



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

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

MATTER OF W-C-

DATE: FEB. 10, 2016

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 Acting 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 April 19, 2013, 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, 8 U.S.C. § 1231(a)(5), as his previous order of removal was reinstated.

On appeal, the Applicant requests that his application be reconsidered and approved. Citing sections 244(a)(1) and 244(a)(3)(B) of the Act, the Applicant contends that he is eligible for TPS despite the fact the removal order has been reinstated.

We conduct appellate review on a *de novo* basis. The entire record was reviewed and considered in rendering this decision on appeal.

The Director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien 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 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.

(b)(6)

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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 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 January 19, 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 [REDACTED] 2000. The Board of Immigration Appeals dismissed a subsequent appeal on June 12, 2002, and denied a motion to reconsider on October 31, 2005. The Applicant departed the United States on [REDACTED] 2008. On [REDACTED], 2010, the Applicant was apprehended by the U.S. Customs and Border Protection (CBP) near [REDACTED] Vermont, after entering the United States without inspection. On March 12, 2010, a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, was issued. During the reinstatement process, the Applicant raised no ground for challenging the reinstatement of removal order. 8 C.F.R. § 241.8(b). Pursuant to 8 C.F.R. § 241.8(a), CBP determined that the Applicant had met the three conditions for reinstatement of a prior order, and the Applicant's removal order was reinstated under 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.

The Applicant was granted TPS on November 29, 2011. 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.

Citing section 244(a)(1) of the Act, the Applicant, on appeal, claims that he is eligible for TPS. 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 him 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 also claims that he is eligible for TPS pursuant to section 244(a)(3)(B) of the Act. Because Haiti was not a TPS designated country at the time of initiation of his deportation proceedings in 2000, there was no requirement to promptly notify the Applicant that TPS may be

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available to him.<sup>1</sup> Furthermore, pursuant to 8 C.F.R. § 241.8(a), the Applicant has no right to a subsequent hearing.

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 withdrawn 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 W-C-*, ID# 12440 (AAO Feb. 10, 2016)

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<sup>1</sup> Haiti was first designated on January 21, 2010, and redesignated on July 23, 2011, as a country eligible for TPS.