PART III:
WRITING EXERCISE

This Section Contains:

- *Ramirez* (8 pages)
- *Sanchez* (Main Case) (8 pages)
- *Serrano* (4 pages)
- 8 U.S.C.A. § 1254a (for reference use **ONLY**) (10 pages)
- 8 U.S.C.A. § 1255 (for reference use **ONLY**) (9 pages)

Note—The statutes are attached for reference and familiarity with the law discussed in the cases. **DO NOT ANALYZE THE STATUTES**. Instead, use them, **IF NEEDED**, to fully understand the cases in order to make your legal argument.

Note—Make sure your packet is complete, and Part III (including this page) contains **40 pages.**

PLEASE BE SURE TO REVIEW ALL PART III DIRECTIONS IN THE INSTRUCTIONS PACKET BEFORE YOU BEGIN THE ASSIGNMENT

852 F.3d 954
United States Court of Appeals, Ninth Circuit.

Jesus RAMIREZ; Barbara Lopez, Plaintiffs–Appellees,

v.

Micah BROWN, Acting Field Office Director, USCIS Seattle Field Office; Lori Scialabba, Acting Director, USCIS; John F. Kelly, DHS Secretary; Jefferson B. Sessions III, Attorney General, United States Attorney General, Defendants–Appellants.

No. 14–35633
|
Argued and Submitted December 6, 2016 Seattle, Washington
|
Filed March 31, 2017

OPINION

McKEOWN, Circuit Judge:

This appeal presents a question of statutory interpretation about the interplay between two subsections of the immigration code—one involving designation of Temporary Protected Status ("TPS") and the other involving adjustment of status. The Attorney General may grant TPS to an alien who cannot safely return home to a war-torn or disaster-ridden country. During the pendency of the TPS designation, the U.S. government may not send the alien back to the unsafe country.

Jesus Ramirez, who came to the United States from El Salvador in 1999, was ***956** granted TPS in 2001 and has remained in that status to the present day. In 2012, he married Barbara Lopez, a U.S. citizen, and the couple sought lawful permanent resident status for Ramirez. Although they were unsuccessful before U.S. Citizenship and Immigration Services ("USCIS"), they prevailed in a lawsuit filed in district court.

The parties dispute whether being a TPS designee provides a pathway for Ramirez to obtain lawful permanent resident status under the adjustment statute. We hold that it does: under 8 U.S.C. § 1254a(f)(4), an alien afforded TPS is deemed to be in lawful status as a nonimmigrant—and has thereby satisfied the requirements for becoming a nonimmigrant, including inspection and admission—for purposes of adjustment of status under § 1255.

Background

I. Statutory Regime

Two statutory provisions are at the heart of this appeal. The first relates to TPS, a status that the Attorney General may grant to aliens that prevents their removal from the United States while dangerous conditions persist in their home country. *See* 8 U.S.C. § 1254a(a)(1)(A), (b)(1). The second provision governs an alien's ability to adjust to lawful permanent resident status. *See id.* § 1255(a). We offer a general description of the mechanics of the TPS statute and then address where the rubber meets the road in this appeal—the intersection of the TPS and adjustment statutes.

TPS first requires a designation. When the Attorney General determines that a foreign state (or any part of a foreign state) faces an ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions that prevent aliens from returning safely, the Attorney General may designate that state (or part of the state) for TPS and grant TPS to an alien who is a national of that state. *Id.* § 1254a(a)(1)(A), (b)(1). The Attorney General sets the initial duration of the designation, which may be extended following periodic review. *See id.* § 1254a(b)(2)–(3). An alien desiring TPS requests such status by submitting an application—including detailed information about identity, residence, and admissibility—to USCIS, which considers the application. *See* 8 C.F.R. §§ 244.2, 244.7, 244.10(b). To maintain TPS, aliens must periodically re-register. *See* 8 U.S.C. § 1254a(c)(3)(C); 8 C.F.R. § 244.17(a).

An alien granted TPS receives two primary benefits during the period in which TPS is in effect: he is not subject to removal and he is authorized to work in the United States (and supplied with the relevant accompanying documentation). 8 U.S.C. § 1254a(a)(1)–(2). The grant of TPS has other consequences. For example, the TPS beneficiary is not "considered to be permanently residing in the United States under color of law" and "may be deemed ineligible for public assistance by a State ... or any political subdivision thereof which furnishes such assistance." *Id.* § 1254a(f)(1)–(2). If the beneficiary wishes to travel abroad, he must seek and obtain the prior consent of the Attorney General. *Id.* § 1254a(f)(3). The consequence pertinent to this appeal is that "for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, *the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant*." *Id.* § 1254a(f)(4) (emphasis added).

The interpretive challenge is figuring out the extent to which the just-quoted language affects a TPS beneficiary's ability to adjust to lawful permanent resident status. Section 1255(a)—the first subsection of the adjustment statute—permits the Attorney ***957** General to adjust "[t]he status of an alien who was inspected and admitted or paroled into the United States." *Id.* § 1255(a). In addition, some aliens are statutorily ineligible to adjust their status. Section 1255(c) lists multiple categories of aliens to whom "subsection (a) shall not be applicable." *Id.* § 1255(c). One such bar under § 1255(c)(2) applies to an alien, other than an immediate relative or special immigrant defined under the statute, "who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed ... to maintain continuously a lawful status since entry into the United States." *Id.* § 1255(c)(2). Reading the TPS and adjustment statutes together, the question we confront is whether the grant of TPS allows an alien not only to avoid the bar under § 1255(c)(2) but also to meet the "inspected and admitted or paroled" requirement in § 1255(a). We conclude that it does and affirm the district court.

II. Factual and Procedural History

The parties agree on the essential background facts. Ramirez is a native and citizen of El Salvador who entered the United States on May 30, 1999, without being inspected and admitted or paroled by an immigration officer. In 2001, the Attorney General designated El Salvador under the TPS program after the country suffered a series of earthquakes. *See* Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214–01 (Mar. 9, 2001). With his home country designated, Ramirez applied for and received TPS. Since then, the Attorney General has continually redesignated El Salvador, *see* Extension of the Designation of El Salvador

for Temporary Protected Status, 81 Fed. Reg. 44,645–03 (July 8, 2016), and Ramirez has kept his TPS registration up to date.

On July 21, 2012, Ramirez married Barbara Lopez, a U.S. citizen. She filed a Form I–130 "Petition for Alien Resident" on behalf of Ramirez, and Ramirez filed a Form I–485 application to adjust his status to that of a lawful permanent resident. USCIS approved Lopez's petition on April 16, 2013.

However, eight days later, on April 24, 2013, USCIS denied Ramirez's separate application. The agency explained that Ramirez was "ineligible as a matter of law to adjust status in the United States" because he had not shown that he was inspected and admitted or paroled at the time of his May 1999 entry into the United States nor that he was exempt from that requirement. Although USCIS recognized that, by virtue of the grant of TPS, Ramirez is "considered as if [he] was in a lawful non-immigrant status," it concluded that that treatment does not override the adjustment statute's general requirement to be inspected and admitted or paroled.

Ramirez and Lopez then filed suit in the Western District of Washington, bringing an action under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq*. The district court determined that USCIS's interpretation is incorrect as a matter of law because the TPS statute clearly provides that recipients count as being "inspected and admitted" for purposes of adjusting their status.

The court also noted that, though it need not defer to the agency's interpretation where the statute unambiguously answers the question at issue, the agency's non-precedential decisions do not deserve deference because they reach the wrong conclusion and do not thoroughly examine the question at issue. Finally, the court closed with the policy consideration that Ramirez has established a life in the United States and should not have to leave the country to seek admission. For these reasons, the district ***958** court ruled that Ramirez is entitled to summary judgment because he meets the requirements of § 1255(a) to adjust his status. We review this judgment de novo, *Protect Our Cmtys. Found. v. Jewell*, 825 F.3d 571, 578 (9th Cir. 2016), through the lens of the APA's "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" standard, 5 U.S.C. § 706(2)(A).

Analysis

Ramirez desires to adjust his status to that of a lawful permanent resident, a process governed by 8 U.S.C. § 1255. All parties agree that Ramirez must comply with the requirements of the first subsection, which provides that

> [t]he status of an alien who was inspected and admitted or paroled into the United States ... may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

Id. § 1255(a). Ramirez easily satisfies subsections (a)(1) and (a)(3) because he made an application for adjustment of status and an immigrant visa is immediately available through his American citizen wife. The prefatory language and subsection (a)(2) remain.

The prefatory language asks whether Ramirez "was inspected and admitted or paroled into the United States," but for our case the question can be slightly narrowed from there. No party contends that Ramirez was "paroled into the United States." The government also downplays or fails to make separate arguments about inspection, and Ramirez soundly argues that he has been "inspected" because TPS applicants undergo a rigorous inspection process by an immigration officer. Therefore, the action in this appeal centers on whether Ramirez has been "admitted" as that term is used in § 1255(a). Although the government separately contends that Ramirez flunks subsection (a)(2) because his May 1999 illegal entry renders him inadmissible, *see id.* § 1182(a)(6)(A)(i), the question whether Ramirez is "admissible" is bound up with

whether the grant of TPS to Ramirez means that he has been "admitted."

This takes us to the TPS statute. The operative provision, § 1254a(f)(4), states that TPS recipients "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" for purposes of adjustment of status. Under the familiar two-step framework for evaluating an agency's statutory interpretation, we first consider whether the statute is unambiguous. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

Employing the traditional canons of statutory construction at step one, we conclude that § 1254a(f)(4) unambiguously treats aliens with TPS as being "admitted" for purposes of adjusting status. Because the statutory language is clear, that ends the inquiry: the agency has no interpretive role to play but must instead follow the congressional mandate. *Chevron*, 467 U.S. at 842–43 & n.9, 104 S.Ct. 2778; *see I.N.S. v. Cardoza–Fonseca*, 480 U.S. 421, 446, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987).

It bears noting, however, that even if we were to proceed to step two because the statute is unclear on the "admitted" issue, the government has not identified any controlling agency interpretation to ***959** which we owe deference. *See Chevron*, 467 U.S. at 843–44, 104 S.Ct. 2778. The cited published decisions do not address the statutory interpretation question at issue here. *See In re Alyazji*, 25 I. & N. Dec. 397 (BIA 2011); *In re Sosa Ventura*, 25 I. & N. Dec. 391 (BIA 2010). The remaining decisions—variously issued by the Immigration and Naturalization Service General Counsel, Board of Immigration Appeals ("BIA"), and USCIS—are non-precedential, *see* 8 C.F.R. § 1003.1(d)(1), (g), so the deference owed depends on their persuasive value, *see Garcia v. Holder*, 659 F.3d 1261, 1266–67 (9th Cir. 2011). While the decisions stretch back to 1991, that consistency is strongly outweighed by a pervasive lack of thorough and valid reasoning, as the decisions often state a conclusory answer without taking into account the various statutory and other considerations at play. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944). Because the agency's interpretation does not warrant deference, we must decide the proper construction based on the text, structure, and purpose of the relevant provisions.

I. The Plain Statutory Language

The language of the TPS statute itself strongly points to the conclusion that Ramirez qualifies as "admitted" for adjusting his status. *See POM Wonderful LLC v. Coca–Cola Co.*, —— U.S. ——, 134 S.Ct. 2228, 2236, 189 L.Ed.2d 141 (2014) (noting the primacy of the text in statutory interpretation). In particular, § 1254a(f)(4) broadly states that "[d]uring a period in which an alien is granted temporary protected status under this section[,] for purposes of adjustment of status under section 1255 of this title ..., the alien shall be considered as being in, and maintaining, *lawful status as a nonimmigrant*." (Emphasis added.) The language explicitly refers to the adjustment statute, § 1255, and confers the status of lawful nonimmigrant on TPS recipients when looking at adjusting their status.

The Sixth Circuit, squarely addressing the same interpretive issue, concluded that that text is clear. *Flores v. U.S. Citizenship & Immigration Servs.*, 718 F.3d 548, 551–53 (6th Cir. 2013). The court explained that "exactly what § 1254a(f)(4) provides [is that a TPS recipient] is considered [as] being in lawful nonimmigrant status and thus meets the ['admitted'] requirement[ ] in § 1255." *Id.* at 554. Like the Sixth Circuit, "[w]e interpret the statute exactly as written—as allowing [a TPS recipient] to be considered as being in lawful status as a nonimmigrant for purposes of adjustment of status under § 1255." *Id.* at 553.

The Eleventh Circuit has taken a contrary position, holding that the statutes unambiguously point the other way: "[t]he plain language of § 1255(a) limits eligibility for status adjustment to an alien who has been inspected and admitted or paroled" and "[t]hat an alien with Temporary Protected Status has 'lawful status as a nonimmigrant' for purposes of adjusting his status does not change § 1255(a)'s threshold [eligibility] requirement." *Serrano v. U.S. Attorney Gen.*, 655 F.3d 1260, 1265 (11th Cir. 2011) (per curiam). While the Sixth Circuit in *Flores* and the district court here attempt to distinguish *Serrano* on the ground that the petitioner there did not disclose his illegal entry into the country in his TPS application, *see Serrano*, 655 F.3d at 1265 n.4, that factual difference has no bearing on the Eleventh Circuit's conclusion that § 1254a(f)(4) does not override § 1255(a)'s threshold "inspected and admitted" requirement. Nevertheless, for the reasons discussed below, we disagree with the Eleventh Circuit and ***960** decline to follow *Serrano*. [1]

[1] Significantly, the division in opinion between the Sixth and Eleventh Circuits on the plain meaning of the statutes does not establish ambiguity. On multiple occasions, the Supreme Court has held that a provision is unambiguous even when the circuits are split on the interpretive issue. *See, e.g.*, *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 132 S.Ct. 1702, 1706 & n.2, 1709–11, 182 L.Ed.2d 720 (2012) (holding that the term "individual" as used in the Torture Victim Protection Act unambiguously encompasses only natural persons notwithstanding disagreement among several circuits); *Roberts v. Sea–Land Servs., Inc.*, 566 U.S. 93, 99 & n.4, 113 & n.12, 132 S.Ct. 1350, 182 L.Ed.2d 341 (2012) (holding that § 906(c) of the Longshore and Harbor Workers' Compensation Act is unambiguous despite disagreement between the Fifth, Ninth, and Eleventh Circuits about its meaning).

Under the immigration laws, an alien who has obtained lawful status as a nonimmigrant has necessarily been "admitted." The statutory provisions refer to "[t]he *admission* to the United States of any alien as a *nonimmigrant*," though the duration and purpose of the alien's stay may be tightly circumscribed. 8 U.S.C. § 1184(a)(1) (emphases added); *see id.* §§ 1182(d)(1) ("alien's admission as a nonimmigrant"), 1184(g)(4) ("the period of authorized admission as such a nonimmigrant"), 1187(a)(7) ("the conditions of any previous admission as such a nonimmigrant"). Indeed, every alien "shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status." *Id.* § 1184(b). In other words, by the very nature of obtaining lawful nonimmigrant status, the alien goes through inspection and is deemed "admitted." *See also id.* § 1184(k)(3) ("the admission, and continued stay in lawful status, of such a nonimmigrant").

As the governing statutes and implementing regulations demonstrate, in practice, too, the application and approval process for securing TPS shares many of the main attributes of the usual "admission" process for nonimmigrants. Like an alien seeking nonimmigrant status, *see id.* § 1184(b); 8 C.F.R. §§ 212.1, 235.1(f)(1), an alien seeking TPS must establish that he meets the identity and citizenship requirements for that status, usually by submitting supporting documentation like a passport, *see* 8 U.S.C. § 1254a(a)(1), (c)(1)(A); 8 C.F.R. § 244.9(a). Similarly, an alien on either track must adequately demonstrate that he is eligible to be admitted to the United States, with the possibility that some grounds of inadmissibility may be waived in individual cases at the Attorney General's discretion. *Compare* 8 U.S.C. § 1182(a), (d)(11)–(12), (g)–(i); 8 C.F.R. §§ 212.7, 214.1(a)(3)(i), *with* 8 U.S.C. § 1254a(c)(1)(A)(iii), (c)(2)(A); 8 C.F.R. §§ 244.2(d), 244.3.

Once the request for nonimmigrant status or TPS has been submitted, the application is scrutinized for compliance—sometimes supplemented with an interview of the applicant—then approved or denied by USCIS. *Compare* 8 U.S.C. § 1184(a)(1), (b); 8 C.F.R. § 214.11(d)(6), *with* 8 U.S.C. § 1254a(a)(3)(A); 8 C.F.R. §§ 244.8, 244.10(b). That the TPS application is subject to a rigorous process comparable to any other admission process further confirms that an alien approved for TPS has been "admitted."[2]

[2] Even USCIS referred to Ramirez as being "admitted." Ironically, in its letter denying Ramirez's application to adjust his status, the agency remarked that Ramirez must keep his TPS current by "comply[ing] with all the conditions that apply to [his] nonimmigrant *admission*."

The government pushes back, urging that the statutory definition of "admitted" ***961** at 8 U.S.C. § 1101(a)(13)(A)—which requires something akin to passage into the United States at a designated port of entry—controls, but the awkwardness of the fit is telling and makes that definition inapplicable. The government itself concedes that the port-of-entry definition is not always appropriate by acknowledging and accepting the BIA's decisions which hold that aliens can be "admitted" even if they do not meet the definition in § 1101(a)(13)(A). *See, e.g.*, *In re Alyazji*, 25 I. & N. Dec. at 399 (holding that aliens who entered the United States without permission but who later adjusted to lawful permanent residents qualify as "admitted"). Although we have said that § 1101(a)(13)(A) provides the "primary, controlling definition" of "admitted," we similarly have "embrace[d] an alternative construction of the term" when the statutory context so dictates. *Negrete–Ramirez v. Holder*, 741 F.3d 1047, 1052 (9th Cir. 2014) (citation omitted) (surveying

situations where our court has held that the definition of "admitted" in § 1101(a)(13)(A) is inapplicable); *see also Roberts v. Holder*, 745 F.3d 928, 932 (8th Cir. 2014) (per curiam) ("The immigration statutes use the words 'admitted' and 'admission' inconsistently.").

Turning again to the plain language, the adjustment statute uses "admission" in a way that is inconsistent with the port-of-entry definition when it states that "the Attorney General shall record the alien's lawful admission for permanent residence" on the date the adjustment application is approved. *See* 8 U.S.C. § 1255(b). In the current context, the port-of-entry definition yields, and an alien granted TPS is considered "admitted."

II. Structure of the Statutory Regime

Other familiar interpretive guides reinforce the plain meaning understanding that TPS recipients are considered "admitted" under § 1255. Section 1255 is titled "Adjustment of status of nonimmigrant to that of person admitted for permanent residence." The heading is not without significance, as it uses language that directly links the adjustment statute to the TPS statute and § 1254a(f)(4)'s phrasing of "lawful status as a nonimmigrant." This language and structure signal that Congress contemplated that TPS recipients, via their treatment as lawful nonimmigrants, would be able to make use of § 1255. *See Almendarez–Torres v. United States*, 523 U.S. 224, 234, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998) (explaining that "the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute" (internal quotation marks and citation omitted)).

A related provision also links § 1254a(f)(4)'s use of "lawful status as a nonimmigrant" to the concept of being "admitted." Section 1254a(f)(4)'s mandate that TPS recipients "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" expressly applies "for purposes of ... change of status under section 1258 of this title." Section 1258(a) in turn provides that, subject to a number of exceptions, "[t]he Secretary of Homeland Security may ... authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status" and is not inadmissible. Tracking the language in the two provisions, § 1254a(f)(4) equates "being in ... lawful status as a nonimmigrant" with § 1258(a)'s "lawfully admitted ... as a nonimmigrant." This statutory mirroring is significant because § 1258 uses the word "admitted," thus supporting ***962** the interpretation that "being in ... lawful status as a nonimmigrant" qualifies Ramirez as being "admitted" for purposes of both statutory provisions—§§ 1255 and 1258—cited in § 1254a(f)(4).

The government would limit § 1254a(f)(4)'s effect to one subsection in § 1255—specifically, § 1255(c)(2)—because those two provisions both refer to being in "lawful status" rather than being "admitted." But we see multiple problems with the government's interpretation. For one, § 1254a(f)(4) does not point to one particular subsection of § 1255 but instead says that it applies "for purposes of adjustment of status under section 1255." We acknowledge that this statement of broad application does not answer all questions: it does not tell us which subsections § 1254a(f)(4) applies to, and § 1254a(f)(4)'s language clearly has no effect in some of § 1255's subsections. But the general reference to § 1255 cuts against the government's effort to confine the effect of § 1254a(f)(4) to one specific subsection in § 1255. Such an interpretation appears particularly crabbed when Congress easily could have written the statute to refer solely to subsection (c)(2) but chose not to do so.

The government's interpretation would also yield an anomalous result because § 1254a(f)(4) would not benefit immediate relatives of U.S. citizens seeking adjustment—like Ramirez—for no discernible reason. By its terms, § 1255(c)(2) does not apply to a U.S. citizen's immediate relatives—*i.e.*, children, spouses, and parents, 8 U.S.C. § 1151(b)(2)(A)(i).[3] Thus, if § 1254a(f)(4) were interpreted to apply only to § 1255(c)(2), as the government says, § 1254a(f)(4) would be meaningless for adjustment seekers who are immediate relatives of U.S. citizens. Such an interpretation would rob the statute of much force: in the government's brief, the only groups that it pinpoints that would benefit from § 1254a(f)(4)'s elimination of the (c)(2) bar are applicants seeking adjustment based on employment-based visas and applicants seeking adjustment based on relatives other than spouses, children, and parents.[4] Restricting § 1254a(f)(4) in this way seems especially peculiar in the face of § 1254a(f)(4)'s indication that it benefits all TPS grantees and the government's failure to offer any explanation or clear language indicating that Congress meant for such a limited

operation. These textual and practical incongruities suffice to reject the government's construction, particularly because the language in §§ 1254a(f)(4) and 1255(c)(2) does not line up exactly.

3 Not only does § 1255(c)(2) exclude immediate relatives from its coverage, but it also does not apply to certain special immigrants defined in § 1101(a)(27)(H), (I), (J), (K), or to various aliens classified as priority workers, advanced-degree professionals, or skilled workers under § 1151(b) if they meet the conditions specified in § 1255(k)(1)–(2). While we think the exclusion of immediate relatives is most striking, the fact that other large swaths of potential beneficiaries already fall outside the (c)(2) bar further bolsters our conclusion that the government does not leave § 1254a(f)(4) to do much work.

4 At oral argument, the parties also acknowledged that aliens present on a tourist or student visa could qualify. *See* Oral Argument at 33:30–34:20, *Ramirez v. Dougherty*, No. 14–35633 (9th Cir. Dec. 6, 2016), http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000010663.

Nor are we persuaded by the government's identification of other provisions that it says provide more precise exceptions for particular groups of aliens to § 1255(a)'s "admitted" requirement. For example, § 1255(a) itself removes the "inspected and admitted or paroled" requirement for applicants covered by the Violence Against Women Act ("VAWA"), stating that "the status of any other alien ***963** having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General." Similarly, § 1255(g) explains that "[i]n applying this section to a special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States." But these exceptions do not bear on the remaining language in § 1255 or the TPS statute, and, regardless, they were added to the code after the enactment of § 1255(a)'s "admitted" requirement and the TPS statute. *See* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. No. 109–271, 120 Stat. 750 (2006) (adding VAWA exception language); Armed Forces Immigration Adjustment Act of 1991, Pub. L. No. 102–110, 105 Stat. 555 (adding § 1255(g)); Immigration Act of 1990, Pub. L. No. 101–649, 104 Stat. 4978 (enacting TPS statute). Even if those exceptions are formulated more precisely, there is no requirement that Congress draft an elegant statute. We can certainly identify good reasons why Congress may have written the statute the way it did; in addition to pure administrative ease, Congress may have wanted to vary the scope of the exceptions for different groups.

In general, the TPS statute places great—though not unfettered—discretion into the hands of the Attorney General to make specific determinations about an individual alien's fitness to enter the country. Indeed, while the requirements related to certain criminals and former Nazis may not be waived, *see* 8 U.S.C. § 1254a(c)(2)(A)(iii), the Attorney General may waive other grounds of inadmissibility "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest," *id.* § 1254a(c)(2)(A)(ii). The statute thus contemplates and confers the power to vet each applicant thoroughly and make delicate judgments on a particularized basis about whether the alien should be "admitted" into the United States.

III. Allowing Adjustment of Status Is Consistent with the Purpose of the TPS Statute

Finally, we note that interpreting § 1254a(f)(4) to confer a limited "admission" on TPS recipients is consistent with the purpose of TPS. *See Kokoszka v. Belford*, 417 U.S. 642, 650, 94 S.Ct. 2431, 41 L.Ed.2d 374 (1974) (stating that statutory interpretation involves looking at a provision in the context of the entire scheme, including the "objects and policy of the law"). The TPS regime provides a limited, temporary form of relief for the period that conditions render an alien's return unsafe by creating a safe harbor and authorizing recipients to work in the United States to support themselves for the duration of their stay. *See, e.g.*, 8 U.S.C. § 1254a(b), (e), (f)(1), (h)(1). Allowing TPS recipients to adjust their status comfortably fits within that purpose.

Because TPS confers an actual status on and provides a slew of benefits to an alien who satisfies rigorous eligibility requirements, it is different than other forms of temporary reprieve we ordinarily would not consider sufficient for "admission." This designation puts an alien granted TPS in a different position than an alien granted employment authorization or approval of a visa petition, forms of relief

that our court has ruled do not, by themselves, constitute an "admission." *See Guevara v. Holder*, 649 F.3d 1086, 1093–94 (9th Cir. 2011); *Vasquez de Alcantar v. Holder*, 645 F.3d 1097, 1105–06 (9th Cir. 2011).

***964** And the government's interpretation is inconsistent with the TPS statute's purpose because its interpretation completely ignores that TPS recipients are allowed to stay in the United States pursuant to that status and instead subjects them to a Rube Goldberg-like procedure under a different statute in order to become "admitted." According to the government, an alien in Ramirez's position who wishes to adjust his status would first need to apply for and obtain a waiver of his unlawful presence, which he could pursue from within the United States. *See* Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 Fed. Reg. 536–01, 536 (Jan. 3, 2013). Assuming that Ramirez demonstrates "extreme hardship" to his U.S. citizen wife and the waiver is granted, *see* 8 U.S.C. § 1182(a)(9)(B)(v), he would then need to exit the United States to seek an immigrant visa through processing at a U.S. embassy or consulate in another country. Such processing usually takes place in the alien's home country—in this case, the country that the Attorney General has deemed unsafe—though it can occur in another country with approval from the Department of State and the third country. *See* 22 C.F.R. § 42.61(a). If he obtains the visa, Ramirez could then return to the United States to request admission as a lawful permanent resident. To be sure, other nonimmigrants must leave the country to adjust their status, *see* 8 U.S.C. § 1255(i), but the invocation of these procedures in other circumstances does not undercut the clear language of the TPS statute on the "admitted" issue, and the convoluted nature of the government's proposal underscores its unnatural fit with the overall statutory structure.

In short, § 1254a(f)(4) provides that a TPS recipient is considered "inspected and admitted" under § 1255(a). Accordingly, under §§ 1254a(f)(4) and 1255, Ramirez, who has been granted TPS, is eligible for adjustment of status because he also meets the other requirements set forth in § 1255(a). USCIS's decision to deny Ramirez's application on the ground that he was not "admitted" was legally flawed, and the district court properly granted summary judgment to Ramirez and remanded the case to USCIS for further proceedings.

AFFIRMED.

967 F.3d 242
United States Court of Appeals, Third Circuit.

Jose Santos SANCHEZ; Sonia Gonzalez
v.
SECRETARY UNITED STATES DEPARTMENT OF HOMELAND SECURITY; Director United States Citizenship and Immigration Services; Director United States Citizenship and Immigration Services Nebraska Service Center; District Director United States Citizenship and Immigration Services Newark, Appellants

No. 19-1311
|
Argued January 15, 2020
|
(Filed: July 22, 2020)

OPINION OF THE COURT

HARDIMAN, Circuit Judge.

***244** This appeal presents a question of statutory interpretation involving adjacent subsections of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*: Does the conferral of Temporary Protected Status (TPS) under § 1254a constitute an "admission" into the United States under § 1255? We hold it does not.

I

Jose Sanchez and Sonia Gonzalez (Plaintiffs or Appellees) are husband and wife and citizens of El Salvador. They entered the United States without inspection or admission in 1997 and again in 1998. Following a series of earthquakes in El Salvador in 2001, Plaintiffs applied for and received

TPS. Over the next several years, the Attorney General [1] periodically extended TPS eligibility for El Salvadoran nationals, which enabled Plaintiffs to remain in the United States.

[1] Although §§ 1254a and 1255 reference the Attorney General's authority and discretion in managing the TPS program, this authority now belongs to the Secretary of the Department of Homeland Security. *See Mejia Rodriguez v. U.S. Dep't of Homeland Sec.*, 562 F.3d 1137, 1140 n.3 (11th Cir. 2009) (citing 8 U.S.C. § 1103(a) & 8 C.F.R. § 244.2).

In 2014, Plaintiffs applied to become lawful permanent residents under § 1255. The United States Citizenship and Immigration Services (USCIS) denied their applications, explaining that Sanchez was "statutorily ineligible" for adjustment of status because he had not been admitted into the United States. And USCIS denied Gonzalez's application because it depended on the success of Sanchez's application.

Plaintiffs challenged that decision in the United States District Court for the District of New Jersey, arguing Sanchez was "admitted" into the United States when he received TPS. *Sanchez v. Johnson*, 2018 WL 6427894, at *4 (D.N.J. 2018). The District Court granted Plaintiffs summary judgment, holding a grant of TPS meets § 1255(a)'s requirement that an alien must be "inspected and admitted or paroled" to be eligible for adjustment of status. *Id.* at *5–6. The Court reasoned that being considered in "lawful status" is "wholly consistent with being considered as though Plaintiffs had been 'inspected and admitted' under § 1255." *Id.* at *4. The Government filed this timely appeal. [2]

[2] The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291. We review the summary judgment de novo, applying the same standard as the District Court. *Fraternal Order of Police, Lodge 1 v. City of Camden*, 842 F.3d 231, 238 (3d Cir. 2016). Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). There is no genuine dispute over any material fact, so we review only the District Court's legal interpretation of §§ 1254a and 1255.

II

TPS shields foreign nationals present in the United States from removal during ***245** armed conflict, environmental disasters, or other extraordinary conditions in their homelands. 8 U.S.C. § 1254a(b)(1). Once TPS is granted, "*the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant*" for adjustment-of-status purposes under § 1255. 8 U.S.C. § 1254a(f)(4) (emphasis added).

Section 1255(a) permits certain aliens present in the United States (including some who received TPS) to adjust their status. It provides:

> The status of an alien *who was inspected and admitted or paroled* into the United States ... may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence.

8 U.S.C. § 1255(a) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

As relevant here, an applicant is ineligible for adjustment of status under § 1255 if he "has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States." 8 U.S.C. § 1255(c)(2). An applicant may nevertheless seek adjustment of status despite that bar if "the alien, on the date of filing an application for adjustment of status, is present in the United States *pursuant to a lawful admission*." 8 U.S.C. § 1255(k)(1) (emphasis added).

III

Appellees claim they are eligible for adjustment of status because they were admitted when they received TPS. We disagree because their interpretation of §§ 1254a and 1255 is inconsistent with the text, context, structure, and purpose of those sections.

A

The text of §§ 1254a and 1255 supports our determination that a grant of TPS does not constitute an admission.

The Government argues the District Court erred when it held that "being in, and maintaining, lawful status as a nonimmigrant" includes being "inspected and admitted or paroled" as required by § 1255(a). According to the Government, "lawful status" does not qualify as an "admission" because the concepts are distinct. Appellees agree that these terms have distinct meanings, so they do not argue that "being in any lawful status is equivalent to an admission." Sanchez Br. 8. Instead, they insist "that the process of obtaining TPS constitutes an admission, akin to an alien who is considered admitted after an adjustment of status." *Id.* (citing *In re Espinosa Guillot*, 25 I. & N. Dec. 653, 654 (BIA 2011) ("An adjustment of status generally constitutes an admission.")). Appellees contend "[a]n individual's original entry is irrelevant because the subsequent grant of TPS ... provides the 'lawful entry' referred to in § 1101(a)(13)." *Id.* at 15. And they emphasize that obtaining nonimmigrant status requires the admission of the alien, so the government admits TPS recipients by treating them as being in lawful nonimmigrant status under § 1254a(f)(4).

The Government's position is more consistent with the text of §§ 1254a and 1255. The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). We have interpreted "admission" in § 1255(b) in accordance with that statutory definition. ***246** *Hanif v. Att'y Gen.*, 694 F.3d 479, 485 (3d Cir. 2012). And although "lawful status" is not defined in the INA, we have drawn a clear line between "admission" and "status," saying "[t]he date of gaining a new status is not the same as the date of the physical event of entering the country." *Id.*; *See also Taveras v. Att'y Gen.*, 731 F.3d 281, 290 (3d Cir. 2013) ("The words 'entry' and 'into' plainly indicate that 'admission' involves physical entrance into the country, which is inapposite to adjustment of status in removal proceedings, a procedure that is structured to take place entirely within the United States."). Nothing in §§ 1254a or 1255 suggests we should interpret these terms differently now. [3]

3 The Fifth Circuit also has recognized the distinction between admission and status:

> Admission and status are fundamentally distinct concepts. Admission is an occurrence, defined in wholly factual and procedural terms: An individual who presents himself at an immigration checkpoint, undergoes a procedurally regular inspection, and is given permission to enter has been admitted, regardless of whether he had any underlying legal right to do so. Status, by contrast, usually describes the type of permission to be present in the United States that an individual has.

Gomez v. Lynch, 831 F.3d 652, 658 (5th Cir. 2016) (citations omitted).

Appellees principally argue that "[b]y the very nature of obtaining lawful nonimmigrant status, the alien goes through inspection and is deemed admitted." Sanchez Br. 8 (quoting *Ramirez v. Brown*, 852 F.3d 954, 960 (9th Cir. 2017) (internal quotation marks omitted)). This assertion is unpersuasive for at least three reasons.

First, the text of § 1254a does not mention that a grant of TPS is (or should be considered) an inspection and admission. Second, a grant of TPS cannot be an "admission" because § 1254a requires an alien to be present in the United States to be eligible for TPS. Consistent with that fact, we have recognized that TPS is not "a program of entry for an alien." *De Leon-Ochoa v. Att'y Gen.*, 622 F.3d 341, 353–54 (3d Cir. 2010). Third, although Appellees are correct that admission often accompanies a grant of lawful status, it does not follow that a grant of lawful status *is* an admission. For example, "a grant of asylum places the individual in valid immigration status but is not an 'admission.' " *In re H-G-G-*, 27 I. & N. Dec. 617, 635 (AAO 2019) (citing *In re V-X-*, 26 I. & N. Dec. 147 (BIA 2013)). "And a grant of benefits under the Family Unity Program confers a 'status' for immigration purposes,

but does not constitute an 'admission.' " *Id.* (quoting *In re Fajardo Espinoza*, 26 I. & N. Dec. 603, 605 (BIA 2015)). [4]

[4] Although we owe no deference to the agency's interpretation of these statutes, the Immigration and Naturalization Service (INS) General Counsel issued an opinion just one year after Congress enacted the TPS statute endorsing the Government's view. *Temporary Protected Status and Eligibility for Adjustment of Status under Section [1255]*, INS Gen. Counsel Op. No. 91-27, 1991 WL 1185138 (Mar. 4, 1991) (1991 Opinion), *incorporated at* 7 USCIS Policy Manual B.2(A)(5), https://www.uscis.gov/policymanual (advising that a grant of TPS should not be construed as an admission into the United States). And when the INS promulgated regulations later that year, it declined to adopt a proposal that would have allowed TPS recipients to adjust their status no matter how they entered the United States. *See In re H-G-G-*, 27 I. & N. Dec. at 621. These agency actions suggest § 1254a(f)(4) was not understood to supersede § 1255(a)'s admission requirement.

B

The statutory context and structure also support our holding that a grant of TPS does not constitute an admission.

Congress created an exception to the admission requirement for some aliens but did not do so for TPS recipients. Instead, it said that an alien with TPS "shall ***247** be considered as being in, and maintaining, lawful status as a nonimmigrant." 8 U.S.C. § 1254a(f)(4). It did not say the alien would also be considered "inspected and admitted or paroled," which is the first requirement for adjustment of status under § 1255(a). But Congress did provide an exception to the "inspected and admitted or paroled" requirement for "special immigrants" described by § 1101(a)(27)(J) and aliens eligible for a visa. *See* 8 U.S.C. § 1255(h), (i). Unlike special immigrants and aliens eligible for a visa, TPS recipients were not excepted from the admission requirement because "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 432, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987) (internal citation and quotation marks omitted).

The interpretation Appellees propose also risks rendering part of § 1254a superfluous. Section 1254a(h) enables Congress to pass special legislation adjusting the status of aliens receiving TPS only by a supermajority of the Senate. 8 U.S.C. § 1254a(h)(2). Reading § 1254a(f)(4) to place aliens effectively in lawful status and to satisfy § 1255's threshold requirement would pave a clear path to status adjustment for TPS recipients in derogation of § 1254a(h)(2)'s supermajority requirement. We doubt Congress intended that. *See Hibbs v. Winn*, 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.") (internal quotation marks and citation omitted).

Other subsections in § 1255 refer to admission and lawful status as distinct concepts, further highlighting the independent significance of both. For example, § 1255(k) says an alien is eligible for adjustment of status if "subsequent to such lawful *admission* [the alien] has not ... failed to maintain, continuously, a lawful *status*." 8 U.S.C. § 1255(k)(2)(A) (emphasis added). And § 1255(m)(1) provides: "The Secretary of Homeland Security may adjust the *status* of an alien *admitted* into the United States (or otherwise provided nonimmigrant status)." 8 U.S.C. § 1255(m)(1) (emphasis added).

Beyond the textual differences between the sections, the structure of § 1255 also supports our opinion that §§ 1254a(f)(4) and 1255(a) refer to different requirements. If being considered in lawful nonimmigrant status was the same as being inspected and admitted or paroled, there would be no need for § 1255 to list inspection and admission or parole as a threshold requirement in § 1255(a) and failure to maintain lawful status as a bar to eligibility for adjustment of status in § 1255(c)(2). Under Appellees' theory, anyone who is considered in lawful status would be able to satisfy § 1255(a)'s admission requirement, thus rendering the two provisions superfluous.

C

Finally, Appellees' interpretation would undermine the purpose of the TPS statute. As we have held, "[b]y the terms of the statute, the TPS program was designed to shield aliens already in the country from removal when a natural disaster or similar occurrence has rendered removal unsafe." *De Leon-Ochoa*, 622 F.3d at 353. As its name suggests, this protection is meant to be temporary. Treating a grant of TPS as an admission would open the door to more permanent status adjustments that Congress did not intend.

***248** IV

The District Court did not read the INA in the manner we just described. Instead, it cited *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013), and *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017), to support its conclusion that a grant of TPS constitutes an admission. We respectfully disagree with those opinions.

A

The petitioner in *Flores*, Saady Suazo, entered the United States without inspection or admission in 1998. 718 F.3d at 550. The Attorney General granted Suazo TPS in 1999 and he remained in the United States for the next fifteen years. *Id.* at 549–50. After marrying an American citizen, Suazo sought adjustment of status through an "Immediate Relative Petition." *Id.* at 550. The USCIS denied his petition because he entered the United States without inspection. *Id.* Suazo was also unsuccessful in the district court, which held the plain language of § 1255 "precludes a TPS beneficiary who was not initially 'inspected and admitted or paroled' into the United States ... from adjusting his status." *Id.* at 550–51.

On appeal, Suazo argued the plain language of § 1255 "shows that Congress's clear intent was that a TPS beneficiary is afforded with a pathway to [Lawful Permanent Resident] status." *Id.* at 552. Although he conceded that an alien must be "admitted" to be eligible for adjustment of status, Suazo argued "TPS beneficiaries are afforded with an exception under the TPS statute which operates as an inadmissibility waiver." *Id.* The Sixth Circuit agreed, holding the text of §§ 1254a and 1255 suggests TPS functions as an inspection and admission for aliens who entered the country illegally. *Id.* at 551–54.

In so holding, the Sixth Circuit purported to follow the plain language of §§ 1254a and 1255. *Id.* at 553. It reasoned that to have lawful status as a nonimmigrant under § 1255, an alien must also be considered admitted. *Id.* It took § 1254a(f)(4)'s statement about status and applied it to all of § 1255, including the admission requirement. *Id.* The court also considered "the statutory scheme as a whole." *Id.* It noted that although the Attorney General has discretion to waive certain grounds of inadmissibility for groups of aliens, § 1254a also explicitly limits the Attorney General's discretion as to particular groups. *Id.* TPS recipients are not included in the groups of aliens prohibited from discretionary relief, so the court reasoned that "Congress did not intend to strip the Attorney General of discretion to waive admissibility requirements for all TPS beneficiaries." *Id.* at 554. Moreover, the court took TPS recipients' absence from a list of "[c]lasses of aliens ineligible for visas or admission" as further proof that they are eligible for adjustment of status, regardless of whether they were admitted when they entered the United States. *Id.* (quoting 8 U.S.C. § 1182) (alteration in original).

The *Flores* court also relied on "Congress's apparent intent" to conclude that, because "a TPS beneficiary is a member of a class of people that Congress chose to protect," courts should read § 1254a(f)(4) as satisfying § 1255's admission requirement. *Id.* And finally, the court considered policy considerations, saying "[the petitioner] seems to be the exact type of person that Congress would have in mind to allow adjustment of status," *id.* at 555, and it was "disturbed by the Government's incessant and injudicious opposition in cases like this," *id.* at 556.

We disagree with the Sixth Circuit's interpretation for three reasons.

***249** *First*, the court concluded § 1254a(f)(4) should be read as satisfying all of § 1255's requirements. *Id.* at 553. But that conflates "lawful status" with "admission." Even if § 1254a applies to all of § 1255, it does not follow that considering an alien to be in lawful status means he or she was admitted into the United States. As we explained already, status and admission are distinct—an alien can possess lawful status without ever having been admitted.

Second, we find the court's analysis of the "statutory scheme as a whole" and Congressional intent unpersuasive. TPS recipients' exclusion from a list of aliens ineligible for discretionary relief has no bearing on whether they are excused from § 1255's admission requirement. Moreover, the very nature of TPS—a program of *temporary* protection—undermines the Sixth Circuit's conclusion that Congress intended to waive § 1255's admissibility requirement so TPS recipients could readily become permanent residents.

Third, although the court claimed to be guided by the text of §§ 1254a and 1255, it betrayed its policy-driven approach at the outset of its opinion, stating:

> This case illustrates the archaic and convoluted state of our current immigration system. While many suggest that immigrants should simply "get in line" and pursue a legal pathway to citizenship, for Saady Suazo and other similarly situated Temporary Protected Status beneficiaries, the Government proposes that there is simply no line available for them to join.

Id. at 549.

We express no opinion about the merits of this broadside against how the other branches of the federal government have handled immigration policy. If it's true that our nation's immigration system is "archaic" or "convoluted," such criticism is no substitute for a careful evaluation of the statute's text, context, and history. The court ended its opinion by saying it was "disturbed" by the Government's position in the case and it considered Suazo—whom the court called a "contributing member of society"—"the exact type of person" that Congress would have wanted to be eligible for adjustment of status. *Id.* at 555–56. But a petitioner's personal characteristics, however commendable they may be, are irrelevant to whether he or she has satisfied § 1255's requirements. *See* 28 U.S.C. § 453 (requiring federal judges to "administer justice without respect to persons").

B

The Ninth Circuit's decision in *Ramirez* is similarly unpersuasive. As in *Flores*, the *Ramirez* court considered whether a TPS recipient who entered the United States without inspection or admission was eligible for adjustment of status by virtue of marrying an American citizen. 852 F.3d at 957. The Ninth Circuit agreed with the Sixth Circuit that an alien who is considered in lawful status under § 1254a(f)(4) should also be considered to have been admitted under § 1255(a). *Id.* at 959. To support this conclusion, the court cited several sections of the immigration code in which Congress discussed "admission" and "nonimmigrant" status together and held that "by the very nature of obtaining lawful nonimmigrant status, the alien goes through inspection and is deemed 'admitted.' " *Id.* at 960.

The court also emphasized similarities in the rigor of the admission and TPS application processes and concluded that an alien who receives TPS has also been admitted. *Id.* And although the court acknowledged its interpretation of §§ 1254a and 1255 does not align with the statutory definition of "admitted," it cited Ninth Circuit caselaw allowing it to " 'embrace[ ] an ***250** alternative construction of the term' when the statutory context so dictates." *Id.* at 961 (quoting *Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1052 (9th Cir. 2014)).

The *Ramirez* court then turned to the structure of the statutory scheme to support its interpretation. First, it concluded that the title of § 1255—"Adjustment of status of nonimmigrant to that of person admitted for permanent residence"—shows that Congress intended TPS recipients to be able to "make use of § 1255." *Id.* It then discussed § 1254a(f)(4)'s applicability to § 1258(a), which provides that "[t]he Secretary of Homeland Security may ... authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status." *Id.* (alterations in original). The court concluded that § 1254a(f)(4) satisfies § 1255's admission requirement because it "equates 'being in ... lawful status as a nonimmigrant' with § 1258(a)'s 'lawfully admitted ... as a nonimmigrant.' " *Id.* at 961–62 (alterations in original). It also opined

that an alternative interpretation would limit § 1254a(f)(4)'s applicability to § 1255(c)(2) and "yield an anomalous result" by not benefitting immediate relatives of American citizens. *Id.* at 962.

Finally, the Ninth Circuit held its interpretation of §§ 1254a and 1255 is consistent with the purpose of TPS. *Id.* at 963. It explained: "Because TPS confers an actual status on and provides a slew of benefits to an alien who satisfies rigorous eligibility requirements, it is different than other forms of temporary reprieve we ordinarily would not consider sufficient for 'admission.' " *Id.* And it reasoned that forcing TPS recipients to leave the United States, return to their homelands, then reenter with inspection and admission or parole, would undermine TPS's purpose of protecting aliens from unsafe conditions in those countries. *Id.* at 964.

We disagree with the Ninth Circuit's decision in *Ramirez* largely for the reasons we disagree with the Sixth Circuit's decision in *Flores*.

First, the court failed to acknowledge the meaningful differences between "status" and "admission" that we previously explained. And § 1254a(f)(4) is clear—aliens with TPS are granted only lawful status, they are not "admitted." Moreover, the court overlooked distinctions between a conferral of TPS and an admission. For example, an alien at a port of entry may be subject to a full range of inadmissibility grounds that an applicant for TPS is not. *Compare* 8 U.S.C. § 1182(a) *with* 8 U.S.C. § 1254a(c)(2).

Second, the Ninth Circuit brushed off the statutory definition of "admission" because its own caselaw allowed it to "embrace[ ] an alternative construction of the term when the statutory context so dictates." *Ramirez*, 852 F.3d at 961 (internal citation and quotation marks omitted). Our caselaw does not permit such a move. *See Hanif*, 694 F.3d at 485. Instead, we are bound to follow Congress's definition in § 1101(a)(13)(A), which defines admission as the physical event of entering the country. *Taveras*, 731 F.3d at 290.

Third, the Ninth Circuit's discussion of the structure of the immigration code is unpersuasive. The court said the title of § 1255 suggests Congress intended TPS recipients to be able to "make use" of its process for adjusting status. *Ramirez*, 852 F.3d at 961. Fair enough. But § 1255 also establishes that adjustment of status is available only for TPS recipients *lawfully admitted* into the United States. The Ninth Circuit also reasoned that limiting § 1255 eligibility to TPS recipients lawfully ***251** admitted when they entered the United States would "yield an anomalous result" by not benefitting relatives of American citizens. *Id.* at 962. This rationale ignores the fact that TPS recipients who marry American citizens will be eligible for adjustment of status so long as they were inspected and admitted or paroled when they entered the United States. So our interpretation does not bar eligibility for TPS recipients who entered the country legally. [5]

5 Nonimmigrants inspected and admitted or paroled when they entered the United States are eligible for TPS. *See, e.g.*, *Saliba v. Att'y Gen.*, 828 F.3d 182, 186 (3d Cir. 2016) (nonimmigrant who lawfully entered the United States on a student visa applied for, and received, TPS); *Mejia Rodriguez*, 562 F.3d at 1140 (same for nonimmigrant with B-2 visa).

Fourth, the court compared § 1254a to other sections of the immigration code and concluded that § 1254a(f)(4) "equates 'being in ... lawful status as a nonimmigrant' with § 1258(a)'s 'lawfully admitted ... as a nonimmigrant.' " *Id.* at 961–62 (alterations in original). But that analysis again failed to recognize the difference between "status" and "admission." Section 1258(a) applies to "any alien lawfully *admitted* to the United States as a nonimmigrant who is continuing to maintain that *status*." (emphasis added). Nothing in § 1258(a) suggests that we should collapse the admission and status elements into a single requirement. Instead, § 1254a(f)(4) applies to § 1258(a) (just like § 1255) to excuse only a lapse in lawful status following a lawful admission.

Finally, the Ninth Circuit's discussion of the purpose of TPS is contradictory. The court correctly noted that TPS "provides a *limited, temporary* form of relief." *Id.* at 963 (emphasis added). But then it interpreted § 1254a(f)(4) broadly to satisfy § 1255's admission requirement. *Id.* Absent a clear statutory directive, a program that provides "limited, temporary" relief should not be read to facilitate permanent residence for aliens who entered the country illegally.

The court reasoned further that forcing TPS recipients who entered illegally to leave the country and reenter lawfully before seeking adjustment of status would undermine the purpose of TPS. *Id.* at 964. According to the Ninth Circuit, this process would be particularly troubling for TPS recipients

because their home countries are unsafe. *Id.* But that ignores the fact that TPS recipients may remain in the United States—without seeking adjustment of status—as long as the Secretary of Homeland Security extends TPS for their homelands. Although they may be unable to adjust their status during that time (if they entered the country illegally), they are free to remain in the United States with lawful nonimmigrant status.

For these reasons, we respectfully disagree with the Sixth and Ninth Circuits' interpretations of the statute. We hold that Congress did not intend a grant of TPS to serve as an admission for those who entered the United States illegally. [6]

[6] Our interpretation of §§ 1254a and 1255 is closely aligned with the Eleventh Circuit's opinion in *Serrano v. Att'y Gen.*, 655 F.3d 1260 (11th Cir. 2011) (per curiam). There, the petitioner argued he was exempt from § 1255(a)'s admission requirement because he had been granted TPS. 655 F.3d at 1265. Although that argument is slightly different than the argument raised in this appeal (and in *Flores* and *Ramirez*), the court said: "That an alien with Temporary Protected Status has 'lawful status as a nonimmigrant' for purposes of adjusting his status does not change § 1255(a)'s threshold requirement that he is eligible for adjustment of status only if he was initially inspected and admitted or paroled." *Id.* That holding, like ours today, respects the distinction between status and admission and is faithful to the text of §§ 1254a and 1255.

***252** V [7]

[7] Sanchez and Gonzalez also argue they are eligible for adjustment of status under § 1255(k). That section provides an exception for aliens seeking to adjust status for employment purposes if, *inter alia*, the alien "on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission." Because Sanchez and Gonzalez were never admitted, they are ineligible for adjustment under § 1255(k).

We cannot square the District Court's opinion with the text, context, structure, and purpose of §§ 1254a and 1255. For the foregoing reasons, we hold that a grant of TPS does not constitute an "admission" into the United States under § 1255. We will reverse.

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655 F.3d 1260
United States Court of Appeals,
Eleventh Circuit.

Jose Garcia SERRANO, Plaintiff–Appellant,
v.
U.S. ATTORNEY GENERAL, Secretary, U.S. Department of Homeland Security, Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, Denise Frazier, Acting District Director of the Atlanta Office, United States Citizenship and Immigration Services, Defendants–Appellees.

No. 10–12990.
|
Sept. 16, 2011.

Opinion

PER CURIAM:

Jose Garcia Serrano appeals the district court's judgment dismissing his petition for a writ of mandamus and his complaint seeking declaratory and injunctive relief under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.* Serrano's complaint requested the district court to mandamus the defendants (1) to determine as a matter of law that Serrano has been "admitted" to the United States for purposes of his application for adjustment of status under 8 U.S.C. § 1255(a) and (2) to re-open and re-adjudicate Serrano's application for adjustment of status, which was previously denied. To be eligible for adjustment ***1263** of status under 8 U.S.C. § 1255(a), an alien must be "inspected and admitted or paroled into the United States." Serrano contends that he does not have to meet § 1255(a)'s eligibility requirement because he was granted Temporary Protected Status under 8 U.S.C. § 1254a, and thus his application for adjustment of status was improperly denied. After review of the record and the benefit of oral argument, we conclude that the district court did not err in dismissing Serrano's petition and complaint, and therefore affirm.

I. FACTUAL BACKGROUND

Serrano was born in El Salvador and is a citizen of that country.[1] In 1996, he illegally entered the United States without being inspected and admitted or paroled. Subsequently, he registered for Temporary Protected Status in 2001 and re-registered in 2006, 2008, and 2009. In 2006, he married Olga Garcia, a U.S. citizen, and in 2008 she filed a Form I–130, Petition for Alien Relative, on his behalf. At the same time, Serrano filed a Form I–485, seeking to adjust his status to lawful, permanent resident.

[1] There is inconsistency in the record about Serrano's citizenship. Serrano's complaint asserted that he is a citizen of Mexico, but his initial brief to this Court states that he is a citizen of El Salvador. It is not relevant to the outcome of this case, but we will assume for purposes of this opinion only that Serrano is a citizen of El Salvador.

The Department of Homeland Security's U.S. Citizenship and Immigration Services ("DHS") denied Serrano's application for adjustment of status. The DHS found that because Serrano illegally had entered the United States in 1996 without having been admitted or paroled following inspection by an immigration officer, he was not eligible for adjustment of status under 8 U.S.C. § 1255(a).

Challenging that DHS decision, Serrano filed, in the district court, a lawsuit seeking mandamus as well as declaratory and injunctive relief. He contended that 8 U.S.C. § 1254a(f)(4) alters the admission requirements set forth in 8 U.S.C. § 1255(a), allowing him to adjust his status to lawful permanent resident based on his current Temporary Protected Status. The district court denied Serrano's mandamus request, concluding that he has a legal remedy under the Administrative Procedure Act. The court also denied his request for declaratory and injunctive relief, determining that § 1254a(f)(4) does not alter the plain language of § 1255(a), which expressly limits eligibility for adjustment of status to an alien who has been "inspected and admitted or paroled." The court further found that, even if § 1255(a) is ambiguous, the agency's interpretation was entitled to *Skidmore* deference. *See Skidmore v. Swift & Co.,* 323 U.S. 134, 140, 65 S.Ct. 161, 164, 89 L.Ed. 124 (1944).

II. MANDAMUS RELIEF

We review *de novo* a district court's decision about whether it has subject matter jurisdiction to grant mandamus relief. *See Cash v. Barnhart,* 327 F.3d 1252, 1255 n. 4 (11th Cir.2003). A district court may "compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Mandamus is an extraordinary remedy available only in the clearest and most compelling of cases. *Cash,* 327 F.3d at 1257. Mandamus is appropriate only if (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear duty to act; and (3) no other adequate remedy is available. *Id.* at 1258. The party seeking mandamus has the burden of demonstrating that his right to the writ is clear and indisputable. *In re BellSouth* ***1264** *Corp.,* 334 F.3d 941, 953 (11th Cir.2003).

Serrano cannot satisfy the requirements for mandamus relief. He has not demonstrated that he lacks an adequate alternative remedy for obtaining relief. *See Cash,* 327 F.3d at 1258. In fact, Serrano has sued under the APA, which provides an adequate remedy. *See* 5 U.S.C. § 706 (providing for judicial review of final agency actions and stating that "the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and ... shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"). Because Serrano has an adequate remedy available to him, the district court properly dismissed his request for mandamus relief. *See Cash,* 327 F.3d at 1258; *see also Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.,* 641 F.3d 1259, 1268 (11th Cir.2011) ("The availability of relief under the Administrative Procedure Act ... forecloses a grant of a writ of mandamus.").

III. STATUTORY CONSTRUCTION

We review *de novo* questions of statutory interpretation. *Bankston v. Then,* 615 F.3d 1364, 1367 (11th Cir.2010). Courts may, under the Administrative Procedure Act, review an agency's interpretation of a statute. 5 U.S.C. § 706. "If the intent of Congress is clear, that is the end of the matter;

for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984). "The first step of statutory construction is to determine whether the language of the statute, when considered in context, is plain. If the meaning of the statutory language in context is plain, we go no further." *Wachovia Bank, N.A. v. United States*, 455 F.3d 1261, 1267 (11th Cir.2006) (citation omitted).

Section 1255(a) of Title 8 of the U.S. Code authorizes the Secretary of Homeland Security to adjust the "status of an alien who was inspected and admitted or paroled into the United States ... to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed."[2] 8 U.S.C. § 1255(a); *see also Scheerer v. U.S. Att'y Gen.*, 445 F.3d 1311, 1321 (11th Cir.2006) (recognizing that 8 U.S.C. § 1255(a) "grants eligibility to adjust status to any alien 'who was inspected and admitted or paroled into the United States' " (emphasis omitted)). Stating the same principle in terms of ineligibility, a relevant regulation provides that "[t]he following categories of aliens are ineligible to apply for adjustment of status ... (3) Any alien who was not admitted or paroled following inspection by an immigration officer." 8 C.F.R. § 245.1(b)(3).

2 Section 1255(a) provides that "the Attorney General" is the government official with the authority to adjust status, "but Congress has transferred the adjudication functions of the former Immigration and Naturalization Service (INS) to the Secretary of Homeland Security and his delegate" at the U.S. Citizenship and Immigration Services. *Scheerer v. U.S. Att'y Gen.*, 513 F.3d 1244, 1251 n. 6 (11th Cir.2008).

***1265** Under 8 U.S.C. § 1254a, Temporary Protected Status may be conferred on an alien who is a national of a foreign state that the Secretary of the Department of Homeland Security has designated for inclusion in the Temporary Protected Status program. *See* 8 U.S.C. § 1254a(a)(1). Foreign states are selected for that program based on certain conditions in the country, such as ongoing armed conflict, an environmental disaster, or some other extraordinary and temporary condition.[3] *See id.* § 1254a(b)(1). An alien who is granted Temporary Protected Status is not subject to removal "from the United States during the period in which such status is in effect," is authorized to engage in employment in the United States, and is provided documentation of that authorization. *Id.* § 1254a(a). The statute also provides: "During a period in which an alien is granted temporary protected status under this section ... (4) for purposes of adjustment of status under section 1255 of this title ..., the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant." *Id.* § 1254a(f)(4).

3 Like the adjustment of status statute, the statute that applies to Temporary Protected Status refers to the Attorney General as the decision maker, but the authority to designate countries for inclusion in the Temporary Protected Status program and for adjudicating the eligibility of individual applicants has been transferred to the Secretary of the Department of Homeland Security and the district directors at the U.S. Citizenship and Immigration Services. *Mejia Rodriguez v. U.S. Dep't of Homeland Sec.*, 562 F.3d 1137, 1140 n. 3 (11th Cir.2009).

Serrano argues that § 1254a(f)(4) alters the "inspected and admitted or paroled" limitation on eligibility for adjustment of status under § 1255(a). We disagree. The plain language of § 1255(a) limits eligibility for status adjustment to an alien who has been inspected and admitted or paroled.[4] *Id.* § 1255(a). That an alien with Temporary Protected Status has "lawful status as a nonimmigrant" for purposes of adjusting his status does not change § 1255(a)'s threshold requirement that he is eligible for adjustment of status only if he was initially inspected and admitted or paroled. Accordingly, the district court's ruling is consistent with the plain language of the statute.

4 We recognize that Serrano relies on *United States v. Orellana*, 405 F.3d 360 (5th Cir.2005), but that decision fails to support his argument. *Orellana* addresses the "sole question ... [of] whether an alien who enters the United States without inspection and subsequently receives TPS is 'illegally or

unlawfully in the United States' under [18 U.S.C.] section 922(g)(5)(A).” *Id.* at 362. The court noted:

> Technically, Orellana was not eligible for TPS because he had entered the country without inspection and was inadmissible at the time of his application. However, Orellana disclosed his illegal entry on his TPS application, and this application was subsequently granted. This raises an inference that Orellana's inadmissibility was waived by the Attorney General.

Id. at 363 n. 8 (citation omitted). Serrano does not assert that he disclosed his illegal entry into the United States on his application for Temporary Protected Status. Furthermore, the *Orellana* court was not addressing the interaction of § 1254a(f)(4) with the plain language of § 1255(a) but instead was deciding only the issue of whether an alien with Temporary Protected Status can be convicted of violating 18 U.S.C. § 922(g)(5)(A). *See id.* at 362. Anything the *Orellana* opinion says about adjustment of status is dicta.

Furthermore, to the extent Serrano contends that the statutory language is ambiguous, Serrano's claim still fails because the INS, the predecessor to the DHS, has interpreted § 1255(a) and § 1254a(f)(4) in the same way as we do above. *See* Genco. Op. No. 91–27, 1991 WL 1185138 (INS Mar. 4, 1991) (concluding that an alien who entered the United States without inspection is ineligible for adjustment of status ***1266** under § 1255, even if granted Temporary Protected Status under § 1254a); Genco. Op. No. 93–94, 1993 WL 1504041 (INS Dec. 28, 1993) (concluding that an alien who entered the United States without inspection is eligible to change his nonimmigrant status under 8 U.S.C. § 1258, but noting that, unlike § 1255, § 1258 does not require inspection or admission).

We conclude that these DHS interpretations enjoy deference under *Skidmore,* which holds that “a non-binding administrative interpretation carries a weight dependent upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Quinchia v. U.S. Att'y Gen.,* 552 F.3d 1255, 1259 (11th Cir.2008). In other words, even if the statutory language is ambiguous, we defer to the DHS's consistent and well-reasoned interpretation of the interplay between § 1255(a) and § 1254a(f)(4). [5]

5 The appellees also note that Serrano's interpretation of § 1254a(f)(4) would render superfluous § 1254a(h), which requires a three-fifths super-majority before the Senate may consider any bill, resolution, or amendment that allows aliens with Temporary Protected Status to adjust to lawful or permanent resident alien status. As the appellees note, Congress's recognition of the possibility of special legislation to allow an alien granted Temporary Protected Status to adjust his status further bolsters the DHS's interpretation of the statutes here.

AFFIRMED.

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8 U.S.C.A. § 1254a

§ 1254a. Temporary protected status

Currentness

(a) Granting of status

(1) In general

In the case of an alien who is a national of a foreign state designated under subsection (b) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section--

(A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect, and

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

(2) Duration of work authorization

Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

(3) Notice

(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a removal proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b), the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b), an alien (who is a national of such state) is in a removal proceeding under this subchapter, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

(4) Temporary treatment for eligible aliens

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

(5) Clarification

Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this chapter. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this chapter.

(b) Designations

(1) In general

The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if--

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that--

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) Effective period of designation for foreign states

The designation of a foreign state (or part of such foreign state) under paragraph (1) shall--

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) Periodic review, terminations, and extensions of designations

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) Extension of designation

If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

(4) Information concerning protected status at time of designations

At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

(5) Review

(A) Designations

There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) Application to individuals

The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) Aliens eligible for temporary protected status

(1) In general

(A) Nationals of designated foreign states

Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if--

(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

(B) Registration fee

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an "employment authorized" endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed $50. In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of Title 31, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(2) Eligibility standards

(A) Waiver of certain grounds for inadmissibility

In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)--

(i) the provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the Attorney General may not waive--

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) Aliens ineligible

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that--

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 1158(b)(2)(A) of this title.

(3) Withdrawal of temporary protected status

The Attorney General shall withdraw temporary protected status granted to an alien under this section if--

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

(B) except as provided in paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or

(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) Treatment of brief, casual, and innocent departures and certain other absences

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) Construction

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Confidentiality of information

The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) Documentation

(1) Initial issuance

Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) Period of validity

Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) Effective date of terminations

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) Detention of alien

An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

(e) Relation of period of temporary protected status to cancellation of removal

With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 1229b(a) of this title, unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) Benefits and status during period of temporary protected status

During a period in which an alien is granted temporary protected status under this section--

(1) the alien shall not be considered to be permanently residing in the United States under color of law;

(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 1101(a)(36) of this title) or any political subdivision thereof which furnishes such assistance;

(3) the alien may travel abroad with the prior consent of the Attorney General; and

(4) for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.

(g) Exclusive remedy

Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) Limitation on consideration in Senate of legislation adjusting status

(1) In general

Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that--

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) Supermajority required

Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) Rules

Paragraphs (1) and (2) are enacted--

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) Annual report and review

(1) Annual report

Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include--

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3).

(2) Committee report

No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.

CREDIT(S)

(June 27, 1952, c. 477, Title II, c. 5, § 244, formerly § 244A, as added and amended Pub.L. 101-649, Title III, § 302(a), Title VI, § 603(a)(24), Nov. 29, 1990, 104 Stat. 5030, 5084; Pub.L. 102-232, Title III, §§ 304(b), 307(l)(5), Dec. 12, 1991, 105 Stat. 1749, 1756; Pub.L. 103-416, Title II, § 219(j), (z)(2), Oct. 25, 1994, 108 Stat. 4317, 4318; renumbered § 244 and amended Pub.L. 104-208, Div. C, Title III, § 308(b)(7), (e)(1)(G), (11), (g)(7)(E)(i), (8)(A)(i), Sept. 30, 1996, 110 Stat. 3009-615, 3009-619, 3009-620, 3009-624.)

Notes of Decisions (64)

8 U.S.C.A. § 1254a, 8 USCA § 1254a
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

End of Document

8 U.S.C.A. § 1255

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

Effective: March 23, 2009
Currentness

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa

The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Record of lawful admission for permanent residence; reduction of preference visas

Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 1152 and 1153 of this title within the class to which the alien is chargeable for the fiscal year then current.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H), (I), (J), or (K) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(l) of this title or section 1187 of this title; (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(15)(S) of this title, [1] (6) an alien who is deportable under section 1227(a)(4)(B) of this title; (7) any alien who seeks adjustment of status to that of an immigrant under section 1153(b) of this title and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 1324a(h)(3) of this title, or who has otherwise violated the terms of a nonimmigrant visa.

(d) Alien admitted for permanent residence on conditional basis; fiancee or fiance of citizen

The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a of this title. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception

(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 1154(g) of this title shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) Limitation on adjustment of status

The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186b of this title.

(g) Special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States.

(h) Application with respect to special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title--

(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant--

(A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 1182(a) of this title shall not apply; and

(B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i) Adjustment in status of certain aliens physically present in United States

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

(A) who--

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of--

(i) a petition for classification under section 1154 of this title that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 1182(a)(5)(A) of this title that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on December 21, 2000;

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling $1,000 as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who--

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986;

(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section.

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if--

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

(3)(A) The portion of each application fee (not to exceed $200) that the Attorney General determines is required to process an application under this section and is remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (o) of section 1356 of this title.

(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Breached Bond/Detention Fund established under section 1356(r) of this title, except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 1356(m) of this title.

(j) Adjustment to permanent resident status

(1) If, in the opinion of the Attorney General--

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(i) of this title has supplied information described in subclause (I) of such section; and

(B) the provision of such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(2) If, in the sole discretion of the Attorney General--

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(ii) of this title has supplied information described in subclause (I) of such section, and

(B) the provision of such information has substantially contributed to--

(i) the prevention or frustration of an act of terrorism against a United States person or United States property, or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

(C) the nonimmigrant has received a reward under section 2708(a) of Title 22,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(3) Upon the approval of adjustment of status under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 1151(d) and 1153(b)(4) of this title for the fiscal year then current.

(k) Inapplicability of certain provisions for certain employment-based immigrants

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 1153(b) of this title (or, in the case of an alien 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 alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;

(2) the alien, 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 alien's admission.

(l) Adjustment of status for victims of trafficking

(1) If, in the opinion of the Secretary of Homeland Security, or in the case of subparagraph (C)(i), in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate [2] a nonimmigrant admitted into the United States under section 1101(a)(15)(T)(i) of this title--

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 1101(a)(15)(T)(i) of this title, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less;

(B) subject to paragraph (6), has, throughout such period, been a person of good moral character; and

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;

(ii) the alien [3] would suffer extreme hardship involving unusual and severe harm upon removal from the United States; or

(iii) was younger than 18 years of age at the time of the victimization qualifying the alien for relief under section 1101(a)(15)(T) of this title. [4]

the Secretary of Homeland Security may adjust the status of the alien (and any person admitted under section 1101(a)(15)(T)(ii) of this title as the spouse, parent, sibling, or child of the alien) to that of an alien lawfully admitted for permanent residence.

(2) Paragraph (1) shall not apply to an alien admitted under section 1101(a)(15)(T) of this title who is inadmissible to the United States by reason of a ground that has not been waived under section 1182 of this title, except that, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's [5] discretion, may waive the application of

(A) paragraphs (1) and (4) of section 1182(a) of this title; and

(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10(E)) [6], if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

(3) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days, unless--

(A) the absence was necessary to assist in the investigation or prosecution described in paragraph (1)(A); or

(B) an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(4)(A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

(5) Upon the approval of adjustment of status under paragraph (1), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(6) For purposes of paragraph (1)(B), the Secretary of Homeland Security may waive consideration of a disqualification from good moral character with respect to an alien if the disqualification was caused by, or incident to, the trafficking described in section 1101(a)(15)(T)(i)(I) of this title.

(7) The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) of this title (as in effect on March 31, 1997).

(m) Adjustment of status for victims of crimes against women

(1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 1101(a)(15)(U) of this title to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title, unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if--

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 1101(a)(15)(U) of this title; and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(U)(i) of this title the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 1101(a)(15)(U)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(5)(A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title.

(B) Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title.

CREDIT(S)

(June 27, 1952, c. 477, Title II, c. 5, § 245, 66 Stat. 217; Pub.L. 85-700, § 1, Aug. 21, 1958, 72 Stat. 699; Pub.L. 86-648, § 10, July 14, 1960, 74 Stat. 505; Pub.L. 89-236, § 13, Oct. 3, 1965, 79 Stat. 918; Pub.L. 94-571, § 6, Oct. 20, 1976, 90 Stat. 2705; Pub.L. 97-116, § 5(d)(2), Dec. 29, 1981, 95 Stat. 1614; Pub.L. 99-603, Title I, § 117, Title III, § 313(c), Nov. 6, 1986, 100 Stat. 3384, 3438; Pub.L. 99-639, §§ 2(e), 3(b), 5(a), Nov. 10, 1986, 100 Stat. 3542, 3543; Pub.L. 100-525, §§ 2(f)(1), (p)(3), 7(b), Oct. 24, 1988, 102 Stat. 2611, 2613, 2616; Pub.L. 101-649, Title I, §§ 121(b)(4), 162(e)(3), Title VII, § 702(a), Nov. 29, 1990, 104 Stat. 4994, 5011, 5086; Pub.L. 102-110, § 2(c), Oct. 1, 1991, 105 Stat. 556; Pub.L. 102-232, Title III, §§ 302(d)(2), (e)(7), 308(a), Dec. 12, 1991, 105 Stat. 1744, 1746, 1757; Pub.L. 103-317, Title V, § 506(b), Aug. 26, 1994, 108 Stat. 1765; Pub.L. 103-322, Title XIII, § 130003(c), Sept. 13, 1994, 108 Stat. 2025; Pub.L. 103-416, Title II, § 219(k), Oct. 25, 1994, 108 Stat. 4317; Pub.L. 104-132, Title IV, § 413(d), Apr. 24, 1996, 110 Stat. 1269; Pub.L. 104-208, Div. C, Title III, §§ 308(f)(1)(O), (2)(C), (g)(10)(B), 375, 376(a), Title VI, § 671(a)(4)(A), (5), Sept. 30, 1996, 110 Stat. 3009-621, 3009-625, 3009-648, 3009-721;

Pub.L. 105-119, Title I, §§ 110(3), 111(a), (c), Nov. 26, 1997, 111 Stat. 2458; Pub.L. 106-386, Div. A, § 107(f), Div. B, Title V, §§ 1506(a)(1), 1513(f), Oct. 28, 2000, 114 Stat. 1479, 1527, 1536; Pub.L. 106-553, § 1(a)(2) [Title XI, §§ 1102(c), (d)(2), 1103(c)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A-143 to 2762A-145; Pub.L. 106-554, § 1(a)(4) [Div. B, Title XV, § 1502], Dec. 21, 2000, 114 Stat. 2763, 2763A-324; Pub.L. 108-193, §§ 4(b)(3), 8(a)(4), Dec. 19, 2003, 117 Stat. 2879, 2886; Pub.L. 109-162, Title VIII, § 803, Jan. 5, 2006, 119 Stat. 3054; Pub.L. 109-271, § 6(f), Aug. 12, 2006, 120 Stat. 763; Pub.L. 110-457, Title II, §§ 201(d), (e), 235(d)(3), Dec. 23, 2008, 122 Stat. 5053, 5054, 5080.)

Notes of Decisions (751)

Footnotes

1 So in original. The comma probably should be a semicolon.
2 So in original. Probably should be followed by a comma.
3 So in original. The words “the alien” probably should not appear.
4 So in original. The period probably should be a comma.
5 So in original. The term “Attorney General's” probably should be “Secretary's”.
6 So in original. Probably should be “(10)(E))”.

8 U.S.C.A. § 1255, 8 USCA § 1255
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

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