

The Intersection of TPS and Asylum for Afghan Parolees: Considerations for Practitioners and Pro Bono Attorneys

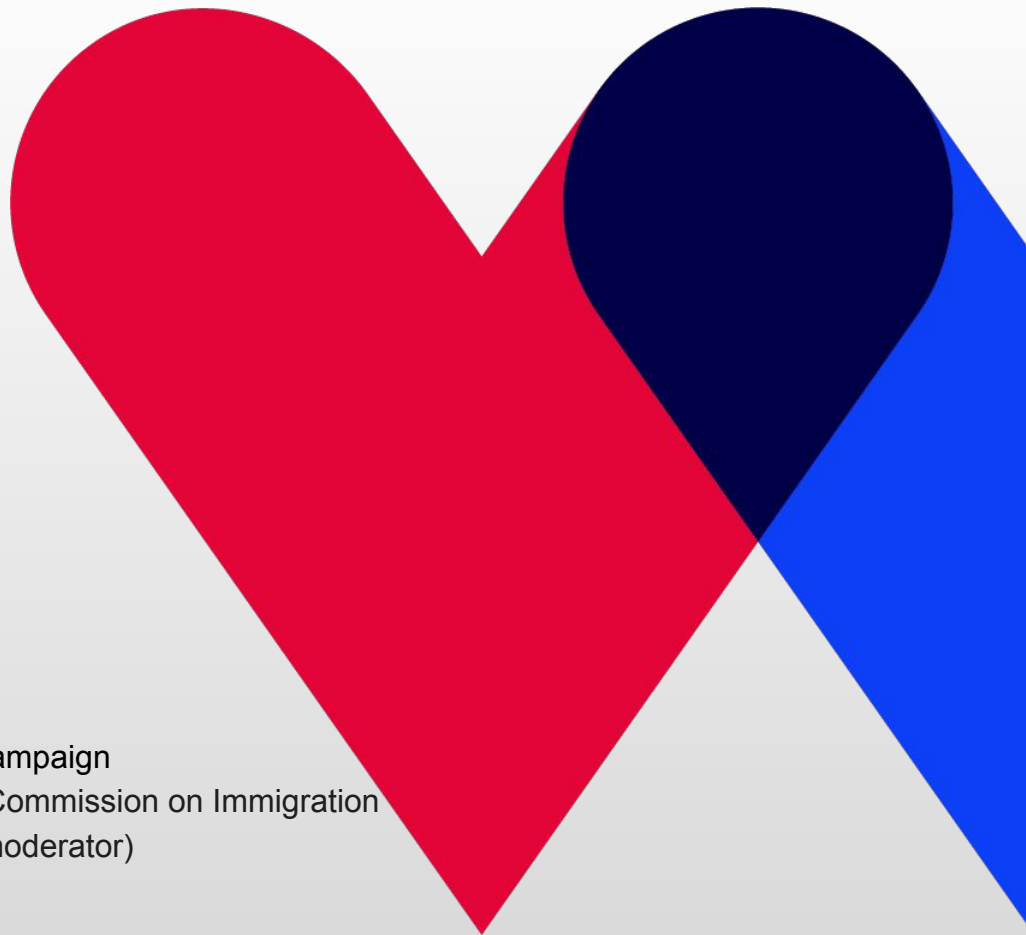
Jennie Guilfoyle, Legal Director, VECINA

Ilana Greenstein, Senior Attorney, Immigration Justice Campaign

Adonia Simpson, Director of Policy and Pro Bono, ABA Commission on Immigration

Karen Lucas, Consulting Senior Advisor, Welcome.US (moderator)

March 1, 2023



Asylum

- Granted for indefinite period
- Provides work authorization
- Pathway to green card after one year
- Pathway for spouse + children to get asylum
- Complex legal requirements
- Complex application
- Lengthy interview required
- Free

TPS

- Currently, approved through Nov 20, 2023
- Provides work authorization
- No pathway to green card
- No pathway for spouses and children
- Simpler legal requirements
- Fairly simple application
- No interview
- Fees required (can be waived, but need to apply for fee waiver)

Basic Eligibility for TPS

- Afghan national
- “Continuous residence” in US since March 15, 2022
 - Applicant has been residing in US
 - Exception: temporary departure for “brief, casual, and innocent” reason
- “Continuous physical presence” in US since May 20, 2022
 - Applicant has been physically in U.S.
 - Exception: temporary departure for “brief, casual, and innocent” reason
- Applicants have until November 20, 2023 to apply
 - Late initial filing options

- 8 CFR 244
- <https://www.uscis.gov/humanitarian/temporary-protected-status>

Bars to TPS

Firm resettlement

Persecutor of others

Terrorism-related
Inadmissibility Grounds
("TRIG")

Certain crimes

Felony conviction in U.S.

2+ misdemeanor conviction in U.S.

"Crimes involving moral turpitude"

Drug trafficking

Multiple convictions

Conviction of "particularly serious" crime

Bars to TPS, continued

- Firm Resettlement
 - Layovers/stops between evacuation and arrival to US are not an issue
 - Travel to country where applicant holds status or applied for status may be an issue

- TRIG (Terrorism-Related Inadmissibility Grounds)
 - June 2022: TRIG “situational exemptions” for certain Afghans:
 - Afghan Civil Servants
 - Afghan Allies
 - “Insignificant” or “limited” material support

Screening for Potential Bars

- Some of the bars are very concrete (conviction for one felony or more than one misdemeanor), but most are fact-based and open to interpretation.
- Some criminal grounds of inadmissibility do not require a conviction, and conviction has its own meaning in the immigration context.
- DHS has access to domestic and international criminal records databases, as well as DOS records.
- Help clients to understand the law.
- Check other applications filed.

To file or not to file for TPS?

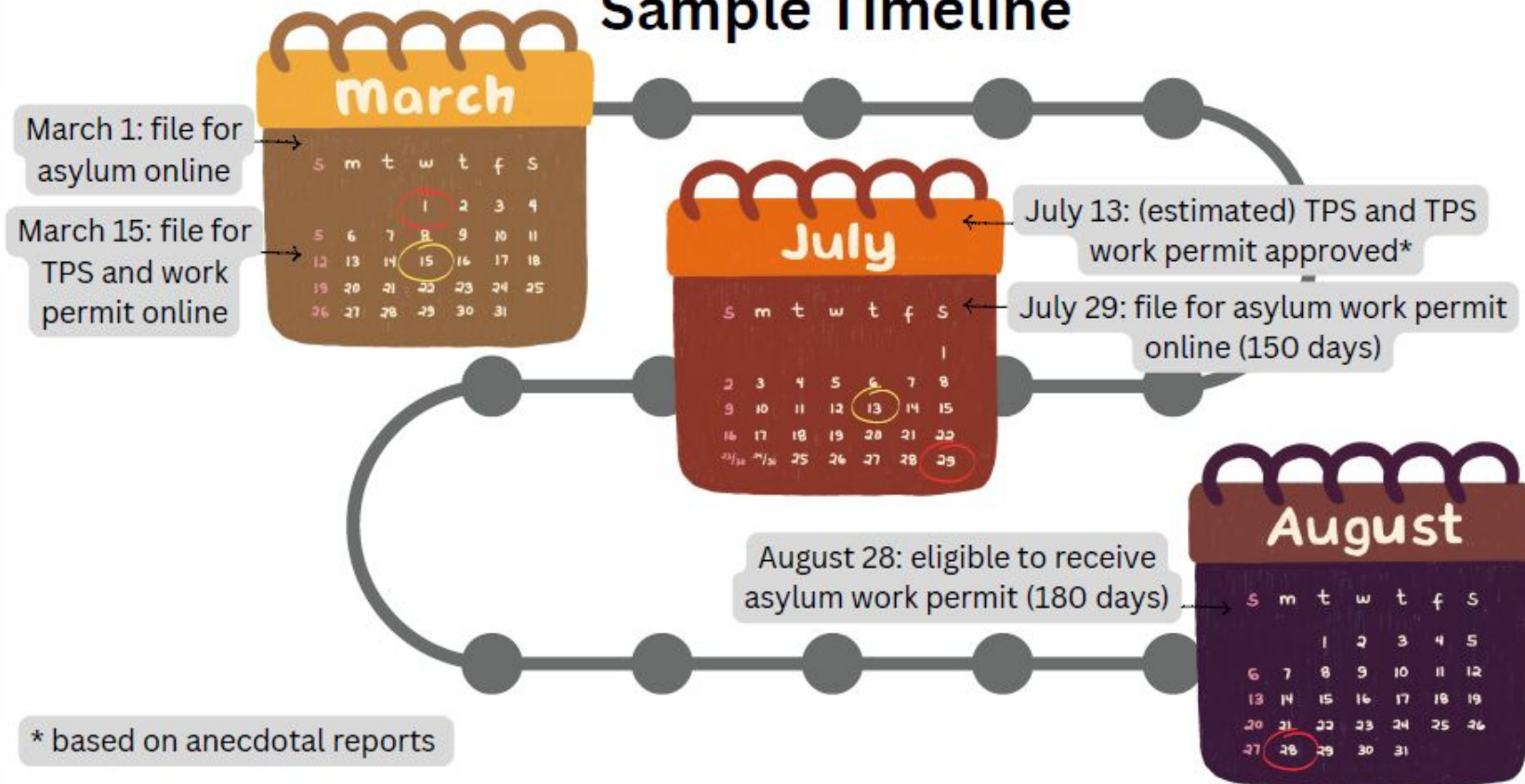
Pros

1. Maintain work authorization without gaps
 - a. Parole-based EADs expiring soon
 - b. 150-day rule for asylum-pending EADs
2. Extends asylum filing deadline
3. Maintains lawful status
4. Relative simplicity (simpler application and no interview)
5. Continued eligibility for ORR benefits

Cons

1. Expenditure of time and resources
2. Filing fees
3. Asylum might be a better forum in which to present arguments on potential bars
4. Denial of asylum application rather than referral to Immigration Court

Work Permit Eligibility Sample Timeline



Documenting the application (trends and RFEs)

- Physical Presence
 - Frequency?
- Identity/Nationality
 - Primary v. Secondary
 - Passport, birth certificate, other national ID document
- Military Service
 - (31a) military/police/vigilante:
 - Type of group, Name of squad, Time period, Rank or position, Name of commanding officer, Duties, Training, Combat experience, Interrogation experience, Whether participation was voluntary
 - (31b) prison/detention facilities:
 - Type of facility, Name of facility, Location, Time period, Rank or position, Duties, Training, Type of prisoners detained at the facility, Whether participation was voluntary

Military Service, continued

- (32) member of a group which used weapons:
 - Name of squad, Type of weapons, Time period, Training, Whether participation was voluntary
- (33) provide/transport weapons:
 - Type of weapons, To whom, Number of weapons, Time period, Purpose of the weapons, Whether participation was voluntary
- (34) military/weapons training:
 - Name of squad, Time period, Type of weapons, Who provided the training, Whether you've used weapons against others, Whether participation was voluntary

What happens if the application is denied?

- Asylum
 - Referral to immigration court (NTA)
 - Denial vs referral

- TPS
 - NTA?

- Strategic considerations - what's the best forum for addressing potential issues/bars?

Best Practices with Separate Representation on Asylum and TPS Applications

Consistency between applications is key

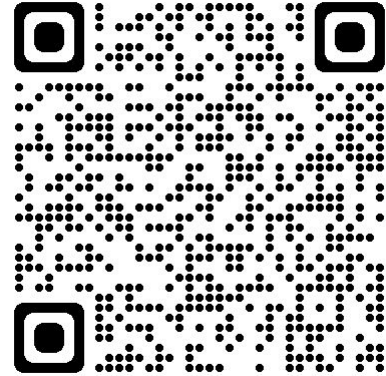
Many of the same bars apply

Do answers on TPS application match the asylum application?

Make sure clients have copies of all applications submitted and review them before filing a new application

Resources and getting involved

- [Welcome Legal Alliance](#)
- [TPS Clinic Toolkit for Legal Service Providers](#)
- VECINA TPS Teachable Course – coming soon!
- [Ask the Expert](#)
- [Volunteer](#)
- [Intake for Afghans needing assistance with asylum](#)





Welcome Legal Alliance

