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## How employers can support Temporary Protected Status beneficiaries

*With some TPS designations terminated or in question, here's how employers can help affected workers*

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The end of Temporary Protected Status, or TPS, for Salvadorans, Nicaraguans and Haitians has left many individuals — a substantial number of whom work in the foodservice and hospitality industries — scrambling for ways to lawfully remain in the United States.

In January 2017, an estimated 325,000 migrants from 13 TPS-designated countries resided in the U.S., with approximately 32,400 working in the restaurant and foodservice industries. Terminating the rights of TPS beneficiaries not only affects individuals and their families, but also the U.S. economy and employers.

TPS is a temporary form of relief for individuals from certain countries designated by the Department of Homeland Security during times of extraordinary and temporary conditions, such as armed conflicts or environmental disasters. Currently, El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria and Yemen hold TPS designation. TPS beneficiaries receive employment authorization and temporary lawful status in the U.S. On Jan. 8, 2018, the Trump administration decided to terminate the TPS designation for El Salvador, leaving approximately 200,000 Salvadoran TPS beneficiaries in legal limbo.

Many TPS beneficiaries have resided in the U.S. for a long time, some since the original designation of their country — 2001 for El Salvador and 1999 for Nicaragua, for example. If TPS beneficiaries could obtain lawful permanent residency, or green cards, in the U.S., they would then have unrestricted travel and work authorization. Lawful permanent residency also generally leads to citizenship. However, many TPS beneficiaries are not currently eligible to receive green cards due to the way they entered the U.S.

For someone to be eligible for a green card, that person must have been “inspected and admitted or paroled” into the U.S. “Parole” usually occurs when someone enters the country lawfully, such as for humanitarian reasons, or after they have been granted Advance Parole, or travel authorization. “Admission” generally occurs when someone presents themselves at a port of entry with valid immigration documents, such as a tourist visa or work visa, and is formally admitted to the U.S.

This “inspected and admitted or paroled” requirement is problematic for some TPS beneficiaries who entered without inspection and thus have not been admitted or paroled into the U.S. At the current time, whether a TPS beneficiary can obtain a green card depends on which state that person lives.

Since the termination of TPS designations for Nicaragua, El Salvador and Haiti is not immediate, many employers are now asking how they can keep their TPS beneficiary employees. The best alternative for TPS beneficiaries is a permanent solution by Congress. However, absent a legislative solution, employers may still have some options to help TPS beneficiaries obtain permanent status in the U.S.

### **What employers can do**

Employers can immediately begin the process of sponsoring their employees through a process commonly known as PERM, which involves filing an application for Labor Certification with the Department of Labor on behalf of the employee. If successful, an employer can then file an immigrant visa petition with U.S. Citizenship and Immigration Services.

If the employer is in the 6th or 9th Circuit, the employee can proceed to the final step of the green card process, Adjustment of Status. Outside the 6th and 9th Circuits, employees are not currently eligible for this final step of the green card process. However, if pending legislation is successful, or if Congress passes a law to address the situation, employees who have already commenced the green card process will be in the best position to finalize the process and secure permanent status in the U.S.

A similar process to employment-based sponsorship exists for TPS beneficiaries with immediate relatives who are U.S. citizens and lawful permanent residents, wherein a qualifying relative can file a petition for a TPS beneficiary, who can then request a green card.

As pending litigation in federal court moves forward and some protected statuses come to an end, it is important that beneficiaries, their families and their employers know that in many cases, long-term solutions do exist to ensure the safety of TPS beneficiaries in the U.S.

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