



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

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

MATTER OF M-P-

DATE: OCT. 7, 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. *See* Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant filed an initial Form I-821, Application for Temporary Protected Status, on July 20, 2011, which was denied by the Director on January 6, 2012. The Director 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 statutorily eligible for temporary protected status under section 244 of the Act, as this section does not contain reinstatement of removal orders as a basis for ineligibility. In the alternative, the Applicant asserts that this ineligibility can be waived. The Applicant further contends that as temporary protected status 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 the Applicant was ordered removed by an immigration judge on May 9, 2007. A subsequent appeal was dismissed by the Board of Immigration Appeals on June 11, 2008. The Applicant later entered the United States without admission or parole on or about March 5, 2010. On March 6, 2010, the Applicant's prior order of removal was reinstated. 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 asserts that he is eligible for temporary protected status, as section 244 of the Act identifies categories of ineligibility for temporary protected status and does not include reinstatement. 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 temporary protected status is contained within the Act, under section 244(c).

The Applicant also contends that even if he is ineligible for temporary protected status, his ineligibility can be waived 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 temporary protected status.

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 temporary protected status. 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 temporary protected status, 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 temporary protected status 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 M-P-*, ID# 15867 (AAO Oct. 7, 2015)