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Update on Bhattarai v. Nielsen

The termination of Temporary Protected Status (TPS) for Honduras and Nepal will not take effect until further notice as a result of the court order in Bhattarai v. Nielsen.

As required by the court-approved stipulation in [Bhattarai v. Nielsen](#), No. 19-cv-731 (N.D. Cal), USCIS will extend appropriate TPS-related documentation (Employment Authorization Documents (EADs); Forms I-797, Notice of Action; and Forms I-94, Arrival/Departure Record) for eligible beneficiaries of TPS for Honduras and TPS for Nepal while the appeal of the preliminary injunction in [Ramos v. Nielsen](#), No. 18-cv-16981 (9th Cir.) continues its way through the legal system.

While the appeal is pending in [Ramos](#) – a case which presents similar issues to those presented in [Bhattarai](#) – DHS may not terminate TPS for beneficiaries under the designations for Honduras or Nepal, provided that a beneficiary's TPS is not withdrawn under INA section 244(c)(3) or 8 CFR 244.14 because of individual ineligibility. On May 10, 2019, DHS published the first Federal Register Notice (FRN), extending the TPS-related documentation for beneficiaries of TPS Nepal. See 81 FR 74470. On Nov. 4, 2019, DHS published a subsequent [FRN](#) that automatically extends the validity of TPS-related documentation for beneficiaries under the TPS designations for Honduras and Nepal through Jan. 4, 2021.

Current Status

The court order adopting the parties' joint stipulation to stay proceedings is currently in effect. As a result of this order, pending the resolution of the appeal in [Ramos](#), the TPS designations of Honduras and Nepal remain in effect.

On Nov. 1, 2019, DHS announced an FRN for eligible, affected beneficiaries of TPS for Honduras and Nepal that automatically extends the validity of TPS-related documents for the affected beneficiaries through Jan. 4, 2021.

The government has filed its appeal of the preliminary injunction in [Ramos](#) to the U.S. Court of Appeals for the Ninth Circuit. However, TPS beneficiaries will maintain their status during the appeal process provided they continue to meet all the individual requirements for TPS eligibility found in INA section 244(c) and 8 CFR 244, as well as in the instructions for [Form I-821, Application for Temporary Protected Status](#).

If the Bhattarai court order staying district court proceedings continues in effect beyond Jan. 4, 2021, DHS will continue to issue notices that will automatically extend TPS-related documentation for all affected, eligible beneficiaries under the TPS designations for Honduras and Nepal, or consistent with any other order of the court.

In Case of Reversal

If the court reverses the preliminary injunction and that decision is final, the terminations of the TPS designations for Honduras and Nepal will take effect, unless the final court order places other limitations on the terminations.

If one or more of the termination decisions can take effect, DHS will allow for an orderly transition period ending the later of:

- 120 days from the issuance of any appellate mandate to the District Court; or
- to the extent the government requests the District Court to terminate the stay, 180 days after the District Court terminates the stay.

For legal reasons, the 120-day or 180-day transition period will not start automatically if there is a decision reversing the preliminary injunction. USCIS will inform TPS beneficiaries when the transition period will begin. The transition period will provide time for current TPS beneficiaries who do not have another lawful immigration status or authorization to remain in the United States to leave the United States, or they will be subject to removal.

Demonstrating Temporary Protected Status

As evidence of valid TPS, eligible beneficiaries under the TPS designations for Honduras and Nepal may show their TPS-related documents, which have been specified in the Nov. 4, 2019 FRN as having been automatically extended through Jan. 4, 2021, along with that [FRN \(PDF\)](#).

DHS is automatically extending through Jan. 4, 2021, the validity periods of the following Forms I-94 and Forms I-797, Notice of Action (Approval Notice), previously issued to eligible beneficiaries granted TPS under the designations for Honduras and Nepal:

Country	Beginning date of validity:	End date of validity:
Nepal	Dec. 25, 2016	June 24, 2018
	June 25, 2018	June 24, 2019
Honduras	July 6, 2016	Jan. 5, 2018
	Jan. 6, 2018	July 5, 2018
	July 6, 2018	Jan. 5, 2020

However, the extension of these validity periods applies only if the eligible TPS beneficiary properly filed for TPS re-registration during one of the most recent DHS-announced registration periods for Honduras: May 16–July 15, 2016; Dec. 15, 2017–Feb. 13, 2018; or June 5–Aug. 6, 2018, or for Nepal: Oct. 26–Dec. 27, 2016; or May 22–July 23, 2018, or has a re-registration application that remains pending.

Current End Date

TPS beneficiaries under the TPS designations for Honduras and Nepal will maintain valid TPS in the United States as long as the Bhattarai court order, or any superseding court order, prevents DHS from implementing and enforcing the TPS termination determinations, provided that each TPS beneficiary under these designations maintains his or her individual eligibility for TPS. Some TPS beneficiaries may also have other valid immigration status or authorization to remain in the United States that may continue once TPS for their country ends. If a court order permits the termination of TPS for any country, USCIS will issue an FRN, if warranted, and update its website to inform beneficiaries of the termination date and any applicable orderly transition period.

Re-Registration

Current beneficiaries under the TPS designations for Honduras and Nepal do not need to re-register to maintain TPS at this time, provided that they properly re-registered for TPS during one of the re-registration periods for their country listed below. If you properly re-registered during the following re-registration periods for your country, then you do not need to submit new biometrics, unless USCIS specifically sent you a notice informing you to attend a biometrics collection appointment.

Country	Re-Registration Dates
Nepal	May 22, 2018 – July 23, 2018
	Oct. 26, 2016 – Dec. 27, 2016
Honduras	June 5, 2018 – Aug. 6, 2018
	Dec. 15, 2017 – Feb. 13, 2018
	May 16, 2016 – July 15, 2016

Beneficiaries who did not re-register during either of these periods may still file Form I-821, Application for Temporary Protected Status, but must demonstrate "good cause" for failing to re-register on time, as required by law. See INA, section 244(c)(3)(C).

Late re-registrants must submit a letter describing all of their reasons for failing to file on time in accordance with the most recently announced re-registration procedures in the FRN for their TPS-designated country.

If you re-registered outside of the re-registration period because DHS announced the termination of TPS for your country, you should explain how that announcement affected you, including how the termination decisions impacted your failure to re-register. USCIS may consider this explanation for purposes of meeting the "good cause" exception for failing to re-register on time. However, if the announcement of the TPS termination did not cause you to file late, you should not include it as a reason. Applicants must be truthful in explaining their reasons.

Biometrics

TPS beneficiaries who did not file for re-registration under the re-registration procedures announced during at least one of the periods listed above for their country must submit biometrics when they file a late re-registration application if they are age 14 or older. USCIS will send the individual a scheduling notice for biometrics collection, if required. USCIS may also send a separate biometrics scheduling notice to a TPS beneficiary who has properly re-registered, but who later filed a [Form I-765](#), Application for Employment Authorization, for an EAD.

Employment Authorization Documents

In the FRN published on Nov. 4, 2019, DHS announced the automatic extension of EADs for TPS beneficiaries under the designations of Honduras and Nepal through Jan. 4, 2021, with the category codes "A-12" or "C-19" and one of the expiration dates shown below:

01/05/2018
06/24/2018
07/05/2018
06/24/2019
01/05/2020
03/24/2020

TPS beneficiaries with EADs that are auto-extended do not need to apply for a new EAD, but they may if they choose to do so. Additionally, beneficiaries of TPS Honduras and TPS Nepal who have EAD and re-registration applications pending will receive an EAD with a validity date through Jan. 4, 2021, if USCIS approves their re-registration and EAD applications.

If DHS publishes a subsequent Federal Register Notice before Jan. 4, 2021, that FRN will either extend TPS-related documents from Jan. 4, 2021, or provide appropriate procedures for obtaining renewed TPS documentation for all affected eligible beneficiaries under the TPS designations for Honduras and Nepal.

Any eligible beneficiary under the TPS designation for Honduras and Nepal who does not possess an EAD that is automatically extended in the FRN, or who wishes to apply for a new EAD, despite having an older EAD that is automatically extended under the FRN, may file [Form I-765](#) with the appropriate fee (or fee waiver request). If USCIS approves the application, it will issue an EAD with a Jan. 4, 2021, expiration date.

If you believe you are eligible for a fee waiver, complete [Form I-912, Request for Fee Waiver](#), and submit it with your [Form I-765](#).

Establishing Employment Eligibility

When completing [Form I-9, Employment Eligibility Verification](#), as evidence of employment eligibility and identity, TPS beneficiaries may provide their employers with their unexpired EADs, facially expired EADs with individual notices that auto-extend those EADs, or facially expired EADs that are specified in the Nov. 4, 2019 [FRN](#) that have been auto-extended. Employees with a facially-expired EAD that has been auto-extended may also use a copy of the FRN to show that their facially-expired EAD has been extended through Jan. 4, 2021. As also noted in the FRN and on the [USCIS I-9 Central web page](#), an individual may satisfy Form I-9 requirements for employment eligibility verification with any of the types of documents, or combination of documents, described on Form I-9.

Form I-9 is mandatory for all employment in the United States, but its requirements do not apply until an employer actually hires an individual. Employees may present any documentation from the [Form I-9 Lists of Acceptable Documents](#) to their employer to show identity and employment eligibility. For purposes of Form I-9, an unexpired EAD or an EAD with a validity period that is auto-extended by the FRN or the individual notice are acceptable to prove both identity and eligibility to work.

Employers can learn more about completing Form I-9 by visiting [I-9 Central](#) or calling the I-9 Contact Center:

- For Employers: 888-464-4218
- For Employees: 888-897-7781
- TTY: 877-875-6028

Discrimination in Employment Verification

Employees can report an employer who rejects acceptable documents for I-9 purposes or one who refuses to accept an auto-extended EAD, and refer any discrimination-related questions, to the Immigrant and Employee Rights Section in the Department of Justice's Civil Rights Division:

- For Employees: 800-255-7688
- For Employers: 800-255-8155
- TTY: 202-616-5525 or 800-237-2515

Demonstrating Status to State Agencies

TPS beneficiaries who need to demonstrate their continued lawful status to obtain a driver's license or other benefit to a state or local agency that uses USCIS' Systematic Alien Verification for Entitlements ([SAVE Program](#)) must have alien or I-94 numbers to be verified through SAVE. These numbers can be found on various immigration documents beneficiaries may have received regarding their TPS.

DHS issues the following documents that satisfy this requirement:

- Form I-797, Notice of Action, approval notice for I-821, Application for Temporary Protected Status, has an alien number;
- Form I-766, Employment Authorization Document (EAD). EADs issued to TPS recipients will indicate a category of A12 or C19 and have an alien number;
- Form I-512, Authorization for Parole of an Alien into the United States, has an alien number. This form is issued to TPS beneficiaries who request travel authorization and who are allowed to travel outside the U.S. and return if authorized at the port of entry by Customs and Border Protection; and
- Form I-94 Arrival/Departure Record, has an I-94 number.

Beneficiaries may also have a final order from the Executive Office of Immigration Review approval that may have either an alien or I-94 number.

For further information, see our web page on [SAVE for Benefit Applicants](#).

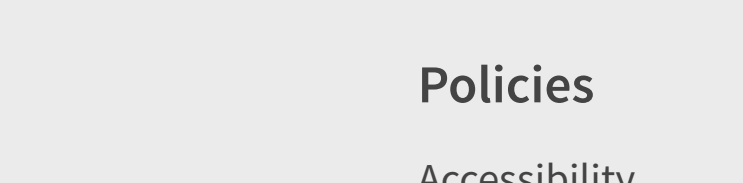
If DHS has published an FRN announcing the automatic extension of certain TPS-related documents, SAVE advises TPS beneficiaries to show the state or local agency a copy of the FRN, documenting such extension with their most recently-issued immigration document.

While SAVE can verify when an individual has TPS, each agency's procedures govern whether they will accept an auto-extended TPS-related document. You should present the agency with the relevant FRN showing the extension of TPS-related documents in addition to your recent TPS-related document with your alien or I-94 number. You should explain that SAVE will be able to verify the continuation of your TPS. You should ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response confirming TPS. You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or auto-extension of TPS-related documents.

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