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TPS Holders Spurn Trump-Era Decision Barring Green Cards

By **Alyssa Aquino**

Law360 (November 10, 2021, 6:06 PM EST) -- Individuals with temporary protective status have lobbed a proposed class action against U.S. Citizenship and Immigration Services in New York federal court, challenging a Trump-era decision that blocks them from applying for green cards.

Three TPS holders accused the agency of violating the Immigration and Nationality Act and upending a decadeslong practice when it determined in August 2020 that migrants who entered the U.S. illegally, but who left and reentered the country after gaining TPS status, cannot be considered as having been admitted for the purpose of getting a green card.

"USCIS found that the immigration status to which TPS holders returned following authorized travel abroad was that of a TPS holder who is present in the United States without inspection and admission or parole. No such immigration status exists," the TPS holders said in their complaint filed on Monday. "Being present in the United States without having been inspected and admitted or paroled is not an immigration status but rather a ground of inadmissibility."

The three named plaintiffs in the case have lived in the U.S. for years, have married U.S. citizens, have U.S. citizen children and are now looking to obtain a green card. They are seeking to represent a class of people who entered the U.S. without authorization but later reentered the country on advance parole, according to the complaint.

The TPS program provides roughly 320,000 individuals from designated countries in crisis with deportation protections and work permits, allowing beneficiaries to travel temporarily outside the U.S., according to an August report from the Congressional Research Service.

According to the lawsuit, USCIS used to treat TPS holders who traveled abroad as "inspected and ... paroled" into the U.S. upon their return, regardless of how they originally entered the U.S.

"An untold number" of TPS holders successfully obtained green cards under that practice, but USCIS' Administrative Appeals Office ruled in *Matter of Z-R-Z-C-* last year that a TPS holder wasn't lawfully admitted or paroled when she reentered the U.S. after traveling to her home country.

The decision created a "legal fiction" by forcing USCIS officers to treat returning TPS holders "as if they never left the United States," since plain statutory language shows that TPS holders are "inspected and admitted" once they return from authorized travel, the plaintiffs said. Regulations also provide that when USCIS allows TPS holders to travel abroad, the agency is authorizing them to be paroled back into the U.S., they added.

The plaintiffs' attorney, Mary Kenney of the National Immigration Litigation Alliance, told Law360 that the August 2020 decision is the only thing preventing them from applying for green cards.

"Under the Trump administration, the last remaining door [for permanent residency] for these individuals who have been here for so long and have deep roots has been closed," Kenney said. "They're very deserving individuals; we think that was an unlawful closing of the door."

Whether TPS holders who initially entered the U.S. illegally are eligible for green cards has been hotly debated in the courts, with several beneficiaries arguing that receiving the temporary status qualified as an "admission" for green card purposes. The circuit courts split over the issue, and in June, the U.S. Supreme Court **unanimously found** that receiving TPS doesn't count as an admission.

USCIS declined to comment on Wednesday, citing pending litigation.

The TPS holders are represented by Kristin Macleod-Ball and Mary Kenney of the National Immigration Litigation Alliance, Matt Adams, Leila Kang, Aaron Korthuis and Margot Adams of the Northwest Immigrant Rights Project, and Stacy Tolchin and the Law Offices of Stacy Tolchin.

Counsel information for USCIS wasn't available on Wednesday.

The case is Gomez et al. v. Jaddou, case number 1:21-cv-09203, in the U.S. District Court for the Southern District of New York.

--Editing by Steven Edelstone.

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