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U.S. Citizenship
and Immigration
Services

DATE:

JUN 09 2014

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the re-registration application and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn and TPS will be reinstated.¹

The applicant is a native and citizen of Haiti who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the re-registration application because it was determined that the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

Citing case laws, counsel, on appeal, argues that there is no evidence that the applicant participated in any activity that would trigger the persecutor bar. Counsel asserts that the director did not cite to any evidence in the record to demonstrate that the applicant actually engaged in acts that were persecutory in nature or that he personally assisted or otherwise participated in the persecution of others. Counsel asserts that the applicant only engaged in routine military service and did not participate in the detention, interrogation or the persecution of others.

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:

¹ The applicant's temporary protected status was withdrawn and an application for re-registration was simultaneously denied by the director. The applicant appealed the denial of the re-registration application.

- (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 Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The record reflects that on August 1, 1996, the applicant filed a Form I-589, Application for Asylum. On September 10, 1996, the applicant admitted in a Record of Sworn Statement (Form I-215W) that he had served in the Haitian military as a radio dispatcher from May 1983 to September 1994; that he “did not doing anything wrong against the people” while he was in the military; that he did not violate the human rights of anyone; that he worked in the security of the barracks; and that he did not apprehend anyone. On the same date, the applicant testified to an asylum officer that he attained the rank of a sergeant at the time the army disbanded when President Aristide returned in October 1994; and that he was stationed with the [REDACTED] in [REDACTED].

In his deportation proceedings on January 13, 1997, the applicant reiterated his claim of service in the Haitian army from 1983 through 1994. When questioned as to his function and responsibilities in the military, the applicant indicated that for eleven years he “was a member of the heavy equipment;” and that “I used to walk post, I did some security job, I was couple of times Sergeant of the Guard, officer of the day also.” When asked if part of his duties included arresting individuals or if he had assisted anyone with the arrest of individuals, the applicant answered “no.”

In response to a January 22, 2014 Notice of Intent to Withdraw TPS requesting the applicant to submit answers to the questions outlined in the notice regarding his military service, the applicant submitted the following declaration:

I was a member of the Armed Forces of Haiti (Army) from 1984 to 1993). I served in the [REDACTED]. I was stationed at the [REDACTED] and then transferred to the [REDACTED]. I was training some officers on how to repair weapons. I was a Sargent [sic] in charge of training officers on how to repair weapons. I received different types of training such as: weapons, how to repair them. I never had to relay information nor commands. My Commending [sic] Officers were [REDACTED] and [REDACTED]. I used to train other officers on how to [text missing] the weapons. I never witnessed any arrest because my unit did not do that. I never used violence against anyone and never ordered others to use violence against anyone. I never witnessed any violent act against anyone. My unit never committed any violence against others. I never

ordered, incited, assisted or participated in the persecution in any way for any reason. I never participated in any combats or interrogations. I voluntarily participated in the unit.

The applicant provided an additional copy of his military membership/identification card with English translation.

In issuing her decision on March 21, 2014, the director noted, “[t]here is no evidence in the record that the applicant ever ordered or directly participated in the persecution of any person. However, the evidence can show that the applicant’s service in the Haitian military assisted others in the persecution of the Haitian population.” The director based her conclusion on the U.S. Department of State Country Report on Human Rights Practices 1993–Haiti, which reported that the military, police, and paramilitary personnel committed numerous human rights violations with impunity in 1993. The director indicated that although the applicant claims not to have been involved in human rights abuses or to have witnessed such abuses, the evidence demonstrates that the applicant would have known such abuses were occurring. The director cites to an August 1, 1993 USCIS country profile report of Haiti indicating, “Virtually every military barracks includes a detention area, with the barracks in major cities serving as collection points for detainees from outlying areas.”² The director further cites to federal register 59 FR 16548 (April 7, 1994), which included the names of the applicant’s commanding officers, [REDACTED] and [REDACTED] whose assets had been blocked by the [REDACTED]. The director noted:

Because of their rank and position, because of the documented widespread abuses committed by the Haitian military and because they have been recognized by the [REDACTED] as assisting the de facto military regime the applicant’s commanding officers can be considered to have 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 applicant’s commanding officers are not part of this application, nor has the applicant’s eligibility been determined based on the actions of his superior officers. However, it must be concluded that officers and soldiers from the applicant’s unit participated, or at least contributed in some manner, in human rights violations. Moreover, the applicant indicates that his role in the Haitian army was confined to heavy weapons and training. It must be concluded, though, that the applicant provided training to officers and soldiers who did actively participate in human rights violations.

The applicant claims not to have participated in any arrests, interrogations or any other human rights violations. The applicant, in fact, claims never to have

²See <http://www.refworld.org/docid/3ae6a60a6.html>

witness [sic] any violation of human rights. The fact remains that the applicant provided support – even if considered small or on a limited scale – to the Haitian military and to the de facto regime that rule [sic] Haiti from 1991- 1994. The military regime was pervasive and inescapable that a soldier serving in the applicant’s position cannot claim to have not assisted in the persecution of any person on the account of race, religion, nationality, membership in a particular social group, or political opinion. There is no evidence that the applicant’s role as a trainer insulated himself from the crimes committed by the rest of the Haitian military.

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. Therefore, the applicant’s membership in a Haitian heavy artillery unit is insufficient, by itself, to invoke the persecutor bar.

In *Matter of A-H-*, 23 I&N Dec. 774 (A.G. 2005), it was held that the Government must “offer prima facie evidence” to indicate that a respondent incited, assisted, or otherwise participated in the persecution of persons on account of a protected ground before the burden shifts to the respondent.

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 1993 Country Report on Human Rights Practices has been cited as evidence that persecutory acts were committed by the military, police and paramilitary personnel 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 “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. To reach such a conclusion would be through a “guilt by association” link to the military and the de facto government, which 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 deny the re-registration application based on ineligibility under section 208(b)(2)(A)(i) of the Act will be withdrawn.



Based on the foregoing analysis, the AAO concludes that the applicant is not ineligible for TPS under sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(i) of the Act. Accordingly, the director's decision of March 21, 2014 will be withdrawn. The director's initial decision of June 30, 2010, approving the application for TPS, will be reinstated.

ORDER: The decision of the director dated March 21, 2014, is withdrawn. The decision dated June 30, 2010, approving the application for TPS, is reinstated.