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

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

MATTER OF E-B-

DATE: DEC. 18, 2015

APPEAL OF CALIFORNIA 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, California Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On June 12, 2013, 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 eligible for a waiver, and that the Director should have gave him the opportunity to file a Form I-601, Application for Waiver of Grounds of Inadmissibility.

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 April 11, 2000, 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 September 19, 2001. The Board of Immigration Appeals affirmed the immigration judge's order, without opinion, on September 13, 2002, and denied a motion to reopen on August 17, 2005. The Applicant departed the United States. On or about [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. On the same date, a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, was issued. During the reinstatement process, the Applicant raised no grounds challenging the reinstatement of removal order.

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8 C.F.R. § 241.8(b). The Applicant's removal order was reinstated pursuant to section 241(a)(5) of the Act. As such, the Applicant is not eligible for and may not apply for any relief under 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. 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, not section 212(a) of the Act. Section 241(a)(5) of the Act, any provision of section 244(c) of the Act, or 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.

The Applicant, on appeal, states that he is eligible to file for a waiver. However, 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-B-*, ID# 12444 (AAO Dec. 18, 2015)