



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

Current Issues Impacting TPS and DED Clients

March 22, 2019

Speakers

- **Jill Marie Bussey**, *Director of Advocacy*
- **Ilissa Mira**, *Staff Attorney, Training and Legal Support*
- **Jen Riddle**, *Staff Attorney, Training and Legal Support*
- **Lisa Parisio**, *Advocacy Attorney, Policy & Outreach*



Webinar Overview

- TPS and DED status
- TPS/DED litigation
- CLINIC's advocacy efforts
- Advising TPS clients
 - Who is covered by the auto-extension
 - Late-registration and "good cause"
 - Enforcement risks
 - Advance parole consideration
 - Employment verification and driver's licenses
 - Screening for other relief
- Program planning and community education
- Q&A



Status of TPS & DED



TPS and DED for Liberians

- Liberia was first designated for TPS in 1991
- President Bush granted DED for approx. 10,000 Liberians in 2007 (TPS expired)
- Liberia's DED was extended until March 27, 2018, when Trump ordered 12-month wind-down
- Liberia's DED is set to expire **March 31, 2019**



TPS/DED Litigation

Case	Countries	Highlights/Status
<i>Casa de Maryland v. Trump</i>	El Salvador	Survived Motion to Dismiss Nov. 2018
<i>Centro Presente v. Trump</i>	Haiti, El Salvador, Honduras	Survived Motion to Dismiss July 2018
<i>NAACP v. DHS</i>	Haiti	Survived Motion to Dismiss March 2019
<i>Ramos v. Nielsen</i>	El Salvador, Haiti, Nicaragua, Sudan	Preliminary injunction in place
<i>Saget v. Trump</i>	Haiti	Decision due after March 1
<i>Bhattarai v. Nielsen</i>	Nepal, Honduras	Linked to <i>Ramos</i> ; injunction in place
<i>African Communities Together v. Trump</i>	Liberia DED	Filed March 8; termination date March 31, 2019
<i>Moreno v. Nielsen</i>	N/A	Seeks to expand 6 th & 9 th Cir. TPS opportunity to adjust status



<https://cliniclegal.org/resources/challenges-tps-terminations>

TPS/DED Litigation in Overall Movement/Advocacy Context

- Legislative push – Dream and Promise Act of 2019
- Messaging: Preliminary injunction is key temporary relief, but it is not and will never be permanent relief
- Best possible outcome of any case is a new decision



CLINIC's Advocacy Efforts

- DHS/USCIS compliance
- Litigation automatic extensions and USCIS systemic issues
- Oversight and accountability strategies



Ramos Injunction and DHS Response

- [Oct 3, 2018](#): Injunction halts TPS termination for [Sudan, Nicaragua, Haiti and El Salvador](#)
- [Oct 31, 2018](#): DHS issues 1st Federal Register Notice (FRN)
 - Auto-extends TPS and work authorization for eligible [Nicaraguans and Sudanese](#) through Apr 2, 2019
- [Mar 1, 2019](#): DHS issues 2nd FRN
 - Auto-extends TPS and work authorization for eligible [Nicaraguans, Sudanese, Haitians and Salvadorans](#) through Jan. 2, 2020
- [Mar 12, 2019](#): Judge links [Bhattarai](#) to [Ramos](#) injunction
 - Expect FRNs auto-extending TPS and work authorization for eligible [Nepalis](#) (by May 10, 2019) and [Hondurans](#) (by Nov 21, 2019)
- [Dec 2019](#): DHS will issue 3rd FRN if injunction still in place
 - Would provide additional 9-month extension for all [6 nationalities](#)



Do We Know Who is Covered by the Auto-extension?

EADs with Category Codes A-12 or C-19 and one of the following expiration dates:

- 7/22/2017
- 11/02/2017
- 01/05/2018
- 01/22/2018
- 03/09/2018
- 11/02/2018
- 01/05/2019
- 04/02/2019
- 07/22/2019
- 09/09/2019



Do We Know Who is Covered by the Auto-extension?

- The extension of this validity period applies only if the eligible TPS beneficiary properly filed for TPS during the **most recent** DHS-announced registration period for the applicable country, or in the case of Haiti, during the most recent such re-registration period or the re-registration period prescribed in the May 24, 2017 FRN, or has a re-registration pending...



Assessing Whether Clients Are Covered

- Review March 1, 2019 FRN
- Make sure their individual TPS grant has not been withdrawn
- Did they apply during the most recent period for their country?
 - Note: Certain Haitians and Salvadorans were not required to re-register during the last period for their country
- Do they have a current application pending?
- Review past EADs / I-797s to confirm re-registration and identify gaps in status
- Review re-registration notices for country
 - Client's last EAD may be on the list even if they didn't re-register during most recent period
- If it's unclear whether client is covered, weigh pros and cons of re-registering



Are Rosaline and Miranda Covered by the Auto-extension?

Miranda and her sister Rosaline from Nicaragua, received TPS in 1999.

- **Miranda** has always applied to re-register on time but her most recent re-registration application has been pending with USCIS since Feb. 2018. She has an EAD that expired January 5, 2019.
- **Rosaline** missed the two most recent re-registration periods. During the May 2016 re-registration period she was hospitalized due to a complicated pregnancy. Subsequently, her newborn underwent a series of serious operations and she never re-registered. She heard about the Dec. 2017 announcement that TPS for Nicaragua would be terminated. She didn't realize that there would be a 12-month extension first so she did not re-register. She believed that the termination was effective immediately.



Late TPS Re-Registration

- 8 CFR § 244.17(b): [USCIS](#) may, for good cause, accept and approve an untimely registration request.
- What is considered “good cause”?



What is “Good Cause”

- No USCIS guidance defines “good cause.”
- Anecdotal approvals for:
 - Serious physical or mental illness
 - Death in family
 - Personal emergency
 - Sought assistance but was misinformed
 - Homelessness
 - Loss of employment
 - Inability to understand requirement due to lack of mental capacity, lack of access to legal resources, language barriers



“Good Cause” Under *Ramos v. Nielsen*

For late re-registrants from Sudan, Nicaragua, Haiti, El Salvador, Nepal and Honduras:

- Include a letter describing all reasons for failing to file timely
- If relevant, explain how announcement of TPS termination decisions impacted failure to re-register.
- Adjudicators will consider “all relevant factors”
- “Presumptive weight” will be given to an applicant’s credible statement that delay “was due in whole or in part to the termination notices.”



How to File for Late Re-Registration

- Form I-821 (no application fee)
- \$85 biometrics for those 14 or older
- Statement explaining good cause reason for late filing
- Supporting evidence
- Optional: Form I-765 for EAD



Example

Martin has held TPS since 1999. Last June, USCIS announced the termination of TPS for Honduras. It also announced that Honduras TPS holders who re-registered between June 5, 2018 and Aug. 6, 2018 could maintain TPS and work authorization until Jan. 5, 2020.

Martin speaks little English and lives in an isolated rural area with no immigration legal service providers. He heard about the termination and went to a *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 Jan. 1, 2019.

Even though Martin failed to timely re-register during the re-registration period, can he file a late re-registration application now?



Enforcement Risks

- According to NTA Policy Memo, NTA *will* be issued if application denied and:
 - Applicant is ineligible for TPS due to inadmissibility or deportability; or
 - Applicant has no other lawful status or authorization to remain in the U.S.
- DHS *may* issue an NTA when former TPS holders lose status based on the designation for their country being terminated
- Little information about how USCIS is implementing this policy
- Inform clients of potential risks, particularly where weak reason for “good cause”



Adjudications of TPS-Related Applications

- Expect delays in adjudicating TPS, employment authorization and advance parole applications
- Ensure applications are filed with all required initial evidence per current RFE/NOID guidance



Advance Parole Considerations

- Some TPS recipients who EWied may become 245(a) adjustment-eligible after advance parole travel
- No changes to advance parole eligibility under USCIS compliance with *Ramos/Bhattarai* orders
- Consider advance parole processing times and expected TPS expiration date
- Possibility of greater USCIS scrutiny of need to travel
- Emergency advance parole appointments may now require calling USCIS Contact Center



How Would You Advise Gloria?

Gloria is a TPS holder from El Salvador who entered the U.S. without inspection in 2000. She lives in Georgia and is married to LPR Frank. Gloria qualifies for the auto-extension through Jan 2, 2020. She wants to apply for advance parole to visit her mother in San Salvador whose health is quickly deteriorating. What should Gloria consider before proceeding with an I-131?



Employment Verification

- Not required to apply for new EAD, may want one for convenience
- Sudanese, Nicaraguan, Haitian, or Salvadoran TPS holders can show automatic extension of your TPS and work authorization until Jan. 2, 2020 by presenting:
- The [Federal Register Notice](#) granting the automatic extension until Jan. 2, 2020 and
- Your most recent EAD with category code A-12 or C-19 and one of the following expiration dates:

Expiration date	Corresponding Country
7/22/2017	Haiti
11/2/2017	Sudan
1/5/2018	Nicaragua
1/22/2018	Haiti
3/9/2018	El Salvador
11/2/2018	Sudan
1/5/2019	Nicaragua
4/2/2019	Sudan, Nicaragua
7/22/2019	Haiti
9/9/2019	El Salvador



DMV, Public Agencies, Other Institutions

Provide a copy of the [Federal Register Notice](#) granting the automatic extension of work authorization

AND

- Auto-extended EAD;
- A copy of your Form I-94 Arrival/Departure Record;
- Form I-797 Notice of Action Approval Notice; or
- Any other relevant DHS document that shows TPS status
- Haitians and Salvadorans may have received a Notice of Continued Work Authorization by mail, due to TPS processing delays. We recommend also bringing that document with you to the DMV, if applicable.

State and institution requirements may vary. Confirm what specific documents are required.



Screening for Other Relief

- LPR status through family, employment, humanitarian, diversity lottery paths
 - Consider TPS grant as “admission” in 6th and 9th Circuit states and advance parole travel
- Asylum and humanitarian protection
- Non-immigrant status
 - Many types require non-immigrant intent
- Relief from removal (non-LPR cancellation, etc.)



Screening Tips

- The sooner the better
- Screen for both affirmative and defensive relief
- Even if client previously screened, screen again
- Consider filing FOIA requests, FBI background check, and/or criminal records requests
- Advise about exposure to enforcement
- Identify cases for referral



Program Implications

See **Program Action Plan** on TPS webpage for program management recommendations



Program Action Plan for TPS Decisions

This document provides information and guidance for attorneys, social workers, and other service providers who are involved in the decision on TPS for certain individuals.

Preparing your program

Q: Are there any other actions and decisions that may affect an individual's TPS and any rights to re-apply?

ANSWERS:

Individuals who are TPS eligible for Nicaragua have been informed that TPS has been granted to those who are eligible for TPS for the period of January 1, 2017 to present. To continue to receive TPS, individuals must apply for TPS before their current TPS expires. Individuals who are not currently in TPS status should apply for TPS before their current TPS expires. Individuals who are currently in TPS status should apply for TPS before their current TPS expires. Individuals who are currently in TPS status should apply for TPS before their current TPS expires. Individuals who are currently in TPS status should apply for TPS before their current TPS expires.

FAQ:

Individuals who are TPS eligible for Haiti have been informed that TPS has been granted to those who are eligible for TPS for the period of January 1, 2017 to present. To continue to receive TPS, individuals must apply for TPS before their current TPS expires. Individuals who are not currently in TPS status should apply for TPS before their current TPS expires. Individuals who are currently in TPS status should apply for TPS before their current TPS expires. Individuals who are currently in TPS status should apply for TPS before their current TPS expires.



Community Education

- NOT just for TPS and DED holders
- Others that need information:
 - Employers, DMV offices, colleges and universities
- Outreach
- Resources for your client
 - For example: template cover letters to employers with copy of Federal Register notice



Timing is Crucial

- Now: outreach, screening, and program planning
- Clients will likely not come to you until their EAD is about to expire
 - Are you ready to help all of your current TPS clients renew their driver licenses or speak to their employers?
 - Prepare materials now!
 - Make sure you keep updated – are your community ed materials accurate?



Resources: cliniclegal.org/tps

- Up-to-date info on TPS decisions
- TPS backgrounders, talking points, reports
- TPS tools for practitioners and individuals
- Program management (re: TPS terminations)
- TPS media/advocacy tools – including *TPS Interfaith Toolkit*



Resources: cliniclegal.org/tps

- Avoiding unauthorized practice of immigration law
- Screening for other immigration benefits
- Know Your Rights materials
- Emergency planning for families (guardianship, financials)



U.S. Government Resources

- USCIS TPS and DED
 - www.uscis.gov/humanitarian/temporary-protected-status
 - www.uscis.gov/humanitarian/temporary-protected-status/deferred-enforced-departure
- USCIS Update on *Ramos v. Nielsen*
 - www.uscis.gov/update-ramos-v-nielsen
- Federal Register www.federalregister.gov
- Department of Justice
- EEOC







Catholic Legal Immigration Network, Inc.

National Office
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
Main Phone: (301) 565-4800
Main Fax: (301) 565-4824

cliniclegal.org
fb.com/cliniclegal
