



Welcome the stranger.  
Protect the refugee.

# TPS/DED Project Toolkit

For Pro Bono Attorneys

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## About HIAS

There have never been more people seeking safety and so few places willing to protect and welcome them. Over 100 million people are forcibly displaced. Governments should be taking responsibility to support them, but instead, their responses are unacceptable. Founded in the late 1800s, HIAS is there for refugees when and where they need help most. We are a Jewish humanitarian organization that works in the United States in 20 different cities, as well as in 20+ other countries, providing vital services to refugees and asylum seekers of all faiths so they can rebuild their lives in safety, and with dignity. With the Jewish community beside us, we also advocate for the rights of forcibly displaced people globally. Over our expansive history, we've confronted—and overcome—formidable challenges facing refugees. Today, we are a leader with the expertise, partnerships, and values necessary to respond to the global crisis. Refugees deserve a world in which they find welcome, safety, and freedom. With you, we can create it. Join us.

- **Learn** about the global refugee crisis and how to make our world safer and more welcoming.
- [Visit HIAS.org](https://www.hias.org) to learn about our work in the U.S. and around the world.
- **Donate to HIAS**, or directly to [HIAS' Legal Team](#). Your gift will make an immediate impact in the lives of refugees and asylum seekers.
- **Take action**. Speak up, show up, or organize your community to advocate for the rights of refugees and asylum seekers everywhere.
- **Volunteer** your time and talents directly to help refugees and asylum seekers near you.
- **Welcome the Stranger**. Learn about the Jewish values we bring to our work and how you can live them out every day.
- **Follow HIAS on social media** ([Facebook](#) – [Instagram](#) – [Twitter](#)) to stay informed on refugee news and ways to help.

## About Temporary Protected Status and Deferred Enforced Departure

Created by Congress in 1990, **Temporary Protected Status (TPS)** is a short-term immigration benefit for noncitizens who are unable to return to their home country safely due to conditions or circumstances preventing the home country from adequately handling the noncitizens' return. Such circumstances may include: ongoing armed conflict; natural disaster (like earthquake, flood, drought, epidemic, or other environmental disaster); or other "extraordinary and temporary conditions" which prevent the citizens of that country from returning in safety. Eligible individuals can apply for TPS and, if granted, enjoy a temporary reprieve from immigration enforcement (typically 6, 12, or 18 months in duration) as well as employment authorization.

To qualify for TPS, one must:

- Be a **national** of a country designated for TPS, or a person without nationality who **last habitually resided** in the designated country;
- **File during the open initial registration or re-registration period**, or you meet the requirements for late initial filing during any extension of your country's TPS designation (Late initial filers see 'Filing Late' section below);
- Have been **continuously physically present (CPP) in the United States since the effective date** of the most recent designation date of your country; and
- Have been **continuously residing (CR) in the United States since the date specified** for your country.

**Note:** The law allows an exception to the continuous physical presence and continuous residence requirements for brief, casual and innocent departures from the United States. When your client is applying or re-registering for TPS, they must inform USCIS of all absences from the United States since the CPP and CR dates. USCIS will determine whether the exception applies in your client's case.

In contrast, **Deferred Enforced Departure (DED)** has no statutory basis, but rather, derives from the President's constitutional powers to conduct foreign relations. It is designated by the President (through Executive Order or Presidential Memorandum), based largely on foreign relations considerations. Eligible individuals are afforded DED automatically by virtue of their citizenship; they enjoy a temporary reprieve from immigration enforcement (meaning DHS will refrain from enforcing immigration removal laws against them, unless extraordinary circumstances apply, typically for a period of 6, 12, or 18 months) and they can apply for employment authorization.

Eligibility requirements for Deferred Enforced Departure (DED) are based on the terms of the president's directive regarding DED for that country and any relevant implementing requirements established by DHS.

	<b>DED</b>	<b>TPS</b>
<b>Type of relief</b>	Protection from deportation.	Temporary immigration benefit.
<b>Permanency</b>	Not permanent. Designated for specific timeframe.	Not permanent. Designated for specific timeframe.
<b>Designation</b>	By U.S. President.	By DHS Secretary.
<b>Consultation with Secretary of State</b>	Not required.	Required.
<b>Eligibility</b>	Country or region-specific.	Country-specific.
<b>Expiration</b>	Country or region-specific with option for extension.	Country-specific with option for extension.
<b>Work authorization</b>	Yes, with limited expiration date and option for renewal if DED is extended.	Yes, with limited expiration date and option for renewal if TPS is extended.
<b>Travel abroad</b>	Not automatically allowed and only with advance parole.	Not automatically allowed and only with advance parole

*Infographic from National Immigration Forum*

## Overview for Remote TPS/DED Project Cases

- 1) Contact your Client to Arrange a Virtual Meeting. HIAS will contact you to with information about your client and your HIAS mentor. Your first step in the Remote TPS/DED Project is to reach out to the client to introduce yourself and set up a time (ideally in the following week) to meet. Try to balance your client’s needs with your work schedule. Ask your client if they feel comfortable meeting over video (either via Zoom, WebEx, FaceTime/WhatsApp) or if they would prefer to meet by phone.
- 2) Complete the Client Questionnaire. The client questionnaire will include all of the information you need to complete the forms associated with your client’s TPS application. It will also note what documentation your client will need to provide for submission with the TPS application so your client can begin working to gather that. Using the questionnaire is optional; if you feel more comfortable completing the application forms without using the questionnaire, please feel free to do so.
- 3) Draft the Application Forms. Your HIAS mentor will confirm which application forms apply to your client’s situation, but generally speaking, the following forms are relevant for the respective types of applications:
  - a. **TPS:**
    - [G-28, Entry of Appearance as Attorney](#)
    - [I-821, Application for TPS](#)
    - [I-765, Application for Employment Authorization](#) – category (a)(12)
    - [\\*I-912, Application for Fee Waiver](#) (Client may choose to pay a filing fee or file the Application for a Fee Waiver)
    - [I-601, Application for Waiver of Inadmissibility](#) (*only if necessary, see below*)
  - b. **DED:**
    - [G-28, Entry of Appearance as Attorney](#)
    - [I-765, Application for Employment Authorization](#) – category (a)(11)
    - [\\*I-912, Application for Fee Waiver](#) (Client may choose to pay a filing fee or file the Application for a Fee Waiver)
- 4) Gather the Required Supporting Documentation. Your HIAS mentor will confirm which supporting documentation will be required/recommended in your client’s situation, but generally speaking, the following documentation is relevant for these applications:

TPS	DED
Proof of Identity and Nationality: <ul style="list-style-type: none"> <li>• Passport;</li> <li>• Birth Certificate, accompanied by photo identification; or</li> <li>• Another form of photo identification from home country with photo/fingerprint.</li> </ul> Proof of Date of Entry to the US: <ul style="list-style-type: none"> <li>• If entered lawfully: Passport stamp; I-94 record;</li> <li>• If entered irregularly: Use documentation below to prove presence in the U.S.</li> </ul> Proof of Presence/Continuous Residence in the US:	Proof of Identity and Nationality: <ul style="list-style-type: none"> <li>• Passport;</li> <li>• Birth Certificate, accompanied by photo identification; or</li> <li>• Another form of photo identification from home country with photo/fingerprint.</li> </ul> Proof of Presence/Continuous Residence:

<ul style="list-style-type: none"> <li>• Employment records (paystubs, W2s, tax returns, letter from employer);</li> <li>• Passport entries, and/or Form I-94, Arrival-Departure Record;</li> <li>• Rent receipts, utility bills (gas, electric, telephone, etc.), receipts, or letters from companies showing dates when the applicant received service;</li> <li>• Attestations by churches, unions, or other organizations of the applicant's residence;</li> <li>• Affidavits;</li> <li>• Money order receipts for money sent in or out of the U.S.;</li> <li>• Birth certificates of children born in the U.S.</li> </ul> <p>Filing Fee, or Fee Waiver* w/ Supporting Documentation</p> <ul style="list-style-type: none"> <li>• For filing fee information, see Appendix C</li> <li>• If filing Fee Waiver, include: <ul style="list-style-type: none"> <li>○ Proof of income (Paystubs, W2s, letter from employer, etc.);</li> <li>○ Proof of expenses (Copy of apartment/home lease contract, copies of recent bills);</li> <li>○ Proof of receipt of a means-tested benefit;</li> <li>○ Proof of dependent children, if applicable, like copies of birth certificates (include certified English translations if not in English) and school records.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Employment records (paystubs, W2s, tax returns, letter from employer);</li> <li>• Passport entries, and/or Form I-94, Arrival-Departure Record;</li> <li>• Rent receipts, utility bills (gas, electric, telephone, etc.), receipts, or letters from companies showing dates when the applicant received service;</li> <li>• Attestations by churches, unions, or other organizations of the applicant's residence;</li> <li>• Affidavits;</li> <li>• Money order receipts for money sent in or out of the U.S.;</li> <li>• Birth certificates of children born in the U.S.</li> </ul>
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*\*Optional*

- 5) Review Application with Client; Send Assembled Packet for HIAS Mentor Review. After reviewing the application forms with your client, send the draft forms, draft cover letter, and supporting documentation to your HIAS mentor to review. Once the review is complete, your client can sign the drafted forms, and you can finalize and file the application with USCIS.

## Waivers of Inadmissibility for TPS Applicants

Some applicants for TPS may be inadmissible under the Immigration and Nationality Act, §212. However, not every ground of inadmissibility will bar an applicant from receiving TPS. We list below some grounds of inadmissibility for which a TPS applicant will not need a waiver, grounds of inadmissibility for which a waiver is required, and grounds of inadmissibility which will disqualify an applicant for TPS entirely.

Note that if a TPS applicant requires a waiver, they will need to establish that such a waiver is warranted for humanitarian purposes, to assure family unity, or is otherwise in the public interest.

### Common Grounds of Inadmissibility for which **NO WAIVER IS REQUIRED**

1. Public charge (INA §212(a)(4));
2. Aliens present without admission or parole (INA section 212(a)(6)(A));
3. Stowaways (INA §212(a)(6)(D));
4. Student visa violators (INA section 212(a)(6)(G));
5. Certain aliens previously removed (INA §212(a)(9)(A));
6. Aliens unlawfully present (INA §212(a)(9)(B)); or
7. Aliens unlawfully present after previous immigration violations (INA §212(a)(9)(C)).

### Common Grounds of Inadmissibility for which a **WAIVER IS REQUIRED**

1. A controlled substance violation (INA section 212(a)(2)(A)(i)(II)) – **ONLY IF** the offense was a single offense relating to simple possession of 30 grams or less of marijuana;
2. Prostitution (INA §212(a)(2)(D));
3. Drug abuse or addiction (INA §212(a)(1)(A)(iv));
4. Fraud (INA §212(a)(6)(C)); and
5. Smuggling (INA §212(a)(6)(E)). **\*Note:** USCIS may accuse a parent of smuggling if they entered the US irregularly with their minor children. It would be best practice to file a waiver in this case as a precaution.

*\*If your client was convicted (or admitted to the essential elements) of any of the above-referenced crimes, please alert your HIAS mentor.*

**Note:** Certain criminal convictions will wholly disqualify an applicant from TPS, and no waiver is available. See more details below.



## Disqualifying Circumstances

### TPS: Disqualifying Criminal Convictions (No Waiver Available)

- Crime involving moral turpitude (CIMT under INA §212(a)(2)(A)(i)(I))
  - **Note:** If the offense falls under a statutory exception, the applicant is not inadmissible for having committed a CIMT. The exceptions are:
    - A purely political offense;
    - If the applicant committed only one CIMT, they were under 18 years of age at the time, and they committed the crime (and were released from confinement), more than 5 years before their application; or
    - If they committed only one CIMT for which the maximum possible sentence was 1 year or less of imprisonment, and the actual sentence received was not more than 6 months of imprisonment.
  - *\*If your client was convicted of only one crime that might constitute a CIMT, please alert your HIAS mentor.*
- Controlled substance violations (INA §212(a)(2)(A)(i)(II))
  - **BUT:** A TPS applicant *may* apply for a waiver if the offense was a single offense relating to simple possession of 30 grams or less of marijuana.
- Multiple criminal convictions (INA §212(a)(2)(B)) (but purely political offenses do not make an applicant inadmissible);
- Controlled substance traffickers (INA §212(a)(2)(C));
- General security and related grounds (INA §212(a)(3)(A));
- Terrorist activities (INA §212(a)(3)(B));
- Adverse foreign policy consequences for the United States (INA §212(a)(3)(C));
- Immigrant membership in totalitarian party (INA section 212(a)(3)(D)); and
- Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (INA §212(a)(3)(E)).

### TPS: Disqualifying Circumstances

- Having been convicted of any felony or two or more misdemeanors committed in the US;
- Being inadmissible as an immigrant under INA § 212(a), including non-waivable criminal and security-related grounds;
- Being subject to any of the mandatory bars to asylum under INA § 208(b)(2)(A):
  - Participating in the persecution of others due to their race, religion, nationality, membership in a particular social group, or political opinion;
  - Having been convicted of a particularly serious crime;
  - Reason to believe that the noncitizen committed a serious nonpolitical crime outside the US prior to arriving in the US;
  - Reason to believe the noncitizen is a danger to the security of the US;
  - Terrorist or national security grounds;
  - Noncitizen was firmly resettled in another country prior to arriving in the US.  
*\*\*See FAQ below for information on firm resettlement and dual nationality\*\**
- Failing to meet the continuous physical presence and continuous residence requirements;
- Failing to meet initial or late initial TPS registration requirements; or
- If granted TPS, failing to re-register for TPS, as required, without good cause.

## DED: Disqualifying Circumstances

- Having voluntarily returned to their country of nationality, or their country of last habitual residence outside the United States;
- Not having continuously resided in the United States since [the designation date];
- Being inadmissible under INA § 212(a)(3) (security grounds; terrorism; foreign policy; members of totalitarian parties; or perpetrators of genocide) or removable under INA §237(a)(4) (security grounds; terrorism; foreign policy; perpetrators of genocide; violators of religious freedom; or recruiters of child soldiers);
- Having been convicted of any felony, or two or more misdemeanors committed in the United States,
- Being subject to any of the mandatory bars to asylum under INA § 208(b)(2)(A):
  - Participating in the persecution of others due to their race, religion, nationality, membership in a particular social group, or political opinion;
  - Having been convicted of a particularly serious crime;
  - Reason to believe that the noncitizen committed a serious nonpolitical crime outside the US prior to arriving in the US;
  - Reason to believe the noncitizen is a danger to the security of the US;
  - Terrorist or national security grounds;
  - Noncitizen was firmly resettled in another country prior to arriving in the US.  
*\*\*See FAQ below for information on firm resettlement and dual nationality\*\**
- Having been deported, excluded, or removed before [the designation date];
- Being subject to extradition;
- Being a person whose presence in the US the secretary of DHS has determined is not in the interest of the US or presents a danger to public safety; or
- Being a person whose presence in the US the secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the US.

## Frequently Asked Questions

- 1. What if my client was arrested (and/or criminally charged) in their home country, but for politically-motivated reasons?**
  - Even if your client technically answers “no” to the relevant questions about criminal history on the Form I-821, it is best practice to exercise candor to USCIS. We recommend checking the “no” box if appropriate, and adding a brief explanation in the addendum page, like: “On January 1, 2017, Venezuelan National Police arrested me while I was peacefully protesting in Caracas. They accused me of disloyalty to the motherland and protesting without a permit. I was detained for 72 hours but was never formally charged with wrongdoing and was never convicted of a crime.”
- 2. My client entered the U.S. without permission with minor children. Are they still eligible for TPS?**
  - Yes, but USCIS may accuse a person in this situation of smuggling. Be sure to honestly answer questions related to the entry with the minor children on the TPS form.
  - We recommend preparing an I-601 waiver (either for submission with the initial application, or to submit later if USCIS issues a Request for Evidence) in case USCIS deems the applicant inadmissible for smuggling.
- 3. If my client is eligible for both TPS and DED, which is better?**
  - It depends. In most cases, TPS would be “better” – it’s considered an affirmative immigration status and may make the individual eligible for other local benefits, like driver’s license or state ID. One other important consideration is that a work permit based on DED does not automatically extend in validity when a renewal work permit is timely filed; a TPS-based work permit would automatically be extended if the renewal is timely filed. Though applicants may utilize fee waivers for either program, if cost is an issue the applicant may want to consider a work permit under DED over TPS, or TPS without a work permit.
- 4. My client’s application for asylum is pending at the Asylum Office. What happens if they are granted TPS?**
  - If your client is granted TPS, they will be considered in valid immigration status. Having TPS will not interfere with the ability of the Asylum Office to grant asylum. However, if the Asylum Office does not approve the application, if they hold TPS, the Asylum Office will simply deny the case. In contrast, if the Asylum Office does not approve the application and they do not hold TPS (and are not otherwise in a lawful immigration status), the Asylum Office will issue a Notice to Appear (charging document for removal proceedings) and refer the case to the Immigration Court. If the case is referred to Immigration Court, your client can renew their request and an Immigration Judge can consider your asylum application.
- 5. My client’s application for asylum is pending before the Immigration Court. What happens if they are granted TPS?**
  - If your client is granted TPS, you may consider asking the Court to dismiss removal proceedings, or administratively close the removal proceedings for the pendency of your TPS status.<sup>1</sup> However, doing so will mean that the Court will not move forward on your asylum application. Alternatively, one could ask the Immigration Judge to proceed in adjudicating the asylum application, and if asylum is denied, the individual should still be protected from removal by their TPS status. The best decision will depend on each individual’s circumstances.
  - *Administrative Closure:* A grant of administrative closure will mean that your client is technically still in removal proceedings, but that the case is essentially inactive. Administrative closure may be a preferable option for a client with a pending asylum claim, as they will not abandon an asylum claim and “lose” a filing date which complied with the “one year filing deadline.”

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<sup>1</sup> Matter of Cruz-Valdez, 28 I&N Dec. 326 (A.G. 2021), vacated prior precedent and restored the ability of immigration judges to grant administrative closure.

- *Dismissal*: If the Immigration Judge dismisses your client’s case without prejudice, they will no longer be in removal proceedings. However, because the dismissal is “without prejudice,” DHS can always reinstate removal proceedings later, if circumstances exist which would render your client removable. One factor to keep in mind with dismissal is how it could affect a pending asylum application. If your client filed for asylum within one year of their entry to the U.S., dismissal of removal proceedings also ends that pending asylum application. If your client decides later to apply for asylum again, they may be determined to have missed the “one year filing deadline,” and be ineligible for asylum.<sup>2</sup>

## 6. What will happen when my client’s TPS expires?

- Sixty days before a country’s TPS designation is set to expire, DHS will make an announcement regarding the future of this designation, either: (1) DHS will re-designate and extend TPS, allowing current TPS beneficiaries to renew and other citizens of that country to apply in the first instance; (2) DHS will extend TPS, allowing current TPS beneficiaries to renew, but not allowing others who did not qualify for TPS previously to apply; or (3) DHS will terminate TPS, setting an expiration date for the status of current TPS holders.
- If TPS is not extended, DHS will provide details about the expectation of when and how TPS holders should plan to return to their country. If that is the case, we would encourage all TPS holders interested in remaining in the US to consider other avenues for immigration relief, and to consult with a trustworthy immigration attorney to evaluate all options.

## 7. Is my client still eligible for TPS if they have dual nationality with another country?

- Having dual citizenship alone does not necessarily disqualify an applicant for TPS. The two relevant considerations when a TPS applicant has dual nationality with a non-TPS country are: (1) whether the applicant’s “operative nationality” is of the TPS-designated country, and (2) whether the applicant was “firmly resettled” anywhere, including the country of second nationality, prior to coming to the U.S.
- *On Operative Nationality*: Even though a person may hold two nationalities, the U.S. government will only recognize one nationality at a time. Examine how (with which passport) the applicant entered the United States, and how the applicant represented themselves in any encounters with U.S. immigration authorities. These situations will help indicate which country is the applicant’s “operative nationality” for purposes of eligibility for TPS.
- *On Firm Resettlement*: Some factors which would suggest “firm resettlement” include: whether and when the noncitizen resided in the country of second nationality immediately prior to entering the US; which passport the noncitizen used in entering the US; and the extent of the contacts the noncitizen has in the country of second nationality.

## 8. Is my client still eligible for TPS if they were living in another country before they came to the US?

- Maybe. A noncitizen is not eligible for TPS if they were “firmly resettled” in another country prior to coming to the U.S. According to DHS rules, an individual is considered to be “firmly resettled” if, prior to arrival in the United States, they entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement. One does not have to have *received* an offer of permanent resettlement to be considered firmly resettled, “the existence of a legal mechanism in the country by which a foreign national could obtain permanent residence may be sufficient to make a showing of an offer of firm resettlement.”<sup>3</sup>

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<sup>2</sup> See more about the One Year Filing Deadline for asylum, here: [https://www.uscis.gov/sites/default/files/document/lesson-plans/One\\_Year\\_Filing\\_Deadline\\_Asymylum\\_Lesson\\_Plan.pdf](https://www.uscis.gov/sites/default/files/document/lesson-plans/One_Year_Filing_Deadline_Asymylum_Lesson_Plan.pdf)

<sup>3</sup> Matter of A-G-G-, 25 I&N Dec. 486, 502 (BIA 2011).

- *Determining Firm Resettlement:* To determine if someone was firmly resettled, the government uses a four-step framework:<sup>4</sup>
  - 1) The government bears the burden of presenting prima facie evidence of an offer of firm resettlement by producing direct evidence or indirect evidence of his or her ability to stay in a country indefinitely, if of a sufficient level of clarity and force;
  - 2) The foreign national can rebut the prima facie evidence by showing by a preponderance of the evidence that such an offer has not been made or that he or she would not qualify for it;
  - 3) The totality of the evidence presented by both parties is considered to determine whether the foreign national has rebutted the evidence of an offer of firm resettlement; and
  - 4) If deemed firmly resettled, the burden shifts to the foreign national to establish that an exception to firm resettlement, by a preponderance of the evidence.
- *Exceptions to Firm Resettlement:* If the foreign national is found to have been “firmly resettled,” they are ineligible for TPS unless they establish:
  - A. That entry into that country was a necessary consequence of his or her flight from persecution, they remained in that country only as long as was necessary to arrange onward travel, and they did not establish significant ties in that country; or
  - B. That the conditions of residence in that country were so substantially and consciously restricted by the authority of the country of refuge that they were not in fact resettled.<sup>5</sup>

#### 9. What happens if my client (or someone my client knows) misses the deadline to initially register for TPS?

- In certain circumstances, someone otherwise eligible for TPS may submit a late initial registration. To qualify, one must fall into one of the following categories:
  - A. During the initial registration period or re-designation period, you met one of the following conditions, and you register while the condition still exists or within a 60-day period immediately following the expiration or termination of such condition
    1. You were a nonimmigrant, were granted voluntary departure status, or any relief from removal
    2. You had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal
    3. You were a parolee or had a pending request for re-parole
    4. You are a spouse of an individual who is currently eligible for TPS
  - B. OR - During the initial registration period or re-designation period, you were a child of an individual who is currently eligible for TPS. There is no time limitation on filing if you meet this condition. So if your parent is currently eligible for TPS and you were his or her child (unmarried and under 21 years old) at any time during a TPS initial registration period for your country, you may still be eligible for late initial filing even if you are now over 21 years old or married.

#### 10. Can my TPS Client travel abroad?

- In certain situations, an individual who has applied for or been granted TPS may apply for, and receive, permission from DHS to travel abroad, called “Advance Parole.” Typically, DHS will consider granting Advance Parole only in urgent, emergency situations, for example, to visit a sick or ailing relative. DHS typically does not grant Advance Parole to TPS holders so they may return to their home country to visit family, where an emergency or urgent situation is not present.

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<sup>4</sup> Matter of A-G-G-, 25 I&N Dec. 486, 501-02 (BIA 2011).

<sup>5</sup> 8 C.F.R. § 208.15(a)-(b).

- If an individual travels abroad *without Advance Parole*, whether their TPS application is pending (not yet approved) or whether their TPS application has been approved, they may be considered to have abandoned their TPS status, and will likely not be able to re-enter the United States.
- If an urgent, emergency situation arises, an individual who holds TPS may apply for Advance Parole via the Form I-131. The TPS holder is strongly urged to provide proof of the urgent/emergency situation along with their filing (i.e., if a close family member is sick, include a letter from the family member's doctor [and certified English translation if applicable], as well as proof of the family relationship [birth certificate, marriage certificate, etc.]).

## Cultural Humility and Working with Immigrant Clients

*Cultural humility is a complex issue that requires continuous work. These materials are meant only to provide an introduction to this topic. HIAS encourages those in our Pro Bono Attorney network to seek additional training opportunities on this and other topics related to Diversity, Equity, Inclusion, and Justice.*

When working with clients with a different cultural identity, we must be aware of our own biases and preconceptions and continually work towards a place of understanding, inclusivity, and advocacy.

**Cultural humility** is defined as the ability to maintain an interpersonal stance that is other-oriented (or open to the other) in relation to aspects of cultural identity that are most important to that person. In contrast to the framework of cultural competency, which assumes that learning and understanding of other cultures can reach a successful end-point, cultural humility involves a humble awareness that we will never stop learning and growing as we connect with others.

When we talk about "cultural humility," we are inherently talking about "culture," which, in practice, is multifaceted and diverse:

*"Culture," according to one account, is "a system of shared beliefs, values, customs, behaviors, and artifacts that members of a society use to cope with their world and with one another, and that is transmitted from generation to generation through learning." Cultural groups can be based on a range of different identities including race, religion, age, sexual orientation, gender, immigration status, social status, language, and geography. No single characteristic will determine a person's "culture"- we are each a part of several cultures, and each culture generates its own norms. A person's behaviors and values are thus driven, in part, by a complex confluence of cultures and by the way in which society treats members of different groups. Culture is closely bound up with identity; it may be understood as an expression of group identity.<sup>6</sup>*

In approaching our work with immigrant clients with cultural humility, we encourage our pro bono attorneys to:<sup>7</sup>

1. **Adopt a lifelong commitment to self-evaluation and self-critique.** Be humble and flexible about what we know and what we have yet to learn. Recognize that one can never really master another's culture. Strive towards self-awareness about one's own values and beliefs and realize that we all bring those notions (consciously or unconsciously) to our work with others. (This is sometimes referred to as "[implicit bias](#) or [unconscious bias](#)"). We must understand ourselves before we can overcome difference and build successful relationships.

### *Questions for Self-Reflection:*<sup>8</sup>

- What do I think about my client's cultural group(s)? How do I know this to be "true"?
- We all have biases; this is normal and not inherently bad. What are my biases? What are my biases based on?
- What are the consequences in my relationship with this person, this community, if I act on my biases?
- What can I learn here? And how?

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<sup>6</sup> Debra Chopp, "[Addressing Cultural Bias in the Legal Profession](#)," 41 NYU Rev. of L. and Soc. Change 367, 371 (2017).

<sup>7</sup> See [Hook, Davis, Owen, Worthington and Utsey \(2013\)](#).

<sup>8</sup> Adapted from "Race Matters: The Impact of Race on Social Justice," National Association of Criminal Defense Lawyers (Jan. 2019), available at <https://www.nacdl.org/getattachment/8d685d93-86f4-40b5-849b-39eb495302ee/practicing-cultural-humility.pdf>

- What is my own cultural identity? How do I bring this identity into interactions with my client? How do I bring identity, power, and privilege to my work?
2. **Incorporate a desire to fix power imbalances.** Our job as lawyers is to bring a unique education and expertise to assist our clients with a particular legal challenge. Though our clients do not typically possess this particular base of knowledge, our clients do have valuable knowledge and experience in other areas. We strive to recognize our different experiences without assigning value to one over another. We are each the expert of *our own* experience. We encourage pro bono attorneys to see their clients as the experts of their own experience.

*Questions for Self-Reflection when Working with Clients:*<sup>9</sup>

- Can I practice curious, respectful inquiry when discussing client matters?
  - How can I encourage, rather than presume, pre-empt, or obstruct, my client's telling of their own story?
  - What are my client's goals for this representation? How can I best use my skills and expertise to meet my client's goals and needs? How can I meet my client where they are?
3. **Develop partnerships with people and groups who advocate for others.** As lawyers, we do not just represent and support our individual clients; we can be (and often, as a result of our representation, are) advocates for these communities and issues at large. However, we know that we are not the experts of our clients' lived experience. To that end, we should continue to advocate for others but respect the advocacy priorities as defined by the community – not necessarily what we think their priorities are or should be.

*Questions for Self-Reflection:*<sup>10</sup>

- How can I be an effective student of and partner for this community?
- How does my advocacy build upon the community's existing strengths?
- Does my work serve what the community sees as important?

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<sup>9</sup> Id.  
<sup>10</sup> Id.



## Tips for Working with Survivors of Trauma and Grief

**Understanding Trauma:** Trauma occurs after a particular event causes an intense reaction or stress (be it physical, psychological, etc.). Traumatic memories are stored in the body's "limbic system" (fight/flight/freeze part of the brain), not in the "frontal lobe" (thinking part of the brain). Thus, traumatized individuals may struggle to recall traumatic memories and contextualize the events in a coherent chronology. Traumatic memories may be triggered by sensory events, including smells, sounds, images, fear, and stress.

**Understanding Grief:** In addition to being a survivor of trauma, your client may also be experiencing grief. Grief is the loss and absence of something cherished and relates to the relationship one has with another person, thing, experience, or themselves. It is not simply about the death of a loved one. Grief is not a linear process, and it is not something a person completes. Your client may continue experiencing grief for losses suffered months or even years ago.

**Manifestations of Trauma:** An individual who has suffered a traumatic event may show symptoms of this trauma in diverse or various ways, including:

- **Physical ailments:** Scars, burns, internal injuries, brain injuries/headaches, jaw pain, reproductive/fertility issues, developmental delays
- **Relational ailments:** Distrust of others, lack of interest in relationships, isolation, lack of appropriate boundaries with others
- **Psychological ailments:** Depression, anxiety, suicidal ideation, low self-esteem, drug/alcohol addiction/dependency, difficulty concentrating, difficulty remembering, poor habits (self-care, grooming)
- **Flooding:** details of similar traumatic events get confused or mixed up.
- **Flashbacks:** uncontrollable and vivid memory of a traumatic event. May cause heart racing, sweating, shortness of breath.
- **Dissociation:** mentally transported back to a traumatic incident, as if re-living it. They may appear to be "spaced out" or may be reacting to the situation in their memory.
- **Minimization:** flat affect, makes it seem as if "wasn't as bad as it could have been."

**Manifestations of Grief:** Your client's grief, like their trauma, might manifest in different ways. Exhaustion, changes in sleep and appetite, crying easily, feeling numb, forgetfulness, and difficulty concentrating are examples of grief symptoms. Being mindful of a person's grief will also position you to best serve your client.

### Working with Survivors of Trauma and Grief:

- **Try to create a safe space:** Manage expectations of what the meeting will be about, explain if you are taking notes, what they are for; Be aware of children present, the client may not be able to be as forthcoming about details; (if possible) Have tissues, water, snacks available. If not possible, encourage the client to bring tissues, water, and/or snacks.
- **Understanding Each Other:** Explain the roles of the attorney and the client and attorney/client privilege; Encourage the client to ask questions and advocate for themselves (if they don't understand if they need a break).
- **Who has the control?** Is the client's comfort considered? Is the client's physical/emotional/psychological safety being considered? Is the client able to (or does the client feel empowered to) ask for a break? **Remind the client that this is their case and their process, and they are an important part of the preparation of their claim.** To that end, encourage the

client to ask questions if they don't understand. As the attorney, take time to ask the client, "does this sound okay to you?" or "did I explain that in a way that makes sense? can I explain that better?"

### **Discussing Sensitive Topics:**

- Warn the client before asking a sensitive question and explain why the question is relevant/necessary.
- Consider the client's reaction – are they giving you clues about how they are feeling, or whether there is something they're not comfortable sharing right now?
- Keep your own reactions in check – your intense reaction may make the client feel judged or uncomfortable.
- Use open-ended questions: Try not to interrupt too much (unless the client is flooding); Record your questions and go back later to ask clarifying questions
- Ask only what you need to know
- Be careful with labeling/word choice – try to mirror the language that the client uses.
- Use context to build a timeline
  - What was the weather like?
  - Was it near a holiday?

### **If the Client is Triggered:**

- If the client is triggered, work to get back to the present moment: Take a break; Suggest a walk; comment on surroundings to re-center the client to the present moment
- Your goal is to contain the traumatic memory and return to a calm state

### **Ending the Meeting:**

- Don't end the meeting immediately after the re-telling of a traumatic event
- Remind your client that everything they shared will remain confidential
- Thank your client for sharing their story
- Give the client a clear understanding of what's next and who to contact if they have questions

## Appendix A: HIAS Volunteer Policies and Agreements

Download the **HIAS Volunteer Policies Agreement** [here](#), and the **HIAS Pro Bono Attorney Agreement** [here](#), and after signing them, return them to us at [probono@hias.org](mailto:probono@hias.org).

## Appendix B: Filing Fees and Mailing Addresses

### TPS: Mailing Addresses

Find the appropriate country on [this page](#) to determine the correct mailing address. If you are not including a Fee Waiver request, consider [filing the application online](#).

### TPS: Filing Fees

The Applicant Is	Applicant's Age	I-821 Fee	Biometric Services	I-765 Fee	Total
Submitting their first TPS application and requesting an EAD	Younger than 14	\$50	\$0	\$0	\$50
	14-65 years old	\$50	\$85	\$410	\$545
	66 and older	\$50	\$85	\$0	\$135
Submitting their first TPS application and are <b>not</b> requesting an EAD	Younger than 14	\$50	\$0	N/A	\$50
	14 and older	\$50	\$85	N/A	\$135

**DED (Venezuela): Mailing Addresses** - See [here](#).

### DED: Filing Fees

Individuals from designated countries are afforded DED without having to separately apply.

To work in the US, they require an Employment Authorization Document. If they desire an Employment Authorization Document, the filing fee for every applicant is the same: \$410.

## Appendix C: Sample TPS Application

To download this sample cover letter to use as a template, click [here](#).

[Insert or print on letterhead]

[ALWAYS CHECK THE CURRENT FILING ADDRESS]

USCIS  
PO Box 805282  
Chicago, IL 60680

DATE

**RE:                   Application for Temporary Protected Status - VENEZUELA**  
**Applicant:       NAME NAME (A#123-456-789 or DOB)**

Dear USCIS Officer:

On behalf of the above-referenced applicant, a citizen of **Venezuela**, we submit an application for Temporary Protected Status. Mr. **NAME NAME** is eligible for Temporary Protected Status as he has continuously resided in the United States since **March 8, 2021**, and has been continuously physically present in the United States since **March 9, 2021**. In support of this application, please find enclosed:

- **Form G-28, Entry of Appearance as Attorney;**
- **Form I-821, Application for Temporary Protected Status:**
  - Proof of Identity and Nationality:
    - Copy of Passport Biographic Page;
  - Proof of Date of Entry to the U.S.:
    - Copy of I-94, Record of Entry;
  - Evidence of Continuous Residence:
    - Copy of Rental Agreement, dated February 15, 2021, showing that Mr. NAME rented an apartment at 123 Main Street, Washington DC 20001;
    - Copy of School Records, dated March 1, 2021, showing that Mr. NAME enrolled his minor child in DC Public School as of March 1, 2021;
    - Letter from Pastor John Smith of ABC Church in Washington DC, dated March 15, 2021, attesting that Mr. NAME and his family have been members of the church and have attended services on a weekly basis since approximately February 15, 2021;
    - Copy of Medical Records dated April 1, 2021, and May 5, 2021, showing medical treatment rendered to Mr. NAME in Washington DC;
    - Copy of electric bills, dated March – May 2021, showing Mr. NAME’s residence at 123 Main Street, Washington DC 20001.
- **Form I-765, Application for Work Authorization**, with two passport-style photographs attached thereto; and
- **Filing Fees OR Form I-912, Application for Fee Waiver**, with relevant documentation of financial hardship attached.

If you require any additional information, please do not hesitate to contact me.  
Respectfully submitted,

**ATTORNEY**, Esq.

## Appendix D: Sample TPS Application Forms

To access a [Sample G-28, Entry of Appearance as Attorney, click here.](#)

To access a [Sample I-821, Application for TPS, click here.](#)

To access a [Sample I-765, Application for Employment Authorization based on TPS, click here.](#)

To access a [Sample I-912, Request for Fee Waiver, click here.](#)

## Appendix E: Legal Resources on “Firm Resettlement”

### Precedent

- [8 CFR 208.15](#)
- [Matter of A-G-G-](#), 25 I&N Dec. 486 (BIA 2011)(establishing the framework for determining whether a noncitizen was firmly resettled, and if so, whether any exception applies)
- [Matter of D-X- & Y-Z-](#), 25 I&N Dec. 664 (BIA 2012) (finding that an asylum applicant who has resettled in a third country and then travels to the US or their country of claimed persecution and then returns to the country of resettlement, has not remained in that country “only as long as was necessary to arrange onward travel” for purposes of establishing an exception to firm resettlement)
- [Matter of K-S-E-](#), 27 I&N Dec. 818 (BIA 2020) (finding a Haitian TPS applicant firmly resettled in Brazil where he was offered permanent residence but had not accepted the offer “because of the cost and time involved” and “fear of local crime”; also finding that although Haitians were “treated poorly in Brazil, partly on account of their race,” there was insufficient evidence to show that the government of Brazil “actively supports any mistreatment of Haitians” to constitute a “conscious and substantial restriction” on his residence there).
- [Aden v. Wilkinson](#), 17-71313 (9th Cir., Mar. 4, 2021) (finding that a Somali asylum-seeker who was firmly resettled as an asylee in South Africa qualified for the restricted-residence exception because, although he was persecuted by private actors, the South African government was unwilling and unable to protect him from persecution).
- [Ramos Lara v. Lynch](#), 833 F.3d 556 (5th Cir. 2016) (upholding the denial of asylum, finding that the applicant had firmly resettled in Mexico prior to her entry to the U.S. and failed to establish that her five-year stay in Mexico, where she held a lawful and renewable work visa, was only a “necessary consequence” of her flight from Bolivia)
- [Tchitchui v. Holder](#), 657 F.3d 132 (2d Cir. 2011) (holding that firm resettlement is determined from the totality of the circumstances, and may include consideration of ties formed in the third country prior to the asylum applicant’s last flight from persecution)

### Non-Precedent Decisions<sup>11</sup>

- [In Re A10857095](#) (AAO, Feb. 9, 2021) (finding an applicant eligible for an exception to the firm resettlement bar with respect to her prior residence in Kenya, but ineligible to any exception to the firm resettlement bar with respect to her prior residence in Uganda).
- [I-A-P-C-, AXXX-XXX-784](#) (BIA July 11, 2019) (respondent not subject to firm resettlement bar based on grant of temporary refugee status in Brazil because he left before acquiring four years of residence necessary to apply for permanent status).

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<sup>11</sup> Thanks to Ben Winograd, who compiles an invaluable database of unpublished BIA decisions on a diverse array of topics. For more information or to access his database, visit [www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

- [J-W-A-L-, AXXX-XXX-848](#) (BIA April 26, 2019) (firm resettlement bar does not apply if the respondent has a well-founded fear of persecution in the country of resettlement).
- [D-T-, AXXX-XXX-930](#) (BIA June 14, 2018) (firm resettlement bar does not apply to applicant who lived in Saudi Arabia for 15 years where work permit was tied to employer and had to be renewed annually)
- [L-K-U-, AXXX-XXX-003](#) (BIA June 16, 2017) holding that the firm resettlement bar does not apply to asylum applicants who fear persecution in the country of alleged resettlement).

Other Instructive Tools

- [USCIS, Refugee, Asylum, and International Operations Directorate \(RAIO\), Officer Training Module on Firm Resettlement](#) (Dec. 2019).