



TPS FOR VENEZUELA

An Overview

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I. Introduction

Temporary Protected Status (TPS) is a form of temporary immigration relief available to people from specific countries designated by the Department of Homeland Security (DHS).¹ TPS designations may result from civil war, natural disaster, or other conditions that make the return of nationals unreasonable. Once a country is designated for TPS, nationals from that country who are already living in the United States may apply for TPS. After an individual is 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.

On March 9, 2021, the Biden administration announced the designation of Venezuela for TPS, effective March 9, 2021 through September 9, 2022.² The registration period began on March 9, 2021 and ends on September 5, 2021. It is anticipated that approximately 300,000 individuals will benefit from this TPS designation. The Biden administration also provided guidance for Deferred Enforced Departure (DED) for Venezuela, which was announced in January.

This advisory will describe the requirements and application process for TPS for Venezuelan nationals as well as provide an overview of DED for Venezuela.

Please note, ten other countries are currently designated for TPS, but the Trump administration ordered the termination of TPS for six of those countries and litigation challenging those terminations is on-going. It is expected that the Biden administration will make an announcement about the future of those designations in the coming months.

¹ INA § 244.

² *Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure*, 86 FR 13574, (Mar. 9, 2021).

II. The Requirements to Apply for TPS for Venezuela

Requirements to apply for Venezuela TPS are as follows:

- 1) Be a national of Venezuela (or a noncitizen without a nationality who last habitually resided in Venezuela);
- 2) Have continuously resided in the United States since March 8, 2021; and
- 3) Have been continuously physically present in the United States since March 9, 2021.

Generally, a TPS applicant must show they are admissible. However, the specific grounds and bars to TPS differ somewhat from those of other immigration programs.³ For example, public charge does not apply. Other grounds of inadmissibility may be waived through a waiver based on humanitarian reasons, to ensure family unity, or if otherwise in the public interest.⁴ But an individual, even if they meet the above requirements, will be ineligible for TPS if any of the following apply:

- Have been convicted of any felony or two or more misdemeanors committed in the United States;
- Are found inadmissible under applicable grounds in INA section 212(a), including non-waivable criminal and security-related grounds; or
- Are subject to any of the mandatory bars to asylum. These include, but are not limited to, participating in the persecution of another individual or engaging in or inciting terrorist activity.⁵

Each applicant must be individually eligible for TPS as there is no option to qualify as a derivative.

The 180-day registration period for Venezuelan TPS is March 9, 2021 until September 5, 2021. Once the initial registration period closes, the only way to register is by qualifying for late initial registration, which has stricter requirements.⁶

III. The Application Process for TPS for Venezuela

Eligible individuals can file an application for TPS on Form I-821 along with an application for an employment authorization document (EAD) on Form I-765.⁷ The EAD category for TPS is (a)(12). In addition to completed Forms I-821 and I-765, applicants must include the following documents with their initial TPS application packet:

- 1) Proof of Venezuelan nationality (passport, birth certificate and form of photo ID, or other government issued identification such as driver's license, voter registration card, etc.) or secondary evidence and proof of inability to secure such documents;

³ See 8 CFR § 244.3.

⁴ INA § 244 (c)(2)(A).

⁵ INA § 244(c)(2)(B).

⁶ See USCIS guidance under the "Filing Late" tab here: <https://www.uscis.gov/humanitarian/temporary-protected-status#:~:text=USCIS%20may%20accept%20a%20late,with%20your%20re%2Dregistration%20application>.

⁷ Forms I-821 and I-765 are available for free from the USCIS website, at <https://www.uscis.gov/i-821> and <https://www.uscis.gov/i-765>, respectively. Always make sure you are using the most current edition of the form.

- 2) Proof of date of entry into the United States (passport, visa, and I-94 card or proof of presence in the United States after unlawful entry, see below);
- 3) Proof of continuous residence in the United States since March 8, 2021 and physical presence since March 9, 2021. Documents with the name of the applicant and date that indicate presence in the United States are acceptable, including pay stubs, medical records, educational records, bills, banks statements, etc.;
- 4) 2 passport-style photos;
- 5) Application fee⁸ or request for a fee waiver on Form I-912⁹ with supporting evidence;
- 6) If applicable, Form I-601¹⁰ and supporting evidence to waive any relevant grounds of inadmissibility; and
- 7) If applicable, certified court dispositions from any criminal case.

Applications for TPS for Venezuela are processed at specific USCIS processing centers and applicants should verify the correct address for sending the TPS application packet based on their place of residence.¹¹ A denial of TPS may be appealed to USCIS's Administrative Appeals Office.¹² An Immigration Judge (IJ) may review the denial of TPS by the AAO, and in limited circumstances an IJ can be the initial adjudicator of TPS, such as when a Notice to Appear has been issued where a TPS application was pending with USCIS.¹³

IV. Denials and Approvals for TPS for Venezuela

A. Denials

As stated, applicants who have their TPS application denied can appeal that decision to the Administrative Appeals Office (AAO) by filing Form I-290B. Applicants also have the option to re-apply if they are able to correct any deficiencies in the initial application and it is still within the registration period. A TPS denial can be reviewed *de novo* by an immigration judge for individuals who are placed in removal proceedings.

B. Approvals

Applicants approved for TPS will be sent a notice of approval and, if they filed Form I-765, a work permit valid until September 9, 2022. If TPS was granted by an IJ, the recipient can apply for an EAD by filing Form I-765 with USCIS and attaching the judge's order. Once the individual has a valid work permit, they can seek a Social Security Number as well as a driver's license or state identification in accordance with state law. TPS recipients should keep USCIS updated about their address in order to receive any relevant notices and documents by filing a Form AR-11 and doing an online change of address at: <https://egov.uscis.gov/coa/displayCOAForm.do>. Because TPS for Venezuela is only valid for an 18-month period, it is important that TPS recipients remain

⁸ For current fees, please check the USCIS website: <https://www.uscis.gov/forms/filing-fees>.

⁹ Form I-912 and form instructions available at <https://www.uscis.gov/i-912>.

¹⁰ Available at <https://www.uscis.gov/i-601>.

¹¹ See "Temporary Protected Status Designated Country: Venezuela" on USCIS website: <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela>.

¹² 8 CFR §§ 244.10, 1244.10.

¹³ 8 CFR §§ 244.18(b), 1244.18(b), 1244.7(d).

informed about the re-authorization of TPS, which is announced at least 60 days prior to the expiration date of the current designation.

NOTE: A grant of TPS “stops the clock” for the one-year filing rule for asylum applications. This means that if one year has not already passed since a TPS applicant’s arrival in the United States, the grant of TPS will stop the clock from running.¹⁴

V. DED for Venezuela

Deferred Enforced Departure (DED) is a form of protection available to nationals of certain countries as designated by the President pursuant to their foreign relations authority. It is not an immigration benefit but rather a stay of removal that prevents the removal of certain nationals of designated countries and can provide work authorization. DED was authorized for Venezuela on January 19, 2021 and an official announcement and guidance was provided on March 9, 2021.¹⁵ DED applies to eligible Venezuelan nationals (or stateless persons who last habitually resided in Venezuela) who have continuously resided in the United States since January 20, 2021. There are limitations to eligibility, including individuals who:

- Have voluntarily returned to Venezuela or their country of last habitual residence;
- Are inadmissible under INA section 212(a)(3) (8 U.S.C. 1182(a)(3)) or removable under INA section 237(a)(4) (8 U.S.C. 1227(a)(4));
- Have been convicted of any felony or two or more misdemeanors or meet the criteria in INA section 208(b)(2)(A) (8 U.S.C. 1158(b)(2)(A));
- Were deported, excluded, or removed before January 20, 2021;
- Are subject to extradition;
- The Secretary of Homeland Security has determined their presence is not in the interest of the United States or presents a danger to public safety; or
- The Secretary of State has reasonable grounds to believe their presence would have potentially serious adverse foreign policy consequences for the United States.¹⁶

DED for Venezuela will remain in effect until July 20, 2022, unless it is extended by the President. There is no affirmative application process for DED but those who are eligible can apply for work authorization by filing Form I-765 under category (a)(11) along with the filing fee (or a fee waiver request on Form I-912 and supporting documents) and evidence of Venezuelan nationality and proof of continuous residence since and physical presence as of January 20, 2021 (see above discussion of the TPS application process for descriptions of acceptable documents to prove nationality and physical presence).

¹⁴ See 8 CFR § 208.4(a)(5)(iv).

¹⁵ *Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure*, 86 FR 13574, (Mar. 9, 2021).

¹⁶ DED Granted Country: Venezuela, USCIS, available at: www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-venezuela.

Many Venezuelan nationals may be eligible for both TPS and DED. However, it is important to note that TPS is a greater form of protection than DED, as it provides a legal status and is supported by a statute, regulation and caselaw. DED is an administrative stay of removal, not a specific status, that is ordered by the President.

VI. Other Considerations

TPS for Venezuela provides an important opportunity for many people to gain stability and protection. However, it is important to think strategically about the options and goals of each TPS holder and to consider longer-term opportunities and benefits.

- ✓ TPS recipients with current TPS protection can apply for permission to travel abroad on Advance Parole but should be careful not to remain outside the United States beyond the approval date of their Advance Parole document and the validity period of their TPS. Given the COVID-19 pandemic, those who plan to travel should consider relevant travel restrictions, take precautions to stay healthy while abroad, and allow for additional time to return to the United States in case they encounter travel difficulties. If a TPS recipient has a pending asylum application or plans to file an application for asylum, they should avoid travel to their home country which could undermine their asylum claim.
- ✓ TPS beneficiaries should consult an expert about other legal options that provide a more permanent status. It is permissible to apply for another form of status while having TPS and it is a good idea to start those application processes while still protected by TPS. Community members can find a free or low-cost immigration legal service provider in their area by searching by their zip code in this national directory: www.immigrationadvocates.org/nonprofit/legaldirectory/.

Note: TPS recipients with family members who are lawful permanent residents or U.S. citizens may be able to gain permanent residence through family-based immigration. This process can take place either in the United States or at the U.S. embassy or consulate in their country of origin, depending on how they first entered the United States, where they now live, if they had a family petition pending on or before April 30, 2001, and if they have travelled on Advance Parole prior to August 20, 2020. It is critical to talk with a legal service provider about the best strategy for family-based immigration.

- ✓ Stay informed about developments. Many factors are at play that could determine future legal options for TPS recipients from Venezuela and other TPS-designated countries, including further announcements from the Biden administration as well as proposed legislation. For more information and updates, visit: ilrc.org, nationaltpsalliance.org, and cliniclegal.org/issues/temporary-protected-status-tps-and-deferred-enforced-departure-ded.



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