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Understanding the Complexities of Completing the Form I-9 for TPS Beneficiaries

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Completing the Form I-9, Employment Eligibility Verification, is already a complicated process for most U.S. employers. However, when you factor in exceptions and special rules involving different immigration categories, executing the form can seem downright daunting. Temporary Protected Status (TPS) is one such category that causes a lot of confusion in the I-9 process due to the manner in which the U.S. Department of Homeland Security (DHS) implements the TPS program.

DHS may designate foreign countries for TPS if conditions in those countries (e.g., civil war, natural disaster, epidemic, etc.) temporarily prevent nationals from those countries from returning home safely. Eligible nationals of those countries who are already in the U.S. may apply for TPS which allows them to remain in the U.S. legally. There are 16 countries currently designated for TPS, and the list of countries can be found [here](#).

TPS beneficiaries who maintain their status are authorized to work in the U.S. and will be issued an Employment Authorization Document (EAD) with a finite end date. As a general matter, completing the Form I-9 for a TPS beneficiary presenting a valid EAD is straightforward. The point at which I-9 completion gets tricky is when the EAD of the TPS beneficiary has expired or will expire. Often, the individual will verbally inform the employer that his EAD is in the process of being extended, but will not offer additional information or documentation. We find that the first reaction most employers have is to terminate the employee for not presenting appropriate documents for I-9 verification. However, the TPS beneficiary's EAD may, in fact, be automatically extended, but the information regarding such extension may require additional follow up by the employer to ensure compliance with I-9 rules.

Employers must be careful when they are presented with an expired EAD for I-9 verification purposes. Certain categories of EADs are eligible for automatic extensions. Information related to those specific categories can be found [here](#). TPS is listed among the categories of EADs that are eligible for automatic extension (specifically, the A12 and C19 categories which are annotated on the EAD). TPS-based EADs may be automatically extended through publication of a Federal Register notice or by virtue of a receipt notice issued by the U.S. Citizenship and Immigration Services (USCIS) which contains automatic extension language. Information related to the extension can be found on the applicable country's page on USCIS' TPS website.

Unfortunately, the USCIS' website is not the most user-friendly and sometimes it takes a bit of digging to get the answer.

The important thing to note is that when an employee presents an EAD with an original expiration date that has passed and insists that it has been automatically extended, employers should carefully review the category annotated on the EAD and any information related to that category. If it is a TPS-based EAD, the employer should verify whether it may have been automatically extended and may still be valid for Form I-9 purposes. Terminating an employee or deciding not to hire an individual because the EAD has expired may be considered a discriminatory employment practice.

If you would like additional information on the Form I-9 and how to complete an I-9 for TPS beneficiaries, please feel free to contact our office.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.