

Chapter 9: Temporary Protected Status (TPS)

DISCLAIMER

This chapter is provided for informational purposes only, and does not constitute legal advice of any kind. Before proceeding with any legal matters under U.S. immigration law, please consult, as needed, both the primary source documents referenced in this chapter (statutes, regulations, cases, etc.) and your KIND pro bono coordinator.

What is Temporary Protected Status (TPS)?

TPS is a temporary immigration status granted to eligible nationals of certain countries¹ (or persons without nationality who last habitually resided in a country) designated by the Secretary of Homeland Security.² Such countries are designated in response to temporary dangerous conditions, such as armed conflict or a natural disaster, for nationals of these countries residing in the United States whose lives may be in danger if they were forced to return to the home country.

What does an applicant need to prove to be eligible for TPS?

An unaccompanied child only needs to prove that she is a national of a current TPS country and has been in the United States since the required designation date. As a result, TPS is only relevant for children already physically present in the United States at the time of their country's TPS designation, and not for those who arrive after such designation date. To qualify for TPS, the child does not need to prove that she will be singled out for persecution in her home country, as with other forms of relief.

What are the benefits of receiving TPS?

A person who has been granted TPS is allowed to remain in the United States for the duration of the TPS designation, which can be anywhere from six to 18 months.³ This status can also be longer if DHS extends the designation. While a person has TPS, the individual will not be removed from the United States. In addition, the individual will not be detained. A person with TPS is eligible to work in the United States and a grant of TPS will serve as evidence of lawful status for an application for work authorization. A person with TPS is also allowed to travel abroad with advance permission. Finally, a

person with TPS is considered to be in lawful immigration status for the duration of designation.

Can TPS lead to lawful permanent resident status?

No. It is important to understand that TPS is not a basis to apply for legal permanent residency. When the Secretary terminates a TPS designation, beneficiaries revert back to the same immigration status they had before receipt of TPS, unless that status has since terminated or expired. In other words, if the applicant was originally in the United States unlawfully and then received TPS, upon termination of TPS, she would yet again be without lawful status.

However, a TPS beneficiary may apply to adjust or change her status if she has an alternative basis of doing so. For example, if a TPS beneficiary married a U.S. citizen, she could apply for LPR status based on marriage.

Child Practice Pointer:

When considering a child's legal options, make sure to determine whether her home country falls under TPS protection, especially if the child comes from a war-torn country or one affected by a natural disaster.

How are countries designated as TPS eligible?

The legislation that created TPS authorizes DHS to designate a foreign state or part of a foreign state under any of three circumstances: (a) ongoing armed conflict that poses a serious threat to the personal safety of nationals who would be returned there; (b) an environmental disaster that has substantially but temporarily disrupted living conditions and the state cannot adequately handle the return of its nationals; and (c) extraordinary and temporary conditions that prevent safe return, and that staying in the United States would not be contrary to the national interest.⁴

The initial designation and any extension of designation for countries eligible for TPS is published by DHS in the Federal Register. Countries which have received TPS designation include: Burundi, El Salvador, Haiti, Honduras, Liberia, Nicaragua, Somalia, and Sudan.

Practice Pointer:

Each designation also has an effective end date, which means that unless the Secretary of DHS extends the designation further, the TPS program will end for that particular country. Therefore, it is important to check whether the TPS designation or re-designation for any particular country is still

effective as of the date you are advising your client.

Initial registration

Once a country is initially designated for the TPS program, USCIS will designate a period of time for applicants to file their applications for initial registration. This means the applicant must file for TPS status before the designated registration period expires.

When a country's designation has been extended, USCIS will set a new deadline for people to file their applications for registration.

Practice Pointer:

In order to maintain TPS status, a child must be registered with the TPS program when the TPS designation is initially made and must continue to renew her registration during each subsequent renewal period. Otherwise, the child's TPS will expire if she has no other immigration status and could be placed in removal proceedings.

What must my client prove to be granted TPS?

Besides proving that your client is a national of a country designated for TPS and has registered within the specified registration time, your client must satisfy four other criteria:

Continuous physical presence

Your client must prove that she has maintained continuous physical presence in the United States since the effective date of the country's designation. If your client arrived in the United States after TPS had been designated for your client's country of origin, your client would be ineligible for TPS. In other words, the child must be present in the United States on or before the effective date to be considered eligible for TPS.

Continuous residence in the United States

In addition to proving that your client has maintained continuous physical presence in the United States since the date of TPS designation, your client must also prove that she has continued to reside in the United States since a date designated by the Secretary of DHS. This may be a different date than the designation date depending on what country your client is from. For example, DHS designated TPS status for Haiti on January 12, 2010 and the date from which a Haitian applicant must prove continuous residence is January 21, 2010 (which was later extended). However, for Sudan the designation date and the continuous presence date are the same, October 7, 2004. You will need to check the USCIS website to determine which dates are relevant for your client.

Practice Pointer:

There are certain absences and departures from the United States that do not break continuous physical presence and residence requirements for TPS. For further explanation, read INA § 244(c)(4).

Criminal and other disqualifying conduct

Your client will be ineligible for TPS if she has been convicted of a felony, two or more misdemeanors, or certain drug offenses; has persecuted others; is a terrorist, or is a threat to national security.⁵

Otherwise admissible:

You will need to prove that your client is admissible as an immigrant. There are a few exclusions grounds that are automatically waived, for example unlawful presence and entry without inspection. There are other grounds of inadmissibility that can be waived upon request at USCIS's discretion.

Practice Pointer:

TPS can be obtained even if the child entered the United States without lawful admission. Additionally, the child can obtain TPS in the United States even if, at the time of application, she is present without lawful immigration status.

What immigration forms does my client need to fill out to apply for TPS?

Your client will apply for TPS with USCIS, even if your client is in removal proceedings at the time of the designation.⁶ To apply for TPS with USCIS your client will need to file two forms: (1) Form I-821 (Application for Temporary Protected Status), and (2) Form I-765 (Application for Employment Authorization Document), regardless of age. The applicant must also submit the required fees or a

fee waiver (Form I-912 or a written request explaining your client's inability to pay the requisite fees). If your client is not applying for work authorization, your client does not need to submit the fees for the I-765. However, your client must fill out Form I-765 to be granted TPS. The fees include biometric screening costs required for the adjudication of the application forms.

What if my client missed the initial registration deadline?

If your client did not register during the initial registration period, your client may register during any subsequent "extension" period. There are additional requirements your client must meet if your client is a late registrant. Late initial registrants must show that during the initial registration period, she:

- Was a nonimmigrant or had been granted voluntary departure status or any relief from removal.
- Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal.
- Was a parolee or had a pending request for re-parole, or
- Was the spouse or child of an alien currently eligible for TPS.

Child Practice Pointer:

Late Initial Filing for TPS

A child of a person eligible for TPS may register after the initial registration period during subsequent extensions of TPS, as long as the relationship existed at the time of the parent's initial registration. This means your child client does not need to wait for registration to reopen to apply for TPS as long as the child can demonstrate that she was born at the time the parent was initially eligible for TPS in order for the child to subsequently qualify for TPS.⁷ The child must still independently meet all the TPS eligibility requirements listed.

In contrast, you cannot obtain TPS as a derivative because your parent has TPS.

Citations

¹ TPS designations are decided through an interagency process that includes DHS, the White House, DOJ, and the U.S. State Dept.

² INA § 244.

³ INA § 244(b)(2).

⁴ INA § 244 (b)(1).

⁵ INA § 244(c).

⁶ 8 C.F.R. § 244.7(a) & (d) (2008).

⁷ 8 C.F.R. 244.2(f)(iv).