

What Attorneys Can Do For Salvadorans Losing TPS

By **Kevin Penton**

Law360, New York (January 9, 2018, 7:38 PM EST) -- About 200,000 Salvadorans will lose their temporary protected status in the United States next year, and many attorneys are now scrambling to offer these immigrants a legal means to remain in the U.S.

Short of a broader legislative fix to prevent their TPS statuses from expiring in September 2019 following **Monday's announcement**, approximately 195,000 people who currently have no reason to hide from federal immigration authorities and who are able to work and study without legal repercussions will be subject to deportation, according to experts.

"If they choose to remain in the U.S. without pursuing some other legal strategy, they're going to have to effectively go into hiding," said Patricia Gannon, a shareholder with Greenspoon Marder LLP's immigration practice group. "Going into hiding will potentially expose them to abuse by employers, criminals and others looking to take advantage of their precarious legal situation."

Salvadorans are by far the largest group of participants in the TPS program, accounting for nearly two-thirds of the expected 317,660 re-registrants in the program, according to data released in October by the Congressional Research Service. The program provides relief to people from countries deemed to be unsafe because of natural disaster, civil war and other conditions.

Originally receiving the designation in March 2001 following a series of earthquakes, El Salvador received 10 subsequent TPS extensions from the Bush and Obama administrations.

But the Trump administration has put the program in its crosshairs, rolling back the designation not only for El Salvador, but also for Sudan, Haiti, Nicaragua, and offering a short extension for Honduras.

So what are these immigrants to do if they want to stay in the United States? Immigration experts say there are a variety of options that could come into play.

Seek Out Alternative Visas

Many forms of relief may be available to TPS holders, experts agreed, and the key for attorneys is a thorough interview with their clients to match up immigrants with their best options for legal status.

Individuals may be able to obtain legal permanent residency through their personal ties to a U.S. citizen, such as a spouse or a sibling; they can obtain asylum if they can establish a credible fear of harm should they be sent back to El Salvador; or they can receive a U visa if they have been a victim of a crime in the U.S. and have cooperated with authorities in the incident's investigation and prosecution, said Royce Bernstein Murray, policy director at the American Immigration Council, a nonprofit immigration advocacy group.

"Every situation is going to be different, and each individual's immigration history will vary," Murray said. "That consultation is very critical."

It is unlikely that many TPS holders possess criminal histories that could bar them from qualifying to seek certain changes to their legal status, as criminal convictions generally make individuals ineligible for the program, said Kerry Bretz, an attorney with Bretz & Coven LLP.

"Some may be eligible for other forms of relief, like the cancellation of removal or political asylum," Bretz said. "Temporary protected status has allowed them to work legally and pay taxes, as so many have done."

Adjustment of Status ... in Some Jurisdictions

An added legal twist is present for Salvadorans with TPS status who may have originally entered the U.S. without authorization before going on to successfully apply for the program.

There is currently a circuit split on the question of whether such individuals are eligible to adjust their status based on an immediate relative petition, with the Eleventh Circuit ruling in 2011 in *Serrano v. U.S. Attorney General* that they are not and the Sixth Circuit in 2013 in *Flores v. U.S. Citizenship and Immigration Services* and the Ninth Circuit in March in *Ramirez v. Brown* ruling that they are, according to court documents.

The federal government's position in the remaining circuits is that such individuals are not eligible to adjust their status, because receiving TPS is not an "admission" into the country.

While it is possible that a case could someday reach the U.S. Supreme Court that would bring clarity to the matter, it is unclear whether any such resolution would arrive before the September 2019 deadline, Gannon said.

"For tens of thousands of people, their lives would be up in the air before then," said Gannon, who noted that the individuals would face the prospect of leaving the security of the U.S., where they are currently legally present, for the instability of El Salvador. "These people left for a reason, and it wasn't just economics."

Plan for a Return to Their Home Country

Despite best efforts to find a legal path to remain in the United States, some TPS holders may see no alternative but to return to their home country.

The U.S. Department of Homeland Security said this is a viable option because of improved conditions in El Salvador. "Schools and hospitals damaged by the earthquakes have been reconstructed and repaired, homes have been rebuilt, and money has been provided for water and sanitation and to repair earthquake-damaged roads and other infrastructure," according to the DHS announcement. "The substantial disruption of living conditions caused by the earthquake no longer exist."

For TPS holders who are either considering to voluntarily return to El Salvador or who are taking a clear-eyed look at the possibility that federal immigration agents may come knocking sooner or later and force them to return to Central America, Murray advises that they proactively begin the legal process of establishing who would be their U.S.-born children's legal guardians, should they consider allowing them to remain in the U.S.

There are approximately 273,000 children who were born in the U.S. to TPS holders from all countries, with 61 percent of TPS holders from El Salvador and Honduras reporting in a 2016 survey that they have at least one U.S.-born child, according to data compiled by the American Immigration Council.

Kick-starting maneuvers now regarding arrangements for these children would provide the TPS holders a greater ability to control what undoubtedly is a crucial part of the process, and give them enough time to proactively make such difficult decisions, she said.

"With 18 months, they do have a little bit of a window to sort it out," Murray said.

--Editing by Katherine Rautenberg.