



Practice Advisory¹

FREQUENTLY ASKED QUESTIONS: RESCISSION OF *MATTER OF Z-R-Z-C-*

August 12, 2022

INTRODUCTION

On July 1, 2022, U.S. Citizenship and Immigration Services (USCIS) issued a new policy in which it announced that:

- The designation of *Matter of Z-R-Z-C-*, Adopted Decision 2020-02 (AAO Aug. 20, 2020), as agency-wide policy of USCIS is rescinded;
- Effective July 1, 2022, the entry of individuals holding Temporary Protected Status (TPS) following authorized travel abroad will be considered an “inspection and admission” into the United States;
- TPS holders admitted following authorized travel will be “inspected and admitted” for purposes of INA § 245(a) and will be present in the United States pursuant to a lawful admission for purposes of INA § 245(k), even if the individual was present without admission or parole when granted TPS;
- Such individuals’ status upon admission will be TPS; and
- USCIS intends to amend the regulations relating to travel authorization for TPS holders and has created a new TPS travel document.

See USCIS, *Policy Memorandum: Rescission of Matter of Z-R-Z-C- as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries*, PM-602-0188 (July 1, 2022), <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf> (*Z-R-Z-C-* Rescission Policy).

Going forward, this new policy confirms that there is a path to lawful permanent residence for TPS holders who, inter alia:

- initially entered the United States without inspection;²

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² TPS recipients who previously were admitted into the United States, including those who can demonstrate an admission under *Matter of Quilantan*, 25 I. & N. Dec. 285 (BIA 2010), do not need to rely on a TPS-related travel entry to satisfy admission requirements in INA § 245, as their earlier admission satisfies this section.

- travel with prior authorization of USCIS on or after July 1, 2022; and
- are exempted from the bars to adjustment found in INA § 245(c)(2), (c)(7) and (c)(8) because they seek to adjust as either an immediate relative (of a U.S. citizen) or through an employer and qualify for the exception in INA § 245(k).³

Additionally, the policy has the potential for providing a path to permanent residence for TPS holders who meet the same criteria *except that they traveled prior to July 1, 2022*. For these individuals, USCIS will determine—on a case-by-case basis—whether to apply the new policy retroactively.

This advisory outlines the changes in the new policy, the impact on TPS holders seeking to adjust status, and issues that remain.

PRIOR USCIS POLICY

Q1: What was the policy between 1991 until adoption of *Matter of Z-R-Z-C-* as agency policy on August 20, 2020?

Under regulations adopted soon after the TPS statute was first enacted, USCIS (and its predecessor, the Immigration and Naturalization Service (INS)) authorized travel abroad for TPS holders by issuing them an advance parole document. *See* 8 C.F.R. § 244.15; *see also* INA § 244(f)(3). For close to three decades, INS and USCIS treated TPS holders who entered the United States with an advance parole document provided under these regulations as having been “paroled” for purposes of the “inspected and . . . paroled” requirement of INA § 245(a). As a result, TPS holders who traveled abroad were able to adjust their status to that of lawful permanent resident if they satisfied all other statutory requirements and USCIS exercised its discretion in their favor. This was true even for those who initially entered the United States without inspection, as USCIS considered the individual’s more recent parole entry rather than the original entry when determining whether the applicant met § 245(a).

Q2: How did *Matter of Z-R-Z-C-* change prior policy?

On August 20, 2020, USCIS issued a Policy Memorandum designating the Administrative Appeals Office’s (AAO) decision in *Matter of Z-R-Z-C-* as an Adopted Decision (*Z-R-Z-C-* Policy).⁴ Reversing the long-held policy of treating a TPS holder’s return from authorized travel as a “parole,” the *Z-R-Z-C-* Policy directed all adjudicators to find that a TPS holder who received advance authorization to travel abroad and who carried out this travel on or after August 20, 2020—the date of the new policy—was not “inspected and admitted or paroled” for purposes

³ All TPS holders with an initial unlawful entry will have some period of unlawful status; consequently, only those who are exempt from the INA § 245(c)(2) bar will benefit from this policy. INA § 245(c)(2) specifically exempts immediate relatives and certain special immigrants and INA § 245(k) provides an exemption for certain employment-based cases.

⁴ USCIS, *Policy Memorandum: Matter of Z-R-Z-C-, Adopted Decision 2020-02* (AAO Aug. 20, 2020), PM-602-0179 (Aug. 20, 2020), <https://www.uscis.gov/sites/default/files/document/aao-decisions/Matter-of-Z-R-Z-C-Adopted-AAO-Decision.pdf>.

of INA § 245(a) upon their return to the United States. USCIS issued this directive notwithstanding the fact that the agency’s pre-travel approval was pursuant to the “advance parole” regulations.

However, recognizing that TPS holders would have relied upon the agency’s longstanding policy, USCIS announced that it would not apply the *Z-R-Z-C*- Policy retroactively to travel that was initiated prior to August 20, 2020. For TPS holders who received advance parole and traveled prior to that date, USCIS policy required continuing to treat the TPS holder’s return to the United States as an inspection and parole for purposes of INA § 245(a).

Q3: Was there a legal challenge to the *Z-R-Z-C*- Policy?

Yes. Three TPS holders whose adjustment applications had been or would be denied under the *Z-R-Z-C*- Policy filed a putative class action challenging the policy as unlawful. *Gomez v. Jaddou*, No. 1:21-cv-09203 (S.D.N.Y. filed Nov. 8, 2021).⁵ Plaintiffs claimed that, under § 304(c) of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991 (MTINA), Pub. L. No. 102-232, 105 Stat. 1733, a TPS holder’s return from authorized travel abroad must be recognized as an inspection and admission. Alternately, Plaintiffs claimed that such a return must be treated as a parole. Plaintiffs and the putative class are represented by the Northwest Immigrant Rights Project, the National Immigration Litigation Alliance, and the Law Offices of Stacy Tolchin. This lawsuit remains pending in the U.S. District Court for the Southern District of New York.

***Z-R-Z-C*- RESCISSION POLICY**

Q4: What is the *Z-R-Z-C*- Rescission Policy?

After the district court denied Defendants’ motion to stay proceedings in *Gomez v. Jaddou*, USCIS issued the *Z-R-Z-C*- Rescission Policy. This policy is USCIS’ revised interpretation of the effects of authorized travel by TPS holders. It states that a TPS holder’s entry into the United States following authorized travel abroad is an “inspection and admission” for purposes of INA § 245(a) where the TPS holder:

- Remained in valid TPS for the duration of travel;
- Obtained advance authorization for the travel under INA § 244(f)(3);
- Returned in accordance with prior authorization under INA § 244(f)(3);
- Was inspected at a designated port of entry;
- Was not found to be inadmissible on the grounds specified in INA § 244(c)(2)(A)(iii) when returning from the authorized travel; and
- Was not paroled or permitted to enter the United States on a basis other than the TPS-based travel authorization.

⁵ See <https://immigrationlitigation.org/wp-content/uploads/2021/11/Gomez-Complaint.pdf>.

Z-R-Z-C- Rescission Policy at 2. Additionally, the TPS holder who is admitted in these circumstances will be found to be present in the United States pursuant to a lawful admission for purposes of INA § 245(k). *Id.* at 7.

Except for cases arising within the jurisdiction of the Court of Appeals for the Fifth Circuit, USCIS will apply this policy prospectively to TPS holders who travel after July 1, 2022. *Id.* Additionally, it will consider—on a case-by-case basis—whether to apply the policy retroactively in cases in which the travel occurred prior to July 1, 2022. *See infra* Q9-15.

Q5: What is the legal rationale for this new guidance?

USCIS adopted the *Z-R-Z-C- Rescission Policy* based on new legal precedent and guidance from the U.S. Department of Homeland Security’s Office of General Counsel (DHS OGC), which is attached to the new policy. DHS OGC interpreted MTINA § 304(c), which states that a TPS holder who travels abroad with advance authorization “shall be inspected and admitted in the same immigration status the [noncitizen] had at the time of departure.” MTINA § 304(c)(1)(A). In particular, DHS OGC determined that the phrase “inspected and admitted” should be interpreted the same way as it is used in the INA, including in INA § 245(a), the adjustment provision. *See* DHS OGC, *Memorandum: Immigration Consequences of Authorized Travel and Return to the United States by Individuals Holding Temporary Protected Status* (Apr. 6, 2022).⁶ It also determined that the phrase “same immigration status that the [noncitizen] had at the time of departure” should be interpreted to mean TPS, rejecting the bizarre definition given by the AAO in *Matter of Z-R-Z-C*, which equated status with the manner of entry into the United States. *Id.* at 2.

USCIS also found that this interpretation of MTINA § 304(c)(1)(A) was consistent with a number of its policy goals. *See Z-R-Z-C- Rescission Policy* at 9.

Finally, USCIS emphasized that this policy does not in itself provide a direct path to lawful permanent residence, since TPS holders must independently satisfy all other eligibility requirements for adjustment, must be found to warrant a favorable exercise of discretion, and must not be barred from adjusting. *See Z-R-Z-C- Rescission Policy* at 11; *see also infra* Q7.

Q6: What document will USCIS issue to authorize travel abroad for TPS holders?

As of July 1, 2022, USCIS issues a new TPS travel authorization document, Form I-512T, Authorization for Travel by a Noncitizen to the United States, to eligible TPS holders. *See* USCIS, Application for Travel Document, <https://www.uscis.gov/i-131>. It will no longer issue an advance parole document to TPS holders to authorize travel. However, TPS holders who have an unexpired advance parole document may continue to use it for travel abroad through the validity period on the document. *Id.* TPS holders should continue to apply for advance authorization to travel abroad through the Form I-131, Application for Travel Document.

⁶ *See Z-R-Z-C- Rescission Policy* at 18-46, <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf>.

Q7: Will all TPS holders who travel with authorization after July 1, 2022 be able to adjust?

No. Although the new guidance resolves INA § 245(a) ineligibility for TPS holders who entered without inspection, these individuals still must independently qualify based on a visa petition filed by an employer or family member; they also must satisfy all other eligibility requirements for adjustment of status. Furthermore, USCIS must find that they warrant a favorable exercise of discretion.

INA § 245(c)(2) bars adjustment for any individual who has worked without authorization or failed to maintain lawful status since entry. The INA exempts two groups from this bar: (1) immediate relatives⁷ and (2) employment-based applicants who satisfy INA § 245(k).⁸ Thus, a TPS holder must fall within one of these two groups to benefit from the new policy.

Q8: Will a determination that a TPS holder is admitted upon return from authorized travel render them inadmissible under INA § 212(a)(6)(B), 212(a)(9)(A)(ii), or 212(a)(9)(B)(i)?

USCIS indicates that, under the new policy of treating the return of TPS holders from authorized travel after July 1, 2022, as an admission, some TPS holders may become inadmissible under INA § 212(a)(6)(B)⁹ or 212(a)(9)(A)(ii).¹⁰ See *Z-R-Z-C- Rescission Policy* at 13. These grounds of inadmissibility will not prevent the person from being admitted in TPS following their travel; however, either ground could render the person ineligible for adjustment or, should their TPS end, subject to removal under INA § 237(a)(1)(A) for being inadmissible at the time of

⁷ TPS holders who do not meet the definition of an “immediate relative,” even though they are the beneficiaries of family visa petitions filed by lawful permanent resident or U.S. citizen family members, remain inadmissible under INA § 245(c)(2) and will not be able to adjust status.

⁸ INA §245(k) provides:

A[noncitizen] who is eligible to receive an immigrant visa under paragraph (1), (2), (3), or (5) of section 1153(b) of this title (or, in the case of a[noncitizen] who is an immigrant described in section 1101(a)(27)(C) of this title, under section 1153(b)(4) of this title) may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if—

- (1) the [noncitizen], on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;
- (2) the [noncitizen], subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—
 - (A) failed to maintain, continuously, a lawful status;
 - (B) engaged in unauthorized employment; or
 - (C) otherwise violated the terms and conditions of the [noncitizen’s] admission.

⁹ This section renders inadmissible anyone who fails to attend a removal hearing without reasonable cause and then seeks admission within five years of their subsequent removal or departure.

¹⁰ This provision renders inadmissible anyone who has been ordered removed or departed while under a removal order and seeks admission within certain time frames, depending on the circumstances, of their departure or removal. Noncitizens may seek relief from this ground by obtaining consent to reapply for admission under INA § 212(a)(9)(A)(iii).

admission. *Id.* Practitioners whose clients may be adversely affected in this way should explore these potential consequences with their clients prior to any travel; those whose clients are under a final removal order may want to explore a joint motion to reopen removal proceedings in order to avoid the inadmissibility ground at INA § 212(a)(9)(A). *See Central American Resource Center v. Jaddou*, No. 20-2363 (RBW) (D.D.C Mar. 21, 2022).¹¹

In contrast, USCIS specifies that treating TPS holders' return after travel abroad as an admission will not render them inadmissible under INA § 212(a)(9)(B)(ii).¹² *See Z-R-Z-C- Rescission Policy* at 13 n.59. USCIS determined that the reasoning of *Matter of Arrabally and Yerrabelly*, 25 I. & N. Dec. 771 (BIA 2012)—which held that a noncitizen who leaves the United States temporarily pursuant to a grant of advance parole does not make a “departure” from the United States within the meaning of INA § 212(a)(9)(B)(i)(II)¹³—is equally applicable to TPS holders who engage in authorized travel under MTINA and are then admitted to the United States in TPS. *Id.* Thus, the new policy should not render a TPS holder inadmissible on this ground.

RETROACTIVE APPLICATION OF NEW POLICY

Q9: Does the new guidance apply retroactively to all travel by TPS holders that occurred prior to July 1, 2022?

No. TPS holders must satisfy these four factors for USCIS to consider whether to apply the *Z-R-Z-C- Rescission Policy* retroactively:

- The noncitizen obtained prior authorization to travel abroad temporarily on the basis of being a TPS beneficiary;
- The noncitizen's TPS was not withdrawn and the designation for their foreign state (or part of the foreign state) was not terminated or did not expire during their travel;
- The noncitizen returned to the United States in accordance with the travel authorization; and
- Upon return, the noncitizen was inspected by the former INS or DHS at a port of entry and paroled or otherwise permitted to enter the United States in accordance with the TPS-based travel authorization.

Z-R-Z-C- Rescission Policy at 2. For TPS holders unable to satisfy all four factors, USCIS will apply “the policy that was in effect at the time of departure.” USCIS, *Policy Manual*, Vol. 7, Part B, Chap. 2.A.5.¹⁴

¹¹ Available at <https://carecencd.org/wp-content/uploads/2022/05/CARECEN-el-al-TPS-Settlement-1-5.pdf>.

¹² This provision renders inadmissible any noncitizen who is (1) unlawfully present for more than 180 days but less than a year and seeks admission within three years following a departure or removal, *or* (2) any noncitizen who is unlawfully present for one or more years and seeks admission within ten years following a departure or removal.

¹³ USCIS erroneously cites § 212(a)(9)(B)(ii) with respect to the holding in this case. In fact, however, *Matter of Arrabally and Yerrabelly* dealt with § 212(a)(9)(B)(i)(II).

¹⁴ *See* <https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-2>.

For TPS holders who meet all four factors, “USCIS will *consider* retroactive application” of the current policy. *Id.* (emphasis added); *see also infra* Q11.

The revised USCIS policy does not clarify what policy will be applied to a TPS holder who meets all four factors but for whom USCIS decides not to apply the current policy retroactively. In other words, it is unclear whether USCIS intends in such cases to apply the policy in effect at the time of departure—which would include the *Z-R-Z-C-* Policy for those who traveled between August 20, 2020 and July 1, 2022—or whether it will treat all such TPS holders as having been paroled upon return. Counsel in the *Gomez* litigation have asked USCIS to clarify this provision of the *Z-R-Z-C-* Rescission Policy.

Q10: How will USCIS treat authorized travel by TPS holders in the Fifth Circuit?

For TPS holders whose cases fall within the Fifth Circuit, USCIS is bound by *Duarte v. Mayorkas*, 27 F.4th 1044 (5th Cir. 2022), which held that the plain language of MTINA § 304 mandated that TPS holders be admitted—not paroled—upon their return from authorized travel abroad. *Id.* at 1058-61. The court found that this interpretation applied to all past travel by TPS holders. *Id.* Accordingly, for cases in the Fifth Circuit, USCIS will treat the entry of a TPS holder following *all* qualifying travel—whether before or after July 1, 2022—as an inspection and admission. *Z-R-Z-C-* Rescission Policy at 7.

Q11: In what cases will USCIS carry out the retroactivity analysis to determine whether to apply the new policy to past travel and how will USCIS make this determination?

First, USCIS will apply the new policy in all cases arising within the jurisdiction of the Fifth Circuit, regardless of when the TPS holder’s travel occurred; thus, all TPS holders within this circuit will be found to be inspected and admitted upon return from authorized travel abroad. *See Z-R-Z-C-* Rescission Policy at 14; *see also supra* Q10.

Second, USCIS will not make a retroactivity determination in cases in which the determination of whether to treat the TPS holder’s return entry as a parole or an admission will not affect the outcome of the case. *See Z-R-Z-C-* Rescission Policy at 15; USCIS, Policy Manual, Vol. 7, Part B, Chap. 2.A.5. USCIS notes that in most cases, particularly in the adjustment context, no retroactivity analysis will be necessary, as both a parole and an admission satisfy INA § 245(a). *Z-R-Z-C-* Rescission Policy at 14-15. One exception is employment-based adjustment applicants who must be present pursuant to a lawful admission to qualify for the INA § 245(k) exemption. *Id.* at 15 n.69; *see also infra* Q12.

Finally, in other cases, USCIS will make a case-by-case retroactivity determination. In these cases, USCIS will carry out the retroactivity analysis to determine whether it is appropriate to apply the new policy to the case; that is, whether to find that the TPS holder was admitted following their past travel. *Z-R-Z-C-* Rescission Policy at 15; *see also infra* Q13.

Q12: Are there TPS holders with pre-July 1, 2022 travel who will be able to adjust only if the new policy is applied retroactively and their pre-July 1, 2022 travel is deemed an admission?

Yes. Employment-based adjustment applicants who have worked without authorization or failed to maintain lawful status since entry are barred from adjusting under INA § 245(c)(2) unless they can satisfy INA § 245(k). *See* INA § 245(c)(2). Among other things, INA § 245(k) requires that the applicant be present in the United States pursuant to a lawful admission. INA § 245(k)(1). Because a parole is not an admission, *see, e.g.*, INA §§ 101(a)(13)(B), 212(d)(5), TPS holders whom USCIS might otherwise find have been paroled will not be able to adjust unless USCIS deems their entry following authorized travel to be an admission. USCIS recognizes this and states that, in such cases, it will conduct the individualized review to determine if the new policy should be applied retroactively. *Z-R-Z-C- Rescission Policy* at 15 n.69; *see also* USCIS, Policy Manual, Vol. 7, Part B, Chap. 2.A.5 at n.74. Thus, practitioners with a client in this situation should make clear that their client will be able to adjust only if USCIS deems the entry following travel abroad an admission, citing to the policy.

Q13. What is the standard USCIS will use to determine whether to apply the policy retroactively?

In cases eligible for retroactive application of the policy, USCIS will apply the traditional five-factor test to determine whether to treat the person’s past entry following authorized travel as an admission. These factors are:

- (1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) *the extent to which the party against whom the new rule is applied relied on the former rule*, (4) *the degree of the burden which a retroactive order imposes on a party*, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

Z-R-Z-C- Rescission Policy at 15 (emphasis added) (quoting *Retail Wholesale and Dep’t Store Union AFL-CIO v. Nat’l Lab. Rel. Bd.*, 466 F.2d 380, 390 (D.C. Cir. 1972)). According to USCIS’ Policy Manual, factors 1, 2, and 5 will be standard across most cases. USCIS, Policy Manual, Vol. 7, Part B, Chap. 2.A.5. Thus, the retroactivity analysis will usually center on factors 3 and 4. *Id.* USCIS notes that, in most cases, the new policy will be favorable to the applicant and thus, under the test, USCIS may deem a prior parole an admission for purposes of adjustment. *Id.*; *see also Z-R-Z-C- Rescission Policy* at 15 (“In general, when USCIS determines that an applicant is eligible for adjustment of status but for having been paroled rather than admitted under MTINA, and the applicant merits adjustment in the exercise of discretion, it would be appropriate on a case-by-case basis to deem the prior parole to be an admission.”).

Q14. What role can an attorney play with respect to USCIS’ determination as to whether to apply the policy retroactively?

USCIS will make its determination about whether to apply the new policy retroactively when adjudicating the adjustment application. Consequently, attorneys should consider including an argument and any relevant supporting evidence demonstrating that retroactive application of the new policy is critical to the client’s case—that is, why the client will be ineligible for adjustment if the prior entry is deemed a parole rather than an admission. Similarly, attorneys whose clients would be negatively affected by the retroactive application of the new policy should include arguments and any relevant supporting evidence to that effect.

Q15. What should a practitioner do if USCIS denies the retroactive application of the new policy in a case in which an “admission” is necessary for the client to adjust?

The new policy leaves open the possibility that USCIS will decide not to apply the retroactive notwithstanding that such a result will harm the applicant—for example, in an employment-based adjustment in which the TPS holder must have been admitted to qualify for the INA § 245(k) exemption. In such a case, the practitioner should consider filing a motion to reconsider.

REMOVAL PROCEEDINGS/FINAL ORDER CASES

Q16. How will USCIS’ new guidance impact TPS holders who seek to adjust while in removal proceedings or while under a final order of removal?

Generally, the Executive Office for Immigration Review (EOIR) has jurisdiction over adjustment applications of noncitizens in removal proceedings unless the individual is classified as an “arriving alien.” *See* 8 C.F.R. §§ 245.2(a)(1) (specifying USCIS jurisdiction over adjustment applications), 1245.2(a)(1) (specifying immigration courts’ jurisdiction over adjustment applications). A noncitizen admitted into the United States is not an “arriving alien.” *See* 8 C.F.R. § 1.2. USCIS takes the position that a noncitizen remains in removal proceedings while under a final order of removal that has not been executed. *See* USCIS, Policy Manual at Vol. 7, Part A, Chap. 3.D.

When the new guidance was issued, USCIS amended its Policy Manual to indicate that a TPS holder who is in removal proceedings at the time of departure under authorized travel “remains a TPS beneficiary in removal proceedings upon authorized reentry into the United States under MTINA, unless those proceedings have been otherwise terminated.” USCIS, Policy Manual at Vol. 7, Part A, Chap. 3.D (citing MTINA § 304(c)(1)(A)(ii) and *Duarte v. Mayorkas*, 27 F.4th 1044 (5th Cir. 2022)). Additionally, USCIS indicates that a TPS holder who met the definition of an “arriving alien” at the time of departure on authorized travel would no longer meet this definition once they have been admitted upon return. *Id.* “Consequently, if DHS places the beneficiary into removal proceedings after returning from authorized travel, USCIS would not have jurisdiction over the adjustment application.” *Id.*

TPS holders in removal proceedings who wish to have USCIS adjudicate their adjustment applications following an admission after authorized travel can ask the ICE counsel to join a motion to terminate removal proceedings. If granted, USCIS would have jurisdiction over the

adjustment application. TPS holders under a final order of removal may be eligible for relief under the settlement agreement in *Central American Resource Center v. Jaddou*, No. 20-2363 (RBW) (D.D.C. Mar. 21, 2022). See CARECEN, TPS Settlement, <https://carecencdc.org/tps-settlement/>.