

[Federal Register: October 29, 2007 (Volume 72, Number 208)]
[Notices]
[Page 61172-61177]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr29oc07-70]

=====

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2416-07; DHS Docket No. USCIS-2007-0052]
RIN-1615-ZA54

Termination of the Designation of Burundi for Temporary Protected
Status; Automatic Extension of Employment Authorization Documentation
for Burundi TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of
Homeland Security (DHS).

ACTION: Notice.

SUMMARY: Following a review of country conditions and consultations
with the Secretary of State and other appropriate Government agencies,
the Secretary of Homeland Security has determined that the temporary
protected status (TPS) designation for Burundi should be terminated.
This termination will not take effect until May 2, 2009, to provide for
an orderly transition. This Notice informs the public of the
termination of the TPS designation for Burundi and sets forth
procedures for nationals of Burundi (or aliens having no nationality
who last habitually resided in Burundi)

[[Page 61173]]

with TPS to re-register for TPS benefits. Re-registration is limited to
persons who have previously registered for TPS under the designation of
Burundi and whose application has been granted or remains pending.
Burundians (or aliens having no nationality who last habitually resided
in Burundi) who have not previously been granted TPS, or who do not
already have a pending application for TPS under the designation for
Burundi, may not file under Late Initial Filing (LIFs) provisions,
which are only allowed during an extension of a designation of TPS.

Given the timeframes involved with processing TPS re-registration
applications, the Department of Homeland Security (DHS) recognizes the
possibility that re-registrants may not receive a new Employment
Authorization Document (EAD) until after their current EAD expires on
November 2, 2007. Accordingly, this Notice automatically extends the
validity of EADs issued under the TPS designation of Burundi for six
months, through May 2, 2008, and explains how TPS beneficiaries and
their employers may determine which EADs are automatically extended.
New EADs with the May 1, 2009, expiration date will be issued to

eligible TPS beneficiaries who timely re-register and apply for an EAD.

DATES: The termination of the TPS designation for Burundi is effective 12:01 a.m., local time, May 2, 2009. To maintain TPS benefits for the 18 months leading up to the effective date of the termination, Burundi TPS beneficiaries must comply with the re-registration requirements described in this Notice. The 60-day re-registration period begins October 29, 2007, and will remain in effect until December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Shelly Hock, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272-1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at <http://www.uscis.gov>. Note: The phone number provided here is solely for questions regarding this notice and the information contained herein. It is not for individual case status inquiries. Applicants seeking information about the status of their individual case can check Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1-800-375-5283 (TTY 1-800-767-1833).

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act--Immigration and Nationality Act
ASC--USCIS Application Support Center
DHS--Department of Homeland Security
DOS--Department of State
EAD--Employment Authorization Document
Secretary--Secretary of Homeland Security
TPS--Temporary Protected Status
USCIS--U.S. Citizenship and Immigration Services

What authority does the Secretary of Homeland Security have to terminate the designation of Burundi for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1), authorizes the Secretary of Homeland Security (Secretary), after consultation with appropriate agencies of the Government, to designate a foreign state (or part thereof) for TPS. The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultations with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, the length of an extension. 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, he must terminate the designation. Such termination may not take effect earlier than 60 days after the date of Notice of termination is published in the Federal Register. 8 U.S.C. 1254a(b)(3)(B). The Secretary may determine the appropriate effective

date of the termination for the purpose of providing an orderly transition. 8 U.S.C. 1254a(b)(3)(B); 8 U.S.C. 1254a(d)(3).

Why did the Secretary decide to terminate the TPS designation of Burundi?

On November 4, 1997, the Attorney General published a Notice in the Federal Register, at 62 FR 59735, designating Burundi for TPS based upon ongoing armed conflict and extraordinary and temporary conditions within the country. The Attorney General extended the designation finding that the conditions prompting designation continued to exist (63 FR 59334). In November 1999, the Attorney General extended and re-designated TPS for Burundi by publishing a notice in the Federal Register at 64 FR 61123. Since that time, TPS for Burundi has been extended seven times based upon a determination that the conditions warranting the designation continued to be met. 65 FR 67404 (November 9, 2000); 66 FR 46027 (August 31, 2001); 67 FR 55875 (August 30, 2002); 68 FR 52405 (September 3, 2003); 69 FR 60165 (October 7, 2004); 70 FR 52425 (September 2, 2005); 71 FR 54300 (September 14, 2006). The most recent extension became effective on November 3, 2006, and is due to expire on November 2, 2007.

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Burundi. Based upon this review, DHS has determined that the TPS designation of Burundi should be terminated because the armed conflict is no longer ongoing and because the extraordinary and temporary conditions that formed the basis of the designation have improved to such a degree that they no longer prevent Burundians (or aliens having no nationality who last habitually resided in Burundi) from returning to their home country in safety.

A comprehensive cease-fire was signed in September 2006 with the final remaining rebel group, the Parti Pour la Liberation du Peuple Hutu-Forces Nationales de Liberation (Party for the Liberation of the Hutu People-National Liberation Forces) (also known as the PALIPEHUTU-FNL or the FNL). The security situation has also improved in the last year. As of December 2006, 21,769 former combatants of the armed forces and former rebel groups have demobilized. Furthermore, since 2002, 319,000 Burundian refugees have returned to their homes. In addition, the Government of Burundi requested that the United Nations Operation in Burundi (ONUB) terminate at the end of 2006, and the United Nations role has changed from peacekeeping to supporting the development process. Since the last extension of TPS for Burundi, the country has shown positive developments in what were then ongoing peace talks with the FNL. This year, the Government of Burundi and the FNL have begun steps to reintegrate former FNL rebels into society. The implementation of a general cease-fire throughout the country, progress in the efforts of reconstruction and rebuilding, and active encouragement of refugees to repatriate indicate that conditions that warranted the initial designation of TPS in 1997 and the re-designation in 1999 no longer continue to be met. There are

[[Page 61174]]

approximately 30 nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who have been granted TPS.

Based upon this review, the Secretary finds, after consultation with the appropriate Government agencies, that the armed conflict is no longer ongoing, that the extraordinary and temporary conditions that

prompted the designation and re-designation of Burundi for TPS no longer prevent Burundians (or aliens having no nationality who last habitually resided in Burundi) from returning in safety, and that the designation of Burundi for TPS should be terminated. See 8 U.S.C. 1254a(b)(3)(A); 8 U.S.C. 1254(b)(3)(B).

Notice of Termination of the Designation of Burundi for TPS

By the authority vested in me under section 244(b)(3) of the Act, and after consulting with the appropriate Government agencies, I have determined that the conditions that prompted designation of Burundi for TPS no longer support the TPS designation. Accordingly, I order as follows:

(1) The designation of Burundi under section 244(b)(1)(C) of the Immigration and Nationality Act is terminated effective 12:01 a.m., local time, May 2, 2009. 8 U.S.C. 1254a(b)(3)(B), (d)(3).

(2) To maintain TPS and related benefits until the effective date of the termination (May 2, 2009), a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who was granted TPS and who has not had TPS withdrawn must re-register during the 60-day re-registration period from October 29, 2007 until December 28, 2007.

(3) To re-register, aliens must follow the filing procedures set forth in this Notice.

Dated: October 11, 2007.
Michael Chertoff,
Secretary.

Temporary Protected Status Filing Guidelines

If I currently have benefits through the TPS designation of Burundi and would like to maintain those benefits until the effective date of the termination (May 2, 2009), do I need to re-register for TPS?

Yes. If you already have received TPS benefits through the TPS designation of Burundi, your benefits will expire at 11:59 p.m. on November 2, 2007. All TPS beneficiaries must comply with the re-registration requirements described in this Notice in order to maintain TPS benefits through May 1, 2009. TPS benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits until the effective date of the termination (May 2, 2009)?

Please submit the proper forms and fees according to Table 1 below. All applicants are strongly encouraged to pay close and careful attention when filling out the required forms to help ensure that their dates of birth, alien registration numbers, spelling of their names, and other required information are correctly entered on the forms. Aliens who have previously registered for TPS, but whose applications remain pending, should follow these instructions if they wish to renew

their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicant. All fee waiver requests should be filed in accordance with 8 CFR 244.20. If you received an EAD during the most recent registration period, please submit a photocopy of the front and back of your EAD.

Table 1.--Application Forms and Application Fees

| | If-- | And-- | Then-- |
|-----------|--|--|---|
| I- | You are re-registering for TPS. | You are applying for an extension of | You must complete and file the Form |
| I- | | your EAD valid through May 1, 2009. | 765, Application for Employment Authorization, |
| with | | | the fee of \$340 or a fee waiver request. You must also submit Form |
| I- | | | 821, Application for Temporary Protected Status, with no fee. |
| I- | You are re-registering for TPS. | You are NOT applying for renewal of your | You must complete and file the Form |
| I- | | EAD. | 765 with no fee |
| and | | | Form I-821 with no fee. Note: DO NOT check any box for the question ``I |
| am | | | applying for'' listed on Form I-765, as you are |
| NOT | | | requesting an EAD benefit. |
| I- | Your previous TPS application is still | You are applying to renew your | You must complete and file the Form |
| I- | pending. | temporary treatment | 765 with the fee |
| of | | benefits (i.e., an EAD with category | \$340 or a fee waiver request. |
| You | | ``c-19'' on its face). | must also submit Form I-821, Application for Temporary |
| Protected | | | |

Status, with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2).

[[Page 61175]]

Table 2.--Biometric Service Fees

| If-- | And-- | Then-- |
|--|--|--|
| You are 14 years of age or older. fee | 1. You are re-registering for TPS, or 2. Your TPS application is still pending and you are applying to renew temporary treatment benefits (i.e., EAD with category ``C-19`` on its face). | You must submit a Biometric Service fee of \$80 or a waiver request. |
| You are younger than 14 years of age. fee | You are applying for an EAD. | You must submit a Biometric Service fee of \$80 or a waiver request. |
| You are younger than 14 years of age. | You are NOT applying for an EAD. | You do NOT need to submit a Biometric Service fee. |

What edition of the Form I-821 should I submit?

Only the edition of Form I-821 dated November 5, 2004, or later will be accepted. The revision date can be found in the bottom right corner of the form. The proper form can be found on the Internet at <http://www.uscis.gov> or by calling the USCIS forms hotline at 1-800-870-3676.

Where should I submit my application for TPS?

Please reference Table 3 below to see where to mail your specific application.

Table 3.--Application Mailing Directions

 -
 If-- Then Mail to-- Or, for Non-United States Postal Service (USPS) deliveries, Mail to--

 -
 You are applying for re- and registration or applying to renew your temporary TPS treatment benefits. U.S. Citizenship and Immigration Services, Attn: TPS Burundi, P.O. Box 6943, Chicago, IL 60680-6943. U.S. Citizenship and Immigration Services, Attn: Burundi, 427 S. LaSalle--3rd Chicago, IL 60605-1029.
 Floor,
 You were granted TPS by an Immigration Judge or the Board of Immigration Appeals. U.S. Citizenship and Immigration Services, Attn: TPS Burundi, P.O. Box 8677, Chicago, IL 60680-8677. U.S. Citizenship and Immigration Services, Attn: Burundi, [EOIR/Additional Documents], 427 S. LaSalle--3rd Chicago, IL 60605-1029.
 Floor,

 -

How will I know if I need to submit supporting documentation with my application package?

See Table 4 below to determine if you need to submit supporting documentation.

Table 4.--Who Should Submit Supporting Documentation?

 -
 If-- Then--

 -
 One or more of the questions listed in explanation, Part 4, Question 2 of Form I-821 applies to you. You must submit an on a separate sheet(s) of paper, and/or additional documentation must be provided. You may NOT file electronically.
 You were granted TPS by an Immigration Judge or the Board of Immigration Appeals. You must include evidence of the grant of TPS (such as an order from the Immigration

Judge) with your application package. You may NOT file electronically.

-

Can I file my application electronically?

If you are filing for re-registration and do not need to submit supporting documentation with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: <http://www.uscis.gov>.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. See 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A). See 8 U.S.C. 1254a(c)(2)(B)(ii).

If I currently have TPS, can I lose my TPS benefits?

An individual granted TPS will have his or her TPS withdrawn if the alien is not in fact eligible for TPS, if the alien fails to timely re-register for TPS without good cause, or if the alien fails to maintain continuous physical presence in the United States. See 8 U.S.C. 1254a(c)(3)(A)-(C).

Does TPS lead to lawful permanent residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence or confer any other immigration status. 8 U.S.C. 1254a(f)(1) and (h). When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status that they held prior to TPS (unless that status has expired or

[[Page 61176]]

been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation, and who do not hold any other lawful immigration status, are expected to plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for nonimmigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or

protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. See 8 U.S.C. 1254a(f)(4).

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. See 8 U.S.C. 1158(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Does this Notice allow nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who entered the United States after November 9, 1999, to file for TPS?

No. This Notice terminating the TPS designation for Burundi does not change the required dates of continuous residence and continuous physical presence in the United States. This Notice does not expand TPS eligibility to those who are not currently registered for TPS under the designation of Burundi.

May I register under the late initial registration provisions at this time?

No. Certain nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who have not previously applied for TPS cannot establish eligibility for TPS under the "late initial registration" provisions. Late initial filings are only permitted during an extension of a TPS designation, pursuant to 8 CFR 244.2(f)(2), not when the TPS designation is being terminated. Thus, Burundians (or aliens having no nationality who last habitually resided in Burundi) who have not previously filed for TPS and been granted, or who do not already have a pending application for TPS under the designation for Burundi, may not file under late initial filing provisions. Late initial registration applications submitted to USCIS under the Burundi designation will be denied.

How does the termination of TPS affect nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who currently receive TPS benefits?

Once the termination of Burundi's TPS designation becomes effective on May 2, 2009, these TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has expired or been terminated), if any, or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the effective date of termination of the TPS designation (May 2, 2009).

After termination, former TPS beneficiaries will no longer be eligible for a stay of removal or employment authorization based on

TPS. TPS-related EADs issued under the Burundi designation will expire and will not be renewed or extended.

Termination of the TPS designation for Burundi does not necessarily affect pending applications for other forms of immigration relief or protection. Former TPS beneficiaries, however, will begin to accrue unlawful presence as of May 2, 2009, unless they have been granted another immigration status or protection or if they have certain applications pending. An alien is deemed to be unlawfully present if the alien is present in the United States after the expiration of the period of stay authorized or is present in the United States without being admitted or paroled. See 8 U.S.C. 1182(a)(9)(B), (C) (aliens unlawfully present).

Employment Authorization Document Automatic Extension Guidelines

Who is eligible to receive an automatic extension of his or her EAD from November 3, 2007 to May 2, 2008?

To receive an automatic extension of an EAD, an individual must be a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who has applied for and received an EAD under the designation of Burundi for TPS and who has not had TPS withdrawn or denied. This automatic extension is limited to EADs issued on Form I-766, Employment Authorization Document, bearing an expiration date of November 2, 2007. These EADs must also bear the notation ``A-12'' or ``C-19'' on the face of the card under ``Category.''

If I am currently registered under the designation of Burundi for TPS and am re-registering for TPS, how do I receive an extension of my EAD after the automatic six-month extension?

TPS re-registrants will receive a notice in the mail with instructions as to whether or not they will be required to appear at a USCIS Application Support Center (ASC) for biometrics collection. To increase efficiency and improve customer service, USCIS will reuse previously-captured biometrics, whenever possible, and conduct the security checks using those biometrics, so that you may not be required to appear at an ASC.

Regardless of whether you are required to appear at an ASC, you are required to pay the biometrics fee during this re-registration. The fee will cover the USCIS costs associated with the use of the collected biometrics for FBI and other background checks. If you are required to report to an ASC, you must bring the following documents: (1) your receipt notice for your re-registration application; (2) your ASC appointment notice; and (3) your current EAD. If no further action is required for your case, you will receive a new EAD by mail valid through May 1, 2009. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. Once your case is resolved and if your application is approved, you will receive a new EAD in the mail with an expiration date of May 1, 2009.

May I request an interim EAD at my local District Office?

No. USCIS will not be issuing interim EADs to TPS applicants and re-registrants at District Offices.

[[Page 61177]]

How may employers determine whether an EAD has been automatically extended for six months through May 2, 2008, and is therefore acceptable for completion of the Form I-9?

An EAD that has been automatically extended for six months by this Notice through May 2, 2008, will be a Form I-766 bearing the notation ``A-12'' or ``C-19'' on the face of the card under ``Category,' ' and have an expiration date of November 2, 2007, on the face of the card. New EADs or extension stickers showing the May 2, 2008, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Burundian citizenship.

Employers should accept an EAD as a valid ``List A'' document and not ask for additional Form I-9, Employment Eligibility Verification, documentation if presented with an EAD that has been extended pursuant to this Federal Register Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office Employer Hotline at 1-800-357-2099. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155. Employees or applicants may call the OSC Employee Hotline at 1-800-255-7688 for information regarding the automatic extension. Additional information is available on the OSC Web site at <http://www.usdoj.gov/crt/osc/index.html>.

How may employers determine an employee's eligibility for employment once the automatic six-month extension expires on May 2, 2008?

Eligible TPS aliens will possess an EAD with an expiration date of May 1, 2009. The EAD will be a Form I-766 bearing the notation ``A-12'' or ``C-19'' on the face of the card under ``Category,' ' and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I-9, Employment Eligibility Verification?

During the first six months of this extension, qualified individuals who have received a six-month automatic extension of their EADs by virtue of this Federal Register Notice may present TPS-based EADs to their employers, as described above, as proof of identity and employment authorization through May 2, 2008. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this Federal Register Notice

regarding the automatic extension of employment authorization documentation through May 2, 2008. After May 2, 2008, a qualified individual may present a new EAD valid through May 1, 2009.

In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I-9 may be presented as proof of identity and employment eligibility.

[FR Doc. E7-21128 Filed 10-26-07; 8:45 am]

BILLING CODE 4410-10-P