

## **Deferred Enforced Departure (DED) and Temporary Protected Status (TPS) Live Engagement Questions and Answers**

### **Deferred Enforced Departure (DED) and Temporary Protected Status (TPS)**

#### **Q1. Do I need to file any documents to receive DED?**

A1. Individuals covered by DED are not required to file any applications; however, they must submit Form I-765, Application for Employment Authorization, if they want to apply for an Employment Authorization Document (EAD).

#### **Q2. Do individuals who have not applied for TPS or DED Employment Authorization Documents accrue unlawful status while DED is still in place?**

A2. If you are covered by DED, you will not accrue unlawful status during the DED period.

#### **Q3: How do DED and TPS differ?**

A3: DED is an administrative stay of removal that the President can make for a group of individuals in his constitutional authority to conduct foreign relations. TPS designations can be made in the Secretary of Homeland Security's discretion, if he determines that conditions in the country satisfy the statutory standard. Unlike TPS, DED has no statutory basis. Although individuals covered by a grant of DED will not be removed from the United States, they are not considered to have an immigration status.

### **General TPS Background**

#### **Q4. What proof of my TPS status will I receive?**

A4. If USCIS approves your initial TPS application, USCIS will send you an approval notice with an I-94, Arrival/Departure Record, which is evidence of your TPS. If you filed Form I-765, Application for Employment Authorization, USCIS will also send you an Employment Authorization Document (EAD), if you did not receive an EAD before this step. For more information on the TPS application process, visit the [TPS page](#) on the USCIS website. (See the section **Application Process**.)

#### **Q5. What are the expected processing times for Form I-821, Form I-765 and Form I-131?**

A5. The processing time for initial Form I-821, Application for Temporary Protected Status, is approximately 6 months; the processing time for Form I-765, Application for Employment Authorization, is approximately 3 months; the processing time for Form I-131, Application for Travel Document, is approximately 6 months. Note that these are approximate times and that processing time for each case may vary depending on its complexity. For more information on processing times, visit the [Check Case Processing Times page](#) on the USCIS website.

#### **Q6. Are there any exceptions to the firm resettlement bar to TPS?**

A6. As defined in 8 CFR 208.15, an applicant 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 residence status, citizenship, or some other type of permanent resettlement, unless they establish:

- That their entry into that country was a necessary consequence of their flight from persecution, that they remained in that country only as long as was necessary to arrange onward travel, and that they did not establish significant ties in that country,

OR

- That the conditions of their residence in that country were so substantially and consciously restricted by the authority in the country that they were not in fact resettled.

**Q7. What happens if I have dual nationality and I entered the United States with a visa granted to my other nationality?**

A7. Irrespective of whatever additional foreign citizenships individuals may hold, they are eligible for TPS if they establish that they are a national of the TPS country and meet all other eligibility requirements.

As long as the applicant can provide sufficient evidence that they are a Venezuelan 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 they do 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 Venezuelan nationality.

Being a dual national of Venezuela and another country does not automatically prevent an applicant from meeting the nationality requirement for TPS. However, having another citizenship in addition to being Venezuelan 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 Venezuela and another country are encouraged to submit as much evidence as possible regarding when and how they obtained their non-Venezuelan citizenship, the nature of their family and other ties to the non-Venezuela 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.

**Q8. Could you provide a link with specific information about "firm resettlement" for TPS (not asylum or refugees)?**

A8. Whether you are applying for asylum or TPS, the definition of firm resettlement remains the same. If you are firmly resettled, you are not eligible for asylum or for TPS. The asylum section of the [Firm Resettlement Lesson Plan](#) applies to TPS.

**Q9. What absences are considered brief and casual?**

A9. When determining continuous physical presence (CPP) and continuous residence (CR), USCIS must consider your time outside of the United States after March 9, 2021. The law allows an exception to the CPP and CR requirements for brief, casual and innocent departures from the United States. When you apply for TPS, you must inform USCIS of all absences from the United States since the CPP and CR dates. An absence such as a temporary trip abroad required by emergency or extenuating circumstances outside your control will not break continuous residence. USCIS will determine whether the exception applies in your case.

**Q10: What is the definition of habitual residence with respect to TPS? How would someone be eligible for TPS based on having last habitually resided in Venezuela?**

A10: TPS is a country-specific program. Based on the Secretary's designation, USCIS may grant TPS to eligible nationals of certain countries and to eligible individuals without nationality (stateless) who last habitually resided in the designated country before residing in the United States. A TPS applicant who claims to be stateless has the burden to establish that they are not a national of any country. Individuals may submit an affidavit explaining why they have no lawful nationality (that is, why they are stateless) with as much supporting documentation as possible. Examples of documentation include a government order taking away their prior nationality; a copy of legislation that deprived them of their nationality; evidence that their previous country of nationality has ceased to exist without a successor country that recognizes them as its national; a written document from a court or government entity stating that they are stateless and therefore have no nationality; or any other evidence supporting their claim that they do not have a nationality.

Individuals who are claiming that they do not have any nationality and are stateless must also demonstrate that they last habitually resided in a TPS-designated country before they came to live in the United States. Examples of documentation include evidence of established residence in the TPS-designated country, such as documentation that they rented or owned a home during the period they lived there; employment and/or school records; address(es) where they lived; medical records; phone or utility records from the period they lived there; or at least two affidavits from persons who knew them when they lived in the TPS-designated country that describe their relationship to them, how long they have known them, how they know that they lived in the TPS-designated country before coming to live in the United States, and their address and contact phone numbers. Individuals may also provide any other documents that demonstrate that they lived in the TPS-designated country immediately before coming to the United States to live. If they lived in any other country between the time that they lived in the TPS-designated country and the time that they came to the United States, they must provide evidence of residence in that other country or countries.

### **TPS – How to Apply**

**Q11: Over the past years, there has been an inconsistency regarding indications of the correct I-765 EAD code for *initial* TPS EAD applications: (c)(19) or (a)(12). What is the correct code to use for an initial TPS registration I-765 application?**

A11: The correct code for an initial TPS Employment Authorization Document is A12. We recommend that TPS registrants (that is, individuals applying for TPS for the first time) answer A12 to question No. 27 on [Form I-765, Application for Employment Authorization](#). USCIS will not reject a Form I-765, category C19, that is properly filed (with fees or fee waiver request, signatures, etc.).

**Q12: May people in immigration detention apply for TPS?**

A12: USCIS may consider TPS applications from individuals who are currently in immigration detention. An individual in removal proceedings, at the time of the foreign state's designation, may submit an application to USCIS. If an individual is in removal proceedings and the basis of the Notice To Appear (NTA) is a mandatory ground for TPS ineligibility, EOIR would have jurisdiction to adjudicate the TPS application. See [8 C.F.R. 244.7\(d\)](#).

**Q13: When a family is applying for TPS, do you recommend that every family member apply simultaneously?**

A13: TPS is an individual benefit and provides no benefit to derivatives. Family members may apply for TPS simultaneously or individually provided that each individual meets the eligibility criteria for TPS independently. USCIS encourages each family member file their own application with a separate payment.

**Q14: Are TPS applicants who are subject to certain waivable inadmissibilities required to submit Form I-601 waiver applications with the Form I-821, or can they submit them at a later date?**

A14: TPS applicants may submit [Form I-601, Application for Waiver of Grounds of Inadmissibility](#), with their initial TPS package; however, USCIS will give applicants the opportunity to submit this form later if they did not submit it their initial package. For more information, visit the [TPS page](#) on the USCIS website.

**Q15: Are people with Venezuelan residency (like Venezuelan green card holders) able to apply for TPS Venezuela?**

A15: Not unless they are a Venezuelan national or an individual without nationality who last habitually resided in Venezuela. Eligible nationals of Venezuela (or individuals having no nationality who last habitually resided in Venezuela) may submit an initial registration application under the designation of Venezuela for TPS and apply for an Employment Authorization Document.

**Q16: May a person who was born in a third country, who lived all their life in Venezuela but never obtained Venezuelan citizenship apply for TPS?**

A16: No. Only eligible nationals of Venezuela (or individuals having no nationality who last habitually resided in Venezuela) may submit an initial registration application under the designation of Venezuela for TPS and apply for an Employment Authorization Document.

#### **TPS – Filling out the Application**

**Q17. Does the applicant have to put all the countries they resided in before coming to the United States in general, or just those they visited in the time between leaving Venezuela and his last entry to the United States?**

A17. TPS applicants should list all countries they entered while traveling to the United States, including countries where they resided as well as those where they transited through. In Part 11, Additional Information of Form I-821, TPS applicants may provide the dates when they were in those countries and any immigration status they may have had while in those countries.

**Q18: How should I respond to the question about my current immigration status if I have applied for asylum?**

A18: Please provide your current immigration status (or lack of status). For example, visitor, student, visa overstay or no status.

**Q19. For Part 6 of the Form I-821 (Children), can you confirm that this section should only be completed if filing a late application?**

A19. Yes. **Part 6 Information About Your Children (if any)** of Form I-821 should be completed only if you are filing a late initial application for TPS. There is no late initial filing during an initial designation for TPS.

### **TPS – Documents**

**Q20. Should I submit my entire passport along with my TPS application (Form I-821)?**

A20. TPS applicants who are submitting a copy of their passport to establish nationality and identity and also to show their entry into the United States should include all of the pertinent pages that evidence that information, for example, the Visa Page, admission stamp, etc.

**Q21: Are expired passports acceptable forms of identification for establishing nationality and identity?**

A21: Expired passports are acceptable to establish nationality and identity.

**Q22: Is a Venezuelan nationality certificate, issued by the embassy in the United States for the express purpose of seeking TPS, an acceptable way to establish nationality?**

A22: Any national identity document from the country of origin bearing a photo and/or fingerprint is acceptable.

### **General TPS Questions**

**Q23. If I am granted TPS, can I still apply for a B2 tourist visa and/or travel to another country (besides Venezuela)?**

A23. Registration for TPS does not prevent individuals from applying for or maintaining a nonimmigrant status, such as a tourist visa; however, they should submit Form I-131, Application for Travel Document, and obtain a travel document before travelling outside of the United States.

**Q24. If an applicant is out-of-status or entered the US illegally, are they still entitled to apply for TPS?**

A24. Yes, applicants who are out of status or entered the United States without being inspected and admitted may apply for TPS provided that they meet all other eligibility requirements.

**Q25. If I have an employment authorization based on my pending asylum application (category C8), could I apply for employment authorization based on TPS (category A12)?**

A25. While individuals who already have an EAD are not required to apply for a TPS-based EAD, category (a)12, they are permitted to request one at the time of filing Form I-821 or at a later date.

**Q26. If a student applies for TPS, does the student lose his or her F-1 student status? What happens if the TPS period is not extended?**

A26. Registration for TPS does not prevent individuals from applying for or maintaining a nonimmigrant status, such as F1 academic student. As stated in the **Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure** FRN (see [86 FR 13574](#)), at least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after

consultation with appropriate Government agencies, must review the conditions in the foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. See INA section 244(b)(3)(A), [8 U.S.C. 1254a\(b\)\(3\)\(A\)](#). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. See INA section 244(b)(3)(A), (C), [8 U.S.C. 1254a\(b\)\(3\)\(A\), \(C\)](#). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. See INA section 244(b)(3)(B), [8 U.S.C. 1254a\(b\)\(3\)\(B\)](#).

**Q27: Can I apply for TPS without affecting my asylum claim? Would I have to pay for a work permit and to be fingerprinted again?**

A27: Individuals with a pending or approved asylum claim may also apply for TPS and for an Employment Authorization Document (EAD) based on TPS. Applying for TPS will not affect your asylum claim. All TPS applicants must pay the required fees or submit a [Form I-912, Request for a Fee Waiver](#). USCIS also collects the photograph, signature, and/or fingerprints (that is, the biometrics) of every TPS applicant over 14 years old, as needed. Biometrics are required for identity verification, background checks, and the production of your EAD, if you requested one and are eligible. As part of the processing of your TPS application, USCIS will send you an appointment notice to have your biometrics captured at an Application Support Center ([ASC](#)). For more information on the TPS application process, visit the [TPS page](#) on the USCIS website (see “**Step 3, USCIS Contacts You**” in the section “**Application Process**”).

**Q28. 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?**

A28. The granting of TPS, in and of itself, does not release a J nonimmigrant from the INA 212(e) two-year foreign residence requirement. The J nonimmigrant would still need to apply for the waiver, provide evidence supporting their reasons for seeking the waiver, and be granted a waiver of the two-year requirement if they wish to change to a different nonimmigrant status (other than certain limited nonimmigrant categories) or seek immigrant status.

Eligibility for TPS is based on whether the applicant is an eligible national of the designated country (or a person having no nationality who last habitually resided in the designated country). Therefore, the underlying basis for a person's TPS status is not related to and may not support a claim for a waiver of the J-1 2-year requirement based on either a fear of persecution or a claim of exceptional hardship upon the applicant's U.S. citizen or lawfully permanent resident spouse or child.