



AN OVERVIEW OF INITIAL REGISTRATION FOR TPS

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Temporary Protected Status (TPS) provides a temporary, legal safe haven for noncitizens from designated countries who cannot return to their home country due to natural disaster, civil unrest, or other conditions that pose a significant risk to their safety. Enacted in 1990,¹ TPS allows eligible applicants to remain in the United States with work authorization for a designated period.

The Secretary of the Department of Homeland Security (DHS) has the authority to designate a country for TPS based on conditions that prevent nationals from safely returning.² TPS is designed to benefit only those nationals residing in the United States at the time of designation. The United States Citizenship and Immigration Services (USCIS) adjudicates the majority of TPS applications, but immigration judges also have jurisdiction in certain cases.³ TPS can be granted initially for a period of six to eighteen months.⁴ Renewal of TPS is possible where DHS extends TPS for a particular country (continues protections for a longer period than initially designated) or redesignates that country (moves up the date by which an applicant must already have been residing in the United States, which also allows more recent arrivals to apply).

For the most updated information on the countries currently designated for TPS and their respective eligibility dates and registration periods, please visit the USCIS TPS page at: <https://www.uscis.gov/humanitarian/temporary-protected-status>.

¹ Immigration and Nationality Act (INA) § 244.

² Note that although the TPS statute from 1990 names the U.S. Attorney General as the authority who can designate TPS, that authority transferred to the Secretary of the Department of Homeland Security (DHS) when Congress reorganized the functions of the Immigration and Naturalization Service from the Department of Justice to the newly created DHS and U.S. Citizenship and Immigration Services (USCIS) in March 2003. See Homeland Security Act of 2002 (P.L. 107-296).

³ See 8 CFR § 244.14(a)-(b).

⁴ INA § 244(b)(2).

I. Summary of TPS Requirements

To qualify for TPS, each applicant must meet all of the requirements listed below. Note that there is no derivative status possible for children and spouses of those eligible for TPS, which means each applicant must meet these requirements individually. Each of these requirements can involve complex analysis and documentation. For a thorough exploration of TPS and practice tips, consult ILRC's manual, *Temporary Protected Status: Practice and Strategies*.⁵

A. Nationality

Only nationals of countries designated for TPS, or noncitizens with no nationality who last habitually resided in such a country, are eligible for the status.⁶ Dual nationals may also be eligible for TPS, although some applicants may present circumstances which can trigger an inquiry into the firm resettlement bar to TPS.⁷

B. Physical Presence

An applicant must prove that they have been continuously physically present in the United States since the effective date of the TPS designation for their country of origin, although brief, casual, and innocent absences are allowed.⁸

C. Continuous Residence

The applicant must show that they have been continuously residing in the United States since the date indicated in the designation of the relevant country, this date is usually a few days prior to the effective date of the designation. Brief, casual, and innocent absences are permissible.

D. Not Inadmissible

TPS applicants must be admissible or eligible for a waiver for any applicable grounds. However, inadmissibility is assessed in a unique way in the TPS context and several grounds of

⁵ This manual may be ordered online at <https://www.ilrc.org/publications> and is available to many California nonprofit legal organizations at reduced cost or free of charge.

⁶ INA § 244(a)(1).

⁷ For an in-depth review of the firm resettlement asylum bar in the TPS context, please see ILRC, *A Framework for Analysis: The Impact of Firm Resettlement and Dual Nationality on Temporary Protected Status (TPS)*, (December 17, 2001), <https://www.ilrc.org/framework-for-analysis-temporary-protected-status>.

⁸ Brief, casual, and innocent absences which do not interfere with TPS eligibility are those of short duration, reasonably calculated to accomplish the purpose of the absence, but not departure that are a result of an order of removal, voluntary departure, or institution of removal proceedings, or an administrative grant of voluntary departure without institution of deportation proceedings. Absences will not be deemed innocent if they are for purposes that are contrary to law, see 8 CFR § 244.1(3).

inadmissibility are waived by statute and regulation.⁹ Other grounds of inadmissibility have been waived by USCIS policy.¹⁰ However, some grounds are not waivable and will bar eligibility, if applicable.

E. Not Subject to Mandatory Criminal Bars

An individual is ineligible for TPS if convicted of any felony or two or more misdemeanors committed in the United States. This bar cannot be waived and is distinct from any crimes-related inadmissibility grounds raised in INA § 212(a), as outlined above.¹¹ Only post-conviction relief, which completely vacates the conviction for statutory or constitutional reasons, can help where these criminal bars apply.

F. Not Subject to Mandatory Asylum Bars

The TPS statute incorporates the mandatory bars to asylum. These bars concern crimes, persecution of others, security grounds, and the firm resettlement bar, where an applicant is found to have firmly resettled in a third country prior to arriving in the United States.¹² There is no waiver available for the asylum bars.

Again, a careful assessment of each of these requirements is critical. If a TPS applicant is found to be inadmissible or deportable, not only will they be denied TPS but the regulations also dictate that they be placed in removal proceedings.

⁹ See INA § 244(c)(2)(A) and 8 CFR § 244.3(a) which provide that the following inadmissibility grounds do not apply to TPS: public charge, INA § 212(a)(4); labor certification grounds, INA § 212(a)(5)(A); unqualified physicians, INA § 212(a)(5)(B); and documentation requirements, INA § 212(a)(7)(A)(i).

¹⁰ See USCIS, Forms, *I-601 Waiver of Inadmissibility, Instructions*, p. 13 (2021), <https://www.uscis.gov/sites/default/files/document/forms/i-601instr.pdf> in which USCIS instructs TPS applicants not to file waivers for: INA § 212(a)(9)(B) 3/10-year bars for unlawful presence; INA § 212(a)(9)(C) permanent bar for unlawful attempted or actual reentry after accrual of unlawful presence or a removal order; INA § 212(a)(6)(A) bar for presence without admission or parole; INA § 212(a)(9)(A) bar for removal orders; INA § 212(a)(6)(D) bar for stowaways, and INA § 212(a)(6)(G) bar for student violators.

¹¹ 8 CFR § 244.4(a).

¹² See INA § 244(c)(2)(B)(ii) and 8 CFR § 244.4(b) which state that a noncitizen described in INA § 208(b)(2)(A) will not be eligible for TPS. This section of asylum law lists persecutors of others, noncitizens convicted of a particularly serious crime, persons who there are reasons to believe are a danger to the security of the United States, certain persons engaged in terrorist activity, or persons firmly resettled in another country prior to arriving in the United States.

IMPORTANT NOTE: Gathering immigration and criminal history documents prior to filing for TPS. Before submitting an application for TPS, even if the client appears eligible and does not appear to be barred or otherwise inadmissible without a waiver available, it is critical to do a Freedom of Information Act (FOIA) request¹³ for a complete review of their immigration history as well as an FBI records check and other relevant criminal record checks.¹⁴

In addition to fulfilling these eligibility requirements, the individual must submit their application and supporting evidence during the registration period indicated in their country's designation or qualify for late registration.

II. Registration Period

To apply for TPS for the first time, also called “initial registration,” the applicant must submit their application within a specified filing window, called the registration period.¹⁵ If the filing deadline has already passed, see *Section VII* below for information on late initial registration. The filing deadlines for initial TPS applications are country-specific and tied to when the DHS Secretary designates a country's nationals for TPS benefits. This time period for initial filing for a particular country can be found on the USCIS TPS webpage, under “registration period,” and is also published in the Federal Register. The initial registration sometimes is extended, and there is also the possibility that a country can be redesignated for TPS even long after the initial registration period has expired. A redesignation results in updated eligibility dates and a new initial registration period.

III. Required Forms

An application for TPS is made on Form I-821, Application for Temporary Protected Status,¹⁶ together with proof of eligibility. Each individual applying for TPS must submit a separate I-821 as there is no derivative TPS status. Applicants seeking employment authorization can file Form

¹³ See *ILRC, A Step By Step Guide to Completing FOIA Requests with DHS*, (December 14, 2021) <https://www.ilrc.org/step-step-guide-completing-foia-requests-dhs>.

¹⁴ See *ILRC, How to Check if You Have a Criminal Record?*, (November 26, 2019), https://www.ilrc.org/background_check_advisory; see also *FOIA Requests and Other Background Checks (ILRC 2020)*.

¹⁵ 8 CFR § 244.7(b).

¹⁶ Form I-821 is available at <https://www.uscis.gov/i-821>. This page also has a link and instructions for submitting the form online. Note that at time of writing, online form submission does not allow use of a fee waiver. Always make sure you are using a currently accepted version of the form by checking accepted edition date(s) on the form webpage, and make sure that all submitted pages of the form are from the same edition date.

I-765, Application for Employment Authorization, concurrently with the I-821, or after TPS approval.¹⁷ The employment authorization code for TPS applicants filling out the I-765 is (a)(12).

If a waiver of inadmissibility is required and available to the TPS applicant, they should include Form I-601, Application for Waiver of Grounds of Inadmissibility,¹⁸ with supporting documentation. A request for advance parole travel authorization on Form I-131, Application for Travel Document,¹⁹ may also be filed together with the I-821 application or subsequently, including after TPS approval when a need or desire for travel arises.²⁰

IV. Fees and Fee Waivers

A. Filing Fees

The filing fee for Form I-821 is \$50 for all initial applicants;²¹ there is no I-821 fee if re-registering for TPS. In addition, all applicants aged fourteen or older must include a biometrics fee of \$85.

If an applicant wishes to request employment authorization with their TPS application, the I-765 fee of \$410 is also required, unless the initial TPS applicant is under age fourteen or over age sixty-five, in which case they do not have to pay the I-765 filing fee.²²

Some applicants may also be filing I-601 waiver applications or I-131 requests for travel documents, with applicable filing fees for these forms. Always check the USCIS website before filing to see if fees or form editions have changed.²³

¹⁷ 8 CFR § 244.6(b).

¹⁸ Available at <https://www.uscis.gov/i-601>.

¹⁹ Available at <https://www.uscis.gov/i-131>.

²⁰ See USCIS-AFM, Ch. 38.1(h). TPS travel is not restricted to specified reasons only. (Note that while USCIS has retired its Adjudicator's Field Manual (AFM) and migrated most policy guidance to its Policy Manual, available online at <https://www.uscis.gov/policy-manual>, the TPS section has not yet been updated thus all references to USCIS guidance on TPS originate in the AFM.)

²¹ A unique aspect of TPS is that the TPS application fee is set by statute, not by regulation, and thus it cannot be changed with periodic agency revisions of regulatory fee schedules. The application fee for TPS (Form I-821) was set at \$50 by Congress in 1990 and remains the fee today.

²² When re-registering, a TPS applicant must include the I-765 fee to request an employment authorization document, regardless of age.

²³ You can check current form filing fees at <https://www.uscis.gov/forms/all-forms>, or on the applicable forms page, e.g. <https://www.uscis.gov/i-821> for the I-821. While as explained in footnote 18, *supra*, the I-821 fee is set by statute and thus cannot be changed by the agency in an updated fee schedule, other associated fees for forms I-765 and I-131, however, are not insulated in this way from periodic fee increases and thus could change.

B. Fee Waivers

A fee waiver is possible for all filing fees associated with the TPS application, this includes the I-821, biometrics, I-765, I-131, and I-601 fees as applicable.²⁴ To request a fee waiver, the applicant can either complete Form I-912, Request for Fee Waiver,²⁵ or submit a written request. The fee waiver request must be accompanied by documentation of the applicant's inability to pay the required fee(s). Note at the time of this writing, you cannot include a fee waiver request if you are applying online.

If USCIS denies the fee waiver request, the applicant has until the TPS registration deadline or within 45 days of the fee waiver denial, whichever is later, to re-file and pay the fees (or file another fee waiver request and attempt to overcome the deficiencies in the previous one).²⁶

V. Supporting Evidence

An initial TPS applicant must provide evidence of identity, nationality, date of entry, continuous physical presence, and continuous residence in the United States since specified dates. They must also prove they are admissible, meaning that no relevant grounds of inadmissibility apply or if any ground(s) apply, the applicant is eligible for and warrants a waiver.

USCIS distinguishes between “primary” evidence, like official documents or other records that are viewed as more credible, and “secondary” evidence, such as baptismal certificates or sworn statements. Where available, USCIS prefers primary evidence. However, in the TPS form instructions USCIS indicates that if an official record is not available, and the applicant demonstrates that they cannot obtain a particular record, they “can submit any secondary evidence that might be available.”²⁷ The sufficiency of the evidence is judged “according to its relevancy, consistency, credibility, and probative value.”²⁸

Submit photocopies of all required evidence and include an English translation, with certification, of any documents in a foreign language.

²⁴ See USCIS, Form I-912 Instructions, page 2.

²⁵ Available at <https://www.uscis.gov/i-912>.

²⁶ See USCIS, “Temporary Protected Status,” <https://www.uscis.gov/humanitarian/temporary-protected-status> (“What to File” dropdown menu, under “Fee Waiver”).

²⁷ Form I-821 Instructions, page 12.

²⁸ 8 CFR § 244.9(b).

A. Evidence of Identity and Nationality

A TPS applicant must prove their identity and show that they are a national of a TPS designated country or have no nationality and last habitually resided in a country designated for TPS.

Documents that USCIS considers to be “primary” evidence of *both* identity and nationality include a passport from the country of nationality; a birth certificate together with photo identification; and/or any national identity document with a photo and/or fingerprint issued by the TPS-designated country, including documents issued by the country’s embassy or consulate in the United States, such as a national ID card or naturalization certificate.²⁹

Any federal, state, or local official identification document is also considered acceptable as primary evidence of *identity*. Such documents could include: state identity documents, driver’s license, military identity documents, or public educational documents.³⁰

“Secondary” evidence of identity and/or nationality, on the other hand, may include a variety of different documents including naturalization documents that do not have the applicant’s photo or fingerprint, baptismal certificate where the applicant’s or parents’ nationality is stated, school or medical records that indicate nationality, other immigration documents, and affidavit from friends or family who have personal knowledge of the date and place of applicant’s birth and parents’ nationality.

If the applicant needs to rely on secondary evidence, *USCIS also requires that the applicant submit an affidavit* providing: (1) proof of unsuccessful efforts to obtain primary evidence; (2) an explanation why the applicant’s embassy or consulate in the United States was unable or unavailable to assist the applicant in obtaining primary evidence; and (3) affirming that the applicant is indeed an actual national of the designated country.³¹ In these circumstances, USCIS will also require an in-person interview.³²

Minor children of school age (five to ten years old) may use school identity documents, such as school class pictures with the names of the students in the class photo listed. Children who are less than five years old may use their birth certificate along with additional evidence, such as immunization records containing the child’s name and a parent’s signature to prove their identity.³³

²⁹ 8 CFR § 244.9(a)(1).

³⁰ USCIS-AFM, Ch. 38.1(e)(2).

³¹ *Id.*

³² USCIS-AFM, Ch. 38.1(e)(2); 8 CFR § 244.9(a)(1).

³³ USCIS-AFM, Ch. 38.1(e)(2).

PRACTICE TIP: Proving nationality. Because birth in a country does not necessarily confer nationality, if the applicant does not have a current passport from the designated TPS country, the nationality laws of that country should be consulted to determine whether the person acquired nationality at birth, acquired nationality subsequently, or has even possibly lost nationality at some point. For example, some countries only confer nationality based on one or both parents' nationalities, even if the child was born in that country. Other countries may confer citizenship on a child born abroad to a parent who is a national but require the child to take certain steps to preserve nationality by a certain age.

B. Evidence of Date of Entry and Residence in the United States

1. Evidence of Date of Entry

Because eligibility for TPS requires that a person entered the United States by a particular date indicated in the TPS designation, an initial applicant for TPS must provide evidence of their date of entry to the United States. USCIS has stated that it will accept any one of the following documents as proof of the date of entry:

- Passport with the U.S. entry stamp;
- I-94 Arrival/Departure Record; or
- Other evidence which is also submitted as proof of continuous residence.³⁴

Since many TPS applicants may have originally entered without inspection (such that no formal entry stamp or I-94 is available to show their date of entry), proof of date of entry most likely will be the same types of documents obtained for proof of initial continuous residence.

2. Evidence of Continuous Residence and Physical Presence

The kinds of evidence that can be used to prove continuous residence and physical residence are similar to other immigration processes. The following documents are listed by USCIS as acceptable evidence of continuous residence and physical presence:

- Employment records such as pay stubs; W-2s; certification of filing federal income tax returns; state verification of filing state income tax returns; letters from employers;³⁵ or, for

³⁴ *Id.*

³⁵ Practitioners should assess for misrepresentation, false claim to U.S. citizenship, or other issues before submitting employment documentation containing a Social Security Number that was not validly issued to the applicant, as it could pose problems in a future application for adjustment or other immigration benefit.

those who are self-employed, letters from banks and other firms with which the applicant has done business;

- Rent receipts or utility bills showing the dates during which service was provided to applicant at the U.S. address;
- School records from schools the applicant or their child(ren) attended in the United States, with names of schools and time periods of school attendance;
- Hospital or medical records of the applicant or their child(ren), with name of medical facility or physician and dates of treatment or hospitalization;
- Attestations by church, union, or other organization officials who know the applicant and where the applicant has been residing;³⁶
- Money order receipts;
- Birth certificates of children born in the United States;
- Dated bank transactions;
- Car records such as license receipts, title, vehicle registration;
- Any other relevant documents.³⁷

3. Admissibility

TPS applicants must also establish that they are admissible under all applicable grounds.³⁸ Generally, the application for TPS, Form I-821, covers all areas of possible ineligibility in Part 7. It is important in screening potential TPS applicants to determine whether any answers in this section: 1) trigger a bar to TPS; 2) otherwise raise an inadmissibility issue; and if so, 3) whether the inadmissibility ground(s) can be waived. Even if past criminal offenses do not raise

³⁶ Such attestations must be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during membership periods; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and establish the origin of the information being attested to. See USCIS, Form I-821 Instructions, page 11.

³⁷ 8 CFR § 244.9(a)(2). See also USCIS-AFM, Ch. 38.1(e)(3); USCIS, “Temporary Protected Status,” <https://www.uscis.gov/humanitarian/temporary-protected-status>.

³⁸ Note INA §§ 212(a)(4) (public charge), (a)(5)(A) (labor certification) & (B) (unqualified physicians), and (a)(7)(A)(i) (immigrant documentation requirements) do not apply to TPS applicants. 8 CFR § 244.3(a).

inadmissibility issues or other bars, applicants with certain criminal history are also required to submit documentation regarding arrests, charges, and any convictions.

As described above, TPS applicants are exempt from certain inadmissibility grounds. The INA creates an exemption for some grounds, while USCIS regulations and policy clarify that other grounds do not apply.³⁹ For these inadmissibility grounds, TPS applicants benefit from a blanket, automatic exemption. They do not need to apply for a waiver.

However, some inadmissibility grounds cannot be waived, including certain criminal grounds in INA § 212(a)(2)(A)-(C) and national security, terrorism-related, and persecution grounds in INA § 212(a)(3)(A)-(C) & (E).

Red Flags: You must assess inadmissibility in addition to carefully screening for the TPS criminal bars and the asylum bars. If triggered, the TPS criminal bars and asylum bars are mandatory and not waivable.

If the applicant falls within a ground of inadmissibility that is waivable, they must submit Form I-601, Application for Waiver of Grounds of Inadmissibility with supporting evidence demonstrating that a favorable exercise of discretion is warranted.⁴⁰ USCIS may grant discretionary waivers of certain inadmissibility grounds for humanitarian purposes, to assure family unity, or because it is otherwise in the public interest.⁴¹ If a waiver is not filed and USCIS determines that inadmissibility applies, they will request a waiver through the RFE process. The application should not be denied without first providing an opportunity to seek a waiver.

The Form I-601 requires a \$930 fee, but a fee waiver is available for TPS applicants. It is important to state all potential grounds of inadmissibility on the application, in order to ensure that the waiver covers all potential issues (while keeping in mind that certain types of admissions to conduct could trigger inadmissibility that could make the client ineligible for TPS or lawful permanent residence in the future). Also, remember that criminal convictions are very problematic in the TPS context. If you are pursuing an application with criminal issues, double check that the person remains eligible for TPS and that the waiver is available for the stated ground of inadmissibility. If you don't have experience with these issues or are unsure of your analysis, consult with an expert before applying for TPS.

³⁹ INA §244(c)(2)(A) specifies that inadmissibility pursuant to INA § 212(a)(5) and § 212(a)(7)(A) do not apply. The regulations provide that INA § 212(a)(4), INA § 212(a)(5)(A) and (B), and § 212(a)(7)(A)(i) do not apply, thus adding public charge to the list of grounds not applicable in the TPS application process. See 8 CFR § 244.3(a).

⁴⁰ See 8 CFR § 244.3(c) (inadmissibility grounds that may not be waived with TPS application)..

⁴¹ INA § 244(c)(2)(A)(ii).

It helps to have documentation to support a waiver application. Although humanitarian purposes, family unity, and the public interest are listed as three distinct grounds in the statute, these areas overlap and the same documentation may be used to establish eligibility under each of the three bases. Practitioners often provide evidence of family ties, especially those with U.S. citizenship or other lawful immigration status, and any other information that would persuade an officer that the waiver should be granted. A short declaration from the applicant is best practice. Depending on the facts, various forms of evidence can be helpful:

- Evidence of family relationships (birth certificates of children, proof of relationship or status of parents, spouse, siblings, others)
- Evidence of community service
- Medical records
- Psychological reports showing hardship if the application is denied
- Supporting affidavits from friends, family, neighbors, teachers, employers, community members and leaders
- Photographs of the applicant with their family and showing their life in the United States
- Tax returns

The amount of evidence submitted will depend on the particular case. Advocates must weigh whether the inadmissibility concern is particularly egregious, warranting more positive evidence to counterbalance the negative factors. Additionally, advocates must determine whether the reasons the waiver should be granted take additional explanation. For instance, a person with substantial family ties in the United States will have an easier time demonstrating family unity than someone without these ties. For someone lacking much family in the United States, they might need to explain humanitarian reasons the waiver should be granted, such as conditions in their home country.

It is important to remember that a waiver granted in conjunction with an application for TPS will not “cure” the inadmissibility ground for other purposes, such as immigrating through a family visa. Because the waiver will only be valid in the context of TPS, it is critical to consider the long-term goals and options of a client when completing the TPS application and preparing any related waiver. Since the waiver requirements for TPS, similar to those for asylum, are much broader and more flexible than in other contexts, a waiver may be granted for purposes of TPS, but the applicant may then be ineligible for a waiver of the same ground when applying for family or employment based permanent residence.

VI. Jurisdiction over Application

If the applicant is not in removal proceedings, USCIS has initial jurisdiction over the TPS application. The USCIS address for submitting the TPS application differs depending on the TPS country. Check the USCIS TPS website for current filing information based on the TPS country.⁴² The TPS application may also presently be filed online through the USCIS website, at <https://www.uscis.gov/i-821>. However, online submission does not allow for inclusion of a fee waiver request.

If the applicant is in removal proceedings, jurisdiction depends on what is charged in the Notice to Appear (NTA). If the basis for the charges in the NTA would render the noncitizen ineligible for TPS, then jurisdiction over the TPS application will be with the immigration court.⁴³ Otherwise, jurisdiction over the TPS application remains with USCIS, even during the pendency of removal proceedings.⁴⁴ However, if USCIS has already denied the TPS application and the individual is in removal proceedings, the immigration judge can review the TPS application *de novo*.⁴⁵

If the basis for the charges in the Notice to Appear (NTA) would make the noncitizen ineligible for TPS, then the application should be filed with the judge together with an argument and documentation regarding why the applicant is not actually ineligible for TPS.⁴⁶ These grounds of ineligibility include a conviction of one felony or two or more misdemeanors; the asylum bars for being a persecutor of others and firm resettlement; and the grounds of inadmissibility related to criminal convictions or drug trafficking, terrorism and national security, or past assistance in Nazi persecution.

Example: Dara was issued an NTA charging her with deportability for a misdemeanor “under the influence” of a controlled substance conviction. If found to be true she would be ineligible for TPS, so she must apply for TPS in immigration court and fight the charges there.

Otherwise, the application for TPS may still be filed with USCIS, if the NTA alleges grounds of inadmissibility or deportability unrelated to TPS ineligibility.

⁴² USCIS, “Temporary Protected Status,” <https://www.uscis.gov/humanitarian/temporary-protected-status>.

⁴³ 8 CFR § 244.7(d).

⁴⁴ *See id.*

⁴⁵ *See Matter of Lopez-Aldana*, 25 I&N Dec. 49 (BIA 2009).

⁴⁶ *See* 8 CFR § 244.7(d).

Example: Jean-Pierre was issued an NTA and charged with deportability as a visa overstay. Because being a visa overstay does not make him ineligible for TPS, he must apply for TPS with USCIS.

If in removal proceedings but the TPS application falls under the jurisdiction of USCIS, it is important to explain that clearly in the application packet so the agency accepts and adjudicates the TPS application rather than erroneously rejecting it. It is recommended to put a cover sheet, ideally on colored paper so it stands out, on top of the application packet and write “USCIS HAS JURISDICTION PER 8 CFR 244.7(d) – DO NOT REJECT.” Also make sure to explain that jurisdiction with USCIS is proper in the cover letter accompanying the application packet.

VII. Late Initial Registration

Individuals who failed to initially register for TPS can still apply during an extension of the TPS country designation if, during the initial registration period or during any subsequent initial registration period if the country was re-designated, they meet one of the following criteria:

- Were a nonimmigrant, were granted voluntary departure status, or were granted any relief from removal;
- 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;
- Were a parolee or had a pending request for re-parole; or
- Are a spouse of someone who is currently eligible for TPS.⁴⁷

If one of the above scenarios applies, *the individual must register for TPS while the above condition still exists or within 60 days immediately following the expiration or termination of such condition.*⁴⁸

Alternatively, an individual can file an initial TPS application late if, during the initial registration period or during any subsequent initial registration period if the country was re-designated, they were a child (unmarried and under age twenty-one) of an individual who is currently eligible for TPS. Unlike the above scenarios, there is no time limit to file late on this basis.

⁴⁷ 8 CFR § 244.2(f)(2).

⁴⁸ 8 CFR § 244.2(g).

Example: Marisol was fifteen years old when her country was initially designated for TPS. Her father is currently eligible for TPS and even though she is now thirty years old, because she was unmarried and under twenty-one during the initial registration period, she is eligible for late initial TPS filing. She can file during an extension of her TPS country's designation.

VIII. Adjudications

After the initial TPS application is received and accepted, all applicants over fourteen years old are scheduled for fingerprinting at an Application Support Center. These fingerprints are required to identify the applicant, conduct background checks, and produce the employment authorization document (EAD). Generally, there is no interview to apply for TPS, so the entire application process from initial submission to decision takes place by mail.

A. Prima Facie Eligibility

USCIS will first review for *prima facie* TPS eligibility, which includes determining whether to issue the EAD,⁴⁹ if requested. With re-registration, by contrast, USCIS will not issue an EAD until the entire TPS application is adjudicated. At the *prima facie* eligibility review stage, the adjudicator is instructed to “accept . . . [evidence and supporting documentation] at face value, unless a conflict or contradiction in the record that which may otherwise render them ineligible can be articulated.”⁵⁰ An initial TPS applicant found *prima facie* eligible will be granted a stay of removal, as well as an EAD where requested, while their TPS application is pending.⁵¹

B. Requests for Evidence and Notices of Intent to Deny

If USCIS is dissatisfied with the evidence provided or believes that the applicant is ineligible, they may issue a request for evidence (RFE) or notice of intent to deny (NOID). Generally, the applicant should be given an opportunity to supplement the record via an RFE or NOID before USCIS issues a denial; if the officer reviewing the case wants to deny without first issuing an RFE or NOID, they must obtain supervisory approval to do so.⁵² The maximum amount of time allowed to respond to an RFE is 90 days,⁵³ and 30 days for a NOID.⁵⁴ If the applicant fails to

⁴⁹ 8 CFR §§ 244.5, 244.6(b).

⁵⁰ USCIS, Adjudicator's Field Manual (USCIS-AFM), Ch. 38.1(e)(5)(A).

⁵¹ INA § 244(a)(4)(B). See also USCIS-AFM, Ch. 38.1(e)(5)(A).

⁵² USCIS-AFM, Ch. 38.1(e)(6).

⁵³ *Id.* Note the AFM indicates “twelve weeks.”

⁵⁴ *Id.*

respond to the RFE or NOID within the prescribed period of time, the application will be treated as abandoned.⁵⁵

C. TPS Approvals

If approved, USCIS will send the individual granted TPS an I-94, Arrival/Departure Record as evidence of TPS, as well as an EAD if requested.⁵⁶ TPS holders are also allowed to travel abroad if granted prior consent through an approved application for travel permission on Form I-131.⁵⁷ TPS holders are protected from removal during the period that the status remains in effect.⁵⁸

Although an immigration judge or the Board of Immigration Appeals (BIA) may grant TPS in certain circumstances, neither court has authority to grant work or travel authorization. Thus, in order to obtain these benefits after a TPS grant in court, or to re-register for TPS, the next step is to provide USCIS with a copy of the order granting TPS by the immigration judge or the BIA, along with a copy of Form I-821 that was filed in court and subsequently approved.

For employment authorization, in addition to a copy of the court order granting TPS and a copy of the court filed I-821, the applicant should file Form I-765 with the fee or fee waiver request and a cover sheet that explicitly states: "DO NOT REJECT - TPS GRANTED BY IJ/BIA." For a travel document, the applicant should file Form I-131 with a copy of the court order and I-821.

Once granted, an individual must periodically “re-register” to maintain TPS if the relevant country’s TPS designation is extended. USCIS can withdraw a grant of TPS if it later determines the applicant was ineligible when granted or later became ineligible, fails to remain continuously physical present in the United States since the TPS grant, or fails without good cause to timely re-register.⁵⁹

D. Denials, Appeals, and Motions to Reconsider and Reopen

If USCIS denies the application for TPS, USCIS must issue the reasons for denial in writing, including notifying the applicant of their right to appeal the denial to the Administrative Appeals

⁵⁵ *Id.*

⁵⁶ INA § 244(a)(1)(B)

⁵⁷ INA § 244(f)(3). Note that in a July 2022 memorandum, USCIS clarified that TPS grantees are issued travel permission that is distinct from parole and, upon return, an admission results rather than a parole entry, although many may continue colloquially to refer to TPS travel permission as “advance parole.” See USCIS, *Policy Memorandum: Rescission of Matter of Z-R-Z-C- as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries*, (July 1, 2022), <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf>.

⁵⁸ 8 CFR § 244.10(e).

⁵⁹ 8 CFR § 244.14(a).

Office (AAO).⁶⁰ Another option after a denial is to file a motion to reconsider or reopen with the USCIS Service Center that decided the TPS application, using Form I-290B, Notice of Appeal or Motion. Motions to reopen are generally used when persons have new facts pertinent to the decision while motions to reconsider are based on claims that USCIS incorrectly applied the law or policy in their decision.

If the basis for the denial is a ground of inadmissibility or deportability, the applicant cannot appeal to the AAO, however, and instead will be placed in removal proceedings.⁶¹ In proceedings, the immigration judge can review *de novo* the denied TPS application.⁶² If the immigration judge denies the TPS application, the applicant may appeal that denial to the Board of Immigration Appeals (BIA).⁶³

In the event of a TPS denial, employment authorization expires on the denial decision date or expiration of the EAD, whichever is later.⁶⁴ If a denial is appealed, the EAD will be extended while the appeal is pending.⁶⁵

⁶⁰ 8 CFR § 244.10(c).

⁶¹ 8 CFR § 244.10(c)(1)-(2).

⁶² 8 CFR §§ 244.10(c)(2), 244.11. The immigration judge can review *de novo* the denied TPS application even if the applicant did not originally appeal the denial and was not referred to the immigration court after the denial, but later is placed in proceedings. *See Matter of Lopez-Aldana*, 25 I&N Dec. 49 (BIA 2009) (clarifying that the holding in *Matter of Barrientos*, 24 I&N Dec. 100 (BIA 2007), does not mean that TPS applicant can only seek *de novo* review by immigration judge after they have exhausted all appeal rights before DHS).

⁶³ 8 CFR § 244.11.

⁶⁴ 8 CFR § 244.12(c).

⁶⁵ 8 CFR § 244.12(d).



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.