

Temporary Protected Status (TPS) – June 2021



Update: On April 19, 2021 the **Supreme Court of the United States (SCOTUS)** heard arguments in *Sanchez v. Mayorkas*, a case involving a TPS recipient from El Salvador. This past Monday, in a **unanimous decision (9-0)**, the court found that Mr. Sanchez, who has held TPS since 2001, **cannot apply** for his green card while in the U.S. because he first “entered without inspection.” Mr. Sanchez had argued that because he has TPS, he should be treated like he was **admitted** to the U.S.--the same way some people are admitted if they arrived in the U.S. on a visa-- and so can adjust status here. This **disappointing decision** is a loud reminder that our fight for legislative and permanent solutions is **critical now** more than ever for our immigrant communities.

What is Temporary Protected Status (TPS)? TPS is a temporary, renewable, program for people in the United States who are temporarily unable to return safely to their country. The Secretary of Homeland Security has the authority, in consultation with other governmental agencies, to designate a country for TPS for periods of 6 to 18 months and to extend these periods.

How have people applied for TPS and what are the benefits? TPS applicants **can only** apply for the first time during a designated country-specific time period. TPS beneficiaries are issued a work permit and protection against deportation. They can also travel with an approved advance parole document. *As of now*, TPS may be held by people from El Salvador, Honduras, Haiti, Nepal, Nicaragua, Sudan, South Sudan, Syria, Venezuela, Yemen, Somalia **and most recently** Burma.

What does the SCOTUS decision mean for TPS holders? While this decision is unfavorable, it **does not** eliminate TPS protections for current TPS holders. It does eliminate an important pathway to a green card which had existed in some states like California, where TPS holders who first “entered without inspection” were treated as “admitted” for purposes of applying for a green card. This nationwide decision eliminates this pathway to a green card **but** TPS holders may be eligible for a green card through other pathways.

How could a TPS holder generally qualify for a green card? There are generally two main routes to apply for lawful permanent residence through a family member or employer; **adjustment of status** while in the United States or **consular processing** at a U.S. embassy abroad. In order to adjust status in the U.S., a TPS holder, among other requirements, must demonstrate they have either been “inspected and admitted” or “inspected and paroled” into the United States. Adjusting status for a TPS holder is still a possibility if:

- A TPS holder was “inspected and admitted” during their first entry into the United States, for example using a tourist visa, and now has a qualifying family member/employer willing to petition for them;
- A TPS holder who first “entered without inspection” has traveled on advance parole before **August 20, 2020** and has a qualifying family member/employer willing to petition for them. That’s because under a long-standing USCIS policy, TPS beneficiaries who had returned to the U.S. on an approved advance parole document, were considered as having made a lawful entry “fixing” their first entry without inspection. However, *Matter of Z-R-Z-C* drastically changed this and **now** any advance parole travel after August 20, 2020 **will not** “fix” the first entry without inspection; and
- Importantly, this new court decision **does not** impact eligibility for TPS holders to adjust status through humanitarian pathways such as those based on a U visa or asylum.

Consular processing, on the other hand, requires leaving the United States and having an interview abroad. With this route a TPS holder generally has to consider several factors, such as any accrual of “unlawful presence” before considering this a viable option.

What can I do if I have more questions? You should consult with a trusted immigration attorney or accredited representative to explore your options and come out to our weekly committee meetings to join us in fighting for pathways to citizenship for all.

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