



**CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.**

TPS and DED for Venezuela
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Speakers

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Today's Agenda

- Background on TPS and DED for Venezuela
- Comparison of TPS and DED
- TPS eligibility, application process, and benefits
- DED eligibility and benefits
- Practical Issues
 - Dual nationality/ Firm resettlement
 - Concurrent asylum applications
 - Nonimmigrant status and TPS
- Program management considerations



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TPS and DED for Venezuela

- Jan. 19, 2021: Former President Trump announced DED for certain Venezuelans
 - <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01718.pdf>
- Mar. 8, 2021: DHS designated Venezuela for TPS
- Mar. 9, 2021: DHS published Federal Register Notice on TPS designation and DED implementation
 - <https://www.govinfo.gov/content/pkg/FR-2021-03-09/pdf/2021-04951.pdf>



DED v. TPS

DED	TPS
Designated by President	Designated by Secretary of Homeland Security (in consultation with Secretary of State)
Comes from President's constitutional authority to conduct foreign relations	Comes from INA Section 244
Temporary administrative stay of removal	Temporary immigration status
Designated through July 20, 2022	Designated through Sept. 29, 2022
No registration required	Must register before Sept. 5, 2021 by filing Form I-821
Can apply for EAD (valid through July 20, 2022)	Can apply for EAD (valid through Sept. 29, 2022)
Advance parole not specifically authorized	Can apply for advance parole

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TPS Eligibility Requirements

- INA § 244(c); 8 CFR § 244.2 – 244.4
- National of Venezuela or person without nationality who last habitually resided in Venezuela;
- Continuous residence in U.S. since Mar. 8, 2021
- Continuous physical presence in U.S. since Mar. 9, 2021
 - Exception for brief, casual, and innocent absence



Ineligible for TPS if:

- Convicted of any felony or 2 or more misdemeanors;
- Found inadmissible under applicable INA §212(a) grounds and not eligible for a waiver
 - 212(a) (4), (5)(A) and (B), and 7(A)(i) do not apply
 - Certain criminal and security-related grounds cannot be waived
- Subject to any of the mandatory bars to asylum under INA §208(b)(2)(A)

TPS Application Process

- Apply during Mar. 9 - Sept. 5, 2021 registration period (or qualify for late initial filing)
- File I-821 w/ \$50 filing fee and \$85 biometrics fee (if 14 or older), or I-912 Request for Fee Waiver
- Include evidence to prove:
 - Identity and Venezuelan nationality
 - I-94 Arrival-Departure Record; employment records; rent receipts; utility bills; bank statements; church/union attestations; money order receipts; affidavits; birth certificate of children born in U.S.; Social Security card
 - Date of entry to U.S.
 - Continuous residence since Mar. 8, 2021 and physical presence since Mar. 9, 2021
 - I-94 Arrival-Departure Record; employment records; rent receipts; utility bills; bank statements; church/union attestations; money order receipts; affidavits; birth certificate of children born in U.S.; Social Security card

Application Process (cont.)

- Include certified court dispositions, if ever arrested, charged, or convicted
- Include Form I-601 to waive applicable inadmissibility ground(s), if needed
- If EAD desired, include I-765 w/ filing fee or I-912
- 2 passport photos
- Check USCIS TPS-Venezuela page for correct filing address

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

DED Eligibility Requirements

- National of Venezuela or person without nationality who last habitually resided in Venezuela
- Present in the United States on Jan. 20, 2021
- No application form required to obtain DED coverage

Ineligible for DED if:

- Voluntarily returned to VZ or country of last habitual residence;
- Have not continuously resided in U.S. since Jan. 20, 2021;
- Inadmissible under INA §212(a)(3) or removable under §237(a)(4);
- Convicted of a felony or 2 or more misdemeanors;
- Subject to a mandatory asylum bar at INA §208(b)(2)(A);
- Deported, excluded, or removed before Jan. 20, 2021;
- Subject to extradition;
- Presence in the U.S. is not in U.S. interest, presents public safety danger, or poses serious adverse foreign policy consequences

Applying for an EAD

- DED-based EADs will be issued through July 20, 2022
- File I-765 indicating category code (a)(11)
- Include I-765 filing fee or I-912 Request for Fee Waiver
- If biometrics are needed, applicants will receive a notice for ASC appointment

Applying for an EAD (cont.)

- Include evidence of identity and Venezuelan nationality (or habitual residence in Venezuela for applicant without nationality)
- Include evidence of presence/continuous residence as of Jan. 20, 2021

<https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-venezuela>



	DED	TPS
Nationality	Venezuelan or stateless w/ habitual residence in VZ	Venezuelan national or stateless w/ habitual residence in VZ
Physical presence	Present on Jan. 20, 2021	CPP since Mar. 9, 2021
Continuous Residence	CR since Jan. 20, 2021	CR since Mar. 8, 2021
Travel	Cannot have voluntarily returned to VZ or country of last habitual residence	Brief, casual, innocent absence does not disrupt CPP or CR
Inadmissibility grounds	Do not apply except INA §212(a)(3)	Most grounds apply but can be waived (with some exceptions)
Mandatory asylum bars (firm resettlement, etc.)	Apply	Apply
Criminal bars	Felony or 2 or more misdemeanors	Felony or 2 or more misdemeanors
Deported/excluded/removed	Cannot have been before Jan. 20, 2021	N/A
Subject to extradition	Cannot be	N/A
US interest, foreign policy, public safety implications	Apply	N/A

Adjustment Considerations

- TPS is an “admission” for INA § 245(a) adjustment purposes in 6th, 8th, 9th circuits.
- TPS considered lawful nonimmigrant status for purposes of 245(c) bars to adjustment. INA 244(f)(4).
 - But TPS does not cure 245(c) bar for failure to continuously maintain lawful status before the grant of TPS. *Matter of H-G-G* (AAO July 31, 2019)
- DED is not a lawful nonimmigrant status
- Return with advance parole after Aug. 20, 2020 is not “admission or parole” for 245(a) adjustment purposes. *Matter of Z-R-Z-C* (AAO Aug. 20, 2020)

<https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/practice>



Dual Nationality

- Must establish nationality of TPS country or if stateless, habitual residence in TPS country. INA 244(c)(1); 8 CFR 244.2
- National = person owing allegiance to a state INA 101(a)(21)
- Dual nationality doesn't preclude satisfying nationality requirement for TPS, but firm resettlement is often an issue

Is the applicant a Venezuelan National?

- USCIS will review all evidence of nationality in application as well as A-file
- Nationality that is used for purposes of U.S. immigration is "operative nationality" – *Matter of Ognibene* (BIA 1983)
 - Consider: which passport used to enter the U.S., which nationality claimed when applying for U.S. visa or other immigration benefits

Does Luz meet the TPS nationality requirement?

Luz is a dual citizen of Venezuela and Spain. She was born in Venezuela and has never lived in Spain, but derived Spanish citizenship from her father. Luz entered the U.S. under the Visa Waiver Program and used her Spanish passport.

Firm Resettlement

- Must not be firmly resettled in a third country prior to arriving in U.S.
- Asylum firm resettlement bar is incorporated into TPS statute
 - INA 244(c)(2)(B)(2)(ii); 208(b)(2)(A)(vi) and 8 CFR 208.13(c)(2)(i)(B); 208.15

Firm Resettlement

- 1) Entry into third country prior to arriving in the U.S.
- 2) Offer or receipt of status (acceptance of offer not required; legal mechanism for permanent status could be sufficient)
- 3) Status must be permanent (permanent residence or citizenship)

Exceptions to Firm Resettlement

- Entry into country was necessary consequence of flight from persecution, remained only as long as necessary to make further travel arrangements and no significant ties; or
- Restrictive Conditions
 - Condition of residence were so “substantially and consciously restricted” that he or she was not resettled
 - Consider rights and privileges of other residents: housing/employment, right to obtain property, travel, education, naturalization, etc.

Is Luz barred from TPS due to firm resettlement?

While Luz has never lived in Spain, she lived in Colombia for 4 years before she arrived in the U.S. While in Colombia she had a renewal temporary legal status that allowed her to work. Has she firmly resettled? What factors should you consider?

Asylum applicants

- Pending asylum applicant may apply for TPS
- Affirmative asylum applicants w/ valid TPS (but not DED) will be denied by Asylum Office rather than referred to EOIR - 8 CFR §208.14(c)(2)
- Could wait and possibly file late initial TPS registration on basis of denied asylum application

Late initial registration - 8 CFR §244.2(f)(2)

- Applicant must meet one of the following conditions and register while the condition still exists or within 60-days of its expiration or termination:
 - Was a nonimmigrant, was 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 which was pending or subject to further review/appeal
 - Was a parolee or had a pending request for re-parole
 - Was a spouse of an individual currently eligible for TPS
- OR
- Applicant was a child of an individual currently eligible for TPS. There is no time limitation on filing based on this condition.

How to advise Mauricio?

Mauricio entered the U.S. from Venezuela as a B-2 visitor in January 2020. His affirmative asylum application has been pending with USCIS since August 2020. He wants to know whether he should apply for TPS or DED. What should you consider in advising Mauricio?



Nonimmigrants

- May hold TPS and nonimmigrant status simultaneously
- But consider impact of working with TPS-based EAD on underlying nonimmigrant status
- TPS recipient is considered “in and maintaining lawful nonimmigrant status” while in TPS - INA § 244(f)(4)



What are Ana and Eduardo’s options?

Ana is currently in F-1 status and plans to graduate next Spring. Her boyfriend, Eduardo, is also Venezuelan but recently entered as a B-2 visitor. They want to know whether they should apply for TPS or DED. What would you recommend or what additional information would you want to know?



PROGRAM TIPS - THE CATHOLIC CHARITIES COMMUNITY SERVICES OF THE ARCHDIOCESE OF NEW YORK



1. Prioritizing existing cases

- Existing cases - affirmative/defensive asylum cases
- Assigned attorneys will assess whether to pursue TPS in addition to asylum on a case-by-case basis
- Staff training
 - ✓ Update TPS checklists

2. Proactive outreach for new cases

- Pull case reports (from Lawlogix) on recent consultations and reach out by e-mail or text message.
- Hotlines: information, triage, appointments, referrals:
 - ✓ NYS New Americans Hotline (800-566-7636)
 - ✓ NYC ActionNYC Hotline (800-354-0365)
- TPS flyers
- Funding: advocate for your agency's immigration program needs with your leadership and funders.

3. Remote clinics and self-help workshops

- Reach out to eligible communities, particularly in underserved areas
 - ✓ Presentations to agencies serving the communities & to communities directly
- Assistance (mostly remote):
 - ✓ Light triage -> In-depth screening/consultation clinics
 - ✓ Representation (limited to TPS) in-house & pro bono
 - ✓ Self-help workshops.
- In-person outdoor clinic in partnership with Cleary Gottlieb, NYC Mayor’s Office for Immigrant Affairs (MOIA), and Immigrant Advocates Response Collaborative (IARC).

NYS/NYC Referrals:

- NYS New Americans Hotline (800-566-7636) – M-F, 9 am – 8 pm
 - For NYS residents
- NYC ActionNYC Hotline (800-354-0365) – M-F, 9 am – 6 pm
 - For NYC residents
- E-mail immigration.services@archny.org:
 - name, date of birth, contact number, best language, specify “TPS”
- Lower Hudson Valley Line (845-288-2662) – leave message
 - For residents of Westchester, Rockland, Putnam, Orange, Sullivan, Dutchess and Ulster counties
- Immigration Court Helpdesk (315-690-4831) – leave message
 - For those in removal proceedings at NYC courts.

Resources

- <https://cliniclegal.org/toolkits/case-management/policies-and-procedures>
 - Sample policies and procedures manual
- <https://cliniclegal.org/toolkits/case-management/other-tools-and-forms>
 - Screening Tools
 - Intake sample forms

**Charting
a New
Course**
CLINIC Convening 2021

May 17-20
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