

Adjudicator's Field Manual

NOTE: The [USCIS Policy Manual](#) is our centralized online repository for immigration policies. We are working quickly to update and move material from the Adjudicator's Field Manual to the Policy Manual. Please check that resource, along with our [Policy Memoranda](#) page, to verify information you find in the Adjudicator's Field Manual. If you have questions or concerns about any discrepancies among these resources, please contact PolicyFeedback@uscis.dhs.gov.

Chapter 38 Temporary Protected Status and Deferred Enforced Departure.

- 38.1 Temporary Protected Status
- 38.2 Deferred Enforced Departure

38.1 Temporary Protected Status.

(a) Background Information.

Temporary Protected Status (TPS) is a temporary immigration status granted to eligible nationals of designated countries (or parts thereof). In 1990 Congress established a procedure (IMMACT 90) by which the Attorney General may provide TPS to nationals of a particular country who are in the United States and are unable to return to their homeland due to:

- Ongoing armed conflict within the state and, due to that conflict, the return of nationals to that state would pose a serious threat to their personal safety.

- An environmental disaster resulting in a substantial, temporary disruption of living conditions, the state is temporarily unable to adequately handle returning nationals and the state therefore requests TPS designation.

- Other extraordinary and temporary conditions in the state that prevent nationals from returning safely, unless the Attorney General finds that permitting nationals of the state to remain temporarily is contrary to the national interest of the United States.

(b) Designation.

After consultation with the appropriate agencies of the government, the Attorney General (AG) may decide to designate a foreign state or part of a foreign state as eligible for TPS because one or more of the reasons listed above have been met.

Notice of the designation is published in the Federal Register, and must include an estimate of the number of nationals of the foreign state who are or will become eligible for TPS as a result of the designation.

During the period for which the Attorney General has designated a country under the TPS program, TPS beneficiaries are not required to leave the United States and may obtain work authorization. However, TPS does not lead to permanent resident status. When the Attorney General terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have acquired while registered for TPS. Accordingly, if an alien had unlawful status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon the termination of that TPS designation.

A TPS designation will be effective for a minimum of 6 months to a maximum of 18 months. Before the end of the TPS designation period, the Attorney General will review the conditions in the designated state and determine (60 days prior to the end of the designation period) whether the conditions that led to the designation continue to be met. Based on this assessment, the TPS designation may be extended for an additional 6, 12, or 18 months. If the conditions that led to the TPS designation are no longer met, the Attorney General will terminate the designation. Designations, extensions, terminations, and other information regarding TPS are published in the Federal Register.

(c) Eligibility.

An individual may be eligible for TPS if he or she is a national of a country designated by the Attorney General for TPS, or if the individual is a person who has no nationality but last habitually resided in a designated country.

Individuals must apply for TPS during the specified registration period. The registration period is stated in the Federal Register notices of designation and is also generally advertised in the USCIS press releases. A list of countries designated for TPS with Federal Register cites indicating the most recent action regarding TPS is contained on the USCIS web site at:

<https://www.uscis.gov/humanitarian/temporary-protected-status>

(d) Forms.

The TPS applicant is required to submit an Application for Temporary Protected Status (Form I-821), an

Application for Employment Authorization (Form I- 765), and evidence to satisfy several requirements pertaining to residence and presence in the United States. Additionally, the applicant will be scheduled for fingerprinting through an Application Support Center (ASC).

(1) Fees .

The fees for filing the initial Form I-821, filing the Form I- 765 , and fingerprinting services is set forth in the regulations and on the website. Fee waiver requests – except for the fingerprint fee - will be considered.

(2) Work Authorization Form .

The Form I- 765 is required even if the alien already has or does not desire employment authorization because it provides information for registration of the alien in the TPS program. If an I-765 is being submitted only as a registration document, and employment authorization is not requested, the form will be marked with a red “X” in the fee receipt block and placed directly below the Form I-821 in the file. No fee is required for an I-765 submitted only as a registration document.

(3) Advance Parole .

Applications for advance parole submitted on Form I-131 , Application for Travel Document, should be adjudicated in accordance with 8 CFR 244.15 . Please note that I-131s based on TPS for Nicaraguans, Hondurans, and El Salvadorans may be filed either at the District Office or at the Service Center. I-131s based on all other countries must be filed at the District Office.

(e) Adjudication Procedures Relating to Initial Applications for TPS Classification .

(1) Form I-821 .

Review the Form I-821 to:

- Check the for completeness and correctness.

- Compare with the information in the USCIS printouts.

- Review Part 4, Eligibility Standards. The alien must meet the criteria set in 8 CFR Part 244.2 :
 - Be a national of a designated country or an alien with no nationality who last habitually resided in such designated state;

 - Demonstrate continuous physical presence in the U.S. since the effective date of the designation;

 - Demonstrate continuous residency in the U.S. since the date set by the Attorney General;

 - Be admissible as an immigrant, except provided under 8 CFR 244.3 ;

 - Not be ineligible under 8 CFR 244.4 ;

 - Register for TPS during the initial registration period announced in the Federal Register.

- Review the signature block to make sure the signature is original and that the form is dated. Reminder
 - all forms of signature are acceptable, including an “X,” thumbprint, or an original facsimile signature stamp. A typewritten name is not a signature. Applicants 14 years of age or older must sign their own applications, but applications submitted for applicants under the age of 14 may be signed by a parent or guardian.

(2) Evidence of Identity and Nationality.

An applicant must provide evidence that he or she is a national of a country designated by the Attorney General for TPS. He or she must also provide evidence of his or her identity. Acceptable evidence for both identity and nationality might include:

- Passport
- Birth certificate and photo identity document.

<u>Note</u>
The identity document must be issued by a local, State, or any federal civil authority. Examples: State identity documents, driver's license, military identity documents, or public educational documents. Documents must be reasonably current.

- If these documents are not available, the applicant may file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated country.

At this point, a personal interview before an immigration officer shall be required. Applications adjudicated at the Service Center will be referred to the appropriate district office. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality.

Minor children who are of school age (5 to 10 years old) may use school identity documents. School pictures with names of students listed are acceptable. Children who are under the age of 5 may use their birth certificate along with additional evidence (such as immunization records containing the child's name and a parent's signature) to establish identity.

(3) Evidence of Date of Entry and Residence.

Individuals must have entered, and continuously resided in, the U.S. since a date specified by the Attorney General. Please note that dates are different for each country designated (example: El Salvador, February 13, 2001). Please refer to the Federal Register for the correct date. Acceptable evidence with the applicant's legal name might include, but is not limited to:

- Employment records such as payroll stubs, W-2 Forms, signed and dated copies of tax returns, and employment verification letters. Please note that employment verification letters must be on company letterhead, have original signature of the employer, and have specific dates of employment.
- Financial records such as bank statements, printed money transfer receipts, printed money orders, utility bills, rental lease agreements, printed bills of sale, and printed auto registration and tax documentation, as well as letters from companies where the applicant received services. Deeds, mortgages, contracts, insurance policies, printed receipts, and financial letters are also acceptable.
- Medical documentation including appointment notices, medical bills, prescriptions, hospital records or the medical records of the applicant's children. Birth certificates of children born in the United States may also be accepted if the applicant is the mother or father of the child.
- School records of the applicant or his or her child(ren) (such as report cards, letters, etc.) may be accepted if he or she attended school in the United States. Documentation must show the name of the school, the name of the child and his or her parent, and period(s) of school attendance.
- Attestations from churches, unions, and other organizations may be acceptable evidence if they are accompanied by additional evidence described above. These attestations must identify the applicant by name, state the applicant's address, seal of organization (impressed on the letter or on the letter head), and establish how the attester knows the applicant.

(4) Evidence of Physical Presence.

Individuals must demonstrate that they have been continuously physically present in the United States since the TPS began, or since the effective date of the most recent re-designation. Please note that the dates for physical presence are different for each country under TPS. For specific dates please refer to the Federal Register for the correct dates. Evidence for physical presence is essentially the same as for date of entry and residence.

It should be noted that the applicant's entire case should be reviewed to see if there is sufficient evidence to meet date of entry, residence, and physical presence requirements.

(5) Initial Form I- 765 .

(A) Review .

Review the I-765 for completeness. Verify the nationality, A-number, original signature, and other current information. Compare this information against the USCIS printouts. The applicant must submit evidence of his or her identity to receive employment authorization.

Section 244(a)(4)(B) of the Act states that in the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits (benefits include stay of removal and employment authorization).

The evidence and supporting materials must address, directly or indirectly, the evidentiary requirements pertaining to identity, nationality, date of entry, and continuous residence and/or physical presence in the United States. If the applicant demonstrates prima facie eligibility, the Form I- 765 should be adjudicated. For this review, evidence and supporting materials are accepted at face value, unless a conflict or contradiction in the record that which may otherwise render them ineligible can be articulated.

(B) Classification .

When the Form I- 765 is approved based on the prima facie review, and the I-821 requires further action, the I-765 will be classified as a "c-19." If the I-821 is approvable based on the initial evidence submitted, then the I-765 is classified as an "a-12" once the I-821 has been approved

(C) Approval .

If the I-765 is approved, stamp and sign the application with a legible signature. Check appropriate validity dates.

(6) Request for Evidence. [Chapter 38.1(e)(6) update effective 7/7/2011.]

If the evidence submitted with the initial application was incomplete and did not support an approval, USCIS has decided as a matter of policy that generally it will send a Request for Evidence (RFE) to the applicant or petitioner. If the petitioner or applicant has a representative, USCIS will send the RFE to the representative. However, the representative must have submitted a Form G-28, Notice of Appearance of Attorney or Legal Representative; otherwise, USCIS will be unable to send the RFE to the representative. USCIS may deny outright without RFE on a case-by-case basis upon obtaining supervisory concurrence.

The request for evidence must indicate the deadline for response. See 8 CFR 103.2(b)(8). For RFEs, adjudicators must follow the standard timeframes listed in Appendix 10-9, but may reduce the response time on a case-by-case basis after obtaining supervisory concurrence. This discretion should only be used when warranted by circumstances as determined by the adjudicator and the supervisor.

The maximum response time for a request for evidence cannot exceed 12 weeks, and for a notice of intent to deny cannot exceed 30 days. This does not include additional time provided when the RFE is served by mail. See 8 CFR 103.5a(b) and Appendix 10-9. Additional time to respond to a request for evidence may not be granted. 8 CFR 103.2(b)(8).

<u>Note</u>
See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

(7) Insufficient Evidence [Chapter 38.1(e)(7) update effective June 18, 2007.]

If the applicant or petitioner responds to a request for evidence, but the evidence is insufficient, USCIS will treat the application or petition as a request for a decision on the record. 8 CFR 103.2(b)(11) .

Note

See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

(8) Criminal Charges .

If, however, the evidence submitted reveals criminal charges, and it cannot be determined whether the charges are misdemeanors or felonies, and there are no court dispositions available, the applicant should be scheduled for an interview at the appropriate district office. (See the SOPs for more detailed procedural information.)

(9) Failure to Respond to RFE . [Chapter 38.1(e)(9) update effective June 18, 2007.]

In some instances, USCIS may issue an RFE that requires various types of evidence including proof of identity. An applicant might, however, fail to respond to the RFE, including the request for proof of identity, by the required date. Consequently, after receiving the background check results of the applicant's fingerprints, USCIS may deny the Form I-821 as abandoned or on the record. However, it is a better practice for USCIS to deny the application or petition for both reasons.

8 CFR 103.2(b)(13) (i).

Note:

See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

(10) Relocation of Case to a District .

All cases filed at a service center that are relocated to a district must include a Case Relocation Memo explaining the reason for referral.

(11) Fingerprints .

(A) Scheduling for Fingerprints .

If required, the applicant should be scheduled for fingerprints once the fee has been submitted. The possible FBI responses to fingerprints are:

- IDENT – The applicant was identified in the FBI database,
- Non-IDENT –The applicant was not identified in the FBI database,
- Reject – The applicant’s prints were rejected, because the fingerprints were unclassifiable by the FBI, and
- Pending – The FBI is conducting a more thorough search on the fingerprints.

(B) Waiting Period .

The USCIS has established a 120-day waiting period from the date of fingerprint scheduling to allow applicants to submit fingerprints. When an applicant fails to appear for fingerprints, or a response is not received within that 120-day period, and the applicant has otherwise not advised the USCIS of a change of address or requested that he or she be rescheduled, the case must be denied for abandonment. If the fingerprints have been rejected, schedule the applicant to appear at the closest ASC to be fingerprinted again.

(C) Fingerprints Rejected a Second Time .

If the fingerprints return as rejected a second time, have the applicant report to the district office to be interviewed. If the application is being adjudicated at the Service Center, send the file to the appropriate district office for interview. If the fingerprint results return as an IDENT, verify whether the applicant was convicted on any of the charges specified on the RAP sheet and determine whether the convictions were either felonies or misdemeanors. If an alien that has been convicted of a felony or two or more misdemeanors, as defined in 8 CFR 244.1, and these offenses were committed in the U.S., the applicant is ineligible for TPS. The relating court dispositions should be obtained and the alien’s application should be denied. If the officer cannot determine whether or not the applicant was convicted of one felony or two or more misdemeanors the case should be transferred for interview.

(12) Grounds for Ineligibility .

If any of the following relate, the applicant is ineligible for TPS:

(A) He or she ordered, cited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. (See section 244(c)(2)(B)(ii) of the Act.);

(B) He or she has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the United States.

(C) There are serious reasons for believing that he or she has committed a serious nonpolitical crime outside the United States prior to arrival in the United States.

(D) There are reasonable grounds to believe he or she is a danger to the security of the U.S.

(E) He or she was firmly resettled in another country prior to arriving in the U.S.

(F) He or she has been convicted for any felony (section 244(c)(2)(B)(ii) of the Act), including an aggravated felony as defined in section 101(a)(43) of the Act.

- Murder, rape, or sexual abuse of a minor;

- Illicit trafficking in controlled substance (as described in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in 18 U.S.C. 924(c));
- Illicit trafficking in firearms or destructive devices (as defined in 18 U.S.C. 921) or in explosive materials (as defined in section 841(c) of that title);
- An offense described in 18 U.S.C. 1956 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- An offense described in-
 - 18 U.S.C. 842 (h) or (i) or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
 - 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 18 U.S.C. 924 (b) or (h) (relating to firearms offenses); or
 - Section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);
- A crime of violence (as defined in 18 U.S.C. 16, but not including a purely political offense) for which the term of imprisonment is at least 1 year;
- A theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least 1 year;
- An offense described in 18 U.S.C. 875, 876, 877, or 1202 (relating to the demand for or receipt of ransom);
- An offense described in 18 U.S.C. 2251, 2251A, or 2252 (relating to child pornography);
- An offense described in 18 U.S.C. 1962 (relating to racketeer influenced corrupt organizations, or an offense described in section 1084 (if it is the second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of 1 year imprisonment or more may be imposed;
- An offense that-
 - Relates to the owning, controlling, managing, or supervising of a prostitution business; or
 - Is described in 18 U.S.C. 2421, 2422, 2423 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
 - Is described in 18 U.S.C. 1581, 1582, 1583, 1584, 1585, or 1588 (relating to peonage, slavery, and involuntary servitude);
- An offense described in-
 - 18 U.S.C. 793 (relating to gathering or transmitting national defense information), 18 U.S.C. 798 (relating to disclosure of classified information), 18 U.S.C. 2153 (relating to sabotage), or 18 U.S.C. 2381 or 2382 (relating to treason);
 - Section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents); or

- Section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);
- An offense that-
 - Involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or
 - Is described in Section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;
- An offense described in paragraph (1)(A) or (2) of Section 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;
- An offense described in Section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
- An offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of 18 U.S.C. 1543, or is described in Section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;
- An offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;
- An offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;
- An offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;
- An offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and
- An attempt or conspiracy to commit an offense described in this paragraph.

Note 1:

The term felony applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph. (See also section 212 of the Act and section 237 of the Act).

-

Note 2:

Sometimes misdemeanors can be aggravated felonies. Seek advise from your district or center counsel if the issue is in question.

•

(G) He or she has been convicted for any felony (section 244(c)(2)(B)(ii) of the Act), including an aggravated felony as defined in section 101(a)(43) of the Act.

(13) Inadmissibility Grounds That Do Not Apply .

The following grounds of inadmissibility do not apply to TPS applicants:

- Section 212(a)(4) of the Act – Public Charge
- Section 212(a)(5)(A) and (B) of the Act – Labor Certification, Unqualified Physicians
- Section 212(a)(7)(a)(i) of the Act – Immigrants (Entry documents)

(14) Inadmissibility Grounds That Cannot Be Waived .

The following grounds of inadmissibility cannot be waived for TPS applicants:

- Section 212(a)(2)(A)(i) of the Act - Relating to conviction for certain crimes (CIMT)
- Section 212(a)(2)(B) of the Act – Relating to multiple criminal convictions
- Section 212(a)(2)(C) of the Act – Relating to controlled substance traffickers
- Section 212(a)(3)(A) through (D) of the Act – Relating to national security
- Section 212(a)(3)(E) of the Act – Relating to those who assisted in Nazi persecutions or genocide.

(15) Inadmissibility Grounds That Can Be Waived.

Except for those grounds listed in paragraphs (13) and (14), USCIS may waive any other ground of inadmissibility for TPS applicants.

(f) Adjudication Procedures Relating to Re-registration of Applicants for TPS Classification .

(1) General .

Section 244.17 (a) of Title 8 Code of Federal Regulations states, in pertinent part:

Aliens granted temporary protected status must register annually with the Immigration Service designated office having jurisdiction over their place of residence [if applicant is El Salvadoran, Honduran, or Nicaraguan he or she will need to file with the Service Center having jurisdiction over his or her place of residence]. Such registration will apply to nationals of those foreign states designated or redesignated by the Attorney General pursuant to section 244(b) of the Act. Registration may be accomplished by mailing or submitting in person [if applying at a district office] completed forms I-821 and I-765 within thirty (30) days prior to the anniversary of the grant of temporary protected status. Form I-821 will be filled without fee [for documentation only]. Form I-765 will be filled with the appropriate fee only if the alien is requesting employment authorization.

Review the current application for completeness. Verify nationality, A-number, and the information provided on the current Form I-821 or Form I-765 . The applicant should provide evidence of identity as well as other evidence (if any) required in the Federal Register notice for re-registration under TPS.

Determine whether the initial I- 821 was previously approved. If the initial I-821 was approved, then approve the I- 765 using standard procedures. If the I-821 is still pending, refer to the SOPs.

(2) Approvable I-765 .

If the I-765 is approvable, stamp and sign the application with a legible signature. Check appropriate validity dates. Reminder – the eligibility code for applicants that have been granted TPS is A12. If the initial I-821 is still pending, the eligibility code is C19.

(3) Denied I-821 .

If the initial I-821 has been denied, deny the I-765 . Annotate the “Action” block of the I-765 as “Denied.”

(4) Failure to Register .

8 CFR 244.17(c) states that “failure to register without good cause will result in the withdrawal of the alien’s Temporary Protected Status.” All re- registration applications postmarked after the filing deadline should be rejected. The contractor will forward copies of the rejected notices to USCIS for tracking. If the applicant does not resubmit his or her application with evidence of good cause for failing to re-register timely within 60 days, a notice of intent to withdraw TPS should be issued. That notice must provide the applicant 30 days to submit evidence of good cause for failure to register in accordance with 8 CFR 244.13(b).

(5) Withdrawal Procedures .

If this is not the first re-registration for TPS, verify that the applicant had re-registered during all previous extensions. If not, send a Request for Evidence or a Notice of Intent to Deny requesting evidence that the applicant has re-registered during all previous extensions, as required in 8 CFR 244.17(a). If the applicant does not provide evidence that he or she had re-registered or that he or she did not respond to the Notice of Intent to Deny or Request for Evidence, then deny the application(s) and withdraw the TPS using normal procedures.

(6) Fees .

Applicants for extension of TPS benefits do not need to be re-fingerprinted and thus are not required to pay the fingerprint fee (per headquarters directive dated January 2, 2003). (Except that we may need to re-fingerprint any TPS re-registrants that do not have valid fingerprints.) Child beneficiaries who have reached the age of fourteen (14), and were not previously fingerprinted, must pay the fingerprint fee with the application for extension.

(7) IBIS Checks .

IBIS checks will be conducted prior to adjudication per appropriate procedures.

(8) Decision .

If the I-821 is approved, update CLAIMS (if the case has been adjudicated at a service center), stamp and sign the application (the signature must be legible).

Note

If the initial I-821 was denied, the applicant should be advised to submit another Form I-821, with fee, requesting that the application be as a late initial filing.

(g) Late Initial Filing .

(1) Requirements for Registrant .

Under 8 CFR 244.2(f)(2) an alien may register for TPS as a late initial registrant if he or she:

(A) Meets all of the following basic TPS requirements (see Chapter 38.1(e) of this field manual)

(B) Is able to demonstrate that during the initial registration period, he or she:

- Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;
- Had an application for change of status, adjustment of status, asylum, voluntary departure or any relief from removal or change of status pending or subject to further review or appeal;
- Was a parolee or had a pending request for re-parole.

(C) Registers within a 60-day period immediately following the expiration or termination of the conditions described above.

(2) Requirements for Spouses and Children .

(A) General .

A spouse or child of an alien currently registered for TPS may apply for late initial registration at any time if he or she is otherwise eligible and was so at the time of the initial registration period. The spouse or child must meet all eligibility criteria for TPS in addition to the requirements for filing under the late initial filing provisions.

(B) Valid Marriage .

The marriage must have been valid at the time of the initial registration period. The validity of a marriage for immigration purposes is determined according to the law governing marriage in the place where the couple contracts the marriage. A common law marriage in one of the jurisdictions that recognize such marriages is valid for immigration purposes. If there is a question regarding whether the common law marriage is valid, consult with your district or center counsel.

(3) Review .

All applications for late initial registration must be reviewed within 30 days of receipt. If the applicant fails to submit all of the required initial evidence, a request for evidence will be issued. An adjudication processing hold shall be placed in the I-765 if an EAD is requested and the applicant, initially, does not meet the requirements for late registration, nationality and identity, date of entry, physical presence and continuous presence.

(4) Adjudication .

Follow all other initial I-821 and I-765 procedures contained in paragraph (e).

(h) Advance Parole .

8 CFR 244.15(a) permits an alien who has been granted TPS to request permission from the district director or service center director to travel abroad.

(1) Filing Jurisdiction .

Generally, an Application for Travel Document, Form I-131, for a TPS registrant should be filed with the designated Lockbox facility to be processed by the appropriate service center. However, in emergency situations a Form I-131 based on a pending or approved TPS request can be filed at the local field office.

(2) Application .

An application for advance parole should be submitted on Form I-131. Except as provided in paragraph (6), the complete application for a TPS beneficiary should consist of:

- Form I-131 application (with proper fee);
- Evidence of valid and approved TPS;
- Proof of identity; and
- Two passport-style photos.

(3) Adjudication .

Except as provided in paragraph (6), Form I-131 must be adjudicated in accordance with 8 CFR 244.15. Follow these steps in the adjudication process:

- Review the I-131 for completeness;
- Conduct the required TECS/IBIS checks;
- Verify nationality, A-number, original signature, and other information on the application; and
- Compare this information with the information in the USCIS printouts.

(4) Issuance. Issue Form I-512, Authorization for Parole of an Alien into the United States, if:

(A) The applicant has been granted TPS and all the requirements outlined in paragraph (3) have been met; or

(B) The applicant has applied for TPS, is a citizen of Haiti or an alien without nationality who last habitually resided in Haiti, and all the requirements outlined in both paragraphs (3) and (6) have been met.

Note

Indicate in the remarks section of the Form I-512 that if the applicant's TPS has been revoked for any reason, he or she will be subject to removal proceedings under Section 235(b)(1) or 240 of the Immigration and Nationality Act.

(5) Failure to Obtain Advance Parole.

Section 244.15(b) states that if an alien fails to obtain an advance parole prior to his or her departure from the U.S., it may result in the withdrawal of the TPS and the institution or re-calendering of removal, deportation or exclusion proceedings.

(6) Expedited Processing of Form I-131 with a Pending Form I-821. This guidance covers the processing of advance parole applications for Haitians with pending initial TPS applications. All USCIS offices are instructed to comply with the following guidance:

(A) Special Considerations. The standard adjudicative practice is to determine TPS eligibility before granting advance parole. USCIS anticipates that many Haitian TPS applicants will request advance parole while their initial Form I-182 is pending in order to travel to Haiti for urgent humanitarian reasons. This will require the adjudication of Form I-131 before the adjudication of the initial Form I-821.

Note

Reports indicate that many Haitians have fled Haiti to other countries due to the earthquake. Thus, officers should also consider requests to travel to countries other than Haiti for urgent humanitarian reasons.

In order for USCIS to adjudicate Form I-131 before adjudicating the initial Form I-821, the following must occur:

- The TPS application package, consisting of Forms I-821 and I-765, must have been properly filed, with all appropriate fees, or with a properly documented fee waiver request;
- A TECS/IBIS check must be completed on the name and date of birth on the Form I-131, as well as any known aliases or other name/DOB variations.
- Any hit relating to a national security or significant public safety concern should be resolved.
- The applicant must have appeared at an ASC and had biometrics collected;
- All other standard security checks must be initiated; and
- If an FBI fingerprint check returns a hit that indicates a national security, public safety, or absconder issue that was not revealed through TECS/IBIS, that a TECS record be posted to alert CBP and other authorities that advance parole had been granted (and revoked).

(B) Expedite Requests. These expedite procedures apply regardless of whether the underlying initial Haiti TPS application is pending or has been approved.

An applicant who has not yet filed a Form I-131 should visit his or her local field office by scheduling an InfoPass appointment.

(i) Applicant with a Form I-131 pending at a Service Center. If Form I-131 is pending, but the applicant cannot wait for it to be adjudicated within the normal processing times (e.g., because advance parole is requested for travel to Haiti to care for an injured family member or to provide lifesaving assistance), the applicant should contact the USCIS Contact Center at 1-800-375-5283 or make an InfoPass appointment.

- If a Haitian TPS applicant with a Form I-131 already pending at a service center requests an expedite by contacting the USCIS Contact Center, the USCIS Contact Center will create a "service request" and forward it to the service center where the advance parole application is pending. When the USCIS Contact Center takes the service request, it will ask the applicant how soon the advance parole is needed.
- If the applicant needs advance parole within 48 hours, the USCIS Contact Center will instruct the applicant to visit his or her local field office. The local field office will coordinate with the service center to issue the Form I-512 to the applicant in person.
 - Upon receipt of the service request, the service center should determine if the applicant has already been to the Application Support Center (ASC) for biometrics collection and, if not, should schedule a walk-in appointment.
 - Upon completion of the biometrics capture during the ASC appointment, if the applicant has met all other eligibility requirements, the service center should approve the Form I-131 for advance parole.

- If the applicant does not require the advance parole within 48 hours, the service center will mail the Form I-512 to the applicant.
- If the applicant requires the advance parole within 48 hours, the service center will coordinate with the appropriate field office for in-person delivery of the Form I-512.
- The field office should immediately issue a locally created Form I-512 advance parole document to the applicant valid for multiple entries, but only for 90 days.
- When providing the Form I-512 to the applicant, the field office ISO will also point out the warning section regarding unlawful presence and warn the applicant that he or she could risk missing important notices, such as a Request for Evidence (RFE), and that failure to respond timely to an RFE could result in denial for lack of prosecution.

(ii) Applicant Has Not Yet Filed a Form I-131. If the applicant does not have an advance parole application pending at a service center, the field office should schedule a same-day, walk-in appointment. In addition, the field office should notify the service center responsible for the applicant's Form I-131 of the expedite request.

- Applicants without a pending advance parole application should attempt to schedule an InfoPass appointment at their local field office whenever possible.
- The field office will instruct the applicant to complete and submit a Form I-131 with appropriate fee.
- The local office should determine if the applicant has already been to the ASC for biometrics collection and, if not, should schedule a same-day, walk-in appointment.
- When the applicant returns from the ASC, the field office will make a decision on Form I-131.
- If the field office approves Form I-131, it will immediately issue a locally-created Form I-512. When providing the Form I-512 to the applicant, the field office ISO will also point out the warnings section on the Form I-512 document regarding unlawful presence and warn the applicant that, while on travel, he or she could risk missing important notices, such as an RFE, which could result in a denial for lack of prosecution.
- After providing the Form I-131 to the applicant, the field office should forward the Form I-131 application in a work or T-file to the appropriate service center for data entry and interfiling with the TPS application.

(iii) Applicant with a Form I-131 Pending at a Service Center Who Contacts a Field Office. If an applicant with an advance parole application pending at a service center makes an InfoPass appointment at a field office instead of, or in addition to, calling the field office, the field office and service center, working in coordination, should:

- Determine whether the applicant has been scheduled for a biometrics appointment and appeared at an ASC. If not, the field office should schedule a same-day, walk-in ASC appointment.
- Once the applicant has completed the biometrics collection process, the service center should adjudicate the Form I-131.
- If the service center determines that the applicant is eligible for advance parole, the service center adjudicator will suppress issuance of the Form I-512 and notify the field office to produce the Form I-512 locally and provide it to the applicant in person.

- The field office will immediately issue a locally-created Form I-512. When providing the Form I-512 to the applicant, the field office ISO will also point out the warning section on the Form I-512 document regarding unlawful presence and warn the applicant that, while on travel, he or she could risk missing important notices, such as an RFE, which could result in a denial for lack of prosecution.

(iv) Expedite Decision. The Form I-131 is a discretionary determination, so the officer should consider all evidence presented and make a judgment based on the totality of the circumstances for each case. Please see the USCIS website at www.USCIS.gov for expedite criteria.

(C) Adjudicative Delays. If advance parole has been approved before the adjudication of the initial Form I-821, there may be obstacles in the adjudication of the underlying TPS application.

- If the applicant has been issued advance parole and has left the United States while the initial TPS application is pending and not returned, he or she may not be able to respond to a request for evidence (RFE) in a timely manner.
- If the applicant does not respond to an RFE in a timely manner, then the officer should deny the TPS application based on a lack of prosecution.
- If the applicant returns the denial with evidence showing that he or she could not respond to the RFE timely due to a temporary absence from the United States based on advance parole and submits documentation addressing the RFE, the officer may consider these facts to be good and sufficient cause when evaluating whether to reopen the case on service motion without fee. This decision is based on a case-by-case determination and will depend on the individual circumstances of a case. Evidence that the applicant could not respond timely due to an authorized departure may include copies of the advance parole document and the applicant's transportation documents, e.g., airline tickets.

Note:

This guidance pertains solely to TPS applications and does not apply to requests to reopen other applications denied based on lack of prosecution.

(D) Validity Dates. The appropriate validity period of the Form I-512 depends on whether the initial Form I-821 is pending or approved at the time Form I-512 is issued:

- If the applicant's initial Form I-821 remains pending when the adjudicating office makes a final decision on the applicant's Form I-131, then the I-512 Advance Parole Document will have a validity period of 90 days, but may be valid for multiple entries.
- The applicant should also be advised that if he or she fails to return to the United States within the 90-day period, not only does he or she risk being denied entry at the port, but his or her TPS application may also be denied for failure to maintain continuous residence and presence in the United States.
- If the applicant's initial Form I-821 is approved when the officer makes a final decision on the applicant's Form I-131, then the Form I-512 will have a validity period of one year or the duration of the TPS designation, whichever is less. The advance parole document may be issued valid for multiple entries.

(E) Effect of Travel on TPS Eligibility.

(i) Triggering Inadmissibilities. An individual who departs the United States based on advance parole granted by USCIS while his or her TPS application is pending, or after it has been approved, may trigger the unlawful presence grounds of inadmissibility under sections 212(a)(9)(B) or 212(a)(9)(C) of the INA, depending on how much unlawful presence accrued before the departure. However, the fact that the unlawful presence grounds of inadmissibility may have been triggered does not affect the individual's eligibility (or continued eligibility) for TPS.

Under section 244(a)(5) of the Act, an individual cannot be denied TPS solely based on his or her immigration status. Therefore, while a departure based on advance parole for an individual granted TPS will trigger the 3/10 unlawful presence bars, depending on the amount of unlawful presence accrued before the departure, the individual remains eligible for TPS and does not need to apply for a waiver in order to register or re-register for TPS.

(ii) Departure from the United States Before Approval of Form I-131. Failure to obtain advance parole before the alien's departure from the United States may result in the withdrawal of TPS or the institution or re-calendar of deportation or exclusion proceedings. See 8 CFR 244.15(b).

(iii) Brief, Casual, and Innocent Absences. Under certain circumstances, an alien's brief, casual and innocent absence might not adversely affect his application for TPS:

- For purposes of establishing TPS eligibility, an alien shall not be considered to have failed to maintain continuous physical presence or residence in the United States by virtue of brief, casual, and innocent absences from the United States as defined by 8 CFR 244.1.
- Continuous residence is also not defeated where the brief, temporary trip abroad was due merely to emergency or extenuating circumstances outside the control of the alien. See section 244(c)(4) of the INA; 8 CFR 244.1.
- For adjudicative purposes, a "brief, casual, and innocent" absence means a departure that satisfies the following criteria:
 - The departure must be short;
 - The absence must have been reasonably calculated to accomplish the intended purpose(s);
 - The purpose(s) of the absence and the actions taken by the applicant while out of the United States must not have been contrary to law; and
 - The absence must not have been the result of an order of deportation (removal) or voluntary departure, or an administrative grant of voluntary departure.
- Where USCIS has granted advance parole for 90 days to a pending TPS applicant and that applicant returns to the United States within the 90-day period authorized on his or her Form I-512, officers should not deny TPS on the basis that the applicant has failed to meet the continuous presence or continuous residence requirements.

38.2 Deferred Enforced Departure.

(a) Historical Background.

Deferred Enforced Departure (DED) is a temporary, discretionary, administrative stay of removal granted to aliens from designated countries. Unlike TPS, DED emanates from the President's constitutional powers to conduct foreign relations and has no statutory basis. (Because DED is not a statutory provision under the Immigration and Nationality Act it is not considered an immigration status.) The President designates DED for nationals of a particular country through either an Executive Order or a Presidential Memorandum.

DED was first used in 1990 and has been used a total of five times. Most recently, nationals of Liberia were designated under DED through September 29, 2002.

Once the President has signed a memorandum to the Attorney General directing him or her to extend the grant of DED status to nationals of a designated country in the United States, these individuals are then eligible for DED-related employment authorization.

Note:

DED, in use since 1990, was formerly known as Extended Voluntary Departure (EVD). EVD, in use from 1960 until 1990, was used by the Attorney General pursuant to section 103 of the Act.

(b) Effect on Immigration Status.

Eligible nationals in the United States as of the date required by the Federal Register are:

- Subject to deferral of deportation or removal for a period specified by the federal register notice;
- To be granted employment authorization valid for the same period; and,

- In the case of those who are eligible, released from DHS detention.

(c) Effect on Asylum Applicants.

DED is not considered to be a status under 8 CFR 208.14(c)(2) (applicant who is maintaining valid immigrant, nonimmigrant, or TPS). Therefore, individuals who are covered by DED (and are not eligible for asylum) must be referred pursuant to 8 CFR § 208.14(c)(1) unless they otherwise have valid status or parole at the time of decision, described in 8 CFR 208.14(c)(2) (valid immigrant, nonimmigrant status, TPS) or 8 CFR 208.14(c)(3) (valid parole). As a result, asylum officers should refer DED-protected applicants, as opposed to denying these cases, when they are not eligible for a grant of asylum and they possess no other form of immigration status.

(d) Eligibility.

In general, eligibility requirements and ineligibility bars are set forth in the Presidential designation of DED for each specific group of aliens. For example, the following DED eligibility criteria were set for Liberia:

In order to be eligible for DED, the alien must demonstrate that he or she is a national who was present in the U.S. by the date required in the Federal Register notice.

DED benefits will not be granted to nationals:

- Who are ineligible for TPS under section 244(c)(2)(B) of the Act;
- Whose removal DHS determines is in the interest of the U.S.;
- Whose presence, or activities in the United States, the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States;

- Who voluntarily returned to the designated country or his or her country of last habitual residence outside the U.S.;
- Who was deported, excluded, or removed prior to the date in the Federal Register notice; or
- Who is subject to extradition.

An applicant's eligibility for DED must be determined on the basis of Form I-765 and supporting documentation.

(e) Forms.

Applicants must file Form I-765 , and Form I-765D, with the District Office or Suboffice that has jurisdiction over the applicant's place of residence.

(f) Fees.

No fee is required for Form I-765 , when filed for employment authorization as part of the DED program. However, applicants who are required to be fingerprinted, as described below, must submit a fifty (\$50) fingerprinting fee.

(g) Fingerprints.

Only certain applicants for DED-related employment authorization will need to be fingerprinted.

(1) Fingerprinting is not required for:

- Applicants renewing DED-related employment authorization who have previous FBI clearance from a prior DED application.
- Applicants previously approved for TPS.

Applicants who fall into one of these groups shall be considered eligible for DED- related employment authorization. Form I-765 must be immediately adjudicated, and if approved, the applicant must be issued an employment authorization document (EAD).

(2) Any other applicant for DED or DED-related employment authorization must be scheduled for fingerprinting at a local ASC. The District Director should not favorably adjudicate the DED or EAD applications until a fingerprint response is received from the FBI.

(h) Adjudication.

(1) Interview.

Interviews are optional and at the discretion of local policy. However, it is not anticipated that the majority of applicants will warrant an interview, as most will be able to demonstrate eligibility based on a previous approval for DED during the past year, or were TPS beneficiaries prior to the DED program. An interview is required for all applicants who do not submit documents, or present only an affidavit to demonstrate eligibility.

(2) Decision.

If the alien meets all the requirements set forth in the Presidential Proclamation, and lookout checks have been satisfactorily completed, approve the application.

(i) Employment Authorization, Form I-765 .

Applicants for DED-related employment authorization will file the Form I-765, Application for Employment Authorization, at the District Office or Suboffice having jurisdiction over the applicant's place of residence. District Offices or Suboffices will adjudicate the forms, schedule the applicant for fingerprinting at an ASC (if necessary), conduct lookout checks, and issue employment authorization documents to approved applicants.

In EAD processing, I-688B cards should be issued under the "274a.12(a)(11)" code, and expiration dates should be keyed in as the date listed in the Federal Register notice. To obtain the proper software, and for other software issues, contact the INS Help Desk.

(j) Detention Issues .

Nationals who are eligible for DED must be released from DHS detention. Each office must immediately review the A-file of any national presently detained in their jurisdiction to determine eligibility for DED. The eligibility of a national encountered by DHS in a place other than a District Office or Suboffice should be determined immediately.