



July 1, 2022

PA-2022-16

## Policy Alert

SUBJECT: Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating the [USCIS Policy Manual](#) to address the proper mechanism for authorizing travel by temporary protected status (TPS) beneficiaries, and how such travel may affect their eligibility for adjustment of status under section 245(a) of the Immigration and Nationality Act (INA). USCIS is also updating the USCIS Policy Manual to reflect the decision of the U.S. Supreme Court in *Sanchez v. Mayorkas*, 141 S.Ct. 1809 (2021).

### Background

To be eligible for adjustment of status under [INA 245\(a\)](#), a noncitizen must have been inspected and admitted or inspected and paroled into the United States, unless exempt from this requirement. On June 7, 2021, the U.S. Supreme Court upheld the interpretation that a noncitizen who enters the United States without having been inspected and admitted or inspected and paroled, and who is subsequently granted TPS, generally does not meet this requirement.<sup>1</sup> USCIS is updating its guidance to reflect the decision of the Supreme Court.

USCIS is also updating the effect of authorized travel by a TPS beneficiary on eligibility for adjustment of status under [INA 245\(a\)](#). On August 20, 2020, USCIS adopted a decision by the Administrative Appeals Office in *Matter of Z-R-Z-C-* as agency policy.<sup>2</sup> *Matter of Z-R-Z-C-* held that treating TPS beneficiaries who were paroled upon returning from travel authorized under [INA 244\(f\)\(3\)](#) as parolees for purposes of eligibility for adjustment of status under [INA 245\(a\)](#) was contrary to the language of the statute, as such noncitizens should not be considered to have been paroled, despite the issuance and use of parole documents for reentry into the United States. The adoption of this holding as the agency's policy position significantly changed the agency's position on the effect of authorized travel and return to the United States by TPS recipients. *Matter of Z-R-Z-C-* also held that being "inspected and admitted" after TPS-authorized travel does not constitute being inspected and admitted for purposes of adjustment of status under [INA 245\(a\)](#).

<sup>1</sup> See *Sanchez v. Mayorkas*, 141 S.Ct. 1809 (2021).

<sup>2</sup> See [Matter of Z-R-Z-C-, Adopted Decision 2020-02 \(AAO Aug. 20, 2020\)](#), PM-602-0179, issued August 20, 2020, rescinded July 1, 2022.

USCIS has reviewed its interpretation of the relevant statutory authority<sup>3</sup> and the effect of TPS-authorized travel on eligibility for adjustment of status, and on July 1, 2022, rescinded its designation of *Matter of Z-R-Z-C-* as an adopted decision.<sup>4</sup>

USCIS is updating its guidance to clarify that TPS beneficiaries who travel abroad temporarily, with the prior consent of the U.S. Department of Homeland Security (DHS), and who return in accordance with that prior authorization, may be inspected and admitted into TPS upon return, with certain exceptions. TPS beneficiaries whom DHS has inspected and admitted into TPS after such authorized travel are “inspected and admitted” for purposes of adjustment of status under [INA 245\(a\)](#) and [INA 245\(k\)](#). This is true even if the TPS beneficiary was present without admission or parole when initially granted TPS.

USCIS is also updating its guidance relating to how it authorizes TPS beneficiaries to travel pursuant to the Miscellaneous and Technical Immigration and Nationality Amendments of 1991 (MTINA).<sup>5</sup> USCIS is introducing a new form, TPS Travel Authorization (Form I-512T) for authorizing such travel and will no longer be using Authorization for Parole of an Alien Into the United States (Form I-512L) for this population. Presenting with a valid Form I-512T allows a U.S. Customs and Border Protection (CBP) officer at a port-of-entry to admit the named bearer into TPS.

USCIS is also removing guidance and reserving the affected Policy Manual section regarding the effect of TPS and TPS-authorized travel on whether a naturalization applicant was lawfully admitted for permanent residence, as required under [INA 318](#).<sup>6</sup> The removed guidance did not reflect the 2021 Supreme Court decision that conferral of TPS was not an admission, and it applied the rescinded policy in *Matter of Z-R-Z-C-* to TPS beneficiaries who returned from authorized travel. Guidance reflecting these changes will be issued subsequently.

USCIS is also updating its guidance relating to when adjustment of status applications are in the jurisdiction of USCIS, as opposed to the jurisdiction of the Executive Office for Immigration Review (EOIR). The update also clarifies that jurisdiction is based on whether or not DHS places a noncitizen into removal proceedings as an “arriving alien.”

This guidance, contained in Volume 7 of the Policy Manual, is effective immediately and applies prospectively to applications adjudicated on or after July 1, 2022. The guidance in Part B, Chapter 2, Section A, Subsection 5, Temporary Protected Status, also applies retroactively to past travel in all cases arising under the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit under the recent decision *Duarte v. Mayorkas*, 27 F.4th 1044 (5th Cir. 2022), as well as in individual cases arising

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<sup>3</sup> See [INA 244\(f\)\(3\)](#). See Section 304(c)(1)(A)(ii) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, [Pub. L. 102-232](#), 105 Stat. 1733, 1749 (December 12, 1991), as amended.

<sup>4</sup> See [Rescission of \*Matter of Z-R-Z-C-\* as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries](#), PM-602-0188, issued July 1, 2022. See also DHS Office of the General Counsel, [Immigration Consequences of Authorized Travel and Return to the United States by Individuals Holding Temporary Protected Status](#), Attachment, April 6, 2022.

<sup>5</sup> See [Pub. L. 102-232](#), 105 Stat. 1733 (December 12, 1991), as amended.

<sup>6</sup> See Volume 12, Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization, Section C, Effect of Change in Law [[12 USCIS-PM D.2\(C\)](#)].

elsewhere where USCIS has determined that retroactive application is appropriate, as explained in the guidance.

The guidance contained in the Policy Manual is controlling and supersedes Adjudicators Field Manual Chapter 54.4(a)(3)(A), TPS Advance Parole Procedures, and any other related prior guidance on the topic.

### **Policy Highlights**

- Incorporates the Supreme Court’s decision in *Sanchez v. Mayorkas*.
- Reflects the rescission of *Matter of Z-R-Z-C-* as an adopted decision.
- Clarifies that if a TPS beneficiary is inspected and admitted into TPS following a return from authorized travel, this meets the requirements of [INA 245\(a\)](#) and [245\(k\)](#) for adjustment of status.
- Provides that USCIS may deem past travel under advance parole to have been an admission into TPS in certain cases.
- Clarifies the circumstances under which USCIS or EOIR have jurisdiction over adjustment of status applications following a TPS beneficiary’s inspection and admission into TPS after a return from authorized travel.
- Clarifies that jurisdiction over an adjustment application by a noncitizen in removal proceedings is based on whether or not DHS placed the noncitizen into those proceedings as an “arriving alien.”
- Removes and reserves guidance discussing TPS when considering whether a naturalization applicant was lawfully admitted as a permanent resident as required under [INA 318](#).

### **Summary of Changes**

Affected Section: Volume 7 > Part A > Chapter 3 > Section D, Jurisdiction

- Makes revisions throughout to clarify basis for jurisdiction and to incorporate new policy on effect of TPS-authorized travel.

Affected Section: Volume 7 > Part B > Chapter 2 > Section A, “Inspected and Admitted” or “Inspected and Paroled”

- Revises Subsection 5 (Temporary Protected Status), in its entirety.

Affected Section: Volume 12 > Part D > Chapter 2 > Section C, Effect of Change in Law

- Removes text under Subsection 2 (Case Law), Temporary Protected Status and Admission or Parole into the United States for Adjustment of Status, and reserves section.

### **Citation**

Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions [[7 USCIS-PM A.3](#)]; Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements [[7 USCIS-PM B.2](#)].

Volume 12: Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization [[12 USCIS-PM D.2](#)].