

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: SM 888

INTRODUCER: Senator Campbell

SUBJECT: ESPERER Act of 2017

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanders	Ryon	MS	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SM 888 urges Congress to pass the Extending Status Protection for Eligible Refugees with Established Residency (ESPERER) Act of 2017,¹ which allows aliens² from Haiti, Nicaragua, El Salvador, or Honduras who are granted temporary protected status to adjust their status to legal permanent resident. Copies of the memorial must be sent to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and to each member of the Florida congressional delegation.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

II. Present Situation:

U.S. Department of Homeland Security

The U.S. Department of Homeland Security (DHS) was established by the Homeland Security Act of 2002³ as a cabinet-level agency for the purpose of coordinating and unifying national homeland security efforts.⁴ The agency is led by a secretary appointed by the President and confirmed by the U.S. Senate. The secretary oversees the agency’s efforts to counter terrorism and enhance security, secure and manage U.S. borders, enforce and administer immigration laws,

¹ H.R. 4181, 115th Cong, (Oct. 31, 2017). See <https://www.congress.gov/bill/115th-congress/house-bill/4184> (last visited Feb. 2, 2018).

² An alien is any person not a citizen or national of the United States. “Foreign national” is a synonym and used outside of statutes when referring to noncitizens of the U.S. See U.S. Citizenship and Immigration Services (USCIS), Glossary: Alien, https://www.uscis.gov/tools/glossary?topic_id=a#alpha-listing (last visited Feb. 2, 2018).

³ See Pub. L. No. 107-296, 116 Stat. 2142-2321 (2002).

⁴ Department of Homeland Security (DHS), *Creation of the Department of Homeland Security* (Sept. 24, 2015), <https://www.dhs.gov/creation-department-homeland-security> (last visited Feb. 2, 2018).

safeguard and secure cyberspace, build resilience to disasters, and provide essential support for national and economic security.⁵

U.S. Citizenship and Immigration Services

As part of the Homeland Security Act of 2002, U.S. Citizenship and Immigration Services (USCIS) was created within the DHS to oversee lawful immigration to the U.S. USCIS provides immigration benefits to people who are entitled to stay in the U.S. on a temporary or permanent basis. These benefits include:

- Granting of U.S. citizenship to those who are eligible to naturalize;
- Authorizing individuals to reside in the U.S. on a permanent basis; and
- Providing aliens⁶ with the eligibility to work in the U.S.⁷

Temporary Protected Status

Temporary Protected Status (TPS) is a temporary immigration benefit granted under the Immigration and Nationality Act (INA)⁸ to eligible persons who are present or residing in the U.S., but cannot return to their home country due to conditions that pose a serious threat to their health or personal safety.⁹ The Secretary of the DHS (secretary) may designate a country for TPS and in turn USCIS may grant TPS to eligible nationals of a designated country.¹⁰ The secretary can issue TPS for periods of 6 to 18 months and can extend these periods if conditions do not change in the designated country. TPS does not provide a path to lawful permanent residence or citizenship. A TPS designation from USCIS does allow eligible beneficiaries to obtain an employment authorization document (EAD).¹¹ Countries currently designated for TPS include El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, and Yemen.

Haiti

The secretary initially granted a TPS designation for Haiti in 2010 in response to the January 2010 earthquake. Haiti's designation was subsequently extended due to a cholera epidemic in 2010 and impacts from Hurricane Matthew in 2016. The secretary announced on November 20, 2017 that the TPS designation will not be extended again and is set expire on July 22, 2019.¹² There are approximately 58,550 nationals of Haiti who currently hold TPS under Haiti's

⁵ DHS, *Office of the Secretary* (June 14, 2017), <https://www.dhs.gov/office-secretary> (last visited Feb. 2, 2018).

⁶ *Supra* note 2.

⁷ DHS, *Providing Immigration Benefits & Information* (Oct. 4, 2016), <https://www.dhs.gov/providing-immigration-benefits-information> (last visited Feb. 2, 2018).

⁸ See 8 U.S.C. 1254.

⁹ 8 U.S.C. 1254(b)(1).

¹⁰ USCIS, *Temporary Protected Status: What is TPS* (Feb. 2, 2018), <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Feb. 2, 2018).

¹¹ Employers in the U.S. must verify that all employees, regardless of citizenship or national origin, are allowed to work in the U.S. An EAD issued by USCIS serves as proof that an individual is allowed to work in the U.S. for a specific time period. See USCIS, *Employment Authorization Document* (April 19, 2017), <https://www.uscis.gov/greencard/employment-authorization-document> (last visited Feb. 5, 2018).

¹² DHS, *Acting Secretary Elaine Duke Announcement on Temporary Protected Status for Haiti* (Nov. 20, 2017), <https://www.dhs.gov/news/2017/11/20/acting-secretary-elaine-duke-announcement-temporary-protected-status-haiti#> (last visited Feb. 2, 2018).

designation.¹³ These individuals may apply for an EAD to remain eligible for employment in the U.S. until the designation expires in July of 2019.¹⁴

Nicaragua

Nicaragua received its initial TPS designation on January 5, 1999 due to the environmental, social, and economic devastation caused by Hurricane Mitch.¹⁵ The designation was extended 13 times prior to secretary's decision to terminate TPS for Nicaragua on November 6, 2017. The secretary delayed the termination for 12 months to January 5, 2019 to allow for an orderly transition.¹⁶ There are approximately 5,300 nationals of Nicaragua who hold TPS under the current designation.¹⁷ These individuals may apply for an EAD to remain eligible for employment in the U.S. until the designation expires in January of 2019.¹⁸

El Salvador

On March 9, 2001, El Salvador received a TPS designation due to a series of earthquakes that occurred in 2001. The designation was extended 11 times since 2001 with the most recent extension occurring on July 8, 2016. El Salvador's TPS designation was terminated on January 8, 2018. The termination is delayed 18 months until September 9, 2019 to allow for an orderly transition.¹⁹ There are approximately 262,500 nationals of El Salvador who hold TPS under the current designation.²⁰ These individuals may apply for an EAD to remain eligible for employment in the U.S. until the designation expires in September of 2019.²¹

Honduras

Honduras was initially designated for TPS on January 5, 1999 due to the impacts of Hurricane Mitch. This designation was extended for the fourteenth time on December 15, 2017. The secretary did not make a determination by the November 6, 2017 deadline as statutorily required in the INA. Therefore, the TPS designation for Honduras was automatically extended for six

¹³ See *Termination of the Designation of Haiti for Temporary Protected Status*, 83 FR 2648 (Jan. 18, 2018), <https://www.federalregister.gov/documents/2018/01/18/2018-00886/termination-of-the-designation-of-haiti-for-temporary-protected-status> (last visited Feb. 5, 2018).

¹⁴ Id.

¹⁵ See *Termination of the Designation of Nicaragua for Temporary Protected Status*, 82 FR 59636 (Dec. 15, 2017), <https://www.federalregister.gov/documents/2017/12/15/2017-27141/termination-of-the-designation-of-nicaragua-for-temporary-protected-status> (last visited Feb. 2, 2018).

¹⁶ DHS, *Acting Secretary Elaine Duke Announcement on Temporary Protected Status for Nicaragua and Honduras* (Nov. 6, 2017), <https://www.dhs.gov/news/2017/11/06/acting-secretary-elaine-duke-announcement-temporary-protected-status-nicaragua-and> (last visited Feb. 2, 2018).

¹⁷ Supra note 14.

¹⁸ Supra note 14.

¹⁹ DHS, *Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for El Salvador*, <https://www.dhs.gov/news/2018/01/08/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected> (last visited Feb. 2, 2018).

²⁰ See *Termination of the Designation of El Salvador for Temporary Protected Status*, 83 FR 2654 (Jan. 18, 2018), <https://www.federalregister.gov/documents/2018/01/18/2018-00885/termination-of-the-designation-of-el-salvador-for-temporary-protected-status> (last visited Feb. 5, 2018).

²¹ Id.

months to July 5, 2018.²² The secretary must reevaluate Honduras' TPS designation and issue a decision to either extend or terminate no later than May 6, 2018. There are approximately 86,000 nationals of Honduras who hold TPS under the current designation.

Immigration Status

USCIS issues two types of visas²³ to aliens who wish to enter the U.S. – non-immigrant and immigrant. A non-immigrant is admitted into the U.S. for a specific and temporary period of time whereas an immigrant is a permanent²⁴ resident. Aliens eligible for entry into the U.S. as a non-immigrant are granted either a non-immigrant temporary visa,²⁵ victim of trafficking visa (T visa), or a crime victim or witness visa (U visa). Aliens eligible for entry into the U.S. as an immigrant are granted one of the following types of immigration status:

- Naturalized citizen;
- Lawful permanent resident;
- Conditional permanent resident;
- Family-sponsored visa;
- Violence Against Women Act Self-Petitioner;
- Special Immigrant Juvenile Status; or
- Refugee/Asylee.²⁶

Adjustment of Status

Adjustment of status is a procedure that allows an eligible applicant to apply for lawful permanent resident status (also known as a Green Card) without having to return to his or her home country to complete visa processing.²⁷ TPS recipients are not eligible to apply to adjust status to lawful permanent resident within the U.S. based on their status as a TPS recipient. Typically, in order to gain permanent resident status, a TPS recipient must depart the U.S. to have a visa processed at a consular post.

²² See *Extension of the Designation of Honduras for Temporary Protected Status*, 82 FR 59630, available at <https://www.federalregister.gov/documents/2017/12/15/2017-27140/extension-of-the-designation-of-honduras-for-temporary-protected-status> (last visited Feb. 2, 2018).

²³ A visa is a document authorizing travel to the U.S., but not entry. A visa is a precursor to an application for non-immigrant status. See USCIS, *Glossary: Visa*, https://www.uscis.gov/tools/glossary?topic_id=v#alpha-listing (last visited Feb. 2, 2018).

²⁴ Permanent means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law. 8 U.S.C. 1101 (31).

²⁵ There a large variety of non-immigrant categories to include: foreign government officials, visitors for business and for pleasure, foreign nationals in transit through the United States, treaty traders and investors, students, international representatives, temporary workers and trainees, representatives of foreign information media, exchange visitors, fiancé(e)s of U.S. citizens, intracompany transferees, NATO officials, and religious workers.

²⁶ See State Justice Institute, *Overview of Types of Immigration Status* (April 1, 2013), <http://www.sji.gov/wp/wp-content/uploads/Immigration-Status-4-1-13.pdf> (last visited Feb. 2, 2018).

²⁷ See USCIS, *Adjustment of Status*, available at: <https://www.uscis.gov/greencard/adjustment-of-status> (last visited Feb. 5, 2018)

Extending Status Protection for Eligible Refugees with Established Residency (ESPERER) Act of 2017

The ESPERER Act of 2017 (Act)²⁸ provides a pathway to permanent legal status for certain TPS recipients who arrived in the U.S. before January 13, 2011. The Act allows eligible TPS recipients to apply to the DHS to adjust their status to lawful permanent resident. The TPS recipient must apply for the adjustment of status prior to January 1, 2021 and be:

- A national of Haiti, Nicaragua, El Salvador, or Honduras;
- Granted TPS on or after January 13, 2011 and remain under TPS at the time of application; and
- Physically present in the U.S. for at least one year and at the time of application.²⁹

The Act provides a pathway to permanent legal status for the spouse, child, or un-married son or daughter of a TPS recipient whose status was adjusted to permanent resident under the Act. The secretary may not remove an individual from the U.S. while an adjustment application is pending. If the individual's application is denied, the removal proceedings shall continue. The Act would allow the approximately 300,000 TPS recipients from Haiti, Nicaragua, El Salvador, or Honduras to apply for adjustment of immigration even if the country's TPS is set to expire.

III. Effect of Proposed Changes:

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto.³⁰

SM 888 urges Congress to pass the H.R. 4184, Extending Status Protection for Eligible Refugees with Established Residency (ESPERER) Act of 2017,³¹ which allows aliens³² from Haiti, Nicaragua, El Salvador, or Honduras who are granted temporary protected status to adjust their status to legal permanent resident.. Copies of the memorial must be sent to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and to each member of the Florida congressional delegation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ Supra note 1.

²⁹ Supra note 1.

³⁰ The Florida Senate, Office of Bill Drafting Services, *Manual for Drafting Legislation*, at 137-138. (2009).

³¹ H.R. 4181, 115th Cong. (Oct. 31, 2017). See <https://www.congress.gov/bill/115th-congress/house-bill/4184> (last visited Feb. 2, 2018).

³² An alien is any person not a citizen or national of the United States. "Foreign national" is a synonym and used outside of statutes when referring to noncitizens of the U.S. See U.S. Citizenship and Immigration Services (USCIS), Glossary: Alien, https://www.uscis.gov/tools/glossary?topic_id=a#alpha-listing (last visited Feb. 2, 2018).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.