

Filling out the Form I-9 for TPS beneficiaries: Work Permits extended for El Salvadorians

On May 30, 2013, the [Department of Homeland Security](#) (DHS) [extended](#) Temporary Protected Status (TPS) for El Salvadorians for an additional 18 months beginning September 10, 2013, and ending March 9, 2015.

What does this mean for employers?

For companies whose workforce may include individuals with TPS from El Salvador, Haiti, Honduras, Nicaragua, Somalia, Sudan, South Sudan and Syria, it is critical to be familiar with the work authorization benefits of TPS to avoid issues in the Form I-9 employment eligibility verification process.

U.S. Citizenship and Immigration Service (USCIS) regulations require that documents presented during the Form I-9 process documents be unexpired, but there are exceptions employers need to be aware of. In the case of TPS work authorized individuals, it may be *permissible* to continue to employ a worker or hire a new worker with a TPS extension even after the expiration date noted on their work authorization document. An Employment Authorization Document (EAD) (I-766) generally takes three (3) months to process. When DHS extends a TPS country designation (and work eligibility), it is often close to its current expiration, often leaving TPS beneficiaries with a potential gap in work authorization. To account for the time it takes to obtain a new EAD, in conjunction with the TPS extension, DHS often issues a Federal Register notice that provides for an automatic extension of expiring EADs. This allows individuals to apply for extensions and allows USCIS the time it requires to process new EADs with the new validity dates. To be eligible for the work authorization, applicants must re-register for TPS and request the work authorization to obtain the new EAD before the automatic extension period ends.

In the case of workers with TPS from El Salvador, individuals have from May 30, 2013 to July 29, 2013, to re-register with DHS, and their Employment Authorization Documents are automatically extended through March 9, 2014.

What is TPS?

[TPS](#) is a temporary immigration benefit allowing qualified individuals from designated countries to remain the United States for a limited time period due to extenuating circumstances, such as armed conflict, environmental disaster, or other extraordinary and temporary conditions in the designated country. Those individuals qualifying for TPS may obtain employment authorization documents to work legally in the United States. Below is a current list of the countries that DHS has designated as having TPS status.

Countries Currently Designated for TPS

Designated Country	Most Recent Designation Date	TPS Current Expiration Date	TPS Current Re-Registration Period	Current Initial Registration Period	Employment Authorization Document (EAD) Automatically Extended Through
El Salvador	March 9, 2001	March 9, 2015	May 30, 2013 – July 29, 2013	N/A	March 9, 2014
Haiti	July 23, 2011	July 22, 2014	Oct. 1, 2012 – Nov. 30, 2012	N/A	July 22, 2013
Honduras	Jan. 5, 1999	Jan. 5, 2015	April 3, 2013 – June 3, 2013	N/A	Jan. 5, 2014
Nicaragua	Jan. 5, 1999	Jan. 5, 2015	April 3, 2013 – June 3, 2013	N/A	Jan. 5, 2014
Somalia	Sept. 18, 2012	March 17, 2014	May 1, 2012 – July 2, 2012	May 1, 2012 – Oct. 29, 2012	NONE – no auto extension granted
Sudan	May 3, 2013	Nov. 2, 2014	Jan. 9, 2013 – March 11, 2013	Jan. 9, 2013 – July 8, 2013	NONE – no auto extension granted
South Sudan	May 3, 2013	Nov. 2, 2014	Jan. 9, 2013 – March 11, 2013	Jan. 9, 2013 – July 8, 2013	NONE – no auto extension granted
Syria	March 29, 2012	Sept. 30, 2013	N/A	March 29, 2012 – Sept. 25, 2013	N/A

May I hire or continue to employ someone with an expired Employment Authorization Document (EAD)?

Yes, **only** if the employee is a TPS beneficiary and there is an auto-extension in effect. The EAD issued to a TPS beneficiary is one of the documents listed as acceptable for the Form I-9, even if it is expired. This “List A” document indicates the expiration date for the end of the TPS period for which the bearer last registered. When DHS extends a specific TPS country designation (as it did for El Salvador), it issues a Federal Register notice that sometimes contains a temporary blanket automatic extension of expiring EADs for TPS beneficiaries from that country to allow time for U.S. Citizenship and Immigration Services (USCIS) to issue new EADs with updated expiration dates.

To ensure that your records are up to date, be sure to check the USCIS website (www.uscis.gov/tps) and the Federal Registrar notice to see the EADs with auto-extensions and dates the extensions end. Typically, the auto-extension period lasts for six (6) months, but the time period can vary.

If an employee presents a TPS-related EAD that is expired on its face, but is actually unexpired due to an open-extension of the EAD by DHS, the employer must accept the document (provided the document reasonably appears to be genuine on its face and relates to the employee presenting it). If the employee is not entitled to an auto-extension of the EAD, he or she must present a valid, unexpired work authorization document. This is a peculiar directive to employers as they are prohibited from asking for any additional documentation regarding eligibility including proof of an employee’s reregistration.

How do I know that the employee is a beneficiary of TPS?

There are several clues that an employer should look for in order to determine whether an employee is a TPS authorized worker. First, look at the category listed on the EAD. If the person's work authorization is granted based on TPS, the notation "A-12" or "C-19" will appear on the face of the card under "category." Second, look at the expiration date. The expiration date of the most recent TPS extension period will appear on the face of the EAD. This date will appear in the Federal Register notice announcing the auto-extension of the EADs (also available at www.uscis.gov/tps). For El Salvadorians, the employee's EAD card would have expired on September 9, 2013.



Under "Category," the notation "A-12" or "C-19" will appear on the face of the Employment Authorization Document (Form I-766).

The expiration date of the last re-registration period will appear on the face of the card (this date can be found in the Federal Register notice or at www.uscis.gov/tps).

How do I complete a Form I-9 when a TPS Beneficiary presents an expired EAD?

When using an **automatically extended** EAD to fill out a Form I-9 for a new hire prior to March 9, 2014, the Form I-9 should be completed as follows:

For Section 1, the **employee** should:

- Check "An alien authorized to work";
- Write the alien number (A-number) in the first space (the employee's EAD or other document from DHS will have the A-number printed on it); and
- Write the automatic extension date in the second space.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)					
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Other Names Used (if any)		
DAVIS	JONATHAN	F	JOHNNY DAVIS		
Address (Street Number and Name)		Apt. Number	City or Town	State	Zip Code
123 MAIN STREET		4F	ANYWHERE	DC	12345
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	E-mail Address		Telephone Number	
01/01/1950	1-2-3-4-5-6-7-8-9	N/A		N/A	
<p>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</p> <p>I attest, under penalty of perjury, that I am (check one of the following):</p> <p><input type="checkbox"/> A citizen of the United States</p> <p><input type="checkbox"/> A noncitizen national of the United States (See instructions)</p> <p><input type="checkbox"/> A lawful permanent resident (Alien Registration Number/USCIS Number): _____</p> <p><input checked="" type="checkbox"/> An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) 03/09/2014. Some aliens may write "N/A" in this field. (See instructions)</p> <p>For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:</p> <p>1 Alien Registration Number/USCIS Number: 9 8 7 6 5 4 3 2 1</p>					

For Section 2, the **employer** should:

- Record the document title;
- Record the document number; and
- Record the automatically extended EAD expiration date.

List A Identity and Employment Authorization
Document Title: EAD
Issuing Authority: USCIS
Document Number: EAC0123456789
Expiration Date (if any)(mm/dd/yyyy): 03/09/2014

After March 9, 2014, employers must re-verify the employee's employment authorization in Section 3 of the Form I-9. The employee may choose to present an unexpired EAD with an updated expiration date, or any other document from List A or C of the Form I-9 evidencing that he or she continues to be authorized to work in the United States. Employers should check for ongoing TPS extensions.

How do I update a Form I-9 for a TPS Beneficiary?

USCIS requests that auto-extensions be recorded in Section 2 instead of Section 3 in the Form I-9. Accordingly, if an existing employee presented an EAD that was valid when he/she first started the job, but the EAD is expired and has been automatically extended, the previously completed Form I-9 should be updated as follows:

For Section 1, the employee should:

- Draw a line through the expiration date in the second space;
- Write the new work authorization expiration date (which for EI Salvadorians at this time would be September 9, 2013) next to the previous date;
- Write "EAD Ext." in the margin of Section 1; and
- Initial and date the correction in the margin of Section 1.

Section 1. Employee Information and Attestation <small>(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)</small>					
Last Name (Family Name) DAVIS		First Name (Given Name) JONATHAN		Middle Initial F	Other Names Used (if any) JOHNNY DAVIS
Address (Street Number and Name) 123 MAIN STREET			Apt. Number 4F	City or Town ANYWHERE	State DC Zip Code 12345
Date of Birth (mm/dd/yyyy) 01/01/1950	U.S. Social Security Number 123-45-6789		E-mail Address N/A		Telephone Number N/A
<p>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</p> <p>I attest, under penalty of perjury, that I am (check one of the following):</p> <p><input type="checkbox"/> A citizen of the United States</p> <p><input type="checkbox"/> A noncitizen national of the United States (See instructions)</p> <p><input type="checkbox"/> A lawful permanent resident (Alien Registration Number/USCIS Number): _____</p> <p><input checked="" type="checkbox"/> An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) 09/09/2013 <u>03/09/2014</u> — EAD Ext. J. DAVIS (02/13)</p> <p><small>(See instructions) Some aliens may write "N/A" in this field.</small></p> <p>For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:</p> <p>1. Alien Registration Number/USCIS Number: 9 8 7 6 5 4 3 2 1</p>					

For Section 2, the employer should:

- Draw a line through the expiration date written in Section 2;
- Write the new work authorization expiration date (which for EI Salvadorians at this time would be September 9, 2013) below the previous date;
- Write "EAD Ext." in the margin of Section 2; and
- Initial and date the correction in the margin of Section 2.

List A Identity and Employment Authorization	
Document Title:	EAD
Issuing Authority:	USCIS
Document Number:	EAC0987654321
Expiration Date (if any)(mm/dd/yyyy):	09/09/2013 <u>03/09/2014</u>
Document Title:	EAD EXT. J. DAVIS (02/13)
Issuing Authority:	
Document Number:	

What should I do with Form I-9s for employees with TPS extensions?

Extended TPS beneficiary Form I-9s should be treated the same as Form I-9s for aliens authorized to work for set time periods. After updating a TPS beneficiary employee's I-9, the employer should place the Form I-9 in an "Employment Authorization Expiration" binder reverification system. The reverification binder should be organized in chronological order, with the employee Form I-9s

needing reverification earliest in front. For El Salvadorian employees with TPS, the employee must present either a List A or a List C document verifying their work authorization on or before March 9, 2014. Employers should update Section 3 of the Form I-9 with the updated work authorization information. The Form I-9 should be placed in the location where all "Reverifications" are maintained.

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On or before the newly extended expiration date, the employee must present a new, unexpired document to the employer. The employer should then complete Section 3 of the Form I-9 and either place the employee's Form I-9 back in the "Employment Authorization Expiration" binder (if he/she presents authorization that expires) or in the active employee Form I-9 binder (if he/she presents authorization that does not expire) (e.g. Permanent Residence Card).

Be sure to visit the "[What's New](#)" page in USCIS's website under I-9 Central for additional information regarding updating Form I-9s with TPS auto-extensions.

What are the fines and penalties if we violate the law?

Remember immigration compliance should be handled carefully by trained individuals regardless of the size of the company. A balance between ensuring workers are authorized to work and ensuring workers' rights are not violated is critical. Employers must also be careful to ensure they do not discriminate against individuals on the basis of national origin, citizenship, or immigration status. Employers who violate the law may be subject to:

- civil fines;
- criminal penalties (when there is a pattern or practice of violations);
- debarment from government contracts;
- a court order requiring the payment of back pay to the individual discriminated against;
- a court order requiring the employer to hire the individual discriminated against.

Employers should also ensure they do not hire, recruit for a fee, or refer for a fee aliens whom they know to be unauthorized to work in the United States. Employers who violate the law may be subject to Civil Fines and criminal penalties for form I-9 violations ranging from \$375 to \$16,000. If comprehensive immigration reform is passed, it is very likely these fines will increase enormously.

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