



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **JUN 21 2013** Office: CALIFORNIA 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. § 1254

ON BEHALF OF APPLICANT:  
[REDACTED]

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, California 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 application because it was determined that the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel for the applicant asserts that the “government” did not provide any specific evidence to show that the applicant was a persecutor. Counsel argues that “to generalize and determine that because the appellant was a member of the Haitian army under General Raoul Cedras that he must have been a persecutor is contrary to logic and any legal principles.”

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.<sup>1</sup>

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:

- (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

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<sup>1</sup>The 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).

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 of proceedings reflects the following facts and procedural history:

The applicant entered the United States on or about October 27, 1994 as a nonimmigrant [REDACTED] with authorization to remain in the United States for a temporary period not to exceed November 25, 1994. The applicant remained in the United States beyond his authorized stay. On November 25, 1996, the applicant submitted an application for political asylum, which was referred to the Immigration Court on April 8, 1997. At his removal proceedings before the court, the applicant testified that he was a [REDACTED] in the Haitian military. The applicant testified that he started his military education in the late 1970s, graduating from the military academy in [REDACTED]. He held different positions within the military and rose in ranks from [REDACTED] in 1991. The applicant stated that after the coup d'état, he was stationed at the police department headquarters in [REDACTED] where he served as an [REDACTED]. He stated that he was in charge of making sure that there were no demonstrations and he issued press releases to the population not to demonstrate. The applicant claims that his duties included writing press releases as to incidents, participated in court-martials, investigations, and attended meetings convened by the Chief of Police where discussions were held regarding discipline, crime, foreign and diplomatic personnel, military matters and discipline.

The record reflects that during his tenure at the police headquarters in [REDACTED] he served under the direct command of [REDACTED], the head of the police in [REDACTED] a major persecutor and one of the leaders of the coup d'état in Haiti 1991. The applicant also served under the supervision of the intelligence [REDACTED] a known human rights abuser and the major suspect in the assassination of the former head of the Communist Party and an influential politician in Haiti, [REDACTED] bodyguard. The applicant denied knowledge of any human rights abuses committed by the military despite the

fact that he was stationed for about three years at the police headquarters in [REDACTED] and served directly under a known human rights abuser and a persecutor.

In his oral decision, the immigration judge noted that the applicant was a [REDACTED] in the Haitian armed forces and that he was in the top 1 percent in the military in Haiti. The judge also notes that during most of the time after the coup d'état, the applicant was an [REDACTED] in charge of [REDACTED] and under the direct command of [REDACTED] of Police. Based on the evidence and the ample record showing the numerous acts of human rights violations and persecution on account of protected groups in Haiti, during the entire period of the military regime, the judge determined that the applicant assisted or otherwise participated in the persecution of others on account of one of the statutory groups.

The Immigration Judge (IJ) stated in pertinent part:

The information presented shows that the applicant was a [REDACTED] [REDACTED] in a military government known for its widespread and rampant persecution and human rights abuses. By virtue of his rank as a major and the position he held as intelligence officer in [REDACTED] under infamous [REDACTED] of police [REDACTED] it is evident that [the applicant] must have been at the very least aware of the human rights abuses and persecutions and in fact participated in them, directly or indirectly. . . Moreover, [the applicant] was stationed right in the headquarters of the police department in [REDACTED] where most of these acts of oppression were committed and/or directed.

The IJ cited a U.S. State Department opinion that listed the applicant as a major participant in the 1991 coup d'état. The judge noted that the applicant's admission to suppressing demonstrations and public expressions against the regime shows that he was indeed active in suppressing political expression in Haiti. The IJ determined that the applicant's investigation of the murder of [REDACTED] bodyguard and exonerating any of the military men suspected of it and not considering them as suspects, also shows that the applicant had no inclination to stop human rights abuses in Haiti. The IJ also determined that the applicant's claim that he was unaware of human rights abuses is not credible because the applicant testified that he had been in charge of making all reports for arrests in [REDACTED]

Consequently, the IJ found the applicant is ineligible for refugee status under section 101(a)(42)(B) of the Act as a persecutor, and must show by a preponderance of the evidence that he did not order, incite or otherwise participate in the persecution of others.

The Director, California Service Center, in issuing his decision to deny the applicant's TPS, determined that in light of 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 ordered, incited, assisted or otherwise participated in the persecution of others on account of race, religion, nationality, membership in a particular social group or political opinion. The director noted that the applicant is barred from TPS as a persecutor.

On appeal, counsel for the applicant asserts that the “government” did not provide any specific evidence to show that the applicant was a persecutor. Counsel argues that “to generalize and determine that because the appellant was a member of the Haitian army under [REDACTED] that he must have been a persecutor is contrary to logic and any legal principles.” Other than his statements and allegations, the applicant does not provide credible documentary evidence to rebut the director’s finding that he persecuted others.

To determine whether an applicant “assisted or otherwise participated in persecution,” the adjudicator has to determine whether the applicant’s acts further the persecution in any way or whether his actions were tangential to it. *Miranda-Alvarado v. Gonzales*, 449 F.3d 915, 928 (9<sup>th</sup> Cir. 2006). 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. 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 (2<sup>nd</sup> 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 (7<sup>th</sup> Cir. 1993), cert. denied, 510 U.S. 1196 (1994). Similarly, the Board of Immigration Appeals (BIA) 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. The 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 Rodriquez-Marjano*, 19 I&N Dec. 811, 815 (BIA 1988).

In this case, the record reflects that the applicant was a [REDACTED] in a military government known for its widespread and rampant persecution and human rights abuses. The applicant served under the direct supervision of a well-known persecutor and a human rights abuser. The applicant served in the intelligence unit at [REDACTED] police headquarters where most of the abuses by the Haitian military were committed and/or directed. The applicant was listed as one of the coup participants in the 1991 coup d’état that overthrew the government of Jean-Bertrand Aristide in 1991 and instituted an illegal government. The applicant testified that he was involved in curtaining demonstrations during his three-year tenure as an [REDACTED] stationed at the police headquarters in [REDACTED]

According to USCIS Country of Origin Information Research Section Response to Information Request,<sup>2</sup> Haitian Armed Forces commander [REDACTED] overthrew [REDACTED] in a military coup in September 1991. A three-member junta seized power, headed by [REDACTED] of the militarized police of [REDACTED] and the applicant’s direct boss. (emphasis added). The military junta organized a new network centered around the military section chiefs and their deputies. This

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<sup>2</sup> *Haiti: Information on Human Rights Violators (1957 to present)*, Number:HTI10006.ASM, dated March 26, 2010.

network answered to the military rather than the presidency. A February 1991 [REDACTED] report quoted Haiti's AFL-CIO spokesperson as claiming that the Haitian military police had photographed, fingerprinted and followed virtually all of Haiti's union leaders, and that some had been jailed and beaten, and forced to go into hiding. During this time, the army developed close links with a paramilitary organization known as [REDACTED]

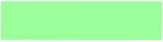
[REDACTED] from Nexis. According to [REDACTED] the army, [REDACTED] and *attaches* killed several thousand suspected [REDACTED] supporters. [REDACTED]

Based on the applicant's position in the military and his duties and responsibilities at the Port-au-Prince police headquarters under the direct supervision of [REDACTED] and the [REDACTED] the applicant must have been aware of the human rights abuses and persecution by members of the Haitian armed forces and directly or indirectly participated in it. By his own admission, the applicant was involved with curtailing demonstrations – a political expression by Haitian people. 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. Counsel's assertion on appeal that the government did not provide any specific evidence to show that the applicant was a persecutor is without merit as the law does not require personal action for the persecutor bar to attach.

The record also reflects that the applicant was considered to have possibly participated in drug trafficking during the three-year defacto regime of the military junta that overthrew Jean-Bertrand Aristide in 1991. In his oral decision, the IJ cited a U.S. Department of State advisory opinion that implicated the applicant as having participated in drug trafficking. It specifically states that the applicant had shipped cocaine through Haiti to the United States with [REDACTED] assisting him and providing him with political backing. If proven, the applicant would be inadmissible to the United States under section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C) as an alien who the consular officer or the Attorney General knows or has reasons to believe is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so, for which no waiver is available.

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

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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.