



FAQs for Legal Practitioners: TPS for Venezuelans

Oct. 10, 2023

In recent years, an unprecedented number of Venezuelans have migrated to the United States and other countries, fleeing political and economic crises. These frequently asked questions review one of the options that may be available to Venezuelans seeking protection from removal and/or seeking lawful immigration status in the United States: Temporary Protected Status (TPS).

On Sept. 20, 2023, the Department of Homeland Security (DHS) [announced](#) that it would extend and re-designate TPS for Venezuela. This will allow existing TPS beneficiaries, whose status was previously set to expire on March 10, 2024, to re-register and maintain their TPS for an additional 18 months. The re-designation will also allow newly eligible Venezuelans to apply for TPS for the first time.

This FAQ reviews the eligibility requirements and benefits of TPS, the TPS application process, applying for work authorization, and other practical considerations for Venezuelan clients.

What is Temporary Protected Status?

TPS is an immigration status granted to eligible nationals of a designated country or persons without nationality who last habitually resided in that country. Under INA § 244, the Secretary of DHS in consultation with the Secretary of State is authorized to designate a country for TPS based on an emergency situation, such as an ongoing armed conflict or environmental disaster, that temporarily prevents nationals who are in the United States from returning safely to the designated country. TPS beneficiaries who register by the specified date¹ are eligible to remain in the United States during the TPS designation period and receive protection from deportation. They may also apply for employment authorization and a travel authorization document during their grant of TPS. TPS recipients may also act as “supporters” who can initiate the process of applying for the parole of eligible individuals abroad through the Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) parole process.

Who is eligible for TPS for Venezuela as an initial applicant?

To qualify for TPS, an applicant must be a Venezuelan national or a noncitizen with no nationality who last habitually resided in Venezuela. He or she must also prove continuous residence in the United States since July 31, 2023, and continuous physical presence in the United States since Oct. 3, 2023. Absences that are “brief, casual and innocent” do not prevent applicants from showing continuous residence or continuous physical presence. Likewise, a brief temporary trip abroad required because of an emergency or extenuating circumstances outside the applicant’s control will not break continuous residence. See 8 CFR § 244.1.

¹ USCIS may accept late initial registrations and re-registration applications under certain circumstances.

The applicant must apply within the registration period that runs from Oct. 3, 2023, through April 2, 2025, unless he or she qualifies for late initial registration. An otherwise eligible individual is disqualified if he or she:

- Has been convicted of any felony or two or more misdemeanors committed in the United States;
- Is found inadmissible as an immigrant under applicable grounds in INA § 212(a), including non-waivable criminal and security-related grounds; or
- Is subject to any of the mandatory bars to asylum, found at INA § 208(b)(2)(A).

Who is eligible for TPS re-registration?

Current TPS beneficiaries who continue to meet the eligibility requirements for TPS are eligible to re-register. They must also file for re-registration during a 60-day period that runs from Jan. 10, 2024, through March 10, 2024, unless they qualify for late re-registration based on good cause.

Which inadmissibility grounds apply to TPS applicants? Which of those can be waived?

TPS applicants must demonstrate that they are admissible. However, as provided in INA § 244(c)(2), corresponding regulations, and USCIS policy, certain grounds of inadmissibility do not apply to TPS applicants while others may be waived.

The following grounds of inadmissibility are not applicable: public charge, 212(a)(4); the labor certification grounds, 212(a)(5)(A); unqualified physicians, 212(a)(5)(B); documentation requirements, 212(a)(7)(A)(i); being present without admission or parole, 212(a)(6)(A), stowaways, 212(a)(6)(D); student visa violators, 212(a)(6)(G); those previously removed and seeking admission, 212(a)(9)(A); unlawful presence, 212(a)(9)(B); and those unlawfully present after previous immigration violations, 212(a)(9)(C).

Certain criminal and security-related grounds cannot be waived: crimes involving moral turpitude, 212(a)(2)(A)(i)(I); controlled substance violations, except for a single offense of simple possession of 30 grams or less of marijuana, 212(a)(2)(A)(i)(II); multiple criminal convictions, 212(a)(2)(B); controlled substance trafficking, 212(a)(2)(B); danger to U.S. security, 212(a)(3)(A); terrorist activities, 212(a)(3)(B); adverse foreign policy consequences, 212(a)(3)(C); membership in totalitarian party, 212(a)(3)(D); and grounds relating to Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing, 212(a)(3)(E).

The remaining inadmissibility grounds may be waived for humanitarian purposes, to assure family unity, or when it is in the public interest.

What are the mandatory bars to asylum and why are they relevant to TPS?

INA § 244(c)(2) references the mandatory bars to asylum and incorporates them as a bar to TPS eligibility. A noncitizen who is subject to a mandatory bar to asylum, found at INA § 208(b)(2)(A), cannot qualify for TPS. These bars apply to a person who:

- Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

- Has been convicted by a final judgment of a “particularly serious crime” (which includes an aggravated felony) that constitutes a danger to the community of the United States;
- DHS has reasons for believing has committed a serious nonpolitical crime outside the United States prior to arrival in the United States;
- DHS determines, based on reasonable grounds, is a danger to the security of the United States;
- Has engaged in or incited terrorist activity, as described in 212(a)(3)(B)(i) or 237(a)(4)(B); or
- Is considered firmly resettled in a third country prior to arriving in the United States.

What is the application process for initial TPS for Venezuela?

Those who are eligible for TPS should file an initial application within the registration period, which is open from Oct. 3, 2023, to April 2, 2025. Noncitizens who fail to apply during the initial registration period may be able to file a late initial application if they meet certain conditions described below. Applicants should submit the following:

1. Form I-821 for each applicant, along with required fees or an I-912 fee waiver request. The filing fee for an initial TPS application is \$50. In addition, an \$85 biometrics fee is required from applicants who are 14 years of age or older.
2. Form I-765 for those who are requesting an Employment Authorization Document (EAD). For applicants between the ages of 14 and 65, the filing fee is \$410. This fee may also be waived. Two passport-style photos should be included. USCIS has clarified that initial TPS EAD applications should use code (a)(12).
3. Proof of identity and Venezuelan nationality (passport; birth certificate and photo ID; or national identity document with photo and/or fingerprint).
4. Proof of date of entry to U.S. (passport; I-94).
5. Proof of continuous residence since July 31, 2023, and physical presence since Oct. 3, 2023 (employment records, rent receipts, utility bills, tax returns, school records, medical records, etc.).
6. If applicable, Form I-601 waiver of inadmissibility and supporting documentation.
7. If applicable, certified court disposition related to any criminal arrest, charge or conviction.

Applicants who are submitting a first-time re-registration with U.S. Citizenship and Immigration Services (USCIS) following an Immigration Judge or Board of Immigration Appeals decision granting TPS should include a copy of that decision order with their Form I-821.

What is the application process for TPS re-registration?

Current TPS beneficiaries under the 2021 designation for Venezuela must re-register during the 60-day period that runs from Jan. 10, 2024, through March 10, 2024. Those who miss the re-registration period may be able to file late for good cause, as described below. Re-registration applications should include the following:

1. Form I-821. There is no \$50 application fee. However, applicants who are 14 years of age or older must include an \$85 biometrics fee.
2. Proof of identity.

3. Other evidence previously submitted is not required (e.g., proof of nationality and residence).
4. If applicable, Form I-601 and supporting documentation for any inadmissibility ground that was not previously waived in connection with their TPS.
5. Form I-765 for those who are requesting a new EAD. The filing fee is \$410.

TPS beneficiaries who have a Form I-821 and/or Form I-765 pending on Oct. 3, 2023, do not need to re-file. If these forms are approved, they will be granted validity through Sept. 10, 2025.

Will current TPS beneficiaries receive an automatic extension of their existing EADs?

Current TPS beneficiaries whose EADs will expire as of March 10, 2024, or Sept. 9, 2022, will receive an automatic extension of their EAD through March 10, 2025. Re-registration is still required to maintain TPS and work authorization.

How can TPS beneficiaries who are covered by the automatic extension prove to employers that they are eligible to work?

If an EAD states that it is under the A-12 or C-19 category and has an expiration date of March 10, 2024, or Sept. 9, 2022, the beneficiary may choose to present that EAD to their employer, along with the [Oct. 3, 2023 Federal Register Notice](#) (FRN). Additional directions for employers and employees can be found in the FRN. If a TPS beneficiary presents their employer with an EAD that has been automatically extended, the employer should accept it as a valid document proving both identity and work authorization.

What are the requirements for late initial registration?

Those who fail to apply for TPS during the initial registration period may be eligible to file a late initial registration during any extension of their country's designation. To qualify, during the initial registration period or a subsequent initial registration period the applicant must have:

- Been a nonimmigrant or been granted voluntary departure status or any relief from removal;
- Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal that was pending or subject to further review or appeal;
- Been a parolee or had a pending request for re-parole; or
- Be the spouse of an individual who is currently eligible for TPS.

The application for late registration must be filed while the condition still exists or within a 60-day period immediately following the expiration or termination of the status described above. In addition, someone who during the initial registration period or a subsequent initial registration period was a child of a noncitizen currently eligible for TPS may also apply for late registration. There is no time limitation on filing if you meet this condition. "Child" refers to someone who was under 21 and unmarried at any time during an initial registration period. In all cases, the applicant seeking to register late must satisfy the other TPS eligibility requirements. See 8 CFR § 244.2(f)(2) – (g) and the [USCIS webpage on TPS](#).

What evidence should an initial applicant submit to show continuous residence since July 31, 2023, and continuous physical presence since Oct. 3, 2023?

The instructions to Form I-821 provide a list of supporting documentation that may be included to prove continuous residence and continuous physical presence. Examples include employment records, rent receipts, utility bills, school records, medical records, birth certificates of children born in the United States, dated bank transactions, insurance policies, and vehicle registration. Applicants may use any relevant documentation, particularly records created during the course of ordinary business that include the applicant's name, address, and a date.

Can a dual citizen apply for TPS as a Venezuelan national?

Dual nationality is not necessarily a bar to TPS if the applicant is able to prove that he or she is a national of Venezuela. Dual nationality can sometimes indicate that an individual has firmly resettled in a third country. Dual nationals may consider including arguments that, despite having dual nationality, the applicant has no significant ties to their other country of nationality. For more on this topic, see CLINIC's [practice pointer](#) "Temporary Protected Status: Navigating Removal Proceedings, Dual Nationality, and Asylum."

Does firm resettlement in a third country make my client ineligible for TPS?

A noncitizen is ineligible for TPS if he or she was "firmly resettled in another country prior to arriving in the United States." INA § 208(b)(A)(vi). Whether a noncitizen has received an offer of firm resettlement is a complex analysis and is highly case specific.

A noncitizen is considered firmly resettled if, prior to arrival in the United States, he or she entered another country with, or while in that country received an offer of, permanent resident status, citizenship, or some other type of permanent resettlement, unless he or she meets one of two exceptions. First, the noncitizen establishes that entry into the third country was a necessary consequence of flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and he or she did not establish significant ties to that country. Second, an exception applies if the conditions of residence in that country were so substantially and consciously restricted by the authority of that country that he or she was not in fact resettled. 8 CFR § 208.15. Restrictive condition factors include the type of housing and employment opportunities available, country conditions, the ability to own property and travel, and access to education, as well as evidence of persecution or discrimination by the government of the third country.

For more on this topic, see CLINIC's [practice pointer](#) "Temporary Protected Status: Navigating Removal Proceedings, Dual Nationality, and Asylum."

May someone with a pending asylum application apply for TPS?

Yes. An application for TPS does not affect a pending application for asylum or any other immigration benefit. It is possible to be both a pending asylum applicant and a TPS beneficiary at the same time. However, there is an important consideration for someone with TPS and an affirmative asylum application pending at the USCIS Asylum Office. Having TPS does not impact the asylum officer's ability to approve the asylum application. But, if following the interview, the asylum officer decides not to grant asylum, 8 CFR § 208.14(c)(2) requires the officer to deny the application when the applicant is

maintaining valid immigrant status, nonimmigrant status, or TPS at the time the application is decided. In contrast, if the applicant is without lawful status, their asylum case will be referred to an immigration judge who can review the asylum claim *de novo*.² If the applicant is covered by Deferred Enforced Departure (DED) when the asylum officer decides not to grant asylum, the application will be referred to the immigration judge (instead of being denied) since DED is not considered to be a status under 8 CFR § 208.14(c)(2).³

Depending on the individual asylum case, being denied at USCIS instead of referred to court could be beneficial or detrimental. If the client has a weak asylum case that is not likely to be granted by an immigration judge and does not have other relief available, it may be in his or her best interest to have TPS. On the other hand, if TPS is granted and the client wants to continue to pursue asylum (or another form of relief) in front of an immigration judge, that option would be foreclosed. Those who have a strong case for asylum may decide to refrain from filing for TPS until the asylum application has been decided and later to apply for TPS under the late initial registration guidelines at 8 CFR § 244.2(f)(2), assuming the TPS designation for Venezuela is extended beyond Sept. 10, 2025. The client would need to apply for TPS during that extension period and within 60 days of their asylum denial. Once the initial TPS registration deadline of April 2, 2025, has passed, if their asylum application is denied more than 60 days before an extension of TPS for Venezuela is announced, they would not be eligible for late initial registration.⁴

Note that TPS status will “stop the clock” on the requirement to file for asylum within one year of arriving in the United States if the one-year clock has not already expired. See 8 CFR § 208.4(a)(5)(iv).

Can a client currently in valid nonimmigrant status apply for TPS?

Yes. A Venezuelan in valid nonimmigrant status may apply for and be granted TPS. However, to continue to maintain nonimmigrant status while simultaneously holding TPS, the person must remain eligible for both statuses. USCIS has advised that: “[I]t is up to the individual to know and understand the requirements of all statuses he/she holds or is seeking to obtain and/or maintain.”⁵ One important consideration is the impact of a decision to work using a TPS-based EAD. It is important to consider whether that employment would violate the terms of the person’s underlying nonimmigrant status, such as a B-2 visitor or F-1 student, for example, who faces limitations on employment. Those who would like to maintain their nonimmigrant status could either file the Form I-821 but not request an EAD, or they could request the EAD but refrain from using it to work.

Under INA § 244(f)(4), a TPS beneficiary is considered to be “in and maintaining lawful nonimmigrant status” while they hold valid TPS. Thus, a nonimmigrant who obtains TPS and ends up losing their underlying nonimmigrant status may be able to revert to nonimmigrant status in advance of their TPS

² Following an interview, an asylum officer can either approve an asylum application or determine the applicant has not demonstrated eligibility for asylum. In the latter case, the three options are for the asylum office to deny the application, refer it to an immigration judge, or dismiss it. Referral results in the asylum applicant being placed in removal proceedings where he or she may present the asylum claim again but this time to an immigration judge.

³ See USCIS Adjudicator’s Field Manual, Chapter 38.2, available at: www.uscis.gov/sites/default/files/document/policy-manual-afm/afm38-external.pdf.

⁴ USCIS Questions and Answers: Designation of Syria for Temporary Protected Status, March 29, 2012, available at: https://www.uscis.gov/sites/default/files/document/questions-and-answers/TPS_Syria_QAs_03-29-12.pdf.

⁵ USCIS FAQs on Statelessness and the Ability to Work for Joint F-1/TPS, September 3, 2015 AILA Doc. No. 15090306, available at: <https://www.aila.org/infonet/uscis-faq-joint-f-1tps-status-and-statelessness>.

expiring or terminating. For example, an F-1 student who obtains TPS and subsequently loses F-1 may be able to switch back into F-1 or even change into R-1 or H-1B or some other employment-based nonimmigrant status as long as the Form I-539 or I-129 is filed while he or she remains in valid TPS status.

Should someone with valid parole consider applying for TPS?

For many Venezuelans, TPS may be a good back-up option to another long-term option they are pursuing, such as asylum or adjustment of status. A grant of TPS will provide them employment authorization and protection from deportation. TPS has historically been extended for many countries, so there is a good chance that TPS will be extended for Venezuela beyond the current 18-month designation period. In addition, TPS is considered a lawful nonimmigrant status that may allow for additional possibilities for adjustment of status for Venezuelan citizens, such as through an employment-based category under INA § 203(b) or through a family-based preference category.

Can obtaining TPS help my client qualify to adjust to lawful permanent resident status?

A TPS grant does not independently put someone on a path to lawful permanent residence. However, TPS may help beneficiaries of immediate relative petitions and others become eligible to adjust status under INA § 245(a), even when they initially entered the United States without being inspected and admitted or paroled. More information is available in CLINIC's [Practice Advisory on Adjustment Options for TPS Beneficiaries](#).

Does someone with TPS accrue unlawful presence?

No. A TPS beneficiary is considered to be in lawful nonimmigrant status for the duration of the TPS grant and does not accrue unlawful presence for purposes of INA §§ 212(a)(9)(B) and (C)(i)(I). The period of authorized stay begins on the date the TPS application is filed, provided it is ultimately approved, and continues until TPS status is terminated. However, a grant of TPS does not erase any unlawful presence accrued before TPS was approved.⁶

What if my client is in removal proceedings?

For a detailed discussion of these issues, please see CLINIC's [practice pointer](#) "Temporary Protected Status: Navigating Removal Proceedings, Dual Nationality, and Asylum."

Where is the legal guidance for TPS?

Oct. 3, 2023 Federal Register Notice - <https://www.govinfo.gov/content/pkg/FR-2023-10-03/pdf/2023-21865.pdf>

INA § 244 - <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1254a&num=0&edition=prelim>

8 CFR § 244 - <https://www.law.cornell.edu/cfr/text/8/part-244>

⁶ See USCIS Adjudicator's Field Manual, Chapter 40.9.2.

8 CFR § 1244 - <https://www.law.cornell.edu/cfr/text/8/part-1244>

USCIS website - <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela> and <https://www.uscis.gov/i-821>