

§§ 241.26–241.29

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§§ 241.26–241.29 [Reserved]

**Subpart C—Deportation of Aliens
in the United States (for Hearings
Commenced Prior to
April 1, 1997)**

**§ 241.30 Proceedings commenced prior
to April 1, 1997.**

Subpart C of 8 CFR part 241 applies to deportation proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 241.31 Final order of deportation.

An order of deportation becomes final in accordance with 8 CFR 1241.31.

[70 FR 673, Jan. 5, 2005]

§ 241.32 Warrant of deportation.

A Form I–205, Warrant of Deportation, based upon the final administrative order of deportation in the alien’s case shall be issued by a district director. The district director shall exercise the authority contained in section 243 of the Act to determine at whose expense the alien shall be deported and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

§ 241.33 Expulsion.

(a) *Execution of order.* Except in the exercise of discretion by the district director, and for such reasons as are set forth in § 212.5(b) of this chapter, once an order of deportation becomes final, an alien shall be taken into custody and the order shall be executed. An order of deportation becomes final in accordance with 8 CFR 1241.31.

(b) *Service of decision.* In the case of an order entered by any of the authorities enumerated above, the order shall be executed no sooner than 72 hours after service of the decision, regardless of whether the alien is in Service custody, provided that such period may be waived on the knowing and voluntary request of the alien. Nothing in this paragraph shall be construed, however, to preclude assumption of custody by

the Service at the time of issuance of the final order.

[62 FR 10378, Mar. 6, 1997, as amended at 65 FR 82256, Dec. 28, 2000; 70 FR 674, Jan. 5, 2005]

PARTS 242–243 [RESERVED]

**PART 244—TEMPORARY PROTECTED
STATUS FOR NATIONALS OF DES-
IGNATED STATES**

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AUTHORITY: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.1 Definitions.

As used in this part:

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Foreign state means any foreign country or part thereof as designated by the Attorney General pursuant to section 244 of the Act.

Misdemeanor means a crime committed in the United States, either:

(1) Punishable by imprisonment for a term of one year or less, regardless of

the term such alien actually served, if any, or

(2) A crime treated as a misdemeanor under the term “felony” of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

Prima facie means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.

Register means to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63595, Nov. 16, 1998; 64 FR 4781, Feb. 1, 1999]

§ 244.2 Eligibility.

Except as provided in §§ 244.3 and 244.4, an alien may in the discretion of the director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 244.3;

(e) Is not ineligible under § 244.4; and

(f)(1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or

(2) During any subsequent extension of such designation if at the time of the initial registration period:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

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(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

(3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1999, for any applicant who would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1998.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

[63 FR 63595, Nov. 16, 1998]

§ 244.3 Applicability of grounds of inadmissibility.

(a) *Grounds of inadmissibility not to be applied.* Paragraphs (4), (5) (A) and (B), and (7)(A)(i) of section 212(a) of the Act shall not render an alien ineligible for Temporary Protected Status.

(b) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c) of this section, USCIS may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver.

(c) *Grounds of inadmissibility that may not be waived.* USCIS may not waive the following provisions of section 212(a) of the Act:

(1) Paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses);

(2) Paragraphs (3)(A), (3)(B), (3)(C), and (3)(D) (relating to national security); or

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(3) Paragraph (3)(E) (relating to those who assisted in the Nazi persecution).

[56 FR 619, Jan. 7, 1991, as amended at 58 FR 58937, Nov. 5, 1993. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997; 76 FR 53791, Aug. 29, 2011]

§ 244.4 Ineligible aliens.

An alien is ineligible for Temporary Protected Status if the alien:

(a) Has been convicted of any felony or two or more misdemeanors, as defined in § 244.1, committed in the United States, or

(b) Is an alien described in section 208(b)(2)(A) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 76 FR 53791, Aug. 29, 2011]

§ 244.5 Temporary treatment benefits for eligible aliens.

(a) *Prior to the registration period.* Prior to the registration period established by DHS, a national of a foreign state designated by DHS shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's *prima facie* eligibility for benefits under section 244 of the Act. This application may be filed without fee. Temporary treatment benefits, if granted, shall terminate unless the registration fee is paid or a waiver is sought within the first thirty days of the registration period designated by DHS. If the registration fee is paid or a waiver is sought within such thirty day period, temporary treatment benefits shall continue until terminated under § 244.13. The denial of temporary treatment benefits prior to the registration period designated by DHS shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

(b) *During the registration period.* Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's *prima facie* eligibility for Temporary Protected Status. Such temporary treatment benefits shall

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continue until terminated under § 244.13.

(c) *Denied benefits.* There shall be no appeal from the denial of temporary treatment benefits.

[56 FR 619, May 22, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 76 FR 53791, Aug. 29, 2011]

§ 244.6 Application.

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific FEDERAL REGISTER notice that announces the procedures for TPS registration or re-registration, and 8 CFR 103.2, except as otherwise provided in this section, with the appropriate fees and biometric information as described in 8 CFR 103.7(b)(1), 103.16, and 103.17.

(b) An applicant for TPS may also request employment authorization pursuant to 8 CFR 274a. Those applicants between the ages of 14 and 65 who are not requesting authorization to work will not be charged a fee for an application for employment authorization.

[76 FR 53791, Aug. 29, 2011]

§ 244.7 Filing the application.

(a) An application for Temporary Protected Status must be filed on the form designated by USCIS with any prescribed fees and in accordance with the form instructions.

(b) An application for Temporary Protected Status must be filed during the registration period established by DHS, except in the case of an alien described in § 244.2(f)(2).

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in § 244.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a foreign state is designated under section 244(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the director under paragraph (a) of this section during the published reg-

istration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under § 244.3(c) or § 244.4. Eligibility for Temporary Protected Status in the latter instance shall be decided by the Executive Office for Immigration Review during such proceedings.

[63 FR 63596, Nov. 16, 1998, as amended at 74 FR 26940, June 5, 2009; 76 FR 53791, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

§ 244.8 Appearance.

The applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility. The applicant may have a representative as defined in § 292.1 of this chapter present during any examination. Such representative shall not directly participate in the examination; however, such representative may consult with and provide advice to the applicant. The record of examination shall consist of the application, documents relating to the application, and the decision of the director.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998]

§ 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide

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documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

(2) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any of the following:

(i) Employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal, State, or local income tax returns; letters from employer(s) or, if the applicant has been self employed, letters from banks, and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

- (A) Alien's address(es) at the time of employment;
- (B) Exact period(s) of employment;
- (C) Period(s) of layoff; and
- (D) Duties with the company.

(ii) Rent receipts, utility bills (gas, electric, telephone, etc.), receipts, or letters from companies showing the dates during which the applicant received service;

(iii) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing name of school and period(s) of school attendance;

(iv) Hospital or medical records showing medical treatment or hospitalization of the applicant or his or her children, showing the name of the medical facility or physician as well as the date(s) of the treatment or hospitalization;

(v) Attestations by churches, unions, or other organizations of the applicant's residence by letter which:

- (A) Identifies applicant by name;
- (B) Is signed by an official whose title is also shown;
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during the membership period;
- (E) Includes the seal of the organization impressed on the letter or is on the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the attester knows the applicant; and
- (G) Establishes the origin of the information being attested to.

(vi) Additional documents to support the applicant's claim, which may include:

- (A) Money order receipts for money sent in or out of the country;
- (B) Passport entries;
- (C) Birth certificates of children born in the United States;
- (D) Bank books with dated transactions;
- (E) Correspondence between the applicant and other persons or organizations;
- (F) Social Security card;
- (G) Selective Service card;
- (H) Automobile license receipts, title, vehicle registration, etc;
- (I) Deeds, mortgages, contracts to which applicant has been a party;
- (J) Tax receipts;
- (K) Insurance policies, receipts, or letters; and/or
- (L) Any other relevant document.

(3) *Evidence of eligibility under section 244(c)(2) of the Act.* An applicant has the burden of showing that he or she is eligible for benefits under this part.

(4) *Evidence of valid immigrant or non-immigrant status.* In the case of an alien described in §244.2(f)(2), evidence of admission for lawful permanent residence or nonimmigrant status must be submitted by the applicant.

(b) *Sufficiency of evidence.* The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To

meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements.

(c) *Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 76 FR 53791, Aug. 29, 2011]

§ 244.10 Decision and appeal.

(a) *Temporary treatment benefits.* USCIS will grant temporary treatment benefits to the applicant if the applicant establishes prima facie eligibility for Temporary Protected Status in accordance with 8 CFR 244.5.

(b) *Temporary Protected Status.* Upon review of the evidence presented, USCIS may approve or deny the application for Temporary Protected Status in the exercise of discretion, consistent with the standards for eligibility in 8 CFR 244.2, 244.3, and 244.4.

(c) *Denial.* The initial decision to deny Temporary Protected Status, a waiver of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien will be given written notice of his or her right to appeal. If an appeal is filed, the administrative record shall be forwarded to the USCIS AAO for review and decision, except as otherwise provided in this section.

(1) If the basis for the denial of the Temporary Protected Status constitutes a ground for deportability or inadmissibility which renders the alien ineligible for Temporary Protected Status under § 244.4 or inadmissible under § 244.3(c), the decision shall in-

clude a charging document which sets forth such ground(s).

(2) If such a charging document is issued, the alien shall not have the right to appeal the USCIS decision denying Temporary Protected Status as provided in 8 CFR 103.3. However, the decision will also apprise the alien of his or her right to a *de novo* determination of his or her eligibility for Temporary Protected Status in removal proceedings pursuant to section 240 of the Act and 8 CFR 1244.18.

(d) *Administrative appeal.* The appellate decision will be served in accordance with 8 CFR 103.8. If the appeal is dismissed, the decision must state the reasons for dismissal.

(1) If the appeal is dismissed on appeal under 8 CFR 244.18(b), the decision shall also apprise the alien of his or her right to a *de novo* determination of eligibility for Temporary Protected Status in removal proceedings pursuant to section 240 of the Act and 8 CFR 1244.18.

(2) If the appeal is dismissed, USCIS may issue a charging document if no charging document is presently filed with the Immigration Court.

(3) If a charging document has previously been filed or is pending before the Immigration Court, either party may move to re-calendar the case after the administrative appeal is dismissed.

(e) *Grant of temporary treatment benefits.* (1) Temporary treatment benefits shall be evidenced by the issuance of an employment authorization document. The alien shall be given, in English and in the language of the designated foreign state or a language that the alien understands, a notice of the registration requirements for Temporary Protected Status and a notice of the following benefits:

(i) Temporary stay of deportation; and

(ii) Temporary employment authorization.

(2) Unless terminated under § 244.13, temporary treatment benefits shall remain in effect until a final decision has been made on the application for Temporary Protected Status.

(f) *Grant of temporary protected status.* (1) The decision to grant Temporary Protected Status shall be evidenced by the issuance of an alien registration document. For those aliens requesting

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employment authorization, the employment authorization document will act as alien registration.

(2) The alien shall be provided with a notice, in English and in the language of the designated foreign state or a language that the alien understands, of the following benefits:

(i) The alien shall not be deported while maintaining Temporary Protected Status;

(ii) Employment authorization;

(iii) The privilege to travel abroad with the prior consent of the director as provided in § 244.15;

(iv) For the purposes of adjustment of status under section 245 of the Act and change of status under section 248 of the Act, the alien is considered as being in, and maintaining, lawful status as a nonimmigrant while the alien maintains Temporary Protected Status.

(v) An alien eligible to apply for Temporary Protected Status under § 244.2(f)(2), who was prevented from filing a late application for registration because the regulations failed to provide him or her with this opportunity, will be considered to have been maintaining lawful status as a nonimmigrant until the benefit is granted.

(3) The benefits contained in the notice are the only benefits the alien is entitled to under Temporary Protected Status.

(4) Such notice shall also advise the alien of the following:

(i) The alien must remain eligible for Temporary Protected Status;

(ii) The alien must register annually with the district office or service center having jurisdiction over the alien's place of residence; and

(iii) The alien's failure to comply with paragraphs (f)(4) (i) or (ii) of this section will result in the withdrawal of Temporary Protected Status, including work authorization granted under this Program, and may result in the alien's deportation from the United States.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993; 60 FR 34090, June 30, 1995. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 64 FR 4782, Feb. 1, 1999; 76 FR 53791, Aug. 29, 2011]

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§ 244.11 Renewal of application; appeal to the Board of Immigration Appeals.

If a charging document is served on the alien with a notice of denial or withdrawal of Temporary Protected Status, an alien may renew the application for Temporary Protected Status in deportation or exclusion proceedings. The decision of the immigration judge as to eligibility for Temporary Protected Status may be appealed to the Board of Immigration Appeals pursuant to 8 CFR 1003. The provisions of this section do not extend the benefits of Temporary Protected Status beyond the termination of a foreign state's designation pursuant to § 244.19.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 76 FR 53792, Aug. 29, 2011]

§ 244.12 Employment authorization.

(a) Upon approval of an application for Temporary Protected Status, USCIS shall grant an employment authorization document valid during the initial period of the foreign state's designation (and any extensions of such period).

(b) If the alien's Temporary Protected Status is withdrawn under § 244.14, employment authorization expires upon notice of withdrawal or on the date stated on the employment authorization document, whichever occurs later.

(c) If Temporary Protected Status is denied by USCIS, employment authorization shall terminate upon notice of denial or at the expiration of the employment authorization document, whichever occurs later.

(d) If the application is renewed or appealed in deportation or exclusion proceedings, or pending administrative appeal pursuant to § 244.18(b), employment authorization will be extended during the pendency of the renewal and/or appeal.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991; 60 FR 21975, May 4, 1995. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 64 FR 4782, Feb. 1, 1999; 76 FR 53792, Aug. 29, 2011]

§ 244.13 Termination of temporary treatment benefits.

(a) Temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for Temporary Protected Status.

(b) Temporary treatment benefits terminate, in any case, sixty (60) days after the date that notice is published of the termination of a foreign state's designation under section 244(b)(3) of the Act.

[56 FR 619, Jan. 7, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998]

§ 244.14 Withdrawal of Temporary Protected Status.

(a) *Authority of USCIS.* USCIS may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;

(2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from USCIS to travel pursuant to § 244.15;

(3) The alien fails without good cause to register with DHS annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

(b) *Decision by USCIS.* (1) Withdrawal of an alien's status under paragraph (a) of this section shall be in writing and served by personal service pursuant to 8 CFR 103.8(a)(2). If the ground for withdrawal is 8 CFR 244.14(a)(3), the notice shall provide that the alien has thirty (30) days within which to provide evidence of good cause for failure to register. If the alien fails to respond within thirty (30) days, Temporary Protected Status shall be withdrawn without further notice.

(2) Withdrawal of the alien's Temporary Protected Status under paragraph (b)(1) of this section may subject the applicant to exclusion or deportation proceedings under sections 235, 236, 237, 238, 240, or 241 of the Act as appropriate.

(3) If the basis for the withdrawal of Temporary Protected Status constitutes a ground of deportability or excludability which renders an alien ineligible for Temporary Protected Status under § 244.4 or inadmissible under § 244.3(c), the decision shall include a charging document which sets forth such ground(s) with notice of the right of a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings. If the basis for withdrawal does not constitute such a ground, the alien shall be given written notice of his or her right to appeal to the AAU. Upon receipt of an appeal, the administrative record will be forwarded to the AAU for review and decision pursuant to the authority delegated under § 103.1(f)(2). Temporary Protected Status benefits will be extended during the pendency of an appeal.

(c) *Decision by AAU.* If a decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 244.10(d).

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, 63597, Nov. 16, 1998; 76 FR 53792, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

§ 244.15 Travel abroad.

(a) After the grant of Temporary Protected Status, the alien must remain continuously physically present in the United States under the provisions of section 244(c)(3)(B) of the Act. The grant of Temporary Protected Status shall not constitute permission to travel abroad. Permission to travel may be granted by the director pursuant to the Service's advance parole provisions. There is no appeal from a denial of advance parole.

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(b) Failure to obtain advance parole prior to the alien's departure from the United States may result in the withdrawal of Temporary Protected Status and/or the institution or recalendering of deportation or exclusion proceedings against the alien.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63597, Nov. 16, 1998; 64 FR 4782, Feb. 1, 1999]

§ 244.16 Confidentiality.

The information contained in the application and supporting documents submitted by an alien shall not be released in any form whatsoever to a third party requester without a court order, or the written consent of the alien. For the purpose of this provision, a third party requester means any requester other than the alien, his or her authorized representative, an officer of DHS, or any federal or State law enforcement agency. Any information provided under this part may be used for purposes of enforcement of the Act or in any criminal proceeding.

[56 FR 619, Jan. 7, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997; 76 FR 53792, Aug. 29, 2011]

§ 244.17 Periodic registration.

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated or redesignated for more than one year by DHS. Applicants for periodic re-registration must apply during the registration period provided by USCIS. Re-registering applicants will not need to re-pay the TPS application fee that was required for initial registration except that aliens requesting employment authorization must submit the application fee for employment authorization. The biometric service fee described in 103.7(b), or an approved fee waiver, will be required of applicants age 14 and over. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional supporting documents unless USCIS requests them to do so.

(b) If an alien fails to register without good cause, USCIS will withdraw

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Temporary Protected Status. USCIS may, for good cause, accept and approve an untimely registration request.

[76 FR 53792, Aug. 29, 2011]

§ 244.18 Issuance of charging documents; detention.

(a) A charging document may be issued against an alien granted Temporary Protected Status on grounds of deportability or excludability which would have rendered the alien statutorily ineligible for such status pursuant to §§244.3(c) and 244.4. Aliens shall not be deported for a particular offense for which the Service has expressly granted a waiver. If the alien is deportable on a waivable ground, and no such waiver for the charged offense has been previously granted, then the alien may seek such a waiver in deportation or exclusion proceedings. The charging document shall constitute notice to the alien that his or her status in the United States is subject to withdrawal. A final order of deportation or exclusion against an alien granted Temporary Protected Status shall constitute a withdrawal of such status.

(b) The filing of the charging document by DHS with the Immigration Court renders inapplicable any other administrative, adjudication or review of eligibility for Temporary Protected Status. The alien shall have the right to a *de novo* determination of his or her eligibility for Temporary Protected Status in removal proceedings pursuant to section 240 of the Act and 8 CFR 1244.18. Review by the Board of Immigration Appeals shall be the exclusive administrative appellate review procedure. If an appeal is already pending before the Administrative Appeals Office (AAO), USCIS will notify the AAO of the filing of the charging document, in which case the pending appeal shall be dismissed and the record of proceeding returned to the jurisdiction where the charging document was filed.

(c) Upon denial of Temporary Protected Status by the Administrative Appeals Unit, the Administrative Appeals Unit shall immediately forward the record of proceeding to the director having jurisdiction over the alien's place of residence. The director shall, as soon as practicable, file a charging document with the Immigration Court

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if the alien is then deportable or excludable under section 241(a) or section 212(a) of the Act, respectively.

(d) An alien who is determined by USCIS deportable or inadmissible upon grounds which would have rendered the alien ineligible for such status as provided in 8 CFR 244.3(c) and 8 CFR 244.4 may be detained under the provisions of this chapter pending removal proceedings. Such alien may be removed from the United States upon entry of a final order of removal.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991; 60 FR 34090, June 30, 1995. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63597, Nov. 16, 1998; 64 FR 4782, Feb. 1, 1999; 76 FR 53792, Aug. 29, 2011]

§ 244.19 Termination of designation.

Upon the termination of designation of a foreign state, those nationals afforded temporary Protected Status shall, upon the sixtieth (60th) day after the date notice of termination is published in the FEDERAL REGISTER, or on the last day of the most recent extension of designation by the Attorney General, automatically and without further notice or right of appeal, lose Temporary Protected Status in the United States. Such termination of a foreign state's designation is not subject to appeal.

[56 FR 619, Jan. 7, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63597, Nov. 16, 1998]

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

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AUTHORITY: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105-100, section 202, 111 Stat. 2160, 2193; Pub. L. 105-277, section 902, 112 Stat. 2681; Pub. L. 110-229, tit. VII, 122 Stat. 754; 8 CFR part 2.

§ 245.1 Eligibility.

(a) *General.* Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application. A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States.

(b) *Restricted aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act, unless the alien establishes eligibility under the provisions of section 245(i) of the Act