



Individuals Receiving Benefits Under TPS During Fiscal Years 2012 – 2015

January 3, 2018

Fiscal Year 2017 Report to Congress



**Homeland
Security**

U.S. Citizenship and Immigration Services

Message from the Director

January 3, 2018

I am pleased to present the following report, “Individuals Receiving Benefits under TPS during Fiscal Years 2012 – 2015,” which has been prepared by U.S. Citizenship and Immigration Services (USCIS).

This report was compiled pursuant to language set forth in Senate Report 114-264 accompanying the Fiscal Year (FY) 2017 Department of Homeland Security Appropriations Act (P.L. 115-31).

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:



The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Boozman
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I am pleased to respond to any questions you may have. Please do not hesitate to contact me at (202) 272-1000 or the Department’s Deputy Chief Financial Officer, Stacy Marcott, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink that reads "L. Francis Cissna". The signature is stylized and written in a cursive-like font.

L. Francis Cissna
Director
U.S. Citizenship and Immigration Services

Executive Summary

Under section 244 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1254a, the Secretary of Homeland Security may designate a foreign state (or part thereof) for Temporary Protected Status (TPS) after consulting with appropriate agencies of the U.S. Government. The Secretary then may grant TPS to eligible nationals of that foreign state or eligible aliens having no nationality who last habitually resided in that state. Section 244(b)(1) of the INA provides the circumstances and criteria under which the Secretary may exercise his or her discretion to designate a country for TPS.¹

The total numbers of TPS beneficiaries for FY 2012 through FY 2015 are reflected in the table below. Section III of this report provides the effective dates of designation, redesignation, extension, and expiration for each of the 13 foreign states that held a TPS designation at any time from FY 2012 through FY 2015.

| FY 2012 | FY 2013 | FY 2014 | FY 2015 |
|----------------|----------------|----------------|----------------|
| 418,151 | 420,962 | 422,674 | 426,581 |

In addition, Senate Report 114-264 requested the cost of providing TPS benefits for FY 2012 through FY 2015. Because USCIS does not track costs distinctly associated with the TPS programs in its financial system, it is not able to report the actual costs of providing TPS benefits for this period. Because of variation in the length of designations, the number of applicants per designated country, and the number of countries designated, TPS costs are not stable year to year.

¹ Section 244(b)(1) of the INA provides:

The [Secretary of Homeland Security], after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if--

- (A) the [Secretary] finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;
- (B) the [Secretary] finds that--
 - (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,
 - (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and
 - (iii) the foreign state officially has requested designation under this subparagraph; or
- (C) the [Secretary] finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the *Federal Register*. In such notice, the [Secretary] shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

Unlike the majority of its application and petition fees, USCIS is not able to set the fee for TPS through regulation; by law, each TPS registrant pays a fee of \$50 for initial registration (8 U.S.C. § 1254(a)(c)(1)(B)). There is no fee for re-registration. Historically, collections from the statutorily set \$50 initial registration fee have not been sufficient to cover the full costs of administering the TPS program. Because of these circumstances and the temporary nature of the TPS designations, USCIS excludes TPS from its biennial fee reviews.

Section IV of this report details the law, policy, and process informing TPS designations and benefits.



USCIS Individuals Receiving Benefits under TPS during Fiscal Years 2012 – 2015

Table of Contents

| | | |
|------|---|----|
| I. | Legislative Language..... | 1 |
| II. | Background..... | 2 |
| III. | Data Report..... | 4 |
| | A. Foreign States with TPS Designations from FY 2012 to FY 2015..... | 4 |
| | B. Number of TPS Beneficiaries in an Approved Status from FY 2012 to FY 2015 | 7 |
| | C. Cost of Providing TPS Benefits from FY 2012 to FY 2015..... | 7 |
| IV. | Authority: Law, Policy, and Process Informing TPS Designations and Benefits | 9 |
| | A. Temporary Protected Status Legal Authority | 9 |
| | B. Process for the Secretary to Extend or Terminate TPS Designations of Foreign States Under INA § 244(b)(3) | 10 |
| | C. Process for the Secretary to Designate or Redesignate a Foreign State for TPS Under INA § 244(b)(1) | 10 |

I. Legislative Language

This document has been compiled in response to language included in Senate Report 114-264, which accompanies the Fiscal Year (FY) 2017 Department of Homeland Security Appropriations Act (P.L. 115-31).

Senate Report 114-264 states:

The Committee directs USCIS to report on the number of individuals receiving benefits under temporary protected status [TPS] annually from fiscal year 2012 through fiscal year 2015, the cost of providing the benefits granted to those individuals, as well as the validity period of benefits provided, and on the policies governing TPS determinations. In addition, the Committee directs USCIS to brief the Committee within 120 days of the date of enactment of this act on the estimates of the costs of administering the TPS programs.

II. Background

Section 244(b)(1) of the Immigration and Nationality Act (INA) provides the Secretary with the authority to designate a foreign state, or any part of such state, for TPS upon finding that such state is experiencing ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions. (*See* fn. 1 for specific statutory requirements for each type of designation.) The Secretary may grant TPS to an eligible national of the designated foreign state (or to an eligible alien having no nationality who last habitually resided in such state) who, as described in § 244(c)(1)(A) of the INA and implementing regulations in 8 C.F.R. 244.2:

- Has been present physically in the United States continuously since the effective date of the most recent designation of the state as published in the *Federal Register* notice for the country designation;
- Has resided continuously in the United States since a date determined by the Secretary and published in the *Federal Register* notice;
- Is admissible as an immigrant except as otherwise provided under § 244(c)(2)(A) of the INA;
- Is not ineligible for TPS under § 244(c)(2)(B) of the INA; and
- Registers during an initial registration period of not less than 180 days, as announced by public notice in the *Federal Register*, or who meets late initial registration criteria during any subsequent extension of TPS designation pursuant to 8 C.F.R. § 244.2(f)(2).

During the period for which the Secretary has designated a country for TPS, registered TPS beneficiaries are eligible to remain in the United States, cannot be removed, and are authorized to work, so long as they continue to meet the terms and conditions of their TPS registration. They also may be granted authorization to travel abroad, including back to their home country, at the Secretary's discretion, for brief periods. *See* INA § 244(a)(1), § 244(a)(2), and § 244(f)(3).

The granting of TPS does not lead to permanent resident status.² When the Secretary terminates a country's TPS designation, beneficiaries revert to the same immigration status that they

² Although the granting of TPS does not confer permanent resident status, § 244(f)(4) of INA does contemplate that certain individuals who have both TPS and a lawful admission or parole will be eligible to seek adjustment of status, pursuant to INA § 245 or change of status pursuant to INA § 248. In a related context concerning whether TPS itself constitutes an admission, the current governmental position reflects the historical General Counsel Opinion 93-94 (INS Dec. 28, 1993), which provides that a grant of TPS is not an admission, but that those individuals in valid TPS status who return to the United States on a grant of advance parole would satisfy the admission requirement in INA § 245. Contrary to the limitations expressed in the General Counsel opinion, the Sixth Circuit in *Flores v. USCIS*, 718 F.3d 548 (Sixth Cir. 2013), and the Ninth Circuit in *Ramirez v. Brown*, 852 F.3d 954 (Ninth Cir. 2017), have ruled that foreign nationals who enter the United States—even without inspection or parole—and who subsequently are granted TPS do, in fact, meet the inspected and admitted or inspected and paroled requirement under INA § 245(a). To note, the Eleventh Circuit in *Serrano v. Attorney General*, 655 F.3d 1260 (Eleventh Cir. 2011), reached the opposite conclusion and is aligned with the current governmental position. Therefore, if the applicant resides in the Sixth or Ninth Circuits or if U.S. Citizenship and Immigration Services (USCIS) is adjudicating the application in the Sixth or Ninth Circuits, USCIS must treat a grant of TPS as an admission for purposes of adjustment of status under INA § 245(a), but only so long as the applicant remains in valid TPS status. USCIS does not apply *Flores* outside of the Sixth Circuit or *Ramirez* outside of the Ninth Circuit.

possessed before TPS, unless that status since has expired or been terminated, or the beneficiary obtained another lawful status while registered for TPS. Beneficiaries who had no lawful status before obtaining TPS and who have not obtained any other lawful status during TPS return to unlawful status when TPS benefits end.

III. Data Report

A. Foreign States with TPS Designations from FY 2012 to FY 2015

The following table reflects all of the foreign states that held a TPS designation at any time from FY 2012 to the end of FY 2015. The table shows the effective dates of each designation, redesignation, and/or extension during that timeframe, and the expiration date for each country's TPS designation as of September 30, 2015.³

Figure 1: Foreign States that held a TPS designation FY 2012 – FY 2015

| Country | Effective Date of Designation, Redesignation, or Extension | Expiration | Federal Register Notice |
|-------------|--|-------------------|------------------------------------|
| El Salvador | September 9, 2010 (extension) | March 9, 2012 | 75 FR 39556 (July 9, 2010) |
| | March 10, 2012 (extension) | September 9, 2013 | 77 FR 1710 (January 11, 2012) |
| | September 10, 2013 (extension) | March 9, 2015 | 78 FR 32418 (May 30, 2013) |
| | March 10, 2015 (extension) | September 9, 2016 | 80 FR 893 (January 7, 2015) |
| Guinea | November 21, 2014 (initial designation) | May 21, 2016 | 79 FR 69511 (November 21, 2014) |
| Haiti | July 23, 2011 (extension and redesignation) | January 22, 2013 | 76 FR 29000 (May 19, 2011) |
| | January 23, 2013 (extension) | July 22, 2014 | 77 FR 59943 (October 1, 2012) |
| | July 23, 2014 (extension) | January 22, 2016 | 79 FR 11808 (March 3, 2014) |

³ TPS actions taken by the Secretary between September 30, 2015, and the date of this report are not reflected in the table.

| Country | Effective Date of Designation, Redesignation, or Extension | Expiration | Federal Register Notice |
|----------------|---|--------------------|------------------------------------|
| Honduras | July 6, 2010 (extension) | January 5, 2012 | 75 FR 24734 (May 5, 2010) |
| | January 6, 2012 (extension) | July 5, 2013 | 76 FR 68488 (November 4, 2011) |
| | July 6, 2013 (extension) | January 5, 2015 | 78 FR 20123 (April 3, 2013) |
| | January 6, 2015 (extension) | July 5, 2016 | 79 FR 62170 (October 16, 2014) |
| Liberia | November 21, 2014 (initial designation) | May 21, 2016 | 79 FR 69502 (November 21, 2014) |
| Nepal | June 24, 2015 (initial designation) | December 24, 2016 | 80 FR 36346 (June 24, 2015) |
| Nicaragua | July 6, 2010 (extension) | January 5, 2012 | 75 FR 24737 (May 5, 2010) |
| | January 6, 2012 (extension) | July 5, 2013 | 76 FR 68493 (November 4, 2011) |
| | July 6, 2013 (extension) | January 5, 2015 | 78 FR 20128 (April 3, 2013) |
| | January 6, 2015 (extension) | July 5, 2016 | 79 FR 62176 (October 16, 2014) |
| Sierra Leone | November 21, 2014 (initial designation) | May 21, 2016 | 79 FR 69506 (November 21, 2014) |
| Somalia | March 18, 2010 (extension) | September 17, 2012 | 75 FR 67383 (November 2, 2010) |
| | September 18, 2012 (extension and redesignation) | March 17, 2014 | 77 FR 25723 (May 1, 2012) |
| | March 18, 2014 (extension) | September 17, 2015 | 78 FR 65690 (November 1, 2013) |
| | September 18, 2015 (extension) | March 17, 2017 | 80 FR 31056 (June 1, 2015) |

| Country | Effective Date of Designation, Redesignation, or Extension | Expiration | Federal Register Notice |
|----------------|--|--|--|
| South Sudan | November 3, 2011 (initial designation) May 3, 2013 (extension and redesignation) November 3, 2014 (extension and redesignation) | May 2, 2013 November 4, 2015 May 2, 2016 | 76 FR 63629 (October 13, 2011) 78 FR 1866 (January 9, 2011) 79 FR 52019 (September 2, 2014) |
| Sudan | May 3, 2010 (extension) November 3, 2011 (extension) May 3, 2013 (extension and redesignation) November 3, 2014 (extension) | November 2, 2011 May 2, 2013 November 2, 2014 May 2, 2016 | 74 FR 69355 (December 31, 2009) 76 FR 63635 (October 13, 2011) 78 FR 1866 (January 9, 2013) 79 FR 52027 (September 2, 2014) |
| Syria | March 29, 2012 (initial designation) October 1, 2013 (extension and redesignation) April 1, 2015 (extension and redesignation) | September 30, 2013 March 31, 2015 September 30, 2016 | 77 FR 19026 (March 20, 2012) 78 FR 36223 (June 17, 2013) 80 FR 245 (January 5, 2015) |
| Yemen | September 3, 2015 (initial designation) | March 3, 2017 | 80 FR 53319 (September 3, 2015) |

B. Number of TPS Beneficiaries in an Approved Status from FY 2012 to FY 2015

The following table reflects the number of TPS beneficiaries under each designated foreign state for FY 2012 to FY 2015.⁴

Figure 2: Number of TPS Beneficiaries by Foreign State FY 2012 – FY 2015

| Country | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
|--------------------|----------------|----------------|----------------|----------------|
| El Salvador | 265,294 | 265,785 | 265,063 | 264,912 |
| Guinea | 0 | 0 | 0 | 542 |
| Haiti | 58,874 | 59,105 | 59,229 | 58,947 |
| Honduras | 87,174 | 87,302 | 86,946 | 86,813 |
| Liberia | 0 | 0 | 0 | 1,614 |
| Nepal | 0 | 0 | 0 | 1,097 |
| Nicaragua | 5,372 | 5,383 | 5,380 | 5,374 |
| Sierra Leone | 0 | 0 | 0 | 847 |
| Somalia | 421 | 455 | 483 | 483 |
| South Sudan | 1 | 3 | 20 | 26 |
| Sudan | 833 | 858 | 1,019 | 1,030 |
| Syria | 182 | 2,071 | 4,534 | 4,896 |
| Yemen ⁵ | 0 | 0 | 0 | 0 |
| Total | 418,151 | 420,962 | 422,674 | 426,581 |

C. Cost of Providing TPS Benefits from FY 2012 to FY 2015

In addition, Senate Report 114-264 requested the cost of providing TPS benefits for FY 2012 through FY 2015. However, because USCIS does not track costs distinctly associated with the TPS programs in its financial system, it is not able to report the actual costs of providing TPS benefits for this period. In fiscal years with a high TPS workload due to re-registration periods for individuals from countries with high eligible populations, USCIS reassigns staff from the adjudication of other various benefit applications to handle TPS. In fiscal years with low volumes of TPS filings, fewer staff are assigned to TPS adjudications.

Unlike the majority of its Immigration Examinations Fee Account application and petition fees, USCIS is not able to set the fee for TPS through regulation. The fee for TPS initial registration is capped by law at \$50. *See* INA § 244(c)(1)(B) (authorizing “payment of a reasonable fee as a condition of registering [for TPS] The amount of any such fee shall not exceed \$50.”). The law did not authorize a fee for re-registration, and the highest populations of TPS filers are from

⁴ USCIS typically reports TPS data by calendar year (rather than fiscal year), so the number of beneficiaries shown in this report differs from prior congressional reports on TPS because of the directive to report data by fiscal year for the purposes of this report.

⁵ Yemen initially was designated for TPS on September 3, 2015; however, no beneficiaries were approved under Yemen’s designation as of the end of FY 2015.

countries that have been designated for many years (e.g., Honduras and El Salvador), and thus have very few eligible initial registrants. The more recent initial TPS country designations had significantly lower eligible populations. Historically, collections from the statutorily set \$50 initial registration fee have not been sufficient to cover the full costs of administering the TPS program. Because of this and the temporary nature of the TPS designations, USCIS excludes TPS from its biennial fee reviews.

IV. Authority: Law, Policy, and Process Informing TPS Designations and Benefits

A. Temporary Protected Status Legal Authority

Pursuant to § 244(b)(1) of the INA, 8 U.S.C. § 1254a(b)(1), the Secretary of Homeland Security, after consultation with appropriate agencies of the U.S. Government, may designate a foreign state (or part thereof) for TPS. The Secretary then may grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

At least 60 days before the expiration of a TPS designation, the Secretary, after consultation with appropriate agencies of the U.S. Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, to determine the length of an extension of the TPS designation. *See* INA § 244(b)(3)(A); 8 U.S.C. § 1254a(b)(3)(A)–(C). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, the Secretary must terminate the designation. *See* INA § 244(b)(3)(B); 8 U.S.C. § 1254a(b)(3)(B). Although the Secretary must make a determination on extension or termination at least 60 days before the expiration of the TPS designation, publication of the required *Federal Register* notice announcing the decision must be “on a timely basis.” *See* INA § 244(b)(3)(A). However, if the Secretary does not make a decision that the foreign state no longer meets the conditions for designation (*See* INA § 244(b)(3)(C); 8 U.S.C. § 1254a(b)(3)(C)), there is an automatic, minimum 6-month extension of a country’s TPS designation.

After the Secretary designates a country for TPS, nationals of the country (and persons without nationality who last habitually resided in the country) may apply for TPS, but they individually must demonstrate their eligibility pursuant to the criteria established in INA § 244(c) and the TPS regulations at 8 C.F.R. § 244.1 *et seq.* These criteria include, but are not limited to, requirements that the applicant show continuous physical presence in the United States since the effective date of the country designation and continuous residence since such date as the Secretary determines; admissibility as an immigrant (with limited exceptions); that the applicant is not ineligible under certain mandatory criminal history, terrorism, and national security bars as specified in INA § 244(c)(2)(A-B); and that the applicant is registering for TPS in accordance with regulatory procedures in 8 C.F.R. §§ 244.2–244.9.

If granted TPS, the individual receives employment authorization and an Employment Authorization Document, if requested, that is valid for the period that he or she holds TPS. TPS is a temporary benefit that does not lead to lawful permanent residence or confer any other immigration status.⁶ When a TPS country designation ends, TPS beneficiaries maintain the same immigration status, if any, that they held prior to TPS (unless that status has expired or has been terminated) or any other status that they may have acquired while registered for TPS.

⁶ *See supra* note 2.

B. Process for the Secretary to Extend or Terminate TPS Designations of Foreign States under INA § 244(b)(3)

The Secretary conducts a periodic review of conditions in each foreign state designated for TPS to determine whether the conditions for the designation continue to be met, in consultation with appropriate agencies of the U.S. Government, including the Department of State (DOS).⁷ The Secretary reviews country conditions information provided by DOS and USCIS. The Secretary's determination of whether to extend or terminate a country's TPS designation is published as a notice in the *Federal Register*. That notice includes an explanation of the reasons for the determination.

C. Process for the Secretary to Designate or Redesignate a Foreign State for TPS under INA § 244(b)(1)

Under INA § 244(b)(1), the Secretary, after consultation with appropriate agencies of the U.S. Government, including DOS, may designate a foreign country (or any part of such foreign country) if the conditions in the foreign country fall into one, or more, of three statutory categories, generally described as ongoing armed conflict, environmental disasters, or extraordinary and temporary conditions.⁸ The Secretary reviews country conditions information provided by DOS and USCIS in considering whether the conditions satisfy the statutory requirements. The Secretary also may redesignate a foreign country for TPS on the basis of country conditions.⁹

⁷ See INA § 244(b)(3)(A).

⁸ See *supra* note 1 (providing text of INA § 244(b)(1)).

⁹ See, e.g., 62 FR 16608, 16609 (Apr. 7, 1997) (Liberia notice providing explanation of authority for TPS redesignation of a foreign country under INA § 244(b)(1), (c)(1)(A)(i)).