



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

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

MATTER OF R-M-

DATE: DEC. 11, 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 Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On September 29, 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 section 241(a)(5) of the Act is not applicable in his case because he presented himself at the U.S. border, and was inspected and admitted by U.S. Customs and Border Protection. Citing section 244(c)(2) of the Act and 8 C.F.R. § 244.3, the Applicant asserts that he is eligible for a waiver as TPS is a humanitarian benefit. The Applicant states 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 September 27, 2002, a Form I-862, Notice to Appear, was issued, and it was served on the Applicant on September 30, 2002. Removal proceedings were held and the Applicant was ordered removed by an immigration judge on June 26, 2003. No appeal was filed from the decision of the immigration judge. Sometime thereafter, the Applicant departed the United States. On [REDACTED] 2010, the Applicant was apprehended by the U.S. Customs and Border Protection (CBP) in [REDACTED] Vermont after entering the United States without inspection. A

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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'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).

The Applicant states that he is eligible for a waiver under section 244(c)(2)(A)(iii) of the Act. 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.

Contrary to his claim on appeal, the Applicant did not present himself before a proper official for inspection at the U.S. border. The term "admitted" means, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. *See* 8 U.S.C. § 1101(a)(13)(a). The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated [REDACTED] 2010, which indicates that the Applicant was apprehended by CBP north of [REDACTED] Vermont, and that the Applicant stated to CBP that he had illegally entered the United States. Subsequent to his apprehension and the reinstatement of his prior order, the Applicant was released from the custody of CBP under an order of supervision,¹ which is an alternative to detention. 8 C.F.R. §241.4(d)(1). The prior removal order, however, remains in effect and actual removal can be initiated at any time. Section 241(a)(5) of the Act.

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.

¹ On March 15, 2010, a Form I-220B, Order of Supervision, was issued.

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ORDER: The appeal is dismissed.

Cite as *Matter of R-M*, ID# 16556 (AAO Dec. 11, 2015)