

TPS and DACA Programs

HR Connections

April 19, 2018

TPS: Temporary Protected Status

- U.S. Department of Homeland Security (via USCIS) may grant TPS for a certain period of time to eligible nationals (who are already in the U.S.) of certain designated countries
- Common reasons for country designations: war, natural disaster, epidemic, other extraordinary and temporary conditions
- During the designated period, TPS beneficiaries are not removable (deportable) from the U.S., may be granted travel authorization, and may obtain employment authorization (employment authorization cards, also known as EADs or EACs)
- Once granted TPS, person cannot be detained by DHS on the basis of his/her immigration status in the U.S. (typically undocumented)
- TPS is a *temporary* benefit that does NOT automatically lead to permanent residence status or any other immigration status

TPS: Temporary Protected Status

- TPS status does not prevent person from applying for legal nonimmigrant status, or permanent residence, *IF* he/she has a legal basis to do so and is eligible for that benefit
- Countries currently designated for TPS status: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, Yemen
- Eligibility requirements are substantial; two separate filings - for TPS status, and the employment card

TPS: Temporary Protected Status

- TPS status for nationals of **El Salvador** will end on **September 9, 2019**
- To maintain TPS status until then, applicants must have re-registered during the 60 day period from January 18 – March 19, 2018
 - Also separately had to apply for new employment card
- EADs which expired on March 9, 2018 have been auto-extended to September 5, 2018
- Between now and September 5, 2018, USCIS will issue new EADs valid until September 9, 2019

TPS: Temporary Protected Status

- TPS status for nationals of **Haiti** will end on **July 22, 2019**
- To maintain TPS status until then, applicants must have re-registered during the 60 day period from January 18 – March 19, 2018
 - Also separately had to apply for new employment card
- EADs which expired on January 22, 2018 have been auto-extended to July 21, 2018
- Between now and July 21, 2018, USCIS will issue new EADs valid until July 22, 2019

TPS: Temporary Protected Status

- TPS status for nationals of **Sudan** will end on **November 2, 2018**
- To maintain TPS status until then, applicants must have re-registered during the 60 day period from October 11 – December 11, 2017
 - Also separately had to apply for new EAD card
- EADs which expired in November 2017 were auto-extended to May 2, 2018
- Between now and May 2, 2018, USCIS will issue new EADs valid until November 2, 2018

TPS: Temporary Protected Status

- What can NC State do as an employer?
 - We can only try to provide employer sponsorship if the position requires at least a bachelor's degree (or equivalent) in a specific field, **AND** the person has that degree or equivalent in that specific (or related) field
 - USCIS is getting more rigorous in its review of bachelor's level sponsorship, and we are experiencing more requests for additional information and suspicion regarding such petitions
 - We cannot continue to employ anyone after their legal status and employment authorization ends, unless that person can provide new or other valid employment authorization documents
 - After TPS status expires (September 9, 2019; July 22, 2019; or November 2, 2018), individual should either leave the U.S. or have already filed for any other lawful status that he/she qualifies for
 - No personal legal services can be provided by a UNC constituent institution

TPS: Temporary Protected Status

- What happens to NC State benefits for these employees?
 - Person should speak with the Benefits Consultant for his/her unit
 - Medical
 - For Sudan and El Salvador, health insurance remains valid (in the U.S.) until the end of the month (November 2018 or September 2019, respectively)
 - For Haiti, health insurance remains valid (in the U.S.) until the end of the following month (August 2019)
 - SHP pays for emergency medical services outside of U.S. during the validity period
 - Person can pay for COBRA, but it is very expensive

TPS: Temporary Protected Status

- What happens to NC State benefits for these employees?
 - NC Flex: all benefits will end on the last day of the month in which the employment ends
 - Retirement:
 - If employee is eligible to retire, probably a good option
 - Remember that 'retiree' is not a legal or recognized immigration status, so person needs some other way to remain in the U.S.
 - If employee has been employed more than 5 years (vested), can also receive interest accrued in retirement accounts
- This is only general information – person should consult individually with a Benefits Consultant!

DACA: Deferred Action for Childhood Arrivals

- Also referred to as “The Dreamers”
- On June 15, 2012, DHS allowed certain people who came to the U.S. as children and met several other criteria to request consideration of “deferred action” for two years, subject to renewal
- Also were allowed to obtain employment cards
- This DACA “status” is NOT a legal status, only a period of authorized stay at the discretion of the government
- Does not authorize travel – must separately apply for travel document; can be risky to leave the U.S.

DACA: Deferred Action for Childhood Arrivals

- September 5, 2017: President rescinded DACA benefit and USCIS stopped accepting extensions for the status and the employment card
- DACA program was due to end on March 5, 2018; no congressional legislative action was taken
- Two recent federal court injunctions have required the government to continue issuing renewals (of the status and the employment cards), but no new applications for initial DACA status are being accepted

DACA: Deferred Action for Childhood Arrivals

- USCIS resumed accepting DACA renewals on January 13, 2018
 - HUGE backlog of renewal applications, potentially putting DACA recipients at risk of being deported
 - DHS says it won't deport people with pending DACA renewals, but many recipients now have no (or little) documentation to prove they are legally allowed to be in the U.S. at this time
 - Over 13,000 DACA employment cards expired in March; over 5,300 will expire in April and nearly 14,000 more in May
- Employers must end employment when the employment cards expire, and cannot resume it until the new card is physically received and available for the I-9 process
 - No auto-extension for DACA employment cards; must stop working even if person timely filed for an extension of the card

DACA: Deferred Action for Childhood Arrivals

- UNC System: allows undocumented individuals to attend a system institution *ONLY IF* they graduated from a U.S. high school
- Immigration status of a student has no bearing on his/her eligibility to attend and graduate from a UNC constituent institution
 - So students can remain, even after DACA ends
 - But employment would end if/when the person's card expires
- DACA recipients are not considered "residents" for purposes of in-state tuition
- No personal legal services can be provided by a UNC institution
- DACA students: FERPA applies, but institutions might be required to share certain information based on other federal requirements
- UNC SO does not track how many DACA recipients (or other undocumented students) are in the system

DACA: Deferred Action for Childhood Arrivals

- What can NC State do as an employer?
 - We can only try to provide employer sponsorship if the position requires at least a bachelor's degree (or equivalent) in a specific field, **AND** the person has that degree or equivalent in that specific or a related field
 - Person would be required to leave the U.S. to obtain this new, legal nonimmigrant work-authorized status, which could be very risky – people over 21 could face mandatory bars preventing them from returning, even if they otherwise qualify for sponsorship
 - We cannot continue to employ anyone after their status and employment authorization ends, unless that person can provide new or other valid employment authorization documents
 - Benefits/retirement questions: speak to a Benefits Consultant

International Employment Staff

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