

# United States Senate

WASHINGTON, DC 20510

November 15, 2022

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Ave NW  
Washington, DC 20528

Dear Secretary Mayorkas:

I write regarding Departmental processing of Employment Authorization Document (EAD) requests filed by applicants for Temporary Protected Status (TPS).

The TPS program, as you are aware, ensures that non-citizens residing in the United States can legally live and work in America when their home countries are engulfed by war, civil unrest or natural disaster. I am hearing from first-time TPS applicants, including Afghans and Ukrainians, who recently arrived in the United States with few economic resources. Despite being forced to flee their homes, these individuals are eager to work, to support their families and to contribute to their new communities. Furthermore, local businesses often depend on such migrants to fill labor shortages across a variety of industries—including food services, landscaping, hospitality and retail.

As you know, individuals simultaneously apply for TPS and an EAD. Under the Immigration and Nationality Act, U.S. Citizenship and Immigration Services (USCIS) is legally required to conduct a *prima facie* review of all TPS cases.<sup>1</sup> If a TPS application is valid on its face, USCIS must adjudicate the corresponding EAD request *before* the TPS request. The USCIS website also informs applicants that they will receive a decision on their EAD petition before their TPS application is resolved.<sup>2</sup>

Despite this statutory requirement and the information provided to the public through USCIS's website, I am concerned that USCIS may be waiting to review EAD requests until after TPS applications are fully adjudicated. At least one service center has directly informed my office that they will not conduct *prima facie* reviews of new TPS applications.<sup>3</sup> This practice does not comply with statutory requirements and is contrary to the agency's publicly available policy.

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<sup>1</sup> See [8 USC §1254a 4](#), [8 CFR §244.5\(a\)](#), and [Chapter 38.1.e.5 of USCIS' old Adjudicator Field Manual](#)

<sup>2</sup> See Step 5 under "Application Process" at the following link:  
<https://www.uscis.gov/humanitarian/temporary-protected-status>.

<sup>3</sup> The Nebraska Service Center is currently processing Ukrainian TPS cases. NSC staff stated that they must receive permission from USCIS Headquarters before they can conduct *prima facie* processing. A Congressional Liaison further explained that HQ determines processing policy on a country-by-country basis.

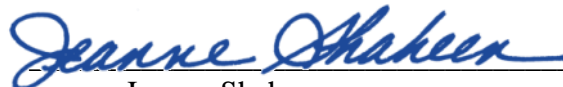
I have long expressed concerns about the processing delays at USCIS. TPS applicants cannot afford yet another barrier that prevents them from joining the workforce and supporting their families. My office is seeing TPS cases with processing times that are upwards of 18 months, forcing TPS applicants to wait far too long to begin working.

Lengthy wait times and inconsistent processing policies are creating additional burdens for TPS applicants and undermining the purpose of TPS. Accordingly, I respectfully request answers to the following questions:

1. Is USCIS conducting *prima facie* reviews of TPS applications for all nationalities?
2. If not, what is the agency's current policy on EAD adjudication for TPS applicants, and what statute guides the policy?
3. How does the agency ensure uniformity of this processing policy across service centers and for all eligible nationalities?
4. What is USCIS doing to decrease processing times for all TPS applications and their associated EADs?

Thank you for your urgent attention to this matter.

Sincerely,



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Jeanne Shaheen  
United States Senator