

## FACTS ABOUT Temporary Protected Status and Proving Work Authorization

July 2006

### ■ What is temporary protected status?

Temporary protected status (TPS) is an immigration status that allows people from certain foreign countries to remain in the United States for a limited period of time. TPS is granted to people from countries where conditions are so unsafe or difficult that it might be dangerous for them to return.<sup>1</sup> Countries are designated under the TPS program for a period of 6 to 18 months, and they may be redesignated for TPS for equivalent periods of time. The list of countries that have been designated for TPS can be found at U.S. Citizenship and Immigration Services' (CIS's) website, [www.cis.gov](http://www.cis.gov), under "Immigration Services and Benefits Programs" > "Temporary Protected Status" ([www.uscis.gov/graphics/services/tps\\_inter.htm](http://www.uscis.gov/graphics/services/tps_inter.htm)).

### ■ Under what circumstances does the U.S. government designate a country as one whose nationals or residents currently living in the United States are eligible for TPS?

The secretary of Homeland Security can designate a country as one whose nationals or residents currently living in the U.S. are eligible for TPS if:<sup>2</sup>

1. There is an ongoing armed conflict in the country (or in part of the country) that would pose a serious threat to the personal safety of the country's nationals, or of people with no nationality who last habitually resided in that country, if they were to return there;
2. There has been an earthquake, flood, drought, epidemic or other environmental disaster in the country that temporarily substantially disrupts living conditions there; or
3. Other extraordinary and temporary conditions exist that prevent that country's nationals, or people of no nationality who last habitually resided in that country, from being safe if they were to return there.

<sup>1</sup> Temporary Protected Status. INA § 244; 8 U.S.C. § 1254a; 8 C.F.R. § 244.

<sup>2</sup> In 1990, as part of the Immigration Act of 1990, P.L. 101-649, Congress established a procedure by which the U.S. attorney general could make TPS available to non-U.S. citizens in the United States who are temporarily unable to safely return to their home country because of ongoing armed conflict, the temporary effects of an environmental disaster, or other extraordinary and temporary conditions. On March 1, 2003, pursuant to the Homeland Security Act of 2002, P.L. 107-296, the authority to designate a country (or part thereof) for TPS, and to extend and terminate TPS designations, was transferred from the attorney general to the secretary of Homeland Security.



#### LOS ANGELES (Headquarters)

3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
213 639-3911 fax

#### WASHINGTON, DC

1101 14th Street, NW  
Suite 410  
Washington, DC 20005  
202 216-0261  
202 216-0266 fax

#### OAKLAND, CA

405 14th Street  
Suite 1400  
Oakland, CA 94612  
510 663-8282  
510 663-2028 fax

## ■ What are the benefits of having TPS?

TPS beneficiaries can remain in the United States without fear of being deported or removed during the TPS period. They also can obtain work authorization during the TPS period, may travel outside the U.S. if they obtain advance permission from U.S. Citizenship and Immigration Services, are considered to be lawfully present in the U.S., and may adjust or change their immigration status — for example, they can apply to adjust to permanent resident status if they are married to a U.S. citizen or resident or if their employer agrees to sponsor them.

TPS, however, does not lead automatically to lawful permanent resident status. When a country's period of designation for TPS ends and it is not redesignated for TPS, TPS beneficiaries from that country revert to the same immigration status they had before being granted TPS (unless that immigration status has since expired or been terminated) or to any other status they may have acquired after they registered for and were granted TPS. Thus, people who were undocumented prior to receiving TPS and who do not obtain any other lawful immigration status while they have TPS will revert to undocumented status when their TPS expires.

## ■ Who is eligible for TPS?

Once the secretary of Homeland Security has designated a country as one whose nationals and residents currently living in the U.S. are eligible for TPS, people from that country are eligible for TPS if they:<sup>3</sup>

1. Establish their identity and that they are a national of that country, or that they have no nationality but last habitually resided in that country. Evidence of identity and nationality may include: a passport; birth certificate accompanied by photo identification; national identity document bearing a photo and fingerprint; or an affidavit explaining the individual's inability to obtain documents with other proof;
2. Establish that they have continuously resided and been "continuously physically present" in the U.S. since the date the country was designated for TPS (however, having been briefly absent from the U.S. will not necessarily make a person ineligible);
3. Are not otherwise inadmissible — i.e., are not subject to any of the criminal, national security-related, or other bars to admission into the U.S.; and
4. Apply or register for TPS during the period provided for by the secretary of Homeland Security. If, when the initial period of designation is about to end, the secretary redesignates the country for TPS, beneficiaries from that country must reregister to maintain their TPS-related benefits. Under certain circumstances, persons who did not register for TPS during the initial registration period may apply for the benefit. 8 C.F.R. § 244.2(f)(2),(g).

Individuals are *not* eligible for TPS who:

1. Have been convicted of any felony or two or more misdemeanors committed in the U.S.;
2. Are a persecutor or terrorist, or are otherwise subject to one of the bars to asylum; or
3. Are subject to one of several criminal-related grounds of inadmissibility for which a waiver is not available.

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<sup>3</sup> Eligibility for TPS. INA §244(c); 8 U.S.C. §1254a(c); 8 C.F.R. §244.1–244.2.

## ■ How does a person apply for TPS?

To apply for TPS:

1. Submit (a) a completed Form I-821, Application for Temporary Protected Status, along with (b) a completed Form I-765, Application for Employment Authorization, and (c) the required evidence of nationality, identity, and continuous residence in the U.S., as well as (d) the required “biometric services fee.” Application forms, filing fee schedules, and additional application-related information can be obtained from U.S. Citizenship and Immigration Services’ website, [www.cis.gov](http://www.cis.gov).
2. File the application, along with the applicable filing fees, by the deadline.

## ■ Can TPS be extended beyond the initial period? If so, is the employment authorization of TPS beneficiaries automatically extended?

Once the secretary of Homeland Security has designated a country as one whose nationals and residents currently living in the U.S. are eligible for TPS, the secretary can redesignate that country for TPS when the initial period of designation is about to expire. Frequently, the secretary also will automatically extend the employment authorization of TPS beneficiaries who reregister for TPS under the redesignation.<sup>4</sup> Usually, the Department of Homeland Security (DHS) will announce the redesignation of a country for TPS through a news release and on the CIS website ([www.cis.gov](http://www.cis.gov)). Thereafter, CIS publishes a notice in the Federal Register that officially announces the redesignation, provides information about the reregistration process, and answers frequently asked questions. If the secretary has decided that it is appropriate to automatically extend the work authorization of TPS reregistrants, the notice will contain information about the automatic extension and about what information employers are allowed — and required — to accept from employees when verifying their employment eligibility on a Form I-9.

For example, on February 23, 2006, DHS issued a news release announcing that TPS beneficiaries from El Salvador, Honduras, and Nicaragua would be allowed to reregister for an additional 12 months of TPS (a copy of this news release is included with this tool kit). In addition, samples of the following Federal Register notices are included in this tool kit: (1) “Extension of the Designation of Temporary Protected Status for Honduras; Automatic Extension of Employment Authorization Documentation for Honduras TPS Beneficiaries” (71 FR 16328–33 (March 31, 2006)); (2) “Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvadorian TPS Beneficiaries” (71 FR 34637–41 (June 15, 2006)), and (3) “Automatic Extension of Employment Authorization Documentation for El Salvadoran TPS Beneficiaries” (71 FR 37941–43 (July 3, 2006)).

When TPS beneficiaries’ employment authorization is automatically extended in conjunction with a redesignation of a country for TPS, the affected TPS beneficiaries *still must reregister for TPS during the reregistration period*. If they *fail* to reregister before the deadline given in the Federal Register notice, *they will lose their TPS*.

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<sup>4</sup> Generally, CIS issues an automatic extension of TPS-related employment authorization when a large number of beneficiaries are expected to reregister for TPS, since in such cases the agency is unlikely to be able to issue new employment authorization documents (EADs) in a timely fashion.

## ■ When TPS beneficiaries have been granted an automatic extension of employment authorization, what documents can they show their employer to prove this?

As explained above, when the secretary of Homeland Security redesignates a country for TPS, the secretary *sometimes* also automatically extends the validity of TPS beneficiaries' employment authorization documents (EADs). In such instances, although the expiration date on the EAD card may have passed, the Federal Register notice issued by DHS extends the validity of the apparently expired EAD, and the person to whom it was issued remains eligible for employment in the U.S. When they need to verify or reverify such a person's employment eligibility (i.e., on the Form I-9), employers can do so by accepting the EAD card whose expiration date has passed, plus a copy of the relevant Federal Register notice. Typically, each such notice describes very specifically the EADs to which it applies. For example, the July 3, 2006, notice regarding the automatic extension of employment authorization for TPS beneficiaries from El Salvador explains that the extension applies to EADs issued on Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category," and with expiration dates of either July 5, 2006 or September 9, 2006. If an employee presents such an EAD card along with a copy of the July 3, 2006, Federal Register notice, his or her employer should *not* ask the employee to produce any additional documents to verify or reverify his or her employment eligibility when completing the Form I-9. (For more information on rights and responsibilities related to employment eligibility reverification, see "Basic Information Brief: Reverification of Employment Eligibility" at [www.nilc.org/immsemplymnt/Info\\_Memos/basic\\_info\\_reverification.htm](http://www.nilc.org/immsemplymnt/Info_Memos/basic_info_reverification.htm).)

Often, employers are unaware of the fact that DHS has issued a notice that (1) allows employees with TPS to extend their lawful status and (2) automatically extends the validity of their EADs. This, in turn, causes confusion among employers and workers and often results in TPS beneficiaries being either suspended or terminated from employment, despite the fact that they remain employment-eligible. It is crucial, therefore, that advocates for immigrant workers educate them about their TPS-related rights and also educate employers about their obligations when verifying or reverifying the employment eligibility of employees who have reregistered for TPS and been granted an automatic extension of employment authorization. A sample letter to employers can be found in this tool kit.

More information regarding these issues is available on the CIS website, [www.cis.gov](http://www.cis.gov), or workers with TPS also can contact the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) at 1-800-255-7688 or 1-800-237-2515 (TDD), or visit the OSC's website, [www.usdoj.gov/crt/osc/index.html](http://www.usdoj.gov/crt/osc/index.html), to obtain more information regarding automatic extensions of employment authorization.

## ■ What rights do TPS beneficiaries have in the workplace?

All workers, regardless of immigration status — including TPS beneficiaries — are protected by state and federal labor and employment laws. More information about the rights of immigrant workers can be found in NILC's *Immigrant Workers' Rights Resource Manual*, available at [www.nilc.org/immsemplymnt/index.htm#resman](http://www.nilc.org/immsemplymnt/index.htm#resman).

If you have TPS and your employer refuses to accept your employment authorization document, you should file a complaint with the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). The OSC can be contacted at 1-800-255-7688 or 1-800-237-2515 (TDD). More information about the OSC and the services it provides is available on its website, [www.usdoj.gov/crt/osc/index.html](http://www.usdoj.gov/crt/osc/index.html).