U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24933071

Date: JULY 2, 2023

Appeal of Texas Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of El Salvador, seeks review of a decision withdrawing his Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the Texas Service Center granted TPS in 2018, but later withdrew it concluding that the Applicant was not eligible for such status at the time it was granted because he did not establish he was not subject to the persecutor bar. The matter is now before us on appeal.

On appeal, the Applicant asserts that the Director's decision was in error, because he had previously fully disclosed his service in the Salvadoran military, and there is no evidence that he was ever personally involved in persecution of others.

Once a noncitizen has been granted TPS, U.S. Citizenship and Immigration Services (USCIS) has the burden to show why TPS should be withdrawn. *See generally* 8 C.F.R. § 244.14. We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we conclude that USCIS has met this burden. Accordingly, we will dismiss the appeal.

I. LAW

USCIS may withdraw the status of an applicant granted TPS under section 244 of the Act at any time if it determines that the applicant 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).

Noncitizens 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 in a particular social group, or political opinion. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A) of the Act, 8 U.S.C. § 1158(b)(2)(A).

Noncitizens seeking TPS must demonstrate eligibility by a preponderance of credible evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). To determine whether a noncitizen has met

that burden, USCIS considers not only the quantity, but also the quality of the evidence, including its relevance, probative value, and credibility. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)

II. ANALYSIS

The issue on appeal is whether at the time the Applicant was granted TPS he was ineligible for such status under section 244(c)(2)(B)(ii) of the Act due to his involvement in persecution of others while he served in the Salvadoran military. As stated, the Director determined that the Applicant was ineligible for TPS on that basis, because an Immigration Judge found the Applicant subject to the persecutor bar in removal proceedings and, given the country conditions at the time of the Applicant's military service, it was unlikely that he was unaware of or did not participate in the persecutory acts.

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 evidence supports the Director's determination of the Applicant's ineligibility for TPS.

A. The Applicant's Testimony in Asylum and NACARA[1] Proceedings and Procedural History

The record reflects that the Applicant entered the United States without inspection in July 1988, and several months later applied for asylum claiming that the guerillas threatened him because of his military service during the Salvadoran Civil War. The Applicant testified, in the course of his asylum proceedings, that he joined the Salvadoran First Infantry brigade in February 1979 as part of mandatory military service; in July 1981 he became a member of the [redacted] Battalion and served as a soldier in the [redacted] region until December 1981. The Applicant further stated that from March 1982 through September 1983 he served in the Salvadoran Civil Defense, and later as the officer of the National Police in [redacted] from September 1983 until May 1988. In his 2005 sworn statement before an asylum officer, the Applicant reported that while in the military he was involved in combat "many times," and that he recalled participating in combat in [redacted] on one occasion.[2] He stated that his responsibilities in the [redacted] Battalion included securing the battalion's base in San Salvador, and he was also instructed to arrest people "[f]or disturbances or [people who were] against the government" and would "write on the walls or hang up posters with their group name." He explained that there were patrols walking the streets that would arrest people for such activities, and although he did not personally arrest any protestors he saw others arresting the guerillas; because "[t]here was fighting in the city . . . sometimes they would have shootouts." The Applicant stated that as part of his duties he also controlled "demonstrations against the government . . . so [they] would not get out of hand," and would not disrupt the traffic. He claimed that did not know what happened to the individuals who were arrested, nor did he ever harm anyone, or witness others harming or killing innocent people. The Applicant subsequently claimed that an interpreter mistranslated his 2005 testimony, and that during his years of miliary service he never arrested or interrogated anyone, and did not see anyone being arrested or interrogated; rather he only went on two patrols while in the

[1] Nicaraguan Adjustment and Central American Relief Act. Pub. Law No. 105-100, 111 Stat. 2160 (Nov. 19, 1997), *amended by* Pub. Law No. 105-139, 111 Stat 2644 (Dec. 2, 1997).

[2] In a subsequent interview, the Applicant testified he was in combat twice while he served in the [redacted] Battalion.

[redacted], never saw any guerillas, and only fired his gun once as a means of communication and not at the enemy.

In 2015, an Immigration Judge denied the Applicant's requests for asylum, withholding of removal, voluntary departure, and cancellation of removal under NACARA, concluding that the Applicant did not meet his burden of proof to show that he did not engage in the persecution of others on account of political opinion. Specifically, the Immigration Judge found that as the civil war in El Salvador was well under way by 1980, when the Applicant served in the military, his testimony that he did not arrest anyone and did not witness others arresting people was implausible. The Immigration Judge further determined that the Applicant's claims that he never encountered any guerillas during his service in the [redacted] Battalion and was unaware of anyone in the battalion capturing or encountering guerillas were similarly not plausible in view of the evidence that the battalion was the most notorious with regards to human rights violations, and that regular soldiers in the battalion would have almost certainly been directly involved in human rights violations during the particularly brutal 1981-1985 period of the war, or at the very least would have known about the systematically brutal way in which the [redacted] operated and the atrocities that ensued. In addition, the Immigration Judge found that while the Applicant testified he never arrested or interrogated anyone when he was working for the National Police in El Salvador from 1983 until 1988, his testimony lacked credibility, as the evidence indicated a high probability that any member of the National Police would have been involved in serious human right abuses prior to 1984, and such involvement would have been also likely after 1984. Lastly, the Immigration Judge determined that the Applicant inconsistently testified about his knowledge of human rights violations by the Salvadoran military, and his inability to explain the inconsistencies raised further doubts regarding his contention that he was neither involved in, nor heard of these violations. Concluding in pertinent part that through his incredible testimony the Applicant failed to meet his burden of proof of establishing that he was not subject to the persecutor bar, the Immigration Judge found the Applicant ineligible for the relief requested and ordered him removed from the United States.

The Applicant appealed the adverse decision to the Board of Immigration Appeals (the Board), but the Board dismissed his appeal in 2016, finding no clear error in the Immigration Judge's determination that the Applicant was providing false testimony when he testified about his activities in the Salvadoran military and that he therefore did not meet his burden of proof to show by a preponderance of the evidence that he did not engage in persecution of others. In 2018, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) denied the Applicant's petition for review, concluding that his testimony was implausible in light of the background evidence, which included reports about the human rights violations by the [redacted] Battalion and National Police during his service, and the record therefore supported the Immigration Judge's adverse credibility finding.

The Applicant then submitted a TPS request which, as stated, the Director initially granted but later withdrew concluding that the Applicant did not establish he was not subject to the persecutor bar.

B. Persecutor Bar

The Applicant asserts that the persecutor bar does not apply to him because there is no evidence that he had been actively or directly involved in persecutory activities, nor is there evidence indicating that he assisted or otherwise participated in the persecution of any person on account of a protected ground.

He reiterates that he did not arrest or harm anyone, and the Director improperly relied on the decisions issued in non-TPS proceedings, which he claims involved a higher evidentiary burden of proof than the "preponderance of the evidence" standard.

1. Background and Country Conditions Information

In *Matter of Casanova*, the Board summarized history of the Civil War in El Salvador between the Salvadoran government and the guerrilla forces as follows:

> 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.
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> In 1980, opposition groups coalesced to form the Frenté 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).

The El Rescate database, is a primary source regarding human rights violations committed by both government and rebel forces during the entire Salvadoran Civil War period from 1980 to 1992. Information in El Rescate shows numerous human rights abuses corresponding with the timing and locations of the Applicant's military service. Specifically, El Rescate reflects that Battalion [redacted] committed numerous human rights violations from 1981 to 1983, which includes the period of the Applicant's assignment in [redacted] Furthermore, according to the 2004 USCIS Resource Information Center report included in the record,[3] a regular soldier in that battalion would almost certainly have been involved in human rights violations during the particularly brutal years from 1981 to 1985. The same report indicates that the principal role of the National Police under the direct command of the Salvadoran military through the Ministry of Defense, was to monitor, film and record peaceful political activities, particularly in urban areas, to provide a basis for abductions and interrogations of suspected leftists, and there is a high probability that prior to 1984 any member of the National Police would have been involved in the committing of serious rights abuses, and that after

[3] Question and Answer Series, *El Salvador, the Armed Forces from the 1970s to the Early 1990s*, 80 QA/SLV/04.001, updated April 2004 (also cited in the Immigration Judge's, the Board's, and the Ninth Circuit's decisions).

1984 involvement also would have been likely, but less so.[4] Moreover, El Rescate points to at least two specific human rights violations by the National Police in [redacted] where the Applicant served as a member of that entity from 1983 until 1988.

Thus, the above information indicates that both the [redacted] Battalion and the Salvadoran National Police were responsible for human rights violations in the 1980s, which amount to persecution on account of the individuals' political opinion in opposition to the Salvadoran government.

2. Eligibility

Where the record contains evidence from which a reasonable factfinder could conclude that the persecutor bar may apply, the noncitizen bears the burden of showing that it does not. *Matter of Negussie*, 28 I&N Dec. 120, 121 (A.G. 2020); *Miranda Alvarado v. Gonzales*, 449 F.3d 915, 930 (9th Cir. 2006). Here, the Applicant has provided no evidence to disprove the information about human rights violations committed by the [redacted] Battalion and the National Police while he served in those units aside from his testimony, which both the Immigration Judge and the Board found to be inconsistent and not credible.

The Applicant does not offer any additional evidence on appeal. Instead, he asserts that in finding him ineligible for TPS based on the persecutor bar the Director improperly held him to a standard of proof higher than the preponderance of the evidence. The Applicant claims that although the Immigration Judge denied his applications for relief and ordered him removed from the United States, this decision was based on the strict standard of proof in removal proceedings described in the regulations at 8 C.F.R. § 1240.8. He further states that the Ninth Circuit's refusal to disturb the Immigration Judge's and the Board's decisions was governed by the "substantial-evidence standard" in section 242(b)(4)(B) of the Act, 8 U.S.C. § 1252(b)(4)(B), which required the court to defer to the factual findings therein "unless any reasonable adjudicator would be compelled to conclude to the contrary."

We note, however, that in both removal and TPS proceedings, the burden is on the noncitizen to show by a preponderance of the evidence that the persecutor bar does not apply. *See Matter of Negussie*, 28 I&N Dec. at 153 (A.G. 2020) (stating that "if evidence in the record indicates that the persecutor bar [in section 208(b)(2)(A) of the Act] may apply, then the applicant bears the additional burden of proving by a preponderance of the evidence that it does not."); 8 C.F.R. § 1240.8(d) (providing in part that "[i]f the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the [noncitizen] shall have the burden of proving by a preponderance of the evidence that such grounds do not apply."). Under the preponderance of the evidence standard, the evidence must demonstrate that the applicant's claim "is 'probably true,' where determination of 'truth' is made based on the factual circumstances of each individual case." *Matter of Chawathe*, 25 I&N Dec. at 376.

Here, the Director determined that in light of the country conditions and events at the time of the Applicant's military service in El Salvador detailed in the Immigration Judge's decision, it was unlikely that the Applicant was unaware of, or did not participate in, the persecutory acts and that he therefore did not meet his burden of proof of demonstrating *by a preponderance of the evidence* that

[4] *Id.* at 68-69.

he was not subject to the persecutor bar.[5] As the Applicant does not point to any specific examples indicating that the Director applied a higher evidentiary standard in making the above TPS ineligibility determination, we conclude that he has not shown that his TPS was improperly withdrawn.

The Applicant next avers, referencing our 2015 non-precedent decision in unrelated proceedings, that his TPS must be reinstated consistently with that decision. This decision, however, was not published as a precedent and therefore does not bind USCIS in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. The decision to which the Applicant refers involved a different set of facts than those in his case, as it addressed applicability of the persecutor bar to a TPS applicant who enlisted in the Salvadoran military in 1994, after the civil war in El Salvador had ended, came to the United States the same year after completing only two months of training, and was never in combat.

We acknowledge the Applicant's claim that pursuant to the Ninth Circuit's precedent decision in *Miranda Alvarado v. Gonzales*, 449 F.3d at 927 "determining whether [a noncitizen] 'assisted in persecution' requires a particularized evaluation of both personal involvement and purposeful assistance in order to ascertain culpability, as well as his assertion that there is no evidence he had been actively or directly involved in any persecutory activities. As discussed, however, the Applicant's own testimony that he served in military units that have committed human rights abuses is sufficient to show that he may have engaged in persecution. *See id.* at 927 (stating that while "'[m]ere acquiescence or membership in an organization,' is insufficient to satisfy the persecutor exception," the "standard does not require actual 'trigger-pulling'.") (Internal citations omitted).

Furthermore, USCIS does not have an evidentiary burden to show that an applicant is ineligible for an immigration benefit based on the persecution of others; rather, if evidence in the record indicates the persecutor bar may apply, the applicant bears the burden of proving by a preponderance of the evidence that it does not. *Matter of Negussie*, 28 I&N Dec. at 154.

Here, the Applicant has not met that burden because his testimony concerning his military service in El Salvador during the civil war was determined to be not credible, and he provided no other evidence to demonstrate that his claim of the inapplicability of the persecutor bar was "probably true" based on the factual circumstances of his case. Consequently, the Applicant has not established that he was eligible for TPS at the time he was granted such status, and his TPS was properly withdrawn on that basis.

ORDER: The appeal is dismissed.

[5] The Applicant misinterprets this to mean the date of the Immigration Judge's decision, though we agree that the Director's conclusory statement lacks clarity.