



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

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

MATTER OF S-B-

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 temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Acting Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On September 6, 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 returned to Haiti voluntarily in 1998, was admitted to the United States as a nonimmigrant in 2000, and reentered without inspection on August 2, 2010. The Applicant requests that his application be reconsidered and approved based on humanitarian grounds.

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 a Form I-221, Order to Show Cause and Notice of Hearing, was issued on November 6, 1995, requesting the Applicant to appear at a removal hearing on March 20, 1996. On that date, the matter was scheduled for another hearing on September 4, 1996. The Applicant was ordered removed *in absentia* by an immigration judge on September 4, 1996. The Applicant was removed from the United States on August 20, 1998. On August 2, 2010, the Applicant was apprehended by the U.S. Customs and Border Protection in [REDACTED], Vermont after entering the United States without inspection. A Form I-871, Notice of Intent/Decision to Reinstate Prior Order, Form I-294, Warning to Alien Ordered Removed or Deported, and Form

I-205, Warrant of Removal/Deportation, were issued. During the reinstatement process, the Applicant raised no ground for challenging the reinstatement of removal order. 8 C.F.R. § 241.8(e). Accordingly, pursuant to section 241(a)(5) of the Act, the Applicant is not eligible for and may not apply for any relief under the Act.

The Applicant, on appeal, requests that his TPS application be reconsidered. 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. Reinstatement of the Applicant's removal order renders him ineligible for any relief pursuant to section 241(a)(5) of the Act. There is no provision under section 244 of the Act or any other statute or regulation that creates 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 S-B-*, ID# 16473 (AAO Dec. 3, 2015)