



Lutheran Immigration
and Refugee Service

Applying for Temporary Protected Status for Haitians

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A Special Thanks

- Over 1800 individuals have registered for this training representing law firms, legal teams at private companies, bar associations, legal aid societies, community based organizations, and law schools...
- Thank you for taking the time to be a part of this and for your willingness to welcome and stand in solidarity with the people of Haiti living in our communities.

Learning Outcomes

- Roles and Responsibilities of volunteers: doing no harm with good intentions.
- Understanding the legal mechanics in play
- Who is eligible for TPS, who is ineligible
- Issue spotting and common mistakes
- Understanding the process
- Tips and strategies
- Resources and ways to engage

Unlawful Practice of Law (UPL)

- UPL – the practice of law by either attorneys who are not licensed to practice in a particular jurisdiction or by persons who are not attorneys but present themselves as qualified to give immigration advice (practice of law: rendering legal services, preparing legal instruments, and advising clients in connection with the law, including what forms to fill out).
- Federal regulations further define who can appear before DHS and EOIR: attorneys, BIA-recognized organizations, BIA-accredited representatives, and qualified representatives.
 - A “qualified representative” must work without compensation and must be familiar with immigration law and regulations (law student/law graduate under attorney supervision; reputable individual of good moral character; or “accredited official” of the government of the country of nationality).

Unlawful Practice of Law

- Crime in most states:
http://www.abanet.org/publicserv/immigration/notario/state_code_sections.pdf
- How to file a complaint on UPL:
<http://www.aila.org/stopnotariofraud>
- In NY state, also call the Attorney General's Immigration Services Fraud Unit at 866-390-2992

Unlawful Practice of Law

- Warnings for the Haitian community
 - In English:
<http://www.uscis.gov/files/nativedocuments/USCIS%20fraud%20brochure.pdf>
 - In Creole:
http://www.uscis.gov/files/nativedocuments/fraud_hcreole_brochure_17dec08.pdf

Roles and Responsibilities

- Who can advise clients on their TPS applications:
 - BIA-recognized agencies;
 - Attorneys;
 - Law students/law graduates under attorney/clinical supervision.
- All others must understand their own responsibilities and limitations as they volunteer
- Legal materials on TPS are available on the AILA website: www.aila.org/haiti

Roles and Responsibilities

- Service Models:
 - Traditional legal service model – each applicant becomes the client of an attorney, law firm, or BIA-recognized agency; law clinics, law student volunteers and volunteer attorneys work with established non-profits to provide services.
 - One-stop workshop – volunteer lawyers and law students under attorney or BIA-representative supervision prepare applications on the spot, which are then mailed out by the applicants.
 - Immigration law clinics working with community-based organizations – law students under attorney/clinical supervision prepare the applications; the community-based organization provides the site and the outreach.
 - Informational workshop and referral to non-profits or pro-bono attorneys

Forms of Humanitarian Relief under U.S. Immigration Law

Importance of screening for all...

- Refugee/Asylum
- Temporary Protected Status
- Withholding of Removal
- Special Immigrant Juvenile Visas
- Visas for Trafficking Victims
- Visas for Victims of Domestic Violence
- Client may have a claim to US citizenship

Temporary Protected Status (TPS)

- Nationals of a designated foreign state or area who are in the United States may be granted temporary protected status and employment authorization for the effective period of the designation if they register for TPS by a specified date.

Sources of Law Specific to TPS

- Statute: Immigration and Nationality Act (INA) §244 (8 USC § 1254(a)); INA § 212 (8 USC §1182)
- Regulations: 8 CFR Part 244; 8 CFR 103.7(c); 8 CFR 212
- Federal Register Notice: <http://frwebgate5.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=125498369169+0+2+0&WAIAction=retrieve>
- Interpretative memos, guidance on TPS: <http://www.uscis.gov/USCIS/Laws/Memoranda/2010/haiti-field-guidance.pdf>
- Other government resources on TPS for Haitians: Q&As <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=855260f64f336210VgnVCM100000082ca60aRCRD&vgnnextchannel=9cf75869c9326210VgnVCM100000082ca60aRCRD>

Who is eligible for TPS

Eligibility: INA § 244(c)[8 USC 1254(a)]; 8 CFR § 244.2

- Haitian national (or a person without nationality that last habitually resided in Haiti)
- Continuous residence in U.S. since Jan 12, 2010
- Continuous physical presence since Jan 21, 2010 (date of publication in Federal Register)
- Admissible to the U.S. as an immigrant (certain exceptions apply)
- Registers during the period
- Not ineligible by statute (next slides)

Meeting the Elements

8 CFR 244.9 EVIDENCE

- How to prove your client is Haitian
 - Passport, Birth Certificate, National ID Card, Letter from Haitian Consulate, Affidavit
- How to prove presence before Jan 12, 2010
 - Entry docs, previous immigration receipts, mail, bills, school records, pay stubs, tax filings, affidavits, etc.
- How to prove continuous residence since Jan 21, 2010
- How to prove that your client is eligible even with criminal convictions (see next slides)
- How to prove admissibility when there is an issue (next slides)

Ineligibility for TPS and Criminal Convictions

INA 244(c)(2)(B); 8 CFR 244.4 (a-b)

Persons ineligible for TPS

- Any person convicted of any felony
- Any person convicted of two or more misdemeanors
- Important guidance on this issue: CIS guidance memo and Immigrant Defense Project Advisory for NY misdemeanors available at <http://www.aila.org/haiti>
- Ineligibility grounds of INA 208(b)(2)(a): persecutor of others, particularly serious crime, serious non-political crimes outside the US, danger to the security of the U.S.; firm resettlement in another country
- No waiver for these grounds of ineligibility

Requirement of Admissibility

- A TPS applicant who falls under the following categories, may be inadmissible to the U.S., and their TPS application will be denied unless a *waiver* is approved:
 - **Those with certain health-related grounds (INA § 212 (a)(1))**
 - **Criminal-related grounds (**no waiver**) (INA § 212 (a)(2))**
 - **National security grounds (**no waiver**) (INA § 212 (a)(3))**
 - **Immigration violators (those who entered the US without inspection, ordered removed in absentia, misrepresentation, etc.) (INA § 212 (a)(6))**
 - **Those with prior removals (INA § 212 (a)(9))**
 - **Those who have accrued unlawful presence in the U.S. (INA § 212 (a)(B))**
 - **Those who have accrued unlawful presence in the U.S. after a previous immigration violation (INA § 212 (a)(9)(C))**
 - **Miscellaneous grounds including military draft evaders**
- All may be waived except where indicated. INA 244(c)(2)(A)(iii). 8 CFR 244.3(b)-(c)
- Grounds that do not apply for TPS applicants: INA §§ 212(a)(5) (lack of labor certification) and 212(a)(7)(A) (lack of valid immigrant visa and passport); public charge (by regulation 8 CFR 244.3(a))

Waivers for certain grounds of inadmissibility

- Waiver Standard: may be waived for “humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” INA §244(c)(2)(A)(ii)
- Sample affidavit following the TPS standard (akin to the refugee waiver standard) is available at <http://www.aila.org/haiti>

Inadmissibility Waivers

- Form I-601:
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=bb515f56ff55d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>
- Fee \$545 (CIS position is that this fee *cannot* be waived as of today)
- Tip: wait to file TPS “bundle” and include the waiver forms and supporting evidence at the same time. If you file it separately, send it to the Service Center listed on the receipt notice. CIS will issue a request for additional evidence if they suspect that a ground of inadmissibility applies to an individual.

Forms and Fees

- **Forms**
 - I-821: <http://www.uscis.gov/files/form/i-821.pdf>
 - I-765: <http://www.uscis.gov/files/form/I-765.pdf>
 - G-28: (for each form) <http://www.uscis.gov/files/form/g-28.pdf>
 - I-601 waiver, if necessary <http://www.uscis.gov/files/form/i-601.pdf>
- **Form Tips from CIS:** http://www.uscis.gov/USCIS/Forms/i-821_Haiti_Filing_Tips.pdf
- **Fees:**
 - \$470 total per person (\$50 for I-821; \$80 for biometrics; \$340 for I-765).
 - \$545 for the I-601 waiver form, when necessary
 - Use separate check for each individual; if asking for a fee waiver, include separate fee waiver requests for each applicant.
- **Where to file – 3 separate locations for NY, FL, and all other states:**
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=80283796f8a5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

Supporting Documentation for TPS Application

- Supporting documents:
 - 2 passport-style photos;
 - Check or money order for \$470 application fee, or documentation to support a fee waiver request (evidence of household income and expenses);
 - Evidence that applicant is of Haitian nationality (passport, even if expired; or birth certificate. If not available, explain why and present secondary evidence);
 - Evidence of continuous residence in the US since 1/12/10 (I-94, or stamped passport);
 - Evidence of continuous physical presence in US since 1/21/10.
 - Certified translations of all foreign documents.
- Other documents the client will need to determine eligibility: certificates of disposition for all arrests.

Supporting Documentation (cont.)

- Avoiding Requests For Evidence (RFEs):
 - Complete every question on the form;
 - Applicant's signature on every form;
 - Use only forms from USCIS website; use the most updated version of each form;
 - Attach all initial evidence specified in the I-821 instructions;
 - Include I-765 even if not applying for an EAD;
 - Type the form (preferred method) or hand-write it neatly.

Fee Waiver

- **What fees can be waived 8 CFR 103.7(c);8 CFR 244.20**
 - Form fees, biometrics fee
- **TPS Standard: 8 CFR §244.20 –inability to pay judged by last 3 months, if essential expenses exceed gross income. TPS regs allow declarations if other evidence of income/expense not available.**
- **“Persuaded”:** Broad discretionary power to decide. Adjudicating office to review with recommendations, decided by supervisor.
- **Helpful Forms to follow for the fee waiver:**
CLINIC:[http://www.cliniclegal.org/sites/default/files/FeeWaiverForm Instructions 0.pdf](http://www.cliniclegal.org/sites/default/files/FeeWaiverForm%20Instructions%200.pdf)
- **FIAC fill in the blank:** <http://www.aila.org/haiti>
- **USCIS Guidance (2007 and 2004) on fee waivers:**
<http://www.uscis.gov/files/pressrelease/FeeWaiver072007.pdf>
- <http://www.uscis.gov/files/pressrelease/FeeWaiverGd3404.pdf>
- **Federal Poverty Guidelines:** <http://aspe.hhs.gov/poverty/09poverty.shtml>

Fee Waiver Practice Tips

- If household member not contributing income but living together, explain and document financial picture
- Translator certification at end of income/expense statement
- Multiple family members as applicants each need own waiver –but should include copy of principal’s fee waiver in each packet
- If waiver is not approved, the application gets returned. Watch the clock!
- Put large notation on mailing envelope, “FEE WAIVER REQUEST ENCLOSED” on top of application to flag it

Filing Timeline:

1. **Initial Consultation: Screening for eligibility, other forms of relief, identify potential grounds of inadmissibility, advise re pros and cons of TPS.**
2. **Complete I-821 and I-765 (ALL MUST FILE these two forms)**
 - Complete G-28, Fee Waiver Request, I-131, and I-601 (where necessary)
 - Make sure all forms are signed, money order/check amount is correct,
3. **Compile and attach all supporting documentation**
4. **REGISTRATION PERIOD OPENS 01/21/2010**
5. **Mail to correct address (1 address for FL, 1 for NY, 1 for all other locales)**
6. **USCIS receipt “1-2 weeks” after USCIS receives the application.**
7. **Biometrics appointment notice “within 60 days”**
8. **EAD within “90 days”**
9. **REGISTRATION PERIOD CLOSES 180 days after 01/21/2010**

**MUST BE ESPECIALLY MINDFUL OF DEADLINES WHEN
FEE WAIVER REQUEST IS DENIED OR WHERE RFE'S ARE ISSUED.**

Benefits and Responsibilities with TPS

- Eligibility for work authorization
- TPS does not allow for family unity: i.e., a person with this status cannot petition for their family members abroad
- Need to re-register before status expires
- Ability to apply for permission to travel (*warning!*)
- Possible downsides to TPS

Traveling with TPS and Unlawful Presence

Special Warning about Travel

- A person with TPS status is eligible to apply for and receive advanced parole (authorization to travel abroad and return to the U.S.).
- Individuals who have accrued unlawful presence as defined by INA § 212(a)(9)(B) and (C) will trigger the bars to admission under this section *by physically leaving the U.S.*
- Those with TPS will not accrue unlawful presence while they have this status, but they may have accrued it before getting it.
- **In most cases, they will not be able to re-enter the U.S., even with permission to leave and return from the U.S. government.**

Confidentiality Issues

- INA § 244(c)(6) mandates the protection of confidential information provided by TPS applicants.
- Responsibility to maintain confidentiality is taken seriously with these applications.
- Remember, however, that all information provided to the Department of Homeland Security can be used for law enforcement (ICE) purposes within the department because this is not deemed a disclosure to a third party.

Legal resources

- AILA (American Immigration Lawyers Association) webpage on updated resources:
<http://www.aila.org/content/default.aspx?bc=15767|31027|31033>
- IAN (Immigration Advocate Network) webpage for members :
http://www.immigrationadvocates.org/haitian_tps_resources/

Opportunities to Volunteer

- AILA has agreed to collect information of organized local efforts to help Haitians apply for TPS. The most up-to-date information can be found at <http://www.aila.org/haiti>.
 - New York:
<http://www.aila.org/content/default.aspx?bc=11836|15767|31027|31034|31036>
 - Miami
 - Boston
 - Washington
 - Atlanta

Thanks and Questions

- Thank you again to everyone involved in this training!
- For additional questions, please send an email to TPSquestions@lirs.org.
- Panelist will compile the questions submitted during the live session with answers.
- This PowerPoint and a recording of the live session are available at www.lirs.org.