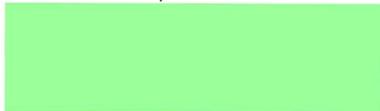




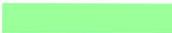
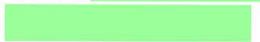
U.S. Citizenship
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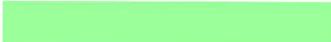
(b)(6)



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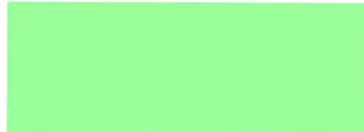
Office: VERMONT SERVICE CENTER

FILE: 


IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

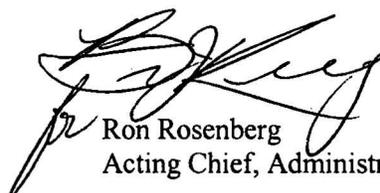


INSTRUCTIONS:

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,



Ron Rosenberg
Acting 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 case will be remanded for further consideration.

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 asserts that the applicant has continuously asserted that he has, at no time, ever met the definition of a persecutor. Counsel submits an additional affidavit from the applicant to support the 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 – (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).

(b)(6)

The applicant filed a Form I-589, Application for Asylum and Withholding of Removal, on May 31, 1991. At the time of his interview on August 17, 2005, the applicant testified to an Asylum Officer, that he had served in the El Salvadoran military as a soldier from 1979 to 1981 with the Second Brigade of Santa Ana, he was trained to use a G-3 rifle and he did not fire the rifle unless he was shot at by the guerrillas. The applicant testified that he also served in the El Salvador National Police from 1983 to March 1991 and carried the G-3 rifle and attained the rank of sergeant. The applicant testified that he served in San Miguel for six months in 1983, San Salvador from 1983 to 1984, Zacatecoluca from 1984 to 1985, La Paz and Santa Techa from 1985 to 1988 and in Battalion Monserrat from 1988 to 1991.

The applicant described his position with the national police as "security" and testified that during his entire service with the national police he did not shoot at or hurt anyone and he did not see any other policemen hurt any individuals. The applicant testified that he was in charge of 100 men and his daily jobs consisted of exercising in the morning, receiving classes until 10:00 a.m., "then lunch, then set up personnel and tell them where they had to go-supervise them. Tell them where to go and what to do. Come back to the base and if people are out we would take water and food to them and then come back to the base." The applicant testified that he would tell the men "to go to their position and make sure not fall asleep or whistle at girls not to distract. Make sure that they wouldn't be killed for being distracted. [He] saw three times where soldiers were shot when they were distracted by these girls." The applicant testified that in 1990 he was shot at by urban commandos and was injured.

On June 16, 2006, the case was administratively closed by the immigration judge as the applicant had filed for TPS.¹

At the time the applicant filed his re-registration application on August 24, 2010, he included an addendum indicating:

I was a member of the National Police of El Salvador from approximately 1983-1990. I was a part of the Batallion Montserrat and worked in San Salvador. As part of this work, I received training in the G-3 rifle, the .28 revolver, the 45 pistol, and the 9 millimeter pistol. My job was similar to a bodyguard to keep the district where I worked peaceful.

On December 17, 2011, the director issued a Notice of Intent to Deny, which informed the applicant that he had indicated yes 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

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).

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 to submit a detailed explanation and describe the circumstances when responding to the three questions above.

The applicant, in response, asserted that he served in the national army in El Salvador from 1979 to 1981. He states that he had to serve in the army because in El Salvador it is the law that every man 18 years or older has to serve two years in the military. The applicant states that he served with the second brigade of infantry, [REDACTED] in Santa Ana, he received weapons training and used his weapon in self-defense in various battles against the FMLN and other groups fighting with the FMLN. The applicant also stated that he was a sergeant in the National Police in the Battalion Montserrat in San Salvador from 1983 to 1991 and was required to carry a gun. The applicant stated, in addition, that he worked on the highways assisting when there were accidents or speeding drivers and "I also had to protect electric towers, water towers, embassies, government buildings, schools, and protect the public peace when there were protests."²

The director, in denying the application, noted that the El Rescate Database indicated that the national police committed numerous human rights violations during the years and at the various locations that the applicant indicated to have served. The director determined that the applicant met the definition of a persecutor in light of his claimed service with the national police, his active participation in the national police, as well as the record of human rights abuses committed by the national police in the areas in which the applicant served.

In *Matter of Rodriguez-Mejano*, 19 I&N Dec. 811, 814-15 (BIA 1988), it was 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.

Mere association with an organization that engages in persecution is insufficient to trigger the bar). *Xu Sheng Gao, v. U.S. Atty. Gen.*, 500 F.3d 93, 99 (2d Cir. 2007). In *Miranda-Alvarado v. Gonzalez*, 449 F.3d 915, 927 (9th Cir. 2006), it was 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." In *Singh v. Gonzales*, 417 F.3d 736 (7th Cir. 2005), it was held that simply being a member of a local Punjabi police department during the pertinent period of persecution is not enough to trigger 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" While the El Rescate Database has been cited as evidence that persecutory acts were

² It is noted that there are inconsistencies in the stated dates when the applicant served in the military and in National Police. The record indicates that the applicant served two (2) years in the military between from 1979 1981, about 10 years in the National police from 1981 until 1991 when he departed El Salvador for the United States. The discrepancies in the dates stated in the various applications are minor as it is clear that the applicant served two years in the El Salvador army, and approximately ten (10) years in the National Police.

committed by the El Salvador National Police, it did not specifically link the applicant 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 had been actively or directly involved in 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 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 case will be remanded to the director for further adjudication of the TPS application. A review of the record reflects that the validity period of the applicant’s fingerprint check has expired. Therefore, the case will also be remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. 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 for further action consistent with the above and entry of a new decision.