

Temporary Protected Status Extended for Haitians and Implications for I-9 Compliance

First, here's a primer on Temporary Protected Status ("TPS"), a humanitarian designation. United States Citizenship and Immigration Services ("USCIS") grants TPS to certain countries where conditions temporarily prevent its nationals who have left and come to the United States from returning safely to their home country. Haiti is one such country. Recently, the Secretary of Homeland Security announced an extension of TPS for eligible Haitian nationals, which was set to expire on July 22, 2014. The extension allows eligible individuals to remain in the U.S. and work for an additional 18 months, or from July 23, 2014, until January 22, 2016. TPS beneficiaries who wish to apply for a new Employment Authorization Document ("EAD") must re-register and apply during a 60-day window between March 3 and May 2, 2014, by filing Form I-821 (Application for Temporary Protected Status) and I-765 (Application for Employment Authorization). Failure to re-register timely can result in withdrawal of TPS benefits.

USCIS recognizes that some EAD cards could expire before the new one is received (*i.e.*, registration and application for a new EAD filed in the latter part of the time frame). Accordingly, USCIS has automatically extended current EAD's for TPS Haitians for an additional six months. This means if you have an employee who is a Haitian TPS beneficiary with an EAD that expires on July 22, 2014, his/her EAD is **automatically extended** until January 22, 2015. You're probably thinking, how will I know if the employee is a TPS beneficiary. If the employee presents an EAD card (a list A document for I-9), the card will have a designation of A12 or C19 (see example from USCIS below), which indicates TPS. Then look for the country of birth below.



What does all this mean for I-9 compliance? Here's a summary of what to look for and how to handle TPS cases and extensions of status.

- For new employees, they will write the date of the automatic EAD extension in the blank for the expiration date of their work authorization in Section 1.

- For new employees, you can accept any List A or List B and C documents. This includes unexpired or expired EAD cards. As a general rule, expired documents are not acceptable, but you must check to see if an expired EAD has been automatically extended. In that case, you will record the date of the automatic extension in Section 2.
- Current employees will need to correct the work authorization expiration date in Section 1 by marking a line through the old expiration date, writing the date of the automatic extension, initialing and dating the changes. This should be done prior to expiration of the work authorization. Remember only the employee can make corrections to Section 1.
- For current employees who previously presented an EAD that is expiring, mark a line through the old expiration date, write the date of the automatic extension and TPS extension, initial and date the changes in Section 2. This too should be done prior to expiration of the work authorization.
- If a current or new employee who is a TPS beneficiary presents an EAD that has been automatically extended, you may not ask for additional documentation to prove work authorization, country of origin or registration for program extensions.
- When the automatic extension expires, you will need to re-verify the employment authorization. The employee can present any List A or C document. This may very well be a new EAD card, but you cannot request that the employee present this specific document. You will then need to complete Section 3.

You can always check the [USCIS website](#), which provides a chart with the designated countries, expiration dates, registration periods, and automatic EAD extensions.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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