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FAQs on Late Re-Registration for Temporary Protected Status (TPS) **Sept. 13, 2023**

When is it possible for a TPS holder who failed to re-register during the designated re-registration period to apply late?

Every time the Department of Homeland Security (DHS) announces the extension of the TPS designation for a particular country, TPS recipients from that country must apply to re-register. Likewise, TPS holders must re-register when a country's TPS designation is terminated, but DHS extends TPS for a transitional period before the termination takes effect. The re-registration period is typically 60 days, but this can vary. Check the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov/tps to see the specific re-registration period for a designated country. Timely re-registration during each re-registration period is required for a recipient to maintain TPS benefits, regardless of whether TPS was initially granted by USCIS by an Immigration Judge or the Board of Immigration Appeals. However, under INA § 244(c)(3)(C) and 8 CFR § 244.17, USCIS has the discretion to accept and approve a late re-registration application when the applicant has "good cause" for filing after the end of the relevant re-registration period.

What sorts of delays might USCIS consider to be for "good cause?"

USCIS has not published guidance about the types of reasons that constitute "good cause." Anecdotally, applicants have had late re-registration applications granted in situations where the applicant failed to re-register on time because of serious physical or mental illness or sudden hospitalization (of the applicant or close relative the applicant had to care for). Good cause might be established by an applicant who sought timely assistance or advice about maintaining TPS but was misinformed through no fault of their own. Other factors that could potentially contribute to a finding of good cause might include unemployment, homelessness, a death in the family, or other personal emergencies. They could also include an inability to understand the re-registration requirements due to mental capacity, language barriers, or lack of access to legal resources.

TPS beneficiaries who seek to re-register outside of the re-registration period because DHS announced the termination of TPS for their country should explain how that announcement affected them, including how confusion resulting from the termination decision impacted their failure to re-register. USCIS will consider confusion caused by the termination decisions when evaluating the "good cause" exception for failing to re-register on time. However, if the

announcement of the TPS termination did not cause the beneficiary to file late, it should not be included as a reason. Applicants must be truthful in explaining their reasons.

What forms, fees, and evidence should be included in a late TPS re-registration application?

Late re-registration applications must be submitted using Form I-821. Check to make sure you are using the edition required by USCIS. As of this writing, the latest edition is dated 07/03/19 E. There is no filing fee for a re-registration application, but an \$85 biometrics fee is required from applicants who are 14 years of age or older. This fee may be waived by filing a Form I-912 fee waiver request.

Along with the I-821 form, the applicant should include a letter or statement explaining all the reasons why he or she did not apply to re-register on time. If available, corroborating evidence of the reason(s) for late filing should also be included. For example, if someone is filing late because they were caring for their ill daughter during the re-registration period, include corroborating documentation from the daughter's doctor and/or others who may be able to verify the medical condition and treatment.

If the TPS applicant is also seeking an employment authorization document (EAD), he or she may include the I-765 form with the late re-registration application.

What if my client has failed to re-register for more than one re-registration period for his or her country?

Typically, the longer the delay in applying to re-register, the more compelling the applicant's "good cause" reason(s) may need to be. However, late re-registration has been granted to TPS beneficiaries who failed to register during more than one re-registration period. In such cases, consider including evidence of the good cause for late filing in addition to evidence that the applicant continues to meet the requisite continuous residence and other eligibility requirements for TPS.

Can a denial of a late re-registration application be appealed?

It depends on the reason for the denial. If the basis for the denial is not a ground of inadmissibility or deportability that makes the applicant ineligible for TPS, the applicant has the right to appeal to the Administrative Appeals Office (AAO) and TPS benefits will be extended while the appeal is pending. See 8 CFR § 244.14(b)(3). If the AAO dismisses the appeal and the individual is then removable, he or she is entitled to a *de novo* determination of eligibility for TPS in removal proceedings. See 8 CFR § 244.14(c).

What are the considerations and potential risks of applying for late re-registration?

Before a client decides to file a late TPS re-registration application, he or she should be advised of the potential risks and issues to consider. First, USCIS delays in processing these applications

can make the timing of receiving a decision uncertain. Second, advise clients about how gaps in work authorization can impact their employment. Finally, ensure that late re-registration clients with no other lawful status to fall back on understand the risks of enforcement if their application is denied. Prior to filing, applicants should be screened to ensure continued eligibility for TPS, including continued physical presence and residence, new criminal issues, and other developments that could trigger inadmissibility and the need for an inadmissibility waiver for grounds not previously waived. While TPS applicants are exempt from certain inadmissibility grounds, some inadmissibility grounds are not waivable for individuals seeking TPS.

If a late re-registration application is denied, will USCIS issue a Notice to Appear (NTA)?

When a re-registration applicant fails to show good cause for filing late, USCIS is mandated to withdraw the grant of TPS.¹ USCIS may then issue an NTA if the basis for denial or withdrawal is a ground of inadmissibility or deportability that makes the individual ineligible for TPS, including certain crime or drug-related grounds.²

Those who have no other underlying status and who lack a credible, compelling reason for failing to re-register on time must make an informed decision. They either file a weak late re-registration application, which could draw attention to their lack of status, or allow their TPS to lapse in the hope that lapsed TPS holders will not become a priority for enforcement. At this time, we do not have enough information to know how USCIS is treating denied re-registration applications or how lapsed TPS holders will be treated in the future. Before filing a late re-registration application, practitioners should always screen clients for continued TPS eligibility and any new inadmissibility grounds that have not been previously waived.

What are some examples of common “good cause” reasons for delay, and how should they be documented?

Example #1: Martin from Honduras was initially granted TPS in 1999 and always applied to re-register until 2018. In June 2018, USCIS announced the [termination of TPS for Honduras, effective Jan. 5, 2020](#). It also announced that Honduras TPS holders who re-registered between June 5, 2018, and Aug. 6, 2018, could maintain TPS and work authorization until Jan. 5, 2020. Martin speaks very little English and lives in an isolated rural area with no immigration legal service providers. He heard about the termination on the radio and went to a local *notario* who told him that his TPS EAD with a July 5, 2018, expiration date had been automatically extended. However, the *notario* did not explain that the automatic extension from the June 2018 notice lasted only 180-days, through Jan. 1, 2019, and that he was required to re-register for TPS to maintain his TPS status and work authorization through Jan. 5, 2020. As of June 21, 2023, USCIS has again extended the TPS designation for Honduras through July 5, 2025. Even though Martin failed to timely re-register during the prior re-registration period, he can file a late re-

¹ If an applicant fails to establish good cause and the late-filed application is denied, 8 CFR § 244.17(b) provides that “USCIS **will** withdraw Temporary Protected Status.” (emphasis added).

² See 8 CFR § 244.10(c)(1) and § 244.14(b)(3).

registration application now. He should include a statement about the efforts he made to seek legal advice, the misinformation provided by the *notario*, and his other equities. If USCIS determines Martin had good cause for missing the deadline, his TPS status and associated employment authorization would be approved through July 5, 2025.

Example #2: Emilio from El Salvador has held TPS for many years but failed to re-register during the last three periods. Emilio has had a lot of difficulty maintaining stability in his life during recent years. Since 2015, he has struggled with mental health issues, which have made it difficult for him to hold a job. He has moved around a lot and been homeless for periods of time. As a result, he was not keeping track of recent TPS developments for El Salvador or when he needed to re-register. Emilio may still file a late re-registration application citing his mental illness, homelessness, and lack of capacity as “good cause” reasons for his delay in filing. He should include his own personal statement, describing how circumstances prevented him from filing sooner. He should also include supporting evidence, such as a letter from his doctor, describing how his medical condition affects him, and a statement from his caseworker explaining his mental health condition, homelessness, and the fact that she referred Emilio to an immigration attorney who informed him about the possibility of late re-registration.