Rescreening for Relief

May 5, 2025

Given the Trump administration's attempts to terminate the Parole Process for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), and the uncertain futures of Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA), it's critical to screen beneficiaries of these protections for all other forms of immigration relief. Even if a client was thoroughly screened prior to applying for a benefit, changes in personal circumstances or immigration policy may mean that a new form of relief is now available. Individuals may apply for multiple statuses, if eligible, and it is important to consider the risks and benefits of applying for them.

This advisory reviews some of the most common forms of relief that may be available to TPS, DACA, and parole beneficiaries. It also provides tips on screening for inadmissibility, which is a prerequisite to many types of relief.

Start With Careful Screening

Since taking office, the Trump administration has implemented policies to terminate categorical parole programs, claw back TPS protections, and make it more difficult for parolees and certain TPS beneficiaries to maintain lawful immigration status in the United States. The use of expedited removal has been expanded, and new U.S. Citizenship and Immigration Services (USCIS) guidance directs officers to issue Notices to Appear (NTAs) upon the denial of a benefit application if the applicant has no other underlying status. With that in mind, it is more important than ever to fully assess a client's eligibility for other benefits and explain any potential risks associated with applying for them.

USCIS has placed an administrative hold on all benefit requests filed by those who were paroled through the Uniting for Ukraine (U4U), CHNV, or the Family Reunification Parole Process (FRP) pending additional screening and vetting. Parolees may file applications, but there is no guarantee that they will be adjudicated. Despite the adjudication pause, there are several reasons for parolees to consider filing applications for alternative benefits if they are eligible. First, the pause appears to be temporary. USCIS could

potentially resume adjudications once the agency has completed appropriate security vetting. A lawsuit challenging both the termination of certain categorial parole processes and the administrative hold on benefit applications is pending in federal court.[1] Second, while having a pending application for immigration status does not provide someone with legal status or protection from removal, it *may* reduce one's risk of enforcement. ICE has issued internal guidance that prioritizes enforcement action against those subject to expedited removal who failed to file for asylum within one year, assuming they are not eligible for the statutory exceptions to the one-year filing deadline. Another potential benefit is that a noncitizen does not accrue unlawful presence while their application for adjustment of status, asylum, or TPS is pending.[2]

Under the current administration's policies, parolees are particularly vulnerable to enforcement action. For that reason, it is critically important to review a client's eligibility for a particular benefit, the likelihood of approval, and the potential risks of applying. For more on evaluating the risks for parolees, see CLINIC's Frequently Asked Questions on Trump Administration Policies Affecting Parolees: Enforcement and Termination of Parole.

Lawful Permanent Residence

This section highlights common paths to lawful permanent residency through family-based and employment-based immigration, as well as humanitarian relief.

Family-Based Immigration

Does your client have a U.S. citizen or lawful permanent resident (LPR) family member who has filed or could file an I-130 petition on their behalf? Beneficiaries of temporary immigration benefits may be eligible to seek LPR status based on a family-based petition. To immigrate, the client must be the beneficiary of an approved I-130, have an immigrant visa immediately available, and not be inadmissible (or else be eligible for a waiver of inadmissibility).[3] For someone who meets all these criteria, determine whether the client will be eligible for adjustment of status or must pursue consular processing instead.

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[1] *Svitlana Doe v. Doem*, No. 1:25-cv-10495 (D. Mass. Feb. 28, 2025).
[2] According to USCIS policy, unlawful presence does not accrue in the following circumstances: while an asylum application is pending, unless the noncitizen engages in unauthorized employment; while a TPS application is pending, provided it is ultimately approved; while an adjustment of status application is pending. See Adjudicator's Field Manual, available at https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf.
[3] See stand-alone discussion on Screening for Inadmissibility on pages 11-12.

Those who are eligible may apply for LPR status in the United States through adjustment of status. Others will have no choice but to return to their home country and consular process. Departing the United States to attend an immigrant visa interview could trigger several different inadmissibility grounds. If the only ground of inadmissibility is an unlawful presence bar under INA § 212(a)(9)(B),[4] determine whether he or she is eligible for a Form I-601A provisional waiver prior to departure. To qualify, the client must demonstrate that a U.S. citizen or LPR spouse or parent would suffer extreme hardship if the waiver were not granted. If the client is inadmissible under any other grounds, they are not eligible for a provisional waiver. Instead, the client would need to apply for the relevant inadmissibility waivers, if available, after attending the interview and being found inadmissible.

There are two statutory doorways to adjust status in the United States: INA § 245(a) and INA § 245(i).

<u>245(a) Adjustment</u>

To adjust under 245(a), an I-130 beneficiary must have been "inspected and admitted or paroled" upon their last entry, have an immigrant visa immediately available, and be admissible. Immediate relatives (i.e. spouses or children of U.S. citizens or parents of adult U.S. citizens) may file their Form I-485 adjustment of status application together with the petitioner's I-130 in what is called a "one-step" filing. For someone in a preference category to adjust under INA § 245(a), in addition to meeting the requirements described above, he or she may not fall into one of the INA § 245(c) bars to adjustment. Because most preference category beneficiaries will either have worked without authorization or failed to have continuously maintained lawful immigration status (or both) prior to obtaining DACA or TPS, eligibility for 245(a) adjustment will be unlikely. Parolees are in lawful status for purposes of 245(a) adjustment of status (see 8 CFR § 245.l(d)(l)) and can potentially avoid the 245(c) bars if they are able to maintain a lawful status and avoid working without authorization.

When screening, ask clients if they have a spouse, son, or daughter (21 or older), or parent who is a U.S. citizen. If the spouse, parent, or child is an LPR, is that relative eligible to naturalize, thus allowing the client to be an immediate relative? If the client is unmarried, do they have a partner who is a U.S. citizen or LPR whom they plan to marry?

If your client's last entry was without inspection, determine whether he or she subsequently traveled abroad and returned under a grant of advance parole or TPS

[4] For DACA recipients who traveled with a valid advance parole travel document, their departure is not considered to have triggered the unlawful presence ground of inadmissibility. See *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012).

travel authorization. Since 245(a) eligibility can be based on entry with admission *or parole*, individuals who returned to the United States after travel on advance parole may now meet the "inspected and admitted or paroled" requirement for 245(a) adjustment eligibility. TPS beneficiaries who reenter the United States with an I-512T travel authorization will be admitted upon return. More information is available in CLINIC's Practice Advisory on Adjustment Options for TPS Beneficiaries.

245(i) Adjustment

Someone whose last entry was without inspection may nonetheless be eligible to adjust under INA § 245(i) upon paying a $1,000 penalty. The requirements are that an immigrant visa is immediately available, the person is admissible, and he or she is the beneficiary (or derivative beneficiary) of an approvable-when-filed petition filed on or before April 30, 2001. Ask clients whether anyone ever filed a petition on their behalf (or on behalf of their spouse or parent) before April 30, 2001. Note that if a Form I-130, I-140, I-360, I-526, or labor certification application was filed between Jan. 15, 1998, and April 30, 2001, there is an additional requirement that the principal beneficiary was physically present in the United States on Dec. 21, 2000.

For clients who appear to be adjustment eligible either under sections 245(a) or 245(i), confirm that the petitioner (or potential petitioner) is working or can otherwise meet the income requirements for the Form I-864, Affidavit of Support Under Section 213 of the INA.

Employment-Based Immigration

When screening TPS, DACA, or parole beneficiaries, inquire about their current job, employment and education history, and whether an employer has ever sponsored the client for an employment-based immigrant visa. If not, would their employer or a prospective employer be willing to sponsor them? Keep in mind that to immigrate in some of the employment-based preference categories, a PERM labor certification is required from the Department of Labor before the sponsoring employer can file the I-140 petition. This means that, even if the employment-based Visa Bulletin indicates an immigrant visa is available, it could take a year or more before the employer can file the I-140 petition and the client can concurrently file their adjustment application or proceed with consular processing.

Employment-based adjustment applicants must meet the requirements of either INA § 245(a) or INA § 245(i). Most TPS and DACA beneficiaries will not be able to adjust through 245(a) due to their having either been out of status or worked without

authorization for an aggregate of more than 180 days.[5] Parolees who are unable to obtain another status before their parole expires are also likely to find themselves in this situation.

Section 245(c) prevents an employment-based applicant from adjusting under 245(a) if he or she has ever worked without authorization or failed to maintain lawful immigration status. TPS, DACA, and parole beneficiaries with periods of unlawful status are unlikely to qualify for 245(a) adjustment based on employment unless they fall into the narrow exception at INA § 245(k). That section protects 245(a) adjustment eligibility for employment-based beneficiaries in the first, second, third, or fourth preference categories who worked without authorization or have been in the United States without lawful status for an aggregate period of 180 days or fewer.

If 245(a) adjustment is not an option, determine whether the client meets the requirements to adjust under 245(i). For those who are not eligible to adjust status under either provision, there is the possibility of consular processing. But, as with family-based immigration, consular processing will only be an option for intending immigrants who can depart the United States without triggering an unlawful presence bar or who can qualify for an inadmissibility waiver.

If necessary, refer clients out to an employment-based immigration specialist for further screening.

Nonimmigrant Status

Some clients may also inquire about the possibility of nonimmigrant employment-based status or student status, such as F-1, M-1, H-1B, TN or R-1 status. In order to be granted a change of status without departing the United States, INA § 248 requires the beneficiary to be lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under INA § 212(a)(9)(B)(i) or is eligible for a waiver. TPS beneficiaries are considered as being in and maintaining lawful nonimmigrant status for purposes of changing status under INA § 248.[6] Moreover, TPS beneficiaries who have traveled and returned on an I-512T travel document are considered admitted into TPS status. Petitioners for a nonimmigrant visa who don't meet the admission or maintaining lawful status requirement would need to apply for a nonimmigrant visa through consular processing abroad.

[5] See INA §§ 245(c) and (k).
[6] *See* INA § 244(f)(4).

Humanitarian Relief

The humanitarian forms of relief discussed in this section may offer a path to permanent residency for DACA and TPS beneficiaries and parolees who are not eligible to immigrate through the family-based system.

Asylum

If your client fled persecution in his or her home country or is afraid of returning, they may be eligible for asylum. To qualify for asylum, one must show that they are unable or unwilling to return to their country of nationality because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.[7]

Those who apply for asylum may also apply for employment authorization after 150 days. Asylees may apply for permanent resident status after one year.

To qualify for asylum, one must apply within one year of arriving in the United States, unless there are changed circumstances or extraordinary circumstances that prevented the applicant from requesting asylum earlier. Maintaining TPS, lawful immigrant or nonimmigrant status, or parole is considered an extraordinary circumstance that "stops the clock" until a reasonable period before the filing of the asylum application.[8] One may also argue that having DACA should stop the one-year filing clock.

A noncitizen who was previously ordered removed but never departed is still considered to be in removal proceedings. Therefore, the immigration court would retain jurisdiction over the case. Where asylum is a viable option, there may be a basis for reopening the removal order to allow the individual to file an affirmative asylum application with USCIS. For more information, see CLINIC's practice advisory "Motions to Reopen for DACA Recipients with Removal Orders."

For additional guidance on asylum for DACA recipients, see CLINIC's practice advisories "Overcoming the Asylum One-Year Filing Deadline for DACA Recipients" and "LGBTI DACA Recipients and Options for Relief under Asylum Law."

[7] INA §§ 208(b)(1)(A), 101(a)(42).
[8] 8 CFR § 208.4(a)(5)(iv).

Cuban Adjustment Act

Cubans who were paroled through CHNV and their family members may be eligible for adjustment of status through the Cuban Adjustment Act of 1966 (CAA). To be eligible, a Cuban citizen must have been inspected and admitted or paroled into the United States, be physically present in the United States for at least one year, and at the time of applying for adjustment, be both admissible and merit a favorable exercise of discretion.

A non-Cuban spouse or child of a qualifying Cuban may also adjust status under the CCA, regardless of his or her nationality or place of birth, so long as the spouse or child meets all other eligibility criteria for CCA (inspection and admission or parole into the United States, one year of physical presence, and admissibility.) For more on this topic, see CLINIC's "Cuban Adjustment: FAQs for Legal Practitioner."

Violence Against Women Act (VAWA)

VAWA provides a path to permanent residency for noncitizens who have been abused by a U.S. citizen or LPR spouse or parent.[9] Parents who have been abused by a U.S. citizen adult son or daughter may also self-petition under this provision. Those who meet the requirements may file Form I-360, VAWA self-petition, rather than rely on an abusive family member to file a relative petition on their behalf.

To qualify based on abuse by a spouse, the applicant must show that he or she was battered or subjected to extreme cruelty; that the marriage was entered into in good faith; that they resided with the abusive U.S. citizen or LPR at some point in the past; and that they have good moral character. "Battery or extreme cruelty" includes physical, emotional, or psychological abuse. Children who are unmarried and under the age of 21 may be included in a VAWA self-petition as derivative beneficiaries. Thus, a child who has not been directly abused could still immigrate based on a parent who qualifies for VAWA.

The child of an abusive U.S. citizen or LPR may self-petition under VAWA if he or she resides or has resided with the abusive parent, has been battered by or has been the subject of extreme cruelty perpetrated by the parent, and is a person of good moral character, if age 14 or older. A person who is over 21 may still file a VAWA self-petition as a child until age 25 if the abuse was one central reason for the delay in filing.[10]

Those whose VAWA self-petitions are approved may apply for permanent residency based on their preference category or as an immediate relative. VAWA self-petitioners who are in the United States are eligible to adjust status despite having entered without

[9] INA § 204.
[10] INA § 204(a)(1)(D)(v).

inspection or parole. While they wait to apply for adjustment of status, they may qualify for deferred action and employment authorization.

Individuals may be eligible for VAWA in several ways. Those who have directly been abused by a U.S. citizen or LPR spouse or parent may file their own self-petition. A noncitizen whose child is abused by a U.S. citizen or LPR spouse may also file for VAWA. Finally, noncitizens who are unmarried and under the age of 21 may be derivative beneficiaries on a VAWA self-petition filed by a parent who was subject to abuse.

When screening for VAWA eligibility, examine possible abuse the individual has suffered directly by a parent or spouse, or whether the individual's child may have been abused by a U.S. citizen or LPR spouse.

While VAWA self-petitioners do not need to prove that they are admissible to the United States, the grounds of inadmissibility will apply when they later seek LPR status. For that reason, clients should be screened for potential inadmissibility as well as eligibility for any VAWA-specific exceptions and waivers.

U Status

Victims of serious crimes and their close family members may be eligible for U nonimmigrant status, also referred to as a "U visa." To qualify, the victim must have suffered substantial physical or mental abuse as the result of having been the victim of one of the "qualifying crimes" listed in the statute or any substantially similar criminal activity.[11] The victim must have been helpful, is being helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime. Finally, the applicant must be admissible or have the applicable ground of inadmissibility waived.[12]

Qualifying crimes include: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes; or any similar activity in violation of federal, state or local law.

Applicants must obtain a law enforcement certification indicating their helpfulness in the investigation or prosecution of the crime. "Helpfulness" does not require a specific act

[11] INA § 101(a)(15)(U).
[12] INA § 212(d)(14) provides an inadmissibility waiver specific to U nonimmigrant status. Any ground may be waived in the public or national interest, except for the grounds applicable to perpetrators and participants of Nazi persecutions, genocide, acts of torture or extrajudicial killings.

and could include activities such as reporting the crime to police, sharing information to aid in the investigation of a crime, etc., even if the case is not prosecuted or the perpetrator of the crime is not convicted.

Certain relatives of the direct victim may qualify as "indirect victims," which allows them to apply for U status though they were not the immediate victim of the crime. "Indirect victims" may include family members where the direct victim is deceased, incompetent, or incapacitated and therefore unable to provide information about the crime or cooperate with law enforcement in the investigation or prosecution of the crime.[13] Indirect victims may include the victim's spouse or children. If the direct victim is under 21, indirect victims may also include parents and siblings under age 18.

Principal applicants may include derivative beneficiaries in their U application. If the principal is under age 21, derivatives include the spouse, parents, children, and siblings who are unmarried and under 18. If the principal applicant is age 21 or older, the spouse and children are included as derivative beneficiaries.

The number of U visas that may be issued each year to U principal applicants is capped at 10,000. The high demand for U status has resulted in an extremely long wait before applicants are granted U status. A person who applies for U status in 2025 will likely face a wait of somewhere between 15 and 20 years to obtain U status. U visa applicants and their derivative beneficiaries who are in the United States may obtain work authorization and deferred action while they await full adjudication through the Bona Fide Determination (BFD) process which USCIS implemented in 2021. Recent reported wait times for a BFD on the USCIS website's case processing times have been four to five years, but advocates have reported some BFDs have been granted much more quickly. Once someone has been in U status for three years, they may apply for lawful permanent residency.

T Status

T nonimmigrant status (also referred as the T visa) provides immigration relief to victims of human trafficking, including both labor trafficking and sex trafficking.[14] T nonimmigrants are granted four years of lawful status and a path to permanent residency. To qualify, an applicant must show that he or she is a survivor of a severe form of trafficking or attempted trafficking,[15] is physically present in the United States or at a port-of-entry on account of such trafficking, has complied with any reasonable

[13] Indirect victim may be the spouse or child of the direct victim. If the direct victim is unmarried and under age 21, indirect victims may include the parents and unmarried siblings under age 18.
[14] INA § 101(a)(15)(T).
[15] See definition of trafficking under 22 USC § 7102.

request for assistance in investigating or prosecuting the trafficking, and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. Note that cooperation with law enforcement is not required if the applicant is under age 18 or unable to cooperate because of physical or psychological trauma, or if the request for cooperation is not reasonable. Most inadmissibility grounds apply to T status applicants but may be waived if in the national interest and the activities resulting in inadmissibility were connected to the victimization.[16]

Derivative beneficiaries for applicants over age 21 include a spouse and children. Applicants over 21 may also include parents and unmarried siblings under age 18 if law enforcement certifies they face a present danger of retaliation. For applicants under 21, derivatives include spouses, children, parents and unmarried siblings under the age of 18. Finally, the adult or minor children of a derivative beneficiary may also be included if they face the present danger of retaliation.[17]

T nonimmigrants may apply for permanent resident status after three years in T status or sooner if the investigation or prosecution is complete.[18]

Labor and sex trafficking crimes may also be U status qualifying crimes. If a noncitizen may qualify for either form of relief, consider whether T status is more advantageous. A law enforcement certification is an absolute requirement for U status, while it is not required for T status. Although T visas are subject to an annual cap of 5,000, there are fewer applicants for T status than for U status and the cap has never been reached, thus it is a much faster path to permanent residency.

Special Immigrant Juvenile Status (SIJS)

Children under age 21 who have been abused, abandoned, or neglected by at least one parent may be eligible for Special Immigrant Juvenile Status (SIJS). To qualify, the child must be dependent on a juvenile court or have been legally committed to, or placed under the custody of, an agency, entity or individual appointed by a juvenile court; the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under state law; and it is not in the child's best interest to be returned to the child's or the parent's country of origin.[19]

A state court must make the determination that the child has been abandoned, abused or neglected by at least one parent and that he or she cannot be reunited with that

[16] See INA § 212(d)(13).
[17] See T status regulations at 8 CFR § 214.11.
[18] See T adjustment regulations at 8 § CFR 245.23.
[19] INA § 101(a)(27)(J).

parent. The court must also decide that it is not in the child's best interests to return to their home country.

Those who are under the age of 21 and unmarried may be eligible for this relief. With a predicate order from a state court, the individual can affirmatively apply to USCIS for SIJS.[20] Certain inadmissibility grounds do not apply to special immigrant juveniles and others are waivable for humanitarian purposes, family unity, or when in the public interest.[21]

Once the applicant has a current priority date, they may also apply for adjustment of status. SIJs fit into the 4th preference employment-based (EB-4) category. Note that there is currently a backlog in the EB-4 category for SIJs from all countries of origin.[22]

Other Temporary Relief

Parole In Place

Does your client have a spouse, parent, son, or daughter who is or was in the U.S. military? Spouses, children, and parents of active duty members of the U.S. Armed Forces or those in the Selected Reserve of the Ready Reserve (as well as those who previously served in the Armed Forces or Selected Reserve) may qualify for a discretionary grant of military parole in place (PIP). If approved, parole will be authorized in one-year increments and parolees may apply for employment authorization.

A grant of PIP meets the "inspected and admitted or paroled" requirement of 245(a) adjustment for someone who originally entered without inspection. Thus, PIP could help create adjustment eligibility for TPS or DACA beneficiaries who entered without inspection and have not been able to travel on advance parole. Even a person with a military member child who is younger than 21 can apply for PIP now in order to create adjustment eligibility later, once the child turns 21 and can file an I-130.

Relief in Removal Proceedings

An individual who does not qualify for an affirmative remedy might be eligible for relief while in removal proceedings. Consider whether the client is eligible for non-LPR cancellation of removal. He or she must have been physically present in the United

[20] 8 CFR § 204.11(d)(2).
[21] INA § 245(h)(2)(B).
[22] See April 2025 Visa Bulletin for Employment-Based Preference Cases, available at: https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2025/visa-bulletin-for-april-2025.html. According to the USCIS website, employment-based adjustment applicants must use the Final Action Dates Chart A for April 2025. See: www.uscis.gov/visabulletininfo.

States for at least 10 years; must be able to demonstrate good moral character; cannot have been convicted of offenses that would make them inadmissible under INA §§ 212(a)(2), 237(a)(2), or 237(a)(3); and must show that a U.S. citizen or LPR spouse, parent, or child would suffer exceptional and extremely unusual hardship.

Other common forms of relief from removal include VAWA cancellation, asylum, withholding of removal, and protection under the Convention Against Torture.

Screening for Inadmissibility

It is critical to screen all potential LPR applicants for inadmissibility under INA § 212(a), whether the individual plans to adjust status in the United States or consular process overseas. DACA applicants are not subject to the grounds of inadmissibility and TPS applicants are exempt from certain inadmissibility grounds, so conduct that did not bar them from DACA or TPS eligibility could create an inadmissibility problem when seeking an alternative status. Note that inadmissibility grounds that were previously waived do not carry over when an applicant seeks a new status. In addition to a detailed screening interview, consider filing Freedom of Information Act (FOIA) requests, FBI background checks, and criminal records requests from the very beginning, so that you have the information you need about clients' immigration and criminal history.

TPS and DACA beneficiaries, as well as parolees who are over 18 years old, will begin to accrue (or resume accruing) unlawful presence for purposes of the three- and 10-year bars under INA § 212(a)(9)(B) as soon as their status or authorized stay expires.[23] Section 212(a)(9)(B) is only triggered by a departure from the United States (leaving under advance parole is not considered a departure[24]). So this ground should not affect those who apply to adjust status in the United States but will impact clients who plan to consular process. Departing the country after accruing at least 180 days of unlawful presence will trigger this ground and the individual will remain ineligible for LPR status for three or 10 years unless he or she qualifies for a waiver. They would apply for the waiver after being found inadmissible by the consular officer or would apply for a provisional waiver before departing.

For clients who appear to be 245(a) adjustment eligible based on advance parole travel, ask about all previous exits and entries to make sure the individual has not already triggered an unlawful presence bar through a prior departure. Keep in mind that, even though someone who left with advance parole and returned is not inadmissible under

[23] Likewise, those who lose TPS, DACA, or parole will begin or resume accruing unlawful presence for purposes of the permanent bar under INA § 212(a)(9)(C).
[24] Per the 2012 Board of Immigration Appeals case, *Matter of Arrabally and Yerrabelly*, travel on advance parole is not considered a "departure" for purposes of triggering inadmissibility under § 212(a)(9)(B)(i).

INA § 212(a)(9)(B), their departure could have triggered another inadmissibility ground. For example, a DACA recipient with a prior removal order who departed with advance parole has likely executed that removal order and could be inadmissible under 212(a)(9)(A).

TPS beneficiaries with outstanding removal orders or who are in removal proceedings will need special attention. For more information, see CLINIC's practice advisory "Temporary Protected Status: Navigating Removal Proceedings, Dual Nationality, and Asylum."

Remember that the criminal bars to DACA or TPS and the criminal grounds of inadmissibility do not necessarily overlap. Thus, it is possible that a client's criminal history was not disqualifying for an earlier benefit but makes him or her inadmissible under INA § 212(a)(2) (or deportable under INA § 237(a)(2)). When screening, pay particular attention to criminal history and drug use, including marijuana. For example, someone with a misdemeanor drug possession conviction would not have been automatically disqualified from DACA but could be inadmissible for a controlled substance offense.

Other common inadmissibility grounds to screen for include public charge, smuggling (which could include acts like sending money to or helping a family member cross the border illegally), making a material misrepresentation to an immigration official (including using fake or borrowed documents to enter the United States), falsely claiming to be a U.S. citizen, and health based inadmissibility (that could be triggered by marijuana use or DUI arrests or convictions). Pay particular attention to prior contact with immigration officials, and multiple entries to the United States. Those who are inadmissible will not be able to obtain permanent residence unless they are exempt from the particular inadmissibility ground or able to get a waiver for it.