

Legal Analysis of USCIS Temporary Protected Status (TPS) Petitions: Current Requirements, Considerations, and Post-Approval Pathways

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FINDINGS

COMPREHENSIVE LEGAL ANALYSIS OF USCIS TEMPORARY PROTECTED STATUS (TPS) PETITIONS: CURRENT REQUIREMENTS, STRATEGIC CONSIDERATIONS, AND POST-APPROVAL PATHWAYS

The landscape of Temporary Protected Status (TPS) in the United States has undergone profound transformation in recent months, creating both urgent challenges and complex opportunities for foreign nationals seeking protection and work authorization under this humanitarian immigration benefit. As of February 2026, foreign nationals from designated countries face a rapidly evolving regulatory environment characterized by multiple simultaneous legal challenges to recent TPS terminations, administrative uncertainties regarding work authorization documents, and emerging opportunities for long-term immigration relief through alternative pathways. This comprehensive analysis addresses the complete spectrum of TPS petition procedures, eligibility requirements, criminal bar considerations, current litigation affecting major beneficiary populations, post-approval strategic options, and Northern California-specific implementation considerations. The research incorporates recent federal court decisions, updated USCIS fee structures established through legislation enacted in 2025, and emerging litigation patterns affecting thousands of TPS holders nationwide.

Legal Framework and Statutory Authority Governing Temporary Protected Status

Temporary Protected Status represents a unique form of humanitarian immigration relief established by Congress through the Immigration Act of 1990 and codified in [8 U.S.C. § 1254a][1]. The statute creates a discretionary authority vested in the Department of Homeland Security Secretary to designate foreign countries for TPS when conditions in those nations render it unsafe for their nationals to return, including situations involving armed conflict, environmental disasters, and other extraordinary conditions.[1] The enabling statutory language states that the Secretary "may grant" TPS to eligible nationals, and implementing regulations at [8 C.F.R. § 244][53] establish that an applicant "may in the discretion of the director be granted" TPS.[34] This discretionary language has become legally significant, as the Board of Immigration Appeals held in [Matter of D-A-C-, 27 I&N Dec. 575 (BIA 2019)][34] that immigration judges retain authority to deny TPS applications even when applicants meet all statutory eligibility criteria, based on consideration of adverse discretionary factors.

The regulatory framework governing TPS adjudication is comprehensive and detailed. When USCIS receives a TPS application, the agency must first determine whether the applicant establishes a prima facie case of eligibility, which triggers automatic protection from removal while the application is pending.[9] This prima facie eligibility determination represents a critically important procedural gateway, as individuals with pending TPS applications demonstrating prima facie eligibility shall not be removed from the United States under [8 U.S.C. § 1254a(a)(4)(B)][50], even if they are placed in removal proceedings. The regulations recognize that USCIS officers make prima facie eligibility determinations, but applicants generally receive no written notification of this determination, creating practical difficulties when applicants or their representatives attempt to demonstrate the existence of protection to immigration enforcement officers or in immigration court proceedings.[9]

The statutory TPS regime provides that designated countries may receive TPS protections for initial periods of six to eighteen months, with extension periods of similar duration at the discretion of the Secretary.[20][23] The statute requires that the Secretary review conditions in designated countries at least sixty days before the

expiration of any TPS designation and make a public determination about whether conditions continue to warrant TPS designation.[23] If the Secretary determines that conditions no longer justify TPS, notice must be published in the Federal Register at least sixty days before the termination becomes effective.[23] This procedural requirement has become the focus of significant litigation in 2025 and early 2026, with federal courts finding that the Trump administration violated the Administrative Procedure Act by terminating TPS designations without adequate consideration of country conditions and by acting in ways that federal judges characterized as motivated by racial animus.[51]

Current TPS Designations and the Rapidly Evolving Legal Landscape as of February 2026

As of February 3, 2026, the landscape of TPS designations reflects unprecedented legal uncertainty resulting from multiple competing administrative actions, federal court injunctions, and Supreme Court emergency orders. Understanding the current status of each TPS-designated country is essential for applicants and practitioners because the designation status directly affects when applications must be filed, when beneficiaries must re-register, and whether existing beneficiaries retain protection and work authorization. The TPS program currently provides protection to approximately 1.3 million individuals from a significantly reduced list of countries compared to mid-2025, reflecting the Trump administration's systematic effort to terminate TPS designations that have remained in effect for extended periods.[2]

For El Salvador, the TPS designation remains valid through September 9, 2026, and existing beneficiaries who wish to extend their status through that date were required to re-register during the designated re-registration period.[40] Individuals from El Salvador who already held TPS and wished to extend protection through September 2026 had to file re-registration applications during the window specified in the Federal Register notice. For Ukraine, TPS remains valid through October 19, 2026, and Ukrainian nationals who held TPS and sought to extend protection through October 2026 were required to complete re-registration between January 17, 2025 and March 18, 2025, with late re-registration available for those establishing "good cause" for missing the deadline.[3] For Sudan, Syria, and South Sudan, TPS designations remain in effect but face ongoing legal challenges by the Trump administration seeking to terminate them.

The termination of TPS for Haiti represents one of the most consequential recent developments. On November 28, 2025, the Department of Homeland Security published a notice announcing that TPS for Haiti would terminate on February 4, 2026, explicitly stating that DHS was "in compliance with the U.S. District Court for the Eastern District of New York's final judgement" setting the end date as February 3, 2026.[2] This termination, while framed as court-mandated, resulted from ongoing litigation regarding the Trump administration's earlier attempt to end TPS for Haiti. The termination of Haiti TPS directly affects approximately 200,000 individuals who held TPS status, making this one of the largest de-documentation events affecting any single country group in recent years.

The termination of TPS for Nepal, Honduras, and Nicaragua created a complex litigation landscape that remains partially unresolved. The Department of Homeland Security announced terminations of TPS for these three countries effective September 8, 2025 (Honduras and Nicaragua) and June 6, 2025 (Nepal), but federal courts repeatedly halted these terminations through injunctions. Most significantly, on December 31, 2025, a federal judge in the case of [National TPS Alliance et al. v. Noem et al.][23] issued a summary judgment finding that the government's effort to end TPS status for Nepal, Honduras, and Nicaragua was unlawful, resulting in restoration of TPS protections for these three nations and extending the validity of recipients' work permits and protection from deportation.[23] This restoration means that approximately 12,700 individuals from Nepal, 72,000 from Honduras, and 4,000 from Nicaragua retain TPS status and work authorization

despite the earlier DHS termination notices.

The Ninth Circuit Court of Appeals subsequently affirmed this decision in a 48-page ruling in [National TPS Alliance v. Noem][51], with the court concluding that Secretary Noem's "actions fundamentally contradict Congress's statutory design, and her assertion of a raw, unchecked power to vacate a country's TPS is irreconcilable with the plain language of the statute." The Ninth Circuit held that the Secretary's effort to exercise termination authority without compliance with statutory procedural requirements violated the Administrative Procedure Act.[51] However, this favorable ruling has limited immediate practical effect because the Supreme Court, through an unexplained two-paragraph order on its shadow docket, stayed the district court's ruling and allowed the Trump administration to continue enforcement actions against Venezuelan TPS holders despite the Ninth Circuit's holding that the termination was unlawful.[51]

For Afghan nationals, TPS terminated on July 21, 2025, affecting individuals who had held TPS following the Taliban takeover of Afghanistan. Cameroon TPS terminated on August 4, 2025. For Burma (Myanmar), DHS announced termination effective January 26, 2026, but a federal judge issued an order pausing the termination.[20] For Ethiopia, DHS announced termination effective February 13, 2026. For Somalia, DHS announced termination effective March 17, 2026, following the Trump administration's deployment of federal immigration officers to Minnesota and focus on reviewing Somali immigrants in the region.[2][20]

The legal uncertainty surrounding these TPS terminations has created practical complications for employers attempting to verify work authorization through the I-9 process, immigration practitioners seeking to advise clients about their status, and government agencies attempting to implement contradictory termination orders. Immigration litigation is ongoing with respect to each TPS termination announced by the Trump administration, with federal courts in Massachusetts, New York, and California having issued stay orders preventing terminations from taking effect pending resolution of lawsuits challenging the terminations as arbitrary and capricious.[2][20][23]

Eligibility Requirements for Initial TPS Registration

Filing an initial TPS application requires that the applicant meet four core statutory eligibility requirements codified in [INA § 244(c)(2)][50] and implemented through [8 C.F.R. § 244.3][53]. These requirements address nationality, continuous physical presence, continuous residence, and criminal history, and each component requires careful analysis and documentation.

The first eligibility requirement concerns nationality. An applicant must be a national of a foreign country designated for TPS, or if the applicant has no nationality, must have last habitually resided in a designated country.[22] Nationality is established through submission of passport, birth certificate accompanied by photo identification, or any national identity document from the country of origin bearing the applicant's photo and/or fingerprint.[21] This requirement excludes individuals from countries that have not been designated for TPS, even if conditions in their countries are severe. For applicants from countries such as Honduras, where TPS status was recently restored through federal court order, the restoration has practical significance because applications filed after the restoration order can proceed without concern that the country is no longer designated.

The second eligibility requirement is that the applicant must have been continuously physically present in the United States since a date specified by the Secretary for each designated country.[19][33] "Continuously physically present" is defined in regulations as actual physical presence in the United States for the entire period specified.[19] Critically, the regulations provide that an alien shall not be considered to have failed to maintain continuous physical presence by virtue of brief, casual, and innocent absences.[19][33] USCIS has

established a framework for determining whether absences constitute brief, casual, and innocent absences, requiring analysis of four criteria: whether each absence was of short duration and reasonably calculated to accomplish the purposes for the absence; whether the absence was not the result of an order of deportation, order of voluntary departure, or administrative grant of voluntary departure; whether the absence was not the result of unlawful entry or a violation of a condition of an admission or parole; and whether the applicant was not under an order of deportation, removal, or exclusion throughout the period of continuous physical presence.[19]

The third requirement is continuous residence in the United States since a date specified by the Secretary for each designated country, generally only a few days prior to the continuous physical presence date.[33] "Continuously resided" is defined in regulations as residing in the United States for the entire period specified, with the same brief, casual, and innocent absence exception applicable.[19][33] Applicants must document continuous residence through employment records, pay stubs, income tax records, school records, rent receipts, mortgage payments, utility bills, hospital or medical records, bank statements, attestations from religious organizations or unions, birth certificates of children born in the United States, insurance policies, vehicle registration, and similar documentary evidence.[16][21][24]

The fourth requirement concerns criminal history. An applicant is statutorily ineligible for TPS if convicted of any felony or two or more misdemeanors committed in the United States.[8][24] This absolute bar applies regardless of the nature of the offenses and constitutes a non-waivable prohibition. Additionally, applicants are ineligible if they have been convicted of a particularly serious crime, have committed a serious nonpolitical crime outside the United States, have engaged in persecution of others, are deemed a danger to the security of the United States, have engaged in terrorist activity, or have been firmly resettled in another country prior to arriving in the United States.[8][24]

Beyond criminal bars, applicants must establish admissibility under the grounds specified in [INA § 212(a)][50] or be eligible for a waiver of applicable grounds. The grounds of inadmissibility include health-related grounds, physical and mental disorders associated with harmful behavior, criminal convictions, security and terrorist-related grounds, and various other bases of excludability.[11][45] Certain grounds of inadmissibility are non-waivable for TPS purposes, including crimes involving moral turpitude, crimes of violence, controlled substance trafficking, terrorism-related grounds, Nazi persecution, and genocide.[11] Other grounds are waivable, including health grounds, drug abuse (without conviction), smuggling of close family members, and fraud or misrepresentation.[11][45] For waivable grounds of inadmissibility, USCIS may grant a waiver for humanitarian purposes, to assure family unity, or when granting the waiver is in the public interest.[11]

Filing Procedures and Documentation Requirements for Initial TPS Applications

USCIS accepts TPS applications through two methods: online submission through the USCIS myUSCIS portal or by mail to the service center having jurisdiction over the applicant's place of residence.[13][16] The online filing method has become predominant, with USCIS myUSCIS accounts allowing applicants to file Form I-821, Application for Temporary Protected Status, along with Form I-765, Application for Employment Authorization, if work authorization is sought. The online application process provides real-time guidance regarding required information and allows applicants to save incomplete applications for up to thirty days.[13]

The initial TPS application requires submission of specific forms and supporting documentation. Form I-821 represents the primary application, and applicants must select the appropriate box on the form indicating whether this is an initial application or a re-registration application.[3][16][21] The form requests

comprehensive biographical information, including name, date and place of birth, passport information, and detailed immigration history. Critical sections require applicants to answer questions regarding criminal history, security concerns, and inadmissibility grounds, and accuracy in these responses is essential because inconsistencies or omissions can result in denials or, in some cases, referral for removal proceedings.

Applicants must provide documentary evidence of nationality, establishing that they are nationals of a designated country. Acceptable documents include a valid passport (which does not need to be unexpired), a birth certificate accompanied by certified English translation and government-issued photo identification, or a national identity document bearing the applicant's photo and/or fingerprint.[16][21][24] For many applicants from Central American countries, birth certificates from Honduras, Guatemala, and El Salvador serve as primary evidence of nationality, though certified translations must accompany non-English language documents.

Applicants must prove the date of entry into the United States through submission of one of the following: a passport with a U.S. entry stamp, an I-94 Arrival/Departure Record, or copies of documents specified in the residence documentation section.[16][21][24] Electronic I-94 records can be obtained from the CBP website and serve as valid evidence of the entry date and class of admission.[38] Individuals who entered without inspection must still document their presence in the United States as of the continuous physical presence date, though they have not met the "inspected and admitted" requirement generally necessary for adjustment of status to permanent residence.

The most substantial documentation burden typically involves proving continuous residence and continuous physical presence in the United States since the specified dates. Acceptable evidence includes employment records such as pay stubs or letters from employers specifying the period of employment and duties, income tax records showing filing dates and amounts, school or university records and report cards, rent receipts or letters from landlords showing the dates of residence, utility bills showing service during the specified period, bank statements, hospital or medical records, insurance policies with documented issue dates, membership cards from religious organizations or unions with attestations regarding membership periods, certificates of citizenship or naturalization for children born in the United States, vehicle registration documents, and affidavits from individuals with personal knowledge of the applicant's presence in the United States.[16][21][24]

An often-overlooked but essential requirement is that applicants must submit Form I-765 regardless of whether employment authorization is being requested.[16][21] While USCIS does not mandate that applicants actually seek employment authorization through their TPS application, they are required to submit the form. If the applicant does seek work authorization, the filing fee structure for Form I-765 (as amended by HR-1, the "One Big Beautiful Bill Act," effective July 22, 2025) specifies that initial EAD applications based on TPS category codes A12 and C19 require a \$550 fee and a \$30 biometrics fee.[17]

The fee structure for TPS applications has undergone significant changes in 2025. Initial TPS registration now requires a \$510 filing fee and a \$30 biometrics fee for applicants fourteen years old and older, totaling \$540 in fees before any work authorization costs.[28] If the applicant is also applying for employment authorization, the additional fees are \$550 for the I-765 filing fee and \$30 biometrics fee (if not already paid), bringing the total possible fee obligation to approximately \$1,150.[17][28] Applicants under fourteen years of age pay \$50 for initial registration, and applicants over sixty-five pay \$135 total (inclusive of the biometrics fee, with work authorization included).[24]

Fee waivers are available for applicants unable to pay the required fees. USCIS regulations permit fee waiver applications on Form I-912, Request for Fee Waiver, when applicants demonstrate income at or below one

hundred fifty percent of the federal poverty guidelines (established by the Department of Health and Human Services and adjusted annually), receipt of means-tested benefits including Medicaid, SNAP, TANF, or SSI, or financial hardship circumstances including medical expenses, homelessness, or eviction risk.[24][48] The biometrics fee specifically is waivable through demonstration of inability to pay, but as of 2025, the filing fees for initial TPS registration are no longer waivable in all circumstances.[7]

Re-registration Requirements and "Good Cause" Analysis for Late Filing

Existing TPS beneficiaries must re-register for TPS whenever the designation is extended or when the country's TPS designation is terminated but an extended period is granted before termination takes effect.[3][6] Re-registration periods typically last sixty days and are published in Federal Register notices announcing extension decisions.[3] The requirement to re-register applies regardless of whether the TPS beneficiary originally received TPS from USCIS, an immigration judge, or the Board of Immigration Appeals.[6]

Applicants who fail to re-register during the designated re-registration period face loss of TPS status and work authorization. However, [INA § 244(c)(3)(C)][6] and [8 C.F.R. § 244.17][6] authorize USCIS to accept and approve late re-registration applications when the applicant demonstrates "good cause" for missing the deadline. The determination of good cause is discretionary with USCIS and requires careful documentation of the reasons for the delay.

USCIS has identified categories of circumstances that may constitute good cause. These include circumstances beyond the applicant's control, including serious illness, disability, or incapacity; lack of receipt of re-registration notices due to address changes; loss or destruction of documents; reasonable reliance on incorrect legal advice from an immigration attorney, accredited representative, or community-based legal services provider; language barriers that impeded timely understanding of the re-registration requirement; and emergency circumstances requiring immediate travel outside the United States.[6] Circumstances that do not constitute good cause include general confusion about immigration requirements, belief that TPS designation was permanent, or reliance on statements from unaccredited notaries or immigration service fraud providers.[6]

When filing for late re-registration, applicants must submit a letter or statement explaining the specific reasons why they failed to re-register on time, and the statement must be truthful and provide clear explanation of the circumstances.[3][6] Applicants should include corroborating evidence of the reasons for delay when available—for example, medical records documenting illness during the re-registration period, letters from employers confirming employment situations, or correspondence from the applicant's prior representative explaining the failure to notify the applicant of the deadline.[3][6]

USCIS has not established any specific time limit for how late an applicant may file for TPS re-registration after the deadline has expired. However, advocates handling these cases generally advise clients that the longer the delay, the more compelling the stated reasons for good cause must be.[6] Applicants who have failed to re-register during more than one re-registration period may still be eligible for late re-registration, though they should anticipate requests for exceptionally compelling good cause evidence.[6]

The re-registration application requires submission of Form I-821 with Box 1.b checked to indicate this is a re-registration application.[3][16][21] Re-registration does not require a filing fee, though a biometrics fee of \$30 applies to applicants age fourteen and older.[3][6] If the applicant seeks to renew employment authorization concurrent with TPS re-registration, Form I-765 must be filed, and as of the July 2025 fee changes, the I-765 filing fee is \$550 with a \$30 biometrics fee (unless paid separately).[17]

Criminal Bars and Grounds of Inadmissibility Affecting TPS Eligibility

The criminal history provisions affecting TPS eligibility represent a particularly complex area of immigration law, as multiple overlapping bars from different statutory provisions may apply to a single conviction. Understanding these bars requires analysis of three distinct categories: the TPS-specific felony and misdemeanor bar, the grounds of inadmissibility that bars asylum eligibility, and the asylum-related bars that also apply to TPS.

The first category is the TPS-specific felony and misdemeanor bar codified in [INA § 244(c)(2)(A)(i)][50]. This provision establishes an absolute and non-waivable bar to TPS eligibility for any applicant convicted of any felony or two or more misdemeanors committed in the United States.[8][24][44] The term "felony" refers to any offense punishable by more than one year of imprisonment, while "misdemeanor" refers to offenses punishable by between five days and one year of imprisonment. Importantly, this bar applies regardless of the type or severity of the offense—a conviction for a non-violent, non-drug misdemeanor can constitute part of the felony/misdemeanor bar if accompanied by another misdemeanor conviction.[8]

The statute's language requiring conviction "of any felony" or "of two misdemeanors" means that the specific type of crime is irrelevant to whether the bar applies. This represents a crucial distinction from criminal bars applicable in other contexts, such as asylum law, where certain crimes (like crimes of violence) trigger bars while others do not. For TPS purposes, conviction of any felony automatically bars TPS eligibility, and conviction of any two misdemeanors automatically bars eligibility, making this the most absolute of the criminal bars to TPS.[8][24]

The second category consists of crimes-based grounds of inadmissibility under [INA § 212(a)(2)][11][45][48], which include admission or conviction of crimes involving moral turpitude (CIMT), crimes of violence, controlled substance offenses, multiple criminal convictions with aggregate sentences of five years or more, crimes of violence with sentences of at least one year, prostitution or commercialized vice, serious criminal activity when immunity from prosecution was asserted, and foreign government officials who committed severe violations of religious freedom.[11][45] Certain of these inadmissibility grounds are non-waivable for TPS purposes, including crimes involving moral turpitude, crimes of violence, multiple criminal convictions, and terrorism-related grounds.[11][45] Other inadmissibility grounds may be waivable, such as prostitution, drug possession offenses not involving trafficking, and some smuggling offenses.[11][45]

The third category comprises asylum-related crime bars that also apply to TPS. Under [INA § 244(c)(2)(A)(ii) and (iii)][50], applicants are ineligible for TPS if they have been convicted of a particularly serious crime, have committed a serious nonpolitical crime outside the United States, or have been convicted of a crime against peace, a war crime, or a crime against humanity. Additionally, applicants are ineligible if they are deemed a danger to the security of the United States, engaged in terrorist activity, or have been firmly resettled in another country prior to arriving in the United States.[8][24][50]

The "particularly serious crime" (PSC) determination represents one of the most significant and complex aspects of criminal bar analysis for TPS and asylum purposes. Under [INA § 208(b)(2)(B)(i)][44], any conviction for an aggravated felony is categorically a particularly serious crime.[44] Aggravated felonies under immigration law include crimes of violence with sentences of at least one year, drug trafficking offenses, crimes of fraud with sentences of at least one year, crimes of failure to appear with sentences of at least two years, firearm offenses, and sexual abuse of minors, among others.[44] Beyond aggravated felonies, other crimes may constitute particularly serious crimes based on analysis of the nature of the conviction, the sentence imposed, whether it was a crime against a person or property, and whether the person constitutes a danger to society.[44][47]

For TPS purposes, none of the criminal bars are waivable. An applicant barred from TPS eligibility due to criminal convictions cannot overcome the bar through filing Form I-601, Application for Waiver of Grounds of Inadmissibility, because the criminal bars operate outside the grounds of inadmissibility framework.[8][24][44] The only path forward for applicants barred by criminal convictions is to seek post-conviction relief in state criminal court to vacate, modify, or overturn the conviction. California state law provides pathways for such relief, particularly under [PC § 1473.7][8][45], which permits motion to vacate a conviction based on evidence that the conviction was based on a factual or legal error that undermines the validity of the conviction, or that the conviction violated the defendant's rights as an immigrant. Additionally, [PC § 1203.43][8][45] permits relief when a conviction causes immigration consequences, and Prop 47 provides relief for certain drug and theft offenses.

Criminal Bar Analysis Framework and Particularly Serious Crime Determinations

Practitioners handling TPS cases with criminal histories must conduct a three-layered analysis of whether criminal convictions bar TPS eligibility. The first layer concerns whether the applicant has a conviction for any felony or two or more misdemeanors in the United States, which automatically bars TPS eligibility.[8][24] If this analysis is clear, practitioners should immediately explore post-conviction relief options rather than proceeding with a TPS application that will be denied.

The second layer examines whether the conviction triggers a ground of inadmissibility. Crimes involving moral turpitude (CIMT) constitute a particularly common basis for inadmissibility, but determining whether a specific offense qualifies as CIMT requires detailed legal analysis. CIMT generally encompasses crimes involving dishonesty, fraud, or depravity, and includes offenses such as theft (when the elements of the offense require specific intent to deprive another of property), forgery, embezzlement, fraud in various forms, prostitution, and sexual conduct crimes.[11][45] Additionally, the BIA and courts have held that CIMT determinations may require examination of the offense as defined by the specific state statute and the specific conduct underlying the conviction.[44][45]

The third layer examines whether the conviction constitutes a particularly serious crime or involves a serious nonpolitical crime outside the United States. For drug trafficking offenses, a rebuttable presumption exists that the offense constitutes a particularly serious crime for purposes of withholding of removal, though this presumption can be overcome if the individual demonstrates six minimum requirements including that the offense did not result in death or bodily injury, that no firearm or weapon was used, and that the offense involved minimal involvement in the offense and absence of any involvement in organized crime.[44][47] For offenses other than drug trafficking, the adjudicator must conduct a two-step analysis: first, determining whether the offense falls within the categorical boundaries of a particularly serious crime; and second, if so, examining case-specific circumstances to determine whether the particular conviction constitutes a PSC.[44][47]

Recent Ninth Circuit precedent has emphasized that mental health evidence, including evidence of post-traumatic stress disorder, depression, and other conditions, may be relevant to whether an applicant constitutes a "danger to the community" for purposes of the PSC bar and thus affects whether a conviction constitutes a PSC.[44][47] This represents an important development because it permits advocates to present evidence of trauma, mental health treatment, and behavioral change that may mitigate an otherwise problematic conviction.

Work Authorization Through TPS and Current Fee Structure for Employment Authorization Documents

Approval for TPS provides work authorization through the Employment Authorization Document (EAD), which is issued through filing Form I-765. However, the relationship between TPS approval and EAD issuance is complex and deserves careful attention, as multiple categories of work authorization exist with distinct fee structures and validity periods.

The employment authorization document categories for TPS holders are designated as A12 (for initial TPS beneficiaries) and C19 (for TPS re-registration applicants seeking work authorization renewal).[17] As amended by HR-1 in 2025, the filing fee for initial EAD applications based on TPS categories is \$550, with an additional \$30 biometrics fee, for a total of \$580 when filed concurrent with a TPS application.[17] Renewal or extension EAD applications based on TPS carry a reduced fee of \$275 plus \$30 biometrics fee.[17] These fees represent substantial increases from the fee structure that prevailed prior to July 22, 2025.

The validity period for TPS-based work authorization documents has also been modified by the 2025 legislation. Under the amended regulation, initial employment authorization valid for TPS holders is valid for 365 days or for the duration of the TPS status, whichever is shorter.[17] For renewal applications pending or filed on or after July 22, 2025, the work permit may only be automatically extended for up to one year or the duration of TPS, whichever is shorter.[17] This represents a substantial change from prior practice, when work permits based on TPS could extend for longer periods.

A critical practical issue affecting many TPS holders concerns automatic extensions of work permits. In situations where a TPS beneficiary's work permit is expiring and the beneficiary has submitted a renewal application before the expiration date, but USCIS has not yet approved the renewal application, the work permit receives an automatic extension for one year (or until TPS expires, whichever is shorter).[20][28] However, this automatic extension requires that the renewal work permit application receipt notice was received by USCIS with a "Received Date" before February 6, 2025, in which case the work permit is extended for 540 days past the expiration date printed on the card.[28] Conversely, work permits renewed based on applications received after February 6, 2025 appear to receive automatic extension only for one year.[20][28]

Employers attempting to verify work authorization through the I-9 form face significant complications due to the multiple overlapping EAD categories and the automatic extension provisions. Some TPS holders have multiple EAD cards issued at different times with different expiration dates, or may be eligible for work authorization through multiple bases (such as both TPS and a pending asylum application). An USCIS tool allows employers and applicants to verify whether a specific TPS country's work permits for that country have been automatically extended by checking the country's status on the USCIS website.[20]

Importantly, USCIS has confirmed that some TPS employees may possess work permits with expired expiration dates but remain eligible to work because the work permits have been automatically extended.[4] Employers are required to permit employees to provide any combination of documents from the List of Acceptable Documents on Form I-9 demonstrating identity and work authorization, and a work permit with a non-current expiration date does not per se render an employee ineligible for employment if the work permit has been automatically extended.[4][32]

For TPS holders obtaining work authorization, the processing time for initial work permit applications has historically been lengthy. As of recent data, Form I-765 processing typically takes approximately 1.9 months for standard processing, though this metric represents an average and individual cases may take substantially longer.[25] USCIS announced in September 2023 that it would take steps to process work permit applications for TPS beneficiaries more quickly, but delays remain common in many service centers.[28]

Post-TPS Pathways: Adjusting Status to Permanent Residence and Long-Term Immigration Relief

While TPS is designed as temporary protection, many beneficiaries seek to establish permanent residency in the United States. The critical understanding is that TPS does not itself provide a direct pathway to permanent resident status, but it creates opportunities for beneficiaries to pursue adjustment of status through other immigration categories. The legal analysis differs significantly depending on when the applicant entered the United States and whether the applicant was previously inspected and admitted.

For TPS beneficiaries who were inspected and admitted upon initial entry, or who received TPS while in valid humanitarian parole status, adjustment of status to permanent resident status is available through family-based sponsorship, employment-based sponsorship, or asylum, provided the applicant meets all other requirements for the respective category. The critical requirement is that the applicant demonstrate "inspected and admitted or paroled" status—a requirement that is satisfied by virtue of having been granted TPS in the Sixth and Ninth Circuits.[58] This holding represents a major development in immigration law for TPS holders in Northern California, as it permits TPS beneficiaries from California to apply for adjustment of status to permanent resident status without having to leave the United States to obtain an immigrant visa at a consulate abroad.

For TPS beneficiaries who entered the United States without inspection and who reside in jurisdictions outside the Sixth and Ninth Circuits, adjustment of status under [INA § 245(a)][58] is generally available only to immediate relatives of United States citizens (spouses, unmarried children, and parents of adult United States citizens). However, such individuals may be eligible to adjust status under [INA § 245(i)][58] if they were beneficiaries of an "approvable when filed" immigrant petition with a priority date on or before April 30, 2001, and if the individual was physically present in the United States on December 21, 2000.[58] The penalty fee for adjusting under 245(i) is typically \$1,000.

The most common pathway for TPS beneficiaries seeking permanent residency involves family-based sponsorship. An applicant who has a spouse, parent, sibling, adult child, or other qualified relative who is a United States citizen or lawful permanent resident may have that relative file an Form I-130, Petition for Alien Relative, on the applicant's behalf. The processing time for I-130 petitions varies dramatically depending on whether the sponsoring relative is a United States citizen or a permanent resident. For immediate relative petitions filed by United States citizens, USCIS currently processes such petitions in approximately 14.5 months.[25] For petitions filed by permanent residents, processing times exceed three years (35 months as of October 2025).[25]

Another significant pathway for TPS holders seeking permanent residency involves employment-based sponsorship. An employer sponsoring a TPS employee may file for the employee using the employment-based immigration visa categories, most commonly the EB-3 category for skilled workers and professionals.[56][59] The employment-based pathway involves a multi-stage process: first, the employer must obtain PERM labor certification from the Department of Labor, demonstrating that no willing and qualified United States workers are available for the position and that the employment will not adversely affect United States workers' wages and working conditions; second, the employer files Form I-140, Immigrant Petition for Alien Worker; and third, once the I-140 is approved and the applicant's priority date becomes current, the applicant files Form I-485 for adjustment of status.[56][59] A critical advantage of the employment-based pathway for TPS holders is that a TPS holder who enters the United States without inspection may still adjust status based on employment sponsorship, provided the employment petition satisfies certain requirements.[56]

For TPS holders who were paroled into the United States and later received TPS, the travel implications deserve specific attention. Under new USCIS policy effective July 1, 2022, TPS holders no longer apply for

"advance parole" travel documents under Form I-512L. Instead, they request travel authorization using Form I-131, but the approval is documented on Form I-512T, Authorization for Travel by a Noncitizen to the United States, which is unique to TPS holders.[29] A TPS holder with an I-512T travel document who travels internationally and returns to the United States on that document is considered to have been admitted upon return, which satisfies the "inspected and admitted or paroled" requirement for adjustment of status purposes.[29][56] This represents a significant change from prior practice and should incentivize TPS holders with family sponsorship or employment sponsorship pending to apply for travel authorization before their TPS expires, travel internationally, and return on the TPS travel document, thereby creating a qualifying entry for adjustment purposes.

A final significant pathway for TPS holders involves asylum. Form I-589, Application for Asylum and for Withholding of Removal, may be filed by TPS holders who fear persecution in their home country if they are returned. Importantly, TPS and asylum are separate benefits, and a TPS beneficiary may apply for asylum without jeopardizing their TPS status.[49] If the asylum application is approved, the applicant becomes an asylee and may apply for adjustment of status to permanent resident status after holding asylum status for one year.[49] The advantage of the asylum pathway is that asylees and refugees automatically receive employment authorization without separate application, and the work permit is typically valid for longer periods than TPS-based work permits.[49] However, the disadvantage is that asylum determinations may take four to six years or longer to complete through the affirmative asylum interview process at USCIS, or may be determined through removal proceedings before an immigration judge, which may take even longer.[49]

The Interplay Between TPS and Asylum Claims: Strategic Considerations for Applicants

The decision whether to apply for both TPS and asylum, or to pursue only one, represents a strategically significant choice for many foreign nationals with credible fear of persecution in their home country and nationality from a designated TPS country. The two statuses are completely separate, and an applicant denied for one status does not lose the other.[49] Conversely, an applicant approved for one status may continue pursuing the other.

The practical implications of pursuing both statuses differ significantly based on whether the applicant is in removal proceedings before an immigration judge or seeking benefits affirmatively from USCIS. Applicants in immigration court proceedings should consult with a qualified attorney before deciding whether to apply for TPS, as approval for TPS in removal proceedings may result in termination of the entire case (rather than merely termination of the removal portion), which would foreclose the opportunity to seek asylum relief before the immigration judge.[49] Conversely, some immigration judges have discretion to administratively close removal cases rather than terminate them, which would preserve the asylum application while protecting the applicant through TPS status.

For applicants not in removal proceedings seeking affirmative relief from USCIS, applying for both TPS and asylum simultaneously provides maximum protection. If both are approved, the applicant receives immediate protection and work authorization through TPS while the asylum application is pending. The asylum work authorization (EAD category C08) and TPS work authorization (category A12/C19) are separate, and an applicant with both approved statuses may hold two employment authorization documents simultaneously, though managing the renewals of two separate work permits is more administratively burdensome than maintaining a single work permit.[49]

The primary disadvantage of applying for asylum is the substantial processing time-asylum decisions typically

require four to six years or longer to obtain final determination through the affirmative asylum interview process, whereas TPS applications are typically decided within six months to 1.5 years.[49] Additionally, if an applicant's asylum application is denied after being approved for TPS, the applicant retains TPS status and is not affected by the asylum denial.[49] However, if an asylum application is pending and the immigration judge or USCIS officer makes a determination on the asylum claim before rendering a decision on TPS, the outcome of the asylum determination may affect the strategic value of TPS approval.

San Francisco Immigration Court and Northern California Procedural Context

For TPS applicants in Northern California facing removal proceedings, understanding the jurisdictional landscape and procedural rules of the San Francisco Immigration Court is essential. The San Francisco Immigration Court, formally designated as the Executive Office for Immigration Review's San Francisco Immigration Court, maintains hearing locations at [100 Montgomery Street, Suite 800, San Francisco, CA 94104]; [630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111]; and a satellite location at [1855 Gateway Blvd., Suite 850, Concord, CA 94520].[9]

The San Francisco Immigration Court serves Northern California and maintains specific procedural expectations distinct from other immigration court circuits. The immigration judges in the San Francisco court have individual preferences regarding motion practice, evidence presentation, and continuance requests that practitioners should research through consultation with local immigration practitioners and through observation of other cases before specific judges. The master calendar hearing represents the initial appearance before an immigration judge and typically focuses on confirming service of the Notice to Appear, establishing whether counsel is present, and determining whether the case is ready for an individual hearing or whether a continuance is necessary.

For TPS holders in removal proceedings, a critical procedural option is available under [8 C.F.R. § 1003.18(d)(1)(ii)(C)][9], which grants immigration judges discretionary authority to terminate removal proceedings based on a noncitizen holding TPS status. Additionally, under [8 C.F.R. § 1003.18(d)(1)(ii)(A)-(E)][9], immigration judges have discretion to terminate removal proceedings on a number of other bases, such as when adjustment of status is granted, when the noncitizen is no longer subject to deportability, or when the court finds humanitarian purposes would be served. An immigration judge may administratively close proceedings rather than terminate them, which takes the case off the calendar but does not end the removal proceedings, permitting them to be recalendared at any time.

The San Francisco Asylum Office, located within the jurisdiction of USCIS District Office 1 serving Northern California, maintains specific procedures for asylum interviews and has developed institutional practices regarding burden of proof, credibility determinations, and country conditions. USCIS asylum officers generally conduct credible fear screenings for applicants seeking asylum protection who are in expedited removal proceedings, and credible fear interview wait times in Northern California have ranged from several months to over a year depending on staffing and caseload.

Strategic Framework for TPS Applicants: Risk Assessment and Decision-Making Criteria

TPS applicants and their counsel should evaluate several key factors when developing a filing strategy. First, applicants should assess their current immigration status and whether they are in removal proceedings. Applicants currently in removal proceedings face different strategic considerations than applicants not yet in proceedings. An applicant in removal proceedings who applies for TPS and is denied faces the risk that the

denial itself may be used as the predicate for a removal order, whereas an applicant applying affirmatively to USCIS avoids this procedural risk.

Second, applicants should carefully analyze whether any criminal history bars TPS eligibility. Applicants with even a single felony conviction or two misdemeanors face absolute ineligibility for TPS, and such applicants should pursue post-conviction relief in state court before filing a TPS application. Applicants with criminal histories that do not constitute per se bars should consult with an attorney to determine whether their specific convictions trigger grounds of inadmissibility and whether those grounds are waivable.

Third, applicants should assess their documentation of continuous physical presence and continuous residence since the designated effective dates. Many TPS applicants cannot readily produce documentary evidence of presence during every year since the relevant effective date. USCIS regulations permit applicants to establish continuous residence and physical presence through multiple forms of evidence, including affidavits from individuals with personal knowledge of the applicant's presence in the United States, but such evidence requires careful preparation and may be challenged during adjudication.

Fourth, applicants should evaluate whether they have a basis for pursuing permanent residency post-TPS approval. An applicant with a spouse, parent, or other qualified relative who is a United States citizen should consider having that relative file a Form I-130 petition contemporaneously with or shortly after the TPS application is submitted, so that the I-130 petition is pending during TPS status and can be processed without gaps in authorized status. An applicant with an employer willing to sponsor employment-based immigration should similarly consider initiating the PERM labor certification and I-140 processes while in TPS status.

Comprehensive Risk Assessment: Current Legal Uncertainty and Litigation Impact

TPS beneficiaries and applicants face unprecedented legal uncertainty as of February 2026 due to the simultaneous pursuit by the Trump administration of TPS terminations for multiple countries concurrent with federal court litigation challenging those terminations as unlawful. The implications for TPS holders are profound and multifaceted.

For individuals holding TPS from countries whose designations have been terminated, the core issue is whether they will receive protection pending resolution of litigation challenging the terminations. Federal courts have issued stays and injunctions halting terminations for several countries, meaning that TPS holders from those countries retain work authorization and protection from deportation pending resolution of the underlying litigation. However, for countries such as Afghanistan and Cameroon, whose TPS designations terminated before significant litigation protection developed, former TPS holders face increased risk of removal and loss of work authorization.

The employment authorization complications are particularly acute for individuals with expired work permits from countries where TPS has terminated but litigation is ongoing. Some employers will not accept expired work permits as valid work authorization even if automatic extension has occurred, and verification through E-Verify may show expired work authorization. This creates practical difficulties even though beneficiaries technically retain work authorization.

TPS holders whose countries' designations face termination should prioritize several immediate actions. First, they should verify their current TPS status and work permit validity through the USCIS TPS tracker. Second, if their TPS country faces termination, they should consult with an immigration attorney immediately to assess alternative relief options, including asylum, cancellation of removal (if applicable), family-based sponsorship opportunities, or employment-based sponsorship pathways. Third, they should ensure that any pending

petitions-such as I-130 family sponsorship petitions or employment-based I-140 petitions-are filed and prioritized, as approval of such petitions while TPS status is valid may provide intermediate protection.

Conclusion: Strategic Imperatives and Recommended Next Steps

The Temporary Protected Status program as of February 2026 operates within a context of unprecedented legal turbulence, characterized by fundamental disagreement between the executive branch and federal courts regarding the scope of the Secretary's discretionary authority to terminate TPS designations. For foreign nationals considering TPS applications, the legal landscape requires careful analysis of multiple overlapping issues: eligibility criteria ranging from nationality through criminal bar analysis; recent fee modifications and work authorization validity periods; current status of specific country designations given multiple ongoing legal challenges; procedural pathways through both USCIS affirmative applications and immigration court proceedings; and critically, post-approval options for securing longer-term immigration relief.

TPS applicants should move expeditiously to file applications during open registration periods, as regulatory uncertainty and potential future changes in TPS designation policy create risk of sudden elimination of opportunities. Applicants with family or employment sponsorship opportunities should simultaneously pursue those pathways while TPS applications are pending, creating layered protection against future legal changes. Criminal bar analysis deserves particular attention, as convictions that bar TPS eligibility do not become less problematic by remaining undisclosed; rather, early identification of criminal bars permits consideration of post-conviction relief options under California law. For beneficiaries whose TPS countries face termination through pending litigation, consultation with qualified immigration counsel is not optional but essential to developing comprehensive protection strategies that preserve options for relief.

The intersection of Northern California's progressive immigration law framework, including [Penal Code § 1473.7][8][45] providing motion to vacate for immigration consequences, and the Ninth Circuit's recent holdings favoring TPS holders in ongoing termination litigation, creates particular opportunities for Northern California practitioners to advocate effectively for clients. The San Francisco Immigration Court's acknowledged procedural flexibility regarding administrative closure and termination of removal proceedings provides multiple strategic options for clients in removal proceedings. Yet the Supreme Court's recent stay order permitting continued enforcement against Venezuelan TPS holders despite Ninth Circuit findings of unlawfulness demonstrates the extraordinary legal uncertainty currently characterizing the TPS program.

As counsel representing immigrant clients, attorneys must emphasize to clients that TPS represents a temporary status whose continuation is never certain, and that TPS status creates the opportunity-not the guarantee-of long-term immigration relief. Aggressive pursuit of alternative relief pathways while TPS status remains valid is essential risk management. The complex interaction between TPS eligibility requirements, criminal bar provisions, work authorization regulations, and post-approval immigration opportunities creates a legal terrain requiring comprehensive analysis and careful strategic planning for each client's specific circumstances.

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