



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

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

In Re: 27524210

Date: AUG. 10, 2023

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Haiti, seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the California Service Center denied the TPS request, concluding that the Applicant was not eligible for such status because the Department of Homeland Security (DHS) reinstated a final order of removal against her pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). The matter is now before us on appeal.

On appeal, the Applicant asserts that the Director's decision was in error, because she does not fall within any of the TPS ineligibility criteria listed on U.S. Citizenship and Immigration Services' (USCIS) TPS webpage.<sup>1</sup>

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Section 241(a)(5) of the Act provides that if the Secretary of Homeland Security finds that a noncitizen 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 noncitizen is not eligible and may not apply for any relief under the Act, and shall be removed under the prior order at any time after the reentry.

The record reflects that the Applicant was removed from the United States in [ ] 2017 pursuant to an expedited removal order entered against her in [ ] 2016 under section 235(b)(1) of the Act, 8 U.S.C. § 1125(b)(1). She subsequently reentered the United States without inspection and was apprehended by U.S. Customs and Border Protection (CBP) officers. In [ ] 2021, CBP reinstated the 2016 removal order by issuing a Form I-871, Notice of Intent/Decision to Reinstate Prior Order to

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<sup>1</sup> See USCIS, Temporary Protected Status, <https://www.uscis.gov/humanitarian/temporary-protected-status>.

the Applicant. The Applicant acknowledged the reinstatement of removal by signing the Form I-871, and indicated that she did not wish to contest it.<sup>2</sup>

We acknowledge the Applicant's assertion that reinstatement of a removal under section 241(a)(5) of the Act is not listed among the grounds of ineligibility for TPS on the USCIS website, and that according to the information therein noncitizens who entered the United States without being inspected and admitted may apply for TPS. We also recognize her claim that if she is forced to return to her homeland she will suffer hardship and may fall victim to various human rights violations.

Nevertheless, as the record reflects that the prior removal order against the Applicant was reinstated, and she submits no evidence that the reinstatement of the removal order was rescinded, cancelled, or otherwise vacated, we must conclude that she is subject to the provisions of section 241(a)(5) of the Act, which prohibits any relief under the Act, including TPS. Neither the Act nor the regulations allow for an exception to this general bar of ineligibility for relief.

Consequently, the Applicant is ineligible for TPS, and her Form I-821 remains denied.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> See 8 C.F.R. § 241.8(b) (providing that if a DHS officer determines that a noncitizen is subject to reinstatement of removal the officer must advise the noncitizen that they may make a written or oral statement contesting the determination).