



# TPS EAD EXTENSION FOR EL SALVADOR, HAITI, HONDURAS, NEPAL, NICARAGUA, AND SUDAN

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On November 1, 2019 the Department of Homeland Security (DHS) announced the automatic extension of employment authorization and other documentation for Temporary Protected Status (TPS) holders from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan.<sup>1</sup> Each of those TPS-designated countries was set to expire in 2020 but will now be automatically extended through January 4, 2021. The notice in the Federal Register was published on November 4, 2019.<sup>2</sup>

This announcement applies to the employment authorization documents (EADs) and other documentation for TPS holders from these countries, not to the TPS designations of these countries. In other words, while the documents will be extended, DHS could require TPS holders from these countries to re-register at some later point. If they do, DHS will announce this, and the procedure to re-register, in a future Federal Register notice. Until then, TPS holders must continue to maintain their TPS eligibility and re-register as required.

## I. Background

In recent years, the Trump administration has sought to terminate TPS designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan as each country's TPS designation came up for review, a move that would throw the families of hundreds of thousands of TPS holders into limbo. However, lawsuits filed in the U.S. District Court for the Northern District of California<sup>3</sup> and the U.S. District Court for the Eastern District of New York<sup>4</sup> have resulted in court orders that, for now, halt the administration's attempts to end TPS for all six countries. The judges in two of the cases, *Ramos*<sup>5</sup> and *Saget*,<sup>6</sup> have issued preliminary injunctions blocking termination of TPS; together the injunctions cover all six countries. The Court in the third case, *Bhattarai*,<sup>7</sup> has issued a stay of proceedings, pending the outcome of the government's appeal of the *Ramos* preliminary injunction.

<sup>1</sup> USCIS, "DHS Extends TPS Documentation for Six Countries," <https://www.uscis.gov/news/alerts/dhs-extends-tps-documentation-six-countries>.

<sup>2</sup> 84 FR 59403, found online at <https://www.federalregister.gov/documents/2019/11/04/2019-24047/continuation-of-documentation-for-beneficiaries-of-temporary-protected-status-designations-for-el>.

<sup>3</sup> *Ramos, et al. v. Nielsen, et al.*, No. 18-cv-01554 (N.D. Cal. Oct. 3, 2018); *Bhattarai v. Nielsen*, No. 19-cv-00731 (N.D. Cal. Mar. 12, 2019).

<sup>4</sup> *Saget, et al., v. Trump, et al.*, No. 18-cv-1599 (E.D.N.Y. Apr. 11, 2019).

<sup>5</sup> *Ramos, et al. v. Nielsen, et al.*, No. 18-cv-01554 (N.D. Cal. Oct. 3, 2018).

<sup>6</sup> *Saget, et al., v. Trump, et al.*, No. 18-cv-1599 (E.D.N.Y. Apr. 11, 2019).

<sup>7</sup> *Bhattarai v. Nielsen*, No. 19-cv-00731 (N.D. Cal. Mar. 12, 2019).

The cases will continue to be litigated as they—and [numerous other lawsuits challenging the Trump administration's termination of TPS designations for these countries](#)—wind their way through the courts. USCIS is ostensibly extending employment authorization for these TPS-designated countries while the preliminary injunctions remain in place. TPS holders from El Salvador, Honduras, Nepal, Nicaragua, and Sudan will retain their TPS while the *Ramos* case remains in effect, provided their TPS is not withdrawn because of individual ineligibility. TPS holders from Haiti will retain their TPS while the *Ramos* or *Saget* cases remain in effect, provided their TPS is not withdrawn because of individual ineligibility. TPS holders from Honduras and Nepal will also retain their TPS while the *Bhattarai* order to stay proceedings is in effect, again as long as their TPS is not withdrawn because of individual ineligibility.

The fate of TPS is likely to end up at the U.S. Supreme Court. Nonetheless, the November 4, 2019 notice in the Federal Register sets forth the Trump administration's timeline for terminating TPS for these countries, if it succeeds in its attempts to overcome the court orders currently blocking TPS termination for these countries.

Specifically, the November 4 notice provides there will be additional time before TPS termination takes effect if the government is allowed to proceed with its plans to terminate TPS for the six countries, as follows:

If the Trump administration ultimately prevails in its appeal of the *Ramos* preliminary injunction, **TPS for Honduras, Nepal, Nicaragua, and Sudan** will remain in effect for at least 120 days from the issuance of any appellate mandate to the district court.

If the Trump administration ultimately prevails in its appeal of the *Ramos* preliminary injunction, **TPS for El Salvador** will remain in effect for at least 365 days from the issuance of any appellate mandate to the district court. DHS claims additional time was given to TPS holders from El Salvador because there are so many more of them, compared to the other groups.<sup>8</sup>

If the Trump administration ultimately prevails in its appeal of both the *Ramos* and the *Saget* preliminary injunctions, **TPS for Haiti** will remain in effect for at least 120 days from the issuance of any appellate mandate to the latter of the two district courts.

If the Trump administration prevails in a motion to vacate the *Bhattarai* order to stay proceedings, **TPS for Honduras and Nepal** will remain in effect for at least 180 days following the District Court's order vacating the stay of proceedings.

Note there are different timeframes for the same country, in some instances, depending on the outcome of a particular legal challenge.

## II. Automatic Extension of TPS-Based EADs for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan

The automatic extension impacts the following TPS-designated countries in Table 2, below, with the following validity periods (reprinted from the Federal Register).

<sup>8</sup> There is some speculation that the additional time for TPS holders from El Salvador may also be related to [a recent agreement with El Salvador on asylum seekers](#).

Country	Beginning date of validity:	End date of validity:	Validity of Forms I-94 and I-797 extended through:
El Salvador	Sept. 10, 2016	Mar. 9, 2018	01/04/2021
	Mar. 10, 2018	Sept. 9, 2019	01/04/2021
Haiti	Jan. 23, 2016	Jul. 22, 2017	01/04/2021
	Jul. 23, 2017	Jan. 22, 2018	01/04/2021
	Jan. 23, 2018	July 22, 2019	01/04/2021
Honduras	July 6, 2016	Jan. 5, 2018	01/04/2021
	Jan. 6, 2018	July 5, 2018	01/04/2021
	July 6, 2018	Jan. 5, 2020	01/04/2021
Nepal	Dec. 25, 2016	June 24, 2018	01/04/2021
	June 25, 2018	June 24, 2019	01/04/2021
Nicaragua	July 6, 2016	Jan. 5, 2018	01/04/2021
	Jan. 6, 2018	Jan. 5, 2019	01/04/2021
Sudan	May 3, 2016	Nov. 2, 2017	01/04/2021
	Nov. 3, 2017	Nov. 2, 2018	01/04/2021

For TPS holders from these countries, the employment authorization document (also known as an EAD or a work permit) will be automatically extended past the expiration date on the EAD card. TPS holders can continue to use their EAD through January 4, 2021 and can show employers a copy of the Federal Register Notice<sup>9</sup> to explain that their EAD has been extended through January 4, 2021; they do not have to submit any application or filing fee or do anything to renew.

TPS holders who have an EAD without a January 4, 2021 expiration date on it are covered by this automatic extension if their EAD contains one of the expiration dates listed in Table 1, below (reprinted from the Federal Register):

<sup>9</sup> 84 FR 59403.

Table 1—Affected EADs

If an EAD has a category code of A-12 or C-19 and an expiration date of:	Then the validity of the EAD is extended through:
07/22/2017	01/04/2021
11/02/2017	01/04/2021
01/05/2018	01/04/2021
01/22/2018	01/04/2021
03/09/2018	01/04/2021
06/24/2018	01/04/2021
07/05/2018	01/04/2021
11/02/2018	01/04/2021
01/05/2019	01/04/2021
04/02/2019	01/04/2021
06/24/2019	01/04/2021
07/22/2019	01/04/2021
09/09/2019	01/04/2021
01/02/2020	01/04/2021
01/05/2020	01/04/2021
03/24/2020	01/04/2021

TPS holders covered under this extension should enter “January 4, 2021” as the expiration date of their EAD on any Employment Eligibility Verification (Form I-9) or other employment documentation. The Federal Register notice provides guidance to share with employers about how to complete Form I-9 in this situation.

### III. What Do TPS Holders from El Salvador, Honduras, Nepal, Nicaragua, and Sudan Need to Do Now?

As long as the **TPS holder from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan is currently and properly registered and has a TPS-related EAD**, no new Application for Employment Authorization (Form I-765), other form or filing fee is required for their EAD to be *automatically extended* through January 4, 2021. The Federal Register Notice dated November 4, 2019 automatically extends their EAD. However, sometimes this can be difficult for TPS holders to explain to their employers, and the Federal Register Notice is also hard to understand. See **Sample Employer Letter**, attached as an appendix to this advisory, for a sample letter that practitioners can give to clients, to in turn give to their employers, explaining the automatic extension.<sup>10</sup>

<sup>10</sup> Thank you to the Central American Resource Center (CARECEN) in San Francisco for providing the sample employer letter.

For **TPS holders who have not re-registered their TPS status**, they may file an Application for Temporary Protection Status (Form I-821), but they will have to show “good cause” for failing to re-register on time.<sup>11</sup>

**Properly registered TPS holders from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan who do not have an EAD or pending EAD** application may file an Application for Employment Authorization (Form I-765) with the appropriate filing fee or Request for Fee Waiver (Form I-912).<sup>12</sup>

Although TPS holders from El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan do not need to apply for a new EAD to qualify for this automatic extension, **if they wish to obtain a new EAD that reflects the extended expiration date of January 4, 2021**, they may do so by filing an Application for Employment Authorization (Form I-765) with the appropriate filing fee or Request for Fee Waiver (Form I-912).

For **TPS holders with a pending I-821 or I-765 application**, they do not need to file a new application and, if approved, their EAD will be valid through January 4, 2021.

#### IV. All TPS Holders Should Explore Other Options for More Permanent Status

While in valid TPS status, TPS holders can remain in the United States, avoid removal, obtain a work permit, and travel outside the country with advance parole. However, TPS does not in and of itself provide a pathway to lawful permanent resident status.

If TPS ends, the TPS holder may be able to:

- Return to the same immigration status or category they maintained before TPS, if they remain eligible and the status or category still exists, or
- Return to any other lawfully obtained status or category received while in TPS status, as long as it is still valid on the date TPS terminates. For example, if a person was granted asylum while they had TPS, they would remain an asylee on the date their TPS ends.

In all cases, TPS holders do not have to immediately leave the United States if their TPS designation ends.

Before and even if TPS ends, current TPS holders should explore what other options they may have. For more information on possible options for lawful status and relief from removal, and practical steps that advocates can take now to prepare for the end of TPS and to secure alternative forms of protection, see the ILRC’s practice advisory, *After TPS: Options and Next Steps*, available at <https://www.ilrc.org/after-tps-options-and-next-steps>.

Some TPS holders may be able to adjust status to that of a lawful permanent resident. TPS holders in the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington) or the Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee) may be eligible to adjust status through an immediate relative petition, even if they have not been inspected and admitted or paroled. Others, who do not live in the Ninth or Sixth Circuits, may have a parole entry leading to adjustment eligibility, if they have traveled and returned with TPS advance parole. Others still may have entered with inspection or be eligible for adjustment under 245(i).

<sup>11</sup>See INA § 244(c)(3)(C), 8 CFR § 244.14(b).

<sup>12</sup> Note that USCIS is changing fee waiver form and policy starting December 2, 2019, when it will require use of a revised Form I-912 that removes receipt of means-tested benefits as a way to qualify for a fee waiver. For more information, see ILRC, *Practice Alert: Upcoming Elimination of Means-Tested Benefits as Basis for Fee Waiver Requests*, (June 2019), <https://www.ilrc.org/practice-alert-upcoming-elimination-means-tested-benefits-basis-fee-waiver-requests>.

For more information on adjustment eligibility for TPS holders, see ILRC, *Practice Alert on Ramirez v. Brown – November 2017 Update: Adjustment Opportunities for People with TPS and People Whose TPS Will Expire*, available at <https://www.ilrc.org/practice-alert-ramirez-v-brown-november-2017-update-adjustment-opportunities-people-tps-and-people>.

Other immigration options may also be available. All TPS holders should have an immigration “check-up” to get screened for other immigration options. Most TPS holders have been living in the United States for decades, and over the years the facts in their case may have changed, potentially yielding new options for immigration relief. For clients outside your area, you may search for legal service providers and referrals closest to concerned community members by visiting the Immigration Advocates Network’s National Immigration Legal Services Directory at: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>.



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