



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 23249916

Date: DEC. 5, 2022

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of El Salvador, seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a, as a late initial registrant.

The Director of the Vermont Service Center denied the TPS request, concluding that although the Applicant qualified for late initial TPS filing he was statutorily ineligible for such status because his testimony in prior immigration proceedings indicated that he participated in persecution of others on account of a protected ground.

On appeal, the Applicant asserts that he is not subject to the persecutor bar and the Director's adverse decision was therefore in error.

The Applicant has the burden of proof to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

## I. LAW

The Applicant is seeking review of a decision denying his late initial registration for TPS. Applicants are ineligible for TPS if they ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership of a particular social group, or political opinion. Sections 244(c)(2)(B)(ii), 208(b)(2)(A) of the Act, 8 U.S.C. § 1158(b)(2)(A).

Applicants must demonstrate eligibility by a preponderance of credible evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). We judge the sufficiency of all evidence is judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

## II. ANALYSIS

The issue on appeal is whether the Applicant has established that he is not subject to the persecutor bar. As stated, the Director determined that the Applicant was ineligible for TPS under section 244(c)(2)(B)(ii) of the Act because of his past involvement in persecution while he served under the

Salvadoran military command. In making this determination, the Director considered the Applicant's prior testimony in asylum and NACARA<sup>1</sup> proceedings that during his service in the Salvadoran Civil Defense he was responsible, in part for arresting individuals who had not fulfilled their military service requirements, as well as surveillance of suspected subversive hideouts or safe houses and calling the army to attack them and apprehend or kill the subversives.

On appeal, the Applicant avers that he is not subject to the persecutor bar because he did not personally and purposefully participate in the persecution of others on the basis of any protected grounds.

After reviewing the entire record, which includes the Applicant's statements in prior immigration proceedings, information on human rights violations during the Salvadoran Civil War, and determinations concerning his asylum and NACARA applications we conclude that the Applicant has not overcome evidence indicating that he assisted or otherwise participated in the persecution of others on account of their political opinion.

#### A. The Applicant's Testimony

The Applicant's statements in support of his asylum and NACARA applications reflect that he served in the Salvadoran Civil Patrol in the [REDACTED] Province from 1983-1986. He testified that as part of his duties he performed surveillance on suspected guerilla or guerilla sympathizers' meetings. The Applicant reported that he participated in the arrest of one person for taking part in a political meeting, and that this person was sent to a judge and likely sentenced to three to six months in jail as this was the usual punishment for rebel sympathizers. In his written declaration the Applicant stated that he also called in the military to attack the political meetings he was observing, which resulted in participants being arrested or killed. During his NACARA interview the Applicant related that he reported information he obtained from his friends about meetings at churches, schools and homes of guerrilla sympathizers including women, children, and elderly people, and the military attacked those meetings. The Applicant acknowledged that if there was resistance, the army would attack and kill everyone in attendance, even the women, children, and elderly. Although the Applicant denied engaging in direct persecution of suspected guerillas, he did admit to reporting them to the military on three occasions, which resulted in the army capturing or killing the suspected guerillas.

U.S. Citizenship and Immigration Services (USCIS) previously determined that the Applicant's statements indicated he was barred from receiving asylum under section 208(b)(2)(A)(i) of the Act as a persecutor of others, and issued a notice of intent to deny his asylum request. In the notice, USCIS advised the Applicant that by informing the army about the political meetings of guerilla sympathizers, which led to arrests and killing of non-combatant women, children, and elderly who were present at those meetings the Applicant assisted or otherwise participated in the persecution of others on account of their political opinion.<sup>2</sup>

The Director similarly relied on the Applicant's prior testimony in concluding that the Applicant was subject to the persecutor bar and was therefore ineligible for TPS.

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<sup>1</sup> Specifically, Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to under Section 203 of Public Law 105-100 [Nicaraguan Adjustment and Central American Relief Act] (NACARA).

<sup>2</sup> The Applicant did not respond to the notice, nor did he file a Freedom of Information Act (FOIA) request to obtain a copy of the record of proceedings, although he was given an opportunity to do so.

## B. Persecutor Bar

The Applicant asserts generally that the persecutor bar does not apply to him because he did not personally and purposefully participate in the persecution of others on the basis of their race, religion, nationality, membership in a particular social group or political opinion.

In support he cites *Miranda Alvarado v. Gonzales*, 449 F.3d 915 (9th Cir. 2006), in which the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) held that determining whether an individual “assisted in persecution” within meaning of statutory bars to granting of asylum and withholding of removal, requires particularized evaluation of both personal involvement and purposeful assistance in order to ascertain culpability. The Applicant further states, citing *Laipenieks v. INS*, 750 F.2d 1427, 1431, 1436 (9th Cir. 1985) that to apply the persecutor bar in his case the government must make a showing of his personal active assistance or participation in persecutorial acts and must also prove by clear, convincing, and unequivocal evidence that he persecuted individuals because of political opinion or at least that his acts led to the persecution of individuals because of political belief.

The Applicant maintains that “any actions on his part were passive and not directly connected to the individualized persecution of another” on any protected ground, and the record contains no evidence that any individuals he apprehended or arrested were eventually persecuted because of their political beliefs; rather, he avers that while the record shows he arrested an individual at a political meeting in 1986, it does not reflect why that arrest was made. He further states referencing *Laipenieks* that although he did inform his commanding officers about suspected guerilla meetings, the record contains no proof that any one person was directly persecuted as a result of the information he provided. The Applicant asserts that the government therefore failed to meet its burden of establishing that he assisted or participated in the persecution of others on account of their political opinion.

### 1. Background and Country Conditions Information

In *Matter of Casanova*, the Board of Immigration Appeals provided a brief history of the Civil War in El Salvador between the Salvadoran government and the guerrilla forces:

A military coup in October 1979 resulted in the creation of a civilian-military junta with a civilian President . . . . A new constitution was drafted in 1983, and Jose Napoleon Duarte was elected President in 1984. Despite these political changes, the military retained significant power in the Government of El Salvador.

In 1980, opposition groups coalesced to form the Frente Farabundo Marti para la Liberación Nacional (“FMLN”). In reaction to the resistance, both the Armed Forces and Security Forces began a campaign of repression, resulting in mass killings and torture of civilians who were believed to be supporting the rebels. “Death squads,” often operating as extensions of the Armed Forces and Security Forces, were active throughout the war. The intensity of violence and number of human rights abuses fluctuated over the course of the war . . . .

Peace accords between the Government and the FMLN, brokered by the United Nations, were signed on January 16, 1992. After the war, the United Nations created

the Commission on the Truth for El Salvador (“Truth Commission”) to investigate “serious acts of violence” committed during the war.

26 I&N Dec. 494, 496 (BIA 2015).

Country reports indicate that the Salvadoran Civil Defense (of which the Applicant was a member) under military command and usually armed with rifles, handguns and machetes, was responsible for serious and substantial human rights violations in the 1980s. *See* United States Bureau of Citizenship and Immigration Services, *El Salvador: Information on the role of the Civil Defense during the war*, 8 February 2001, SLV01003.ZSF.<sup>3</sup> During 1983-1986 the “low-intensity conflict” strategy designed by the United States called for the setting up of new, better-trained Civil Defense units to defend areas repopulated by peasants after guerrillas had been cleared and then provided with economic aid. *Id.* According to low-intensity strategy advocates, the role of the Civil Defense was to protect the population and to isolate the FMLN guerrillas from the people; however, as indicated by the El Rescate database, although abuses against civilians by the Civil Defense declined somewhat beginning in the mid-1980s, serious and substantial violations continued until the end of the decade. *Id.*

## 2. Eligibility

As an initial matter, the Applicant’s reliance on *Laipenieks* concerning the burden of proof in these proceedings is misplaced. The Ninth Circuit held in that case that the language and intent of former section 241(a)(19) of the Act, 8 U.S.C. § 1251(a)(19) (providing for deportability of persons who assisted the Nazi government of Germany and its allies in persecution) require that deportability be sustained only when the evidence establishes that the individual in question personally ordered, incited, assisted or otherwise participated in the persecution of individuals. This holding confirms that the Department of Homeland Security (DHS) bears the burden of proof to establish an individual’s deportability in removal proceedings,<sup>4</sup> but it does not address the persecutor bar under section 208(b)(2)(A) of the Act, which is at issue in this case. As stated, because the Applicant is seeking TPS, he has the burden to establish eligibility for such status by a preponderance of the evidence, which requires him to show in part that he is not subject to the persecutor bar.

Here, country conditions information referenced above indicates that the human rights abuses committed by the Civil Defense amounted to persecution on account of the guerrillas’ political opinion in opposition to the Salvadoran government. In addition, the Applicant’s own testimony indicates that he was tasked, in part with surveillance of suspected guerilla sympathizers and reporting information about their meeting places to the army, knowing that the army would capture or kill those in attendance, including non-combatant women, children, and elderly.

We acknowledge the Applicant’s claim that he was a passive participant and did not personally persecute anyone. However, the terms “committed, ordered, incited, assisted, or otherwise participated” under the Act “are to be given broad application” and “do not require direct personal involvement in the acts.” *Matter of M-B-C-*, 27 I&N Dec. 31, 36 (BIA 2017) (citing *Matter of A-H-*, 23 I&N Dec. 774, 784 (A.G. 2005), *remanded on other grounds*, *Haddam v. Holder*, 547 F. App’x

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<sup>3</sup> Available at: <https://www.refworld.org/docid/3decd8184.html> (accessed Nov. 23, 2022).

<sup>4</sup> *See* 8 C.F.R. § 1240.8 (providing that a respondent charged with deportability shall be found to be removable if the [DHS] proves by clear and convincing evidence that the respondent is deportable as charged).

306 (4th Cir. 2013)). The Applicant does not contest that the information he provided to the army led to attacks on guerilla sympathizers attending political meetings and sometimes killing of the participants, including non-combatants. The Applicant's actions led to serious harm to the individuals who were present there, and thus amount to his assistance or participation in persecution.

Once the evidence of a noncitizen's association with persecution is introduced, the noncitizen bears the burden to disprove that they engaged in persecution. *See Castaneda-Castillo v. Gonzales*, 488 F.3d 17, 21 & n.3 (1st Cir. 2007); *Singh v. Gonzales*, 417 F.3d 736, 740 (7th Cir. 2005) (holding that "if there is any evidence that an applicant . . . has assisted or participated in persecution, that individual has the burden of demonstrating by a preponderance of the evidence that he has not been involved in such conduct.") (Internal citation omitted).

The Applicant does not offer evidence to establish that he is not subject to the persecutor bar aside from his statements that he only provided information to the army and did not personally engage in persecution. These statements, however, are insufficient to overcome the Applicant's previous testimony indicating that as an informant for the army he assisted or otherwise participated in persecution of others on account of their political opinion. The Applicant's testimony, considered in the context of Salvadoran civil war history and information about substantial human rights violations by the Civil Defense during the period of the Applicant's service in the Civil Defense patrol, is sufficient to trigger the persecutor bar and shift the burden of proof to the Applicant. As the Applicant does not submit evidence to show that this bar does not apply to him he has not overcome the Director's determination of ineligibility for TPS on that basis.

### III. CONCLUSION

The Applicant has not met his burden of proof to establish that he did not order, incite, assist, or otherwise participate in the persecution of any person on account of race, religion, nationality, membership of a particular social group, or political opinion. Consequently, he is ineligible for TPS and his Form I-821 remains denied.

**ORDER:** The appeal is dismissed.