



## SHOULD HAITIANS APPLY FOR TEMPORARY PROTECTED STATUS?

*Posted on January 23, 2010 by Cyrus Mehta*

In the aftermath of the most devastating earthquake in Haiti, we lawyers are all trying to find ways to help. Assisting Haitians legalize their status in the United States is a good start, and there are pro bono clinics lined up already in New York. Haitians who can work legally can send more remittances to their loved ones in Haiti, which can be the most effective form of aid after this horrific tragedy. The AILA-NY Chapter and the New York City Bar Justice Center are holding a free clinic to assist Haitians on January 28, 2010, although the response from lawyers was so wonderfully overwhelming that it was closed in less than a day, <http://www.aila.org/content/default.aspx?docid=31036>

CUNY Citizenship Now!, the New York City Mayor's Office of Immigrant Affairs, the Legal Aid Society, the New York Immigration Coalition, the CUNY School of Professional Studies, and other advocacy groups are planning two TPS application assistance events in Brooklyn, New York on Saturday, January 30 and Saturday, February 6, 2010. See link for details: <http://www.cuny.edu/about/citizenship/volunteer/HelpHaitiByVolunteering.html>.

For now, all of these pro bono projects are a work in progress. We need to gauge the need from the Haitian community too. The question everyone is asking is whether Haitians will come forward in large numbers and apply for Temporary Protected Status, which was announced on January 21, 2010 and which will continue till July 22, 2011?

<http://edocket.access.gpo.gov/2010/2010-1169.htm> . TPS is only temporary and will last for 18 months. An individual who was not in status prior to the grant of TPS will again fall out of status after July 22, 2011, unless TPS is extended. This individual might justifiably fear that after the 18 month period, will Immigration

and Customs Enforcement (ICE) deport me since I am already in the system? While this concern may be legitimate, it must be weighed against continuing to be out of status. An undocumented individual, or one who is out of status, is still at risk of being apprehended and ultimately deported. So it might be better to legalize through TPS, which also gives one the benefit of work authorization. If the application is too expensive - the total filing fees with an Employment Authorization Document costs \$470 - there is a fee waiver, which the USCIS has indicated that it will consider generously and with compassion.

It is likely that TPS for Haitians will be extended beyond 18 months given the havoc the earthquake has wrought on the country. TPS has been extended for many years to nationals of other countries. For example, TPS for Salvadorans was announced on March 9, 2001 and is continuing until the present. TPS for Somalians was announced on September 16, 2001 and still continues till today. TPS for Sudanese was announced on November 4, 1997 and continues till today. The same with nationals of Honduras and Nicaragua, which have benefited from TPS for more than a decade. Liberians too enjoyed TPS, and when TPS expired for them, they were granted Deferred Enforced Departure, which they still get. We have never heard of mass deportations after the TPS program for a country has expired. See Immigration Policy Center Report on TPS,

<http://www.immigrationpolicy.org/just-facts/granting-refuge-temporary-protected-status-tps-haitians-united-states>

Hence, there is a great advantage for a Haitian to apply for TPS within the 180 day period. Getting in now, within the 180 day period, will allow the individual to extend if TPS is extended for Haiti after the 18 month period. Note that an eligible candidate must have continuously resided in the U.S. since January 12, 2010. Anyone who has come after that date is not eligible. Finally, TPS is not available to those who have been convicted of a felony or two or more misdemeanors. If anyone falls in this disqualifying category, the Immigrant Defense Project Advisory is essential reading,

<http://www.immigrantdefenseproject.org/webPages/practiceTips.htm>.