

Ukrainians in the United States Who May Qualify for Temporary Protected Status: An Overview & FAQ

Introduction

On February 24, 2022, Russia launched a military invasion on Ukraine, resulting in at least 2 million refugees fleeing Ukraine in the following two weeks, and renewing calls for humanitarian protections for Ukrainians in the United States and abroad.¹ On March 3, 2022, the Department of Homeland Security announced the designation of Ukraine for Temporary Protected Status for 18 months.²

What is Temporary Protected Status?

Congress created TPS as part of the Immigration Act of 1990.³ TPS is a Department of Homeland Security (DHS) program that provides temporary immigration status to nationals of specific countries that have been designated unsafe due to ongoing armed conflict, environmental disaster, or other extraordinary circumstances.⁴ TPS provides the right to live and work in the United States for a temporary, but extendable, period of time.⁵ TPS is granted for period of up to 18 months, which the government can continue to renew indefinitely if it determines that conditions in the home country prevent nationals from returning safely.⁶ During that time, TPS holders are eligible for employment and are protected from deportation.⁷ TPS holders are also eligible for advance parole, which provides permission to travel abroad and return to the United States, but they must apply for that separately.⁸ TPS beneficiaries are not eligible for any public assistance by virtue of their TPS status.

¹ See P. Tamma, UN Agency: Number of Ukrainian Refugees hits 1.5 Million, Politico, March 6, 2022, <https://www.politico.eu/article/ukraine-war-refugees-ukraine-poland-hungary-romania-escaping-fleeing/#:~:text=The%20number%20of%20Ukrainians%20fleeing,crisis%20since%20World%20War%20II.>; see also, Filippo Grandi, Twitter, March 8, 2022,

https://twitter.com/FilippoGrandi/status/1501130493781286913?s=20&t=mEyYxJsIKdP_0uOqBdOWug

² Secretary Mayorkas Designates Ukraine for Temporary Protected status for 18 Months, , DHS, March 3, 2022, <https://www.dhs.gov/news/2022/03/03/secretary-mayorkas-designates-ukraine-temporary-protected-status-18-months>

³ Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (1990); Summary: S.358–101st Congress, <https://www.congress.gov/bill/101st-congress/senate-bill/358>

⁴ D. Roy and C. Felter, What is Temporary Protected Status? Council on Foreign Relations, March 4, 2022, https://www.cfr.org/backgrounder/what-temporary-protected-status?gclid=Cj0KCOiA95aRBhCsARIsAC2xvfx0OYZNmWfliaEf-5fyMs5-RUe6ip8DM3CXGbg9cChXDJw70Zjt1l0aAjYsEALw_wcB

⁵Id.

⁶ Id.

⁷ Id.

⁸ See USCIS, Temporary Protected Status, Travel, <https://www.uscis.gov/humanitarian/temporary-protected-status>

Who is eligible for TPS?

To qualify for TPS, an individual must:

- Be a national of the foreign country that has a TPS designation (or if stateless, have last habitually resided in a country with a TPS designation);
- Be continuously physically present in the United States since the effective date of designation;
- Have continuously resided in the United States since a date specified by the secretary of the U.S. Department of Homeland Security;
- Not have been convicted of a felony or two or more misdemeanors committed in the United States; and
- Not be barred from asylum for persecuting an individual, inciting terrorist activity, or other violations; or be found inadmissible under immigration rules for other criminal or national security reasons.⁹

Additionally, nationals of designated countries do not automatically receive TPS, but must register during a period defined by DHS and may pay significant fees.¹⁰ Individuals who are eligible for TPS must submit an application to U.S. Citizenship and Immigration Services (USCIS).¹¹ An individual's immigration status at the time of the application for TPS has no effect on their eligibility, nor does a previous issuance of an order of removal.¹² Lastly, individuals eligible for TPS must have continuously resided within the United States since March 1, 2022.¹³ Individuals who attempt to travel to the United States after March 1, 2022 will not be eligible for TPS.¹⁴

Possible Beneficiaries of TPS Status Among Ukrainian Immigrants

A recent study produced by the American Immigration Council estimates that of the 344,000 Ukrainian immigrants in the United States, approximately 34,000 do not have an otherwise

⁹ See USCIS, Temporary Status, Eligibility Requirements, <https://www.uscis.gov/humanitarian/temporary-protected-status>; see also Ukrainians in the U.S. Who May Qualify for Temporary Protected Status: An Overview, American Immigration Council, March 2022, <https://www.americanimmigrationcouncil.org/research/Temporary-Protected-Status-for-Ukrainians-An-Overview>

¹⁰ See USCIS, I-812, Application for Temporary Protected Status, Filing Fee, <https://www.uscis.gov/i-821>

¹¹ See USCIS, Instructions for Form I-812, <https://www.uscis.gov/i-821>

¹² Ukrainians in the U.S. Who May Qualify for Temporary Protected Status: An Overview, American Immigration Council, March 2022, <https://www.americanimmigrationcouncil.org/research/Temporary-Protected-Status-for-Ukrainians-An-Overview>

¹³ Secretary Mayorkas Designates Ukraine for Temporary Protected status for 18 Months, , DHS, March 3, 2022, <https://www.dhs.gov/news/2022/03/03/secretary-mayorkas-designates-ukraine-temporary-protected-status-18-months>

¹⁴ Id.

defined immigration status.¹⁵ Those 34,000 Ukrainians, already present in the United States, could benefit from a TPS designation from the Biden administration.¹⁶

Frequently Asked Questions

Q1. When a family is applying for TPS, do you recommend that every family member apply simultaneously?

A1. TPS is an individual benefit, and family members cannot get TPS because their spouse or parent receives TPS. Family members may each apply for TPS on their own individual applications either simultaneously or at different times, but each individual must meet the eligibility criteria for TPS independently. USCIS encourages each family member to file their own application with a separate payment.

Q2. What are the expected processing times for Form I-821, Form I-765 and Form I-131?

A2. Processing times vary depending on how complicated a case is. However, the approximate times below generally apply:

- If you are filing an initial Form I-812, Application for Temporary Protected Status, the approximate processing time might be 6 months
- If you are filing a Form I-765, Application for Employment Authorization, the approximate processing time might be 3 months
- If you are filing a Form I-131, Application for Travel Document, the approximate processing time might be 6 months

For more information on processing times, please visit USCIS' check case processing times webpage: <https://egov.uscis.gov/processing-times/>

Q3. May people in immigration detention apply for TPS?

A3. USCIS may consider TPS applications from individuals who are currently in immigration detention. If you are in removal proceedings at the time of your country's TPS designation, you may submit an application to USCIS. If you are in removal proceedings, and the basis of the Notice to Appear (NTA) is a mandatory ground for TPS ineligibility, the Department of Justice's Executive Office for Immigration Review will have jurisdiction to adjudicate your TPS application. See 8 C.F.R. 244.7(d)

Q4. If I am out-of-status or entered the United States illegally, am I still entitled to apply for TPS?

¹⁵ American Immigration Council analysis of the IPUMS microdata from the 2019 American Community Survey, 1-Year Sample, <https://www.americanimmigrationcouncil.org/research/Temporary-Protected-Status-for-Ukrainians-An-Overview>

¹⁶ Id.

A4. Yes, if you are out of status or entered the United States illegally, without being inspected and admitted, you may apply for TPS. To be approved for TPS, you must meet all eligibility requirements.

Q5. Does TPS take effect on the date USCIS approves the application or the date USCIS receives it?

A5. TPS takes effect on the date USCIS approves the application for Temporary Protected Status.

For more information on the application process, please see the Application Process section on USCIS' TPS webpage: <https://www.uscis.gov/humanitarian/temporary-protected-status>

Q6. When completing the application, do I have to list every country I lived in before coming to the United States, or just those I visited in the time between leaving my home country and my last entry to the United States?

A6. You should list all countries you entered while traveling to the United States, including countries where you lived as well as those through which you traveled. On Form I-821, Part 11, Additional Information, you may provide the dates when you were in those countries and any immigration status you had while in those countries.

Q7. For Form I-821 Part 6, Information About Your Children, can you confirm that I should only complete this section if I am filing a late application?

A7. Yes. You should only complete Form I-821, Part 6, if you are filing a late initial application for TPS. There is no late initial filing during an initial designation for TPS.

Q8. Do I need to submit my entire passport along with my TPS application (Form I-821)?

A8. If you are submitting a copy of your passport to establish nationality and identity and also to show your entry into the United States, include all of the relevant pages that show that information (for example, the visa page, admission stamp, etc.).

Q9. Are expired passports acceptable forms of identification to establish nationality and identity?

A9. Expired passports are acceptable to establish nationality and identity. USCIS may request additional evidence of nationality or identity if there is any question about whether you have demonstrated those requirements.

Q10. If a question doesn't apply to the applicant, should they put N/A or leave blank?

A10. If a question does not apply, the applicant can leave it blank.

Q11. If I am a student and I apply for TPS, do I lose my F-1 student status? What happens if the TPS period is not extended?

A11. Registration for TPS does not prevent you from applying for or maintaining a nonimmigrant status, such as F-1 academic student. Even if TPS is not extended, it has no bearing on F-1 status and the individual can continue to remain in F-1 status if he or she remains eligible for F-1 status.

Q12. How should I respond to the question about my current immigration status if I have applied for asylum?

A12. Please provide your current immigration status (or lack of status). For example, visitor, student, visa overstay, or no status.

Q13. Can I apply for TPS without affecting my asylum claim? Would I have to pay for a work permit and to be fingerprinted again?

A13. If you have a pending or approved asylum claim, you may also apply for TPS and for an EAD based on TPS. However, it is not mandatory for you to apply for TPS if you do not wish to do so. Applying for TPS will not affect the merits of your asylum claim or whether you may be granted an Employment Authorization Document(EAD) based on your pending asylum application or being approved for asylum. You should be aware, however, that if you are granted TPS, but your asylum application is not ultimately granted by USCIS, having TPS prevents USCIS from being able to refer your asylum application to an immigration judge for further review, and USCIS must deny the asylum application under 8 CFR 208.14(c)(2).

If you do wish to apply for TPS and an optional Employment Authorization Document, you must pay the required fees or obtain a fee waiver. You may request a fee waiver by submitting a Form I-912, Request for a Fee Waiver. If you are age 14 or older, USCIS will also collect your photograph, signature, and fingerprints, as needed. USCIS requires biometrics to verify your identity, do a background check, and produce your EAD, if you requested one and are eligible. When USCIS processes your TPS application, they will send you an appointment notice so they can capture your biometrics at an Application Support Center (ASC).

For more information on the TPS application process, visit USCIS' TPS webpage (see "Step 3, USCIS Contacts You" in the section "Application Process")

<https://www.uscis.gov/humanitarian/temporary-protected-status>