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United States and Haiti: Temporary and permanent protection offered to Haitian asylum seekers in the United States; statistics on the number of Haitians granted asylum and Temporary Protected Status (TPS) (2008 - 2011)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Haitians Claiming Asylum in the United States

There are two ways in which a foreigner in the United States (US) can be granted asylum: affirmatively and defensively (US 3 Mar. 2011; *ibid.* Apr. 2010, 4). Affirmative requests are carried out through the US Citizenship and Immigration Services (CIS), whereby determination is made by a US CIS asylum officer (*ibid.*). The defensive process occurs when asylum is granted or rejected during removal proceedings by an immigration judge of the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) (*ibid.*).

Statistics from the US CIS on affirmative asylum applications filed by Haitian nationals for the years 2008 to 2010 indicate the following:

Fiscal Year	2010	2009	2008
Applications Filed	998	1,145	1,431
Cases Completed	1,018	1,422	2,169
Cases Approved	522	458	587
Cases Denied	73	48	64
Cases referred to immigration court	393	775	1,081
Cases administratively closed	30	141	437
Approval rate	55 %	37 %	35 %

(US 3 Mar. 2011)

Statistics from the US Department of Justice on defensive asylum claims decided by immigration courts for Haitian nationals indicate the following:

Fiscal Year	2010	2009	2008
Received	820	1,900	3,316
Granted	167	410	529
Denied	496	1,586	2,037

Abandoned	132	281	492
Withdrawn	347	259	435
"Other"	2,238	716	1,358

(US 2010; ibid. 2009; ibid. 2008)

The US Department of Justice notes that the category "Other" includes other ways in which asylum claims are completed, such as a change in venue to another court or the granting of another type of relief instead of asylum (US Jan. 2011, K1).

Temporary Protected Status for Haitians in the United States

Temporary Protected Status (TPS) is a temporary immigration status that may be provided to nationals of designated countries who are in the US and are unable to return to their home country because of "armed conflict, environmental disaster, or extraordinary and temporary conditions" (ibid. 13 July 2010; ibid. 24 Feb. 2011). The US Secretary of Homeland Security designated Haiti as a country eligible for TPS as a result of the earthquake that occurred in the country on 12 January 2010 (ibid. 13 July 2010). Haiti's TPS designation is for an 18-month period from 21 January 2010 to 22 July 2011 (ibid. 2 Mar. 2011; ibid. 24 Feb. 2011). Haitians who qualify for TPS are allowed to live and work in the US during this time (ibid. 13 July 2010). Specifically, US CIS outlines that during the designated time period, TPS beneficiaries

- are not removable from the US;
- cannot be detained by the Department of Homeland Security;
- can obtain an employment authorization document (EAD);
- may apply for travel authorization (US 24 Feb. 2011).

To qualify for TPS, the applicant must

- be a Haitian citizen (or a stateless person who last habitually resided in Haiti);
- have continuously resided in the US since 12 January 2010;
- have been present in the US since 21 January 2010;
- complete TPS application procedures;
- meet immigrant admissibility requirements (US 13 July 2010).

According to the US CIS website, applicants must submit documents to prove identity and nationality, such as a Haitian passport or birth certificate, an identity card, a naturalization document, baptismal certificate or school records (US 13 July 2010). Applicants who do not have such primary documents can submit secondary documents, such as affidavits from family members or friends (ibid.). Those without sufficient documentation can explain their situation to an official during the application process (ibid.). Applicants must also provide documents to show continuous residence in the US since 12 January 2010, such as employment records, rent receipts, bank statements, school records or other documents (ibid.).

Those eligible to apply for TPS include individuals who are in detention or have been given final orders for removal (ibid.). An immigration judge or the

Board of Immigration Appeals (BIA) can also grant individuals TPS (ibid.). The deadline for Haitians to apply for TPS was 18 January 2011 (US 2 Mar. 2011).

TPS does not lead to eligibility for permanent residence status in the US (US 13 July 2010). However, a TPS beneficiary is allowed to apply for non-immigrant status, file for adjustment of status or apply for other immigration benefits and protection (ibid.).

When a country is no longer designated as TPS, the beneficiary's status reverts to what it was before being granted TPS if he or she has not acquired a new status (US 21 Jan. 2010).

Ineligibility for Temporary Protected Status

Applicants who have been convicted of a felony or two or more misdemeanours in the US are ineligible for TPS (US 13 July 2010; ibid. 21 Jan. 2010). According to the US CIS, there are also other criminal and security-related obstacles that can cause an applicant to be ineligible for TPS, such as "participating in the persecution of another individual or engaging in or inciting terrorist activity" (US 13 July 2010). Haitians who arrived in the US after 12 January 2010 are also ineligible for TPS (ibid.). However, applicants denied TPS can file an appeal (ibid.).

Statistics on Temporary Protected Status

According to statistics provided by the US CIS, as of 1 March 2011, there were approximately:

- 55,665 TPS applications accepted (complete at time of filing);
- 47,290 TPS applications approved;
- 3,401 TPS applications pending (US 3 Mar. 2011); and
- 4,974 TPS applications denied (ibid. 7 Mar. 2011).

In December 2010, Associated Press (AP) reported that 61,000 Haitians had applied for TPS (20 Dec. 2010).

Deportation of Haitians by the United States

The Canadian Press reports that some Haitians in the US are reluctant to apply for TPS because they fear that if government authorities were aware of their presence, it would lead to prison or deportation (20 Dec. 2010). Although the US suspended the deportation of Haitians after the 12 January 2010 earthquake, media sources report that in January 2011, the United States (US) resumed deportation of some Haitians (ibid.; ACLU 26 Jan. 2011; Reuters 20 Jan. 2011). Prior to the earthquake, approximately 30,000 Haitians had orders to leave the US (Canadian Press 20 Dec. 2010; *TIME* 15 Jan. 2010).

A spokesperson for US Immigration and Customs Enforcement (ICE) told Reuters that 27 Haitians, who had been convicted of crimes in the US, were deported on 20 January 2011 (20 Jan. 2011). She also said that they are the first of approximately 700 Haitians who have been classified as "criminal aliens" and are planned to be returned to Haiti (20 Jan. 2011). Associated Press (AP) notes

that 26 of the repatriated Haitians were criminal convicts, while one was a legal resident who was judged to be a "national security threat" (1 Mar. 2011). A press release by the American Civil Liberties Union (ACLU) reports that Department of Homeland Security officials have stated that any Haitians that do not qualify for TPS may be considered for deportation, and that priority would be allotted to Haitians who committed "serious offences" (26 Jan. 2011). This information could not be corroborated by the sources consulted by the Research Directorate.

Sources expressed concern that the deportations resumed despite a cholera outbreak that has killed approximately 4,000 people in Haiti (Reuters 20 Jan. 2011; AP 1 Feb. 2011). The ACLU of Florida, in a letter addressed to the US President and the Secretary of Homeland Security, warned that conditions in Haiti are "too dangerous" to safely return Haitian nationals, citing the cholera epidemic, the "deplorable conditions" of Haitian jails where repatriated Haitians are sent, and "pressing human rights and humanitarian concerns" (29 Dec. 2010). Several other organizations have expressed similar concerns, including the Inter-American Commission on Human Rights (IACHR) (AFP 4 Feb. 2011), the American Friends Service Committee (States News Service 12 Feb. 2011), and other advocates (CMC 13 Jan. 2011).

Media sources reported that, after being incarcerated in a Haitian prison, one of the deported Haitians died while showing symptoms of cholera (AFP 4 Feb. 2011; AP 1 Mar. 2011; *The Miami Herald* 3 Feb. 2011). The ACLU of Florida also stated that the US has a history of "discriminatory treatment" towards Haitians claiming asylum (ACLU 29 Dec. 2010).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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