



January 15, 2021

VIA EMAIL

Department of Unemployment Assistance
Richard Jeffers, Director
19 Saniford Street
Boston, MA 02114

Re: TPS Recipients Claiming Unemployment Insurance

Dear Director Jeffers:

Lawyers for Civil Rights writes to express serious legal concerns surrounding the unlawful exclusion of numerous individuals with Temporary Protected Status (“TPS”) from unemployment insurance benefits by the Massachusetts Department of Unemployment Assistance (“DUA”). As explained in further detail below, TPS recipients qualify for unemployment insurance benefits, as a result of that active and lawful immigration status. Nevertheless, we have identified multiple, repeated instances of TPS recipients who have been wrongfully denied benefits by DUA. We are immediately identifying three affected individuals whose experiences amply confirm and illustrate the scale and scope of this systemic denial of benefits. These examples are the tip of the iceberg. DUA is improperly denying access to life-saving benefits to hundreds of individuals across the Commonwealth in the midst of the COVID-19 pandemic and its related economic crisis. In light of the urgent food and housing insecurity exacerbated by DUA’s denials, we are requesting immediate corrective action for the three individuals we are identifying at this time. We are also requesting that DUA immediately review its policies, procedures, and trainings to rectify this systemic problem across all similarly situated TPS recipients. We are requesting an emergency meeting with DUA’s leadership, and we look forward to an expedited and amicable resolution to this legal crisis.

Background

Individuals with TPS are eligible to receive employment authorization documents (“EAD”), permitting them to work in the United States. Absent other exclusions, individuals with TPS who have received EAD are further entitled to apply for and receive unemployment benefits. On December 9, 2020, the Department of Homeland Security (“DHS”) issued a notice announcing that DHS was “automatically extending the validity of TPS-related documentation for beneficiaries under the TPS designation for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal for nine months through October 4, 2021, from the current expiration date of January 4, 2021.” (“DHS extension notice”).¹

¹ See Attachment 1 (“Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal,” 85 FR 79208, Dec. 9, 2020).

At this time, we are identifying three affected individuals discussed in turn below: 1) [REDACTED] Marisol [REDACTED]; 2) [REDACTED] Patricia [REDACTED]; and 3) Natacha [REDACTED].

[REDACTED] Marisol [REDACTED]

Ms. [REDACTED], a TPS recipient from El Salvador, was granted an A-12 EAD to work in the United States effective as of April 9, 2018, with an original expiration date of September 9, 2019. On January 7, 2021, using the UI Online portal, Ms. [REDACTED] requested unemployment benefits for the week of December 27, 2020, through January 2, 2021. After submitting her request, the UI Online portal informed Ms. [REDACTED] that her “alien number expired on 1/4/2021,” and that she “must have the number reinstated to be eligible for benefits.”

DHS’s extension notice—effective several weeks *prior* to Ms. [REDACTED] benefits request—applies to Ms. [REDACTED] A-12 EAD.² Ms. [REDACTED] alien number is therefore valid until at least October 4, 2021, and she should not have been denied any benefits on the basis of her alien number “expiring.”

[REDACTED] Patricia [REDACTED]

Ms. [REDACTED], a TPS recipient from Honduras, was granted an A-12 EAD to work in the United States effective as of October 5, 2018, with an original expiration date of January 5, 2020. Notwithstanding Ms. [REDACTED] TPS status, on December 22, 2020, she received a brief and conclusory notice from DUA stating that, effective as of January 19, 2020, she was disqualified from receiving unemployment benefits for an alleged failure to “present proper identification.”³ The December 22, 2020 notice provides no factual information regarding Ms. [REDACTED] alleged failure to comply with Massachusetts General Law Chapter 151A, §25(a).

DUA further alleges that, due to her “disqualification,” Ms. [REDACTED] received an overpayment of unemployment benefits totaling \$20,792.00.⁴ On December 30, 2020, Ms. [REDACTED] submitted a hearing to appeal DUA’s disqualification decision.⁵ In her request for hearing, Ms. [REDACTED] explained that she qualifies for TPS and that her TPS documentation automatically renews yearly. Moreover, DHS’s extension notice applies to Ms. [REDACTED] EAD, and automatically extended her eligibility to seek and receive unemployment benefits until at least October 4, 2021.⁶ Ms. [REDACTED] has not yet received any information from DUA regarding her request for hearing.

Natacha [REDACTED]

Ms. [REDACTED], a Haitian TPS recipient, was granted an A-12 EAD to work in the United States effective as of April 5, 2018, with an original expiration date of July 22, 2019.

² See *id.* at Table 1 (explaining that the validity of an A-12 EAD with an expiration date of September 9, 2019 is extended through October 4, 2021).

³ See Attachment 2.

⁴ See Attachment 3.

⁵ See Attachment 4.

⁶ See Attachment 1 at Table 1.



Notwithstanding Ms. [REDACTED] TPS status, on January 2, 2021, she received a brief and conclusory notice from DUA stating that, effective as of April 26, 2020, she was disqualified from receiving unemployment benefits for an alleged failure to “present proper identification.”⁷ The January 2, 2021, notice provides no factual information regarding Ms. [REDACTED] alleged failure to comply with Massachusetts General Law Chapter 151A, §25(a).

DHS’s extension notice applies to Ms. [REDACTED] EAD, and automatically extended her eligibility to seek and receive unemployment benefits until at least October 4, 2021.⁸ Accordingly, Ms. [REDACTED] should not have been disqualified from receiving benefits starting on April 26, 2020, and any benefits she received after that date should not be considered an overpayment.

Conclusion:

For the reasons discussed above, Ms. [REDACTED], [REDACTED], and [REDACTED] qualify for TPS and, under the DHS’s December 9, 2020, extension, are entitled to unemployment benefits until at least October 4, 2021. Accordingly, we request that DUA immediately correct our clients’ eligibility status as well as: (1) provide Ms. [REDACTED] with unemployment benefits for the week of December 27, 2020, through January 2, 2021; (2) withdraw the allegation that Ms. [REDACTED] was overpaid any amount or, at a minimum, promptly provide her with a hearing date to appeal this determination; and (3) withdraw any allegation that Ms. [REDACTED] was overpaid any amount.

Additionally, we are requesting that DUA launch an immediate review of its practices to reverse unlawful action against all similarly-situated TPS recipients. DUA’s protocols must be brought in line with well-established and prevailing laws, including applicable immigration policies. In this manner, DUA must ensure that a comprehensive and holistic remedy to this systemic problem. The failure to address this problem from a systemic perspective will leave DUA vulnerable to liability because the agency’s wrongful actions against immigrants from Honduras, El Salvador and Haiti, raise serious concerns surrounding race and national origin discrimination.

We are requesting an emergency meeting with DUA’s leadership to discuss benefits and relief for our individual and class clients. We look forward to working collaboratively with DUA to achieve an expedited and amicable resolution to this legal problem.

Sincerely,

Nina Garcia, Esq.
Oren Nimni, Esq.
Iván Espinoza-Madrugal, Esq.
Lawyers for Civil Rights

⁷ See Attachment 5.

⁸ See Attachment 1 at Table 1.