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Immigration Policy and Issues

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CRS Report for Congress

Temporary Protected Status: Current Immigration Policy and Issues

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Summary

When civil unrest, violence, or natural disasters erupt in spots around the world, concerns arise over the safety of nationals from these troubled places who are in the United States. Provisions exist in the Immigration and Nationality Act (INA) to offer temporary protected status (TPS) or relief from removal under specified circumstances. The United States currently provides TPS to nationals from seven countries: Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, and Sudan. Under the INA, the executive branch grants TPS. Congress, however, has also granted TPS legislatively, and legislation pertaining to TPS has received action in the 110th Congress.

Background

The Immigration and Nationality Act (INA) provides that all aliens (i.e., persons who are not citizens or nationals of the United States) must enter pursuant to the INA. The major categories of aliens are immigrants, refugees and asylees (all admitted for or adjusted to legal permanent residence), and nonimmigrants (admitted for temporary reasons, e.g., students, tourists, or business travelers). Aliens who lack proper authorization are generally of two kinds: those who entered the United States without inspection according to immigration procedures, or those who entered the United States on a temporary visa and have stayed beyond the expiration date of the visa. Unauthorized aliens of both kinds are subject to removal.

As a signatory to the United Nations Protocol Relating to the Status of Refugees (hereafter, U.N. Protocol), the United States agrees to the principle of *nonrefoulement*, which means that it will not return an alien to a country where his life or freedom would be threatened. *Nonrefoulement* is embodied in several provisions of U.S. immigration law. Most notably, it is reflected in the provisions requiring the government to withhold the removal of aliens to a country in which the alien's life or freedom would be threatened

on the basis of race, religion, nationality, membership in a particular social group, or political opinion.¹

Humanitarian Migrants

Not all humanitarian migrants are eligible for asylum or refugee status. The legal definition of asylum in the INA is consistent with the U.N. Protocol, which specifies that a refugee is a person who is unwilling or unable to return to his country of nationality or habitual residence because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The definitions of refugee and asylee are essentially the same in the INA, with the notable difference being the physical location of the persons seeking the status. Those who are in the United States or at a U.S. port of entry apply for asylum, while those who are displaced abroad apply for refugee status. The standards of proof and minimum thresholds are similar, but the procedures and priorities are quite different.²

If the motivation of the migrant is determined to be economic improvement rather than the political reasons that underpin the legal definition, the person is not considered eligible for asylum. This distinction is sometimes difficult to discern, because persecution as well as war may lead to economic hardships, and economic deprivation may trigger persecution or insurrection. Since factors such as extreme poverty, deprivation, violence, and the dislocation brought on by famines or natural disasters may evoke a humanitarian response, the term humanitarian migrants encompasses all those who emigrate to the United States for such reasons, including those who receive asylum.³

The concept of “safe haven” embraces humanitarian migrants. It covers those who may not meet the legal definition of refugee but are nonetheless fleeing potentially dangerous situations. Safe haven also assumes that the host country, in this instance the United States, is the first country in which the fleeing alien arrives safely, or is the country where the alien is temporarily residing when the unsafe conditions occur. Safe haven is implicitly temporary in nature because it is given prior to any decision on the long-term resolution of the alien’s status. It is also a form of blanket relief because it is premised on more generalized conditions of turmoil or deprivation in the country of origin, in contrast to the individual circumstances weighed in the case-by-case asylum process.

In terms of permanent residence over the long term, the United States endorses the internationally held position that voluntary repatriation is the best outcome for refugees. Resettlement in the country to which the asylum seeker fled is considered a secondary option, and resettlement in a third country as the last alternative.

¹ §208 of INA (8 U.S.C. §1158); §241(b)(3) of INA (8 U.S.C. §1231); and §101(a) of INA (8 U.S.C. §1101(a)(42)).

² CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem, and CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

³ The term “humanitarian migrant” is not defined in the INA, nor, in this context, is it meant to imply that a sympathetic policy response is warranted. Rather, it refers to factors underlying the alien’s justification for immigration.

Temporary Protected Status

Temporary Protected Status (TPS) is the statutory embodiment of safe haven for those aliens who may not meet the legal definition of refugee but are nonetheless fleeing — or reluctant to return to — potentially dangerous situations. TPS is blanket relief that may be granted under the following conditions: there is ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning, provided that granting TPS is consistent with U.S. national interests.⁴

The Secretary of Homeland Security in consultation with the Secretary of State, can issue TPS for periods of 6 to 18 months and can extend these periods if conditions do not change in the designated country.⁵ To obtain TPS, eligible aliens report to U.S. Citizenship and Immigrant Services (USCIS) in the Department of Homeland Security (DHS), pay a processing fee, and receive registration documents and a work authorization. The major requirements for aliens seeking TPS are proof of eligibility (e.g., a passport issued by the designated country, continuous physical presence in the United States since the date TPS went into effect, timely registration, and being otherwise admissible as an immigrant). The regulation specifies grounds of inadmissibility that cannot be waived, including those relating to criminal convictions and the persecution of others.⁶

Aliens who receive TPS are not on an immigration track that leads to permanent residence or citizenship. The “temporary” nature of TPS is apparent in the regulation. INS has made clear that information it collects when an alien registers for TPS may be used to institute exclusion or deportation proceedings upon the denial, withdrawal or expiration of TPS.⁷ Moreover, the TPS provision in the INA states that a bill or amendment that provides for the adjustment to lawful temporary or legal permanent resident (LPR) status for any alien receiving TPS requires a supermajority vote in the Senate (i.e., three-fifths of all Senators) voting affirmatively.⁸

Other Blanket Forms of Relief

In addition to TPS, the Attorney General has provided, under certain conditions, discretionary relief from deportation so that aliens who have not been legally admitted to the United States may remain in this country either temporarily or permanently. The statutory authority cited by the agency for these discretionary procedures is generally that

⁴ §244 of INA (8 U.S.C. §1254a).

⁵ Under the Homeland Security Act of 2002 (P.L. 107-296), the former Immigration and Naturalization Service was transferred to the Department of Homeland Security. As a part of this transfer, the responsibility for administering the TPS was transferred from the Attorney General in the Department of Justice to the Secretary of the Department of Homeland Security (DHS). DHS’s U.S. Citizenship and Immigrations Services (USCIS) administers TPS.

⁶ 8 U.S.C. §240.

⁷ Ibid.

⁸ §244(h) of INA (8 U.S.C. §1254a).

portion of immigration law that confers on the Attorney General the authority for general enforcement and the section of the law covering the authority for voluntary departure.⁹ Such blanket relief is an exercise of the discretion of the Attorney General, and thus, the Secretary of State need not be consulted.

Prior to the enactment of TPS, the Attorney General provided relief by means of the suspension of enforcement of the immigration laws against a particular group of individuals. The two most common discretionary procedures to provide relief from deportation have been deferred departure or deferred enforced departure (DED) and extended voluntary departure (EVD). The discretionary procedures of DED and EVD continue to be used to provide relief the Administration feels is appropriate, and the executive branch's position is that all blanket relief decisions require a balance of judgment regarding foreign policy, humanitarian, and immigration concerns. Unlike TPS, aliens who benefit from EVD or DED do not necessarily register for the status with USCIS, but they trigger the protection when they are identified for deportation. If, however, they wish to be employed in the United States, they must apply for a work authorization from USCIS.

Nationalities Receiving Temporary Protections

Aliens from six countries currently have TPS. The estimated number of aliens currently protected range from 27 Burundis to 229,000 Salvadorans. In 1990, when Congress enacted the TPS statute, it also granted TPS for one year to nationals from El Salvador who were residing in the United States. Subsequently, the Attorney General, in consultation with the State Department, granted TPS to aliens in the United States from the following countries: Liberia from March 1991 to October 2007; Kuwait from March 1991 to March 1992; Rwanda from June 1995 to December 1997; Lebanon from March 1991 to March 1993; the Kosovo Province of Serbia from June 1998 to December 2000; Bosnia-Herzegovina from August 1992 to February 2001; and Angola from March 29, 2000, to March 29, 2003; and Sierra Leone from November 4, 1997, to May 3, 2004.

Rather than extending Salvadoran TPS when it expired in 1992, the former Bush Administration granted DED to what was then estimated as 190,000 Salvadorans through December 1994.¹⁰ The first Bush Administration also granted DED to about 80,000 Chinese following the Tiananmen Square massacre in June 1989, and the Chinese retained DED through January 1994. In December 1997, President Clinton instructed the Attorney General to grant DED to the Haitians for one year due to country conditions.¹¹

⁹ §240 of INA (8 U.S.C. §1229a); §240B (8 U.S.C. §1229c).

¹⁰ For historical analysis, see CRS Report 97-810, *Central American Asylum Seekers: Impact of 1996 Immigration Law*, by Ruth Ellen Wasem. (Archived report available upon request.)

¹¹ In the past, EVD status has been given to Poles (July 1984 to March 1989), Nicaraguans (July 1979 to September 1980), Iranians (April to December 1979), and Ugandans (June 1978 to September 1986). Lebanese had been handled sympathetically as a group, getting EVD on a case-by-case basis since 1976, prior to receiving TPS from 1991 to 1993. Other countries whose nationals have benefitted in the past from a status similar to EVD include Cambodia, Cuba, Chile, Czechoslovakia, Dominican Republic, Hungary, Laos, Rumania, and Vietnam.

Table 1. Countries Whose Nationals in the United States Currently Benefit from Temporary Protected Status and Deferred Enforced Departure

Country	Status	Dates	Estimated Number ^a
Burundi	TPS	November 4, 1997 - May 2, 2009	27
El Salvador	TPS	March 2, 2001 - September 9, 2010	229,000
Honduras	TPS	December 30, 1998 - July 5, 2010	70,000
Liberia	DED	October 1, 2007 - March 31, 2009	3,600
Nicaragua	TPS	December 30, 1998 - July 5, 2010	3,500
Somalia	TPS	September 16, 1991 - September 17, 2009	300
Sudan	TPS	November 4, 1997 - May 2, 2010	500

Source: CRS compilation of USCIS data.

- a. Estimates based upon USCIS data for designated status or work authorizations. These approximate numbers do not necessarily include all aliens from the countries who are in the United States and might be eligible for the status. USCIS updates these numbers when it renews TPS for nationals from a given country.

Issues

Liberians. Liberians had relief from removal for the longest period of those who currently have TPS or other forms of blanket relief from deportation. They first received TPS in March 1991 following the outbreak of civil war. In 1999, approximately 10,000 Liberians in the United States were given DED after their TPS expired September 28, 1999. Their DED status was subsequently extended to September 29, 2002. On October 1, 2002, Liberia was redesignated for TPS for a period of 12 months, and the status continued to be extended. On September 20, 2006, however, the Bush Administration announced that Liberian TPS would expire on October 1, 2007, and they were once again granted DED until March 31, 2009.

Central Americans. Whether to grant blanket relief to nationals from neighboring Central American countries has perplexed policy makers for several decades. The only time Congress has specifically granted TPS was in 1990 to nationals of El Salvador. In the aftermath of Hurricane Mitch in November 1998, then-Attorney General Janet Reno announced that she would temporarily suspend the deportation of aliens from El Salvador, Guatemala, Honduras, and Nicaragua. On December 30, 1998, the Attorney General designated TPS for undocumented Hondurans and Nicaraguans in the United States as of that date because, they maintained, Honduras and Nicaragua had such extraordinary displacement and damage from Hurricane Mitch as to warrant TPS. Prior to leaving office in January, the Clinton Administration said it would temporarily halt deportations to El Salvador. In 2001, the Bush Administration decided to grant TPS to Salvadorans following two earthquakes that rocked El Salvador. Proponents of granting TPS to the Central Americans maintain it is an appropriate humanitarian response because people should not be forced to return to countries devastated by the natural disaster. Opponents fear TPS for those Central Americans in the United States would serve as a magnet, prompting many of them to seek entry to the United States.

Peruvians and Colombians. Violence growing out of the drug war and insurgencies have prompted some to request TPS for nationals in the United States from Peru and Colombia. The proponents are not asserting that the governments of these countries are repressing people or violating human rights; rather, they maintain that illegal forces within the country are creating dangerous conditions that the governments have not been successful in remedying. Others maintain that many countries around the world are comparably dangerous and that conditions in Peru and Colombia do not warrant TPS.

Nations Affected by Natural Disasters. As a result of the natural disasters in recent years that devastated Peru, Pakistan, Sri Lanka, India, Indonesia, Thailand, Somalia, Myanmar, Malaysia, Maldives, Tanzania, Seychelles, Bangladesh, Kenya, and Haiti, some have called for the Administration to grant TPS to nationals from these countries. Most recently, attention has focused on the Caribbean countries in the aftermath of Hurricanes Gustav and Ike and a series of tropical storms. Proponents maintain that these countries could not handle the return of nationals due to the environmental disasters and that there are extraordinary and temporary conditions that prevent these people from returning safely. Few have issued public statements in opposition, and the Administration repeatedly has not taken a position.

Adjustment of Status. Because aliens granted TPS, EVD, or DED are not eligible to become legal permanent residents (LPRs) in the United States, a special act of Congress is required for such aliens to adjust to LPR status.¹² Legislation that would allow nationals from various countries that have had TPS to adjust to LPR status has been introduced in past Congresses, but not enacted. Similar provisions have also been included as part of comprehensive immigration reform legislation.¹³

Legislation in the 110th Congress. As noted above, the House has passed legislation (H.R. 3123) that would extend Liberia's TPS until September 30, 2008. The Senate's stalled comprehensive immigration reform bill (S. 1639) includes provisions that would have enabled many with TPS to adjust to LPR status. Other bills introduced in the 110th Congress pertaining to TPS include H.R. 522, H.R. 1941, H.R. 2962, S. 330, and S. 1903, none of which have been enacted.¹⁴

¹² For example, Congress enacted legislation in 1992 that allowed Chinese who had deferred enforced departure following the Tiananmen Square massacre to adjust to LPR status (P.L. 102-404). The 105th Congress passed legislation enabling Haitians to adjust status (P.L. 105-277).

¹³ See CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno, and CRS Report RS22111, *Alien Legalization and Adjustment of Status: A Primer*, by Ruth Wasem.

¹⁴ See CRS Report RL34204, *Immigration Legislation and Issues in the 110th Congress*, coordinated by Andorra Bruno.