



CATHOLIC LEGAL  
IMMIGRATION  
NETWORK, INC.

## Advising TPS Clients in Light of Recent Developments

October 21, 2020

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## Speakers

- **Bradley Jenkins**, Federal Litigation Attorney
- **Lisa Parisio**, Advocacy Attorney
- **Jen Riddle**, Staff Attorney, Training and Legal Support
- **Ilissa Mira**, Staff Attorney, Training and Legal Support

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## Today's Agenda

- Background on TPS terminations and legal challenges
- Policy developments impacting TPS and § 245(a) adjustment of status
  - *Matter of H-G-G* (AAO July 31, 2019)
  - *Matter of Z-R-Z-C* (AAO Aug. 20, 2020)
  - Dec. 20, 2019 USCIS Policy Alert
- Section 245(i) adjustment
- Systemic Advocacy and Resources

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## Why TPS Matters

- Life-saving humanitarian protection
- Blanket protection = fills in the gaps
- At start of the administration, protected 320K people from humanitarian crisis and conflict

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## Background on TPS Terminations

- 10 countries had TPS when administration assumed office
- 6 were terminated: Haiti, El Salvador, Sudan, Nicaragua, Nepal, Honduras
- Terminations affected nearly 300K people/families

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## Lawsuits Challenging Terminations

Lawsuit Name	U.S. District Court	Impacted Country/ies	Lower Court Order	Status on Appeal
<i>Ramos v. Nielsen</i>	Northern District of California	El Salvador Haiti Nicaragua Sudan	Preliminary injunction issued 10/4/18	9 <sup>th</sup> Circuit reversed injunction 9/14/20; Petition for rehearing deadline is 11/30/20.
<i>Bhattarai v. Nielsen</i>	Northern District of California	Honduras Nepal	Linked to <i>Ramos</i> on 3/12/19 and stayed pending resolution of <i>Ramos</i> appeal	See above
<i>Saget v. Trump</i>	Eastern District of New York	Haiti	Preliminary injunction granted 4/11/19	Appeal of injunction pending with 2 <sup>nd</sup> Circuit

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### Possible Timeline for Terminations

- Nov. 4, 2019: USCIS Federal Register Notice extended TPS and EADs through Jan. 4, 2021
- Sept. 14, 2020: 9<sup>th</sup> Circuit reversed *Ramos* injunction
- Once all appeals exhausted (assuming the government prevails), the following wind-down periods apply:
  - Haiti, Honduras, Nepal, Nicaragua, Sudan: 6 months from date DHS permitted to terminate
  - El Salvador: 1 year from date DHS permitted to terminate

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### TPS Policy Updates

*Matter of H-G-G- (AAO July 31, 2019)*

- USCIS Policy Manual, Vol. 7, Part B., Ch. 2

*Matter of Z-R-Z-C- (AAO Aug. 20, 2020)*

- USCIS Policy Manual, Vol. 7, Part B., Ch. 2

*Dec. 20, 2019 Policy Alert*

- USCIS Policy Manual, Vol. 7, Part A., Ch. 3

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### 245(a) Adjustment of Status

INA §§ 245(a) and (c)

- Inspected and admitted or paroled
- Immigrant visa immediately available
- Admissible (or eligible for a waiver)
- Not restricted by 245(c)
  - Worked without authorization, failed to maintain lawful status (unless IR)

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### Inspected and Admitted or Paroled?

- Entered the U.S. on B-2 tourist visa?
- Walked through the desert in Arizona?
- Granted humanitarian parole to come to U.S.?
- Traveled and returned to U.S. on advance parole?
- Granted TPS in a 6th or 9th Circuit state?

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### TPS Status as an Admission

- TPS is an admission in 6<sup>th</sup> and 9<sup>th</sup> circuits
  - *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013);
  - *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017)
- Not an admission in the 11<sup>th</sup> and 3<sup>rd</sup> circuits
  - *Serrano v. United States A.G.*, 655 F.3d 1260 (11th Cir. 2011); *Sanchez v. Sec’y United States Dept. of Homeland Sec.*, 967 F.3d 242 (3rd Cir. 2020).
- Other challenges to USCIS position pending

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### TPS Status as an Admission

- TPS recipients are in and maintaining lawful status as a nonimmigrant only while they have TPS.
- TPS is not an admission outside the 6<sup>th</sup> and 9<sup>th</sup> circuits
- TPS does not cure 245(c) bar for failure to continuously maintain lawful status
  - *Matter of H-G-G-* (AAO July 31, 2019)
- Applicant must have TPS on the date USCIS adjudicates I-485
  - USCIS Policy Manual Vol. 7, Part B, Chapter 2, Section A.5

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## Is Romi Adjustment Eligible?

Romi is a TPS beneficiary from El Salvador residing in California. She first entered the U.S. EWI in 1999 and was granted TPS in 2001. Her U.S. citizen son Fred would like to file an I-130 petition for Romi.

Is she eligible to adjust status under 245(a)?

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## TPS and Travel with Advance Authorization

- TPS beneficiaries may travel abroad with prior consent, incident to their status (INA § 244(f)(3))
- USCIS grants “advance parole” – advance permission to re-enter U.S. after temporary travel abroad
- Prior INS and USCIS policy was to treat advance parole entry as an “admission or parole” for 245(a) purposes

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## Is Luis Adjustment Eligible?

Luis from Honduras came to the U.S. EWI in 1997 and has had TPS since April 1999. His USC spouse has filed a petition for him. In 2019, Luis traveled to Canada and returned with advance parole.

Is Luis eligible for adjustment of status under 245(a)?

What if Luis never traveled in 2019 and is now asking you if he can travel to visit his mother in Honduras?

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## Background on Guidance

- New USCIS policies rely on language in Section 304(c) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (“MTINA”), Pub. L. No. 102-232, 105 Stat. 1733, 1749 (December 12, 1991), which states that the TPS beneficiary returning with advance authorization “shall be inspected and admitted in the same immigration status [he or she] had at the time of departure.”

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## Matter of Z-R-Z-C- (AAO Aug. 20, 2020)

- TPS beneficiaries who travel with advance parole “retain the same immigration status the alien had at the time of departure.”
- A return with advance parole AFTER Aug. 20, 2020 is not “admission or parole” for purposes of 245(a) adjustment.
- Policy is prospective. Return with advance parole PRIOR to Aug. 20, 2020 is “admission or parole” for adjustment purposes.

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## Removal Orders & Adjustment

- Who has jurisdiction over AOS?
- Never in removal proceedings? USCIS
  - Currently in removal proceedings? EOIR
    - Exception: Certain arriving aliens.
  - Ordered removed by IJ, and removal order not executed? EOIR + needs motion to reopen
  - Ordered removed + removal order executed by leaving U.S. + lawful re-entry? USCIS
    - No I-601 necessary if traveled on advance parole. *Arrabally & Yerrabelly*.
    - Will generally need I-212 *nunc pro tunc*.

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## Dec. 20, 2019 Policy on Traveling with Removal Order

- TPS beneficiary who departs and returns on advance parole remains in the exact same immigration status and circumstances as when s/he left the U.S.
- Travel with advance parole **does not execute a final removal order**. Upon return, TPS beneficiary continues to have outstanding removal orders.
- TPS beneficiary **in removal proceedings** who travels on advance parole **continues to be subject to removal proceedings** upon return, unless proceedings have been otherwise terminated by an immigration judge.

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## How to Advise Mira?

Mira from Nepal and her young daughter entered the U.S. in early 2015 with the help of a smuggler. She has an outstanding removal order from 2016 and was granted TPS later that year. In 2018, she traveled abroad with advance parole. Mira just married a US citizen and wants to apply for adjustment. Is she eligible? Which agency has jurisdiction over her application?

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## CARECEN v. Cuccinelli

- CLINIC is currently suing USCIS to set aside the December 2019 TPS Policy Alert. If successful, our lawsuit would require USCIS to exercise jurisdiction over AOS applications filed by TPS beneficiaries with removal orders who traveled on advance parole.
- Our lawsuit does not include Z-R-Z-C-, so it would only help those who traveled with AP **before August 20, 2020.**

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## Limitations to Reopening an IJ Order

- Time and numerical limits on motions to reopen
  - 1 motion to reopen
  - Must file within 90 days of final order
- Exceptions:
  - Joint motion to reopen
  - *Sua sponte* motion to reopen
  - Equitable tolling
- Special rules for reopening *in absentia* orders

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## Reopening an IJ Order

- Seek joint motion to reopen and administratively close or terminate proceedings
- Available if statutorily eligible for adjustment; adjustment was unavailable at prior hearing; and Respondent merits favorable exercise of discretion.
- Consider *sua sponte*
- Practices vary locally

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## What's Changed?

TPS Adjustment Applicants	Previous Policy	Current Policy
Advance parole, No prior/pending proceedings	Apply to adjust with USCIS after any return on advance parole	Apply to adjust with USCIS if advance parole return was prior to Aug. 20, 2020 ( <i>Matter of Z-R-Z-C-</i> )
Advance Parole, In removal proceedings	Some strategies for asserting USCIS jurisdiction were successful	USICS says jurisdiction is only with IJ.
Advance Parole, With final orders	Apply to adjust with USCIS with I-212*	Must file motion to reopen to adjust with IJ. Limited due to numeric and time bars. (Dec. 2019 Policy Alert)
TPS as an admission in the 6 <sup>th</sup> and 9 <sup>th</sup> Circuits	Some questions as to whether individual is considered admitted even after TPS is expired or terminated	TPS only an admission in 6 <sup>th</sup> and 9 <sup>th</sup> Circuits if individual has TPS at the time I-485 is adjudicated. ( <i>Matter of H-G-G-</i> )

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## Advice to Practitioners

- TPS clients may still apply for advance parole travel documents. Consider risks and benefits of travel.
- TPS clients who have returned with advance parole prior to Aug. 20, 2020 are still “admitted or paroled” for 245(a).
- Stay up to date on developments related to the possible implementation of TPS termination and don’t delay in filing adjustment applications for clients in the Sixth and Ninth circuits.
- Stay tuned for updates regarding other TPS litigation.
- CLINIC affiliates may contact Ask the Experts for individual case consultation for clients in removal proceedings or with final orders

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## Adjusting Under INA 245(i)

- Beneficiary or derivative beneficiary of “approvable when filed” petition filed on or before April 30, 2001
- Principal beneficiary physically present on Dec. 21, 2000 (if petition filed between Jan 15, 1998 and April 30, 2001)
- Immigrant visa immediately available
- Admissible (or eligible for a waiver)

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## Is Gregoria Eligible to Adjust?

Gregoria, from El Salvador, entered the United States EWI in 2000. She was granted TPS in 2001 and has remained here ever since. She resides in North Carolina and is the beneficiary of a 4<sup>th</sup> preference petition filed by her U.S. citizen sister in 1999. Assuming her priority date is current, is Gregoria eligible to adjust under 245(i)?

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## Systemic TPS Advocacy

- TPS experts list: Email [advocacy@cliniclegal.org](mailto:advocacy@cliniclegal.org) with name, title, organization to request to join
- Action alerts: Sign up here: <https://cliniclegal.org/email>
- Educate your elected officials / keep speaking out
- Stay in touch with CLINIC: [advocacy@cliniclegal.org](mailto:advocacy@cliniclegal.org)



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## Resources

- CLINIC's TPS Resources - <https://cliniclegal.org/tps>
- Practice Advisory: Adjustment Options for TPS Beneficiaries - <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/practice>
- Resources on Motions to Reopen - <https://cliniclegal.org/resources/removal-proceedings/motions-reopen>
- TPS Terminations: Understanding the 9th Circuit's Ramos Decision and How it Affects TPS Clients - <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/tps-0>



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