



September 23, 2011

# Executive Summary

## USCIS Stakeholder Engagement: TPS-EAD

### Background

On September 8, 2011, the Office of Public Engagement hosted a stakeholder engagement to discuss issues related to a potential proposed rule affecting the Employment Authorization of Temporary Protected Status (TPS) beneficiaries and applicants.

TPS beneficiaries are authorized to work based on their status. TPS applicants who are found to be *prima facie* eligible for TPS may also receive employment authorization as a “temporary treatment benefit” while their TPS applications are pending. USCIS is considering a regulatory change that would terminate employment authorization if TPS is withdrawn or denied, rather than allow it to continue until the expiration of a beneficiary’s or applicant’s Employment Authorization Document (EAD) as is currently stated in 8 C.F.R. 244.12(b) and (c). As part of this potential rulemaking, USCIS is also considering whether to amend the rule permitting extension of a TPS-related EAD during the pendency of an appeal or review during removal proceedings of an individual’s TPS application. *See* 8 C.F.R. 244.12(d).

### Overview

USCIS stressed that this is a potential regulatory change and that currently nothing has been changed or even been proposed in the *Federal Register*. The engagement sought individual stakeholder feedback on the possible proposed changes. The session was not intended to obtain group or consensus advice. USCIS asked a number of questions listed below, in order to elicit feedback. Following the questions, stakeholder opinions are summarized.

- How would a proposed rule impact different population groups or entities?
- If USCIS were to continue to provide employment authorization to certain individuals who have had TPS withdrawn or denied and who appeal that decision to the AAO and/or request a *de novo* determination of TPS in removal proceedings:
  - What factors, if any, should be considered by USCIS as reasons to extend or provide EADs to such individuals?
  - What factors, if any, should bar such an individual from receiving an EAD or EAD extension? For example, should individuals who have had TPS withdrawn or denied based on serious criminality or security concerns receive an EAD or an EAD extension?
  - Should USCIS be given discretion to determine what employment authorizations are extended? If so, what factors or limitations would be appropriate for DHS to consider?
  - Should “economic need” be considered as a factor for extending employment authorization?

## Impacts on Specific Populations or Entities

### *Financial Burden*

Stakeholders commented that typically low-skilled laborers who are often living paycheck to paycheck will be affected the most by the proposed rule change. In many cases, the aliens may have lived in the US for years with TPS and may now have US citizen children that they will no longer be able to support if their employment authorization is withdrawn. Participants expressed their concern that the populations the proposed rule might affect are the most vulnerable. Applicants who have applied for TPS come from countries that are in turmoil from conflict or natural disaster. Not only are TPS applicants potentially the bread winners for their families, they are often the only means of support for their family in their native country. When asked if economic need should be considered a factor for extending employment authorization, stakeholders expressed their belief that almost all TPS applicants could demonstrate economic need. Stakeholders asserted that this population was willing to work, contribute to society, and pay taxes. They are not asking for welfare benefits.

Furthermore, participants stressed on numerous occasions that appeals of decisions are costly. If an alien does not have the right to work, he or she may not have additional funds to file an appeal and/or pay for lawyers.

### *Administrative Burden*

Stakeholders mentioned that, in addition to a financial burden, the loss of an EAD is a heavy administrative burden to an alien. Often, an EAD is the only identification document an alien has. Without an EAD, an applicant may have trouble getting other important documents such as a driver's license.

## Administrative Errors

Several participants noted that TPS cases are denied or withdrawn in error by USCIS. One stakeholder gave the example of withdrawals done in error because USCIS sent information to the address where a TPS applicant originally lived even after an applicant gave proper notification that their address had changed. In addition, an applicant may be denied TPS because someone with a similar name had a criminal record or a different travel pattern. Several stakeholders expressed concern that simple name confusion can result in the denial of an otherwise eligible applicant. However, another participant suggested that the number of mistakes made because of similar names was overstated. This stakeholder commented that most of the criminal records come from actual fingerprint hits. They also noted that it would be beneficial to USCIS to allow applicants with criminal or national security concerns to keep their EADs so that these persons of interest would remain in the system as opposed to forcing them underground.

Stakeholders further commented that, in some cases, applicants are unknowing victims of notarios or unauthorized immigration consultants who fill out the applicant's paperwork incorrectly to the applicant's detriment. USCIS noted that it is working diligently to combat the unauthorized practice of immigration law. A number of tools to help applicants avoid scammers and to find the right legal services are available on our [website](#).

## Burden on Limited Government Resources

Several participants noted throughout the engagement their concern that taking away employment authorization would result in additional administrative layers, straining already limited government resources. One individual was concerned how USCIS officers would physically recoup the EADs.

Another individual noted that EADs are not long term documents and their validity typically lasts for eighteen months. If the applicant appeals the decision, the document would most likely expire before the end of a typically lengthy appeal process.

Many stakeholders commented that often initial withdrawals or denials of TPS are overturned during the appeals process or through litigation. Taking away the EAD before the final TPS decision has been reached is just a repetition in errors, because applicants ultimately prevail.

Generally, stakeholders opposed the use of USCIS discretion to decide which EADs are extended. Concerns were that discretion is not exercised enough, that everyone would have similar discretionary factors-especially concerning economic need, and that it is adding another bureaucratic layer to a system that is already backlogged.

### **Next Steps**

USCIS will review issues raised during the teleconference and take them under consideration as policy is being formulated for the proposed regulatory change. If USCIS decides to pursue a regulation, members of the public will be able to comment on the proposal.



## U.S. Citizenship and Immigration Services

# USCIS Office of Policy and Strategy: Proposed Rule affecting the Employment Authorization of TPS Beneficiaries and Applicants

On September 8, 2011, the USCIS Office of Policy and Strategy and the Office of Public Engagement held an engagement to discuss the employment authorization of Temporary Protected Status (TPS) beneficiaries and applicants.

### Background

USCIS initiated a review of the current policies related to TPS in 2010. During this review, we noted that 8 CFR 244.12:

- Allows TPS beneficiaries and applicants who have TPS withdrawn or denied to remain employment authorized until their Employment Authorization Documents (EADs) expire, rather than upon withdrawal or denial; and
- Extends the employment authorization of TPS beneficiaries or applicants whose TPS has been withdrawn or denied through any appeal to the Administrative Appeals Office (AAO) and/or a de novo determination during removal proceedings.

TPS beneficiaries are authorized to work based on their status. TPS applicants who are found to be prima facie eligible for TPS may also receive employment authorization as a “temporary treatment benefit” while their TPS applications remain pending. USCIS is considering a regulatory change that would terminate their employment authorization if TPS is withdrawn or denied, rather than allow it to exist until the expiration of their EADs. Additionally, USCIS is considering:

- Whether an alien who has appealed a TPS denial or withdrawal decision to the AAO or who has sought de novo review of such a decision in removal proceedings should be permitted, in certain circumstances, to request that USCIS issue an EAD while his or her TPS request is under review; and
- If so, what, if any, limitations should be placed on the EADs that may be issued while an AAO appeal is pending or while the TPS request is under review in removal proceedings.



# Meeting Invitation



## **USCIS Office of Policy and Strategy: Proposed Rule affecting the Employment Authorization of TPS Beneficiaries and Applicants**

**Thursday, September 8, 2011 @ 3:00 PM**

Teleconference

The USCIS Office of Policy and Strategy and the Office of Public Engagement invite any interested parties to participate in a session regarding the employment authorization of Temporary Protected Status (TPS) beneficiaries and applicants.

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- Allows TPS beneficiaries and applicants who have TPS withdrawn or denied to remain employment authorized until their Employment Authorization Documents (EADs) expire, rather than upon withdrawal or denial; and
- Extends the employment authorization of TPS beneficiaries or applicants whose TPS has been withdrawn or denied through any appeal to the Administrative Appeals Office (AAO) and/or a *de novo* determination during removal proceedings.

TPS beneficiaries are authorized to work based on their status. TPS applicants who are found to be *prima facie* eligible for TPS may also receive employment authorization as a “temporary treatment benefit” while their TPS applications remain pending. USCIS is considering a regulatory change that would terminate their employment authorization if TPS is withdrawn or denied, rather than allow it to exist until the expiration of their EADs. Additionally, USCIS is considering:

- Whether an alien who has appealed a TPS denial or withdrawal decision to the AAO or who has sought *de novo* review of such a decision in removal proceedings should be permitted, in certain circumstances, to request that USCIS issue an EAD while his or her TPS request is under review; and
- If so, what, if any, limitations should be placed on the EADs that may be issued while an AAO appeal is pending or while the TPS request is under review in removal proceedings.

We are particularly interested in hearing from stakeholders about the impacts or difficulties that these potential amendments may cause. Thus, USCIS would like to engage individuals on the following questions:

- How would a proposed rule amending 8 CFR 244.12 to terminate the employment authorization of TPS beneficiaries and applicants upon withdrawal or denial impact different population groups or entities?

- If USCIS were to provide employment authorization to certain individuals who have had TPS withdrawn or denied and who appeal that decision to the AAO and/or request a *de novo* determination of TPS in removal proceedings:
  - What factors, if any, should be considered by USCIS as reasons to extend or provide EADs to such individuals?
  - What factors, if any, should bar such an individual from receiving an EAD or EAD extension? For example, should individuals who have had TPS withdrawn or denied based on serious criminality or security concerns receive an EAD or an EAD extension?
  - Should USCIS exercise its discretion to determine what employment authorizations are extended? If so, what factors or limitations would be appropriate for DHS to consider?
  - To what extent, if any, should “economic need” be considered as a factor for extending employment authorization?

### **To Participate in the Session**

Any interested parties may participate in this event by telephone. All participants must respond to this invitation. Please contact the Office of Public Engagement at [public.engagement@dhs.gov](mailto:public.engagement@dhs.gov) by **Wednesday, September 7, 2011** referencing “**TPS-EAD**” in the subject line of your email. Please also include your full name and the organization you represent, if any, in the body of the email.

### **To Join the Call**

On the day of the engagement please use the information below to join the session by phone. We recommend calling in 10 minutes prior to the start of the teleconference.

**Call-in Number: 1-888-282-9640**

**Passcode: TPS-EAD**