



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

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

In Re: 28208933

Date: OCT. 16, 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 him pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). The matter is now before us on appeal.

The Applicant asserts that the Director's decision was in error because the reinstatement may have been defective and the Director misapplied section 241(a)(5) of the Act in his case.

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 initially entered the United States in 2016 without inspection and admission or parole and was placed in removal proceedings. The Applicant requested asylum in the United States but an Immigration Judge denied the request in [ ] 2017 upon determination that the Applicant was firmly resettled in Brazil, and ordered him removed from the United States to Haiti or, alternatively, to Brazil. The Board of Immigration Appeals dismissed the Applicant's appeal and he was removed from the United States in [ ] 2018. The Applicant subsequently reentered the United States without inspection and was apprehended by U.S. Customs and Border Protection (CBP) officers shortly thereafter. In [ ] 2021, CBP reinstated the 2017 removal order against the Applicant by issuing a Form I-871, Notice of Intent/Decision to Reinstate Prior Order to the Applicant. The

Applicant signed the Form I-871 on [ ] 2021, acknowledging the reinstatement of removal and indicated that he did not wish to contest it. Instead, he indicated that he feared he would be harmed upon returning to Haiti and requested a hearing on that basis.<sup>1</sup> An asylum officer reviewed this claim and, after interviewing the Applicant, concluded that the Applicant did not establish a reasonable fear of persecution or torture. An Immigration Judge agreed with this determination and returned the matter to DHS to proceed with the Applicant's removal from the United States. In [ ] 2021 the DHS released the Applicant from custody on an order of supervision.

As stated, the Director concluded that because the prior removal order was reinstated the Applicant was barred from for any relief under the Act, including TPS, and was therefore statutorily ineligible for such status.

The Applicant asserts that the reinstatement bar applies only to those individuals who have been served with Form I-871 reinstating their removal order, and that he was never served or presented with such document.<sup>2</sup> He claims that for this reason the reinstatement of removal never occurred and cannot be used as a basis for the denial of his TPS request. We acknowledge the Applicant's statements, but they are not consistent with the record, which contains a properly executed Form I-871, which the Applicant signed on [ ] 2021, acknowledging its receipt, and declining to contest the reinstatement of removal.<sup>3</sup> This evidence shows that the 2017 removal order against the Applicant has been reinstated, and that he is therefore subject to the provisions of section 241(a)(5) of the Act.

The Applicant indicates that even if the removal order was reinstated the bar from "any relief" in section 241(a)(5) of the Act does not apply in his case because "it is generally recognized that TPS is not a form of relief . . . but rather a form of protection base[d] on humanitarian grounds." He further states that that section 244(c)(2)(A) of the Act provides for certain exceptions to the grounds of inadmissibility for TPS applicants, and the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) has recognized in *Perez-Guzman v. Lynch* 835 F.3d. 1066 (9th 2016) that reinstatement of removal does not unequivocally bar all possible relief, such as withholding of removal and protection under the Convention Against Torture (CAT). We have considered the Applicant's statements, but conclude that they are not sufficient to establish that the exceptions to the reinstatement bar include TPS.

First, while certain inadmissibility grounds do not apply in the TPS context and others may be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, section 241(a)(5) of the Act is not a ground of inadmissibility; rather it is a statutory bar to any relief for noncitizens whose prior removal orders have been reinstated. Moreover, although the Ninth Circuit recognized in *Perez-Guzman v. Lynch* that withholding of removal and CAT relief are the exceptions to the reinstatement bar, it found that it was "not unreasonable for the agency to conclude [that the]

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<sup>1</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).

<sup>2</sup> As stated, the record includes the Form I-871 the Applicant received and signed in [ ] 2021. We note that the Applicant may request copies of the Form I-871 and other documents from his immigration record through the Freedom of Information Act (FOIA). See U.S. Citizenship and Immigration Services, *Request Records through the Freedom of Information Act or Privacy Act*, <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act>.

<sup>3</sup> See 8 C.F.R. § 241.8(e) (providing in relevant part that if a noncitizen whose prior order of removal has been reinstated expresses a fear of returning to the country designated in that order, the noncitizen shall be immediately referred to an asylum officer for an interview to determine whether the noncitizen has a reasonable fear of persecution or torture).

prohibition [in section 241(a)(5) of the Act] on ‘any relief under this chapter’ forecloses individuals from applying for asylum relief.” 835 F.3d. at 1080.

Like asylum, TPS is a discretionary immigration benefit. It provides temporary immigration status to nationals of a country designated by the Secretary of Homeland Security due to conditions in that country that temporarily prevent its nationals from returning there. TPS recipients may not be removed from the United States for the duration of their status (provided they remain eligible). Section 244(a) and (c) of the Act, 8 C.F.R. § 244.2. We acknowledge the Applicant’s statement that TPS is not a form of *relief* within the meaning of section 241(a)(5) of the Act, but he does not elaborate or provide support for this statement, and we are thus unable to meaningfully address it.

Because neither the Act nor the regulations provide for an exception to the reinstatement bar in section 241(a)(5) of the Act for TPS applicants, and the Applicant does not point to any legal authority or DHS policy guidance indicating otherwise, we conclude that he has not overcome the Director’s determination of ineligibility for TPS due to the reinstatement of his prior removal order. Consequently, the Applicant’s TPS request remains denied.<sup>4</sup>

**ORDER:** The appeal is dismissed.

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<sup>4</sup> We note that in June 2023 the Applicant filed another Form I-821, which is currently pending adjudication.