



Temporary Protected Status: An Overview

Temporary Protected Status (TPS) is a temporary immigration status provided to nationals of certain countries experiencing problems that place their nationals at risk if deported there or that would compromise the foreign government's ability to absorb the return of its nationals.¹ TPS has been a lifeline to hundreds of thousands of individuals already in the United States when problems in a home country suddenly make their departure or deportation untenable. This fact sheet provides an overview of how TPS designations are made, what benefits TPS confers, and how TPS beneficiaries apply for and regularly renew their status.

What is Temporary Protected Status?

Congress created Temporary Protected Status (TPS) in the Immigration Act of 1990.² It is a temporary immigration status provided to nationals of specifically designated countries that are confronting an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions.³ It provides a work permit and stay of deportation to foreign nationals from those countries who are in the United States at the time the U.S. government makes the designation.⁴

For what reasons can a country be designated for TPS?

A country may be designated for TPS for one or more of the following reasons:⁵

- **An ongoing armed conflict** (such as a civil war) that poses a serious threat to the personal safety to returning nationals;
- **An environmental disaster**, such as an earthquake, hurricane, or epidemic, resulting in a substantial, but temporary disruption of living conditions and the foreign state is temporarily unable to adequately handle the return of its nationals; or
- **Extraordinary and temporary conditions** in the foreign state that prevent its nationals from returning to the state in safety (unless the U.S. government finds that permitting these nationals to remain temporarily in the United States is contrary to the U.S. national interest).

Who has the authority to designate a country for TPS?

The Secretary of Homeland Security has discretion to decide when a country merits a TPS designation.⁶ The Secretary must consult with other government agencies prior to making a decision to designate a country—or part of a country—for TPS.⁷ Although these other agencies are not specified in the statute, these consultations usually involve the Department of State, the National Security Council, and occasionally the Department of Justice (DOJ). The Secretary's decision whether to designate a country for TPS is not subject to judicial review, according to immigration law.

How long are TPS designations?

A TPS designation can be made for 6, 12, or 18 months at a time.⁸ At least 60 days prior to the expiration of TPS, the Secretary must decide whether to extend or terminate a designation based on the conditions in the foreign country.⁹ Decisions to begin, extend, or terminate a TPS designation must be published in the Federal Register.¹⁰ If an extension or termination decision is not published at least 60 days in advance of expiration, the designation is automatically extended for six months.¹¹ The law does not define the term “temporary” or otherwise limit the amount of time for which a country can have a TPS designation.

Who is eligible for TPS?

In order to qualify for TPS, an individual must¹²

- be a national of the foreign country with a TPS designation (or if stateless, have last habitually resided in a country with a TPS designation);
- be continuously physically present in the United States since the effective date of designation;
- have continuously resided in the United States since a date specified by the Secretary of Homeland Security; and
- not be inadmissible to the United States or be barred from asylum for certain criminal or national security-related reasons, such as individuals who have been convicted of any felony or two or more misdemeanors.

Nationals of a designated country do not automatically receive TPS but instead must register during a specific registration period and pay significant fees. In addition, an individual’s immigration status at the time of application for TPS has no effect on one’s eligibility, nor does the previous issuance of an order of removal.

What does TPS authorize a noncitizen to do?

An individual who is eligible for TPS must register by submitting an application to U.S. Citizenship and Immigration Services (USCIS), an agency of the Department of Homeland Security.¹³ If a person demonstrates eligibility and USCIS grants TPS, that person receives a temporary stay of deportation and temporary authorization to work in the United States.¹⁴ TPS beneficiaries are also eligible for advance parole, which provides permission to travel abroad and return to the United States, but they must apply for it separately.¹⁵ Beneficiaries are not eligible for any public assistance by virtue of their TPS status.¹⁶

Which countries have TPS?

As of August 2017, the following 10 countries have valid TPS designations:¹⁷

- El Salvador
- Haiti
- Honduras
- Nepal
- Nicaragua
- Somalia
- South Sudan
- Sudan
- Syria
- Yemen

Which countries have had TPS in the past?

Since TPS was created, the following countries or parts of countries have had TPS designations that are now terminated:¹⁸

- Angola
- Bosnia-Herzegovina
- Burundi
- Guinea
- Guinea-Bissau
- Province of Kosovo
- Kuwait
- Lebanon
- Liberia
- Montserrat
- Rwanda
- Sierra Leone

Does TPS create a path to permanent residence or citizenship?

TPS does not provide beneficiaries with a separate path to lawful permanent residence (a green card) or citizenship.¹⁹ However, a TPS recipient who otherwise is eligible for permanent residence may apply for that status.²⁰

Generally, a person who entered the United States without inspection is not eligible to apply for permanent residence. As of August 2017, three federal appellate circuits have ruled on this issue:

- Two federal appellate circuits (the Ninth and Sixth Circuits) ruled that a person with valid TPS status can adjust status to lawful permanent residence if otherwise eligible through a family-based or employment-based petition, even if he or she entered the United States without inspection.²¹
- The Eleventh Circuit ruled that a TPS recipient who entered without inspection is not eligible to adjust to permanent residence even if otherwise eligible.²²

DHS' position, applicable in all other circuits, is that a TPS holder is not eligible to adjust status within the United States. In order to gain permanent resident status, a TPS recipient must instead depart the country to have a visa processed at a consular post. For many TPS holders who originally entered the United States without inspection, a departure to have a visa interview would trigger bars to re-entry for up to 10 years.

What happens to a TPS beneficiary when a TPS designation ends?

TPS beneficiaries return to the immigration status that the person held prior to receiving TPS, unless that status has expired or the person has successfully acquired a new immigration status.²³ TPS beneficiaries who entered the United States without inspection and who are not eligible for other immigration benefits, for example, would return to being undocumented at the end of a TPS designation and become subject to removal.

How are “Deferred Enforced Departure” and “Extended Voluntary Departure” related to TPS?

Deferred Enforced Departure (DED) is very similar to TPS but derives from the President's foreign policy authority rather than from a specific law.

- There are no explicit criteria for making DED decisions or for determining who would be eligible for DED once a designation is made.
- Just like TPS holders, DED beneficiaries receive a work permit and stay of deportation; however, they are not permitted to travel abroad.²⁴
- As of August 2017, Liberia is the only country with a DED designation, which is due to expire in March 2018.²⁵

Extended Voluntary Departure (EVD) was the predecessor to TPS prior to the Immigration Act of 1990. It was a discretionary authority used by the Attorney General (at a time when the Immigration and Naturalization Service was housed in DOJ) to give nationals of certain countries experiencing turbulent country conditions temporary permission to remain in the United States. Congress eliminated EVD when TPS was created.

Endnotes

1. 8 U.S.C. § 1254a.
2. Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (1990).
3. *Id.*
4. *Id.*
5. 8 U.S.C. § 1254a(b). Note that TPS designations based on an environmental disaster also require the foreign state to officially request designation. This request is not required for TPS designations for other reasons.
6. 8 U.S.C. § 1254a.
7. *Id.*
8. 8 U.S.C. § 1254a(b). Occasionally, the Secretary will re-designate a country for TPS, which is different from an extension in that it updates the physical presence requirement to allow those foreign nationals who have arrived in the United States since the previous designation to apply for TPS.
9. *Id.*
10. 8 C.F.R. § 244.19.
11. *Id.*
12. 8 C.F.R. § 244.
13. 8 C.F.R. § 244.7.
14. 8 U.S.C. § 1254a(a).
15. 8 C.F.R. § 244.15.
16. 8 U.S.C. § 1254a(f).
17. U.S. Citizenship and Immigration Services (USCIS), “Countries Currently Designated for TPS,” updated May 24, 2017, <https://www.uscis.gov/humanitarian/temporary-protected-status>.
18. Executive Office of Immigration Review, “Temporary Protected Status,” updated May 26, 2017, <https://www.justice.gov/eoir/temporary-protected-status>.
19. 8 U.S.C. § 1254a(f).
20. 8 U.S.C. § 1254a.
21. *Ramirez v. Brown*, No. 14-35633, ___ F.3d ___ (9th Cir. 2017); *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013).
22. *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011).
23. 8 U.S.C. § 1254a(f).
24. USCIS, “Deferred Enforced Departure,” updated September 28, 2016, <https://www.uscis.gov/humanitarian/temporary-protected-status/deferred-enforced-departure>.
25. *Id.*