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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: ST. PAUL, MN
[LIN 04 057 50207]

JUL 06 2009

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:

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. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, St. Paul (Bloomington), Minnesota District Office, and is now before the Administrative Appeals Office on appeal.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 record reveals that the applicant filed a TPS application on December 23, 2003, under receipt number LIN 04 057 50207. The Director, Nebraska Service Center, approved that application on February 23, 2004.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

The director determined that the applicant was ineligible for TPS because the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

On appeal, counsel for the applicant states that the applicant gave false information during his asylum interview when he claimed to have been a member of a guerilla group and participated in acts of persecution.

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.

Pursuant to Section 244(c)(2)(B)(ii) of the Act, an alien shall not be eligible for temporary protected status under this section if the Attorney General finds that the alien is described in section 208(b)(2)(A).

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.

United States Citizenship and Immigration Services (USCIS) records indicate that during his asylum interview, the applicant stated that he was a member of the FPL guerilla forces in El Salvador from 1980 through 1984. According to the signed statement of the applicant, he sometimes beat the soldiers, which resulted in their heads bleeding, and that he had taken prisoner and mistreated the guards he had taken prisoner, and that at least one died. The applicant also stated that he shot and killed police.

Pursuant to a letter dated April 23, 2007, the applicant was provided the opportunity to address the adverse information discussed above. In response, the applicant submitted documentation, including a personal affidavit rebutting the persecution charge. According to the applicant, he was afraid he would be deported from the United States if he was not in danger if he returned to El Salvador, so he fabricated the story about being a member of a guerilla organization. The applicant claims that he told the asylum officer that he had been convinced to become an evangelical Christian in 1985, and that had led him to leave the guerillas. However, the applicant states in his affidavit that he had been a member of an evangelical church since 1976. Counsel contends that the applicant has proven by a preponderance of the evidence that he was not a persecutor. This assertion is not supported by the facts. The applicant has given one account during his asylum interview. When it is revealed that that account prevents him from obtaining TPS, he provides another account stating that he lied during the asylum interview. Counsel claims that the applicant's statements to the asylum officer are inconsistent. However, the applicant provides information, in great detail, about his activities as a guerilla. Neither the applicant nor counsel has provided sufficient evidence to overcome the

applicant's testimony to the asylum officer or to establish that the applicant did not persecute or assist in the persecution of others. The applicant has not overcome the basis for the district director's withdrawal of his temporary protected status; therefore, the director's decision is affirmed.

Beyond the director's decision, it is noted that pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. The applicant, in this case, was seeking to procure TPS benefits under section 244 of the Act. The applicant, therefore, appears inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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.