



# GMS Flash Alert

## Immigration Edition

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# United States – TPS Designation for Haiti, Burma; Burmese Students Can Work

On May 22, 2021, the United States Department of Homeland Security (“DHS”) announced an extension of Temporary Protected Status (“TPS”) for Haiti by 18 months, until November 2022.<sup>1</sup> Specific duration dates for the designation and application instructions will be provided in the upcoming *Federal Register* notice.<sup>2</sup>

Also, on May 25, 2021, the DHS published the application procedure to be followed for Burmese nationals seeking TPS, as well as TPS-based employment and travel authorization.<sup>3</sup> Although application instructions were not released until now, the designation of Burma (Myanmar) for TPS was previously announced in March 2021.<sup>4</sup> Burma’s TPS designation will be valid from May 25, 2021 until November 25, 2022.<sup>5</sup>

In conjunction with publication of the application instructions related to Burmese TPS, DHS published a notice on May 25, 2021, that suspends certain regulatory requirements for Burmese F-1 nonimmigrant students experiencing severe economic hardship stemming from the crisis in Burma.<sup>6</sup> Eligible students may potentially apply for employment authorization, work increased hours while school is in session, and reduce their course-load while still being considered in a full course of study.

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## WHY THIS MATTERS

Eligible Haitians who have been in the U.S. continuously since May 21, 2021, will be able to apply for TPS until November 2022. There are approximately 55,000 Haitians holding TPS. It is estimated that more than 100,000 additional Haitian nationals will now be eligible for TPS.<sup>7</sup>

USCIS estimates that 1,600 people will be eligible for Burmese TPS.<sup>8</sup> Those who are eligible also will be able to apply for employment and travel authorization.

The TPS designations for Haiti and Burma, along with the relaxed restrictions on employment for Burmese F-1 students, will allow eligible individuals to work in the U.S. during the relevant TPS designation period without requiring visa sponsorship from a U.S. employer.

# Background

## TPS

A country may be designated for TPS if the DHS Secretary determines that current country conditions fall into one or more of the three statutory bases for designation: 1) ongoing armed conflict, 2) environmental disasters, or 3) extraordinary and temporary conditions.<sup>9</sup> U.S. Citizenship and Immigration Services (USCIS) may grant TPS, along with permission to work and travel authorization, to eligible citizens of countries designated for TPS by the DHS Secretary.

## Haiti

Haiti first received TPS designation after it was hit by a 7.0-magnitude earthquake in 2010. Its designation was extended multiple times since then, and in January 2018, the DHS announced that it would terminate Haiti's TPS designation in July 2019.<sup>10</sup> Since then, multiple federal lawsuits have prevented the DHS from carrying out the termination. After consultation with inter-agency partners, the current DHS Secretary, Alejandro Mayorkas, designated Haiti for TPS due to extraordinary and temporary conditions that prevent nationals from returning safely, specifically, a political crisis and human rights abuses; serious security concerns; and the COVID-19 pandemic's exacerbation of a dire economic situation and lack of adequate access to food, water, and health-care.<sup>11</sup>

## Burma

Burma has never previously been granted TPS designation. DHS Secretary Mayorkas designated Burma for TPS after consultation with inter-agency partners and careful consideration of the extraordinary and temporary conditions in Burma. The recent coup d'état has led to continuing violence and worsened humanitarian conditions in several areas by limiting access to life-saving assistance and spurring an economic crisis.<sup>12</sup> Such conditions prevent Burmese nationals and habitual residents from returning safely.

## F-1 Student Employment

F-1 students are not typically authorized to work off-campus during the first academic year. After the first academic year, F-1 students may engage in certain types of off-campus employment related only to their area of study, if such employment is authorized in advance by the Designated School Official and USCIS. Work is typically limited to a maximum of 20 hours per week while school is in session.<sup>13</sup>

# Eligibility

## TPS Eligibility for Haitians

Eligible Haitians and certain individuals who last habitually resided in Haiti that were in the U.S. as of May 21, 2021, may apply for benefits under TPS. Details of the registration period and application process are expected to be published in a *Federal Register* notice shortly.

## TPS Eligibility for Burmese Nationals

Eligible Burmese nationals and certain individuals who last habitually resided in Burma that have continuously been in the U.S. from March 11, 2021 (when Burmese TPS was initially announced) may apply for TPS during the registration period, which started on May 25, 2021, and is scheduled to end on November 22, 2022.<sup>14</sup> Eligible persons may also apply for TPS-related employment and travel authorization. Individuals seeking TPS are subject to security and background checks as part of the application process. The collection of biometrics is generally required for TPS applicants who are 14 years of age and older.

## Burmese F-1 Student Employment

Any Burmese citizen who meets the following criteria is eligible for student employment pursuant to the notice published by DHS on May 25, 2021:

- Lawfully present in the U.S. in F-1 status as of May 24, 2021;
- Currently maintaining F-1 status;
- Experiencing severe economic hardship as a direct result of the current crisis in Burma; and
- Enrolled in a school that is certified by the DHS's Student and Exchange Visitor Program.<sup>15</sup>

If the above criteria are met, a Form I-765, *Application for Employment Authorization*, must be submitted to USCIS. Students are also encouraged to connect with their Designated School Official ("DSO") to determine eligibility.

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* apprised of any important developments as and when they occur.

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## FOOTNOTES:

- 1 Department of Homeland Security, "[Secretary Mayorkas Designates Haiti for Temporary Protected Status for 18 Months](#)" (May 22, 2021).
- 2 USCIS, "[Temporary Protected Status Designated Country: Haiti](#)."
- 3 *Federal Register* (online), "[Designation of Burma \(Myanmar\) for Temporary Protected Status](#)" (May 25, 2021).
- 4 DHS, "[Secretary Mayorkas Designates Burma for Temporary Protected Status](#)" (March 12, 2021).
- 5 *Federal Register* (online), "[Designation of Burma \(Myanmar\) for Temporary Protected Status](#)" (May 25, 2021).
- 6 *Federal Register* (online), "[Employment Authorization for Burmese F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Burma \(Myanmar\)](#)" (May 25, 2021).
- 7 NPR (online), "More Than 100,000 Haitian Immigrants Can Apply For An Extension To Stay In The U.S." (May 24, 2021). For the article, click [here](#). (Note that this is a 3<sup>rd</sup> party (non-governmental, non-KPMG) website. Providing this link does not represent an endorsement of this website by KPMG.)
- 8 *Federal Register* (online), "[Designation of Burma \(Myanmar\) for Temporary Protected Status](#)" (May 25, 2021).
- 9 8 U.S. Code § 1254a - Temporary protected status (on Cornell Law School's Legal Information Institute [website](#)). (Note that this is a 3<sup>rd</sup> party (non-governmental, non-KPMG) website. Providing this link does not represent an endorsement of this website by KPMG.)
- 10 *Federal Register* (online) "[Termination of the Designation of Haiti for Temporary Protected Status](#)" (January 18, 2018).

## FOOTNOTES continued:

- 11 DHS, "[Secretary Mayorkas Designates Haiti for Temporary Protected Status for 18 Months](#)" (May 22, 2021).
- 12 DHS, "[Secretary Mayorkas Designates Burma for Temporary Protected Status](#)" (March 12, 2021).
- 13 See USCIS' "[Students and Employment](#)" webpage.
- 14 *Federal Register* (online), "[Designation of Burma \(Myanmar\) for Temporary Protected Status](#)" (May 25, 2021).
- 15 Ibid.

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## Contact us

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