

CHAPTER 1

OVERVIEW OF TEMPORARY PROTECTED STATUS

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§ 1.1 What is Temporary Protected Status?

Temporary Protected Status (TPS) is an important form of humanitarian relief for people from certain designated countries that have experienced armed conflict, natural disaster, or other conditions that prevent nationals from returning safely. TPS provides critical protections, including the right to live and work lawfully in the United States for a specified period of time, but offers no pathway to permanent status and does not confer benefits on family members. A country's designation can be reauthorized, allowing for the renewal of TPS protections. TPS can be pursued while holding certain forms of non-immigrant visas and while applying for other forms of protection and legal status. Despite its limitations, TPS can be a lifeline to stability and protection at a time when immigrant community members have limited legal options under existing law.

§ 1.2 Sources of Law

TPS has been part of U.S. immigration law for more than thirty years, enacted as part of the Immigration Act of 1990 (IMMACT 90).¹ INA § 244 and accompanying regulations remain the primary authority on TPS eligibility, the scope of its protections, and the application requirements and process.²

The statute authorizes the Secretary of the Department of Homeland Security (DHS)³ to designate eligible individuals of certain countries for TPS if that country has: an ongoing armed conflict that would pose a serious threat to the personal safety of nationals returned there; experienced an environmental disaster such as an earthquake, flood, drought, or epidemic that substantially, but temporarily, disrupts living conditions; a government that is unable, temporarily, to handle the return of its nationals; and the country affected has officially requested TPS designation.

¹ Pub. L. 101-649.

² INA § 244, 8 CFR § 244.1 - 244.9.

³ At the time that the TPS statute was written, the Attorney General was granted authority over TPS designations, because in 1990 the functions of the U.S. Immigration and Naturalization Service (INS) were organized under the Department of Justice (DOJ). Since the reorganization of the Homeland Security Act of 2003, the Secretary of DHS has taken over the oversight of the former INS functions, which now reside with the U.S. Citizenship and Immigration Services (USCIS). See DHS, *Creation of the Department of Homeland Security*, describing the impact of the Homeland Security Act of 2002, available at: <https://www.dhs.gov/creation-department-homeland-security>.

Alternatively, the DHS Secretary can find that temporary and extraordinary conditions exist that prevent the nationals of the affected country from returning in safety, as long as such designation would not be contrary to the U.S. national interest.⁴

INA § 244 allows eligible nationals of the designated country, or stateless persons who last habitually resided in that country, to apply for a temporary legal status that protects them from removal and provides them authorization to work for a designated period. Initial TPS designations can range from six to eighteen months and may be extended by DHS.⁵ Employment authorization should be effective throughout the period that the individual has TPS.⁶ Eligible applicants have to register for TPS during the initial registration period announced in the Federal Register, unless the individual can qualify for one of the circumstances that allow for late initial registration.⁷ Similarly, if a country's designation is re-authorized, applicants must apply for renewal during the renewal period, with certain exceptions for late re-registration.

§ 1.3 Current Landscape

TPS has been in the news over the last few years and of increasing concern to legal practitioners. First, in 2017 and 2018 the Trump administration attempted to terminate TPS for six countries that had been designated and re-authorized for many years.⁸ These terminations were challenged in federal court and are on hold as of this manual's writing, and the lawsuits remain pending.⁹ Meanwhile, the hundreds of thousands of TPS holders from these countries, the majority of whom have held TPS for more than two decades, find themselves facing an uncertain future.

More recently, the Biden administration has designated additional countries for TPS, including Afghanistan, Burma, Ukraine, and Venezuela. It has also extended and re-designated existing TPS countries, increasing the pool of eligible applicants by updating the eligibility dates allowing for more recently arrived individuals to apply for protection. These designations have caused a huge increase in the demand for legal assistance in TPS cases, specifically with initial registration applications. These developments, while welcome opportunities, have also raised complex legal issues given the migration histories of the impacted communities.

Next, the adjustment options available to TPS holders who did not initially enter the United States with inspection were significantly limited by two important legal decisions. In 2020, the Administrative Appeals Office issued a decision that USCIS then adopted, stating that TPS-authorized travel on advance parole completed after August 20, 2020 is not considered an

⁴ INA § 244(b)(1)(B) and (C).

⁵ INA § 244(b)(2).

⁶ INA § 244(a)(2).

⁷ 8 CFR § 244.2(f).

⁸ In 2017, the termination of TPS for Sudan, Haiti, and Nicaragua were announced. In 2018, TPS for El Salvador, Nepal, and Honduras were announced. For an overview of the history of the designations and attempted terminations of TPS for these six countries, see Congressional Research Service, "Temporary Protected Status: Overview and Issues," October 10, 2018, available at: https://www.everycrsreport.com/files/20181010_RS20844_9fda549df539d8fcfb32f381133838fbb08cc46d.pdf.

⁹ *Ramos et al. v. Wolf et al.*, No. 18-16981 (9th Cir., Sept. 14, 2020); see also USCIS, Update on *Ramos v. Nielsen* available at: <https://www.uscis.gov/humanitarian/update-on-ramos-v-nielsen>.

admission for purposes of adjustment.¹⁰ In 2021, the U.S. Supreme Court addressed a circuit split and ruled that a grant of TPS is not itself an “admission” that allows an applicant for permanent residence to meet the threshold “inspected and admitted or paroled” requirement to adjust status within the United States.¹¹ While neither of these decisions alone precludes adjustment by a TPS holder, they limit the pathways to adjustment eligibility for TPS holders who initially entered without inspection.

Finally, TPS holders and other immigrant community members have led campaigns calling for additional TPS designations to extend protections to individuals from other countries struggling with civil strife and natural disasters. The immigrant rights movement is also advocating for a legalization program for current TPS holders. This would allow TPS beneficiaries, many of whom have been renewing their cases continually for a decade or more, to finally secure lawful permanent residence.

§ 1.4 Orientation to this Manual

This manual is designed to meet the needs of legal advocates with different levels of experience. It provides an orientation to those who are new to immigration practice, have not had prior experience with TPS cases, or need a refresher on TPS practice. At the same time, it also explores some of the more complex and technical aspects of TPS practice. We have included sample cover letters, exhibit lists, declarations, and other documents in appendices throughout the manual as a reference. This manual does not review the details of the current countries designated for TPS as the designation dates, validity periods, and registration deadlines are subject to change. The USCIS TPS webpage is the best source for updated and accurate information about current designations.¹²

In addition to this introductory chapter, this manual covers the following topics:

Chapter 2 provides an **overview of the requirements** for TPS. While each country designated for TPS has specific dates for showing continuous residence and physical presence, as well as registration and re-reregistration periods, the core requirements are the same. As each requirement is explored, we outline tips for conducting background checks and verifying eligibility.

Chapters 3, 4, and 5 collectively cover the array of issues that can make someone ineligible for TPS. While some of these may be familiar, others are unique to TPS. **It is important to consider the factors laid out in all three chapters when assessing TPS eligibility.**

Chapter 3 explores the **criminal bars** to TPS, for which no waivers are available.

Chapter 4 explains how the **bars in asylum law** are applied to the TPS context, with a special focus on firm resettlement.

¹⁰ See *Matter of Z-R-Z-C-* (AAO Aug. 20, 2020); USCIS, Policy Memorandum: *Matter of Z-R-Z-C-*, Adopted Decision 2020-02 (AAO Aug. 20, 2020), available at: <https://www.uscis.gov/sites/default/files/document/aao-decisions/Matter-of-Z-R-Z-C-Adopted-AAO-Decision.pdf>.

¹¹ *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021).

¹² USCIS TPS web page, available at: <https://www.uscis.gov/humanitarian/temporary-protected-status>.

Chapter 5 covers the **grounds of inadmissibility**, which are applied in a unique way to TPS cases. This chapter clearly explains which grounds do not apply to TPS cases and which are waived automatically. Next, it describes the grounds that apply but for which no waiver exists. Finally, it explains how the remaining inadmissibility grounds apply to TPS but can be waived by a special type of waiver available in TPS cases.

Chapter 6 dives into the nuts and bolts of TPS practice by providing an overview of the **initial registration process**, including applications, supporting documentation, and fee waivers. This includes options for how people in removal proceedings can present TPS applications. It also outlines how some eligible individuals can apply for **late initial registration** even when the initial TPS registration period has passed.

Chapter 7 outlines the **benefits of TPS**, including work authorization, lawful status, and travel abroad on advance parole. It also describes how to maintain TPS protections through **re-registration**, including opportunities for late filing. When a country's designation is reauthorized over and over, the relief and benefits afforded to TPS holders can be extended. But this opportunity also means TPS holders are required to maintain eligibility and apply for renewal.

Chapter 8 covers **special and strategic considerations** for TPS cases. Given the temporary nature of the program and the potential changes in the designation status of a given country, it is critical to consider legal options beyond TPS. Furthermore, TPS can be requested while an applicant holds a non-immigrant visa status or pursues another form of immigration relief. Therefore, it is important to understand how TPS interacts with these other legal avenues, such as asylum or family-based immigration, and **how to develop a legal strategy that provides the most robust and stable protections**.

The ILRC hopes this manual will be a valuable resource in your legal advocacy and contributes to ensuring that TPS is accessible and secured by as many eligible individuals as possible.