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United States Citizenship and Immigration Services  
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Via e-mail: [opefeedback@uscis.dhs.gov](mailto:opefeedback@uscis.dhs.gov)

**Re: AILA Comments on USCIS draft policy memorandum, Clarification of Grounds of Inadmissibility that do not Apply to Applicants for TPS and Circumstances Requiring an Individual Waiver of Inadmissibility; AFM Update AD11-15**

The American Immigration Lawyers Association (AILA) submits the following comments on the above-referenced USCIS draft policy memorandum.

### **Introduction**

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this draft memorandum and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

AILA appreciates the opportunity to comment on the draft policy memorandum, "Clarification of Grounds of Inadmissibility that do not Apply to Applicants for Temporary Protected Status (TPS) and Circumstances Requiring an Individual Waiver of Inadmissibility." The policy memorandum clarifies that applicants for TPS are not subject to certain grounds of inadmissibility.

#### **1. Clarification of Grounds of Inadmissibility Not Applicable to TPS Applicants**

The policy memorandum states that an individual's immigration status or lack of status should not be a bar to TPS or related benefits pursuant

to INA §244(a)(5). The memorandum provides clear guidance to adjudicators that the following grounds of inadmissibility do not apply to TPS applicants:

- INA §212(a)(6)(A): Aliens present without admission or parole
- INA §212(a)(6)(D): Stowaways
- INA §212(a)(6)(G): Student visa violators
- INA §212(a)(7)(B): Documentary requirements for nonimmigrants
- INA §212(a)(9)(A): Certain aliens previously removed and seeking admission
- INA §212(a)(9)(B): Unlawful presence
- INA §212(a)(9)(C): Aliens unlawfully present after previous immigration violations

The memorandum further clarifies that TPS applicants who would otherwise be subject to these grounds of inadmissibility, are not required to file a Form I-601 waiver of inadmissibility. This position is consistent with the Service's determination that denying TPS based on inadmissibility under INA §212(a)(7)(B) and §§212(a)(9)(A), (B), and (C), conflicts with INA §244(a)(5), which prohibits the denial of TPS based on the applicant's immigration status or lack of status.

## **2. Administrative Closure of Waiver Applications and Retroactive Application of Policy**

AILA appreciates the Service's directive that officers should administratively close all pending waiver applications filed solely on account of the above-referenced grounds of inadmissibility, and proceed with adjudication of the TPS applications. We further urge USCIS to make this policy retroactive and allow individuals whose TPS applications have previously been denied, solely because of a finding of inadmissibility under INA §§212(a)(6)(A)(D), or (G); §212(a)(7)(B); or §212(a)(9), to reapply for TPS or have their TPS applications reopened.

## **3. Adjustment of Status for TPS Beneficiaries**

A person who has been granted TPS is deemed to be in lawful nonimmigrant status for the duration of the grant for purposes of adjustment of status under INA §245 and change of status under INA §248.<sup>1</sup> However, the Service takes the position that a TPS beneficiary who was not inspected and admitted or paroled upon entry into the United States, is ineligible for adjustment of status by virtue of INA §245(a).<sup>2</sup>

Therefore, under current Service policy, an individual who enters the U.S. without inspection, is granted TPS, and eventually marries a U.S. citizen or becomes otherwise

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<sup>1</sup> INA §244(f)(4).

<sup>2</sup> INS General Counsel Op. 91-27 (Mar. 4, 1991), *reprinted at* 68 Interpreter Releases 483-86 (Apr. 22, 1991). INA §245(a) provides for the adjustment of status of "an alien who was inspected and admitted or paroled into the United States...."

eligible for permanent residence, is ineligible for adjustment of status. In order to acquire permanent residence, the person must depart the United States to pursue an immigrant visa at the U.S. consulate, and may face a three- or ten-year bar to admission, and a lengthy separation from his or her family. Notably, the applicant must apply for the visa in the same country for which the Attorney General has designated TPS.

The Service's position that a person who entered without inspection and was later granted TPS is ineligible for adjustment of status conflicts with the plain language of INA §244(f)(4). TPS applicants, in essence, present themselves for inspection as part of the application process, similar to those admitted in lawful nonimmigrant status. When TPS is granted, the applicant is then deemed to be in lawful nonimmigrant status, and should also be considered to have been inspected and admitted. AILA urges the Service to reconsider its current position and to issue guidance allowing individuals in lawful TPS status to seek adjustment of status, without regard to their manner of entry.

### **Conclusion**

AILA appreciates the opportunity to comment on this draft memorandum and we look forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION