



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

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

MATTER OF J-P-G-

DATE: DEC. 24, 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 review of the decision withdrawing the Applicant's temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, California Service Center, withdrew the Applicant's TPS and denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On March 2, 2012, the Director withdrew the Applicant's TPS and denied the application for re-registration because it was determined that the Applicant was not eligible for relief pursuant to section 241(a)(5) of the Act, as her previous order of removal was reinstated.

On appeal, the Applicant contends that she was paroled into the United States and as such she should not be barred from maintaining TPS. The Applicant asserts that individuals who are subject to reinstatement of prior order may seek relief under section 241(b)(3) of the Act, or 8 C.F.R. §§ 241.8(e) and 208.31. The Applicant asserts that as TPS is a humanitarian benefit, section 241(a)(5) of the Act should be interpreted and applied in an ameliorative fashion.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The entire record was reviewed and considered in rendering this decision on appeal.

The Director may withdraw the status of an applicant granted TPS under section 244 of the Act at any time if it is determined that the applicant was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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

(b)(6)

*Matter of J-P-G-*

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 the Applicant was ordered removed by an immigration judge (IJ) on March 14, 2003. A subsequent motion to reopen was denied by the IJ on March 25, 2003. On April 16, 2003, the Applicant's motion to stay of removal was denied by the Board of Immigration Appeals (the Board), and the Applicant was removed from the United States. A subsequent appeal was withdrawn by the Board on May 19, 2003, due to the Applicant's removal. 8 C.F.R. § 1003.4.

On [REDACTED] 2008, the Applicant attempted to enter the United States without inspection and was apprehended by U.S. Customs and Border Protection (CBP) near [REDACTED] Florida. On July 7, 2008, 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. 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 was granted TPS on August 30, 2010. Once it was apparent that the Applicant was not in fact eligible at the time such status was granted, the Director, in accordance with 8 C.F.R. § 244.14(a)(1) withdrew TPS.

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. Reinstatement of the Applicant's removal order renders her 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 Applicant asserts that section 241(a)(5) of the Act is not applicable to her because she did not enter the United States without inspection, but rather that she attempted to enter.

The Applicant is considered to be an "arriving alien," which is defined, in part, as an alien who is interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. 8 C.F.R. § 1001.1(q). The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated [REDACTED] 2008, which indicates that the U.S. Coast Guard encountered a vessel near [REDACTED] Florida attempting to drop off several individuals including the Applicant, who were then turned over to CBP for processing. Therefore, we find the Applicant to have illegally entered into the United States. Furthermore, the record does not contain any evidence to establish that the Applicant was paroled after inspection into the United States, and the Applicant does not provide, on appeal, evidence to support this claim.

The Applicant asserts that, under *Fernandez-Vargas v. Gonzales*, 548 US 30 (2006), relief, such as withholding of removal, may be sought under section 241(b)(3) of the Act, or 8 C.F.R. §§ 241.8(e) and 208.31 for individuals subject to section 241(a)(5) of the Act. The Applicant adds that, as TPS

and withholding of removal are both temporary, humanitarian forms of relief from deportation, which do not include granting lawful permanent resident status or granting of amnesty, TPS should also be made available to the Applicant.

However, while the Act and regulations provide an exception for applicants who are ineligible under section 241(a)(5) of the Act and seek withholding of removal, there is no statutory or regulatory exception for such applicants who seek TPS. Pursuant to section 241(b)(3)(a) of the Act, the Secretary may not remove an alien to a country if the Secretary decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. The regulations at 8 C.F.R. §§ 241.8(e) and 208.31(a) provide for an exception for withholding of removal for an alien whose prior order of removal has been reinstated and expresses a fear of returning to the country of removal. In the instant case, however, the record does not reflect, and it has not been established on appeal, that during the reinstatement proceedings, the Applicant expressed a fear of returning to the country of removal. In fact, during the reinstatement proceedings, the Applicant raised no ground for challenging the reinstatement of removal order. 8 C.F.R. § 241.8(b).<sup>1</sup> Therefore, despite the humanitarian nature of TPS, the Applicant remains ineligible for the benefit sought.

As noted by the Applicant, 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 withdraw TPS and deny application for re-registration 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 J-P-G-*, ID# 16683 (AAO Dec. 24, 2015)

---

<sup>1</sup> We note that subsequent to the reinstatement of prior order, the Applicant filed a motion to reopen and stay of removal before the IJ, arguing a fear of persecution in Haiti. The stay or removal and motion to reopen were denied by the IJ on March 4, 2009, and March 5, 2009, respectively.