



Homeland
Security

Questions and Answers

September 19, 2007

Deferred Enforced Departure (DED) for Certain Liberians

Q. What is Deferred Enforced Departure (DED)?

A. The President has discretion to authorize DED under his constitutional authority to conduct foreign relations. Presidents of both parties have employed DED, when necessary. Although DED is not a specific immigration status, individuals covered by DED are not subject to enforcement actions to remove them from the United States, usually for a designated period of time. When presidents have exercised their discretion to provide DED to a certain group of individuals, they generally direct that Executive Branch agencies, such as the Department of Homeland Security (DHS), take steps to implement appropriate procedures to apply DED and related benefits, such as employment authorization, to those individuals.

Q. Why did the President grant DED to certain Liberians?

A. On September 20, 2006, the Department of Homeland Security published a *Federal Register* notice at 71 FR 55000, terminating the Temporary Protected Status (TPS) designation of Liberia with a 12-month delayed effective date. Currently, there are approximately 3,500 Liberians in the United States under the TPS designation, which will expire on October 1 at 12:01 a.m.

While acknowledging the progress in Liberia under their current administration, President Bush has determined that there are compelling foreign policy reasons not to enforce the departure of these Liberians at this time. In particular, there is a significant risk that such a decision would adversely affect the process of reconstruction and economic stabilization under way in Liberia and cause further strain on limited resources necessary to absorb the thousands of former Liberian refugees who are returning from the West African region and elsewhere. As such, the President determined on September 12 to defer for 18 months enforced departure of Liberian nationals, or persons without nationality who last habitually resided in Liberia, who are present in the United States and who have TPS as of September 30, 2007.

Q. Who is covered by DED under the President's directive regarding Liberians?

A. On September 12, President George W. Bush issued a memorandum directing Secretary of Homeland Security, Michael Chertoff, to take the necessary steps to implement DED procedures for Liberian nationals (or persons without nationality who last habitually resided in Liberia), with certain limited exceptions, who are present in the United States, who have TPS as of September 30, 2007 and who have continuously resided in the United States since October 1, 2002.

Q. Are there any Liberians, or persons without nationality who last habitually resided in Liberia, who have TPS that is expiring, but who are ineligible for DED?

A. Yes. Certain individuals are not eligible for DED under the President's directive. They include any person: (1) who is ineligible for TPS for the reasons provided in section 244(c)(2)(B) of the Immigration and Nationality

Act, which include persons convicted of a felony or two or more misdemeanors in the United States, persecutors, persons involved in terrorist activity, and persons who are determined to pose a danger to the security of the United States, among certain others; (2) whose removal is determined to be in the interest of the United States; (3) whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States; (4) who has voluntarily returned to Liberia or his or her country of last habitual residence outside the United States; (5) who was deported, excluded, or removed prior to the date of this memorandum; or (6) who is subject to extradition.

Q. How long will eligible Liberians (and persons without nationality who last habitually resided in Liberia) be covered by DED?

A. Eligible Liberians (or persons of no nationality who last resided in Liberia) will be covered by DED for 18 months from October 1 until March 31, 2009.

Q. Must an individual who had TPS under the Liberia designation as of September 30, 2007 apply or register to receive DED?

A. No, DED is automatic for qualified Liberians and persons without nationality who last habitually resided in Liberia, regardless of age. However, such persons who did not request work authorization under TPS who now would like to receive work authorization or who would like to apply for a replacement of a lost, stolen, or mutilated Employment Authorization Document (EAD), must file a Form I-765, Application for Employment Authorization, in accordance with the accompanying form instructions.

Q. Which EADs are automatically extended from October 1, 2007 to March 31, 2009 by the Federal Register notice published at 72 FR 53596?

A. The automatic extension is limited to EADs issued to Liberians (or persons without nationality who last habitually resided in Liberia) on Form I-766, Employment Authorization Document, bearing an expiration date of September 30, 2007. These EADs must also bear the notation “A-12” or “C-19” on the face of the card under “Category.” These are the same EADs issued in conjunction with the individual’s TPS status that terminated as of 12:01 a.m. October 1, 2007 (*see* 71 FR 55000 (Sept. 20, 2006)).

Q. How may employers determine whether an EAD has been automatically extended for 18 months through March 31, 2009, and is therefore acceptable for completion of the Form I-9?

A. An EAD that has been automatically extended for 18 months by the *Federal Register* Notice through March 31, 2009, is a Form I-766 issued to a Liberian national (or person with no nationality who last habitually resided in Liberia) that bears the notation “A-12” or “C-19” on face of the card under “Category” and that has an expiration date of September 30, 2007, on the face of the card. Employers should not request proof of Liberian citizenship.

Employers should accept an EAD as a valid “List A” document and not ask for additional Form I-9, Employment Eligibility Verification documentation if presented with an EAD that has been extended pursuant to the *Federal Register* Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. An applicant for employment or an employee may present any other legally acceptable document as proof of identity and eligibility for employment.

Note to Employers:

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1-800-357-2099. 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. Employees or

applicants may call the OSC Employee Hotline at 1-800-255-7688 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 documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I-9, Employment Eligibility Verification?

A. During the duration of this automatic employment authorization extension for Liberians, qualified individuals who are provided DED in accordance with the Presidential Memorandum of September 12, 2007 and who have received an 18-month automatic extension of their EADs by virtue of the *Federal Register* Notice may present their prior TPS-based EAD to their employer, as described above, as proof of identity and employment authorization through March 31, 2009. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of the *Federal Register* Notice regarding the automatic extension of employment authorization documentation through March 31, 2009. 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.

Q. If an individual is eligible for DED in accordance with the Presidential Memorandum, but he or she does not possess an EAD issued in conjunction with the prior grant of TPS, can the individual now apply for an EAD?

A. Yes. Some individuals granted TPS under the Liberia designation did not obtain an EAD that expires on September 30, 2007, or their EAD was lost, stolen or mutilated. Such persons may file a Form I-765, Application for Employment Authorization Document, in accordance with the accompanying form instructions during the DED authorization period.

Q. What documentation should a Liberian (or person without nationality who last habitually resided in Liberia) submit with the Form I-765, if he or she did not receive employment authorization under TPS or his or her prior TPS-related EAD has been lost stolen or mutilated?

A. On the Form I-765, the individual must indicate that he or she was a beneficiary of TPS as of September 30, 2007, and is now covered by DED for Liberians until March 31, 2009. The individual should also include a copy of the latest I-797, Notice of Action, showing that he or she was approved for TPS, if such copy is available. If biometrics are required to produce the secure EAD, the individual may be scheduled for an Application Support Center appointment. The EAD that is issued will contain an expiration date of March 31, 2009 and may be shown to employers for I-9 purposes.

Q. Where must DED-covered Liberians submit Form I-765, if they did not receive employment authorization under TPS or their prior TPS-related EADs have been lost stolen or mutilated?

A. Submit Form I-765, with all supporting documentation, to the Vermont Service Center, 75 Lower Welden St, St. Albans, VT, 05479-0001.

Q. Can a Liberian (or person without nationality who last resided in Liberia) who is covered by DED until March 31, 2009 leave the United States and be permitted to re-enter before that date?

A. Yes, if he or she seeks and is granted discretionary advance parole by DHS, before departing the United States. Individuals who are covered by DED for Liberians must file a Form I-131, Application for Travel Document, with appropriate fee, to request advance parole. Applicants must provide a copy of their last TPS-related EAD (or, if the applicant does not have a TPS-related EAD, submit a copy of their last Form I-797, Notice of Action, stating that the applicant has been granted TPS) and a copy of the FR notice. Liberians with DED who leave the United States without first requesting and obtaining advance parole are no longer eligible for DED, and may not be permitted to re-enter the United States. The determination whether to grant advance parole is within the discretion of DHS and is not guaranteed in every case.

Q. Will a person covered by Liberian DED accrue “unlawful presence” for purposes of adjustment of status or other immigration benefits for which he or she may be applying?

A. No, Liberians (or other persons without nationality who last habitually resided in Liberia) covered by DED do not accrue “unlawful presence” for the purposes of adjustment of status or other immigration benefits for which they may be applying during the period of time they are covered by DED.

Q. If a person who is covered by Liberian DED is requested by any federal, state or local government official to present proof of authorization to remain in the U.S., what evidence should he or she present?

A. Such persons may present their TPS-related EAD and a copy of the *Federal Register* notice as evidence of permission to remain in the United States until March 31, 2009. If the Liberian does not have a TPS-related EAD, he or she may present a copy of Form I-797, Notice of Action, showing that he or she was a TPS beneficiary as of September 30, 2007, a photo ID, and a copy of the *Federal Register* notice that references the Presidential directive to provide DED to Liberians with TPS.

Q. If an individual who is eligible for Liberian DED does not have an EAD to indicate such eligibility, how can he or she prevent unnecessary removal from the United States?

A. U.S. Immigration and Customs Enforcement (ICE) will issue guidance to its attorneys, officers, and agents to ensure that eligible Liberians or persons without nationality who last habitually resided in Liberia are not removed in violation of the President’s DED directive. The guidance will be consistent with the USCIS *Federal Register* notice. Also, ICE employees are reminded that persons who were previously granted TPS under the Liberia designation are authorized to work in the United States through March 31, 2009.

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