

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

Public Comments and USCIS Responses

	<u>Category</u>		<u>Comment and Response</u>
Form I-821	1	General Comment	<p>Comment: The commenter (#1) indicated that USCIS should not use the Forms I-821 and I-765. This commenter also indicated that the government should not allow foreign individuals who are in the United States illegally to work.</p> <p>Response: USCIS has determined no change is needed because Temporary Protected Status (TPS) is a temporary benefit that does not lead to lawful permanent resident status or give any other immigration status. The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. USCIS may grant TPS to eligible nationals of certain countries (or parts of countries), who are already in the United States. Eligible individuals without nationality who last resided in the designated country may also be granted TPS. During a designated period, individuals who are TPS beneficiaries or who are found preliminarily eligible for TPS upon initial review of their cases are not removable from the United States, can obtain an employment authorization document (EAD), and may be granted travel authorization.</p>
Form I-821	2	Form. Part 1. Employment Authorization. Questions 3.a. and 3.b.	<p>Comment: The commenter (#5) commended USCIS for removing the requirement to submit a completed Form I-765 in conjunction with a Form I-821 when the TPS applicant is not requesting an employment authorization document.</p> <p>Response: USCIS has determined no change is needed because the commenter is only commending USCIS for removing the requirement to submit a Form I-765 in conjunction with a Form I-821 when a TPS applicant is not an employment authorization document.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	3 Form. Part 2. Information About You. Question 17.	<p>Comment: The commenter (#2 and #4) indicated that USCIS should simplify and reduce the number of marital status categories on Form I-821. The commenter states that four new marital status categories were added: “Never Married; Marriage Annulled; Separated; and Other.” The commenter believes these new categories cause confusion and require the applicant to understand potentially complex nuances of family law with respect to marital status. The commenter states that the applicant could be unclear or confused as to the exact status of their previous marriages or relationships and could inadvertently answer incorrectly. The commenter recommends that the format should revert to the previous version of Form I-821 where the applicant was only required to indicate whether they were married, widowed, single or divorced.</p> <p>Response: USCIS has determined no change is needed because the added marital status categories on the proposed I-821 are part of the new standardized language across all updated USCIS forms. If an applicant is uncertain as to whether s/he has checked the right answer for his or her marital status, the applicant may provide an explanation in Part 11, Additional Information.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	4 Form. Part 2. Your Current Immigration Status. Questions 28a-28c.	<p>Comment: The commenter (#3) recommended that questions 28a-28c related to immigration removal proceedings be eliminated. This commenter stated that applicants for TPS remain eligible for protection despite being subject to a final order of removal or being currently subject to removal proceedings; however, the current Form I-821 and proposal for changes to a future I-821 continue to request nuanced legal questions that are confusing and unnecessary. If these questions are not eliminated, the commenter requests that a prompt be added before this set of questions which states: “If you are not sure what kind of immigration proceedings, but were made to appear before an immigration judge in immigration court, you may select question 28c”.</p> <p>Response: USCIS has determined no change is needed because although in many cases, it is true that a prior removal order will not, by itself, be disqualifying for TPS, there are circumstances where the prior removal order may be relevant. For example, if USCIS discovers that the prior removal order has been reinstated, then the applicant is ineligible under INA, sec. 241(a)(5). The basis upon which the removal order was issued may also be relevant to a TPS determination, as with removals based on certain criminal convictions that also make a person ineligible for TPS. See INA, 244(c)(2)(A-B). If an applicant has left the United States based on an order of removal and returned prior to seeking TPS, then the order may be relevant in determining whether the applicant meets the exception for a “brief, casual and innocent absence” from the United States, as defined in 8 C.F.R. 244.1, in determining whether continuous residence and continuous physical presence have been met. There are also jurisdictional reasons for which USCIS needs to know whether the applicant has a final order of removal and could still be considered to be in immigration proceedings before EOIR. See, e.g., 8 C.F.R. 244.7(d). The question and the applicant’s response are very important to the TPS adjudication.</p>

SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	5 Form. Part 2. Your Current Immigration Status. Questions 28c.	<p>Comment: The commenter (#4) stated that Question 28.c. indicates that this box should only be checked if the person was 1) previously in proceedings with an agency, and 2) they no longer are, and 3) they have also been or are in proceedings in federal court: “I am no longer in Department of Justice (DOJ) or Department of Homeland Security (DHS) immigration proceedings, but I am or was in Federal court proceedings regarding immigration issues.” This commenter suggests that if this question is meant to indicate any federal court proceedings regarding immigration issues, it should simply say so: “I am no longer in Department of Justice (DOJ) or Department of Homeland Security (DHS) immigration proceedings, but I am or was in Federal court proceedings regarding immigration issues.”</p> <p>Response: USCIS has determined no change is needed because simply stating “Federal court proceedings” could be misconstrued by some applicants or their representatives to exclude administrative proceedings before DOJ or DHS, and USCIS needs this information, too, in adjudicating a TPS application. See Response to Comment above.</p>
Form I-821	6 Form. Part 2. Your Current Immigration Status. Questions 28c.	<p>Comment: The commenter (#5) stated that Question 28.c. is confusing and should be removed from the Form I-821. This commenter also stated that it appears that USCIS added this question to capture federal appeals, but the wording is confusing because this question references both DOJ and DHS proceedings. For example, it is unclear how an applicant with an expedited removal order would accurately respond to this question because there is no initial option for DHS proceedings. This commenter recommended replacing Question 28.c. with “Other” and also providing space for applicants to explain the type of proceedings</p> <p>Response: USCIS has determined no change is needed for the reasons provided in the responses to the prior to comments regarding Questions in 28c. In addition, we note that expedited removal actions by DHS do constitute an administrative “removal proceeding,” and therefore the commenter is not correct in stating that there is no option for a DHS proceeding. USCIS needs to know about any and all instances in which the applicant has been in either administrative or federal proceedings regarding his immigration situation.</p>

SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	7 Form. Part 3. Biographic Information. Questions 1-6.	<p>Comment: The commenter (#2) indicated that USCIS should eliminate the collection of biographic information on Form I-821 which includes questions relating to an applicant’s ethnicity, race, height, weight, eye color, and hair color. The commenter states that this information is not relevant to TPS eligibility. Alternatively, if the biographic questions are retained, the commenter recommends that the form instructions and outward facing guidance should advise applicants of the purpose for collecting the data and confirm that adjudicators may not take this information into consideration when making a determination. Additionally, the commenter suggests internal guidance to USCIS adjudicators which clearly advises adjudicators that such information should not be taken into consideration when making a TPS determination.</p> <p>Response: USCIS has determined no change is needed because the questions comply with the Office of Management and Budget’s requirements for the collection of race and ethnicity as provided in its memorandum found at: http://www.whitehouse.gov/omb/fedreg_1997standards/.</p>
Form I-821	8 Form. Part 3. Biographic Information. Questions 1-6.	<p>Comment: The commenter (#4) indicated that USCIS should eliminate the collection of ethnic information on Form I-821 and collect it instead at subsequent biometrics appointment. Additionally, USCIS should provide additional guidance for applicants who may not fit into established categories. For example, Hispanic or Latino is indicated as a possible ethnicity; however, for race categories there is no explanation on how to answer if the person does not identify with the categories on the form. This commenter also indicated that this information collection pre-dates the new system of biometric collections and is unnecessary. To the extent that this information is required for biometrics and background checks, USCIS could better collect this information at the biometrics appointment and, therefore, delete this prompt from the proposed form. If there is another purpose to asking for this information, USCIS should clarify its use and explain how to answer for those that do not fit the established categories. Without explanation, this information is extraneous to the purpose of this data collection and should be deleted in its entirety.</p> <p>Response: USCIS has determined no change is needed because <u>The Biographic Information questions and their instructions comply with the Office of Management and Budget’s requirements for the collection of race and ethnicity as provided in its memorandum found at: http://www.whitehouse.gov/omb/fedreg_1997standards/. USCIS has begun collecting this information on all applications and petitions so it can be stored in our data systems for identity management as may be necessary in future encounters between the individual and USCIS, to reduce the time required for a biometric services appointment to collect this information on a paper form.</u></p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	<p>9 Form. Parts 4. Information About Your Current Spouse (if any); Part 5. Information About Your Former Spouses (if any); Part 6. Information About Your Children (if any).</p>	<p>Comment: The commenter (#4) stated that Parts 4, 5 and 6 of the Form I-821 request information about third parties that is unnecessary to adjudicating TPS eligibility and violates the privacy of individuals who do not seek a benefit with USCIS (e.g., the children, prior spouses and spouses of TPS applicants). This commenter also indicated that by requesting the physical address, date of birth, country of birth, and alien number of children, USCIS is asking applicants to choose between disclosing potentially private and sensitive third- party information—such as the location of an undocumented child—or else refraining from applying for TPS altogether. This commenter stated that the applicants may not have this information available or may not have the consent to disclose this information. The burden of finding this information is especially cumbersome for adult children living abroad and may prevent applicants from completing the form. This commenter further indicated that if USCIS requires information about an applicant’s children, it should only request the child’s name, the child’s A- number (if known), and the country where the child is living. Additionally, this commenter indicated that if an applicant is seeking TPS as the spouse of a TPS recipient, USCIS should ask this applicant to provide proof of the marriage and TPS status of that person. This commenter recommended that USCIS remove portions of Part 4, 5, and 6, and also indicate that these parts are only required when an applicant needs to demonstrate eligibility to submit a late initial filing (LIF). This commenter also recommended that USCIS remove all requests for addresses of children and also all request for USCIS Online Account Number and A number of third parties.</p> <p>Response: USCIS will adopt the commenter’s recommendation, in part. We will add the prompt “Complete this section only if you are filing a late initial application for TPS. See the form instructions for information on requirements for late initial filing for TPS. If you need extra space to complete this section on all former spouses or all of your children, please use the space provided in Part 11. Additional Information. No change is recommended with regard to information on addresses of spouses, prior spouses or children. TPS is an individual benefit, and does not confer any benefit or status to derivatives; however, for the limited purposes of demonstrating eligibility to submit a late initial filing (LIF) an applicant’s family relationship as the spouse or child of a current TPS beneficiary might be material to make a threshold determination on the LIF issue. See 8 C.F.R. 244.2(f)(2)(iv). If information on former spouses or on children is known and it is relevant to for late initial filing, the applicant should complete this section.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	10 Form. Part 4. Information About Your Current Spouse (if any). Questions 1-2.	<p>Comment: The commenter (#2) indicated that Questions 1 and 2 regarding the online account number and A-number of current spouses should be clarified. The commenter recommends that these questions be amended to read as follows (new language in bold italics):</p> <p>“1. USCIS Online Account Number (if any and <i>if known</i>).” “2. A-Number (if any and <i>if known</i>).”</p> <p>Response: USCIS will adopt this recommendation. The questions will be amended.</p>
Form I-821	11 Form. Part 4. Information About Your Current Spouse (if any). Questions 10a-10f.	<p>Comment: The commenter (#3 and #5) indicated that Questions 10a-10f under Part 4 of Form I-821 should be removed from the Form I-821 because they are confusing, do not solicit meaningful information, are also irrelevant to continued TPS eligibility. This commenter also indicated that the proposed new additions requesting detailed information on former and current spouses creates an excessive barrier on TPS applicants and their representatives. In particular, the commenter mentioned that the proposed questions regarding the term and duration of the applicant’s spouse’s TPS registration seem unlikely to render meaningful responses and are likely to contribute to confusion.</p> <p>Response: USCIS has determined no change is needed because TPS is an individual benefit, and does not confer any benefit or status to derivatives; however, for the limited purposes of demonstrating eligibility to submit a late initial filing (LIF) an applicant’s family relationship as the spouse or child of a current TPS beneficiary might be material to make a threshold determination on the LIF issue. See response to Comment #9 above.</p>
Form I-821	12 Form. Part 5. Information About Your Former Spouses (if any). Question 3.	<p>Comment: The commenter (#2) indicated that Question 3 regarding the A-number of former spouses is confusing as it is currently written. This commenter also indicated that the language erroneously implies that the applicant may have a former spouse’s A number available to them for a purpose other than reporting the A number on the Form I-821. This commenter further suggested that this could be construed by an applicant that they have a burden or responsibility to seek out this information, which could potentially discourage some individuals from applying. This commenter recommended that this question be amended to read as follows (new language in bold italics):</p> <p>“A Number of Former Spouse (if any and <i>if known</i>).”</p> <p>Response: USCIS will adopt this recommendation. The questions will be amended.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>		<u>Comment and Response</u>
Form I-821	13	Form. Part 5. Information About Your Former Spouses (if any). Questions 1.a.-20.	<p>Comment: The commenter (#5) indicated that Question 1.a. through 20 under Part 5, Information about Your Former Spouses, are burdensome and irrelevant to the majority of TPS applicants and should be removed from the Form I-821. This commenter suggested that if USCIS is requesting information for the limited TPS applicants seeking eligibility for late initial filing as a spouse of an individual currently eligible to be a TPS registrant, then a supplemental form should be used to request this information.</p> <p>Response: USCIS has determined no change is needed. See response to Comment # 9 regarding questions about spouses and children. USCIS will add an instruction indicating that the questions related to such relatives only need to be answered by individuals who are filing a late initial application. TPS applicants who are not late initial filers (LIFs) can skip this section and other sections that do not apply to their situation.</p>
Form I-821	14	Form. Part 6. Information About Your Children (if any). Questions 1.a.-14.	<p>Comment: The commenter (#5) indicated that Question 1.a. through 14 under Part 5, Information about Your Children, are beyond the scope of a TPS applicant's eligibility and should be removed from the Form I-821.</p> <p>Response: USCIS has determined no change is needed for the reasons provided in the responses to the prior to comments regarding Questions in 10a-10f. See also Response to Comment #9.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	15 Form. Part 7. Eligibility Standards. Basis for Eligibility. Questions 2a-2d.	<p>Comment: The commenter (#3) stated that questions 2a-2d seeking dates of stay in third countries while coming to the United States are very difficult for many TPS applicants to answer accurately and completely, and should be eliminated. This commenter stated that many TPS applicants, especially those from Central America, relied on irregular immigration routes and often relied on smugglers, and therefore, this information would be difficult to ascertain and would be unreliable. This commenter also stated that requesting the specific name of countries for the first time is equally a burden on applicants to recollect. In addition to questions surrounding the accuracy of information that may be obtained from these questions, this commenter also stated that the format places an undue burden on TPS applicants. This commenter indicated that there is only one box for countries traveled to prior to arriving in the United States, and only one From/To date field. The commenter stated that many TPS applicants traveled across multiple countries and this lengthy information will result in requiring the additional burden of an addendum of information at the end of the form.</p> <p>Response: USCIS has determined no change is needed because the information collected within this section is material in the review of any issues of citizenship, nationality, statelessness, and firm resettlement that are frequently found in TPS adjudications. Additionally TPS applicants who need extra space to complete this section can use the space provided in Part 11. Additional Information.</p>
Form I-821	16 Form. Part 7. Eligibility Standards. Basis for Eligibility. Questions 1.c.-2d.	<p>Comment: The commenter (#5) stated that questions 1.c.-2d under Part 7. Eligibility Standards are problematic for individuals that have been in the United States for numerous years and are subject to TPS re-registration. This commenter stated that the proposed form would unnecessarily burden nonprofit organizations and agencies that would now be required to assist these applicants in reviewing every country to which the applicant ever traveled, even if only in transit. This commenter recommended removing the requirement for TPS applicants to list dates of travel to other countries from the Form I-821.</p> <p>Response: USCIS has determined no change is needed because the information collected within this section is material in the review of any issues of citizenship, nationality, statelessness and firm resettlement that are frequently found in TPS adjudications. Additionally TPS applicants who need extra space to complete this section can use the space provided in Part 11. Additional Information.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	Category	Comment and Response
Form I-821	17 Form. Part 7. Eligibility Standards. Basis for Eligibility. Questions 2.f.-2.g.	<p>Comment: The commenter (#4) stated that Questions 2.f. and 2.g., under Part 7. Basis for Eligibility, regarding an “offer” of immigration status are legally technical and would require assistance of an attorney to provide the requested details, none of which is related to whether someone is eligible for TPS. This commenter also stated that asking these questions creates an undue financial and time burden on the applicant who is applying for TPS. This commenter indicated that the TPS application should not ask the applicant to provide information that calls for a legal conclusion beyond the scope of basic facts. These issues are better assessed through the fact collection of other countries to which the applicant has travelled. This commenter recommended that Questions 2.f. and 2.g. be removed from the Form I-821.</p> <p>Response: USCIS has determined no change is needed because the information collected within this section is material in the review of any issues of citizenship, nationality, statelessness and, particularly, firm resettlement that are often found in TPS adjudications. Also TPS applicants who need extra space to complete this section can use the space provided in Part 11. Additional Information. <u>USCIS encourages applicants for any form of immigration benefit, including TPS, to seek the services of a reputable private bar immigration attorney or accredited representative.</u></p>
Form I-821	18 Form. Part 7. Eligibility Standards. Basis for Eligibility. Question 13.	<p>Comment: The commenter (#4) recommended that Question 13, “Have you ever been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating the law or ordinance, excluding minor traffic violations” be moved under Question 3, “Have you ever been convicted of:” because all of these questions related to general questions about criminal history, and including more general question much later and separate from the initial inquiry about criminal history is confusing.</p> <p>Response: USCIS will adopt the commenter’s recommendation, in part. We will divide Question 13 into separate questions so that each question addressed only one type of event; however, Question 13 will not be joined with Question 8 because these questions relate to a separate grounds of inadmissibility. Question 13 relates to a specific ground of inadmissibility, INA 212(a)(2)(A) whereas Question 8 relates to INA 212(a)(2)(B).</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	19 Form. Part 7. Eligibility Standards. Basis for Eligibility. Question 8.	<p>Comment: The commenter (#4) recommended that Question 8, “Have you ever been convicted of two or more criminal offenses (other than purely political offenses) for which you received sentences to confinement that, when combined, total five years or more?” be removed from the Form I-821 because this questions is difficult to understand and complex in nature. This commenter also stated that the USCIS should make this determination based on the criminal records submitted.</p> <p>Response: USCIS has determined no change is needed because Question 8 relates to a specific ground of inadmissibility, INA, 212(a)(2)(B) that is relevant to the TPS adjudication. USCIS will certainly review all criminal history records submitted, however, the applicant’s response is helpful in the determination as well, esp. if the applicant fails to submit the requested supporting documentation. The applicant’s response also helps USCIS determine whether additional evidence may be needed in cases where the supporting evidence submitted is insufficient.</p>
Form I-821	20 Form. Part 7. Eligibility Standards. Your Immigration and Criminal History. Criminal Offenses.	<p>Comment: The commenter (#4) stated that USCIS should not request applicants provide police reports that are not part of the record of conviction, provide police reports where there was no conviction or disclose records in violation of confidentiality laws as is the case of juvenile state court files. This commenter also stated that police reports are often unsubstantiated and include alleged details of conduct that may not have resulted in charges being brought or in a conviction, and suggested that police records and even charging documents are considered not reliable. Additionally, this commenter stated that arrest records and charging documents are by definition <i>allegations</i> of criminal conduct; they are not proof of such conduct. This commenter is concerned about how USCIS handles inherently unreliable police reports that may contain inaccurate information or be the result of miscommunication between a defendant and law enforcement due to limited English skills. This commenter further stated that USCIS should not re-litigate criminal issues or re-adjudicate an underlying criminal case in a request for an immigration benefit and should only rely on the stipulated facts of a conviction. This commenter recommended the following change:</p> <p>“If you were arrested, charged, or convicted for an offense, you must provide certified court dispositions showing the court proceedings’ outcome wherever possible. You also must provide copies of arrest reports, statements of charges, indictment information, or any other charging document issued against you that formed the basis of a conviction. <u>Do not submit any documents that are protected by state confidentiality laws.</u>”</p>

SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043

	<u>Category</u>	<u>Comment and Response</u>
20	Form. Part 7. Eligibility Standards. Your Immigration and Criminal History. Criminal Offenses. (Continuation)	<p>Response: USCIS has determined no change is needed because USCIS needs to have all the criminal history records requested, where at all possible for the applicant to obtain. USCIS will then be better able to determine what is or is not relevant to the TPS adjudication. While it is true that an arrest record, without a conviction, will generally not lead to a TPS denial, USCIS, not the applicant, must decide whether the information is relevant. Among other issues, an arrest record, for example, may lead to the need for a request for additional evidence to determine whether certain criminal grounds of inadmissibility that do not necessarily require a conviction apply (<i>see, e.g.</i>, INA, 212(a)(2)(C) ("reason to believe" an alien is trafficking in controlled substance or assisting in such). USCIS further notes that while a juvenile delinquency conviction will not be counted for a TPS adjudication, it remains for USCIS to make the determination as to exactly what transpired in the proceedings and whether they do or do not relate to the TPS adjudications. In addition, USCIS notes that state and local confidentiality laws are not controlling in the federal immigration context, and that many such laws <i>do</i> permit the subject of the criminal record to obtain his or her own records, even if they are sealed to others. Therefore, USCIS asks that the applicant make every reasonable effort to obtain those records.</p> <p>USCIS is sensitive, however, to the concerns commenters have expressed about the difficulty applicants may have in obtaining certain sealed or otherwise protected criminal records. Therefore, we have clarified our instructions to emphasize that an applicant, after making his or her best efforts to obtain the documents from the relevant authorities and not being able to do so, may provide other evidence, such as a personal statement and/or statements from other persons with direct knowledge of the events and legal proceedings, describing what happened and what the disposition was of the arrest/charges, etc. The applicant should also describe why s/he has been unable to obtain the records, and whether they are unavailable to him or her as a result of a state or local confidentiality provision that USCIS asks the applicant to provide. USCIS will consider such secondary evidence in the totality of the circumstances and give it appropriate weight, including but not limited to, whether the arrest resulted in a juvenile conviction, expunged conviction or other conviction that will not be counted to the detriment of the applicant.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
	21 Form. Part 7. Eligibility Standards. Your Immigration and Criminal History. Criminal Offenses.	<p>Comment: The commenter (#5) stated that the proposed form would require applicants to provide court disposition records and copies of arrest reports, statements of charges, indictment information, or any other charging document issued against the applicant, and that if the applicant cannot provide the documentation, they are required to provide a signed statement as to why they cannot provide such documentation. This commenter also stated that this language is also included on checklist found on page 17 of the proposed instructions. This commenter recommended removing this new language on the proposed form and proposed checklist because this expanded list of required documentation adds greatly to the applicant’s burden of producing initial evidence. This commenter also stated that TPS re-registration applicants would be required to submit these documents for the first time for very old arrests, even where no charges were filed, and also that this requirement may lead to requests for additional evidence and delays, subsequently increasing the number of applicants whose work permits expire without interim work authorization.</p> <p>Response: USCIS has determined not to adopt this commenter’s suggestion in full. 8 CFR 103.2(b) (2) addresses unavailability of official records. “Part 6” can be revised to give better guidance. Please also see response to prior comment. Applicants filing for re-registration do not need to submit any copies of documentation as stated in section General Requirements sub-section Documentation Exception of the Form Instructions (pages 9 and 10).</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	22 Form. Part 7. Eligibility Standards. Your Immigration and Criminal History. Criminal Offenses. Questions 3, 4.a., 4.b., 4.c., and 7.a.	<p>Comment: The commenter (#5) stated that there are several questions in the current I-821 that have caused particular confusion to applicants which remain confusing in the proposed form and should be modified. This commenter also stated that Questions 3, 4.a., and 4.b., ask about felony and misdemeanor convictions and Question 4.c. ask about convictions for a “particularly serious crime,” which is a legal term of art that most applicants do not understand and would seemingly qualify as either a misdemeanor or a felony. This commenter also stated that Question 7.a. asks a very similar question which is not easily distinguished from the prior questions regarding crimes: whether the applicant has ever been convicted of OR committed acts which constitute the essential elements of a crime, other than a purely political offense. The commenter recommended that these questions be simplified and clarified.</p> <p>Response: USCIS has determined not to adopt this commenter’s suggestion in full, but we have modified the Instructions to include the definitions of “felony” and “misdemeanor” that are currently in the TPS regulations at 8 C.F.R. 244.1. With regard to the comments about “particularly serious crime,” USCIS declines to change the wording which comes directly from the eligibility criteria for TPS, <i>i.e.</i>, the mandatory bar to asylum that also applies to TPS and is contained in INA, 208(b)(2)(A)(ii) as referenced in 244(c)(2)(B)(ii).- Applicants are encouraged, as always, to obtain private legal advice if they have a question about whether a criminal history record may fall within this particular question.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821	23 Form. Part 10. Contact Information, Declaration, and Signature of the Person Preparing this Application, if Other Than the Applicant.	<p>Comment: The commenter (#4) stated that the Form I-821 currently requires the signature of a preparer and does not explicitly allow for stamps or stickers from group processing events in lieu of this requirement. This commenter explained that, in other contexts, such as the naturalization context, USCIS allows preparers to substitute the signature with a stamp or sticker from a group processing event. TPS, due to the form’s relative straightforwardness for renewal, is uniquely suited for group processing events and is likely to be one of the forms that non-profits help large number of individuals complete at one time. Additionally, this commenter stated that during workshops and community clinics, many volunteers may help an individual prepare their TPS form as that individual moves from one section of the clinic to another. At the end of the process, one or more attorneys may have reviewed an applicant’s application. In these cases, there is not one single preparer that assisted an applicant in completing their application. When there are multiple volunteers, it may not be appropriate for a single “preparer” to certify that they assisted in completing the entirety of the application, because that would be an inaccurate certification. Moreover, a single volunteer attorney or preparer may be unwilling to sign the preparer portion of a form because they may have only helped with a small portion of the form while others, who they did not supervise, may have assisted in completing other portions of the form. This commenter recommended that USCIS allow stamps or stickers from group processing events.</p> <p>Response: USCIS has determined no change is needed. If the applicant uses a preparer or interpreter, the entire preparer and interpreter section must be completed and signed (as appropriate). USCIS recognizes that many organizations may need time to transition to using the revised form so a reasonable grace period will be offered during which applicants may submit either the old or new version of the form, and if the application was prepared at a group assistance event, sponsoring organizations that have followed the practice of using a stamp or sticker in place of the data required in the preparer or interpreter sections may continue to do so. After the grace period, the preparer and interpreter section must be completed and signed when they are used. We recommend that preparers and interpreters begin to fully complete and sign the preparer and interpreter sections of the old form during the grace period to comply with this requirement. If someone helps you complete a form, that person MUST sign and date the form. Stickers and stamps are no longer permitted for Form N-400 for applicants who received help completing their form at an immigration group processing event. For applicants who received help completing their Form I-821, USCIS will also not accept stamps or stickers in place of completing the preparer and/or interpreter sections.</p>

[For information on how to complete the revised form, visit uscis.gov/n-400. For eligibility](https://uscis.gov/n-400)

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	Category	Comment and Response
Instructions	1 Instructions. General Instructions. Copies.	<p>Comment: The commenter (#2 and #5) recommended avoiding the destruction of original documents referenced on page 3 of the Form I-821 instructions. This commenter stated that the Form I-821 instructions warn on page 3 that original documents <i>will</i> be destroyed when they are submitted in error. However, under Processing Information (page 14) the form warns that original documents <i>may</i> be destroyed when submitted in error. This commenter recommended that instead of destroying original documents, they should be returned to the applicant in the same way a rejected application is returned, or sending the applicant a request for additional evidence notice requesting a Form G-884, Request for the Return of Original Documents, or sending the documents to the National Records Center to be combined with the individual’s administrative file so that the applicant can later retrieve the documents by filing a Form G-884. If original documents must be destroyed, then the commenter asks for clarification on whether they <i>may</i> or <i>will</i> be destroyed and what the exact circumstances are under which they will or may be destroyed.</p> <p>Response: USCIS will adopt this recommendation. The form instructions will be amended to reflect that unsolicited documents may be destroyed. .</p>
Instructions	2 Instructions. Who Is Eligible for TPS?; What Waivers are Available for TPS?	<p>Comment: The commenter (#2) recommends adding additional language to page 2 of the Form I-821 instructions to explain in plain language what it means to receive a discretionary waiver. The commenter suggests the instructions should be amended to read as follows (new language in bold italics): “USCIS may grant discretionary waivers of certain inadmissibility grounds for humanitarian purposes, to assure family unity, or because it is otherwise in the public interest. <i>If USCIS grants a discretionary waiver it means an applicant will receive TPS even though they are inadmissible.</i>”</p> <p>Response: USCIS has determined no change is needed because even if a discretionary waiver is granted, a TPS application may still be denied on other grounds if an individual fails to satisfy all of the eligibility requirements for Temporary Protected Status.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<i>Category</i>	<i>Comment and Response</i>
Instructions	3 Instructions. General Requirements. What documents should I submit if I was arrested, charged, and/or convicted of a criminal offense?	<p>Comment: The commenter (#4) stated that the TPS instructions do not discuss juvenile records, and specifically indicate that an applicant should submit documents that have been sealed by the court, and suggested that this request is asking applicants to violate a court order. This commenter recommended that USCIS make the following changes:</p> <p>“NOTE: Provide the conviction and disposition documentation even if your records were sealed, expunged or otherwise cleared, <u>unless disclosure is prohibited under state law.</u>”</p> <p>Response: See Response to comments on documentation of criminal history and offenses within the Form Section of this Summary of Suggestions. Please see also Response to Comment #20 above.</p>
Instructions	4 Instructions. General. What is the filing fee?	<p>Comment: The commenter (#4) stated the instructions should provide clear guidance that those with a granted fee waiver do not need to include payment for fees. Currently, the fee waiver is only mentioned at the end of the section on fees and there is no guidance in the “What Is the Filing Fee?” section indicating that a fee waiver form may be submitted instead of the filing fee. As a result of this lack of clarity, many applicants express concern that their application will not be accepted if they pursue a fee waiver because waivers are not referenced in the instructions. This commenter recommended inserting in the Section What is the Filing Fee? of the form instructions an initial sentence indicating that a fee waiver, Form I-912, may be submitted instead of fees where the person qualifies for a fee waiver.</p> <p>Response: USCIS will adopt the commenter’s recommendation.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
Instructions	5	<p>Instructions. General. What is the filing fee?</p> <p>Comment: The commenter (#4) stated that the instructions should clarify whether a fee waiver application is an acceptable alternative to including fees. This commenter recommended the form instructions be corrected in the following manner:</p> <p>Form I-821 Instructions. Page 12. Bullet point #3 should indicate that individuals under the age of 14 should not pay biometric services fee. Point #2 and #3 are more correctly sub-points of B., for those seeking employment authorization. Indent those categories accordingly. Each of these categories of possible fees should indicate you must pay fee or file a fee waiver form, Form I-912.</p> <p>Response: USCIS will adopt the commenter’s recommendation.</p>
	8	<p>Instructions. Checklist.</p> <p>Comment: The commenter (#2) recommends that the Form I-821 checklist be made more prominent within the form instructions. The commenter states that the checklist was previously listed on page 9, and has been moved to page 17. The commenter indicates that the checklist is a helpful tool for applicants to ensure that they have completed all necessary items before filing the Form I-821. The commenter believes the location of the checklist at the end of the lengthy Form I-821 instructions makes it difficult to find, and applicants may miss this useful tool altogether.</p> <p>Response: USCIS has determined no change is needed because the location of the checklist is standardized throughout all USCIS form types. The checklist is intended to serve as a helpful supplement to TPS applicants after they have reviewed the Form I-821 instructions in their entirety.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>		<u>Comment and Response</u>
I-821/Guidance	1	Burden of Information Collection	<p>Comment: The commenter (#2) recommended that, with respect to the burden of information collection, USCIS may increase efficiency of adjudication and avoid unnecessary data duplication by considering new processes that enable family members in the same household to apply together. The commenter encourages USCIS to explore future opportunities for families seeking TPS and other immigration benefits to submit bundle or family applications or, with the consent of the parties, to link common data in USCIS ELIS that may be used to populate forms for parents, spouses and children.</p> <p>Response: USCIS has determined no change is needed because the TPS law does not allow for derivative family members to be granted TPS on the basis of their relative’s grant. Each person must file an application individually, which must be adjudicated on its own merits. Therefore, USCIS declines to adopt this recommendation. However, USCIS will keep in mind the commenter’s suggestions for future ways that processing efficiencies could be gained and the burdens on family members lessened, as we engage in Transformation efforts.</p>
I-821/Guidance	2	Burden of Information Collection	<p>Comment: The commenter (#3) is concerned that the proposed changes disproportionately burden applicants, particularly those from Central American countries who are the most likely to use the new I-821 form. The commenter stated that their proof of residence may span 20 years and almost 70 percent of Central American immigrants are Limited English Proficient (LEP), of lower income, and have fewer opportunities for legal assistance. The commenter urged the Department to make a greater effort to ensure that proposed changes to the form lessen the burden on applicants</p> <p>Response: USCIS has determined no change is needed because TPS re-registrants do not have to submit any copies of documentation showing previously proved residence unless USCIS requests this information.</p>

**SUPPORTING STATEMENT APPENDIX A COMMENT SUMMARY FOR
Application for Temporary Protected Status
Form I-821
OMB Control No.: 1615-0043**

	<u>Category</u>	<u>Comment and Response</u>
I-821/Guidance	3 Formal Rulemaking Process	<p>Comment: The commenter (#5) stated that the proposed changes to the Form I-821 and instructions broaden the evidentiary requirements and information previously requested for Temporary Protected Status (TPS). For example, the proposed Form I-821 spells out a new requirement of submitting “arrest reports, statements of charges, indictment information, or any other charging documents” for every arrest. Currently, Form I-821 requires dispositions only and USCIS’s proposed form changes heighten the evidentiary requirements, requiring a set of documents that go beyond the record of conviction. This commenter also stated that the new language that is included in the proposed instructions will be incorporated by reference into the Title 8 of the Code of Federal Regulations without the opportunity for full notice and comment. The proposed changes exceed DHS’s statutory authority, and should instead be promulgated by regulation in accordance with the Administrative Procedure Act (APA).</p> <p>Response: USCIS has determined no change is needed because the DHS regulation at 8 C.F.R. 103.2(a)(1) gives forms instructions the force of regulation. The Paperwork Reduction Act governs the development and revision of forms. The PRA process includes publication of notice of any revisions in the FR, and both a 60-day and 30-day period for public comment on the revisions. The actual proposals for form revisions can be found in the manner specified in the notice. So there plenty of opportunity for full notice and comment.. USCIS further disagrees with the commenter that the proposed revisions exceed DHS’ statutory authority. All questions are consistent with provisions of the INA, including but not limited to sections 103, 212, 208, and 244, and other relevant statutes governing immigration. See also Response to comments on documentation of criminal history and offenses within the Form Section of this Summary of Suggestions. See also Response to Comment #20 above.</p>