



# Questions and Answers

## Designation of Syria for Temporary Protected Status March 29, 2012

### Overview

The following information contains USCIS' responses to questions it has received from stakeholders after the March 29, 2012 Designation of Syria for Temporary Protected Status (TPS) Engagement. These responses supplement the general information on TPS eligibility requirements and procedures that is posted on the [USCIS TPS web page](#) and the specific web page for [TPS Syria](#). Readers are encouraged to review those website pages for detailed TPS information.

### Eligibility

**Question:** Is USCIS able to give an estimate of the number of TPS applications that USCIS expects to receive nationwide? Are breakdowns by region or state possible?

**Answer:** As noted in the *Federal Register* notice announcing TPS for Syria, the Department of Homeland Security (DHS) estimates that there are approximately 2,500 to 3,000 Syrian nationals (and persons without nationality who last habitually resided in Syria) who may be eligible for TPS under this designation. *See* 77 FR 19026, 19028 (March 29, 2012). It is not known how many of these individuals will actually apply. We are not able to provide a breakdown by region or state.

**Question:** Can Syrian nationals who entered the USA before March, 29, 2012 apply for TPS?

**Answer:** An individual must demonstrate that he or she has been continuously physically present (CPP) in the United States since March 29, 2012 and also continuously residing (CR) in the United States since that date. A "brief, casual and innocent absence," will not break CPP and CR. To qualify for this exception to CPP and CR requirements, the absence must have been of short duration and reasonably calculated to accomplish the purpose(s) for the absence; the absence cannot have been the result of a deportation or removal order, an order of voluntary departure, or an administrative grant of voluntary departure; and the purposes for the absence or actions while outside of the United States were not contrary to law.

Therefore, an individual must at least have first entered the US on or before March 29, 2012. If an individual first entered the US after March 29, 2012, he or she would not be eligible for TPS Syria.

**Question:** If somebody enters the USA without inspection, is he or she eligible for TPS?

**Answer:** An individual who entered the United States without inspection may still be eligible for TPS if he or she meets all the eligibility requirements. Entering without inspection (EWI), by itself, is not a bar to TPS.

**Question:** If a Syrian national has a travel document from, but not citizenship of, another country and entered the United States on an F-1 visa using that travel document, can he or she still file for TPS as a Syrian national?

**Answer:** As long as an applicant can provide sufficient evidence of being a citizen or national of Syria (or a person having no nationality who last habitually resided in Syria), then the applicant should be able to meet the nationality requirement. Primary evidence of nationality includes a passport, birth certificate accompanied by photo identification, and/or any national identity document from the applicant's country of origin bearing photo and/or fingerprint. Secondary evidence of nationality may also be accepted, but USCIS may require the applicant to attend an interview at a USCIS office to determine his or her nationality. Such an interview, or a request for additional evidence, may also be necessary if the USCIS adjudicator determines that there is a question about the applicant's Syrian nationality because he or she has entered the United States using a passport or other travel document issued by a country other than Syria.

**Question:** If an applicant is both a Syrian national and a national of another country, can the applicant apply for and receive TPS?

**Answer:** As long as the applicant can provide sufficient evidence that he or she is a Syrian national (*e.g.*, passport, birth certificate and photo identification, and/or any national identity document from country of origin bearing a photo and/or fingerprint), then the applicant should be able to meet the nationality requirement. The applicant may also provide secondary evidence of nationality if he or she does not have primary evidence. USCIS may require the applicant to submit additional evidence or attend an interview if the evidence submitted is insufficient to demonstrate Syrian nationality. Being a dual national of Syria and another country does not prevent an applicant from meeting the nationality requirement for TPS.

However, having another citizenship in addition to being Syrian could indicate that the applicant may be ineligible for TPS because of the firm resettlement asylum bar that also applies to TPS. In order for USCIS to determine whether the bar applies, which must be done on a case-by-case basis, dual citizens of Syria and another country are encouraged to submit as much evidence as possible regarding when and how they obtained their non-Syrian citizenship, the nature of their family and other ties to the non-Syria country, whether they have lived in the other country, when and how long; whether and when they have visited the other country of citizenship; and any other information that the applicant believes may be relevant to the firm resettlement issue.

## **Family Members**

**Question:** Can the spouse and child of an individual eligible for TPS also apply as dependents? I have read the regulations that state this is possible after the initial registration period (after an

extension is made). It is not clear if they can register at the initial registration period if they do not independently qualify.

**Answer:** Each family member who believes he or she is eligible for TPS can and should apply during the initial registration period for Syria. Unlike certain other immigration benefits, there is no “derivative” TPS status obtained as a result of being the spouse or child of someone else who is eligible for TPS. Each individual must meet all the TPS eligibility requirements on his or her own merits. This includes meeting the requirements for nationality, “continuous residence” and “continuous physical presence” in the United States, being admissible as an immigrant to the United States under the grounds applicable to TPS, and not being barred from TPS by various criminal, security and other mandatory ineligibility grounds.

An individual who is not a Syrian national may qualify for TPS *only if* he or she has no nationality and last habitually resided in Syria before coming to the United States. If an individual is not a national of Syria, but is a national of another country, then he or she would not qualify for TPS under the Syrian designation. USCIS looks to Syrian law in determining who is considered a national of Syria.

During an extension period for TPS, it is possible for some people to file late if they did not file during the initial registration period for their country. Even if permitted to file late, the applicant must *still* meet all the individual TPS eligibility criteria. In addition to certain other aliens, a late initial filing (LIF) applicant may be a person who, during the initial registration period, was a spouse or child of a person who is currently eligible for TPS. Again, this is not derivative TPS status; it only allows the spouse or child’s application to be accepted late for further adjudication to determine if the spouse or child is eligible for TPS. Further information about who may be a LIF applicant is located on the main [TPS webpage](#).

**Question:** If a Syrian family consisting of a father, mother, and several children enter the US together before March 29, 2012, do they have to file and pay the fees for each person?

**Answer:** Yes, an application packet consisting of both a Form I-821 and Form I-765 must be filed for each individual and any required fees paid for each individual, or fee waiver requests submitted, if appropriate. There is no “derivative” status obtained from TPS. Each individual must meet the TPS eligibility requirements on his or her own.

### **Notices to Appear for Removal Proceedings (NTAs)**

**Question:** If a Syrian national is in removal proceedings (and is not barred from TPS for criminal reasons) and applies for TPS and it is granted, are proceedings terminated or just continued until the "18" months expire?

**Answer:** Generally, when TPS is granted to an alien in removal proceedings, the proceedings are administratively closed. However, if the alien is also pursuing protection or other forms of relief before the Immigration Court, the alien may request that the proceedings continue for a decision on those other forms of protection or relief. If the Secretary decides to extend TPS for Syria beyond the current 18-month period and the Syrian national continues to maintain his or her TPS, the removal proceedings will remain closed. If TPS for Syria terminates or the individual’s TPS status is withdrawn and the individual has no other lawful immigration status, DHS would have the discretion to recalendar the removal case. Whether to recalendar would be a decision made

on a case-by-case basis, taking into consideration the enforcement priorities established by DHS and ICE.

**Question:** Will Syrians who are out of status, but who obtain TPS, be issued NTAs and placed in removal proceedings once TPS for Syria ends?

**Answer:** TPS is a temporary immigration status granted to eligible nationals of a country (or persons without nationality who last habitually resided in that specific country) that has been designated for TPS under the *Immigration and Nationality Act (INA)* while their home country is experiencing on-going armed conflict, environmental disaster, or extraordinary and temporary conditions that prevent nationals of the country from returning in safety. During the period for which the Secretary of Homeland Security (Secretary) designates a country for TPS, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the terms and conditions of TPS.

When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) or to any other status they may have obtained while registered for TPS (if still valid). However, at least 60 days before TPS ends, the Secretary will carefully review conditions in Syria and consult with other federal government agencies to determine whether the conditions warrant a TPS extension. Although there is no guarantee that any TPS designation will be extended, the history of the TPS program for more than 20 years demonstrates that TPS designations have never been terminated lightly and that where there is continuing, reliable evidence that nationals of a country still cannot return home in safety, TPS is typically extended. The Department of Homeland Security (DHS) will give the same careful, in-depth consideration of the conditions in Syria during the review period that it gives when assessing the conditions in every TPS-designated country before deciding whether to extend or end TPS for the country.

Once TPS is terminated, usually meaning that the Secretary has determined it is safe for a country's nationals to return to their home country, any former TPS beneficiary who has no other lawful status in the United States may be issued an NTA if he or she does not depart the United States. The same would be true for any non-U.S. citizen who no longer has lawful immigration status in the United States, regardless of whether that person previously had a temporary immigration status that has expired. The decision to place individuals in removal proceedings is an exercise of prosecutorial discretion and is handled on a case-by-case basis, based on enforcement priorities established by DHS and the Immigration and Customs Enforcement Service (ICE).

## Asylum

**Question:** If an individual did the biometrics (finger print and pictures) for an asylum application, is there a way to waive these for TPS applications?

**Answer:** The TPS application is a different application and process from asylum. An individual must have biometrics captured and their identity verified for each benefit. Therefore, an individual must still go to the Application Support Center (ASC) to have his or her biometrics collected for TPS (if biometrics are required) although the biometrics may have also been collected under another benefit application.

**Question:** If a person already has an asylum application and has already applied for an Employment Authorization Document (EAD) through asylum, should that person still apply for TPS?

**Answer:** An individual may apply for TPS while having a pending asylum application. In some cases, applying for TPS, in addition to asylum, may be best because the person might lose the opportunity to file for TPS if he or she does not apply during the 180-day TPS registration period that ends on September 25, 2012. If the person already has an EAD due to a pending asylum application, he or she does not need to apply for an EAD when filing for TPS. The applicant, however, must submit both the Form I-765 (without EAD fee) along with the Form I-821 and any fee, or fee waiver request. If the person is granted asylum as well as TPS, it is not necessary for him or her to re-register for TPS if the designation is extended since he or she will have asylum, as long as the person does not fail to maintain asylum status.

If you prefer to see whether your asylum application will be granted or denied before you apply for TPS, you *may* be able to file late for TPS, *provided that:* (1) the Secretary does extend TPS for Syria beyond September 30, 2013, *and* (2) you file during the extension period *and* within 60 days of the date that your application for asylum was denied. If, however, your asylum application is denied before any extension period for TPS Syria is announced and the initial registration deadline has passed, you may not be able to apply for TPS.

If you have questions about whether you should file for asylum, TPS, or both at the same time, we encourage you to consult with a private immigration practitioner or recognized immigration organization for further advice specific to your situation

## Nonimmigrant Status Categories

**Question:** Would having TPS ease waiving the J-1 two year home residency requirement if one applies for a waiver based on fear of persecution or hardship of the spouse?

**Answer:** The granting of TPS, in and of itself, does not release a J nonimmigrant from the INA 212(e) 2-year foreign residence requirement. The J nonimmigrant would still need to apply for the waiver, provide evidence supporting his or her reasons for seeking the waiver, and be granted a waiver of the 2-year requirement if he or she wishes to acquire H, L, or Immigrant status. Because TPS is not based on the applicant's fear of persecution or on hardship to their spouse, but rather on whether the person is an eligible national of the designated country (or a person having no nationality who last habitually resided in the designated country), a person's TPS status may not support a claim for a waiver of the J-1 two year requirement based on fear of persecution or hardship of the spouse.

**Question:** Can one enroll in a school program because he has TPS without having a J-1 or F-1 visa?

**Answer:** A person with TPS may enroll in primary or secondary school, but for college and higher it will depend on the school's admission policies. Therefore, an individual should check with the college. Individuals who may already have a nonimmigrant status such as F student status or H worker status will need to ensure that they meet and continue to follow all requirements of their nonimmigrant status if they wish to maintain it, regardless of their TPS status. ICE has published a [special notice](#) in the Federal Register regarding Syrians with F-1 status who may also wish to work on their TPS-related EADs. [See 77 FR 20038, April 3, 2012.](#)

In order not to lose their F status due to working beyond the terms of their F status requirements, such individuals need to follow the procedures in the notice. Those procedures include, among other important steps, that the F-1 nonimmigrant contact and work with his or her designated school official (DSO) for student visas.

**Question:** If an individual was on a J-1 visa, which expired, then the individual got TPS can him or her:

- Apply again to J-1 without leaving the US?
- Apply for H-1 right away?

Would the prior J-1 two-year home-country physical presence requirement be waived?

**Answer:** The alien would need to apply for, and be granted, a waiver of the 2-year foreign residence requirement. Even if the alien is granted a waiver of the 2-year foreign residence requirement, the alien would not be eligible to change to H-1B status unless he or she is “maintaining status” at the time he or she is requesting the change to H-1B status.

**Question:** If an H-1B nonimmigrant obtains an EAD based on his or her TPS, can he or she continue to maintain his or her H-1B nonimmigrant status?

**Answer:** A TPS beneficiary is granted an “open market employment” EAD. This means that the EAD gives him or her unrestricted access to employment in the United States. The fact that an H-1B nonimmigrant is granted this type of an EAD does not cause the alien to violate his or her nonimmigrant status, if he or she continues to act in accordance with the requirements of his or her approved H-1B nonimmigrant petition. However, the nonimmigrant will violate his or her H-1B status if s/he uses the EAD to engage in employment for a separate employer and leaves the employer listed on the approved I-129 petition.