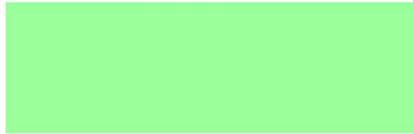




U.S. Citizenship
and Immigration
Services

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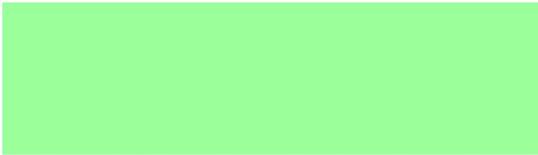
DATE: FEB 19 2015 Office: VERMONT SERVICE CENTER

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. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. All of the documents related to this matter have been returned to the Vermont Service Center. 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,

A handwritten signature in black ink that reads "Michael Shumway".

f/ Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and his re-registration application was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a citizen of El Salvador who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The record reveals that the applicant filed a TPS application during the initial registration period which was subsequently approved, and on July 23, 2013 he filed a re-registration application.

The director withdrew TPS on March 4, 2014, after determining that the applicant failed to respond to a September 27, 2013 notice of intent to deny (NOID) wherein the director requested that the applicant submit evidence concerning his military history and weapons training.¹

On appeal, counsel asserts that the applicant that the applicant was unable to submit the evidence requested in the NOID within the time allowed due to constrains in obtaining the applicant's military history from El Salvadoran officials. Counsel also asserts that the applicant does not met the definition of a persecutor. Counsel submits a brief and additional evidence.

Included in the documentation submitted on appeal is a statement from [REDACTED] who states that he is an attorney in El Salvador whom the applicant engaged to assist in obtaining his military records in El Salvador. Mr. [REDACTED] states that he experienced difficulty obtaining the applicant's military record until he communicated with a Military Judge who ordered issuance of the applicant's military record. We find the record to contain sufficient reason for the applicant's delay in responding to the NOID due to the difficulty in obtaining his military record from El Salvador.

The next issue in this proceeding is whether the applicant is a persecutor under section 208(b)(2)(A)(i) of the Act and is ineligible for TPS under section 244(c)(2)(B)(ii) of the Act.

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;

¹ The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

- (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).

On September 27, 2013, the director issued a Notice of Intent to Deny, which informed the applicant that he had indicated on the Form I-821, “yes” to the question [at Part 4, item: 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?” The applicant was advised to submit a detailed explanation and describe the circumstances when responding to the three questions above.

In response, the applicant states, in his submission on appeal, that he enlisted in the infantry battalion of the [REDACTED] and that he received two (2) months training from March to April 1994; that he did not have a rank and was still in basic training; and, he believes that his military document indicates that he was a second class soldier because he had abandoned training to come to the United States to join his family who relocated here. He states that he volunteered to join the military but changed his mind when he decided to emigrate from El Salvador to the United States; that he did not have any specific; that he never participated in any type of combat; and that he was trained to use the M-16 weapon but never used it against anyone.

The record includes a letter, submitted on appeal, from the [REDACTED] with an English translation, stating that from March 1994 to April 1994, the applicant was listed in the [REDACTED]. Also submitted on appeal is a letter from [REDACTED] stating that the applicant was drafted on March 1, 1994, and was discharged on May 31, 1994, as a soldier of the Second Class due to desertion.

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.

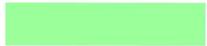
To be statutorily ineligible for TPS, section 208(b)(2)(A)(I) of the Act specifies that an alien must have "ordered, incited, assisted or otherwise participated in the persecution of any person" While the El Rescate Database has been cited as evidence that persecutory acts were committed by the El Salvador 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. The record of evidence does not support a conclusion of ineligibility under section 244(c)(2)(B)(ii) of the Act.

The record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS; the record of proceedings reveals that the Federal Bureau of Investigations (FBI) fingerprint checks conducted in connection with the re-registration applications show no derogatory results. The record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The record of proceedings contains a photo ID in the form of the biographic page of the applicant's El Salvador passport. Therefore, the director's decision withdrawing TPS is itself withdrawn, and the approval of the initial application is reinstated.

(b)(6)



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NON-PRECEDENT DECISION

Since the applicant's TPS is reinstated, the application for re-registration will also be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

ORDER: The appeal is sustained. The applicant's TPS is reinstated. The re-registration application is approved.