



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

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

MATTER OF M-R-O-

DATE: DEC. 3, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Haiti, seeks review of the decision denying the Applicant's temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On October 21, 2011, the Director denied the application because it was determined that the Applicant is not eligible for relief pursuant to section 241(a)(5) of the Act, as his previous order of removal was reinstated.

On appeal, the Applicant asserts that he is statutorily eligible for TPS under section 244 of the Act, as reinstatement of removal orders is not a basis for ineligibility within the TPS statute. Citing 244(c)(2)(A) of the Act, the Applicant asserts that he is eligible for a waiver and that the Director should have requested that a waiver be filed instead of denying his application. The Applicant adds that as TPS is a humanitarian benefit, section 241(a)(5) of the Act should be interpreted and applied in an ameliorative fashion.

Section 241(a)(5) of the Act provides:

(a) Detention, Release, and Removal of Aliens Ordered Removed

(5) Reinstatement of removal orders against aliens illegally reentering. If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The record reflects that on January 13, 2005, a Form I-862, Notice to Appear, was served on the Applicant. Removal proceedings were held and the Applicant was ordered removed by an immigration judge on May 16, 2007. A subsequent appeal was dismissed by the Board of Immigration Appeals on August 29, 2008. The Applicant departed the United States, and on or about April 6, 2010, the Applicant entered the United States without inspection. On April 7, 2010,

(b)(6)

Matter of M-R-O-

the Applicant was apprehended by the U.S. Customs and Border Protection in [REDACTED], Vermont. A Form I-871, Notice of Intent/Decision to Reinstate Prior Order, a Form I-294, Warning to Alien Ordered Removed or Deported, and a Form I-205, Warrant of Removal/Deportation, were issued. The Applicant's removal order was reinstated pursuant to section 241(a)(5) of the Act, and as such, the Applicant is not eligible for and may not apply for any relief under the Act.

The Applicant's statements on appeal have been considered. However, section 241(a)(5) of the Act is a general provision that by its plain language applies to eligibility for *any* relief under the Act. It is not disputed that TPS is contained within the Act, under section 244(c).

Section 244(c)(2)(A)(iii) of the Act specifically refers to the waiver of grounds of inadmissibility under section 212(a) of the Act. Reinstatement of the Applicant's removal order renders him ineligible for any relief pursuant to section 241(a)(5) of the Act, and neither that section nor any provision of section 244(c), nor any other statute or regulation, create an exception from this general bar for TPS.

The regulations at 8 C.F.R. §§ 208.31 and 241.8 provide exceptions to the application of section 241(a)(5) of the Act, including for applicants for benefits under section 902 of the Haitian Refugee Immigrant Fairness Act of 1998 and section 202 of the Nicaraguan Adjustment and Central American Relief Act, and for withholding of removal. However, there is no statutory or regulatory exception for applicants seeking TPS. Although an applicant may obtain a waiver of certain grounds of inadmissibility under section 244(c)(2)(A) of the Act to establish eligibility for TPS, there exists no waiver, humanitarian or otherwise, for ineligibility under section 241(a)(5) of the Act. Consequently, the Director's decision to deny the Applicant's TPS application on this ground will be affirmed.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-R-O-*, ID# 16474 (AAO Dec. 3, 2015)