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TPS and I-9s: Is My TPS Employee Authorized to Work?

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Practices: Immigration

Temporary Protected Status (“TPS”) allows individuals from certain countries designated by the Department of Homeland Security (“DHS”). They are inside the United States to apply for protections from removal that include eligibility for Employment Authorization Documents (“EADs”). This period of protection is granted for a limited time and is subject to extension by the DHS. The current list of eligible nationalities is available on the U.S. Citizenship and Immigration Services’ (“USCIS”) TPS website ([link](#)). Please note that employers cannot ask individuals to prove that they are nationals of a country designated for TPS when completing the Form I-9, Employment Eligibility Verification. Consequently, employers with workers employed with authorization based on TPS may face a confusing situation when it comes to the initial completion and reverification of the Form I-9.

With the Form I-9, employers are required to make a note of the expiration date of employment authorization documents and reverify the employee’s employment authorization before the expiration date of the documents. However, EADs issued for TPS (in the A12 or C19 categories) are subject to an automatic 540-day extension of validity when an extension has been timely filed. (The USCIS temporarily increased the automatic extension from the standard 180-day period to 540 days through October 26, 2023.) Employees can evidence the automatic 540-day extension by showing an extension receipt (Form I-797C, Notice of Action) and their expired EAD in the same category. Details about the automatic extension process are contained in the USCIS I-9 Handbook for Employers, available at <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>.

In addition, in some circumstances, TPS beneficiaries may be able to show continued employment authorization without the Form I-797C. DHS may extend the expiration date of a TPS beneficiary’s EAD either by Federal Register notice or by an individual notice sent to the beneficiary by the USCIS. In these circumstances, employers are directed to complete reverification using the EAD number (in the A12 or C19 category) and the expiration date indicated in the Federal Register notice which can be found on the USCIS’ TPS website or the individual notice sent by the USCIS.

For employers who are unaccustomed to reviewing these documents or navigating the USCIS’ I-9 Central website, completing a Form I-9 for a TPS beneficiary can be very challenging. Suppose an employer does not accept certain documents provided by an employee for I-9 verification, asks for additional documents, or terminates the employee for lack of documentation, depending on the facts. In that case, this may violate the

law and could result in a finding of unfair documentary practices. As a result, employers must ensure that they carefully review the I-9 rules pertaining to TPS prior to taking any adverse action in the I-9 process.

For further inquiries on how to properly complete a Form I-9 for a TPS beneficiary, please get in touch with an immigration attorney at Masuda Funai.