

US Supreme Court

Case: *Sanchez et ux. v. Mayorkas*, No. 20-315 S. Ct. (June 7, 2021)

Date: June 7, 2021

Votes: Unanimous

Opinion: Kagan

Tags: Immigration, TPS, EWI, LPR, AOS

Question(s) Presented: Does the conferral of TPS status on someone who entered without inspection enable him to obtain LPR status?

Holdings: NO. EWI + TPS \neq LPR. “A grant of TPS does not cure a foreign national’s entry without inspection or constitute an inspection and admission of the foreign national.” App. to Pet. for Cert. 40a. (Slip op. at *3)

Rationale: Statute for AOS depends on *lawful admission* into the country, and TPS does not confer this.

Facts: Citizen of El Salvador entered without inspection in 1997. In 2001 U.S. granted him TPS. Now wants to adjust status.

Legal History, Prior Appeals & Trial Court Input:

- **2014: USCIS** denied I-485 because he had not been lawfully admitted to the U.S.
- **2018: District Court:** granted summary judgment for respondent, relying on statutory language that a TPS recipient “shall be considered as” having “lawful status as a nonimmigrant.”
- **2020: 3d Circuit:** reversed: a grant of TPS does not constitute an admission.
- **Circuit Split** (3rd/5th/11th all said nope; 8th/9th/6th all said yep.)

Attorneys’ Arguments:

- Nonimmigrants are considered “admitted,” so if the statute says TPS recipients may be considered as if they were nonimmigrants, this means (by definition) “admitted.”
 - Response: there are other places in the INA where there is daylight between “nonimmigrant” and “admitted” – e.g., alien crewmen; U-visa holders who entered without inspection.

Appeals to Statute & Precedent:

- **8 U.S.C. § 1101(a)(13)(A):** inspection and authorization by an immigration officer necessary for admission
- **8 U.S.C. § 1255:** AOS → LPR only if the immigrant has been lawfully inspected and admitted or paroled into the U.S.
- **8 U.S.C. § 1255(k):** a person who has worked without authorization in U.S. may become an LPR only if his presence in the U.S. is pursuant to a lawful admission.
- **8 U.S.C. § 1254a:** TPS program for humanitarian relief.

- **8 U.S.C. § 1254a(f)(4):** “For purposes of AOS under section 1255, a person given TPS shall be considered as being in, and maintaining, lawful status as a nonimmigrant.” [but this does not meet the statute’s separate lawful entry requirement for LPR]
- **8 U.S.C. § 1254a(c)(2)(A)(ii):** EWI doesn’t preclude a grant of TPS.
- **8 C.F.R. § 244.3:** EWI doesn’t preclude TPS.

Relevant U.S. History:

- **2001: El Salvador TPS** after a series of devastating earthquakes
- **2021: American Dream and Promise Act:** pending legislation that would confer lawful admission to TPS recipients.

Discussion:

- “A person’s unlawful entry into the U.S. will usually not preclude granting him TPS.” Slip op. at *2.