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

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

MATTER OF O-P-

DATE: SEPT. 23, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Haiti, seeks review of a decision withdrawing the Applicant's Temporary Protected Status. *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. Temporary Protected Status (TPS) provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

In a 2012 decision, the Director, Nebraska Service Center, withdrew the Applicant's TPS. The Director concluded that the Applicant was not eligible for relief pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231, as his previous order of removal was reinstated.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and relies upon arguments in a brief previously submitted to U.S. Citizenship and Immigration Services (USCIS). In this brief, the Applicant claims that the reinstatement of his prior removal order is invalid because he did not receive notice of the hearing that led to his removal order or the reinstatement against him. The Applicant also asserts that, even if the reinstatement were valid, he is still eligible for TPS status since there are exceptions to the reinstatement bar, which should include TPS. In a later-filed document, the Applicant adds that he is seeking to reopen his removal proceedings, and that in its 2015 decision the Board of Immigration of Appeals (the Board) found no evidence of a reinstatement of prior order of removal against him.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking TPS based on an application for re-registration or renewal of TPS benefits. 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, 8 U.S.C. 1231(a)(5) provides:

If the [Secretary of Homeland Security] 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 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. The immigration officer must obtain the prior order of exclusion, deportation, or removal relating to the alien.
- (2) The identity of the alien, i.e., whether the alien is in fact an alien who was previously removed, or who departed voluntarily while under an order of exclusion, deportation, or removal. In disputed cases, verification of identity shall be accomplished by a comparison of fingerprints between those of the previously excluded, deported, or removed alien contained in Service records and those of the subject alien. In the absence of fingerprints in a disputed case the alien shall not be removed pursuant to this paragraph.
- (3) Whether the alien unlawfully reentered the United States. In making this determination, the officer shall consider all relevant evidence, including statements made by the alien and any evidence in the alien's possession. The immigration officer shall attempt to verify an alien's claim, if any, that he or she was lawfully admitted, which shall include a check of Service data systems available to the officer.

.....

(e) Exception for withholding of removal. If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be

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immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture pursuant to § 208.31 of this chapter.

II. FACTS AND PROCEDURAL HISTORY

The Applicant entered the United States on or about July 2000 without admission or parole. The Applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, in August 2000. Following an asylum interview, the Applicant's asylum claim was referred to an Immigration Judge and a Form I-862, Notice to Appear, was served on the Applicant in [REDACTED] 2002. The Applicant was ordered removed *in absentia* by an Immigration Judge in [REDACTED] 2003. In [REDACTED] 2008, the Applicant was arrested by USCIS. An Immigration Judge granted the Applicant's motion to stay removal in [REDACTED] 2008, and denied the Applicant's motion to reopen in [REDACTED] 2008. An Immigration Judge denied both a subsequent motion to stay removal in [REDACTED] 2008 and a motion to reconsider in the same month. The Applicant was removed from the United States in [REDACTED] 2008.

In [REDACTED] 2009, the Applicant was apprehended by the U.S. Customs and Border Protection (CBP) near [REDACTED] Texas after entering the United States without inspection. On the date of apprehension, the Applicant attested in a Form I-215B, Record of Sworn Statement in Affidavit Form, to entering the United States in [REDACTED] 2009 without applying for permission to re-enter the United States subsequent to his removal from the United States. The Applicant's prior removal order was reinstated against him in [REDACTED] 2009 with the issuance of a Form I-871, Notice of Intent/Decision to Reinstate Prior Order.

The Applicant was granted TPS in September 2010. The Applicant's TPS was withdrawn in [REDACTED] 2012, pursuant to 8 C.F.R. § 244.14(a)(1), based on the reinstatement of his removal order.

II. ANALYSIS

The issue presented on appeal is whether the Applicant is subject to the reinstatement bar under section 241(a)(5) of the Act and statutorily eligible for TPS. The Director determined that the Applicant was ineligible for any relief including TPS because the Applicant's previous order of removal was reinstated pursuant to section 241(a)(5) of the Act.

On appeal, the Applicant asserts that the reinstatement of his prior removal order is invalid as he did not see or review any reinstatement documentation, including the Form I-871. The Applicant contends that the reinstatement is also procedurally deficient because he did not receive notice of the original [REDACTED] 2003 hearing that led to his *in absentia* removal order. In the alternative, the Applicant states that he is eligible for a waiver because individuals who are subject to reinstatement may seek relief under section 241(b)(3) of the Act, or 8 C.F.R. §§ 241.8(e) and 208.16. The Applicant adds that as TPS is a humanitarian benefit, section 241(a)(5) of the Act should be interpreted and applied in an ameliorative fashion.

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We find the record establishes that the Applicant is subject to the provisions of section 241(a)(5) of the Act, and therefore he is statutorily ineligible for TPS.

The burden of proof is upon the Applicant to establish that he is eligible for TPS. *See* 8 C.F.R. § 244.9(a)(3). Applicants shall submit all documentation as required in the instructions or requested by United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). To meet his burden of proof, the Applicant must provide supporting documentary evidence of eligibility apart from his own statements. *Id.*

A. Eligibility

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. 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 Director, in accordance with 8 C.F.R. § 244.14(a)(1), withdrew the Applicant's TPS based on the reinstatement bar.

The Applicant asserts that his reinstatement cannot be valid because it does not follow the procedural requirements outlined in 8 C.F.R. § 241.8. Specifically, the Applicant asserts that he did not receive notice of his immigration hearing date in [REDACTED] 2003, which resulted in an *in absentia* removal order issued on that date. The Applicant also asserts that he did not receive notice of the Form I-871 reinstating his removal order.

In [REDACTED] 2008, in a decision on the Applicant's motion to reopen, an Immigration Judge determined that the Applicant's allegations that he did not receive notice of the [REDACTED] 2003 proceedings was not supported by the evidence. In addition, the Applicant's Form I-871 contains an acknowledgement and response section, signed and dated by the Applicant, stating that he did not wish to make a statement contesting the reinstatement determination against him. Notwithstanding the Applicant's assertion that he does not recall seeing or signing the Form I-871, his Form I-871 bears his signature. On the same date as the issuance of the Form I-871, the Applicant gave a sworn statement, also bearing his signature, stating that he was removed by the government and subsequently entered the United States without applying for permission to reenter. Accordingly, the record reflects that the Applicant received adequate notice of his [REDACTED] 2003 hearing date and Form I-871 issuance.

The Applicant asserts that withholding of removal may be sought for individuals subject to section 241(a)(5) of the Act. 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. The record does not reflect, and it has not been established on appeal, that during the 2008 reinstatement proceedings, the Applicant expressed a fear

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of returning to the country of removal. In fact, the Applicant, in his Form I-215, attested that he did not have any fear of persecution or torture should he be removed from the United States.

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.

III. OTHER IMMIGRATION PROCEEDINGS

Subsequent to the filing of the appeal from the withdrawal of TPS, the Applicant filed a motion to reopen before the Immigration Court, which was denied by an Immigration Judge in November 2013. A subsequent appeal was filed before the Board. In [REDACTED] 2015, the record was remanded to the Immigration Court for further fact-finding regarding the Applicant's current eligibility for TPS.

The Applicant, on appeal, submits a copy of the Board's [REDACTED] 2015, decision, claiming that in its decision, the Board found no evidence of the reinstatement of a prior order of removal against him. The evidence of record before us, however, establishes that the procedural requirements under 8 C.F.R. § 241.8 were satisfied and the Applicant's prior removal order was reinstated on [REDACTED] 2009. Therefore, the Applicant remains ineligible for TPS.

IV. CONCLUSION

An applicant for TPS has the burden of proving that he or she meets the requirements for this benefit and is otherwise eligible under the provisions of section 244 of the Act. The Applicant has not established eligibility for TPS. The Applicant is subject to the provisions of section 241(a)(5) of the Act and is not eligible to apply for re-registration for TPS. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of O-P-*, ID# 116379 (AAO Sept. 23, 2016)