



U.S. Citizenship
and Immigration
Services

July 6, 2004

Questions and Answers

Termination of TPS for Nationals of Montserrat

Q. What authority does the Secretary of the Department of Homeland Security (DHS) have to terminate the designation of Montserrat under the TPS Program?

A. Section 244(b)(3)(A) of the Immigration and Nationality Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, INA §244(b)(3)(B) requires the Secretary of DHS to terminate the designation, but such termination may not take effect earlier than 60 days after the date the Federal Register notice of termination is published. Under INA §244(d)(3), the Secretary of DHS may determine the appropriate effective date of the termination in order to provide for an orderly transition.

Q. Why did the Secretary of DHS decide to conclude the TPS designation for Montserrat as of February 27, 2005?

A. Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Montserrat. Based upon this review, and after consultation with appropriate government agencies, the Secretary of DHS has determined that the termination of the TPS designation of Montserrat is warranted because the volcanic activity causing the environmental disaster in Montserrat is not likely to cease in the foreseeable future. Therefore, it no longer constitutes a *temporary* disruption of living conditions that *temporarily* prevents Montserrat from adequately handling the return of its nationals. Similarly, the conditions are no longer “extraordinary and *temporary*” as required by section 244(b)(1)(C) of the Act.

Q. If I currently have TPS through the Montserrat TPS Program, do I need to re-register to keep my TPS until February 27, 2005, the termination date?

A. No. If you already have been granted TPS benefits through the Montserrat TPS designation, you do not have to re-register to keep your TPS benefits. You will automatically retain TPS and have your current Employment Authorization Document (EAD) extended until the February 27, 2005 termination date. These persons are urged to use the time before the termination of their TPS to apply for any other immigration benefits they are eligible for or, in the alternative, prepare for and arrange their departure from the United States. When the termination occurs in February, you will no longer have TPS. Your TPS status, however, may still be withdrawn prior to termination pursuant to INS section 244(c)(3) because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States

Q. Why is the Secretary of DHS automatically extending the validity of Employment Authorization Documents (EADs) from August 27, 2004 to February 27, 2005?

A. The Secretary of DHS has decided to extend automatically the validity of EADs to provide for an orderly transition leading up to the effective date for the termination of the Montserrat TPS designation. Therefore, although the EADs list an expiration date of August 27, 2004, the validity of these EADs is extended for a period of 6 months, to February 27, 2005.

Q. Who is eligible to receive an automatic extension of his or her EAD?

A. To receive an automatic extension of his or her EAD, an individual must be a national of Montserrat (or an alien having no nationality who last habitually resided in Montserrat) who has applied for and received an EAD under the TPS designation of Montserrat. This automatic extension is limited to EADs issued on either Form I-766, Employment Authorization Document, or Form I-688B, Employment Authorization Card, bearing an expiration date of August 27, 2004. The EAD must also be either (1) a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category"; or (2) a Form I-688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law".

Q. Must qualified individuals apply for the automatic extension of their TPS-related EADs until February 27, 2005?

A. No. Qualified individuals do not have to apply for this extension of their TPS-related EADs to February 27, 2005.

Q. What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing the employment eligibility verification form (Form I-9)?

A. For completion of the Form I-9 at the time of hire or re-verification, qualified individuals who have received an extension of their EADs by virtue of this Federal Register notice may present to their employer a TPS-related EAD as proof of identity and employment authorization until February 27, 2005. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this Federal Register notice regarding the automatic extension of employment authorization documentation to February 27, 2005. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I-9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

Q. How may employers determine whether an EAD has been automatically extended through February 27, 2005 and is therefore acceptable for completion of the Form I-9?

A. For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I-9 until February 27, 2005, employers of Montserrat TPS beneficiaries whose EADs have been automatically extended by this notice must accept such EAD if presented. An EAD that has been automatically extended by this notice will contain an expiration date of August 27, 2005, and must be either (1) a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category", or (2) a Form I-688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law." New EADs or extension stickers showing the February 27, 2005 expiration date.

Employers should not request proof of Montserrat citizenship. Employers presented with an EAD that (1) this Federal Register notice has extended automatically, (2) that appears to be genuine, and (3) appears to relate to the employee, should accept the document as a valid "List A" document and should not ask for additional Form I-9 documentation. This action by the Secretary of the DHS through this Federal Register notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1-800-357-2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice

Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155 or 1-800-362-2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1-800-255-7688 or 1-800-237-2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at <http://www.usdoj.gov/crt/osc/index.html>.

Q. What may I do if returning to Montserrat is not possible or preferable for me?

A. Nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) in the United States who believe returning to Montserrat is not possible or not preferable for them may be eligible to apply for another immigration status, such as Lawful Permanent Resident (LPR) or a non-immigrant classification. Eligibility for these and other immigration benefits is determined individually on a case-by-case basis. For information on eligibility and how to apply, visit the USCIS web site at <http://uscis.gov> or call the USCIS National Customer Service Center at 1-800-375-5283.

In addition, nationals of Montserrat are eligible to apply for British citizenship based upon their status as British Overseas Territory inhabitants. However, unlike all other BOTCs, as of August 28, 1996, the British government waived the requirement that nationals of Montserrat wait three years after establishing residence in the United Kingdom before becoming eligible for social benefits or treatment by the National Health Service. This provision is scheduled to remain in place through 2005, at which time it is slated for review.

Q. How does the termination of TPS affect former TPS beneficiaries?

A. After the termination of the TPS designation of Montserrat becomes effective on February 27, 2005, these TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Former TPS beneficiaries will no longer be eligible for a stay of removal or an EAD pursuant to TPS. TPS-related EADs which have been automatically extended to February 27, 2005 and will not be renewed.

Termination of the TPS designation for Montserrat does not necessarily affect pending applications for other forms of immigration relief or protection, though former TPS beneficiaries will begin to accrue unlawful presence as of February 27, 2005 if they have not been granted any other immigration status or if they have no pending application for certain benefits

Q. Where can I find information about the termination of TPS for nationals of Montserrat?

A. Information concerning the termination of the TPS program for nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) will be available at local USCIS offices and through the USCIS National Customer Service Center at 1-800-375-5283. This information will also be available on the USCIS web site at <http://www.uscis.gov>.