



U.S. Citizenship
and Immigration
Services

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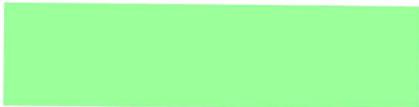
DATE: **JUN 03 2013** Office: NESBRAKA SERVICE CENTER

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of Haiti 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 applicant's TPS application because it was determined that the applicant must have ordered, incited, assisted or otherwise participated in the persecution of others by virtue of his membership in, and involvement with, the Leopard Corps – a known persecutor group in Haiti. The director also denied the application as a matter of discretion.

On appeal, counsel for the applicant asserts that the applicant's membership in the Leopard Corps does not constitute "an inadmissible security ground," that the applicant's membership in this group does not mean that the applicant participated in any acts of persecution, and that there is no proof "either factually or by inference" that the applicant participated in any acts of persecution in his country.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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 and/or Section 212(a)(3)(E)(iii)(5)(a) of the Act.

Section 208(b)(2)(A)(i) of the Act states, in pertinent part:

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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.

Section 212(a)(3)(E)(iii)(5)(a) of the Act states in pertinent part:

(iii) COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS - Any alien who, outside of the United States, has committed, ordered, incited, assisted or otherwise participated in the commission of-

- (I) any act of torture, as defined in section 2340 of title 18, United States Code; or
- (II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Prosecution Act of 1991 (28 U.S.C. 1350 note), is inadmissible.

The record reflects that at his refugee processing interview in Mexico City on June 23, 1993, the applicant stated that he signed a contract in 1983 to join the army in Haiti as a soldier. The applicant stated that in 1989, he decided to discontinue his service in the army because his contract was over and also because he took part in the confrontation in April 1989 between “Caserne Dessalines et Palais National.” At his asylum interview, the applicant testified that he was a member of the Haitian army, specifically, “Corps des Leopard” a tactical unit added to the military by Jean-Claude Duvalier. He served with this unit from June 1983 to June 1989. In his removal proceedings before the Executive Office For Immigration Review (EOIR) the applicant testified that he served in the military in Haiti for six years, from 1983 to June 1989. He also testified that he was a member of the Leopard Corps, the 45th company and that he was aware of several events where civilians were killed but claimed that he was not present and did not believe the Leopard battalion was involved.

International Human Rights organizations and reputable news organizations have implicated the Leopard Corps as a group that was involved in gross human rights violations in Haiti. In its March 20, 1986 article, United Press International reports that the Leopard Corps was formed by Jean-Claude Duvalier, the former dictator of Haiti to replace the “hated Ton Ton Macoutes – Duvalier’s secret police and special militia force.” The report indicated that on February 26, 1986, the Leopard Corps entered the home of a journalist after a curfew and shot three people, a 16-year old was killed and the fate of the other two was unknown. The report further indicated that the February 26, 1986 incident was the second reported assault by the Leopard Corps in one month.

The Annual Report of the Inter-American Commission on Human Rights 1988-1989 – Haiti, described an incident on April 5, 1989 between the Leopard Corps, Casernes Dessalines Battalion and the Presidential Guard that resulted in an unknown number of casualties. The report stated:

. . . A large detachment of soldiers from the Leopard Corps arrived by truck to support the soldiers of the Dessalines Battalion who were demanding General Avril's resignation. Late in the afternoon of the 5th the armored vehicles of the Presidential Guard took positions on the Palace ground . . . heavy shooting was again heard in the vicinity of the presidential palace in Port-au-Prince. It is not clear how many casualties resulted from these two incidents involving heavy fighting.

The Canada Border Services Agency (CBSA) War Crime Unit reports in their Eighth Annual Report (2004-2005), that a number of Haitian military units were known for "gross human rights abuses, including torture, arbitrary killings and arbitrary detentions." The units listed by the agency include the *Service des recherches criminelles* (Anti-Gang Unit), Casernes (Dessalines) Battalion and the Leopard Corps.

In his oral decision denying the applicant's asylum application, an Immigration Judge (IJ) noted that the Leopard Corps replaced the Ton Ton Macoutes, which were Duvalier's secret police and special military force after the dictator departed Haiti and that there are well documented reports that the Leopard Corps was involved in human rights violations. The court considered the applicant's membership in the Leopard Corps as a negative factor in denying his asylum request on discretionary ground.

The Director, Nebraska Service Center, in issuing her decision to deny the applicant's TPS, determined that in light of the reports from various international human rights organizations, the record of the applicant's removal proceedings, the decision from the IJ and the applicant's own testimony, that the record establishes that the applicant was a member of an organization that was known for gross human rights violations. The director determined that the applicant's membership in Leopard Corps is an adverse factor that does not warrant a favorable exercise of discretion and denied the TPS application.

On appeal, counsel for the applicant asserts that the applicant's membership in Leopard Corps does not mean that the applicant participated in any acts of persecution and that there is no proof "either factually or by inference" that the applicant participated in any acts of persecution in his country. Counsel, however, does not provide any documentation in support of his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The U.S. Supreme Court case of *Federenko v. United States*, 449 U.S. 490 (1981) provided guidance in interpreting the persecutor bar cases. Following the *Federenko* decision, many lower courts have expanded the persecutor bar so that personal involvement in killing or torture is not necessary for a finding that an alien assisted in persecution. For example, the second circuit court of appeals held that “[P]ersonal involvement in killing or torture *is not necessary* to impose responsibility for assisting or participating in persecution. *Ofusu v. McElroy*, 98 F.3d, 694, 701 (2nd Cir. 1996) (emphasis added). The seventh circuit found that the atrocities committed by a unit may be attributed to the individual based on his membership and apparent participation. *Kalejs v. INS*, 10 F.3d 441, 444 (7th Cir. 1993), cert. denied, 510 U.S. 1196 (1994). Similarly, the Board of Immigration Appeals (BIA) instructs the court not to look at the subjective intent of the alien, but at the “objective effects of the alien’s actions.” *Matter of Rodriguez-Marjano*, 19 I&N Dec. 811, 815 (BIA 1988). It is notable that there is no mens rea requirement for the persecutor bar to apply and that the alien’s actions need not be of his own volition. *See Id.*(citing *Federenko, supra*). And the Ninth Circuit Court of Appeals, noted that 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 (9th Cir. 2006).

In this case, the record reflects that the applicant was a member of the Leopard Corps, an organization that has been well documented as having committed gross human rights violations in Haiti during the 1980s. The applicant testified that he was involved in a “confrontation,” in 1989 in which an unknown number of civilians were killed. The applicant acknowledged to the IJ that he was aware of several events where civilians were killed but denies any personal involvement. However, as indicated above, the applicant testified at his Refugee Processing interview, that he was involved in a confrontation in April 1989 where civilians were killed. Reports from international human rights organizations identified Leopard Corps as one of the groups that was involved in the indiscriminate killings of civilians in April 1989. Based on the various country condition reports, reports from reputable international human rights organizations, and the applicant’s own testimony, the AAO finds that the applicant participated in the indiscriminate killings of innocent civilians based on their perceived political opinion. Therefore, the applicant’s actions were to such a degree that it is deemed that he assisted or participated in the persecution of others. *Matter of Rodriguez-Majano*, 19 I&N Dec. 814-815 (BIA 1988).

As such, the applicant assisted and/or otherwise participated in the persecution of others. The applicant’s claim on appeal that he was not personally involved in any persecutory acts as a member of Leopard Corps is contrary to his testimony at his refugee processing interview on June 20, 1993 and country condition reports. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application.

The director also denied the TPS application as a matter of discretion. The director determined that the applicant's membership in Leopard Corps, a known human rights violator, "does not warrant a favorable exercise of discretion." On appeal, the applicant has submitted no evidence to overcome this basis for the denial of his TPS application. The AAO agrees with the director that the negative factors far outweigh any positive factors that may be available in this case.

The applicant has the burden of proving by a preponderance of the evidence that the persecutor bar does not apply to him. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. In this case, the applicant has failed to provide any evidence to establish that he did not persecute or assist in the persecution of others. The applicant has not provided any evidence to overcome the grounds for the denial of the application. Consequently, the director's decision to deny the application for TPS will be 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.