

# Screening TPS Recipients for Eligibility to Adjust to Lawful Permanent Resident Status

Many TPS recipients may have options to seek lawful permanent resident, or LPR, status as beneficiaries or derivative beneficiaries of family-based or employment-based petitions. Use this tool to determine whether your TPS client may qualify to apply for LPR status through adjustment of status in the United States.

## Adjustment of Status under INA Section 245(a)

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Under INA Section 245(a), eligibility for adjustment of status requires proof of inspection and admission or parole. In addition, individuals who have worked without authorization or have ever resided in the United States without lawful status are ineligible to adjust under INA 245(a) unless they are immediate relatives, i.e. the spouse or child of a U.S. citizen, or parent of an adult U.S. citizen.

### Step One

**Is your client the spouse or child of a U.S. citizen or parent of an adult U.S. citizen?**

If yes, continue to step two.

If no, ask this question:

**Has your client ever worked without authorization or been in the U.S. without lawful status?**

If yes, your client will not qualify to adjust status under INA 245(a).

If no, continue to step two.

### Step Two

**Was your client inspected and admitted or paroled, including returning to the U.S. on advance parole?**

If yes, your client is eligible to apply for adjustment of status under 245(a). Note that you must still assess your client's admissibility under INA Section 212(a).

If no, consider the following two questions:

**Is your client still in TPS status and eligible to apply for advance parole?**

If your client still has time to obtain and travel on advance parole, once paroled back into the U.S., he or she may become eligible to adjust status under 245(a).

**Does your client reside within the jurisdiction of the Sixth Circuit (Kentucky, Michigan, Ohio, or Tennessee) or Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, or Washington)?**

Residents of those states with valid TPS are considered “admitted” by virtue of their TPS grant and, if they are immediate relatives, can seek LPR status through adjustment of status under 245(a) despite having entered without inspection. (The Circuit Courts of Appeals in the Sixth and Ninth Circuit have held that a grant of TPS satisfies the 245(a) admission-related requirement for someone currently in valid TPS status. *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013; *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017).)

Note, however, that if the grant of TPS is terminated or expires, USCIS may no longer consider that individual to have been admitted. For this reason, TPS holders residing in the Sixth or Ninth Circuits who do not currently have a basis to seek adjustment of status may want to apply for advance parole, if that option is still available.

### Step Three

**Is your client the beneficiary of an employment-based petition who was inspected and admitted or paroled (including return on advance parole) or who resides in the Sixth or Ninth Circuit?**

If yes, adjustment of status under 245(a) is available ONLY if the individual has never worked without authorization or been in the U.S. unlawfully. This is not likely to be the case for most clients. An exception under INA Section 245(k) protects 245(a) adjustment eligibility for those who are employment-based beneficiaries in the first, second, third or fourth preference categories who worked without authorization or have been in the U.S. without lawful status for an aggregate period of 180 days or less. Note that your client must be admissible under INA §212(a).

If no, your client will not qualify to adjust status under 245(a).

## Adjustment of Status under INA Section 245(i)

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Those who cannot meet the criteria to adjust status under 245(a) because they: 1) entered without inspection or 2) entered with inspection but subsequently violated or overstayed their status and are not immigrating as immediate relatives or eligible for 245(k) protection, may still be eligible to adjust if they meet the criteria for INA §245(i).

### Step One

**Is my client the beneficiary (or derivative beneficiary) of an “approvable when filed” I-130, I-140, I-360, I-526, or application for labor certification filed on or before April 30, 2001?**

If yes, continue to step two.

If no, your client will not qualify to adjust status under INA 245(i).

### Step Two

**If the petition was filed between January 15, 1998 and April 30, 2001, was the principal beneficiary present in U.S. on December 21, 2000?**

If yes, the TPS recipient may qualify to adjust status under 245(i) upon payment of a \$1000 penalty fee.

If no, your client will not qualify to adjust status under 245(i).

## Adjustment of Status under the Diversity Visa Lottery

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For TPS clients who do not have a qualifying relative or employer sponsor willing to file a petition on their behalf, consider whether they qualify to enter the 2019 Diversity Immigrant Visa Program. For the 2019 lottery, TPS recipients born in Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, or Yemen (or those with a spouse or parent born in one of these countries) who meet the other criteria are eligible to participate. The online application must be submitted by Nov. 22, 2017. If selected, the client will still need to qualify to subsequently adjust status under the requirements of 245(a) or 245(i).