AFTER TPS: OPTIONS AND NEXT STEPS

By ILRC Attorneys

Temporary Protected Status, or TPS, will end for hundreds of thousands of individuals in late 2018 and 2019.[1] As TPS recipients reregister for the final time with U.S. Citizenship and Immigration Services (USCIS), they should also consult with a trusted legal service provider to explore other legal options and begin the application process for any available forms of relief. TPS recipients have varying immigration histories and options for relief, therefore it is important to thoroughly assess each individual and build a strategy specific to their situation. This practice advisory describes what individuals with TPS might expect when their designation ends, outlines possible options for lawful status and relief from removal, and recommends some practical steps that advocates can take now to prepare for the end of TPS and to secure alternative forms of protection.

I. What Is TPS?

TPS is a form of temporary immigration relief available to people from specific countries designated by the Department of Homeland Security (DHS). TPS designations may result from civil war, natural disaster, or other conditions that make the return of nationals unreasonable. A TPS designation is a discretionary determination that the government can end upon notice. In order to be granted TPS, applicants must undergo an extensive application process, including establishing admissibility under all applicable inadmissibility grounds. Once granted TPS, recipients must regularly re-register to maintain their TPS status for as long as the designation continues. An individual with TPS is protected from removal, is eligible for work authorization, and may request permission to travel abroad under Advance Parole.

II. What Happens When TPS Terminates?

The termination of TPS will affect each individual differently and requires a case-by-case analysis. Generally, an individual automatically loses TPS on the last day of the final extension of her country's designation by the Attorney General.[2] On this date, this individual will revert to either no lawful status or to any status that she obtained while having TPS, if it remains valid on that date. For example, if an individual was granted asylum while she had TPS, she would remain an asylee on the date that her TPS ends. However, if an individual had no lawful status before she was granted TPS and did not obtain another status, she will have no lawful status when her TPS ends.

A CLIENT'S IMMIGRATION HISTORY WILL DETERMINE WHAT HAPPENS AFTER TPS ENDS!

It is imperative to understand the immigration history of a TPS recipient to determine how that individual might be impacted by the end of TPS. Below are some possible scenarios and tips for how to determine which category a particular TPS recipient might fall under.

No Prior Immigration Court Proceedings. It is unclear what steps DHS will take with regards to individuals whose TPS will expire. Recipients may be sent a letter indicating the termination of their status or may not be contacted at all. Individuals who previously had no lawful status before receiving TPS, and have not obtained other lawful status before TPS terminates, could be placed in removal proceedings if they have never been in removal proceedings. DHS can initiate these proceedings by mailing a Notice To Appear (NTA) to the individual at their last address of record. Individuals may also be placed in removal proceedings if they are stopped, arrested, or detained by Immigration and Customs Enforcement (ICE) after losing TPS. Before an NTA has been filed with the Immigration Court, the person can apply affirmatively for immigration relief.[3] However, once an NTA has been filed with the court, it is best to strategize with an attorney before filing any affirmative relief.

Prior Immigration Court Proceedings: Adminsitratively Closed. Many individuals were granted TPS while in removal proceedings, which were administratively closed upon receiving TPS. Administrative closure only takes a case off the Immigration Court's calendar but does not end removal proceedings. For this reason, many individuals who received TPS may not understand or remember that they are still in removal proceedings, especially after living with TPS for more than a decade. DHS may file a "motion to recalendar" with the Immigration Court at any time, which will place a person's case back on the Immigration Court's calendar. This individual will then have to apply for immigration relief in front of an immigration judge,[4] and the options available to her will vary based on when her removal or deportation proceedings began.[5] Additionally, many of these individuals might have submitted asylum applications in these proceedings. It is important to learn what is already in the court's file when developing a strategy. However, keep in mind that the individual may also apply for affirmative forms of relief, such as a U-visa or T-visa, while in removal proceedings. Therefore, advocates should help these clients apply for these options as soon as possible, regardless of their next scheduled appearance in immigration court.

Prior Immigration Court Proceedings: Final Order. Finally, some individuals may have completed removal proceedings and have a final order of removal or deportation.[6] Others may have an order of removal because they accepted voluntary departure in their removal proceedings but did not leave the country when they were required to leave. Because having TPS prevented these individuals from being removed, they may not remember or understand that they are at risk of being removed when they lose TPS. DHS can detain and remove these individuals upon the termination of TPS, if they do not take steps to reopen their removal orders. If possible, these individuals should file a motion to reopen the order of removal or order of deportation and try to seek a new opportunity to apply for lawful status or relief from removal. Motions to reopen have specific legal requirements and each case should be evaluated individually to determine if this strategy is advantageous for the client. Importantly, orders of removal entered in absentia (when the person did not appear at the hearing), have different rules. If the client can show that they never received notice of the hearing, they should pursue a motion to reopen.

Because any client who has had prior contact with the former INS, DHS, or the Immigration Courts may be at risk of removal or detention by DHS, it is important to understand a person's immigration history before her TPS ends. Advocates can call the Executive Office for Immigration Review (EOIR) Hotline (1-800-898-7180) to find out whether a person was or is currently in removal proceedings, has a prior order of removal, or has an upcoming hearing date. For those previously or currently in proceedings, it is recommended to submit a Freedom of Information Act (FOIA) request in order to review the court record.[7] Finally, individuals with prior removal cases should also seek legal advice from an immigration expert as soon as possible: https://www.immigrationadvocates.org/nonprofit/legaldirectory/. If an organization consults with a TPS recipient in this situation but does not represent individuals in removal proceedings, they should refer this person to an expert who does.

Example: *Fernanda is from El Salvador and was ordered deported in absentia by an immigration judge in 1996 because she did not receive her hearing notice. She was granted TPS in 1999 and has maintained this status since then. She married her U.S.-citizen wife in 2016.*

Because Fernanda has a deportation order, she can be removed when her TPS ends. Although Fernanda is married to a U.S.-citizen, she cannot apply for adjustment of status until she reopens her deportation order. Her wife should file an I-130 with USCIS as soon as possible so that the petition can be adjudicated while she still has TPS. Once the I-130 is approved, Fernanda should immediately file a motion to reopen with the Immigration Court to rescind her deportation order before she loses her TPS.

Example: *Omar is from Sudan and entered the United States on a tourist visa in 2009. He was placed in removal proceedings, which were administratively closed when he received TPS in 2013. Last year, he was violently attacked by a group of men as he was leaving Ramadan services. He reported the assault to the police and testified at the trial.*

Omar is now eligibile for a U visa, which would be a defense in his removal proceedings, once they resume. However, U-visa applicants must wait many years to receive a U visa because of processing backlogs and numerical limits. Therefore, Omar should apply for a U visa as soon as possible, even though it is unclear when the government would try to resume Omar's removal proceedings.

Example: *Marie is from Haiti and received TPS in 2010. She has never been in removal proceedings. Before Marie came to the United States, she received threats from a local criminal organization because she ran a small business affiliated with the ruling political party. She does not know whether the group will try to harm her if she returns to Haiti.*

Although Marie will have no lawful status when her TPS ends, it is unclear when or whether the government would place her in removal proceedings. While Marie is afraid to return to Haiti, her claim is not very strong. She probably should not file an affirmative asylum application, as it may be denied very quickly by the Asylum Office. However, she should talk to family and friends in Haiti about her fear of the criminal organization, gather any relevant evidence, and draft a statement about her experience so she can present evidence of her fear as part of a defensive asylum claim, if she is placed in removal proceedings.

III. Possible Alternative Immigration Options For TPS Holders

Many individuals with TPS may be eligible to remain in the United States because of their family ties, the length of time they have been in the United States, or the conditions in their home country. Some of these options may be time-limited or involve a multi-step application process. It is important to assess individuals for eligibility for relief as soon as possible and before they lose TPS. This section provides an overview of possible forms of immigration relief that TPS holders might be able to seek while they currently have TPS or after their status ends. It is important to look at all grounds of inadmissibility or bars to relief that may apply to the specific applicant to make sure she is eligible for the status that she seeks. Furthermore, it is important to determine the client's immigration history during this process because prior removal proceedings can affect an individual's eligibility for certain forms of relief. This section provides an overview of some forms of relief that may be available to individuals with TPS and things to keep in mind when helping someone with TPS consider what to do next.

A. Adjustment of Status

TPS holders with close family members who are U.S. citizens or Lawful Permanent Residents (LPRs) may be eligible for adjustment of status under INA § 245, if they have a lawful admission, live in certain areas of the United States, or were the beneficiary of a petition filed on or before April 30, 2001. This section explains how a TPS holder may be eligible to seek lawful permanent residence through a family member, by applying for adjustment of status in the United States. Immediate relatives of U.S. citizens who do not yet satisfy the requirements below should consider applying for and traveling on advance parole.

1. Applying under INA § 245(a)

Lawful Admission. Adjustment of status may be available to TPS holders who are immediate relatives[8] of a U.S. citizen and who have entered the United States on a nonimmigrant visa or have entered on parole. Under INA § 245(a), people who were admitted or paroled into the United States and who meet other requirements[9] may apply for adjustment of status and become lawful permanent residents in the United States.[10] Persons who have been "admitted" include those who entered the United States with a visa, as well as those who presented themselves for inspection at the border and were allowed to enter the country, even if the person was not questioned by immigration officials or in possession of a valid entry document.[11] Therefore, it is important to learn the exact circumstances of a client's entry into the United States, as she may have been admitted even if she did not enter with a visa.

TPS Holders Living in the Sixth and Ninth Circuits. Additionally, the Sixth and Ninth Circuits have said that a grant of TPS is considered an admission for purposes of adjustment under INA § 245(a).[12] These decisions make TPS recipients who reside in those circuits eligible to adjust through an immediate relative, regardless of their manner of entry.[13] Some federal district courts have also held that a grant of TPS may exempt applicants for admission from the bars to adjustment listed in INA § 245(c).[14] Therefore, individuals who have been petitioned through a family member in a preference category (not immediate relatives) may also be able to argue that they can apply for adjustment of status.

Advance Parole: People with TPS who currently do not have a prior admission or do not qualify under INA § 245(i) (see below) should consider applying for advance parole if they live outside the Sixth or Ninth Circuits. Advance Parole grants permission to an individual with a nonpermanent status to leave the United States and return to resume her status. Individuals who are not in removal proceedings should submit a Form I-131 application for advance parole to USCIS. People who are in removal proceedings or who have an outstanding removal order must submit their application to ICE. It is important to ensure that the individual seeking advance parole is not subject to any grounds of inadmissibility that may be triggered upon her departure and prevent her from being allowed back into the United States. Furthermore, if a person has a prior removal order, it is best to review eligibility for adjustment of status and advance parole before leaving the United States.

2. Applying under INA § 245(i)

INA § 245(i) may provide another option for adjustment of status for TPS recipients, especially those who are not immediate relatives or who live outside of the Sixth and Ninth circuits. Under INA § 245(i), people who entered without inspection (and are therefore ineligible for adjustment through INA § 245(a)) may adjust their status if any qualifying family member or employer filed an approvable family petition or labor certification on their behalf on or before April 30, 2001. Section 245(i) protection also extends to derivatives of petitions filed on or before April 30, 2001, whether or not the person was actually listed on the petition. This provision can also waive the bars at INA § 245(c), thus allowing family members in a preference category to adjust status. With some exceptions, people who adjust status under INA § 245(i) must pay a penalty fee of $1,000, in addition to the regular application fees. Individuals who are the beneficiary of a family petition filed between January 15, 1998 and April 30, 2001, must show physical presence in the United States on December 21, 2000.[15] An applicant for adjustment of status under this provision must be otherwise admissible, so it is important to see whether the client is barred by other grounds of inadmissibility, or is eligible for any waivers, before applying.

3. When to Apply

Immediate relatives who meet the requirements of INA § 245(a) or § 245(i), are not currently in removal proceedings, and do not have an outstanding removal or deportation order may submit an application for

adjustment of status to USCIS at any time. It is generally advantageous for the client to apply for adjustment of status as soon as they are eligible to do so and before the expiration of their TPS to avoid the complication of being placed in removal proceedings. An individual in removal proceedings generally must apply for adjustment of status in front of the immigration judge, in an adversarial proceeding. Note also that arriving aliens must apply to USCIS for adjustment of status even if they they are in removal proceedings, although they are also required to appear in Immigration Court.[16]

Additionally, someone who has never travelled with advance parole and has an unexecuted order of removal or deportation is ineligible for adjustment of status unless an immigration judge reopens this order.[17] A person with a final order of removal or deportation may file a motion to reopen with the Board of Immigration Appeals or the Immigration Court that last had jurisdiction over her removal proceedings.[18] If the order is reopened, the individual can apply for adjustment of status before the immigration judge or file a motion to terminate proceedings to adjust before USCIS.

Presumably, an individual with a final removal order who travels abroad on advance parole will execute this order when she departs the United States.[19] In the past, DHS has approved advance parole for individuals with a removal order and CBP has paroled them in to the United States upon reentry. Individuals who have executed their removal orders by leaving the United States and returning on advance parole are no longer under the jurisdiction of the Immigration Court and so may apply for adjustment of status with USCIS.[20] Thus, this may be an option for individuals with unexecuted removal orders who are unable to reopen their orders before the immigration judge or Board of Immigration Appeals (BIA). However, as a result of leaving the country, the individual will be inadmissible under INA § 212(a)(9)(A)(ii) and will need to apply for a Form I-212 waiver under INA § 212(a)(9)(A)(iii).[21] It is unclear whether the current administration will continue to approve or honor advance parole for individuals with removal orders who leave the United States and it is important to advise a client of the potential risks of this strategy. Additionally, there is some debate over USCIS's jurisdiction over these type of cases—i.e. returning TPS recipients with prior orders of removal.[22]

B. Asylum/Withholding/Protection under the Convention Against Torture

An individual who fears persecution or who would more likely than not be harmed or tortured in her home country may apply for asylum, withholding of removal, or protection under the Convention Against Torture ("CAT"). Many of the countries that have been designated for TPS have also experienced civil unrest that may involve persecution or torture.[23] For this reason, it is important to assess whether TPS recipients should apply for asylum or whether they may be eligible to apply for withholding of removal or protection under CAT in the event they are placed in removal proceedings in the future.[24] Additionally, it is important to confirm whether or not a TPS recipient filed for asylum before receiving TPS.

Practice Tip: When to File an Affirmative Application. On January 29, 2018, the Asylum Office announced that it will prioritize scheduling interviews for all recently filed affirmative asylum applications.[25] This means that any asylum application filed after this date should have an interview scheduled within 21 days. Applications that are denied by the Asylum Office will be immediately referred to the Immigration Court, which has a recent policy to expedite new cases.[26] Because of these new policies, advocates should avoid filing affirmative asylum applications unless the client's claim is strong. Keeping in mind the need to file quickly after any loss in status, or within one year of the last entry, advocates should consider waiting to file the application until gathering most evidence, as there will be a short period between filing the application and the interview.

1. Asylum

It is important to remember that INA § 208(a)(2)(B) requires an applicant to file for asylum within one year after her last arrival in the United States.[27] Because of this, an individual with TPS who has been in the United

States for longer than one year will need to show that she qualifies for an exception to this one-year bar,[28] and that she applied within a reasonable period of time in light of these circumstances.[29] An applicant who obtained TPS during her first year in the United States could argue she was in lawful status and thus fits into the "extraordinary circumstance" exception. However, advocates should explore all possible combinations of exceptions to the one-year bar; for example, an applicant may fit into an extraordinary circumstance exception if she entered with a nonimmigrant visa (such as a tourist or student visa) or suffered "serious illness or mental or physical disability" (such as Post-Traumatic Stress Disorder) during the first year, after which she received TPS and maintained it until she applied for asylum.

Some individuals with TPS may have traveled abroad on advance parole and returned to the United States within the past year. If they file within one year of reentering the United States, they would be eligible to apply for asylum without needing to show an exception to the one-year bar. In any case where the client left the United States, it is important to find out if the client ever returned to her home country, and, if so, the circumstances of her travel. An applicant's travel back to the home country without incidents of harm or persecution could undermine her asylum claim. Finally, individuals who have already applied for asylum (and been denied) may seek to reopen their asylum application based on changed country conditions.[30] However, advocates should review the applicant's original claim to ensure that it did not include fraud or misrepresentations (either intentional or unintentional), which could affect the client's eligibility to apply for asylum now.

2. Withholding of Removal and Protection Under CAT

In addition to asylum, individuals who fear returning to their country may apply for withholding of removal—also known as restriction on removal—or protection under CAT. These forms of relief are available to individuals who do not otherwise qualify for asylum[31] and may only be granted in removal proceedings. In order to qualify for withholding of removal or protection under CAT, the applicant must show that it is more likely than not, or 51%, that she would be harmed or subject to torture in her country.[32] These forms of relief from removal are mandatory, therefore the Immigration Judge must grant withholding of removal or protection under CAT if the applicant shows she meets the requirements. A grant of withholding or protection under CAT gives the applicant only limited benefits: the applicant has a final order of removal, but the government cannot remove the person to her country. She can also receive work authorization. Because the benefits of these forms of relief are very limited, it is important to explore a client's eligibility for other forms of immigration status and possible exceptions to bars to asylum eligibility.

C. Cancellation of Removal

A person can apply for cancellation of removal under INA § 240A(b) if she is in removal proceedings, has been in the United States for 10 years before being served an NTA, has had good moral character for the last 10 years, has not been convicted of certain criminal offenses, and has a U.S.-citizen or LPR spouse, parent or child (under 21 years old and unmarried) who would suffer exceptional and extremely unusual hardship if she is removed from the United States. Because many TPS designations have been in place for more than 10 years, many TPS recipients may qualify for cancellation of removal if they have never been in removal proceedings and if they have a qualifying relative.[33] Keep in mind that, if an individual has traveled on advance parole, it is important to calculate the time that she spent outside the United States during the prior ten years, to ensure that she did not break her continuous period of physical presence.[34] Additionally, individuals who were previously in deportation proceedings that were administratively closed or who reopened such proceedings may now qualify for suspension of deportation, which only requires 7 years of physical presence and good moral character, and considers extreme hardship to the applicant along with the applicant's qualifying relative.[35]

D. NACARA: An Option for Some Salvadoran TPS Recipients

Salvadorans may be eligible for cancellation of removal or suspension of deportation under the Nicaraguan and Central American Relief Act (NACARA). A Salvadoran national is eligible for NACARA benefits if she:

1) first entered the United States on or before September 19, 1990 and registered for benefits under the *American Baptist Churches v. Thornburgh* (*ABC*) settlement agreement on or before October 31, 1991, either by submitting an *ABC* registration (which includes an asylum application in the Ninth Circuit) or by applying for TPS, unless apprehended at the time of entry on or after December 19, 1990, or

2) filed an application for asylum with the INS on or before April 1, 1990.

An individual may also qualify for NACARA benefits if she was the spouse or unmarried child under 21 years of age of a person who was granted suspension under NACARA. However, this family relationship must have existed at the time that NACARA suspension or cancellation was granted to the spouse or parent. In addition to meeting this threshold eligibility, an applicant for NACARA benefits must have seven years continuous physical presence, not be subject to certain criminal grounds,[36] possess good moral character, and demonstrate that returning to her country of origin would result in extreme hardship to herself or a qualifying relative. Because NACARA requires that certain applications were filed by specific deadlines, it is important to review the entire case history for a given client by requesting copy of their file from a prior legal service provider and/or through a FOIA request with USCIS or EOIR.

E. Other Legal Options

Individuals who have lived in the United States with TPS may be eligible for a variety of other forms of relief that will not be covered extensively in this practice advisory. Potential options include:

- **U Visa:** Victims of qualifying crimes in the United States who have cooperated with law enforcement may be eligible for a U visa.[37]
- **T Visa:** Individuals who have been the victim of human trafficking may qualify for a T visa.[38]
- **VAWA:** Abused spouses, sons, or daughters of U.S. citizens or LPRs, abused parents of U.S. citizens who are at least 21 years of age, or non-abused parents of abused children of U.S. citizens or LPRs may also qualify for deferred action or adjustment of status under the Violence Against Women Act ("VAWA"), or be eligible to apply for VAWA Cancellation of Removal or Suspension of Deportation if they are in removal proceedings.[39]
- **PIP:** Close relatives of U.S. military personnel and veterans living in the United States without status may qualify for Parole-in-Place (PIP).[40]
- **Voluntary Departure:** Individuals in removal proceedings may avoid a removal order by leaving the United States under a grant of voluntary departure, which can also facilitate obtaining permanent resident status through consular processing.[41]

IV. What To Do Now

Although the TPS designations for most countries will not end until 2019, many of those who are eligible for other forms of lawful status will have an advantage if they begin seeking this relief as soon as possible. Some applications—such as for adjustment of status for preference category beneficiaries or for advance parole—

need to be filed with USCIS before TPS terminates, so that the applicant will not become ineligible for falling into unlawful status or be unable to reenter the country after traveling. Additionally, individuals at risk of being placed in removal proceedings, individuals with administratively closed cases, and those with final orders of removal, should immediately begin work with a legal representative to file any documents or motions that will keep them informed of the status of their proceedings or prevent DHS from executing an order of removal against them. This section provides an overview of suggested next steps for advocates working with individuals who will lose TPS and want to pursue legal avenues for remaining in the United States.

Step 1: Identify TPS Recipients and Contact Them About a Legal Consultation

Many TPS holders have had this status for more than a decade and may routinely renew their TPS status without exploring other legal options. Advocates should start reviewing case files and client databases now in order to identify TPS recipients and notify them, either through a letter or phone call, about the expiration date of their final TPS designation and the importance of a legal consultation to determine other options in their case. Emphasize the importance of getting a legal consultation soon—and avoid waiting until the TPS expiration date approaches—in order to apply for relief in advance of losing TPS status.

Step 2: Understand a TPS Holder's Immigration History and Assess Options For Relief

Because individuals with TPS have been in the United States for many years and entered the country in a variety of ways, it is important to do a thorough consultation to understand a client's entire immigration history. An individual who has TPS now may be in removal proceedings, may have a final order of removal, or may have reentered the United States after being removed. Additionally, an individual may be eligible for forms of relief—such as asylum or NACARA—based based on events that took place 20 years ago or more. It may be helpful to submit a FOIA request to USCIS, Customs and Border Protection (CBP), and/or the Executive Office for Immigration Review (EOIR) to get a full record of a client's immigration history and any prior applications filed by the client or on her behalf.[42] By entering a client's case number (also known as the A number) in the EOIR telephonic system (1-800-898-7180), it is possible to verify whether an individual has been in removal proceedings, has an upcoming hearing before an immigration judge, or has a final order of removal. If a client was or is in removal proeedings and a legal organization or office does not represent individuals in removal proceedings, it is important refer those clients to another legal service provider as soon as possible.

Step 3: If Eligible, Prepare Applications For Affirmative Relief

If an individual has never previously been in or is not currently in removal proceedings, she has more flexibility to decide when and how to apply for another immigration status. Individuals who can adjust status as an immediate relative or want to seek asylum can apply at any time, before or after losing TPS. Beneficiaries of family petitions who are not immediate relatives should apply for adjustment of status as soon as their priority date is current, in order to ensure that they do not fall out of status before their application is received by USCIS. Additionally, immediate relatives who do not yet have a lawful admission to the United States, who live outside of the Sixth and Ninth Circuits, and who are not eligible under INA § 245(i) should apply for and travel on advance parole before the expiration of their TPS. Individuals who are eligible for relief that is subject to a longer waiting period, such as U visas or a preference category visa, should apply for this relief as soon as possible so the client can wait out this period while having TPS. Finally, applicants for asylum must file their application within a reasonable period of time after the expiration of TPS, which is generally held to be 6 months. However, remember that the asylum office is currently processing new applications within 21 days. For this reason, advocates should be prepared for these cases to be decided quickly and for denied cases to be referred to an Immigration Court within weeks of the interview. See Section III, Part B.1 "Asylum" above for more details.

As explained in the prior section, placement in removal proceedings can affect an individual's eligibility for certain forms of immigration relief. It is unclear if or how DHS will refer individuals to removal proceedings after the termination of TPS. Remember that once an individual is placed in proceedings, the judge will decide their adjustment application, unless they can terminate the case to file with USCIS or the person is an arriving alien. Applying affirmatively with USCIS before being placed in removal proceedings gives the individual two opportunities to submit an adjustment or asylum application—once before USCIS and again at the Immigration Court if USCIS denies the case. This provides advocates an opportunity to address any unexpected inadmissibility or discretionary issues that come up before USCIS during the subsequent application process in Immigration Court. For these reasons, it is preferable to apply for any forms of affirmative immigration relief before being placed in removal proceedings, to ensure a less adversarial adjudication process, reserve the possibility of renewing a denied adjustment or asylum application before an immigration judge, and avoid the risk of being detained during removal proceedings.

Step 4: Make a Plan for Possible Removal Proceedings

Advocates can help their clients prepare for immigration enforcement by understanding their immigration history and taking steps to support a client who has an active case in Immigration Court. When a person has a case in Immigration Court that is administratively closed, DHS can file a motion to recalendar the case once the person loses TPS.[43] This person must appear before an immigration judge and assert a defense to being deported. To identify individuals affected by this, advocates should discuss any prior removal proceedings with their clients and check the EOIR telephonic system (1-800-898-7180) for any record of prior proceedings in Immigration Court. If an individual was previously represented by an attorney or accredited representative in her administratively closed proceedings, she should ensure that any attorney of record is aware that her proceedings will likely be recalendared. Advocates should also advise individuals to update their address with the Immigration Court or the BIA so they will receive any hearing notices when their proceedings are recalendared. If the prior attorney is no longer representing the client, the client should ask the attorney to withdraw from the case. Any new representative should file a motion to substitute counsel with the Immigration Court or BIA.[44]

While it is unclear at this time, it is possible that individuals who have never been in removal proceedings may be served an NTA by DHS once their TPS expires, if they do not have another lawful status. Adovcates should advise these clients to be aware of all mail that arrives at their address so they can know if or when DHS has sent them an NTA and when the Immigration Court has sent them a hearing notice.

Advocates can also help their clients prepare for upcoming removal proceedings by asking their clients to begin collecting documentary evidence for the forms of relief that they intend to request. A client whose case is placed on an expedited docket in the Immigration Court may not have enough time to gather all evidence necessary to support her application for relief from removal. Additionally, ICE may decide to detain an individual during her removal proceedings, which could impede her ability to obtain documents. Advocates should advise clients to take these steps as soon as possible so they are prepared in the event of these possible outcomes.

Step 5: Review Know-Your-Rights Information

It is unclear whether DHS will target TPS recipients upon the termination of their status. Regardless, TPS recipients who face the loss of their status, like everyone in the community, should understand their constitutional rights during an encounter with ICE agents: the right to remain silent and not answer any questions, the right not to open the door nor allow agents into their home unless the agents have a judicial search warrant, and the right to speak with an attorney. Individuals should not sign any document they do not

understand without first consulting with an attorney. Ensure TPS recipients memorize the phone number of a family member as well as their legal service provider in case of emergency.

Individuals who have final orders of removal are likely at the highest risk of being targeted by ICE enforcement after TPS ends. If possible, an individual who has a removal order should file a motion to reopen with the Immigration Court or BIA as soon as possible to avoid arrest or detention. An individual can file a motion to reopen if she did not know that she was in removal proceedings or the date of her hearing, failed to attend a hearing because of an exceptional circumstance, fears removal to her country because of changed circumstances in that country, or has an exceptional situation such as a serious illness.

Finally, individuals who have reentered the country without authorization after a final order of removal are ineligible for most immigration relief,[45] but may still seek withholding of removal or protection under CAT. Advocates should inform any clients with a bona fide fear of return who have a prior removal order that, in the event that they are detained by ICE, to tell immigration officials that that they are afraid of returning to their country. Advocates should also advise any TPS recipients to refuse to sign any documents before speaking with an attorney.

V. Conclusion

The termination of TPS status for many long-term residents of the United States brings much uncertainty. However, many are likely to qualify for another, more permanent form of status, given the length of residence in the United States, the strong family and community ties they have likely formed, and the fact that they have already been vetted repeatedly for admissibility. Through a careful review of a TPS recipient's case history and a detailed evaluation of their current legal options, advocates can assist families in transitioning smoothly out of the TPS program and, for many, onto a path to permanent status.

End Notes

[1] For more information, see www.uscis.gov/humanitarian/temporary-protected-status.
[2] 8 C.F.R. § 244.19 ("[O]n the last day of the most recent extension of designation by the Attorney General, [individuals] automatically and without further notice or right of appeal, lose Temporary Protected Status in the United States.").
[3] As explained in section III.A.3 below, this may also apply to individuals who have executed their removal orders and reentered the U.S. with authorization, such as advance parole.
[4] According to the new EOIR priorities memo, dated January 17, 2018, these recalendared cases will be on an expedited docket, which mandates that such cases be completed within 365 days of being placed back on the EOIR docket (if the individual is not detained).
[5] For example, an individual who was placed in deportation proceedings prior to April 1, 1997 will be eligible for suspension of deportation under former INA § 244(a), which has different requirements from cancellation of removal under INA § 240A(b).
[6] Note that individuals who have executed their removal orders should no longer have an outstanding order of removal and should no longer be under the jurisdiction of the Immigration Court. See section III.A.3 for a more-detailed discussion.
[7] For additional information on FOIA requests, see *FOIA Requests and Other Background Checks: A Practical Guide to Filing Records Requests in Immigration Cases*, https://www.ilrc.org/publications, and "A Step-By-Step Guide to Completing FOIA Requests with DHS" (November 2017), *available at* https://www.ilrc.org/sites/default/files/resources/foiaa-step_by_step-20171117.pdf.
[8] INA § 201(b)(2) defines an immediate relative as a spouse, child under 21, or parent of a U.S. citizen.
[9] See *Families & Immigration: A Practical Guide*, https://www.ilrc.org/publications, for additional information about family-based petitions.

[10] This practice advisory only addresses options for adjustment of status through family petitions. Many TPS recipients may have the ability to adjust through an employment-based petition. For more information about adjustment of status through one's employer, see https://pennstatelaw.psu.edu/sites/default/files/Practice%20Pointer.pdf.
[11] See *Matter of Quilantan*, 25 I&N. Dec. 285, 290–91 (BIA 2010) (holding that an admission only requires procedural regularity for purposes of adjustment of status, rather than compliance with substantive legal requirements); *Matter of Areguillin*, 17 I&N Dec. 308, 310 (BIA 1980).
[12] See *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013), and *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017). The Sixth Circuit includes the states of Kentucky, Michigan, Ohio, and Tennesee. The Ninth Circuit contains the the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.
[13] Immediate relatives need not have TPS at the time of applying for adjustment of status.
[14] See, e.g., *Figueroa v. Rodriguez*, No. CV 16-8218 PA (JCX), 2017 WL 3575284, at *4 (C.D. Cal. Aug. 10, 2017); *Guerrero v. Johnson*, 138 F. Supp. 3d 754, 760 (E.D. La. 2015) (holding that section 245(c) did not apply to a former crewman because "the broad and sweeping language of § 1254(f)(4) much more likely was meant to decisively and generally address the availability of adjustment to those with temporary protected status").
[15] Derivative beneficiaries of an I-130 petition need only show the physical presence of the principal beneficiary in the United States on this date. See 8 C.F.R. § 245(n). Beneficiaries of I-130 petitions filed before January 15, 1998 do not need to show proof of physical presence.
[16] See 8 C.F.R. § 1245.2(a)(1)(ii). But see Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MTNA"), § 304(c)(1)(A), Pub. Law 102-232, December 12, 1991 (codified as amended at section 244 of the Act, Note 3) (explaining that an individual with TPS who travels on Advance Parole "shall be inspected and admitted in the same immigration status the alien had at the time of departure").
[17] Additionally, individuals who were removed or who left the United States while having a final order of removal could be ineligible for adjustment of status if they reentered the United States without authorization. INA §§ 212(a)(9)(A)(ii) (declaring inadmissible an individual who seeks to reenter the United States after being ordered removed), 241(a)(5) (authorizing DHS to reinstate a prior order of removal).
[18] See *Removal Defense: Defending Immigrants in Immigration Court*, https://www.ilrc.org/publications, for additional information about motions to reopen. See also 8 C.F.R. §§ 1003.2 & 1003.23 for a list of reasons that a final order of removal may be reopened by the BIA or immigration judge.
[19] INA § 101(g) ("For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.").
[20] While *Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), held that a departure under advance parole did not trigger the unlawful presence bar under INA § 212(a)(9)(B)(i)(II), it did not address the effect of departing pursuant to advance parole for the ground of inadmissibility at INA § 212(a)(9)(A). While advocates have encountered some confusion by USCIS and EOIR when adjudicating adjustment of status applications for individuals who have departed with a final removal order and reentered on Advance Parole, it still remains that applicants who have traveled on advance parole are "arriving aliens" upon return. Therefore, USCIS has jurisdiction over these applications, pursuant to 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1)(i). Advocates may be required to file a motion to reopen with EOIR even when an individual with a final removal order has left on advance parole, based on readings of the MTNA by unpublished BIA decisions.
[21] See *Families & Immigration: A Practical Guide*, https://www.ilrc.org/publications, for more information about adjustment of status and the I-212 waiver.
[22] See, supra, footnote 20.
[23] For more information about the eligibility requirements for asylum, withholding of removal, and protection under CAT, see *Essentials of Asylum Law*, https://www.ilrc.org/publications.
[24] While individuals may apply for asylum both affirmatively before USCIS and defensively before an immigration judge in removal proceedings, only an immigration judge can grant withholding of removal or protection under CAT. Therefore, individuals who are not in removal proceedings cannot seek this relief until removal proceedings have been initiated by DHS.
[25] https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling.
[26] EOIR Memorandum, *Case Priorities and Immigration Court Performance Measures*, James R. McHenry, Director (January 17, 2018), *available at* https://www.justice.gov/eoir/page/file/1026721/download.
[27] There is no similar requirement for withholding of removal or protection under CAT.
[28] A non-exhaustive list of exceptions to the one-year bar are listed at INA § 208(a)(2)(D) and 8 C.F.R. § 208.4(a)(4)-(5).
[29] "Reasonable time" has been defined by some circuits as 6 months, but can vary based on the circumstances of the applicant's case. See, e.g., *Wakkary v. Holder*, 558 F.3d 1049, 1057 (9th Cir. 2009).

[30] Note that, unlike an exception to the one-year bar, changed personal circumstances do not qualify to reopen a previously denied asylum application.
[31] Examples of bars to asylum include exceptions to asylum eligibility listed at INA § 208(a)(2) (e.g. the one-year bar, previously denied asylum application) and at INA § 208(b)(2) (e.g. particularly serious crime, persecutors).
[32] For more information about the eligibility requirements for withholding of removal and protection under CAT, see *Essentials of Asylum Law*, https://www.ilrc.org/publications.
[33] Individuals whose children are not under 21 years old do not count as a qualifying relative for cancellation of removal, but should consider adjustment of status if the child is a U.S. citizen.
[34] See INA § 240A(b)(2)(B) for an explanation of which absences break continuous physical presence.
[35] An individual in the Ninth Circuit may also qualify for ten-year suspension of deportation if she pled guilty to an offense before April 1, 1997, would have been deportable under the crime grounds based on a conviction by this plea, establish good moral character for ten years after the conviction, have ten years of continuous physical presence, and show exceptional and extremely unusual hardship to herself or a qualifying relative.
[36] See 8 C.F.R. § 1240.65 (suspension of deportation) and 8 C.F.R. § 1240.66 (cancellation of removal) for the complete list of criminal bars to NACARA.
[37] For more information, see *The U Visa: Obtaining Status for Immigrant Victims of Crime*, https://www.ilrc.org/publications.
[38] For more information, see *Representing Survivors of Human Trafficking: A Promising Practices Handbook*, https://www.ilrc.org/publications.
[39] For more information, see *The VAWA Manual: Immigration Relief for Abused Immigrants*, https://www.ilrc.org/publications.
[40] For more information, see *Parole in Immigration Law*, https://www.ilrc.org/publications.
[41] For more information about family-based immigration through consular processing, see *Families & Immigration: A Practical Guide*, https://www.ilrc.org/publications. For more information about voluntary departure in removal proceedings, see *Removal Defense: Defending Immigrants in Immigration Court*, https://www.ilrc.org/publications.
[42] For additional information on FOIA requests, see *FOIA Requests and Other Background Checks: A Practical Guide to Filing Records Requests in Immigration Cases*, https://www.ilrc.org/publications, and "A Step-By-Step Guide to Completing FOIA Requests with DHS" (November 2017), *available at* https://www.ilrc.org/sites/default/files/resources/foiaa-step_by_step-20171117.pdf.
[43] Note that the Attorney General recently held that immigration judges no longer have the authority to administratively close cases without agreement of both parties in Immigration Court and ordered the Immigration Courts to recalendar cases upon a motion by either party. See *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018). It is unclear whether this decision will immediately affect the administratively closed cases for individuals who currently have TPS.
[44] Advocates should consult the Immigration Court Practice Manual, Chapter 2.3, for guidance on how to file a motion to substitute counsel, *available at* https://www.justice.gov/eoir/office-chief-immigration-judge-0.
[45] See *The U Visa: Obtaining Status for Immigrant Victims of Crime*, https://www.ilrc.org/publications, for an explanation of how to obtain a waiver of a prior order of removal.

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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.