



TPS Beneficiaries and Authorized Travel Following the Rescission of *Matter of Z-R-Z-C*

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Speakers



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Agenda

- What the rescission of *Matter of Z-R-Z-C* means for TPS beneficiaries
- Who the new policy applies to
- When the policy affects past travel
- Inadmissibility questions
- Travel with a prior unexecuted removal order
- Applying for travel authorization
- Practice tips and considerations

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Updated USCIS Policy Guidance

- [Policy Memorandum](#), Recission of *Matter of Z-R-Z-C-* as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries (Jul. 1, 2022)
- USCIS Policy Manual, [Volume 7](#): Adjustment of Status, Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements

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Prior policy under *Matter of Z-R-Z-C-*

- On Aug. 20, 2020, USCIS adopted AAO decision *Matter of Z-R-Z-C-*
 - Changed decades-old policy
 - Travel and return on advance parole does not satisfy “inspected and admitted or paroled” requirement of INA § 245(a)
 - Applied prospectively to travel after Aug. 20, 2020

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Highlights of the new policy

- USCIS will issue new TPS travel authorization documents (Form I-512T) rather than advance parole documents.
- TPS recipients will be “inspected and admitted” upon lawful reentry after authorized travel for purposes of adjustment of status under INA §245 (even if they originally entered the U.S. without inspection).

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Review of 245(a) adjustment of status

- Inspected and admitted or paroled
- Immigrant visa immediately available
- Not inadmissible (or eligible for a waiver)
- Warrants favorable exercise of discretion
- Not restricted by § 245(c)
 - Worked without authorization or failed to continuously maintain lawful status (unless Immediate Relative)

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Adjustment-eligible under 245(a)?

Daniela came to the United States as a tourist in 2019 and overstayed. She was approved for TPS in April and just married a U.S. citizen.

- Can Daniela adjust under 245(a)?
- What if Daniela’s spouse was an LPR (not a USC)?
- What if Daniela entered the U.S. without inspection (not as a tourist)?
- What if Daniela EWled in 2019 but obtained travel permission and just returned from Haiti last week?

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How does the policy affect someone who traveled in the past?

Fifth Circuit:

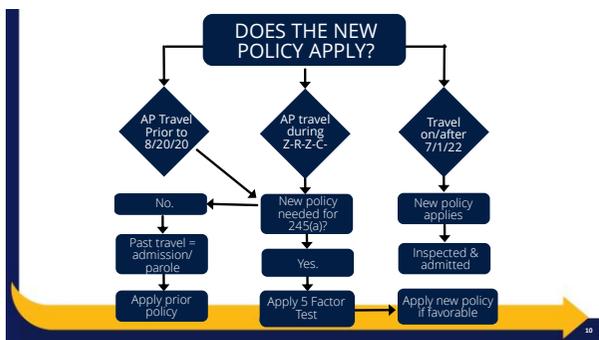
- All authorized entries after advance parole travel will be considered an “inspection and admission” for purposes of 245(a)

Outside of the Fifth Circuit:

- Only where needed, and on case-by-case basis, USCIS will determine whether past parole or otherwise allowed entry should be treated as inspection and admission

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Five-Factor Retroactivity Test

1. Whether the effect of the TPS-authorized travel has previously been considered;
2. Whether the new policy represents an abrupt departure from well-established practice or merely attempts to clarify an unsettled area of law;
3. The extent to which the adjustment of status applicant relied on the former rule;
4. The burden (if any) that retroactive application of the policy would impose on the adjustment applicant; and
5. The statutory interest in applying the new policy despite the applicant's reliance on the old policy.

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Hypo 1

Samuel, who lives in Washington, initially entered the U.S. without inspection in 1998. He was granted TPS in 2001. He traveled and returned with advance parole on Dec. 22, 2021. His U.S. citizen son wants to file an I-130 petition for him.

- Will the new policy help Samuel to adjust status?

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The parole vs. admission distinction

- Could affect eligibility for employment-based adjustment
 - INA 245(k) exception to INA 245(c) bars requires a "lawful admission."
- Admitted individuals are subject to deportability grounds; paroled individuals are subject to inadmissibility grounds
 - Watch out for:
 - 212(a)(9)(A)(ii) - seeking admission w/in 10 yrs of departure after removal order
 - 212(a)(6)(B) - seeking admission within 5 yrs of departure after *in absentia* order
 - *Matter of Arrabally* still applies – travel with prior authorization is not a "departure" for purposes of 212(a)(9)(B)(i)(II)

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Hypo 2

Lucas entered the U.S. without inspection in 1998. In 2005, he obtained TPS. He is married to a USC. He wants to apply for a travel document and would like to know whether he and his spouse can file a one-step after he returns.

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Authorized Travel and Unexecuted Removal Orders

- Rescission of *Z-R-Z-C-* does not change Dec. 20, 2019 USCIS policy, i.e. leaving with TPS travel authorization does not execute outstanding removal order
- EOIR has jurisdiction over subsequent adjustment application, unless proceedings are reopened and dismissed
- Under *CARECEN v. Jaddou* settlement, ICE OPLA will agree to join motions to reopen and dismiss for certain TPS beneficiaries

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CARECEN v. Jaddou Settlement

- Eligibility:
 - Currently possesses TPS
 - Has a removal, deportation, or exclusion order;
 - Has traveled on advance parole since the order was issued; and
 - Is otherwise prima facie eligible to file for adjustment of status with USCIS.

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CARECEN v. Jaddou

- Template joint motion to reopen and motion to dismiss
- Requests will be accepted through at least Jan. 19, 2025
- Resources
 - ICE OPLA guidance: <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>
 - USCIS guidance: <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-agreements/certain-temporary-protected-status-tps-recipients-with-orders-of-removal-or-deportation-seeking>
 - CARECEN: <https://carecenc.org/tps-settlement/>

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Hypo 3

Rosario is a TPS recipient who first came into the U.S. without any documents. Prior to receiving TPS she was placed in removal proceedings and given voluntary departure in 2009, however she never left. She now would like to travel abroad to visit her aging parents. Rosario's spouse just naturalized.

- Can authorized travel help Rosario to become an LPR?
- What should you consider before advising her?

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Hypo 4

Same facts, with a twist:

Rosario is a TPS recipient who first came to the U.S. EWI. But instead of receiving voluntary departure, Rosario failed to attend her removal hearing and was given an *in absentia* order in 2009.

- Would this change your advice?

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Tips for those with unexecuted removal orders

- Unclear how rescission of Z-R-Z-C- interacts with CARECEN settlement
- After travel, submit request for joint motion to reopen and dismiss under CARECEN settlement
- File I-485 with USCIS, together with I-212
- If client has *in absentia* order,
 - can identify for USCIS any reasonable cause for missing hearing or
 - (conservative approach) wait 5 years from authorized travel

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Applying for advance authorization for travel

- Still file Form I-131
- May submit with Form I-821, or file separately based on pending or approved I-821 - <https://www.uscis.gov/i-131-addresses>
- TPS recipients will be issued Form I-512T, Authorization for Travel by a Noncitizen to the United States
- Pending TPS applicants will still be issued Form I-512L, Advance Parole Document
- Clients with pending I-131s on July 1, 2022 do not need to re-file
- Clients with valid advance parole may continue to use them through expiration date

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Top Takeaways

- Advance parole is now “TPS authorization for travel.”
- TPS recipients who travel with advance authorization after July 1, 2022, will be considered “inspected and admitted” upon return.
- Most TPS recipients who traveled during the Z-R-Z-C- era are likely to be retroactively considered “inspected and admitted.”

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Top Takeaways

- Consider whether travel will result in triggering new inadmissibility grounds. If so, can they be waived? Will they impact client’s ability to reenter or adjust?
- Authorized travel does not execute a prior removal order but, in many cases, ICE OPLA should agree to a joint motion to reopen and dismiss.
- Review CLINIC’s updated Practice Advisory: Adjustment Options for TPS Beneficiaries at: <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/practice>

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