

TPS FILING

Section 1244.6 of the C.F.R. states that an application must be made in accordance with section 103.2 except as provided otherwise. Section 103.2(a)(1) states that every application shall be filed in accordance with the instructions on the form. In addition, section 103.2(a)(6) states that an application shall be filed with the INS office or Service Center with jurisdiction over the application or place of residence of applicant, as indicated in the instructions. The 1-821 application for Temporary Protected Status instructs the applicant to file the form with "[t]he USCIS office having jurisdiction over your place of residence ..." Thus, unless provided otherwise in section 1244, the base rule for filing a TPS application is to file it with the USCIS.

Section 1244.7 addresses the filing of the TPS application. It states in paragraph (a) that the application "shall be filed with the director having jurisdiction over the applicant's place of residence." Section (b) addresses when an applicant is already in proceedings. It states that if the applicant is in proceedings when a country is designated, they must be given written notice concerning TPS. It then states that the applicant shall have the opportunity to submit a TPS application in accordance with paragraph (a), i.e. filed with the director, during the published registration period unless the charges of removability, if established, would render the applicant ineligible for TPS. In such a case, "[e]ligibility for Temporary Protected Status ... shall be decided by the Executive Office for Immigration Review during such proceedings." 8 C.F.R. § 1244.7. Although section (b) states that the application shall be filed with the director unless the applicant could be determined to be ineligible for TPS, it only states an alternative for determining eligibility in such an instance; it does not state an alternative for filing. When read in conjunction with section 103.2, this would indicate that, because no alternative is provided, the application should still be filed with USCIS.