

FAQs on Late Re-registration for TPS

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1. When can a TPS holder who failed to re-register during the designated re-registration period apply late?

Every time the Department of Homeland Security, or DHS, announces the extension of the TPS designation for a particular country, TPS recipients from that country must apply to re-register. Likewise, TPS holders must re-register when a country's TPS designation is terminated but DHS extends TPS for a transitional period before the termination takes effect. The re-registration period is typically 60 days and is specified at uscis.gov/tps. Timely re-registration during each re-registration period is required for a recipient to maintain TPS benefits, regardless of whether TPS was initially granted by U.S. Citizenship and Immigration Services, or USCIS, an immigration judge, or the Board of Immigration Appeals. However, under INA § 244(c)(3)(C) and 8 CFR § 244.17, USCIS has the discretion to accept and approve a late re-registration application when the applicant has "good cause" for filing after the end of the relevant re-registration period.

2. What sorts of delays might USCIS consider to be for "good cause"?

USCIS has not published guidance about the types of reasons that constitute "good cause." Anecdotally, applicants have had late re-registration applications granted in situations where the applicant failed to re-register on time because of serious physical or mental illness or sudden hospitalization (of the applicant or a close relative the applicant had to take care of). Good cause might be established by an applicant who sought timely assistance or advice about maintaining TPS but was misinformed through no fault of their own. Other factors that could potentially contribute to a finding of good cause might include unemployment, homelessness, a death in the family, or other personal emergencies; or the inability to understand the re-registration requirements due to mental capacity, language barriers, or lack of access to legal resources.

3. Is there specific "good cause" guidance for TPS beneficiaries from Sudan, Nicaragua, Haiti and El Salvador?

Yes. The terminations of TPS for Sudan, Nicaragua, Haiti, and El Salvador have been temporarily enjoined by a court order issued in the *Ramos v. Nielsen* case,¹ and TPS and employment authorization for eligible beneficiaries has been automatically extended through January 2, 2020. Current TPS holders from these four countries do not need to re-register to benefit from the auto-extension as long as they properly re-registered during the most recent registration period for their country. However, for Sudanese, Nicaraguan, Haitian and Salvadoran TPS beneficiaries filing a late re-registration, USCIS will consider confusion caused by the termination decisions when evaluating "good cause."

Specifically, USCIS advises these late re-registration applicants as follows:

Late re-registrants must submit a letter describing all of their reasons for failing to file on time in accordance with the most recently announced re-registration procedures in the FRN for their TPS-designated country.

¹ The preliminary injunction was issued by the U.S. District Court in the Northern District of California on October 3, 2018. DHS steps to comply with this injunction are summarized in two Federal Register Notices published in the Federal Register on October 31, 2018 and March 1, 2019.

If you re-registered outside of the re-registration period because DHS announced the termination of TPS for your country, you should explain how that announcement affected you, including how the termination decisions impacted your failure to re-register. USCIS will consider this explanation for purposes of meeting the “good cause” exception for failing to re-register on time. However, if the announcement of the TPS termination did not cause you to file late, you should not include it as a reason. Applicants must be truthful in explaining their reasons.

See: uscis.gov/update-ramos-v-nielsen

In a compliance status report presented to the Ramos court,² USCIS stated that adjudicators will consider “all relevant factors” in determining whether there is good cause. It also agreed to give “presumptive weight” to an applicant’s credible statement that their delay in re-registering “was due in whole or in part to the termination notices.” In the case of Haitian TPS holders, presumptive weight will be given to confusion resulting from either the January 2018 termination notice or the May 2017 6-month extension.

4. What about clients from Nepal or Honduras in light of the announced termination of TPS for those countries?

DHS announced its decision to terminate TPS for Nepal on May 22, 2018 and for Honduras on June 5, 2018, and the re-registration periods closed, respectively, on July 23, 2018 and August 6, 2018. Nepali and Honduran TPS beneficiaries may also cite to uncertainty or confusion resulting from the termination announcements as a “good cause” reason for untimely re-registration, if that was indeed a factor. USCIS adjudicators will give presumptive weight to whether the delay in filing for re-registration was due in whole or in part to the termination notices. A similar lawsuit, [Bhattari et al. v. Nielsen](#), was recently filed challenging the TPS terminations for Nepal and Honduras on the same legal grounds as Ramos. On March 12, 2019, the judge in the Bhattari case issued an order linking this case to the Ramos injunction and preventing DHS from implementing termination of TPS for Hondurans and Nepalis. DHS is expected to issue a Federal Register Notice to automatically extend TPS and work authorization for current Nepali and Honduran TPS holders, on or before May 10, 2019 for Nepalis and on or before November 21, 2019 for Hondurans. Like the auto extensions associated with the Ramos case, Nepali and Honduran TPS holders who successfully re-registered during the last registration period would not be required to take action to receive the automatic extension.

5. What forms, fees, and evidence should be included in a late TPS re-registration application?

The I-821 application for re-registration does not require a fee but applicants who are 14 years old or older must pay an \$85 biometric fee.³ Along with the I-821 form, the applicant should include a letter or statement explaining all reasons why he or she did not apply to re-register on time. If available, corroborating evidence of the reason(s) for late filing should also be included. For example, if someone is filing late

² The document was filed with the court on October 23, 2018 and is available at: <https://www.nationaltpsalliance.org/wp-content/uploads/2018/10/Defendants-proposal-to-implement-preliminary-injunction-order-10.23.18.pdf>

³ Note that current TPS beneficiaries from Sudan, Nicaragua, Haiti, and El Salvador who properly re-registered and are covered by the extension under the Ramos injunction do not need to submit new biometrics, unless USCIS has specifically sent a notice to attend a biometrics collection appointment. See: <https://www.uscis.gov/update-ramos-v-nielsen>

because they were caring for their ill daughter during the re-registration period, include corroborating documentation from the daughter's doctor and/or others who may be able to verify the medical condition and treatment.

If the TPS applicant is also seeking an employment authorization document, or EAD, he or she may include the I-765 form with the late re-registration application. There are many factors that may impact whether a client who benefits from automatic extension of TPS and work authorization decides to apply for a new EAD. Someone subject to an automatic extension is not required to apply for a new EAD; but, for practical purposes, some may prefer to obtain a new, unexpired EAD for facilitating interactions with employers or public agencies. For clients from Sudan, Nicaragua, Haiti, and El Salvador where the new EAD expiration date would be January 2, 2020, considerations include: the expiration date of their most recent EAD; their employment situation and whether their employer recognizes their continued work authorization under the Federal Register Notice; the documentation requirements of the local department of motor vehicles for renewing a driver's license; the applicant's eligibility for a fee waiver; and I-765 processing times.

6. What if my client has failed to re-register for more than one re-registration period for his or her country?

Typically, the longer the delay in applying to re-register, the more compelling the applicant's "good cause" reason(s) may need to be. However, late re-registration has been granted to TPS beneficiaries who failed to register during more than one re-registration period. In such cases, consider including evidence of the good cause for late filing in addition to evidence that the applicant continues to meet the requisite continuous residence and other eligibility requirements for TPS.

7. Can a denial of a late re-registration application be appealed?

It depends on the reason for the denial. If the basis for the denial is not a ground of inadmissibility or deportability that makes the applicant ineligible for TPS, the applicant has the right to appeal to the Administrative Appeals Office (AAO) and TPS benefits will be extended while the appeal is pending. See 8 CFR § 244.14(b)(3). If the AAO dismisses the appeal and the individual is then removable, he or she is entitled to a de novo determination of eligibility for TPS in removal proceedings. See 8 CFR § 244.14(c).

8. What are the potential risks of applying for late re-registration?

Before a client decides to file a late TPS re-registration application, he or she should be advised of the potential risks involved. First, USCIS delays in processing these applications can make the timing of receiving a decision uncertain. Second, advise clients about how gaps in work authorization can impact their employment. Finally, ensure that late re-registration clients with no other lawful status to fall back on understand the risks of enforcement if their application is denied. Prior to filing, applicants should be screened to ensure continued eligibility for TPS, including continued physical presence and residence, new criminal issues, and other developments that could trigger inadmissibility and the need for a waiver.

9. If a re-registration application is denied, will USCIS issue a Notice to Appear?

For certain individuals, filing for late re-registration and being denied is more likely to result in issuance of a Notice to Appear than simply allowing their TPS status to lapse. When a re-registration applicant fails

to show good cause for filing late, USCIS is mandated to withdraw the grant of TPS.⁴ USCIS would then issue an NTA in two situations: 1) if the basis for denial or withdrawal is a ground of inadmissibility or deportability that makes the individual ineligible for TPS, including certain crime or drug-related grounds;⁵ 2) if the applicant holds no other lawful immigration status or authorization to remain in the United States.⁶

In contrast, USCIS may (but is not required to) issue an NTA when a former TPS recipient loses status based on the TPS designation for their country being terminated. In such cases, if DHS decides that lapsed TPS holders are an enforcement priority, USCIS “should defer to ICE and CBP regarding the appropriate timing of any NTA issuances.”⁷

Those who have no other underlying status and who lack a credible, compelling reason for failing to re-register on time, must make an informed decision. Either, they file a weak late re-registration application which, if denied, would draw attention to their lack of status. Or, they allow their TPS to lapse in the hope that lapsed TPS holders will not become a priority for enforcement. At this time, we do not have enough information to know how USCIS is treating denied re-registration applications or how lapsed TPS holders will be treated in the future. Before filing a late re-registration application, practitioners should always screen clients for continued TPS eligibility and any new inadmissibility grounds that have not been previously waived.

10. What are some examples of common “good cause” reasons for delay and how should they be documented?

Example #1

Martin from Honduras was initially granted TPS in 1999 and always re-registered until last year. Last June, USCIS announced the termination of TPS for Honduras, effective January 5, 2020. It also announced that Honduras TPS holders who re-registered between June 5, 2018 and August 6, 2018 could maintain TPS and work authorization until January 5, 2020. Martin speaks very little English and lives in an isolated rural area with no immigration legal service providers. He heard about the termination on the radio and went to a local notario who told him that his TPS EAD with a July 5, 2018 expiration date had been automatically extended. However, the notario did not explain that the automatic extension only lasted 180-days, through January 1, 2019. Even though Martin failed to timely re-register during the relevant re-registration period, he can file a late re-registration application now. He should include a statement about the efforts he made to seek legal advice, the misinformation provided by the notario, and his other vulnerabilities. If USCIS determines Martin had good cause for missing the deadline, his TPS status and associated employment authorization would be approved through January 5, 2020.

⁴ If an applicant fails to establish good cause and the late-filed application is denied, 8 CFR § 244.17(b) provides that “USCIS will withdraw Temporary Protected Status.” (emphasis added).

⁵ See 8 CFR § 244.10(c)(1) and § 244.14(b)(3).

⁶ See June 28, 2018 USCIS NTA guidance, available at: <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>. Note that USCIS may delay NTA issuance or not issue an NTA upon the reasonable request of ICE or another law enforcement agency to avoid disrupting an investigation.

⁷ See June 28, 2018 USCIS NTA guidance.

Example #2

Emilio from El Salvador has held TPS for many years but he failed to re-register during the last three periods. Emilio has had a lot of difficulty maintaining stability in his life during recent years. Since 2015, he has struggled with mental health issues which have made it difficult for him to hold a job. He has moved around a lot and been homeless for periods of time. As a result, he was not keeping track of recent TPS developments for El Salvador or when he needed to re-register. Emilio may still file a late re-registration application citing his mental illness, homelessness and lack of capacity as “good cause” reasons for his delay in filing. He should include his own personal statement, describing how circumstances prevented him from filing sooner. He should also include supporting evidence such as a letter from his doctor, describing how his medical condition affects him, and a statement from his caseworker explaining his mental health condition and homelessness, and the fact that she referred Emilio to an immigration attorney who informed him about the possibility of late re-registration.