



September 2014

## The Intersection of Temporary Protected Status (TPS) and the Form I-9: What All US Employers Need to Know

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The Department of Homeland Security (DHS) has redesignated Sudan for Temporary Protected Status (TPS) and extended the existing TPS designation for the country from November 3, 2014, through May 2, 2016. This extension allows eligible nationals of Sudan and South Sudan to register or re-register for TPS based on the notice published September 2, 2014 in the Federal Register. Persons without nationality who last habitually resided in Sudan are also eligible, which is important because of the ongoing civil strife in the region. An auto-extension was also granted from May 2, 2015 for those Sudanese individuals who currently have a November 2, 2014 expiration date. As a result of this extension, individuals that were granted TPS from Sudan will be able to continue working without interruption.

TPS extensions benefit employers and employees by preventing gaps in work eligibility while US Citizenship and Immigration Service (USCIS) processes new work authorization documents for TPS covered individuals. Employers need to be familiar with the work authorization benefits of TPS so that they can identify those granted the status and correctly reverify eligible employees for continuing work eligibility. Trying to determine which employees are covered, and exactly what they are covered for, may be difficult for employers. Accuracy in this area is important as it relates to completing the Form I-9, which is required to be completed by all newly hired employees, regardless of nationality.

### What is TPS?

TPS is a temporary immigration benefit allowing qualified individuals from designated countries to remain in the United States for a limited time period due to extenuating circumstances, such as armed conflict, environmental disaster, or other extraordinary and temporary conditions in the designated country. Individuals who qualify for TPS may obtain employment authorization documents to work legally in the United States. Additional information on TPS can be found on the [USCIS website](#).



## What is the importance of TPS to an employer?

TPS extensions can affect any company whose workforce includes qualifying nationals with TPS from **El Salvador, Haiti, Honduras, Nicaragua, Somalia, Sudan, South Sudan and Syria**. Refer to the section below titled “How do I know my employee is a beneficiary of TPS?” for additional information on identifying these protected nationals.

Understanding how to complete, update and maintain the Form I-9 is at the core of immigration compliance. Filling out the form correctly can be a complex

process, and TPS auto-extensions can complicate matters. Immigration regulations require employees to present employers with *unexpired* documents for verification when completing the Form I-9, but for TPS work-authorized individuals there is a caveat. In these situations, employers are permitted to continue employing a worker or even to hire a new worker with a TPS extension even *after the expiration date* of their work authorization document. This is applicable when the worker shows the requisite proof of TPS eligibility (a TPS-related EAD bearing a November 2, 2014 expiration date and a copy of the Federal Register notice).

As TPS is often reauthorized close to the expiration of the current period, the USCIS is sometimes unable to process all of the employment authorization renewals (EAD cards) it receives before the existing cards expire. To bridge the gap in processing time, DHS publishes a notice in the Federal Register that automatically extends TPS. This allows individuals to apply for extensions without experiencing an interruption in employment authorization while USCIS processes the new EADs.

The most recent reauthorization relates to individuals from Sudan and South Sudan, nonetheless the advice is interchangeable for the other TPS countries, provided you remain cognizant of the applicable dates. The chart at left provides a current list of DHS TPS designated countries and important related deadlines.

### Important Dates to Know for Countries Currently Designated for TPS

Designated Country	Most Recent Designation Date	TPS Current Expiration Date	TPS Current Re-Registration Period	Employment Authorization Document (EAD) Automatically Extended Through
<b>El Salvador</b>	March 9, 2001	March 9, 2015	May 30, 2013 - July 29, 2013 (Expired)	March 9, 2014 (Expired)
<b>Haiti</b>	July 23, 2011	July 22, 2016	May 30, 2013 - July 29, 2013 (Expired)	Jan. 22, 2015
<b>Honduras</b>	Jan. 5, 1999	Jan. 5, 2015	April 3, 2013 - June 3, 2013 (Expired)	Jan. 5, 2014 (Expired)
<b>Nicaragua</b>	Jan. 5, 1999	Jan. 5, 2015	April 3, 2013 - June 3, 2013 (Expired)	Jan. 5, 2014 (Expired)
<b>Somalia</b>	Sept. 18, 2012	Sept. 17, 2015	November 1, 2013 - December 31, 2013 (Expired)	NO Automatic Extension* *Sufficient time was deemed available to issue new EADs
<b>Sudan</b>	May 3, 2013	May 2, 2016	September 2, 2014 – November 1, 2014	May 2, 2015
<b>South Sudan</b>	September 2, 2014	May 2, 2016	September 2, 2014 – November 1, 2014	May 2, 2015
<b>Syria</b>	Oct. 1, 2013	March 31, 2015	June 17, 2013 - August 16, 2013 (Expired)	N/A

*As of September, 2014 only South Sudanese are still eligible to register for INITIAL TPS from September 2, 2014 – March 1, 2015. In certain circumstances late filing are accepted provided there is “good cause” submitted to the USCIS, in the form of a letter explaining the reason for filing late along with the individual’s re-registration application.*





### May I hire or continue to employ someone with an expired Employment Authorization Document (EAD)?

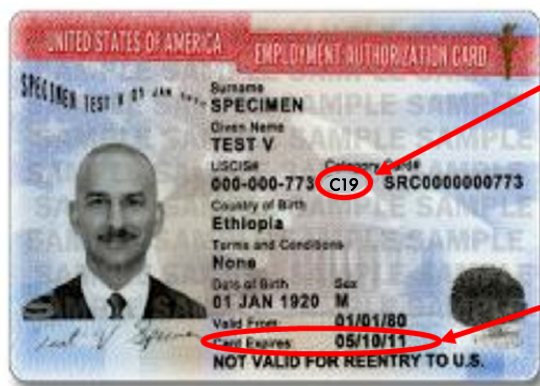
Yes, **only** if the employee is a TPS beneficiary and there is an auto-extension in effect. The EAD issued to a TPS beneficiary is one of the documents listed as acceptable for the Form I-9, even if it is expired. To ensure that your records are up to date, be sure to check the [USCIS website \(www.uscis.gov\)](http://www.uscis.gov) and the Federal Register notice for EADs with auto-extensions and for the dates that the extensions end. Better yet, ensure your immigration counsel keeps you updated. Typically, the auto-extension period lasts for six (6) months, but the time period can vary. For Sudan, the period is valid from November 2014-May 2015.

If an employee presents a TPS-related EAD that is expired on its face, but is actually unexpired due to a DHS open-extension of the EAD, the employer must accept the document (provided the document reasonably appears to be genuine on its face and relates to the employee presenting it). Employers are prohibited from asking for any additional documentation regarding eligibility including proof of an employee's reregistration. Often the employee will present a copy of the Federal Register notice, along with the EAD. Interestingly, USCIS guidance differs on whether the employee

is actually required to show the Notice as part of the Form I-9 verification. Accordingly we do not recommend requiring the notice for I-9 purposes. Should the employee not be entitled to an auto-extension of the EAD, he or she must present any valid document found on the [Form I-9, List of Acceptable Documents](#).

### How do I know my employee is a beneficiary of TPS?

There are several clues that an employer should look for in order to determine whether an employee is a TPS authorized worker. First, look at the category listed on the EAD. If the person's work authorization is granted based on TPS, the notation "A-12" or "C-19" will appear on the face of the card under "category." Second, look at the expiration date. The expiration date of the most recent TPS extension period will appear on the face of the EAD. This same date will appear in the Federal Register notice announcing the auto-extension of the EADs (also available at [www.uscis.gov](http://www.uscis.gov)). For Sudanese beneficiaries, the employee's EAD card will be set to expire on November 2, 2014. Currently, Sudan is the only country with an auto-extension in effect, but as TPS is extended for other countries the process will be the same, with the applicable dates being used.



Under "Category," the notation "A-12" or "C-19" will appear on the face of the Employment Authorization Document (Form 1-766).

The expiration date of the last re-registration period will appear on the face of the card (this date can be found in the Federal Register notice or at [www.uscis.gov/tps](http://www.uscis.gov/tps)).





### How do I complete a Form I-9 when a new employee with TPS presents an expired EAD?

For Sudanese nationals that are hired before May 2, 2015 and present **automatically extended EAD** as work authorization, the Form I-9 should be completed as follows.

For Section 1, the **employee** should:

- Check “An alien authorized to work,”
- Write his/her alien number (A-number) in the first space (the employee’s EAD or other document from DHS will have the A-number printed on it); and
- Write the automatic extension date, May 2, 2015 (assuming the EAD has not yet been issued)

For Section 2, the **employer** should:

- Record the document title;
- Record the document number; and
- Record the automatically extended EAD expiration date (May 2, 2015).

Employers who copy & retain documents should copy both the expired card and the Federal Register notification. These Form I-9s should be tracked for “reverification”. Note: Sudanese nationals hired after May 2, 2015 will need to present a valid EAD card as the auto-extension will have expired.

After May 2, 2015, employers must re-verify the employee’s employment authorization in **Section 3** of the Form I-9. At that point in time, the employee may choose to present an unexpired EAD with an updated expiration date, or any other document from List A or C of the Form I-9 evidencing that he or she continues to be authorized to work in the United States. Employers should consistently check for ongoing TPS extensions.

**Section 1. Employee Information and Attestation** (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name) DOE		First Name (Given Name) Samuel		Middle Initial M	Other Names Used (if any) Sammy	
Address (Street Number and Name) 123 Main Street			Apt. Number 6314	City or Town Anywhere		State DC
Date of Birth (mm/dd/yyyy) 01/01/65		U.S. Social Security Number 123-00-4567		E-mail Address samuel.doe@gmail.com		Zip Code 12345
						Telephone Number (202) 555-1234

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

A citizen of the United States

A noncitizen national of the United States (See instructions)

A lawful permanent resident (Alien Registration Number/USCIS Number): \_\_\_\_\_

An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) 05/02/2015. Some aliens may write "N/A" in this field (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: 1 2 3 4 5 6 7 8 9

3-D Barcode

Section 1 with expired EAD and auto-extension

**List A**  
**Identity and Employment Authorization**

Document Title: EAD
Issuing Authority: USCIS
Document Number: EAC0123456789
Expiration Date (if any)(mm/dd/yyyy): 05/02/2015

Section 2 with expired EAD and auto-extension





### How do I update a Form I-9 for an existing TPS employee?

#### Employees with TPS with a current Auto Extension

For employers that have South Sudanese nationals working for them on November 2, 2014 (with a EAD card that expires on that date) a Section 3 reverification will need to be done to ensure ongoing work eligibility. USCIS requests that auto-extensions be recorded in Sections 1 and 2 **instead of Section 3** of the Form I-9. Accordingly, if an employee presented an EAD that was valid when he/she first started the job, but the EAD is expired and has been automatically extended, the previously completed Form I-9 should be updated as follows:

S.D.  
9/2/14

**Section 1. Employee Information and Attestation** (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name) DOE	First Name (Given Name) Samuel	Middle Initial M	Other Names Used (if any) Sammy	
Address (Street Number and Name) 123 Main Street		Apt. Number 6814	City or Town Anywhere	State DC
Zip Code 12345	Date of Birth (mm/dd/yyyy) 01/01/65	U.S. Social Security Number 123-00-4567	E-mail Address samuel.doe@gmail.com	Telephone Number (202) 555-1234

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

A citizen of the United States

A noncitizen national of the United States (See instructions)

A lawful permanent resident (Alien Registration Number/USCIS Number: 5/a/15)

An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) 11/02/2014. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: 1 2 3 4 5 6 7 8 9

#### Section 1

For Section 1, the **employee** should:

- Draw a line through the expiration date;
- Write the new work authorization expiration date (which for Sudanese, at this time, would be May 2, 2015) next to the previous date; and
- Initial and date the correction in the margin of Section 1.

For Section 2, the **employer** should:

- Draw a line through the expiration date written in Section 2;
- Write the new work authorization expiration date (which for South Sudanese at this time would be May 2, 2015) below the previous date;
- Write "TPS Auto Ext." in the Section 2; and
- Initial (we recommend first initial, last name) and date the correction

**List A**  
**Identity and Employment Authorization**

Document Title:  
EAD

Issuing Authority:  
USCIS

Document Number: D. Lurie  
LIN987654321 9/2/14

Expiration Date (if any) (mm/dd/yyyy):  
11/02/2014 5/a/15

TPS auto ext

#### Section 2 with auto-extension for existing employee





Employees with TPS after an Auto Extension expires

**Section 3. Reverification and Rehires** (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable) Last Name (Family Name) First Name (Given Name) Middle Initial		B. Date of Rehire (if applicable)

C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employer presented that establishes current employment authorization in the space provided below.

Document Title: Employment Authorization Card	Document Number: LIN1500000000	Expiration Date (if any): 05/03/2016
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States on the date of this Form I-9, and the document(s) I have examined appear to be genuine and to relate to the individual named on this Form I-9.

Signature of Employer or Authorized Representative: 	Date (mm/dd/yyyy): 05/01/2015	Print Name of Employer or Authorized Representative: PERFORMANCE LLC
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Section 3 - Reverification

As with any expiring work authorization, on or before the newly extended expiration date the employee must present a new, unexpired document to the employer. This assumes the employer has already addressed the November auto-extension in Section 2. For Sudanese employees with TPS, the employee will need to present either a List A or a List C document verifying their work authorization on or before May 2, 2015.

The employer should then complete Section 3 of the Form I-9 and either place the employee's Form I-9 back in the "Employment Authorization Expiration" binder (if he/she presents authorization that expires) or in the active employee Form I-9 binder (if he/she presents authorization that does not expire) (e.g. Permanent Residence Card).

Be sure to visit the "What's New" section in USCIS's website under I-9 Central and Documentation Employers May Accept and Temporary Protected Status Beneficiaries May Present as Evidence of Employment Eligibility for additional information regarding updating Form I-9s with TPS auto-extensions.

What should I do with these Form I-9s for employees with TPS extensions recorded in Section 2 and/or Section 3?

Extended TPS beneficiary Form I-9s should be treated the same as Form I-9s for aliens authorized to work for set time periods. After updating a TPS beneficiary employee's Form I-9, the employer should place the Form I-9 in the Binder/Section that is segregated for employees with expiring work authorizations. We strongly recommend a three (3) binder system separating out an employer's Form I-9s into Active, Terminated and Reverification/Work Authorization binders. The reverification binder should be organized in chronological order, with the employee Form I-9s needing reverification earliest in front.





## What additional steps should employers should consider at this time?

Regardless of your industry affiliation (healthcare providers, service providers, landscaping, retail, technology, food/hospitality and manufacturing) all employers should consider an independent Form I-9 audit. This audit should be conducted by experienced immigration counsel and should evaluate your policies and practices with respect to not only your Form I-9s but also other areas affected by U.S. immigration laws including visa compliance. If you use E-Verify, a review of your compliance and use of the program should also be considered.

The importance of understanding how your Form I-9s are being completed and whether they are actually compliant is an important step toward risk mitigation. Together with training, an independent audit can significantly minimize your immigration related exposure. Immigration and Customs Enforcement is still very active in worksite enforcement audits. For more information on this issue, please contact the author or another member of Polsinelli's Immigration practice group.



### For More Information

If you have questions regarding this alert, please contact the author or your Polsinelli attorney.

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**To contact another member of our Immigration team,** see below, click [here](#), or visit our website at [www.polsinelli.com](http://www.polsinelli.com) > [Services > Immigration > Related Professionals](#).

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- Mahsa Aliaskari | 310.203.5374 | [maliaskari@polsinelli.com](mailto:maliaskari@polsinelli.com)

**To learn more about our Immigration practice,** click [here](#) or visit our website at [www.polsinelli.com](http://www.polsinelli.com) > [Services > Immigration](#).





## About Polsinelli's Immigration Practice

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The Polsinelli Immigration and Compliance Practice combines the legal talents of a respected immigration centric team with the resources of a top tier Am Law 100 law firm.

We pride ourselves on learning your business so that we can provide tailored solutions. We understand that in the current global labor market, businesses need immigration solutions that fit with their commercial objectives. Our representation spans the gambit of immigration issues, ranging from preparing temporary work visa applications to EB-5 foreign investor work to defending businesses in Immigration and Customs Enforcement (ICE) investigations. Polsinelli's multidisciplinary approach provides clients with comprehensive advice on immigration matters that often involve employment, corporate, international, government contracts, litigation, government investigations, and tax law issues. Such coordination can prove critical to our client's successes. Have a question? See page 7 for contact information for one of Polsinelli's immigration professionals.

## About Polsinelli

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*real challenges. real answers.<sup>SM</sup>*

Polsinelli is a first generation Am Law 100 firm serving corporations, institutions, entrepreneurs and individuals nationally. Our attorneys successfully build enduring client relationships by providing practical legal counsel infused with business insight, and with a passion for assisting General Counsel and CEOs in achieving their objectives. Polsinelli is ranked 18th in number of U.S. partners\* and has more than 740 attorneys in 19 offices. Profiled by *The American Lawyer* and ranked as the fastest growing U.S. law firm over a six-year period\*\*, the firm focuses on healthcare, financial services, real estate, life sciences and technology, energy and business litigation, and has depth of experience in 100 service areas and 70 industries. The firm can be found online at [www.polsinelli.com](http://www.polsinelli.com). Polsinelli PC. In California, Polsinelli LLP.

\* Law360, March 2014

\*\* The American Lawyer 2013 and 2014 reports

## About this Publication

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