

United States Senate

WASHINGTON, DC 20510

November 15, 2022

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20528

Dear Secretary Mayorkas:

I write regarding Departmental processing of Employment Authorization Document (EAD) requests filed by applicants for Temporary Protected Status (TPS).

The TPS program, as you are aware, ensures that non-citizens residing in the United States can legally live and work in America when their home countries are engulfed by war, civil unrest or natural disaster. I am hearing from first-time TPS applicants, including Afghans and Ukrainians, who recently arrived in the United States with few economic resources. Despite being forced to flee their homes, these individuals are eager to work, to support their families and to contribute to their new communities. Furthermore, local businesses often depend on such migrants to fill labor shortages across a variety of industries—including food services, landscaping, hospitality and retail.

As you know, individuals simultaneously apply for TPS and an EAD. Under the Immigration and Nationality Act, U.S. Citizenship and Immigration Services (USCIS) is legally required to conduct a *prima facie* review of all TPS cases.¹ If a TPS application is valid on its face, USCIS must adjudicate the corresponding EAD request *before* the TPS request. The USCIS website also informs applicants that they will receive a decision on their EAD petition before their TPS application is resolved.²

Despite this statutory requirement and the information provided to the public through USCIS's website, I am concerned that USCIS may be waiting to review EAD requests until after TPS applications are fully adjudicated. At least one service center has directly informed my office that they will not conduct *prima facie* reviews of new TPS applications.³ This practice does not comply with statutory requirements and is contrary to the agency's publicly available policy.

¹ See [8 USC §1254a 4](#), [8 CFR §244.5\(a\)](#), and [Chapter 38.1.e.5 of USCIS' old Adjudicator Field Manual](#)

² See Step 5 under "Application Process" at the following link:
<https://www.uscis.gov/humanitarian/temporary-protected-status>.

³ The Nebraska Service Center is currently processing Ukrainian TPS cases. NSC staff stated that they must receive permission from USCIS Headquarters before they can conduct *prima facie* processing. A Congressional Liaison further explained that HQ determines processing policy on a country-by-country basis.

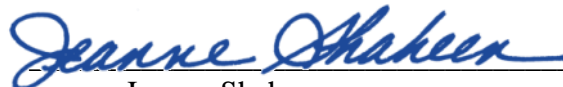
I have long expressed concerns about the processing delays at USCIS. TPS applicants cannot afford yet another barrier that prevents them from joining the workforce and supporting their families. My office is seeing TPS cases with processing times that are upwards of 18 months, forcing TPS applicants to wait far too long to begin working.

Lengthy wait times and inconsistent processing policies are creating additional burdens for TPS applicants and undermining the purpose of TPS. Accordingly, I respectfully request answers to the following questions:

1. Is USCIS conducting *prima facie* reviews of TPS applications for all nationalities?
2. If not, what is the agency's current policy on EAD adjudication for TPS applicants, and what statute guides the policy?
3. How does the agency ensure uniformity of this processing policy across service centers and for all eligible nationalities?
4. What is USCIS doing to decrease processing times for all TPS applications and their associated EADs?

Thank you for your urgent attention to this matter.

Sincerely,



Jeanne Shaheen
United States Senator



U.S. Citizenship
and Immigration
Services

March 20, 2023

The Honorable Jeanne Shaheen
United States Senate
Washington, DC 20510

Dear Senator Shaheen:

Thank you for your November 15, 2022 letter to the U.S. Department of Homeland Security (DHS) regarding the Department's processing of Employment Authorization Document (EAD) requests filed by applicants seeking Temporary Protected Status (TPS). Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delayed response.

Your letter expressed concern that U.S. Citizenship and Immigration Services (USCIS) may be waiting to review EAD requests until after TPS applications are fully adjudicated. You inquired about USCIS' current policy on EAD adjudications for TPS applicants, how we ensure uniformity when executing on this policy, and what we are doing to decrease processing times for TPS applications and their associated EADs.

USCIS is charged with administering our nation's lawful immigration system which includes responsibility for processing and adjudicating dozens of benefit forms of varying complexities, and millions of filings per year. Moreover, when this administration took office in 2021, it was faced with an agency that was in the midst of the most challenging period in its history. A combination of factors, including a serious financial crisis combined with the ongoing COVID pandemic, had created backlogs of millions of cases that affected practically every product line.

In response, the agency has adopted a comprehensive, multifaceted approach to combat and overcome agency backlogs, including TPS backlogs. More information about this approach is available in the USCIS Fiscal Year (FY) 2022 Progress Report, available at: https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf. USCIS has implemented the following measures:

- Hiring and training new employees to assist with priority workloads such as TPS;
- Using overtime for backlog reduction;
- Streamlining the application process through the successful launch of online filing for all TPS designations;
- Leveraging technology solutions to allow systematic verification of certain eligibility criteria to free up officer time for tasks that require manual review; and

- Policy updates such as the Temporary Final Rule¹ to increase the automatic extension period of employment authorization and/or employment authorization documentation from 180 days to up to 540 days for certain renewal applicants.

Despite these improvements, USCIS understands we are not currently able to meet our processing time goals and TPS applicants are waiting longer for EADs. This is due to several factors, including greater demand and intervening world events that have recently placed particularly high demands on our limited adjudicative resources, including the crises in Afghanistan and Ukraine. USCIS has also implemented several new TPS designations, redesignations, and extensions, including for Afghanistan, Burma, Cameroon, Ethiopia, Haiti, Somalia, Sudan, Syria, Ukraine, Venezuela, and Yemen. In FY 2021 and FY 2022 combined, USCIS received 483,000 initial TPS applications, an extraordinary level of new filings.

USCIS is mindful of the vulnerability of the TPS applicant pool, and we are considering all available options to increase efficiencies and reduce wait times. USCIS is committed to timely processing of TPS applications and TPS-based EADs even with significant TPS population growth in the past two years. To address processing challenges as the number of filings, and with it the backlog, has increased, USCIS is actively considering ways to improve processing times that will significantly reduce the backlog in the near future.

The introduction of online filing for TPS, as noted above, has significant potential to help address the issue your letter particularly highlights: TPS “temporary treatment benefits,” including work authorization, based on a determination that a TPS application demonstrates *prima facie* eligibility for TPS, as compared to the ultimate adjudication of eligibility for a grant of TPS.

The current TPS adjudication model is based upon hardcopy paper filing of the application. Due to the logistical challenges of receiving and processing hardcopy TPS applications, and the desire to ensure most effective and efficient processing of the benefit request, the agency has combined the *prima facie* TPS determination with the ultimate TPS determination upon “first touch” of the application. Therefore, the first time that the agency has an opportunity to adjudicate the TPS application, it makes an initial determination of the ultimate eligibility for TPS protection. If the TPS application is approved, the applicant is issued an EAD under category (a)(12) (TPS holder).² If the evidence submitted by the applicant is insufficient to approve the applicant’s TPS, USCIS will generally issue a *prima facie* EAD under category (c)(19) (TPS applicant)³ while a request for additional evidence or notice of intent to deny is pending and until USCIS issues a final decision on the TPS application. The “one touch” approach has to date been the most efficient way in a paper environment to achieve the goal of

¹ On May 4, 2022, the Department of Homeland Security published a [temporary final rule \(87 FR 26614\)](#) that temporarily increases the automatic extension period to up to 540 days for employment authorization and/or Employment Authorization Documents (EAD, Form I-766) available to [certain applicants who have filed Form I-765](#), Application for Employment Authorization, renewal applications. See the [USCIS announcement](#) for more information and [Section 4.4 of the M-274](#) for updated Form I-9 guidance.

² See 8 CFR. section 274.12(a)(12).

³ See 8 CFR section 274.12(c)(19),

getting TPS benefits (whether they are termed “temporary treatment benefits” or full TPS benefits) to the greatest number of eligible applicants in the fastest possible time frame.

In recent years, USCIS has made significant progress towards working in an electronic environment, including for TPS applications which are processed electronically and can be filed online. Electronic processing provides the agency with greater flexibility in assigning and moving adjudications based on available resources. Additionally, newer systems provide greater opportunities to leverage technology to process applications more accurately, consistently, and efficiently by using information available in other electronic systems to validate eligibility information and speed the process to case completion with significantly less manual review. USCIS is seriously examining whether these efficiencies may lead to the ability to reach a quicker “prima facie” determination, leading to a faster EAD, without unduly delaying the ultimate TPS adjudication. In sum, USCIS is actively pursuing all available technological and other solutions to assist in backlog and processing time reductions and are optimistic that these efforts will offer significant progress in the coming weeks and months for both TPS grants and prima facie EADs.

With respect to your question about consistency of TPS processing, USCIS ensures consistency for all active TPS designations and related EAD case processing across all service centers through Standard Operating Procedures, formal trainings and additional roundtable discussions. As a result, all service centers have the relevant processing guidance and are aware of current policy that may impact adjudications.

Through our current initiatives, and others hopefully to be implemented in the future, USCIS will help vulnerable applicants avoid gaps in employment authorization and receive employment authorization documentation sooner, while also addressing agency staffing shortages and case processing efficiencies.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director