

**TEMPORARY  
PROTECTION STATUS  
IMMIGRATION  
SEMINAR**

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Tuesday, January 26, 2010

1-3 pm

# USCIS

- This presentation was made on January 26, 2010. For the most updated information regarding TPS visit :[www.uscis.gov](http://www.uscis.gov)
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# What is Temporary Protected Status? TPS

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- TPS will allow eligible Haitian nationals in the United States to continue living and working in the United States for the next **18 months**, with the possibility of renewal. Providing a temporary refuge for Haitian nationals who are currently in the United States and whose personal safety would be endangered by returning to Haiti.
- It is important to note that TPS will apply only to those individuals who were in the United States as of January 12, 2010.
- During a designated TPS period, eligible individuals:
  - are not removable from the United States
  - cannot be detained by DHS, can obtain an employment authorization document (EAD)
  - may apply for travel authorization

# Eligibility: Who qualifies?

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- You are eligible for TPS if you meet all of the following requirements:
- You are a Haitian and you were present in the United States on or before **January 12, 2010**;
- File during the open registration or re-registration period.
- You have been a continuous resident in the United States since the date specified for your country;
- You have not been convicted of any felony or two or more misdemeanors in the United States;
- You are not a persecutor, or otherwise subject to one of the bars to asylum;
- You are not subject to one of the criminal or security related grounds of inadmissibility for which a waiver is not available.

# Who is a Haitian National?

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- One who is born in Haiti  
or
- Born from Haitian Parents

# Evidence of nationality includes:

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- passport
- birth certificate accompanied by a photo ID
- National identity document bearing photo or fingerprint
- Or an affidavit as to inability to obtain documents with any other proof

# What constitutes evidence of Habitual Residence?

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- Employment records
- Rent receipts
- School records
- Hospital or medical records
- Attestations by churches, unions, or other organizations
- other documents including passport entries, Children's US Birth Certificates, Bank Books
- Tax receipts or any other relevant documents

# Physical Presence

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- In order to qualify for TPS, the Haitian must show that they were in the United States before January 12, 2010.
- Brief, casual and innocent absence without disturbing physical presence or residence requirements and temporary trips abroad due to emergencies do not disturb the residency requirement. INA 244(c)(4)

# Felony and Misdemeanor defined

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- **Felony** means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.
  
- **Misdemeanor** means a crime committed in the United States, either:
  - (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
  - (2) A crime treated as a misdemeanor under the term “felony” of this section.
  
- For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

# Eligibility standards.

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- 2a. Have you been convicted of any felony or two or more misdemeanors committed in the United States?
  - STOP. There could be serious implications for the Haitian National if you apply and they are not qualified
  - However, this is the time to reopen and vacate cases if at all possible

If the answers to questions in Part 2 are yes....

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- STOP- this is a complicated case that would require experience and time
- Do not file without scrutiny
- There is a difference between Pro Bono and helping a Foreign National fill out a form Pro Se.
- There are waivers available ( I-601)
- Some waivers require a qualifying relative and some do not ( HIV and Mental Health do not require a qualifying relative.)

2b. Have you 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?

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- It is important to ask if the foreign national if they have ever been a member of the Haitian Military?
- If so which years?
- There may serious consequences and you must dig deeper.
- Possible Oppressive Regimes
  - François Duvalier "Papa Doc"
  - Jean-Claude Duvalier "Baby Doc"
  - "Tonton Macoutes"- Milice de Volontaires de la Sécurité Nationale (MVSN) (Militia of National Security Volunteers), also called just the Volontaires de la Sécurité Nationale or VSN.

2h. Have you been **excluded and deported** from the United States within the past year, or have you been **deported or removed from the United States at government expense within the last five years** (20 years if you have been convicted of an aggravated felony)?

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- If they have been deported and they reentered do not file for TPS
- If they were deported but never left then you can file for TPS

# Tips for Filling out Form I-821, Application for TPS

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## ■ Must submit:

- I-821(TPS form).
  - \$50.00
- I-765(work authorization)
  - \$340.00
  - \$80.00 for biometrics (fingerprinting)
- 2 passport photographs
  - Even if the alien does not want work authorization the I-765 must be completed for biographic purposes without the fee.
  - Fingerprints are required.

# Communication: Have you ever been arrested or convicted of a crime?

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## Ask

- Have you ever been stopped by the police?
- Have you ever been fingerprinted?
- Have you ever gone to the court house?
- Have you ever been given a ticket?
- Have you ever been placed in the back of a police car?

Ask these questions in many different ways.

# Communication: Have you ever been in deportation proceedings?

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## ■ Ask

- Have you ever filed for Asylum?
- Have you ever been to an interview by an officer?
- Have you ever been to the immigration court house?
- Have you ever received a notice from the government?

# Tips for Filling out Form I-821, Application for TPS

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- Be sure that the last, first, and middle names match exactly on all forms. Misspelled names or using different names may cause the application to be rejected
- Be sure to sign all forms
- Fill out each form completely. If not applicable then put N/A. If the answer is none- write NONE!!!!!!
- In part 1 of the I-821 check only box A. Failure to check Box A may cause the processing of the application to be delayed or the form to be rejected.

# Tips for Filling out Form I-821, Application for TPS

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- Make sure you enter the correct birth date for part 2 of the I-821. Leaving this line blank may result in the application being rejected.
- Make sure you complete the line “ I am the national of...”. Leaving this line blank may result in your application being rejected.

# Tips for filling out for I-765

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- On line 16 of the I-765, enter eligibility code A12. Leaving this line blank or entering a different code may result in delays
- If the foreign national does not require the Employment Authorization document, do not check any box in “ I am applying for...”

# Filing Fees:

If you are:	And	Then	and
Applying for initial TPS and you are between the ages 14 and 65	You are applying for a TPS-related EAD	You must submit the \$50 Form I-821 application fee	You must submit the \$340 Form I-765 application fee
Applying for initial TPS and you are under age 14 or over age 65	You are applying for a TPS-related EAD	You must submit the \$50 Form I-821 application fee	You do not need to submit the Form I-765 application fee
Applying for initial TPS, regardless of age	You are not applying for a TPS-related EAD	You must submit the \$50 Form I-821 application fee	You do not need to submit the Form I-765 application fee

# Paying Immigration Fees

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- Make the check or money order payable to **U.S. Department of Homeland Security** (not "USDHS" or "DHS")

# Advanced Parole

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- If you are granted TPS, you may apply for advance parole by filing **Form I-131**, Application for Travel Document.
- If approved, you'll be given an advance parole document. An advance parole document allows you to depart the U.S. and re-enter as long as the advance parole document remains valid.
- Advance parole cannot be granted for longer than the period of time your country is designated for TPS.
- Advance parole is **within the discretion** of DHS and is not guaranteed.
- Any violation of immigration law can affect your eligibility to reenter the U.S.
- In some instances failure to obey the law may permanently bar your return. This is true even if you have a visa, advance parole or other document, or at some point otherwise become eligible for status. USCIS will not make a determination as to whether you may be inadmissible in advance, even if you apply for an advance parole.

# Advance Parole. Be careful!!!!

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- If an alien has been illegally present in the U.S. at any time and anticipates leaving the U.S., even with approved advance parole. They could be found ineligible for certain immigration benefits in the future if they leave the U.S. because the departure may trigger the unlawful presence ground of inadmissibility in section 212(a)(9) of the INA.

## What if the client cannot afford to pay for filing and/or biometrics fees?

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- They may request a waiver of TPS-related application fees and/or the biometrics fee by submitting a fee waiver request with **proper documentation** of “inability to pay.” USCIS has stated they will be **generously applying** the Fee waivers.

# Fee Waiver Documentation:

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- Receiving a federal/state benefit that is determined by your level of income, or
- Evidence of household income that is below Federal poverty guidelines; or
- Evidence of extraordinary expenses incurred when compared to income such as high medical bills

# Fee Waivers

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- Fee waivers may also be given for **humanitarian reasons** such as disability, homelessness or age. Documentation must also be provided to support these claims.
- An individual who requests a fee waiver must state **exactly which fees** (e.g., Form I-821 application fee, Form I-765 application fee; and/or the biometrics services fee) he or she wants waived.
- In order to obtain a fee waiver, you must submit, with these forms, a written statement, **made under oath**, affirmation
- In the written statement you must state that you believe you are eligible for TPS and that you want the fees waived. You must also explain why you are unable to pay the required fees.

# How long are the TPS application's taking to process?

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- USCIS stated that fingerprint appointments will be received within 60 days, and possibly sooner
- Employment authorization will be issued within 90 days

# Where do I submit the TPS Application?

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## **Florida:**

- US Postal Service: USCISPO Box 4464 Chicago, IL 60680-4464
- For Express mail and courier deliveries:  
USCIS Attn: Haiti TPS  
131 South Dearborn, 3rd Floor Chicago, IL 60603-5520

## **New York**

US Postal Service :USCIS PO Box 660167Dallas, TX 75266-0167  
For Express mail and courier deliveries  
USCIS Attn: Haiti TPS2501 S. State Hwy. 121 Business Suite 400  
Lewisville, TX 75067

## **All other**

US Postal Service: USCIS PO Box 24047 Phoenix, AZ 85074-4047  
For Express mail and courier deliveries  
USCIS Attn: Haiti TPS  
1820 E. Skyharbor Circle Suite 100 Phoenix, AZ 85034

# Fee Waiver Guidance

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- USCIS Officers currently have broad discretion in granting fee waivers under 8 CFR 103.7(c).
- The field guidance is not exhaustive as USCIS Officers will evaluate all factors, circumstances, and evidence supplied by the individual in support of a fee waiver request before making a determination.
- **Each case is unique and will be considered upon it's own merits.**

# Fee Waiver: Processing

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- To facilitate the processing of fee waiver requests, applicants should write in large print “Fee Waiver Request” on the outside of the mailing envelope containing their application or petition and fee waiver request, as well as at the top of their affidavit and each page of their supporting information.
- If a fee waiver request is denied, the **entire application package will be returned to the applicant**, who must then begin the application process again by re-filing for the benefit with the appropriate fee.

# USCIS is also expediting visa consulate applications

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- I-130's
- I-485's
- N-400's
- Advance Parole

# Lets get to work!

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- DHS estimates there are 100,000-200,000 TPS eligible Haitians living inside the United States.
- It is possible that TPS could be extended after the initial 18 months. But to be eligible, one must apply NOW.
- The current deadline is 180 days from today.