



Are Temporary Protected Status Recipients Eligible to Adjust Status?

Updated September 1, 2022

Certain non-U.S. nationals (*aliens*, as the term is used in the [Immigration and Nationality Act \[INA\]](#)) who lack a permanent foothold in the United States may pursue [adjustment of status](#) and become [lawful permanent residents](#) (LPRs). To qualify, an alien must satisfy certain requirements, which generally include having been “[inspected and admitted or paroled](#)” into the United States by immigration authorities. Before the Supreme Court’s 2021 decision in *Sanchez v. Mayorkas*, lower courts had [disagreed](#) over whether aliens who unlawfully entered the United States but later received [Temporary Protected Status](#) (TPS) are “inspected and admitted” into the United States. In *Sanchez*, the Supreme Court [held](#) that the grant of TPS does not constitute an admission for purposes of adjustment of status. However, under Department of Homeland Security (DHS) [guidance](#), TPS recipients who are authorized to travel abroad are considered to be “inspected and admitted” upon their return to the United States, potentially enabling them to seek adjustment. That said, a TPS recipient’s admission into the United States alone does not provide a pathway to adjustment. An alien who had accrued unlawful presence in the United States before receiving TPS must satisfy other requirements, such as being the beneficiary of an immigrant visa petition filed by a U.S. citizen spouse. This Legal Sidebar provides a brief overview of the adjustment of status framework and TPS, before examining the federal jurisprudence regarding TPS recipients’ eligibility for adjustment, DHS’s related guidance, and legislative proposals.

Legal Background: Adjustment of Status and Temporary Protected Status

Adjustment of Status

[Section 245\(a\)](#) of the INA authorizes the Secretary of Homeland Security to adjust the status of the beneficiary of an approved [immigrant visa petition](#) (e.g., an immediate relative petition filed by a U.S. citizen spouse) to that of an LPR. The adjustment of status process was created by Congress to ensure that eligible aliens who were physically present in the United States could become LPRs [without having to travel and apply for immigrant visas abroad](#). Within DHS, [U.S. Citizenship and Immigration Services](#) (USCIS) adjudicates visa petitions and adjustment of status applications. However, if an alien is placed in [formal removal proceedings](#) (e.g., because the alien is unlawfully present in the United States), an

Congressional Research Service

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LSB10554

immigration judge in the Department of Justice's [Executive Office for Immigration Review](#) generally has [jurisdiction](#) over the adjustment application.

INA § 245(a) requires an applicant for adjustment to have been "[inspected and admitted or paroled into the United States](#)" by immigration authorities (but [INA § 245\(i\)](#) permits a small and decreasing category of aliens who entered the country without inspection and whose visa petitions were filed on or before April 30, 2001, to pursue adjustment). The INA [defines](#) "admitted" or "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." Parole occurs when an alien is permitted to enter the United States temporarily for "[urgent humanitarian reasons](#)" or "[significant public benefit](#)," but parole is not an "admission" for INA purposes.

An adjustment applicant [must also be](#) eligible to receive an immigrant visa that is [immediately available](#) at the time of the application, and the applicant must be [admissible to the United States](#) for permanent residence. Additionally, INA § 245(c) bars [certain classes of aliens](#) from adjustment of status, including aliens in "unlawful immigration status" at the time of the application or those who failed "to maintain continuously a lawful status" since entering the United States. The § 245(c) bar, however, does not apply to "[immediate relatives](#)" (e.g., a spouse) of petitioning U.S. citizens, "[special immigrants](#)" (e.g., certain abused or abandoned juveniles), or aliens whose visa petitions were filed [on or before April 30, 2001](#).

Temporary Protected Status (TPS)

Under [INA § 244](#), DHS, in consultation with the State Department, may designate a country for TPS if (1) there is an armed conflict preventing the safe return of nationals from that country; (2) there has been an environmental disaster in the country that substantially disrupts living conditions in the area affected; or (3) there are "extraordinary and temporary conditions" in the country that prevent alien nationals from safely returning. An alien from a country designated for TPS may be [permitted to remain and work](#) in the United States for the period in which the TPS designation is in effect, [even if](#) the alien had entered the United States unlawfully. An alien seeking TPS must have been physically present in the United States since the date of the country's TPS designation, and must meet [certain other criteria](#). Those granted TPS [may travel abroad](#) and return to the United States with the prior consent of the DHS Secretary.

INA § 244(f)(4) [provides](#) that, for purposes of adjustment of status, a TPS holder "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" during the period in which the alien has TPS. A [nonimmigrant](#) is an alien admitted temporarily to the United States for a specified purpose (e.g., a temporary worker). USCIS has [interpreted](#) § 244(f)(4) to mean that a TPS recipient, who would otherwise accrue unlawful status *during* the TPS period were it not for having TPS (e.g., because the period of stay authorized by his nonimmigrant visa expired), is not subject to INA § 245(c)'s bar to adjustment of status for aliens in unlawful immigration status or who failed to maintain lawful status. According to USCIS, however, § 244(f)(4) does not cure any *prior* period of unlawful status that had accrued before the grant of TPS. Thus, based on USCIS's interpretation, a TPS holder who had accrued unlawful presence in the United States before receiving TPS is subject to § 245(c)'s adjustment of status bar for failure to maintain lawful status (unless the alien falls within one of the exempted classes of individuals, including immediate relatives of U.S. citizens).

As noted, an adjustment applicant must also show under INA § 245(a) that the applicant had been "[inspected and admitted or paroled](#)" into the United States. INA § 244(f)(4) [is silent](#) as to whether an alien granted TPS is considered to be "inspected and admitted" for purposes of adjustment of status. Nevertheless, immigration authorities have [long taken the position](#) that § 244(f)(4)'s reference to "lawful status" does not mean that a grant of TPS constitutes an "admission."

Jurisprudence on TPS Recipients' Eligibility for Adjustment of Status

Until the Supreme Court's 2021 decision in *Sanchez v. Mayorkas*, federal appellate courts **had split** over whether aliens granted TPS are considered to be "inspected and admitted" for purposes of adjustment of status, even if they unlawfully entered the United States. The U.S. Courts of Appeals for the **Third, Fifth, and Eleventh Circuits** held that aliens granted TPS are not considered "inspected and admitted." These courts reasoned that, although a TPS recipient obtains "lawful status as a nonimmigrant" under INA § 244(f)(4), that status does not satisfy § 245(a)'s separate requirement of being "inspected and admitted or paroled" into the United States, which contemplates an authorized entry into the country. Conversely, the **Sixth, Eighth, and Ninth Circuits** held that TPS status satisfies § 245(a)'s "inspected and admitted" requirement because, in their view, aliens who acquire lawful nonimmigrant status are necessarily "inspected and admitted" to the United States.

In *Sanchez*, the Supreme Court addressed this circuit split, holding that the grant of TPS does not enable an unlawful entrant to pursue adjustment of status. The Court **observed** that INA § 245(a) plainly requires an adjustment applicant to have been "inspected and admitted or paroled into the United States." The Court **reasoned** that, although under INA § 244(f)(4), a TPS recipient is considered to have lawful nonimmigrant "status," that provision does not enable a TPS recipient to meet INA § 245's separate requirement of being "admitted" because lawful status and admission "are distinct concepts in immigration law." While lawful status may be conferred upon entry into the United States or sometime after entry, the Court **explained**, an admission requires a physical entry after inspection and authorization by an immigration officer. Thus, "because a grant of TPS does not come with a ticket of admission, it does not eliminate the disqualifying effect of an unlawful entry." (Additional discussion about the *Sanchez* decision can be **found here**.)

Federal Agency Guidance on Adjustment of Status for TPS Recipients

While courts grappled over whether TPS recipients who entered the United States without inspection may pursue adjustment of status, USCIS has issued its own guidance. In *Matter of H-G-G-*, the agency's **Administrative Appeals Office** (AAO) ruled in 2019 that a grant of TPS is **not an "admission"** for adjustment of status purposes. The AAO **determined that** INA § 244(f)(4)'s reference to "lawful status" is only intended to ensure that TPS holders who entered the United States lawfully, and whose original nonimmigrant status lapsed *during* their TPS period (e.g., because their visas expired after they acquired TPS), would avoid § 245(c)'s bar to adjustment of status for those who failed to maintain lawful status. The AAO **ruled** that § 244(f)(4) does not confer a broad remedy for *prior* immigration violations, such as an unlawful entry or prior period of unlawful presence. The AAO thus held that the limited lawful-status benefit conferred by § 244(f)(4) **does not waive** the threshold "inspected and admitted" requirement under § 245(a) or cure any previous unlawful status accrued before TPS for purposes of § 245(c).

As discussed above, and consistent with the AAO's 2019 ruling, the Supreme Court's *Sanchez* decision clarified that the grant of TPS does not enable an alien who unlawfully entered the United States to pursue adjustment of status. The Court, however, **did not reach** the separate question of whether a TPS recipient who is authorized to travel abroad and return to the United States is considered, upon returning, to be "inspected, admitted, or paroled into the United States" under INA § 245(a).

A **long-standing regulation** states that a TPS recipient may obtain permission to travel abroad through a process known as "advance parole." For many years, USCIS officials **took the position** that TPS recipients who traveled abroad with an advance parole document, and who were paroled upon returning, satisfy the "inspected and admitted or paroled" requirement for adjustment of status. In 2020, however, the AAO in *Matter of Z-R-Z-C-* ruled that TPS recipients who initially enter the United States without inspection, but are later authorized to travel abroad and return to the United States, do not satisfy the

“inspected and admitted or paroled” threshold. The AAO [relied on](#) the language of the [Miscellaneous and Technical Immigration and Naturalization Amendments of 1991](#) (MTINA), which provides that returning TPS holders who are authorized to travel abroad “shall be inspected and admitted *in the same immigration status*” they had when they departed the United States. The AAO [construed](#) this provision to mean that Congress intended that returning TPS holders would be treated as though they had never left the United States. Thus, the AAO ruled, returning TPS holders who had been present in the United States without admission or parole *before traveling* could not be treated as “admitted or paroled” upon their return for purposes of adjustment of status.

In 2022, USCIS [rescinded](#) *Matter of Z-R-Z-C* after reevaluating that decision. The agency [determined](#) that, under the MTINA, Congress intended that the authorized reentry of TPS recipients effectuates an “admission” under the ordinary [meaning of that term](#). USCIS also [determined](#) that the MTINA’s reference to “the same immigration status the alien had at the time of departure” was intended to refer to TPS. USCIS [noted](#) that, in *Sanchez*, the Supreme Court recognized that TPS is a form of lawful status. According to USCIS, although the conferral of that status does not result in an “admission” (as *Sanchez* held), a TPS holder who returns to the United States with travel authorization must be *admitted into* that “same immigration status” under the MTINA. In reaching this conclusion, USCIS also [cited](#) a then-recent [Fifth Circuit decision](#) interpreting the MTINA as mandating the inspection and admission into the United States of TPS recipients returning from authorized travel abroad. USCIS thus [announced](#) that TPS recipients who return to the United States following approved travel should be “inspected and admitted” at a U.S. port of entry based on their existing grant of TPS (so long as they are not inadmissible on certain criminal or national security-related grounds). The agency also [announced](#) that a TPS holder’s inspection and admission at a U.S. port of entry will satisfy the “inspected and admitted” eligibility requirement for adjustment of status.

Given USCIS’s rescission of *Matter of Z-R-Z-C*, TPS recipients with advance authorization to travel abroad and return to the United States may be eligible to pursue adjustment of status. As noted, however, the AAO’s *Matter of H-G-G* decision ruled that, for purposes of INA § 245(c)’s adjustment of status bar for aliens who failed to maintain lawful status, § 244(f)(4)’s conferral of “lawful status” does not waive any *previous* unlawful status accrued before the grant of TPS (e.g., because of an unlawful entry or expiration of nonimmigrant status). Moreover, some [reviewing courts have ruled](#) that § 244(f)(4)’s lawful status-benefit only cures unlawful presence accrued during the TPS period, and not any prior period of unlawful status. In rescinding *Matter of Z-R-Z-C*, USCIS [noted](#) that aliens who satisfy the “inspected and admitted” requirement under INA § 245(a) “must still satisfy all other requirements for adjustment of status,” and that § 245(c)’s adjustment bars still apply (however, § 245(c) [exempts](#) immediate relatives of U.S. citizens, among other classes of aliens).

In sum, while *Sanchez* holds that the receipt of TPS does not render an alien eligible to adjust status, USCIS has decided that TPS holders potentially may become eligible to adjust upon returning to the United States from authorized travel abroad. However, even if the TPS holder’s authorized return constitutes “admission” into the United States for purposes of the adjustment of status statute, the TPS recipient must still satisfy all of the other applicable criteria set forth in INA § 245 to ultimately adjust.

Legislative Developments

Some legislative proposals have been introduced in the 117th Congress that would allow TPS recipients who unlawfully entered the United States to seek adjustment of status. For instance, the U.S. Citizenship Act (S. 348, H.R. 1177) contains a provision (“The American Promise Act”) that would confer LPR status on TPS recipients (or those who are otherwise eligible for TPS) who meet certain requirements. That provision would also clarify that a person granted TPS is considered to have been “inspected and

admitted” for purposes of adjustment of status under INA § 245(a), and exempt TPS recipients from § 245(c)’s bars to adjustment. Relatedly, legislation has been introduced (e.g., [S. 50](#), [H.R. 161](#)) that would add new countries to those designated for TPS (e.g., Venezuela).

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