



A GUIDE TO TEMPORARY PROTECTED STATUS FOR SYRIAN NATIONALS

I. Brief Overview

On March 29, 2012, the Secretary of Homeland Security designated the Syrian Arab Republic (“Syria”) for Temporary Protected Status (“TPS”) after finding that there are “extraordinary and temporary conditions in Syria that prevent Syrian nationals from returning in safety, and that permitting such aliens to remain temporarily in the United States would not be contrary to the national interest of the United States.”¹ Under the terms of the Notice, eligible Syrian nationals who have both continuously resided in and who have been continuously physically present in the United States since March 29, 2012 are eligible to apply for TPS. The registration period for TPS designation begins March 29, 2012 and will remain open for 180 days, meaning Syrian nationals must apply by September 25, 2012.

This means that Syrian nationals in the United States – including those whose visas have expired or who have otherwise fallen out of legal status – can apply for TPS starting today through September 25, 2012. If granted, you may remain in the U.S. on TPS status through September 30, 2013. During that TPS period, individuals who receive TPS will be allowed to stay in the U.S. regardless of their visa status. You may also request employment authorization while in the U.S. under TPS. Also during that time, individuals who receive TPS will be permitted to apply for visa extensions or other status that permits them to stay in the U.S. past September 30, 2013. On September 30, 2013, your status will revert to either your status *before* receiving TPS, or to the status you gained and maintained *during* the TPS period.

II. Eligibility for TPS

In order to be eligible, applicants for TPS designation must demonstrate that they satisfy all eligibility criteria for TPS. That means you must prove that you are a Syrian national, and that you have been “continuously physically present” and have

¹ See Designation of Syrian Arab Republic for Temporary Protected Status, 77 Fed. Reg. 61,19026 (Mar. 29, 2012) [hereinafter “Notice”].

“continuously resided” in the United States since March 29, 2012.² The filing period for TPS status begins on March 29, 2012, and an applicant *must* file an application by September 25, 2012.³

As a TPS applicant, you will be subject to background checks and will be ineligible for TPS status if you have been convicted of one felony or multiple misdemeanors in the United States.⁴ The government may not waive this restriction, but may waive other violations that are traditional barriers to receiving a visa or admission to the United States for TPS applicants on a case-by-case basis for “humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.”⁵ However, additional documentation may be required for applicants who are seeking waiver of a qualifying violation.⁶

III. Steps and Procedures for Application

A. Applications and Fees

An applicant for TPS must submit the following documents to the United States Customs and Immigration Service (“USCIS”): (1) Application for Temporary Protected Status (Form I-821) and fee for application (or fee waiver request if you are unable to

² This TPS designation also applies to individuals with no nationality who have habitually resided in Syria. *See Notice, supra* note 1; *see also* 8 U.S.C. § 1254a(c)(1)(A). The law contains an exception to the continuous physical presence requirement for brief, innocent departures from the United States; however, the applicant must inform USCIS of all absences from the United States since the eligibility date. USCIS will then determine whether the exception applies. *See id.* at § 1254a(c)(4)(A)-(B).

³ Please note that the date in Notice is *incorrect*. USCIS has stated that it will be submitting a formal correction to clarify that the deadline for application is September 25, 2012. If TPS is later extended beyond September 30, 2013, individuals will need to re-apply, and some individuals who meet the original eligibility criteria may be able to apply for the first time, under certain circumstances. *See Notice, supra* note 1; www.uscis.gov/tps. Additionally, if an extension to this TPS Notice for Syria is granted, an applicant may be able to apply for TPS for the first time during an extension of the country’s TPS designation period, even if the initial registration period has closed, if the applicant still meets all TPS eligibility requirements, and special circumstances must have existed during the initial registration period. For more information on late filing see www.uscis.gov/tps.

⁴ 8 U.S.C. § 1254a(c)(2)(B). Also, an applicant will not be eligible for TPS status if he or she meets any of the criteria described in 8 U.S.C. § 1158(b)(2)(A), including: (1) the alien participated in the persecution of a person on account of race, religion, or other suspect classifications; (2) there are reasons to believe that the alien has committed a serious nonpolitical crime outside of the United States; or (3) there are grounds for regarding the applicant as a danger to the security of the United States.

⁵ 8 U.S.C. § 1254a(c)(2)(A)(ii) (stating that besides certain criminal provisions, the Attorney General may waive any other provisions making an alien inadmissible to be admitted to the United States); *see also* 8 U.S.C. § 1182(a)(6) (stating that aliens present in the United States who have not been admitted or paroled are ineligible for admission to the United States).

⁶ If you have a violation that is able to be waived for TPS purposes, you may submit a request for waiver in two ways. First, you may file a Form I-601 (and associated fee), at the time of filing for TPS, if you know a waiver will be required and will apply to you. Second, you may simply submit your TPS application, and if USCIS determines a waiver will be required, you will receive a request for evidence and request to file an I-601 with respect to requesting a waiver for a particular violation that may apply to you.

pay); (2) Application for Employment Authorization (Form I-765) (even if you are not requesting employment authorization) and fee for employment authorization (only if you are requesting employment authorization); and (3) Biometric Services Fee (or fee waiver request if you are unable to pay).⁷ If biometrics are required for an applicant, the applicant will be mailed a notice scheduling an appointment for biometric collection. You must attend this appointment, or reschedule it as provided in the notice, or else you may be denied TPS.

Both the I-821 and the I-765 must be completed and submitted together. Provide applications and evidence in English (or with an English translation), and provide a U.S. mailing address. The total cost associated with the required documents varies by an applicant's age, with the total cost for applicants between the ages of 14 and 65 being \$135 if not applying for employment authorization, or \$515 if applying for employment authorization.⁸ As noted above, fee waivers may be available if you are unable to pay.⁹

B. Supporting Documents

An applicant for TPS must also submit documents proving nationality and that he or she has continuously resided and been continuously present in the United States since March 29, 2012.

The following documents are the preferred forms of evidence that an applicant is a national of Syria: (1) copy of passport; (2) documentation issued by the Syrian government showing nationality (*e.g.*, national identity card, official travel documentation issued by the Syrian government); and (3) birth certificate (with English translation) accompanied by photo identification. USCIS will also consider secondary evidence supporting Syrian nationality, including nationality documentation (*i.e.*, naturalization certificate without photograph or fingerprint), baptismal certificate (if it indicates nationality or parent's nationality), copies of immigration documents showing nationality and identity, or affidavits from friends or family members who have close

⁷ The current fee for the I-821 is \$50 for first time applicants, although there is no application fee for re-registration. The fee for the I-765 employer authorization form is \$380, and the Biometric Services fee is \$85. *See* www.uscis.gov/tps.

⁸ *See* U.S. CITIZENSHIP AND IMMIGRATION SERVICES, TEMPORARY PROTECTED STATUS, www.uscis.gov/tps.

⁹ Applicants who are unable to pay the fees associated with the forms may apply for a fee waiver by completing a Request for Fee Waiver (Form I-912). Applicants may also submit a personal letter requesting a fee waiver, but the applicant must provide sufficient supporting documentation of why the fee waiver is necessary. *See* Notice, *supra* note 1 at 61,19028.

If an applicant's fee waiver request is denied, the applicant may re-file the application packet with the correct fees before the filing deadline. If an applicant receives the fee waiver denial with fewer than 45 days before the filing deadline, or if the deadline has passed, the applicant may still re-file the application within the 45-day period after the fee waiver denial notice. The application will not be rejected, even if the deadline has passed, as long as the application is mailed within the 45 days and all fees and other required information for the application are included. If an applicant files a new fee waiver request after the deadline and the new fee waiver request is denied, the applicant is barred from re-filing.

personal knowledge of the date and place of the applicant's birth and parents' nationality.¹⁰ If an applicant is unable to produce one of the preferred forms of evidence, the applicant must submit an affidavit showing proof of his or her unsuccessful efforts to obtain the documents and affirming the applicant is a national of Syria. Applicants unable to produce proof of identity or nationality will also be required to interview with an immigration officer.¹¹ In addition to the proof of nationality documentation, the applicant must submit two color passport-style photographs of himself or herself.

The applicant is also required to submit evidence of his/her date of entry and continuous residence to demonstrate that the applicant has been in the United States since March 29, 2012. Documents sufficient to prove date of entry include a copy of the applicant's passport, the I-94 Arrival/Departure Record, or any of the documents sufficient to prove that an applicant has been continuously residing in the United States. Continuously residing evidence includes employment records, rent receipts, utility bills, school records for the applicant or the applicant's children, or hospital or medical records.¹² The law allows an exception to the continuous presence and residence requirements if you have taken a brief, casual, and innocent departure from the United States. When you apply for TPS, you must inform USCIS of all absences from the United States since March 29, 2012, and USCIS will determine whether your absences were brief, casual, and innocent.¹³

The applicant may be required to submit additional documents or explanations if one or more of the questions listed in Part 4, Question 2 of Form I-821 applies to the applicant. Part 4, Question 2 of Form I-821 states that to be eligible for TPS, an applicant must be admissible as an immigrant to the United States, with certain exceptions. The section provides a series of questions including whether the applicant has been involved in terrorism, crime outside the United States, or entered the United States as a stowaway. If the answer is yes to any of the sub-questions in Part 4, Question 2, the applicant must submit additional documentation and/or an explanation and a waiver Form I-601.¹⁴

IV. Consequences of TPS Status

During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain an Employment Authorization Document to seek employment in the United States; however, the TPS designation is not equivalent to permanent resident status. There may also be circumstances under which a TPS beneficiary is granted authorization for travel outside the United States. If you have TPS and wish to travel abroad, you must request permission from USCIS in advance by submitting Form I-131, Application for Travel Document.

¹⁰ See www.uscis.gov/tps for a complete listing of primary and secondary evidence.

¹¹ See *Notice*, supra note 1, at 15.

¹² See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, TEMPORARY PROTECTED STATUS, www.uscis.gov/tps. The I-821 Form Instructions provide additional details on acceptable evidence. 138 U.S.C. § 1254a(c)(4)(A)-(B).

¹⁴ See *Notice*, supra note 1, at 15; Application for Temporary Protected Status (Form I-821).

While under TPS designation, an individual may apply for visa extensions, asylum, or other legal immigration status. When the Secretary of Homeland Security terminates Syria's designation (currently scheduled for September 30, 2013), TPS beneficiaries return to the immigration status they maintained before TPS, or the TPS beneficiaries may assume the lawful immigration status they received during the TPS period.

This analysis is being offered by United for a Free Syria for informational purposes only, and it is not intended to provide legal advice or establish an attorney-client relationship. For more information, please see the USCIS website (www.uscis.gov/tps) or call 1-800-375-5283 or, for unusual TPS issues 202-272-1533. Contact legal counsel for assistance with applying for TPS or other immigration designations.