



Frequently Asked Questions: Temporary Protected Status for Afghans October 2023

What is Temporary Protected Status (TPS)?

TPS is an immigration status granted to eligible nationals of a designated country, or persons without nationality who last habitually resided in the designated country. Under Immigration and Nationality Act (INA) § 244, the Secretary of the Department of Homeland Security (DHS) in consultation with the Secretary of State is authorized to designate a foreign state for TPS based on an emergency, 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 obtain a TPS travel authorization document during their grant of TPS.

Who is eligible for TPS for Afghanistan?

Due to ongoing armed conflict and widespread insecurity, Afghanistan was initially designated for TPS on March 20, 2022, for individuals who had been residing in the United States since March 15, 2022. On Sept. 25, 2022, TPS was extended and redesignated for Afghanistan for those residing in the United States since Sept. 20, 2023.

To be granted TPS, an applicant must be a national of Afghanistan or a noncitizen with no nationality who last habitually resided in Afghanistan. He or she must also prove continuous residence in the United States since Sept. 20, 2023, and continuous physical presence in the United States since Nov. 21, 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.

Initial applicants must apply for TPS within the registration period that runs from Sept. 25, 2023, through May 20, 2025, unless he or she qualifies for late initial registration. The re-registration period for people who already have TPS runs from Sept. 25, 2023, through Nov. 24, 2023, unless he or she qualifies for late re-registration. An otherwise eligible individual is disqualified from TPS 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 the applicable grounds in INA § 212(a), including non-waivable criminal and security-related grounds; or

¹ Registration dates are specified in the Federal Register Notice for each TPS designation. USCIS may accept late initial registrations and re-registration applications under certain circumstances. See information under "Filing Late" at: <https://www.uscis.gov/humanitarian/temporary-protected-status>.

- Is subject to any of the mandatory bars to asylum found at INA § 208(b)(2)(A).

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 U.S. Citizenship and Immigration Services (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);
- Labor certification grounds, 212(a)(5)(A);
- Unqualified physicians, 212(a)(5)(B); and
- Documentation requirements, 212(a)(7)(A)(i).

USCIS does not require a waiver for the following additional grounds²:

- Being present without admission or parole, 212(a)(6)(A);
- Stowaways, 212(a)(6)(D);
- Student visa violators, 212(a)(6)(G);
- Previously removed and seeking admission, 212(a)(9)(A);
- Unlawful presence, 212(a)(9)(B); and
- Unlawfully present after previous immigration violations, 212(a)(9)(C).

The following 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:

² See Instructions to I-601, Application for Waiver of Grounds of Inadmissibility, [Form I-601, Application for Waiver of Grounds of Inadmissibility \(uscis.gov\)](https://uscis.gov/Forms/I-601).

- 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 (commonly referred to as the “persecutor bar”);
- 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 firmly resettled in a third country prior to arriving in the United States; or
- Has engaged in or incited terrorist activity, as described in INA §§ 212(a)(3)(B)(i) or 237(a)(4)(B).

How will the “terrorist activity” asylum bar be interpreted in the TPS context?

Note that this bar to asylum has been interpreted quite broadly by the Board of Immigration Appeals (BIA) and the courts of appeal. Under the statute, a noncitizen “engages in a terrorist activity” if, among other things, the person commits “an act the actor knows, or reasonably should know, affords material support” (1) for the commission of a terrorist activity, (2) to an individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity, or (3) to a terrorist organization. INA § 212(a)(3)(B)(iv)(VI)(dd).

The INA contains three definitions for the term “terrorist organization.” INA § 212(a)(3)(B)(vi). First, a terrorist organization can be formally designated by the Secretary of State, pursuant to INA § 219. INA § 212(a)(3)(B)(vi)(I) (“Tier 1 Organization”). Second, a terrorist organization can be designated upon publication in the Federal Register. INA § 212(a)(3)(B)(vi)(II) (“Tier 2 Organization”). Third, a terrorist organization can also refer to “a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in” terrorist activities. INA § 212(a)(3)(B)(vi)(III) (“Tier 3 Organization”). Under the Consolidated Appropriations Act of 2008, Congress mandated that the Taliban be considered a Tier 1 Organization.

The BIA has held both that there is no implicit “duress exception” to applicability of the “material support” bar to asylum³ and that there is no “de minimis exception.”⁴ That means that even an individual who, for example, provided food or money to the Taliban under threat of death could be barred from obtaining asylum as well as TPS.

The Secretaries of State and Homeland Security, in consultation with the attorney general, can authorize exemptions from the terrorism-related inadmissibility grounds (TRIG). On June 14, 2022, DHS and DOS gave immigration advocates welcome news by announcing three new exemptions to the TRIG bars in order to aid Afghan allies. On June 23, 2022, these exemptions were published in the Federal Register and are currently listed on the USCIS webpage for situational exemptions.⁵

The three exemptions announced in June 2022 are the following:

³ *Matter of M-H-Z-*, 26 I&N Dec. 757 (BIA 2016).

⁴ *Matter of A-C-M-*, 27 I&N Dec. 303 (BIA 2018).

⁵ 87 FR 37522 –24 (6/23/2022); *see also* Terrorism-Related Inadmissibility Grounds (TRIG)-Situational Exemptions, <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions>.

1. Afghans who supported U.S. military interests by fighting or supporting those who fought in the resistance movement against the Taliban and Afghans who took part in the conflict against the Soviet occupation of Afghanistan. The exemption does not include those who targeted non-combatants or U.S. interests, committed certain types of human rights violations or abuses, or acted on behalf of a designated terrorist organization.⁶
2. Individuals employed as civil servants in Afghanistan at any time from Sept. 27, 1996, to Dec. 22, 2001, or any time after Aug. 15, 2021, including teachers, professors, postal workers, doctors, and engineers. However, the exemption does not include individuals who held high-level positions, worked for certain ministries, or directly assisted violent Taliban activities or activities in which the individual's civil service was motivated by an allegiance to the Taliban.⁷
3. Individuals who provided insignificant or certain limited material support to a designated terrorist organization. These include instances in which the support is incidental to a routine social or commercial transaction; incidental to certain humanitarian assistance; provided in response to a reasonably perceived threat of physical or economic harm, restraint, or serious harassment; and where the support provided is considered minimal and inconsequential.⁸
Note that this exemption does not apply only to Afghans and is a general exemption that may aid many individuals potentially subject to the TRIG bars. However, it has the potential to aid Afghans who may have paid a small amount to pass through a Taliban checkpoint to flee Afghanistan, paid the Taliban for utilities such as electricity or the telephone, served the Taliban at one's place of business when to refuse would jeopardize one's livelihood, or paid a fee to obtain a passport or other identity documents necessary to flee Afghanistan. This exemption does not include individuals who share the goals or ideology of the Taliban, provided preferential treatment to them, or who intended to support the Taliban through their activities.

In order to benefit from these exemptions, the applicant must fully disclose in the application for a benefit the nature and circumstances of all activities or associations falling within the scope of INA § 212(a)(3)(B). USCIS will then make a determination on whether to grant an exemption to the applicant. This most commonly happens for asylum applicants although TRIG exemptions may also be granted to TPS applicants.

In the asylum context, USCIS screens thoroughly for these bars during an in-person interview and may spend hours questioning the applicant on any possible contact or connection with terrorist organizations. In the TPS context, the screening is typically less rigorous, as TPS applications typically do not require an in-person interview, and the application is approved or denied based on a paper record. However, it is still extremely important for Afghan TPS applicants to be honest and forthright about any potential TRIG issues that may apply to their case.

Is my client's military service relevant to a grant of TPS?

Many Afghans have previously served with both the U.S. and Afghan militaries. As this military service must be disclosed on the I-821, many Afghan TPS applicants have received Requests for Evidence (RFEs) requesting more information about military service. This is generally done to determine whether the

⁶ 87 FR 37522 (6/23/2022).

⁷ 87 FR 37524 (6/23/2022).

⁸ 87 FR 37523 (6/23/2022).

applicant has ever persecuted others on account of a protected ground and would thus be subject to the “persecutor bar.” RFEs have typically asked for the following information from applicants with prior military service:

- The type of group the applicant served in, was a member of, or assisted in or participated in;
- If the applicant was a member of the military, which branch (Army/Navy, etc.) the applicant served in and the name of the squadron/unit/regiment;
- If the applicant served in a non-governmental unit or group, the official name of that group or groups;
- The period of time the applicant was a member of the group/unit;
- The applicant’s rank, if any;
- The name of the applicant’s commanding officer;
- A list of the applicant’s specific duties within the group;
- Who provided the applicant’s training and where the applicant was trained;
- Whether the applicant participated in any combat;
- Where the applicant participated in interrogating any person;
- A detailed explanation of whether the participation in the group was voluntary or involuntary;
- The type of weapon that the applicant or person within the group used or threatened to use against another person; and/or
- An explanation regarding the events in questions in which the applicant or another person within the group used or threatened to use a weapon against another person.

For more details on the elements required for the persecutor bar to apply, please consult CLINIC’s advisory, [Common Obstacles When Representing Afghans in Immigration Proceedings](#).

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. USCIS has not published TPS-specific guidance on firm resettlement, though it has addressed questions about the issue in recent public engagements.⁹

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 that 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 made available, country conditions, the ability to own property, travel, and access education, as well as evidence of persecution or discrimination by the government of the third country.

⁹ See *USCIS Temporary Protected Status (TPS) Webinar Questions and Answers*, Aug. 25, 2021, available at: https://www.uscis.gov/sites/default/files/document/questions-and-answers/Temporary_Protected_Status_TPS_Webinar_Questions_and_Answers.pdf.

Form I-821 asks applicants to provide information on the countries they have transited through and/or lived in after fleeing their home country and prior to arriving in the United States. Applicants are instructed to provide the dates they were in those countries and describe any immigration status they may have had while in those countries. If the applicant has ever been offered an immigration status or citizenship in another country that they did not accept, he or she is asked to describe that status offer and explain why it was rejected.¹⁰ According to USCIS, applicants it determines are barred by firm resettlement will receive a Notice of Intent to Deny and provide them an opportunity to respond before a denial notice is issued.

Can a dual national of Afghanistan and another country qualify for TPS?

Dual nationality is not necessarily a bar to TPS if the applicant is able to prove that he or she is a national of Afghanistan or is a person without any nationality who last habitually resided in Afghanistan. Firm resettlement, discussed above, is another issue that may arise for dual nationals.

Afghans who have previously applied for an immigration benefit using their non-TPS nationality may receive more scrutiny to determine whether the firm resettlement bar applies. Consider including arguments that, despite having applied for an immigration benefit using their non-TPS nationality, the applicant has proven that he or she is a national of a TPS designated country and has no significant ties to the other country of nationality.

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

Why should an Afghan with valid parole consider applying for TPS?

For many Afghans, 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 Afghans 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 Afghan citizens, such as through an employment-based category under INA § 203(b) or through a family-based preference category. There is no bar to holding both TPS and parole.

What is the application process for initial TPS for Afghanistan?

Individuals who are eligible for TPS and are applying for TPS for the first time should file an initial application within the registration period, which is open from Sept. 25, 2023, through May 20, 2025.

Initial 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.

¹⁰ See Form I-821 Instructions at Part 2, Items 15.a - 15.d, and Part 7, Items 1.c - 7, available at [Form I-821, Instructions for Application for Temporary Protected Status \(uscis.gov\)](#).

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. Initial TPS EAD applications should apply under the (a)(12) eligibility category.
3. Proof of identity and Afghan 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 Sept. 20, 2023, and physical presence since Nov. 21, 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 (although USCIS will also provide the opportunity to submit later, if not included with initial package).
7. If applicable, certified court disposition related to any criminal arrest, charge or conviction.

Initial TPS applicants may choose to submit Form I-821 online. Those seeking an EAD may also concurrently file Form I-765 online.¹¹ However, online filing is not currently available for those requesting a fee waiver.

Noncitizens who fail to apply during the initial registration period may be able to file a late initial application if they meet certain conditions.¹²

What is the application process for TPS re-registration?

Current TPS beneficiaries under the 2022 designation for Afghanistan must re-register during the 60-day period that runs from Sep. 25, 2023, through Nov. 24, 2023. Those who miss the re-registration period may be able to file late for good cause.

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.

Applicants who are submitting a first-time re-registration with USCIS following an Immigration Judge or Board of Immigration Appeals decision granting TPS should include a copy of that decision with their Form I-821. TPS applicants may choose to submit Form I-821 online. Those seeking an EAD may also concurrently file Form I-765 online.¹³ However, online filing is not currently available for those requesting a fee waiver.

¹¹ See USCIS website at <https://www.uscis.gov/newsroom/alerts/all-temporary-protected-status-tps-applicants-may-now-file-forms-i-821-and-i-765-online>

¹² See information under “Filing Late” at: <https://www.uscis.gov/humanitarian/temporary-protected-status>.

¹³ See USCIS website at <https://www.uscis.gov/newsroom/alerts/all-temporary-protected-status-tps-applicants-may-now-file-forms-i-821-and-i-765-online>

TPS beneficiaries who have a Form I-821 and/or Form I-765 pending on Sept. 25, 2023, do not need to re-file. If these forms are approved, they will be granted validity through May 20, 2025.

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

Current TPS beneficiaries whose EADs were previously issued under the TPS designation of Afghanistan will receive an automatic extension of their EAD through Nov. 20, 2024. 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 has the notation A-12 or C-19 under Category and an expiration date of Nov. 20, 2023, the beneficiary may choose to present that EAD to their employer, along with the Sept. 25, 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 evidence should applicants submit to demonstrate identity and nationality?

Primary evidence of identity and nationality includes a passport (valid or expired); a birth certificate, along with photo identification; and/or other nationality identity document (such as Afghan “tazkira”) with photograph and/or fingerprint. If primary evidence is unavailable, an applicant may submit an affidavit explaining why the documents cannot be obtained, along with acceptable secondary evidence. Secondary evidence may include a naturalization certificate; baptismal certificate (if it indicates nationality or parents' nationality); copies of school, medical, or immigration records that include nationality; or affidavits from friends or family members who have close personal knowledge of the date and place of the applicant's birth or their parents' nationality.¹⁴

What evidence can applicants submit to show continuous residence and continuous physical presence?

The Instructions to Form I-821 provide a non-exhaustive 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 ordinary business that include the applicant's name, address, and a date.

Can family members apply for TPS together?

There are no derivative benefits for TPS recipients. To qualify for TPS, everyone must satisfy the requirements for TPS independently and submit their own application. If submitting applications for multiple family members in one packet, USCIS recommends including a separate check for each applicant.

¹⁴ See USCIS website for a list of acceptable secondary evidence, available at: uscis.gov/humanitarian/temporary-protected-status.

Can Afghan TPS holders travel abroad and reenter the United States?

A TPS holder must obtain a TPS travel authorization document prior to departing the United States to avoid breaking the continuous physical presence requirement for maintaining TPS. A valid travel document also demonstrates that the TPS holder has permission to reenter the United States. Issuance of a travel document from USCIS does not guarantee reentry to the United States. CBP inspects returning TPS recipients at the port-of-entry and has the discretion to find someone inadmissible under INA § 212(a) or otherwise deny entry. USCIS advises TPS holders who simultaneously hold a nonimmigrant status to obtain a TPS travel document instead of relying on a nonimmigrant visa to travel.

Afghan evacuees should consider additional risks related to travel outside the U.S. In particular, asylum applicants should avoid traveling to their country of persecution or feared persecution. Travel to the home country may be viewed as an indication that the individual does not meet the definition of a refugee.

Clients with a pending or approved I-821 can apply for a TPS travel authorization document by filing Form I-131. When filing paper applications, concurrently filed Forms I-821 and I-131 should be sent to the address listed on the USCIS TPS page for each specific country. Those who are applying for travel authorization separately based on a pending or approved I-821 should check the USCIS page for [Direct Filing Addresses for Form I-131](#). The \$575 filing fee for the I-131 cannot be waived.

Can TPS lead to permanent immigration status?

TPS does not provide an independent path to Lawful Permanent Resident (LPR) status. However, it may help some beneficiaries of family- or employment-based petitions maintain eligibility for adjustment of status under INA § 245(a). To adjust under 245(a), an applicant must have been “inspected and admitted or paroled” upon his or her last entry; have an immigrant visa immediately available; and be admissible (or eligible for an inadmissibility waiver). In addition, INA § 245(c) imposes bars to adjustment that apply to any preference category beneficiary who has either worked without authorization or has failed to continuously maintain lawful immigration status since entry.

TPS may help Afghans who are not immediate relatives avoid the 245(c) bars to adjustment. Afghans who arrive in the United States through humanitarian parole meet the “inspected and admitted or paroled” requirement of section 245(a). Obtaining TPS before the individual’s parolee status expires will help Afghans in the preference categories by ensuring that they continuously maintain lawful immigration status from the time of their entry. TPS also allows parolees to obtain EADs and avoid working without authorization. In addition, a parolee who obtains TPS is considered to be in lawful nonimmigrant status and may be eligible to adjust in an employment-based category.

May an Afghan with a pending asylum application apply for TPS?

Yes, an asylum application (or an application for any nonimmigrant status) can be approved even if the applicant already has TPS. Those seeking affirmative asylum should note that if, following the interview, the asylum officer decides not to grant asylum, the regulations require the officer to deny the application when the applicant is maintaining valid immigrant, nonimmigrant, or TPS status at the

time the application is decided.¹⁵ In contrast, if the applicant is without lawful status, the asylum case will be referred to an immigration judge who can review the asylum claim *de novo*.¹⁶

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 has no other relief available, then 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.

If an individual has TPS at the time of their asylum interview, prior to the issuance of a final denial, the asylum office will first issue a Notice of Intent to Deny (NOID).¹⁷ Note that Afghan parolees will also be issued NOIDs prior to final denials if they are still maintaining valid parole status. The issuance of a NOID prior to a denial is useful because USCIS will outline its concerns with the case (for example, lack of a well-founded fear of persecution or lack of credibility) and give the applicant the opportunity to respond to perceived deficiencies in his or her case. An applicant who lacks lawful status will be immediately referred to immigration court without the chance to rebut USCIS's findings or even fully understand the reasons behind the referral to court. Applicants may respond to a NOID by providing additional documentation, such as country conditions reports or an expert witness report, to support their claim to asylum.

My client has a pending asylum application. Does the client need to apply for TPS as well?

The need for TPS can be assessed by practitioners on a case-by-case basis. Practitioners should keep in mind that Afghan asylum cases are generally being expedited by the asylum office. Pursuant to section 2502(a) of the Extending Government Funding and Delivering Emergency Assistance Act, certain Afghan nationals are being prioritized for the scheduling of affirmative asylum interviews.¹⁸ For those Afghan nationals paroled into the United States between July 31, 2021, and Sept. 30, 2022, USCIS is required to conduct an initial interview no later than 45 days after the date the application is filed. In the absence of exceptional circumstances, USCIS is required to issue a final decision within 150 days of the filing of the application. However, many advocates have reported severe delays in receiving a decision post interview.

Some applicants may choose to await a decision on their asylum application before proceeding with filing for TPS. However, practitioners should also keep in mind other factors weighing in favor of applying for TPS, including the benefits of completing the asylum process while still in lawful status and the desire to ensure that their clients have no interruption in their ability to work lawfully in the United States.

How does holding TPS impact the one-year filing deadline for asylum applications?

The law requires that an asylum applicant demonstrate by clear and convincing evidence that his or her application for asylum was filed within one year after arrival in the United States.¹⁹ An applicant

¹⁵ 8 CFR § 208.14(c)(4).

¹⁶ *Id.*

¹⁷ USCIS Affirmative Asylum Procedures Manual at 26 (2016) (describing procedures for issuing a NOID to an applicant who is maintaining status in the United States).

¹⁸ P.L. 117-43.

¹⁹ INA § 208(a)(2)(B); 8 CFR § 208.4.

may establish an exception to this general rule if changed or extraordinary circumstances are present.²⁰ The regulations further define “extraordinary circumstances” as those in which the applicant is maintaining TPS, lawful immigrant or nonimmigrant status, or was given parole until a reasonable period before the filing of the asylum application.²¹ Filing within six months of the expiration or termination of parole or any other lawful nonimmigrant status should be considered “reasonable” by the agency.²²

While many Afghans will want to file for asylum as soon as possible to start the process of obtaining permanent status in the United States, advocates should know that Afghans who file outside of the one-year filing deadline will likely be able to establish an exception to the deadline based on extraordinary circumstances, as long as they file within six months of the termination or expiration of their parole document or their TPS. An Afghan client who moves from parole to TPS will essentially extend the one-year filing deadline for as long as their TPS remains valid.

My client is pursuing permanent residency through the Special Immigrant Visa (SIV) process. Do they also need to apply for TPS?

This will be a case-by-case determination depending on the facts and circumstances of each case. One consideration for advocates will be how far along their clients are in each step of the SIV process. Many Afghans pursue permanent residency through the SIV program found under Section 602(b) of the Afghan Allies Protection Act of 2009, as amended, which authorizes the issuance of SIVs to Afghan nationals who meet certain requirements and who were employed in Afghanistan:

- By or on behalf of the U.S. government in Afghanistan, or
- By the International Security Assistance Force (ISAF), or a successor mission, in a capacity that required the applicant to serve as an interpreter or translator for U.S. military personnel while traveling off-base with U.S. military personnel stationed at ISAF or to perform activities for the U.S. military personnel stationed at ISAF.²³

The relevant term of service to qualify for an SIV under this program is one year.

The SIV process traditionally contained three steps. First, the applicant had to seek Chief of Mission (COM) approval. Second, the applicant had to file a Form I-360. Finally, upon approval of that petition, the applicant proceeded to file a Form I-485, Application to [Register Permanent Residence or Adjust Status](#). However, as of July 2022, responsibility for the underlying visa petition was transferred to the Department of State (DOS). Therefore, the three-step process was converted into a two-step process. Now, Afghan SIV applicants file a signed Form DS-157, Petition for Special Immigrant Classification for Afghan SIV Applicants, with the DOS when applying for COM approval. Applicants who receive COM approval on or after July 20, 2022, who submitted a signed DS-157 as part of the request may move directly to filing for adjustment of status.

Applicants who have already received COM approval may not need to register for TPS, because they are nearing the end of their road towards permanent residency. Practitioners are reporting quick

²⁰ 8 CFR §§ 208.4(a)(4), (5).

²¹ 8 CFR § 208.4(a)(5)(iv).

²² *Matter of T-M-H- & S-W-C-*; 25 I&N Dec. 193 (BIA 2010).

²³ Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government, travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html.

processing times for I-360 petitions (for those who need them), with most being adjudicated within 1-2 months. Furthermore, once an I-485 application is filed, applicants are lawfully authorized to remain in the United States and may also seek work authorization based on having a pending adjustment of status application.

However, for those applicants just starting the process of seeking COM approval, applying for TPS as a backup may make sense. Processing times for COM approval can be quite slow, and there is a lack of clarity on how long these requests are taking. Some practitioners have reported COM denials, even for those applicants who appear to be eligible. Filing for TPS can help applicants maintain lawful status and work authorization as they await completion of their SIV processing.

How can having parole, a pending asylum application, or pending I-485 application impact an individual's eligibility for "late initial registration"?

It is possible to apply for TPS for the first time during an extension of a particular country's TPS designation. The individual still must independently meet all the TPS eligibility requirements, including the required period of physical presence and continuous residence. To qualify for late initial registration, the applicants must generally show that they meet one of the following conditions and that they register while the condition still exists or within a 60-day period following the expiration or termination of such condition:

- The applicant was a nonimmigrant, was granted voluntary departure, or was granted relief from removal;
- The applicant had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal;
- The applicant was a parolee or had a pending request for re-parole; or
- The applicant is the spouse or child of an individual who is currently eligible for TPS.²⁴

The late initial registration provisions thus may allow any Afghan citizens who chose not to register initially because of a pending adjustment of status or asylum application to subsequently register should TPS be extended for Afghanistan.

Would a TPS approval terminate someone's parole status or affect his or her eligibility for federal benefits?

Afghan evacuees who were granted parole and are then granted TPS should remain eligible for federal benefits based on the grant of parole.²⁵ However, to avoid causing confusion, parolees should consider using proof of their parole or their parole-based EAD to demonstrate to benefit-granting agencies that they are an Afghan evacuee and therefore eligible for federal benefits during the period of their parole.

²⁴ 8 CFR § 244.2(f).

²⁵ See USCIS's Responses to Questions from the Catholic Legal Immigration Network, Inc., about Temporary Protected Status for Afghan Nationals (April 20, 2022), https://www.uscis.gov/sites/default/files/document/questions-and-answers/Temporary_Protected_Status_for_Afghan_Nationals.pdf.