



HUNTON & WILLIAMS LLP  
1900 K STREET, N.W.  
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500  
FAX 202 • 778 • 2201

WALFRIDO J. MARTINEZ  
DIRECT DIAL: 212 • 309 • 1316  
EMAIL: [wmartinez@hunton.com](mailto:wmartinez@hunton.com)

---

**On Behalf of:** Alliance of Baptists, Minister for Partner Relations • American Immigration Lawyers Association • American Immigration Lawyers Association, DC Chapter • American University's Immigrant Rights Coalition, Labor and Trafficking Committee • ASISTA • Association of Haitian Professionals • Bellevue/NYU Program for Survivors of Torture • Capital Area Immigrants' Rights (CAIR) Coalition • CASA de Maryland • Catholic Charities Community Services, Archdiocese of New York • Catholic Charities Immigration Legal Services of Baltimore • Catholic Charities of the Archdiocese of Washington • Democracy for Haiti • The Episcopal Church, and individually, The Most Rev. Katharine Jefferts Schori, Presiding Bishop and Primate, The Episcopal Church; Rt. Rev. Jean Zache Duracin, Bishop of Haiti; Rt. Rev. John Bryson Chane, D.D., Bishop of Washington; Rt. Rev. Leo Frade, Bishop of Southeast Florida; Ven. Fritz Bazin, Archdeacon for Immigration and Social Concerns, Episcopal Diocese of Southeast Florida; Rt. Rev. Steven Andrew Miller, Bishop of Milwaukee; Rt. Rev. Pierre Whalon, Bishop of the Convocation of Episcopal Churches in Europe • Florida Coastal Immigrant Rights Clinic • Florida Immigrant Advocacy Center • Fondasyon Mapou • The George Washington University Immigration Clinic • The Georgetown Law Chapter of Amnesty International • Greater Washington Haiti Relief Committee • *Hogar* Immigrant Services, Catholic Charities – Diocese of Arlington • Immigrant and Refugee Rights Project, Washington Lawyers' Committee for Civil Rights & Urban Affairs • Immigrant Law Center of Minnesota • IRATE & First Friends • Jewish Law Students Association @ Georgetown Law • Jubilee Church, Washington, D.C. • Law Office of David R. Saffold, Immigration Legal Services • Lazarus House Church • Legal Services of New Jersey • Lutheran Immigration and Refugee Service • Maryland Immigrant Rights Coalition • Mission Board & Christian Education Board of Calvary Baptist Church, Washington, D.C. • National Immigrant Justice Center • National Immigration Project of the National Lawyers Guild • Pennsylvania Immigration Resource Center • Political Asylum/Immigration Representation Project • Potter's House Church, Washington, D.C. • C. Mario Russell, Esq., Adjunct Professor, Refugee and Immigrant Rights Clinic, St. John's School of Law at Catholic Charities, Archdiocese of New York • Sisters of Mercy of the Americas West, Midwest Community Justice Team • Sisters of Mercy of the Americas West, Midwest Community Leadership Team • World Relief • World Relief Baltimore Immigration Clinic

---

March 15, 2010

**VIA HAND DELIVERY**

Alejandro Mayorkas, Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave., N.W.  
Room 5110  
Mail Stop 2000  
Washington D.C. 20529-2000

**Re: Temporary Protected Status for Haitians  
Request for Additional Relief**



Alejandro Mayorkas, Director, USCIS

Page 2

Dear Director Mayorkas:

We write on behalf of Catholic Charities Immigration Legal Services of the Archdiocese of Washington and the above-referenced organizations and individuals, who are deeply involved in efforts to assist underserved communities in the United States on immigration and other matters. As a result of recent catastrophic events in Haiti, these organizations have become focused on helping Haitians located in the United States provide vital financial assistance to their families back in Haiti. We strongly applaud the Department of Homeland Security's (DHS) recent Designation of Haiti for Temporary Protected Status (TPS) in the United States in response to the earthquake and its impacts on Haiti and its citizens, and appreciate your statement that you will consider TPS applications with a "generosity of spirit."

As you know, the needs of Haitians will far exceed the direct assistance pledged by countries and international organizations around the world. Thus, in furtherance of the spirit of generosity, on behalf of the organizations listed above, we request that the United States Citizenship and Immigration Services (USCIS) take additional actions that would provide immediate and invaluable additional assistance to Haiti at a relatively low cost. Specifically, as further discussed below, USCIS should issue further guidance or other clarification for streamlining the fee waiver process to make individual fee waivers more routine and/or to reduce the relevant fees related to the various permits or authorizations Haitian TPS applicants must secure under the program. Such actions by USCIS could substantially and immediately increase the amount of financial aid sent back to Haiti in the form of remittances.

The recent earthquake in Haiti caused unprecedented damage to the island and its economy. According to a recent report by economists from the Inter-American Development Bank, the damage is conservatively estimated at \$8.1 billion-\$13.9 billion, roughly twice the value of the country's annual economy. The report estimated one out of every 50 Haitians died in the earthquake and that, given Haiti's population and economy, the earthquake was one of the most destructive in modern times.<sup>1</sup> Countries, such as the United States, have pledged many billions of dollars to help rebuild Haiti, but it is unclear how much will ultimately be needed and whether such an amount can ever be raised through direct bilateral or multilateral aid. Moreover, these economists found that natural disasters can further exacerbate long term poverty.<sup>2</sup> The threat of further damage from additional quake activity continues to be present.

---

<sup>1</sup> Inter-American Development Bank, *Haiti Reconstruction Cost May Near \$14 Billion, IDB Study Shows* (Feb 16, 2010), <http://www.iadb.org/features-and-web-stories/2010-02/english/haiti-reconstruction-cost-may-near-14-billion-idb-study-shows-6528.html>.

<sup>2</sup> *Id.*

Clearly, every effort should be made to provide additional economic support to Haiti, and this is why TPS designation is so critical. Similarly, as DHS says in its notice designating Haiti for TPS, this status will allow the estimated 100,000-200,000 eligible Haitians in the United States to seek TPS and work permits in order to provide remittances to their relatives in Haiti. As DHS Secretary Janet Napolitano explained in making the TPS designation, TPS provides a “timeout” for Haitians in the United States to “have some resources then, to send back to Haiti themselves.” Secretary Napolitano accurately described the remittances as “a form of indirect economic relief” that provides a vital supplement to the direct aid provided by the United States and other countries.<sup>3</sup> Indeed, the formal designation of TPS states that allowing eligible Haitians to remain in the United States is “an important complement to the U.S. government’s wider disaster relief and humanitarian aide [*sic*] response underway on the ground in Haiti.”<sup>4</sup>

Remittances play a critical role in the economy of Haiti and the survival of its people. It is estimated that Haiti receives between \$1.5 and \$1.8 billion in remittances each year<sup>5</sup> and that in 2009, at least one third of all Port-au-Prince households received a recent gift of money, often in the form of remittances.<sup>6</sup> Indeed, Haiti is one of the top ten countries in annual remittances, with remittances representing the highest share of gross domestic product (21.2 percent share of GDP in 2006).<sup>7</sup> One expert noted that if TPS resulted in a 20 percent

---

<sup>3</sup> Stephen Kaufman, *Haitians in United States Given Temporary Status to Remain*, America.gov, Jan. 16, 2010, <http://www.america.gov/st/development/2010/January/20100116095804esnamfuak0.6290094.html>.

<sup>4</sup> Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476, 3477 (Jan. 21, 2010).

<sup>5</sup> Dilip Ratha, *Helping Haiti Through Migration and Remittances*, People Move, [blogs.worldbank.org](http://blogs.worldbank.org/peoplemove/helping-haiti-through-migration-and-remittances), Jan. 19, 2010, <http://blogs.worldbank.org/peoplemove/helping-haiti-through-migration-and-remittances>.

<sup>6</sup> OECD/UNDP Partnership for Democratic Governance, *Promoting Haiti's Reconstruction: Service Delivery Guidance* 4 n.16 (Jan. 2010), available at [http://www.oecd.org/document/8/0,3343,en\\_39406396\\_39406575\\_44537928\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/8/0,3343,en_39406396_39406575_44537928_1_1_1_1,00.html).

<sup>7</sup> Migration Policy Institute, MPI Data Hub, *The Global Remittances Guide*, at <http://www.migrationinformation.org/datahub/remittances.cfm/>; Migration Policy Institute, MPI Data Hub, *Remittances Profile: Haiti*, at <http://www.migrationinformation.org/datahub/remittances/Haiti.pdf>.

increase in the average remittance per migrant, this might result in an additional \$360 million remittance flows in 2010.<sup>8</sup> If TPS is extended beyond 18 months, additional flows could exceed \$1 billion over three years.<sup>9</sup>

Thus, it is clearly in the interests of the world community and Haiti in particular to maximize the prompt availability and amount of remittances from Haitians in the United States. Your office and DHS have taken the first step in designating Haiti for TPS. However, given the “unique, specific, and extreme factors” surrounding the earthquake and its impact on Haiti,<sup>10</sup> we would appreciate your prompt consideration of additional steps that your Agency can take in this regard.

Currently, under TPS, most applicants must submit \$130 for the TPS (I-821) application and biometrics fees, and an additional \$340 for an employment authorization (I-765) application. This means that a TPS applicant must submit \$470 simply to apply for TPS and employment authorization, and substantial additional amounts to waive inadmissibility and/or appeal a decision, if appropriate.<sup>11</sup> Although nearly all of these fees are waivable for an individual applicant, that process is slow and complex for the applicant, who must secure and submit a significant amount of information to demonstrate an inability to pay or substantial hardship (e.g., disability, age, homelessness, unemployment). Furthermore, it is not clear how strictly USCIS will view applications for fee waivers. We understand that to date the number of applications is quite low. We are aware of instances where the fees have deterred the individuals from proceeding or fee waiver applications have been rejected as inadequately prepared. We are concerned that this might be more widespread and may help to explain the low number of applications to date.<sup>12</sup>

Since a major purpose of TPS designation for Haiti is to augment aid through an increase in remittances, it would be prudent for USCIS to direct its “generosity of spirit” toward adopting

---

<sup>8</sup> Ratha, *supra*.

<sup>9</sup> *Id.*

<sup>10</sup> Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. at 3477.

<sup>11</sup> The fee for a waiver of INA 212(a) inadmissibility (I-601) is \$545 and the fee for an appeal of a denial of TPS (I-290B) is \$385. There is also a fee for an advance parole travel document (I-131) application which, unlike the other fees, is not waivable.

<sup>12</sup> See Elizabeth Llorente, *28,000 Haitians in U.S. Seek Protected Status*, The Record (Bergen County, NJ), March 5, 2010, available at [http://www.northjersey.com/news/86498372\\_28\\_000\\_Haitians\\_in\\_U\\_S\\_seek\\_protected\\_status.html](http://www.northjersey.com/news/86498372_28_000_Haitians_in_U_S_seek_protected_status.html).

a policy of great leniency and flexibility in more routinely granting the fee waivers for Haitians in the United States, and not simply based on individual showing of inability to pay. USCIS could adopt a policy providing that fees be waived on the grounds that such a waiver would help augment the amount and availability of remittances sent back to Haiti. For example, assuming quite conservatively that 20 percent of eligible Haitians sought TPS and work permits, the fees generated from that process would equal some \$9 to \$19 million. While we recognize that waiving such amounts would reduce the funding to USCIS from this source, it would be an amount worth redirecting to increased remittances to Haiti.<sup>13</sup> At the very least, the fees for TPS and work permits could be substantially reduced. The same logic would apply to the additional fees required for appeal and waiver on grounds of admissibility, which are quite costly. Thus, we ask that you consider ways to make fee waivers for these applications more routine and the fees less costly.<sup>14</sup>

If USCIS is not inclined to grant this more lenient waiver policy or fee reduction as a general matter, it might, consistent with its “generosity of spirit,” create a reasonable presumption of eligibility for TPS applicants seeking fee waivers in order to provide remittances to citizens in Haiti, regardless of personal hardship or inability to pay. For example, an applicant seeking TPS employment authorization for purposes of sending remittances could be considered to have established a *prima facie* case of eligibility for the waiver. See 8 U.S.C. § 1254a(a)(4) (describing *prima facie* case of eligibility for TPS benefits). Alternatively, USCIS might consider remittances to be “reasonable and essential [expenditures] to [an applicant’s] physical well being” for purposes of determining ability to pay under 8 C.F.R. § 244.20(b). These steps would enhance the ability of Haitian TPS applicants to secure waivers and use that money for additional remittances.

There are certainly additional benefits to taking these actions. For one, encouraging Haitians to apply for TPS through more routine fee waivers, presumptions of eligibility, or reduced fees would encourage Haitians in the United States to seek legal work permits and thus join the ranks of documented workers. This would not only encourage lawful employment but would generate tax revenues otherwise foregone through unreported wages. Moreover, it is

---

<sup>13</sup> We also note that under USCIS regulations, if an officer is satisfied that an applicant has an inability to pay, he or she shall not deny a fee waiver due to the cost of administering the program. 8 C.F.R. § 244.20(d).

<sup>14</sup> This type of consideration of remittances would be consistent with provisions in the TPS statute waiving certain grounds for inadmissibility for humanitarian purposes, assuring family unity and serving the public interest. 8 U.S.C. § 1254a(c)(2).

far more likely that Haitians granted work permits will be encouraged to pursue legal status in the United States, if they become eligible to do so.<sup>15</sup>

We recognize that these requests might be considered extraordinary, but so is Haiti's unprecedented need. More significantly, additional action by USCIS would strongly support the Administration's efforts to make Haitian people the drivers of their nation's recovery. We believe this request meets the "unique, specific, and extreme" factors cited by your Agency, and thus would not create a precedent for all other countries in future TPS determinations. It also is fully consistent with the "generosity of spirit" that your Agency has promised in the consideration of fee waivers.

In addition to the fee waiver issue, there are practical steps USCIS can take that are relatively simple and straightforward that could further streamline the TPS process, including:

- Designating a specific person to answer attorney and representative questions about problematic cases.
- Committing to accepting the Haitian consular identification (ID) as positive proof of Haitian nationality, whether or not the applicant has any other evidence. The Haitian Embassy has stated it will issue these IDs to Haitians in the United States on an expedited basis, but USCIS has not formally said it would accept them.
- Committing to working with the Application Support Centers to ensure they will accept alternative IDs, including the Haitian consular ID, in order to admit TPS applicants for the required fingerprints and biometrics. This would be in lieu of more formal identification, such as driver's licenses or passports.
- Easing the restrictions on the ability of Haitians who have travelled outside the United States after the earthquake to apply for TPS. Given the unprecedented tragedy in Haiti, Haitians should not be penalized for seeking to travel to their country to look after family and property immediately after the earthquake.
- Providing that applicants for TPS who do not seek employment authorization not be required to fill out Form I-765.

---

<sup>15</sup> The naturalization rate of Haitians is very high. Haitian immigrants were more likely than other immigrant groups to be naturalized U.S. citizens. Among the Haitian foreign born, 48.4 percent were naturalized U.S. citizens, compared to 43.0 percent among the overall foreign-born population. See Aaron Terrazas, *Haitian Immigrants in the United States*, Migration Policy Institute, Jan. 2010, <http://www.migrationinformation.org/USfocus/display.cfm?id=770#9>. Thus, Haitians appear to be quite invested in the United States and in becoming American citizens.



Alejandro Mayorkas, Director, USCIS

Page 7

Accordingly, we request that USCIS take the actions discussed above, including the provision of guidance or clarifications, to streamline the waiver process and make those waivers more routine to help the Haitians in the United States help rebuild their country and its economy.

We thank you for your consideration of these matters and look forward to speaking with you about it.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Walfrido J. Martinez', written over the printed name and title.

Walfrido J. Martinez  
Managing Partner

cc: Mariela Melero, Chief, USCIS Office of Public Engagement (via email)  
Mary Herrmann, USCIS Office of Public Engagement (via email)