

# **EXHIBIT 41**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director (MS 2000)  
Washington, DC 20529-2000



U.S. Citizenship  
and Immigration  
Services

August 28, 2017

**DECISION**

MEMORANDUM FOR THE SECRETARY

FROM:

James W. McCament  
Acting Director

A handwritten signature in black ink that reads "James W. McCament".

SUBJECT:

**Sudan's Designation for Temporary Protected Status**

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**Purpose:** Sudan's existing designation for Temporary Protected Status (TPS) will expire on November 2, 2017. At least 60 days before a TPS designation expires (i.e., by September 1, 2017, for Sudan), the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the designated foreign country to determine whether the conditions for such designation continue to be met. If the Secretary determines that the foreign country no longer continues to meet the statutory conditions for designation, she shall terminate the designation. If the Secretary finds, however, that the conditions for designation continue to be met, the TPS designation must be extended for 6, 12, or 18 months.<sup>1</sup>

U.S. Citizenship and Immigration Services (USCIS) has completed a review of the conditions in Sudan and is presenting options for your consideration. As part of the review process, USCIS has consulted with the Department of State (DOS). As of the date of this memorandum, DOS' assessment and recommendation are under review by Secretary Tillerson's office. The draft package that was submitted to Secretary Tillerson's office for review assesses that the statutory conditions supporting Sudan's TPS designation continue to be met and recommends an 18-month extension of Sudan's designation for TPS. This memorandum relies upon the content of the draft package and will be updated or supplemented, as necessary, once the final country condition assessment and recommendation are approved by Secretary Tillerson and formally transmitted to DHS.

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<sup>1</sup> See Immigration and Nationality Act (INA) § 244(b)(3)(A-C), 8 U.S.C. § 1254a(b)(3)(A-C); see also Attachment A: Temporary Protected Status Legal Authority.

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**Background:** On November 4, 1997, the Attorney General designated Sudan for TPS due to ongoing armed conflict and extraordinary and temporary conditions in Sudan.<sup>2</sup> Sudan's designation has been continuously extended on these same grounds since the initial designation in 1997. Sudan has also been redesignated for TPS three times—in 1999, 2004, and 2013—modifying the eligibility requirements and permitting additional individuals to register for TPS.<sup>3</sup> To be eligible for TPS under Sudan's designation, along with meeting the other eligibility requirements, Sudanese nationals must have continuously resided in the United States since January 9, 2013, and have been continuously physically present in the United States since May 3, 2013.

Demographic Information on Sudanese TPS Beneficiaries

There are currently 1,039 Sudanese TPS beneficiaries,<sup>4</sup> 31 percent female and 69 percent male. They range in age at the time of approval from 3-79 years of age, with most in their 20s, 30s, or 40s. Fifty-three were 18 years of age or younger at the time of approval. Sudanese TPS beneficiaries live in nearly every state across the country, with New York, Texas, and Virginia hosting the largest populations with one hundred or more Sudanese TPS beneficiaries each. The most commonly self-reported immigration statuses at the time of initial TPS application included visitors (113), students (178), and "unknowns" (460). Five reported their status as entering without inspection.<sup>5</sup>

Country Conditions

USCIS and DOS have each conducted a thorough review of conditions in Sudan. The USCIS country condition report can be found in Attachment B. In summary, the ongoing armed conflict and extraordinary and temporary conditions that supported Sudan's designation for TPS persist.

Since the last extension, armed conflict between government forces and opposition groups in Sudan has continued, resulting in an ongoing lack of security and safety for civilians, particularly in conflict-affected regions. Sudan's human rights record remains extremely poor, with instances of extrajudicial killings, disappearances, arbitrary arrest and detention, forced population movements, rape, slavery, and severely restricted freedoms of religion and assembly with violent

<sup>2</sup> See Designation of Sudan Under Temporary Protected Status, 62 FR 59737 (Nov. 4, 1997). See also INA § 244(b)(1)(A), (C).

<sup>3</sup> See Extension and Redesignation of Sudan under the Temporary Protected Status Program, 64 FR 61128 (Nov. 9, 1999); Extension and Redesignation of Temporary Protected Status for Sudan, 69 FR 60168 (Oct. 7, 2004); Extension and Redesignation of Sudan for Temporary Protected Status, 78 FR 1872 (Jan. 9, 2013).

<sup>4</sup> The total number of beneficiaries represents all individuals who have been granted TPS since Sudan's designation in 1997 and have not had their TPS withdrawn. Not all of these individuals continue to re-register because they have adjusted to another valid immigration status, have left the United States, are no longer eligible for TPS, or have failed to re-register for other reasons. As a result, the number of beneficiaries that USCIS expects to re-register for TPS is lower than the total number of beneficiaries. Based on statistics from the last re-registration period, USCIS estimates that approximately 370 re-registration applications will be filed if Sudan's designation for TPS is extended.

<sup>5</sup> The TPS statute does not require individuals to have lawful status in order to qualify for TPS. The TPS application form does request the applicant's status at the time of application, and this information is recorded in USCIS systems. However, the information is self-reported and not all applicants provide this information on the form in a standard or recordable fashion.

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suppression of protests. In 2016, the government of Sudan undertook an aerial bombardment campaign that resulted in civilian casualties and leveled numerous villages. In May 2017, Sudanese officials demolished two Sudanese Church of Christ churches, which were the first on a list of 27 that authorities had earmarked for demolition in February.

Sudan faces ongoing conflict in Darfur and the Two Areas (South Kordofan and Blue Nile states). As a result of the continuing armed conflict, hundreds of thousands of Sudanese have fled to neighboring countries. The majority of those displaced in previous years – currently around 2 million in Darfur and 230,000 in the Two Areas – have not yet been able to return home due to persistent insecurity. Over 100,000 Sudanese have been newly displaced since 2016.

The number of people currently in need of humanitarian assistance in Sudan is 4,800,000 (over 10 percent of the total population of 39.58 million as of 2016). Above-average harvests have moderately improved food security across much of Sudan. However, populations in conflict-affected areas continue to experience acute levels of food insecurity, with nearly 2,773,000 children suffering from acute or severe acute malnutrition. In addition to food insecurity, access to clean drinking water remains a challenge in Sudan, and, in August 2016, a cholera outbreak began that is currently affecting several states. At least 15,000 to 23,000 people have been infected, with an estimated 280 to 820 deaths. Despite some improvement in access for humanitarian actors to provide much-needed humanitarian aid, they remain unable to fully and consistently provide timely and impartial humanitarian access.

Women and children have been particularly affected by the conflict. Particularly in Darfur, sexual and gender-based violence remains a grave concern, and there are many documented incidents of children being killed and maimed. Children also face recruitment by both the government and armed groups.

Sudan has faced significant economic instability since the secession of South Sudan in 2011, characterized by much reduced economic growth and high inflation (estimated at 16.5 percent in July 2016). The labor market is underdeveloped, and much of the labor force is employed in the informal sector.

Options

Your options include the following actions:

1) *Extend Sudan's Designation for TPS*

Under the TPS statute, if you determine that the statutory conditions supporting a country's designation for TPS continue to exist, you must extend the TPS designation for an additional period of 6, 12, or 18 months. The review of conditions in Sudan indicates that it remains unsafe for individuals to return to Sudan and that the statutory requirements to designate a country for TPS under *Immigration and Nationality Act* § 244(b)(1)(A) (ongoing armed conflict) and under § 244(b)(1)(C) (extraordinary and temporary conditions) continue to be met.

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From an operational perspective, extension periods of less than 18 months are challenging given the significant workload and timeframes involved in receiving and adjudicating re-registration applications and issuing new employment authorization documents. Additionally, the deliberative review process to support TPS decision making, including consultation with DOS, typically begins ten months before the expiration date of a country's current designation.

An 18-month extension of Sudan's designation for TPS would permit current Sudanese TPS beneficiaries to re-register for TPS and remain in the United States with work authorization through May 2, 2019.

2) *Redesignate Sudan for TPS*

In addition to extending Sudan's current designation for TPS, you may, in your discretion, also redesignate Sudan for TPS. This would allow you to advance the continuous residence date to match the publication date of the *Federal Register* notice announcing the redesignation, expanding TPS eligibility to include Sudanese nationals who began residing in the United States after the current continuous residence date of January 9, 2013.

Redesignation of a country for TPS is recommended only sparingly, usually in association with a significant deterioration of conditions since the most recent designation. Country conditions do not indicate a new or significant deterioration since Sudan's last designation in 2013, with modest improvements in some areas.

3) *Terminate Sudan's Designation for TPS*

If you determine that Sudan no longer continues to meet the statutory requirements for its TPS designation, you must terminate TPS for Sudan. Termination would end TPS benefits for existing Sudanese TPS beneficiaries. Upon the termination of TPS benefits, former beneficiaries without another immigration status or authorization to remain would no longer have permission to work and remain in the United States. Because the conditions supporting Sudan's TPS designation persist, termination does not appear to be warranted.

If you decide to terminate Sudan's designation, you may determine the appropriate effective date of the termination. You also have the option to provide for an orderly transition period (e.g., 6, 12, or 18 months) after which TPS documentation will end. Delaying the effective date would provide those beneficiaries without any other immigration status a reasonable amount of time following the announcement of termination of the designation to plan and prepare for their departure from the United States. See INA § 244(b)(3)(B), (d)(3) and 8 C.F.R. § 244.19. Note: the effective date of termination may not be earlier than 60 days after the date the *Federal Register* notice announcing the termination is published or, if later, the expiration of the most recent previous extension.

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**Timeliness:** You are required to provide timely notice of whether existing TPS designations will be extended or terminated through publication in the *Federal Register*.<sup>6</sup> Your earliest decision will facilitate publication of notice in the *Federal Register* sufficiently in advance of the November 2, 2017 expiration of Sudan's designation, providing predictability and clarity to beneficiaries and their employers. By statute, if you do not make a decision at least 60 days before the expiration of the current designation (i.e., by September 1, 2017), then Sudan's designation will automatically be extended for a minimum of 6 months.<sup>7</sup>

**Recommendation:** USCIS recommends termination, but to delay the effective date of the termination by 12 months to provide for an orderly transition for those recipients to return to Sudan. This recommendation is supported by the following factors:

- Secretary Tillerson did not make a recommendation for Sudan.
- There is ongoing conflict in some regions, but not the entire country.
  - As any ongoing armed conflict is limited to certain parts of Sudan, extraordinary and temporary conditions preventing the return of their nationals no longer exist.
  - As any ongoing armed conflict is limited to certain parts of Sudan, requiring Sudanese nationals to return to their country does not currently pose a serious threat to their personal safety.
- There were unilateral ceasefires in October 2016 which led to a reduction in violence and rhetoric from the conflict parties.
- President Obama, in an Executive Order just before leaving office, lifted sanctions on Sudan for six months. In this EO, he recognized Sudan's positive steps to improve (see EO from January 2017- <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13761.pdf>).
- President Trump issued another EO to give them 3 additional months, citing improved counterterrorism efforts and other progress to promote regional stability. See also State Department release: <https://www.state.gov/r/pa/prs/ps/2017/07/272539.htm>
- The UK only advises against all travel or all but essential travel to certain parts of Sudan. <https://www.gov.uk/foreign-travel-advice/sudan>.
- Many refugees from South Sudan have arrived in Sudan and are being supported. Nearly 152,000 refugees have arrived this year. <https://www.unocha.org/story/hope-south-sudanese-refugees-arriving-darfur>
- Humanitarian assistance has improved: [http://reliefweb.int/sites/reliefweb.int/files/resources/Sudan\\_Humanitarian\\_Dashboard\\_A4\\_%28Jan - Dec 2016%29.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Sudan_Humanitarian_Dashboard_A4_%28Jan%20-%20Dec%202016%29.pdf)
- Unemployment rate has decreased; GDP growth rate is up. [https://theodora.com/wfbcurrent/sudan/sudan\\_economy.html](https://theodora.com/wfbcurrent/sudan/sudan_economy.html)
- According the African Development Bank Group, the economy is projected to improve: Economic growth slowed in 2016 to an estimated 3 percent as a result of the decline in oil production and macroeconomic imbalances and is projected at 3.4 percent in 2017 and 3.6

<sup>6</sup> See INA § 244(b)(3)(A).

<sup>7</sup> See INA § 244(b)(3)(A), (C).

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percent in 2018 on the back of improved performance in the non-oil sector and temporary lifting of US sanctions.

**Decision:** You may choose to extend, extend and redesignate, or terminate Sudan's TPS designation.

1. Extend: *Extend Sudan's designation for TPS for (circle one):*

*6 months*

*12 months*

*18 months*

Approve/date \_\_\_\_\_

2. Extend and Redesignate: *Extend Sudan's designation for TPS and simultaneously redesignate Sudan for TPS for (circle one):*

*6 months*

*12 months*

*18 months*

Approve/date \_\_\_\_\_

3. Terminate: *Terminate Sudan's designation for TPS with an orderly transition period of (circle one):*

*6 months*

*12 months*

*18 months*

*Other* \_\_\_\_\_

Approve/date \_\_\_\_\_

**Attachments:**

Attachment A: Temporary Protected Status Legal Authority

Attachment B: March 2017 USCIS RAO Research Unit Report on Conditions in Sudan

Attachment C: Demographic Data

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