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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 30 2009

[EAC 08 063 83531]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grisson, 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 on appeal. The appeal will be dismissed.

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 he found that the applicant was ineligible for TPS because the applicant committed, ordered, incited, assisted or otherwise participated in the commission of acts of torture.

On appeal, counsel for the applicant states that the Department of State was not able to conclude that the facts happened as claimed.

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 Attorney General 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; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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 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

USCIS records indicate the applicant entered the United States in G1(diplomatic visa) classification on or about January 17, 1993. The applicant signed a Record of Sworn Statement stating that he was the Assistant Military Attaché at the Organization of American States “OAS” from the Embassy of El Salvador in Washington, D.C. until June 30, 1993. The Department of State records show that the G1 non-immigrant classification was terminated as of May 19, 1993. The applicant stated that he was a member of the El Salvadoran military service from January 29, 1968 to March 1993. On May 27, 1993, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On December 11, 1995, the Department of State issued an opinion objecting to the grant of the adjustment application. According to the Department of State, “It would not be in the national interest of the United States to allow the applicant and members of his family to adjust status to that of an alien admitted for permanent residence. Furthermore, his continued presence in the United States runs counter to our goal of the promotion of human rights in El Salvador and elsewhere.” In addition, the United Nations Commission of Truth (UN Truth Commission) identifies the applicant as being responsible for committing acts of torture and extrajudicial killings. Consequently, the director denied the application.

On appeal, counsel states that the Department of State was not able to conclude that the facts as reported by the UN Truth Commission happened as claimed in their report. However, in **UN Security Council Annex, from Madness to Hope: the 12-year war in El Salvador: Report of the Commission of the Truth for El Salvador, S/25500, 1993, 62-75**, the UN Truth Commission, specifically named the applicant as having ordered units under his command to execute the civilian population in El Junquillo, El Salvador. The evidence provided by the applicant in support of his

claim, one page of a report on Tehuicho and El Junquillo, El Salvador, simply states that no documents had been retrieved in these two cases and follow-up searches have proved fruitless. The evidence does not overcome this basis for the denial of the application.

Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status 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.