



GMS Flash Alert

Immigration Edition

2020-493 | December 11, 2020

United States – Immigration Updates: DACA Reinstatement, TPS Extension

In this newsletter, we report on recent U.S. immigration-related developments, including the restoration of the Deferred Action for Childhood Arrivals (DACA) program ordered by a US District Court on December 4, 2020, and the government's extension of Temporary Protected Status (TPS) for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal.

WHY THIS MATTERS

DACA

There are many DACA beneficiaries employed in the U.S. across various industry sectors. Up until recently, their ability to exit and re-enter the U.S. had been suspended except in extraordinary circumstances. Employers of DACA beneficiaries were advised to take note of this travel restriction, as DACA employees were unable to participate in global mobility assignments or engage in international business travel under the latest Department of Homeland Security (DHS) memorandum. On December 7, 2020, U.S. Citizenship and Immigration Services (USCIS) issued related guidance on its website¹ and stated that the agency will fully comply with the court's decision while it remains in effect. DACA applicants may now submit form I-821D requesting discretionary relief to defer removal using the guidelines set forth in the Secretary of Homeland Security's memorandum issued on June 15, 2012.² They may also file Forms I-765 and I-131 with the required supporting evidence to request employment and travel authorization. DACA employees who wish to travel outside of the U.S. are advised to first consult with immigration legal counsel.

TPS

The DHS' extension of TPS designation for the above-listed countries provides temporary relief to employees work-authorized pursuant to TPS, as well as their employers, who otherwise would have faced a lapse in the ability to continue employment after January 4, 2021. TPS employees are eligible for automatic Employment Authorization Document (EAD) extensions and may update their I-9 employment eligibility records by providing their employer with a copy of the Federal Register Notice, an eligible expiring or expired TPS EAD, and any other required List A or List B and C I-9 documents.

© 2020 KPMG Law LLP, a tax and immigration law firm affiliated with KPMG LLP, each of which is a Canadian limited liability partnership. KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

2020-493 | December 11, 2020

The USCIS TPS guidance updated on December 7, 2020, indicates that TPS employees do not need to apply for a new EAD, but they may request one if they choose to do so. Additionally, TPS beneficiaries who have EAD and re-registration applications pending with USCIS will receive an EAD with a validity date ending October 4, 2021, if USCIS approves their re-registration and EAD applications.

Background: DACA

What Is DACA?

The Deferred Action for Childhood Arrivals program – known by the acronym “DACA” – was implemented in 2012 under the Obama administration to provide temporary relief from deportation to undocumented immigrants who came to the U.S. as children. The program originally allowed applicants to secure DACA-related employment authorization and travel documents, known as “Advance Parole,” which permitted a return to the U.S. following international travel.

Legal Challenges

Issuance of DACA-related travel documents and initial applications for DACA benefits have been suspended since 2017, when the Trump administration introduced plans to rescind the DACA program.

On June 18, 2020, the U.S. Supreme Court held that the administration’s attempt to dismantle the DACA program was improper, but left open the possibility for the administration to terminate the DACA program through legislative efforts.³

Following the U.S. Supreme Court’s June 2020 decision, DHS issued a memorandum on July 28, 2020, cutting renewal permits from two years to one and rejecting all new DACA applications. The memo also instructed USCIS to reject Advance Parole applications except in extraordinary circumstances.

On November 14, 2020, the U.S. District Court for the Eastern District of New York found that Acting Secretary of Homeland Security Wolf was not legally serving as the Acting Secretary of Homeland Security when he issued the July 28, 2020 memo that prevented new applicants from seeking relief under the DACA program. Acting DHS Secretary Wolf was appointed by President Trump in November 2019 but his nomination was never confirmed by the U.S. Senate. The Court found that Chad Wolf’s appointment violated the Homeland Security Act of 2002.⁴

Following the November 14, 2020 ruling, Judge Nicholas Garaufis of the Eastern District of New York invalidated the DHS July 28, 2020 memo as Acting DHS Secretary Wolf lacked authority to issue such a directive, and ordered the immediate reinstatement of the DACA program.

The recent decision in *Batalla Vidal, et al. v. Wolf, et al.* will remain in effect unless and until it is overturned by a higher court.

Further Action on the DACA Program

On December 5, 2020, the U.S. District Court for the Eastern District of New York ordered the immediate reinstatement of the DACA program in its *Batalla Vidal, et al. v. Wolf, et al.* decision.⁵

Specifically, the court rescinded the July 2020 memorandum⁶ issued by Acting DHS Secretary Chad Wolf, which prevented new DACA applicants from enrolling in the program.

The court’s decision also directed USCIS to issue a public notice confirming that the agency is now accepting first time and renewal DACA applications, and that it will issue Advance Parole (AP) and EAD with a two-year duration.

Pursuant to this ruling, USCIS is required to provide a case status report to the court by January 4, 2021, with the following data: number of initial and renewal DACA applications received between November 14, 2020 and December 31, 2020; final disposition of the case; number of DACA applications, AP and EAD requests adjudicated as well as cases rejected pursuant to the July 28, 2020 Wolf memo.

KPMG NOTE

Given that the DHS is likely to appeal the court's ruling in the coming months, it is prudent for DACA employees who remain eligible to renew their DACA benefits as soon as possible, to prevent disruptions to their status and work authorization in the United States.

TPS Program

On December 7, 2020, the DHS announced⁷ that it will extend designation of Temporary Protected Status (TPS) for nationals of several countries including El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal until October 4, 2021. This extension will allow currently eligible beneficiaries to retain TPS benefits including eligibility for work authorization so long as they otherwise continue to meet eligibility requirements.

The Notice of Extension was published in the *Federal Register* on December 9, 2020, extending automatically the validity of TPS-related documentation for TPS beneficiaries from the aforementioned countries.⁸ The TPS-related documentation includes EADs; Forms I-797, *Notices of Action*; and Forms I-94, *Arrival/Departure Record*.

What Is TPS?

When conditions in a given country temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately, DHS may designate such foreign country for TPS. Typically, countries that experience an armed conflict, a natural disaster, or any other extraordinary and temporary conditions, may qualify for TPS designation. Under this humanitarian program, eligible nationals of TPS-designated countries who are already in the United States may remain in the country lawfully and apply for an EAD.

Pending Litigation

In 2017 and 2018, DHS secretaries terminated the TPS designations of El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. (For related coverage, see GMS [Flash Alert 2020-050](#), March 6, 2020.) TPS beneficiaries and their children have filed suit against the administration to prevent the TPS terminations.

Currently, there are three legal challenges pending in federal court including *Ramos et al. v. Wolf et al* (9th Cir.; Sept 14, 2020), *Bhattarai et al. v. Nielsen et al.*, No. 19-cv-731 (N.D. Cal. March 12, 2019), and *Saget v. Trump*, No. 18-cv-01599 (E.D.N.Y.). Preliminary injunctions that blocked DHS from ending the program were issued pending a decision on the lawsuits.

On September 14, 2020, in *Ramos et al. v. Wolf et al.*, No. 18-16981 (9th Cir., Sept. 14, 2020) the U.S. Court of Appeals vacated the district court's injunction prohibiting DHS from terminating TPS for El Salvador, Haiti, Nicaragua, and Sudan.⁹ However, because the Circuit Court has not issued its directive to the District Court to make that ruling effective, the injunction remains in place at this time.

To comply with the injunctions, DHS announced that it would automatically extend TPS designation for all six countries through January 4, 2021. However, if the respective courts reverse the preliminary injunctions that have been granted so far and the decisions are final, the TPS designation for the six countries could be terminated.

KPMG NOTE

KPMG Law LLP in Canada is closely monitoring the administration's response to the recent DACA court ruling, as well as the status of TPS. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 To read DACA-related guidance posted on the USCIS website on December 7, 2020, [click here](#).
- 2 To review the DACA eligibility requirements outlined in the Secretary of Homeland Security's memorandum issued on June 15, 2012, [click here](#).
- 3 For prior coverage on the DACA program, see the following issues of *GMS Flash Alert*: [2020-291](#) (June 22, 2020) and [2020-336](#) (July 31, 2020).
- 4 For press coverage regarding the November 14, 2020 ruling, please read the article published by National Public Radio (NPR) [here](#). *(Note that this is a 3rd party (non-KPMG, non-governmental) website. Providing this link does not represent an endorsement of the website by KPMG.)*
- 5 *Batalla Vidal v. Wolf*, No 16-CV-4756, (2nd Cir. 2020). To read the Court's decision, click [here](#). *(Note that this is a 3rd party (non-KPMG, non-governmental) website. Providing this link does not represent an endorsement of the website by KPMG.)*
- 6 To review the July 28, 2020 memorandum issued by Acting DHS Secretary Chad Wolf, [click here](#).
- 7 See the Notice of Continuation of Documentation for TPS Beneficiaries for Six Countries; Documents Auto-Extended Through Oct. 4, 2021 [here](#).
- 8 The Notice published in the *Federal Register* on 12/09/2020 is available [here](#).
- 9 The September 14, 2020 decision issued by the U.S. Court of Appeals for the Ninth Circuit vacating the District Court's injunction can be viewed [here](#) (*Ramos et al. v. Wolf et al.*, No. 18-16981 (9th Cir., Sept. 14, 2020)).

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in Canada:



Beth Nanton

Partner/U.S. Immigration, Practice Leader

KPMG Law LLP – Tax + Immigration, Canada

Tel. +1 604-691-3316

bnanton@kpmg.ca



Aurélie Espana

Manager, U.S. Immigration

KPMG Law LLP – Tax + Immigration, Canada

Tel. +1 514-840-8610

aurelieespana@kpmg.ca

** Please note that KPMG LLP (U.S.) does not provide any immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

The information contained in this newsletter was submitted by the KPMG International member firm in Canada.

© 2020 KPMG Law LLP, a tax and immigration law firm affiliated with KPMG LLP, each of which is a Canadian limited liability partnership. KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2020 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 147 countries and territories and has more than 219,000 people working in member firms around the world.

Each KPMG firm is a legally distinct and separate entity and describes itself as such. KPMG International Limited is a private English company limited by guarantee. KPMG International Limited and its related entities do not provide services to clients.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.