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May 12, 2022

U.S. Citizenship and Immigration Services
Department of Homeland Security
Administrative Appeals Office
5900 Capital Gateway Drive, MS 2090
Camp Springs, MD 20588-0009

Attn: Susan Dibbins
Chief, Office of Administrative Appeals

Re: Request for Rescission of Adopted Decision Matter of Z-R-Z-C

Dear Ms. Dibbins:

We write to request that U. S. Citizenship and Immigration Services (USCIS) rescind the adopted AAO decision of Matter of Z-R-Z-C-.[1] The decision is inconsistent with well-accepted and long-standing policies with respect to Temporary Protected Status (TPS) recipients, relies on a faulty 1992 Opinion that was never implemented and, most importantly, unnecessarily harms TPS recipients who have lived for many years in the U.S. under color of law. This decision upends the long-understood policy that TPS recipients, who travel abroad and return to the United States based on a USCIS approved advance parole and are otherwise admissible and eligible to adjust, may apply for and receive lawful permanent resident status. Matter of Z-R-Z-C incorrectly eliminated what was often the only pathway for a TPS recipient to regularize their status.

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Background of Matter of Z-R-Z-C

The applicant in Matter of Z-R-Z-C entered the United States without inspection in November 1995 and was granted TPS status in 2002. In April 2011, the applicant was issued an advance parole travel document (Form I-512). She subsequently departed and upon re-entry, received a

[1] Matter of Z-R-Z-C, Adopted Decision 2020-02 (AAO Aug. 20, 2020).

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parole stamp on her Form I-512. After marrying a U.S. citizen, the applicant applied for permanent residence as an immediate relative. While the Director of the USCIS Mount Laurel, New Jersey Field Office approved the I-130 petition filed on the applicant's behalf, the Director denied her Form I-485 on the ground that she had not been inspected and admitted or paroled as required by INA section 245(a). The Director certified the matter for review by the AAO.

The AAO's decision erroneously distinguished the statutory authorization of TPS applicants to travel abroad temporarily pursuant to § 244(f)(3) from the broader concept of Advance Parole contained in INA § 212(d)(5)(A). The AAO's legal analysis relied heavily on the language of § 304(c) of the Miscellaneous and Technical Immigration and Nationality Act Amendments of 1991 (MTINA), which states:

> In the case of a [foreign national] … whom the [Secretary of Homeland Security] authorizes to travel abroad temporarily and who returns … in accordance with such authorization --- (A) the [foreign national] shall be inspected and admitted in the same immigration status the [foreign national] had at the time of departure … (emphasis added).[2]

The AAO interpreted this language as creating a "unique form of travel authorization and operates as a fiction that restores the [foreign national] to the status quo ante as if the [foreign national] never left the United States."

Because the Applicant in Matter of Z-R-Z-C entered the United States without inspection prior to receiving TPS, the AAO determined, based on this "fiction," that her departure and return pursuant to § 304(c) of MTINA did not satisfy the inspected and admitted or paroled language of INA § 245(a). The AAO reached this conclusion despite the fact that the applicant was issued a Form I-512, her arrival document specifically refers to her parole status, and that the MTINA provision dictates that a TPS holder is "inspected and admitted" upon return from authorized travel abroad. The grant of parole by USCIS and the issuance of a parole stamp by U.S. Customs and Border Protection after the Applicant presented herself for inspection was summarily dismissed by the AAO as "simply a mechanism used . . . to effectuate a physical return into the United States. . . . In other words . . . it is as if the TPS recipient's immigration status never changed at all."

Recognizing that the decision in Matter of Z-R-Z-C was a significant deviation from past practice and that the applicant had reasonably relied upon prior policy, the AAO declined to apply this new policy to her application and approved her application for adjustment of status.

Matter of Z-R-Z-C is a Results-Oriented Decision that Distorts Both Facts and Law to Reach a Predetermined Result

The adoption of Matter of Z-R-Z-C- on August 20, 2020 is an arbitrary decision by the prior administration that dramatically changes the understanding of parole, the previous understanding

[2] Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), § 304(c), Pub. L. No. 102-232, 105 Stat. at 1749 (amending section 244 of the Act, Note 3).
MTINA §304(c), Pub. L. No. 102-232, 105 Stat. at 1749.

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of which has been in place and accepted by USCIS and practitioners for decades.[3] Indeed, USCIS acknowledges that this understanding has long been in place by specifying that this change is forward-looking only.[4] Accordingly, those who had adjusted status through this provision will not lose their permanent resident status and those who traveled on advance parole prior to the date of the decision may continue to be eligible to adjust status *because* USCIS understands this new policy is a significant departure from established practice.

One of the arguments made for this dramatic departure is that Congress did not intend for TPS-authorized travel to be treated the same as other travel on advance parole because the term "parole" is not stated in INA §244(f)(3). However, there is no existing procedure available to allow a person to travel other than pursuant to advance parole, with entry under INA §212(d)(5). Indeed, TPS regulations specifically state that "permission to travel may be granted by the director ***pursuant to the Service's advance parole provisions***."[5] Given that Congress clearly intended for TPS recipients to be able to travel, and the only legally appropriate way to do so is through advance parole, to state that their advance parole document and entry is somehow not an advance parole document and entry is inconsistent with both the facts and the statute and contradicts the agency's own regulations.[6]

MTINA's use of the same language as the statute authorizing adjustment of status further illustrates Congress's intention that TPS recipients who return to the United States on advance parole should be allowed to adjust status. Section 304(c)(1)(A) of the MTINA states that when a TPS recipient returns from travel abroad, they "shall be inspected and admitted…" The statute allowing for adjustment of status uses the exact same language – "The status of an alien who was *inspected and admitted* or paroled…may be adjusted by the Attorney General."[7] As a canon of statutory construction, the Supreme Court has long-used the "presumption that equivalent words have equivalent meaning when repeated in the same statute."[8] This canon is of particular resonance when applied to immigration provisions, where the phrase "inspected and admitted" serves as a term of art with significant legal implications. Given the highly technical and specific nature of the term "inspected and admitted" in immigration law, it is implausible that Congress would not

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[3] https://www.uscis.gov/news/news-releases/uscis-adopts-aao-decision-on-tps-and-authorized-travel; *see also* https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/adjustment_of_status_for_tps_holders_after_matter_of_z-r-z-c-.pdf, at 3.

[4] *See* https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-2#footnotelink-85 ("Such lawful permanent residents, when applying for naturalization, may not be denied based on INA 318 grounds for being adjusted under past practice or prior guidance.").

[5] *See* 8 CFR §244.15(a), ***emphasis added***.

[6] Additionally, in designating El Salvador for Temporary Protected Status in 1990, Congress specifically authorized the Attorney General to provide for the "advance parole" of a noncitizen who needed to depart the United States due to an emergency. *See* 104 Stat. 5037 § 303(c)(4) ("In applying section 244(f)(3) of the Immigration and Nationality Act under this section, *the Attorney General shall provide for* ***advance parole*** *in the case of an alien provided special temporary protected status under this section* if the alien establishes to the satisfaction of the Attorney General that emergency and extenuating circumstances beyond the control of the alien requires the alien to depart for a brief, temporary trip abroad.") (emphasis added).

[7] *See* INA § 245(a) (emphasis added).

[8] *Gomez v. De La Cruz*, 523 U.S. 213, 220 (1998) (citing, *e.g., Ratzlaf v. United States*, 510 U.S. 135, 143 (1994)); *see also Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (reading the same term used in different parts of the same act to have the same meaning).

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have used the same term of art in the same body of law if it did not intend for those terms to carry the same meaning.[9]

Furthermore, Matter of Z-R-Z-C-, citing to the MTINA, states that TPS beneficiaries who travel on advance parole return to the United States. in the same status they were in prior to departure and uses this ambiguous language to justify the change in policy. It is noteworthy, however, that MTINA specifically states that a TPS recipient who returns pursuant to advance parole is "inspected and admitted" in the same status. In 1992, INS General Counsel incorrectly interpreted MTINA to mean that TPS recipients should not be paroled into the United States unless previously paroled in. However, this opinion contradicted previous General Counsel opinions pertaining to TPS based travel and was never implemented until, decades later, in Matter of Z-R-Z-C. It should also be noted that, MTINA has been interpreted consistently with the implementation of DHS-authorized travel for TPS recipients over the last three decades.

It is possible for a person to be paroled into the United States and still have the same status as before departure as "status" and "entry" are different concepts.[10] A person with TPS may return to the same status, i.e. TPS, after having been inspected and admitted or paroled. MTINA does not state and cannot be reasonably interpreted to state that a TPS recipient paroled into the U.S. after travel abroad will return to their "status" as having entered without inspection.[11] Fundamentally, this is because entry without inspection is not a status.[12] Throughout the Immigration and Nationality Act (INA) and its implementing regulations, "status" refers to one's legal standing in the United States (e.g., TPS, Student, Legal Permanent Resident, etc.) not their means of entry.[13] Indeed, a more realistic interpretation of the law is that MTINA actually seems to be clarifying that the recipient returns to their existing TPS status *unless* they are excludable for non-waivable grounds.[14] This is supported by the same section clarifying that such travel does not break the continuous presence requirement for TPS.

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[9] *See FAA v. Cooper*, 566 U.S. 284, 291-92 (2012) ("[I]t is a 'cardinal rule of statutory construction' that, when Congress employs a term of art, 'it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken[.]'") (quoting *Molzof v. United States*, 502 U.S. 301, 307 (1992)).

[10] *See Gomez v. Lynch*, 831 F.3d 652, 658 (5th Cir. 2016) (describing "admission" and "status" as "fundamentally distinct concepts"); *Hanif v. Att'y Gen.*, 694 F.3d 479, 485 (3d Cir. 2012) (distinguishing entry and admission, which denote an "event or action," with the concept of "status").

[11] Matter of Z-R-Z-C- cites to a 1993 INS General Counsel opinion in support of this. It states that because the General Counsel found that a TPS recipient who is subject to a final order would continue to be subject to a final order, this supports the idea that a person who entered without inspection would continue to be a person who entered without inspection. However, these are two wildly different situations. The 1993 Opinion finds that departure on parole does not effectuate the final order and the person, upon return, is still subject to that final order. It does not speak to the recipient's entry itself or the viability of that entry for INA §245(a).

[12] *See Gomez*, 831 F.3d at 658 ("[T]here are no fine-grained distinctions between and among various forms of unlawful status, so there is no status of 'present without admission' to which [the petitioner] could return.").

[13] For example, a person may enter with a fraudulent visa. Their status is not that of the fraudulent visa; however, they were still inspected and admitted.

[14] INA §244A(c)(2)(A)(iii), referencing criminal, drug, or national security grounds.

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Request for Rescission

Matter of Z-R-Z-C relies upon a legally contorted and unsupportable interpretation of both MTINA and the plain language of INA § 245(a). It is also a substantial deviation from longstanding policy and practice. For these reasons, it would not be inconsistent with MTINA, nor would it require any additional changes to current regulations or procedures, to overturn Matter of Z-R-Z-C.

Accordingly, we respectfully request that USCIS rescind the policy memorandum dated August 20, 2020, adopting Matter of Z-R-Z-C-. This action will restore a commonsense interpretation of the law as it relates to travel by TPS recipients and reinstate a viable pathway for otherwise eligible and deserving TPS holders to regularize their status.

If you would like to discuss this further, please feel free to contact Sharvari (Shev) Dalal-Dheini, Director of Government Relations at sdalal-dheini@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: Ms. Ur Jaddou, Director
Ms. Ashley Tabbador, Chief Counsel
Ms. Amanda Baran, Chief of Office of Policy and Strategy
Ms. Phyllis Coven, Ombudsman

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