



Policy Brief: Results from Practitioner Survey on Issues with TPS Adjudications

March 2023

In February and March of 2023, the [TPS-DED Administrative Advocacy Coalition](#) surveyed¹ legal practitioners on issues related to the backlog and agency communications related to Form I-821, Application for Temporary Protected Status (TPS),² along with accompanying Form I-765, Applications for Employment Authorization.³ Respondents comprised attorneys in private practice and at public interest organizations, accredited representatives, and paralegals and support staff at private and public interest firms. Forty-one individuals responded to the survey. Clients of those surveyed came from Afghanistan, Burma, El Salvador, Haiti, Honduras, Syria, Ukraine, Venezuela, Yemen, Cameroon, and Nicaragua.

- Approximately **41% of respondents** reported that delays in publishing the Federal Register Notice (FRN) resulted in a client's **inability to apply to new jobs and difficulty securing driver's licenses and other forms of state-issued identification.**
- Approximately **85% of those surveyed reported clients waiting over nine months** for a decision on an application for TPS, with **49% reporting clients waiting over twelve months.**
- About **85% of applications pending over nine months were initial applications,** with the majority of applications processed by the Potomac Service Center.
- Almost half of respondents reported it took **over six months for their clients to receive an approved work permit.**

I. Background

Delays in adjudicating applications for TPS have uniquely harmful consequences because of the short term of a TPS designation (usually 18 months) and the humanitarian failure of removing an otherwise TPS-eligible individual. Delays in adjudicating accompanying applications for Employment Authorization have even more immediate consequences for TPS holders, including loss of employment and financial hardship.

Overall, a picture emerges from the survey results where delays in publishing Federal Register Notices (FRNs) lead to applications for TPS filed well into the designation period, further delaying processing and the ability to apply for Employment Authorization Documents (EADs)

¹ We want to thank the American Immigration Lawyers' Association (AILA), the Immigrant Legal Resource Center (ILRC), and other partners for assisting with the development and distribution of this call for examples. For questions regarding the survey or its findings, please contact Lora Adams at lora@masadc.com.

² The Secretary of Homeland Security, in consultation with the Attorney General, is authorized by statute to grant Temporary Protected Status to foreign nationals in the United States who cannot be safely returned to their country because of humanitarian conditions or other extraordinary circumstances. A TPS grant provides protection against removal and the ability to apply for employment authorization for an 18-month term. The Secretary can renew a designation of TPS for successive 18-month terms. "Application for Temporary Protected Status," USCIS, last accessed March 30, 2023, <https://www.uscis.gov/i-821>.

³ For more on TPS adjudication and FRN delays, see our letter at <https://tinyurl.com/TPSBacklogLetter>.

and receive other benefits open to TPS holders, including state IDs and driver's licenses, access to public healthcare, the ability to take out a loan, and eligibility for financial aid. Delayed work permits in particular threaten current and future employment opportunities. The sum of these delays is not only a demonstration of administrative failure but a direct threat to the ability of TPS holders to provide for themselves and their families.

Importantly, under the recent parole programs extended to nationals from Cuba, Haiti, Nicaragua, and Venezuela, TPS holders in the United States are able to sponsor their loved ones fleeing the same conditions that prevent them from returning.⁴ Delays in TPS adjudication also delay this ability to sponsor.

II. Delays in Federal Register Notices of TPS Designations

Forty-one percent of respondents reported that delays in publishing FRNs resulted in an inability for their clients to apply for new jobs and difficulty securing driver's licenses and other forms of state-issued identification.

Under the TPS statute, “[a]t least **60 days** before the end of the initial period of designation, and any extended period of designation, of a foreign state” DHS “shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation...**in the Federal Register.**”⁵

Federal Register Notices officially open the window in which TPS holders can re-register to maintain their TPS protection from deportation and work authorization. They contain information for TPS holders and their employers about work authorization and how to comply with the law. The notices may also be needed for TPS holders to maintain driver's licenses, access to bank accounts, apply for student loans, etc. In addition to the tremendous stress and confusion these delays cause for TPS holders and their families, delays also create fertile ground for fraud and those engaged in the unauthorized practice of law to take advantage of potential applicants.

III. TPS Application Backlog

Approximately 85% of those surveyed reported clients waiting over nine months for a decision on an application for TPS, with **50%** reporting clients waiting over twelve months. **Around 85%** of applications pending over nine months were initial applications, with most applications processed by the Potomac Service Center (58%) followed by the California Service Center (27%). In one particularly egregious case:

The initial TPS application was pending for 15 months before it was approved. The applicant had financial offers from different graduate schools. And one of these offers was for about \$75,000. The applicant had to decline the financial aid package and chose not to go to this school because of the delay.

For others, the failure to adjudicate TPS applications in a timely manner has negative consequences for collateral forms of relief. One respondent had to decline an offer of prosecutorial discretion in a client's removal case because the client had not yet received TPS status. Another reported a client was the only member of their family that did not

⁴ See *Frequently Asked Questions on the Parole Process for Cubans, Haitians, Nicaraguans and Venezuelans*, Catholic Legal Immigration Network, Inc., last updated March 20, 2023, <https://www.cliniclegal.org/resources/border-issues/frequently-asked-questions-parole-process-cubans-haitians-nicaraguans-and-venezuelans>.

⁵ 8 U.S. Code § 1254a(3)(A).

receive a decision on their TPS application, imperiling a pending adjustment of status application. For one respondent's client, by the time her TPS was approved the EAD was only valid for two months pending the country's redesignation. Reapplying for an EAD may incur hundreds of dollars in additional cost in fees, even when the applicant did not receive the full value of their previous work permit.

IV. Employment Authorization Delays

Aside from protection against removal, Employment Authorization is the most important benefit available to TPS holders. While about half of respondents reported it took a month to receive a decision on an EAD application after receiving a notice of approval of a TPS application, **over 50%** of respondents reported it took over six months for their clients to receive the approved EAD. **About 84%** of these delays were initial applications. Employers may often go by the expiration date on the EAD itself, not fully understanding how automatic extensions function. Respondents said that employers express concern that clients are unauthorized to work with only a notice of extension in the Federal Register Notice. This has led to loss of employment and harassment by employers, as reported by respondents.

When asked about the consequences of any observed EAD processing delays:

- **42%** said their clients were unable to apply to jobs
- **39%** said their clients faced financial hardship
- **32%** said their clients experienced loss of employment

About 46% of respondents mentioned that they had a client whose EAD expired prior to receiving proof of an extension or renewal due to USCIS-caused delays, most of which were initial applications. Delays in EAD processing and delivery have led to legal action against USCIS by TPS applicants from Afghanistan, Haiti, and Somalia.⁶

⁶ "Class Action Lawsuit Challenges Immigration Agency's Denial of the Right to Work to Temporary Protected Status Applicants," National Immigration Litigation Alliance, last accessed March 30, 2023, <https://immigrationlitigation.org/class-action-lawsuit-challenges-immigration-agencys-denial-of-the-right-to-work-to-temporary-protected-status-applicants/>.