



POLICY BRIEF:

USCIS Processing Delays and the Resulting Consequences to TPS Holders and their Families

By Lisa Parisio, Advocacy Attorney for Policy and Outreach
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Questions? Contact Lisa Parisio at lparisio@cliniclegal.org or Jill Marie Bussey at jbussey@cliniclegal.org.

ISSUE SUMMARY

Extreme processing delays at U.S. Citizenship and Immigration Services have resulted in Temporary Protected Status, or TPS, holders not receiving their new Employment Authorization Documents prior to the expiration of their current work authorization, despite timely submission and paying nearly \$500 in government filing fees.¹ Through administrative advocacy and Congressional inquiries, the Catholic Legal Immigration Network, Inc. has learned that this issue has so far impacted TPS holders from four countries, including approximately 20,000 Salvadorans, more than 4,500 Haitians, more than 300 Syrians, and an unknown number of Hondurans. USCIS' method to address the issue is unprecedented, legally questionable, operationally inefficient, and calls for swift and thorough oversight and accountability.

I. TPS AND WORK AUTHORIZATION PROCESSING OVERVIEW

At the time of a TPS extension and beginning of a new TPS designation period, it has been standard practice for the U.S. Department of Homeland Security, or DHS, and U.S. Citizenship and Immigration Services, or USCIS, to take steps to ensure that current TPS holders who are reapplying for TPS during the new designation period will not have a lapse in their work authorization during the time it takes to process their new application. Historically, this has been accomplished by either 1) a TPS decision made well enough in advance of the expiration of the current designation period so that there is adequate time for cases to be processed before the new designation period starts,² or 2) issuing an automatic extension of work authorization in the Federal Register Notice announcing the new designation period that is long enough to cover the time it takes to process

applications of all the expected re-registrants.³

II. UNPRECEDENTED TPS PROCESSING DELAYS UNDER THE TRUMP ADMINISTRATION AND BREAK WITH PAST PRACTICE IN RESOLVING ISSUES

In July 2018, employers and unions of Haitian TPS holders alerted advocates that the automatic extension of work authorization granted to Haitian TPS holders at the most recent TPS decision was days away from expiring, yet many Haitian TPS holders who had timely re-registered had still not received their new work authorization documents and were at risk of losing their jobs. Following Congressional inquiries, USCIS relayed that more than 4,500 Haitian TPS holders were affected by this processing delay.⁴ Following the Haiti incident, USCIS was unable or unwilling to resolve the problem for El Salvador, Syria, and Honduras.⁵ The El Salvador delay affected approximately 20,000 people and the Syria delay affected more than 300 people.⁶ The exact number of Honduran TPS holders affected is unknown to CLINIC as of the publication date of this brief.⁷

In general, processing delays at USCIS have reached extraordinary and damaging levels.⁸ Average case processing time at USCIS has lengthened by 46 percent over the past two fiscal years.⁹ Over the nearly 30-year history of TPS, there have only been a few noted instances in which USCIS was unable to process TPS cases in time before an automatic extension ran out.¹⁰ In those cases, USCIS ensured TPS holders' work authorization would not be impacted by issuing a Federal Register Notice,¹¹ which is a clear and legally sufficient solution for I-9 purposes.¹² I-9 instructions direct employers to accept expired Employment Authorization Documents, or EADs, when they have "been extended by regulation or a Federal Register Notice."¹³

In contrast, under the current administration, USCIS broke with the past practice, mailing out individual Notices of Continued Evidence of Work Authorization to impacted individuals.¹⁴ Thousands of people did not receive these Notices until after their work authorization had already expired.¹⁵ In a letter to then-USCIS Director Cissna, CLINIC requested an explanation for this departure from past practice and highlighted that unlike the previous method of dealing with this issue, the new practice was inefficient, operationally wasteful, prone to error, and it is questionable if individual Notices are legally sufficient for I-9 purposes.¹⁶ Seventy legal experts also wrote to the administration, indicating their belief that this practice was potentially unlawful and not sufficient for employment verification procedures.¹⁷

III. CONSEQUENCES OF PROCESSING DELAYS FOR TPS HOLDERS AND THEIR FAMILIES

TPS processing delays and USCIS' method of resolving issues have impacted TPS holders and their families in numerous ways. Without a valid EAD, people may lose pay or their jobs altogether. The delays also cost people their individual driver's licenses (as well as commercial driver's licenses), as they are unable to provide up-to-date documents. Loss of a driver's license has a cascading effect on a family, impacting ability to get to work, pick up household necessities, drive to health care appointments, attend school, etc. TPS holders have relayed stories to CLINIC about stressful and difficult interactions with police at routine traffic stops, impacts on ability to secure student loans, and losing access to their bank accounts at banks which require proof of immigration status to hold an account. TPS holders also note that even if they did not lose their jobs, it put an uncomfortable strain on their employment not having their work authorization and instead having to provide an individual Notice and a variety of print out materials from USCIS' website to provide their current status. Others discussed the stress of having to take and request limited time off to attend Department of Motor Vehicle appointment after appointment to try to sort out driver's licenses issues. While some TPS holders have been able to resolve these issues by working with attorneys, contacting the Department of Justice Immigrant and Employee Rights

Section,¹⁸ and other methods, the fall out of these issues continues for an unknown number of families.

There are also less tangible consequences to individuals and families who are already vulnerable due to TPS terminations and/or the current political climate. TPS holders describe extreme stress and anxiety caused by not having their cases processed in time and experiencing a lack of justice: they complied with all aspects of the law, timely filing and paying nearly \$500 in fees,¹⁹ yet the government did not process their cases in time and resolved the problem in an unusual, unprecedented way without explanation.

IV. OVERSIGHT AND INVESTIGATION OF TPS PROCESSING DELAYS

CLINIC has alerted the Citizenship and Immigration Service Ombudsman's office of the TPS work authorization processing delays at USCIS several times, as well as the unusual and problematic way USCIS elected to address the problem.²⁰ Despite repeated outreach to the Ombudsman, the processing delays persist and it is unclear if the Ombudsman's office has taken any action. In early 2019, the House Committee on Oversight launched an inquiry, "requesting documents relating to reports that the [Ombudsman's] office is failing to carry out its statutory duties to help people applying for legal immigration programs and to assist the U.S. Citizenship and Immigration Services (USCIS) to improve those programs."²¹

The Government Accountability Office, or GAO, has accepted requests from multiple Senate offices to investigate TPS decisions as well as implementation issues.²² At the time of this brief's publication, the investigation is ongoing with a report forthcoming.²³ As a result of the GAO investigation, the DHS Inspector General, has decided to wait for results from the GAO before pursuing an investigation on similar topics made by 82 U.S. Representatives in December 2018.²⁴

RECOMMENDATIONS FOR OVERSIGHT AND ACCOUNTABILITY

1. Congress must question, investigate, and obtain an explanation as to why USCIS is unable to process TPS work authorization applications in a timely matter, as well as why there have been more delays affecting TPS holders' ability to maintain work authorization during the first few years of the current administration than the entire history of TPS.
2. Congress must question, investigate, and obtain an explanation as to why USCIS broke with past practice in curing TPS processing delay issues, electing an inefficient, operationally wasteful, error-prone, and legally questionable method as opposed to issuing a single Federal Register Notice.
3. Congress must continue to investigate the CIS Ombudsman's office and hold the Ombudsman accountable for any dereliction of statutory duty.

General Oversight Analysis: Tools for oversight and accountability include the Freedom of Information Act requests; GAO investigations; Inspector General investigations; Congressional oversight including data and informational requests from agencies and committee hearings; litigation; investigatory reporting; among others. CLINIC recommends those conducting oversight and accountability work to engage in careful evaluation of the proper vehicle and survey and consult with the current field of advocacy to determine how to best move forward on strategy.

ENDNOTES

- 1 Current fees for an Employment Authorization Document (Form I-765) and biometrics total \$495. See www.uscis.gov/i-765.
- 2 For e.g., “DHS is announcing the extension of the TPS designation of Nicaragua and establishing the re-registration period at an early date to allow sufficient time for DHS to process EAD requests prior to the current January 5, 2009 EAD expiration date.” 73 Fed. Reg. 57138 (Oct. 1, 2008), www.federalregister.gov/documents/2008/10/01/E8-22978/extension-of-the-designation-of-nicaragua-for-temporary-protected-status.
- 3 For e.g., “Given the timeframes involved with processing TPS re-registrants, the Department of Homeland Security (DHS) recognizes that re-registrants may not receive a new EAD until after their current EAD expires on September 9, 2007. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of El Salvador for 6 months, through March 9, 2008, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.” 72 Fed. Reg. 46649 (Aug. 21, 2007), www.federalregister.gov/documents/2007/08/21/E7-16092/extension-of-the-designation-of-el-salvador-for-temporary-protected-status-automatic-extension-of.
- 4 Letter from Senator Bill Nelson to DHS and USCIS regarding EAD expiration date for Haitian TPS holders (July 20, 2018), www.uscis.gov/sites/default/files/files/nativedocuments/EAD_expiration_for_Haitians_with_TSP_-_Senator_Nelson.pdf; Email Interview with Samantha Roberts, Counsel, U.S. Senate (July 20, 2018) (Regarding a response from USCIS to the Senator’s office: “There are approximately 4,650 Haitian TPS beneficiaries with pending employment authorization document (EAD) applications (I-765).”).
- 5 Email Interview with Samantha Roberts, Counsel, U.S. Senate (July 20, 2018) (Regarding a response from USCIS to the Senator’s office: “There are approximately 4,650 Haitian TPS beneficiaries with pending employment authorization document (EAD) applications (I-765).”); Email Interview with Thomas Boodry, Legislative Correspondent, U.S. Senate (Sept. 12, 2018) (Regarding a response from USCIS to the Senator’s office: “As of August 23, 2018, USCIS has accepted 180,200 applications from Salvadoran nationals seeking to re-register their TPS . . . As of August 23, 2018, USCIS has approved 160,008 applications from Salvadoran nationals seeking to re-register their TPS.”); *Trump administration automatically extending work authorizations for 335 Syrians with TPS: USCIS official*, WASHINGTON EXAMINER (Sept. 19, 2018), www.washingtonexaminer.com/news/trump-administration-automatically-extending-work-authorizations-for-335-syrians-with-tps-uscis-official; Temporary Protected Status Designated Country: Honduras, www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras, (accessed June 19, 2019).
- 6 Email Interview with Thomas Boodry, Legislative Correspondent, U.S. Senate (Sept. 12, 2018) (Regarding a response from USCIS to the Senator’s office: “As of August 23, 2018, USCIS has accepted 180,200 applications from Salvadoran nationals seeking to re-register their TPS . . . As of August 23, 2018, USCIS has approved 160,008 applications from Salvadoran nationals seeking to re-register their TPS.”); *Trump administration automatically extending work authorizations for 335 Syrians with TPS: USCIS official*, WASHINGTON EXAMINER (Sept. 19, 2018), www.washingtonexaminer.com/news/trump-administration-automatically-extending-work-authorizations-for-335-syrians-with-tps-uscis-official.
- 7 See Temporary Protected Status Designated Country: Honduras, www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras, (accessed June 19, 2019).
- 8 Jason Boyd, Greg Chen, *AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration*, AMERICAN IMMIGRATION LAWYER’S ASSOCIATION (Jan. 30, 2019), www.aila.org/infonet/aila-policy-brief-uscis-processing-delays.
- 9 *Id.*
- 10 66 Fed. Reg. 35270 (July 3, 2001), www.federalregister.gov/documents/2001/07/03/01-16745/automatic-extension-of-work-authorization-for-honduransand-nicaraguans-under-temporary-protected; 70 Fed. Reg. 39325 (July 5, 2005), www.federalregister.gov/documents/2005/07/07/05-13401/automaticextension-of-employment-authorization-documentation-for-honduran-and-nicaraguan-tps; 82 Fed. Reg. 12629 (March 6, 2017), www.federalregister.gov/documents/2017/03/06/2017-04454/automatic-extension-of-employment-authorization-documentation-for-beneficiaries-under-el-salvadors.

- 11 *Id.*
- 12 I-9, Employment Eligibility Verification, www.uscis.gov/i-9.
- 13 *Id.*
- 14 Temporary Protected Status Designated Country: Honduras, www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras, (accessed June 19, 2019); Temporary Protected Status Designated Country: Syria, www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-syria, (accessed June 19, 2019); *Update from CLINIC: Haiti TPS*, CATHOLIC LEGAL IMMIGRATION NETWORK, (July 2018), <https://mailchi.mp/cliniclegal/agency-update-1019785>; *Update from CLINIC: El Salvador TPS*, CATHOLIC LEGAL IMMIGRATION NETWORK (Sept. 2018), <https://mailchi.mp/cliniclegal/agency-update-1020077>.
- 15 *For e.g.*, Notices for Haiti were not sent until after the automatic work authorization expiration date. Language on USCIS Haiti TPS page: “If you do not receive the Notice of Continued Evidence of Work Authorization *within a week of* July 22, 2018...” (emphasis added) (accessed July 2018) <https://mailchi.mp/cliniclegal/agency-update-1019785>.
- 16 CLINIC letter to USCIS Director regarding processing delays (Nov. 21, 2018), <https://cliniclegal.org/resources/clinic-letter-uscis-director-regarding-processing-delays>; USCIS reply to CLINIC letter regarding processing delays (Dec. 6, 2018), www.uscis.gov/sites/default/files/files/nativedocuments/Work_Authorization_extensions_for_individuals_with_TPS_from_Haiti_El_Salvador_and_Syria_-_Bussey.pdf.
- 17 Letter from Jayesh Rathod, Professor Law, American University Washington College of Law et al. to Kirstjen Nielsen, Secretary, U.S. Department of Homeland Security (Nov. 28, 2018), <https://cliniclegal.org/resources/letter-70-law-professors-and-scholars-uscis-and-dhs-regarding-work-permit-extensions-tps>.
- 18 Telephone interventions, Immigrant and Employee Rights Section, Department of Justice, www.justice.gov/crt/telephone-interventions-2.
- 19 Current fees for an Employment Authorization Document (Form I-765) and biometrics total \$495. *See* www.uscis.gov/i-765.
- 20 *For e.g.*, CLINIC letter to USCIS Director regarding processing delays (Nov. 21, 2018), <https://cliniclegal.org/resources/clinic-letter-uscis-director-regarding-processing-delays>; CLINIC recommendations to USCIS regarding TPS implementation issues and Ramos v. Nielsen (April 29, 2019), <https://cliniclegal.org/resources/clinic-recommendations-uscis-regarding-tps-implementation-issues-and-ramos-v-nielsen>; CLINIC letter to DHS and USCIS regarding persistent TPS Federal Register Notice Processing delays and concerns with DED Federal Register Notice (April 5, 2019), <https://cliniclegal.org/resources/clinic-letter-dhs-and-uscis-regarding-persistent-tps-federal-register-notice-processing>.
- 21 *Cummings Seeks Documents From Immigration Ombudsman After Receiving Troubling Allegations*, HOUSE COMMITTEE ON OVERSIGHT AND REFORM (Feb. 6, 2019), <https://oversight.house.gov/news/press-releases/cummings-seeks-documents-from-immigration-ombudsman-after-receiving-troubling>.
- 22 Letter from Jenny Grover, Director, International Affairs and Trade and Rebecca Gambler, Director, Homeland Security and Justice, U.S. Government Accountability Office (June 13, 2019), (on file with author).
- 23 *Id.*
- 24 Rep. Jimmy Gomez Leads 82 House Democrats in Calling for Investigation on TPS Termination, (Dec. 4, 2018), <https://gomez.house.gov/news/documentsingle.aspx?DocumentID=426>; Letter from John V. Kelly, Acting Inspector General, Office of Inspector General, U.S. Department of Homeland Security to Jimmy Gomez, Representative, U.S. House of Representatives et al. (March 8, 2019), (on file with author).

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