



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

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

MATTER OF E-C-

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 January 6, 2012, 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 the Director's decision constitutes a gross abuse of discretion and a deprivation of his constitutional rights to due process of law. The Applicant contends that he did not illegally reenter the United States as he was paroled into the United States on or about February 13, 2010, after his encounter with U.S. Immigration and Customs Enforcement at the Canadian border. The Applicant asserts that section 241(a)(5) of the Act cannot and should not be invoked to defeat the humanitarian purpose of TPS because the TPS statute does not include an exclusion for having reentered without inspection after deportation. 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 regulation at 8 C.F.R. § 241.8(a) provides:

(a) [A]n alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be

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removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

- (1) Whether the alien has been subject to a prior order of removal,
- (2) The identity of the alien, and
- (3) Whether the alien unlawfully reentered the United States.

The record reflects that on August 20, 2001, a Form I-862, Notice to Appear, was issued and served on the Applicant. Removal proceedings were held and the Applicant was ordered removed by an immigration judge on October 31, 2003. A subsequent appeal was dismissed by the Board of Immigration Appeals on May 31, 2005. The Applicant attested in a February 13, 2010, sworn statement that he departed the United States and entered Canada on February 11, 2008. The Applicant also attested under oath that on February 13, 2010, he walked across the Canadian border into the United States after looking at some maps. On that date, the Applicant was apprehended by the U.S. Customs and Border Protection (CBP) in [REDACTED] Vermont after entering the United States without inspection. A Form I-871, Notice of Intent/Decision to Reinstate Prior Order, and a Form I-294, Warning to Alien Ordered Removed or Deported, 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 claims, on appeal, that the Director's decision constituted a deprivation of his constitutional rights and due process of law. However, the Applicant does not specify how the Director's decision denying the Applicant's TPS status deprives him of those rights. Without any details, we are not in a position to address these assertions on appeal.

Moreover, contrary to the Applicant's claim on appeal, he was not encountered by Immigration and Customs Enforcement at the Canadian border. As discussed above, the Applicant attested under oath that he entered the United States without inspection on February 13, 2010. Furthermore, the record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated February 13, 2010, which indicates that the Applicant was apprehended by CBP at a residence on [REDACTED] in [REDACTED] Vermont. Subsequent to his apprehension and the reinstatement of prior order, the Applicant was released from the custody of CBP under an Order of Release on Recognizance,<sup>1</sup> which is an alternative to detention. 8 C.F.R. §241.4(d)(1). However, the prior removal order remains in effect and actual removal can be initiated at any time. Section 241(a)(5) of the Act.

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. Although the Applicant claims TPS is not a benefit conferred by the Act, but rather, it is a humanitarian ministerial act, the TPS statute is contained within the Act, under section 244(c). Reinstatement of the Applicant's removal order renders him ineligible for any relief

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<sup>1</sup> On February 13, 2010, a Form I-220A, Order of Release on Recognizance, was issued.

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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 E-C-*, ID# 16557 (AAO Dec. 11, 2015)