one of the five grounds, could be persecution, even in wartime. *Id* at 816. In this case, while the applicant indicated that he “got revenge” at the guerrillas who killed his parents, there is no indication on the record demonstrating that the applicant’s actions in fighting the guerrillas during the civil war was on account of the guerrillas’ political opinion. Rather, the evidence indicates that the actions of the applicant were in context of a civil war between the Salvadoran military and the guerrillas, who were fighting for the overthrow of the Salvadoran government and the applicant was defending his country.

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As indicated above, section 208(b)(2)(A)(I) of the Act specifies that for the persecution bar to apply, an alien must have “ordered, incited, assisted or otherwise participated in the persecution of any person ...” A review of the entire record however, does not establish that the applicant directly or indirectly “assisted or otherwise participated” in the persecution of others. Accordingly, the director’s decision to deny TPS based on ineligibility under section 208(b)(2)(A)(i) of the Act will be withdrawn.

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 met this burden.

**ORDER:** The appeal is sustained.