



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

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

In Re: 29077794

Date: DEC. 7, 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 any relief 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).

On appeal, the Applicant states generally that this bar does not apply to him, because he fears returning to Haiti and has applied for withholding of removal. The Applicant indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to our office within 30 calendar days of filing the appeal; however, to date we have not received any correspondence from the Applicant and consider the record complete.

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.

The record reflects that the Applicant was removed from the United States in [redacted] 2017 pursuant to an expedited removal order entered against him in [redacted] 2016 under section 235(b)(1) of the Act, 8 U.S.C. § 1125(b)(1). He subsequently entered the United States without inspection and was apprehended by U.S. Customs and Border Protection (CBP) officers. In [redacted] 2021, CBP reinstated the 2016 removal order by issuing a Form I-871, Notice of Intent/Decision to Reinstate Prior Order to the Applicant. The Applicant acknowledged the reinstatement of removal by signing the Form I-871, and indicated that he did not wish to contest it.

Section 241(a)(5) of the Act provides in relevant part that once DHS reinstates the prior order of removal, 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.

Although the regulations allow certain noncitizens whose prior removal orders have been reinstated to pursue withholding or deferral of removal, there is no equivalent mechanism for pursuing TPS before U.S. Citizenship and Immigration Services. 8 C.F.R. §§ 208.31; 241.8(e).

In conclusion, because the Applicant's prior removal order has been reinstated, he is subject to the provisions of section 241(a)(5) of the Act, which prohibits any relief under the Act, including TPS. Consequently, the Applicant is ineligible for TPS, and his TPS request remains denied.

ORDER: The appeal is dismissed.