

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service**

[INS No. 2146-00; AG Order No. 2496-2001]

RIN 1115-AE26

**Extension of the Designation of
Montserrat Under the Temporary
Protected Status Program****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Notice.

SUMMARY: The designation of Montserrat under the Temporary Protected Status (TPS) program will expire on August 27, 2001. This notice extends the Attorney General's designation of Montserrat under the TPS program for 12 months until August 27, 2002, and sets forth procedures necessary for nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) with TPS to register for the additional 12-month period. Eligible nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on August 27, 1998, or who registered after that date under the late initial registration provisions, and who timely re-registered under each of the subsequent extensions. Nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions. See 8 CFR 244.2 (2001).

EFFECTIVE DATES: The extension of the TPS designation for Montserrat is effective August 27, 2001, and will remain in effect until August 27, 2002. The 90-day re-registration period begins August 3, 2001, and will remain in effect until November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514-4754.

SUPPLEMENTARY INFORMATION:**What Authority Does the Attorney General Have To Extend the Designation of Montserrat Under the TPS Program?**

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act)

states that, at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer meets the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C). With respect to Montserrat, such an extension makes TPS available only to persons who have been continuously physically present since August 28, 1997, and have continuously resided in the United States since August 22, 1997.

Why Did the Attorney General Decide To Extend the TPS Designation for Montserrat?

On August 28, 1997, the Attorney General designated Montserrat under the TPS program for a period of 12 months. 62 FR 45685. The Attorney General extended the TPS designation three times after determining that the conditions warranting such designation continued to be met each time. See 65 FR 58806 (Oct. 2, 2000); 64 FR 48190 (Sept. 2, 1999); 63 FR 45864 (Aug. 27, 1998).

Since the date of the last extension, the Departments of Justice and State have continued to review conditions in Montserrat. The review has resulted in a consensus that a further 12-month extension is warranted. The reasons for the extension include the continued threat of further volcanic eruptions, the ongoing housing shortage, and the serious health risks from volcanic ash. Citing the Montserrat Volcano Observatory's January 2001 Hazard Assessment, the State Department reported that, "the volcano's dome is undergoing a period of vigorous growth. Even though the dome collapsed during the March 2000 eruption, it has reemerged and is now at its largest size since the eruption began in 1995. Dome growth has so far been on the south side of the crater, but if growth shifted to the north side, the 150 people living in settlements on the northwest border of the exclusion zone would be in danger. Such a shift in dome growth can occur within a matter of hours." According to the Department of State, the Observatory's report concludes that "further dangerous volcanic activity of the kinds experienced in 1995-1998,

including dome collapses, pyroclastic flows, explosive activity, ashfall, and mud flows * * * is therefore likely in the near future." On June 6, 2001, the Observatory confirmed for the State Department that conditions remain at a level comparable to that of January 2001. The State Department further notes that a housing shortage persists since residents crowded into the north are unable to return to their homes in the southern part of the island. Over 150 people remain in temporary shelters and 800 still lack permanent housing. In addition to the destruction caused by the eruptions, the ash that periodically covers much of the island poses a health risk to those exposed to it. Even those living in the north of the island are at some risk of contracting lung disease from inhaling airborne particles contained in the volcanic ash.

Based on this review, the Attorney General finds that the conditions that prompted designation of Montserrat under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption of living conditions in Montserrat as a result of environmental disaster, and Montserrat remains unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B).

On the basis of these findings, the Attorney General concludes that the TPS designation for Montserrat should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS, How Do I Re-Register for an Extension?

If you have already been granted TPS through the Montserrat TPS program, your TPS will expire on August 27, 2001. Persons previously granted TPS under the Montserrat program may apply for an extension by filing (1) a Form I-821, Application for Temporary Protected Status, without the fee, (2) a Form I-765, Application for Employment Authorization, and (3) two identification photographs (1½" x 1½"). To determine whether or not you must submit the one hundred dollar (\$100) filing fee with the Form I-765, see the chart below.

Submit the re-registration package to the INS district office that has jurisdiction over your place of residence during the 90-day re-registration period that begins August 3, 2001, and will remain in effect until November 1, 2001.

| If | Then |
|---|--|
| You are applying for employment authorization through August 27, 2002. | You must complete and file: (1) Form I-765, Application for Employment Authorization, with the \$100 fee. |
| You already have employment authorization or do not require employment authorization. | You must complete and file: (1) Form I-765, with no filing fee. |
| You are applying for employment authorization and are requesting a fee waiver. | You must complete and file: (1) Fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20, and (2) Form I-765, with no fee. |

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 necessarily affect disposition of a separate TPS application, though grounds for denying one form of relief may serve as the basis for denying TPS as well. For example, a person who has been convicted of a particularly serious crime is ineligible for both asylum and TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Montserrat (or Aliens Having No Nationality Who Last Habitually Resided in Montserrat) Who Entered the United States After August 28, 1997, To File for TPS?

No. This is a notice of an extension of the TPS designation for Montserrat, not a notice of re-designation for Montserrat for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who arrived in the United States after the required dates for continuous physical presence, August 28, 1997, and continuous residence, August 22, 1997.

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

- (1) Be a national of Montserrat (or an alien who has no nationality and who last habitually resided in Montserrat);
- (2) Have been continuously physically present in the United States since August 28, 1997;

(3) Have continuously resided in the United States since August 22, 1997; and,

(4) Be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from August 28, 1997, through August 27, 1998, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal,

(3) Was a parolee or had a pending request for reparole, or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than 60 days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Montserrat Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies concerning whether the conditions under which Montserrat was designated for TPS continue to exist. As a result, I determine that the conditions for designation of TPS for Montserrat continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Montserrat under section 244(b) of the Act is extended for an additional 12-month period from August 27, 2001, to August 27, 2002. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 323 nationals of Montserrat (or aliens who have no nationality and who last habitually resided in Montserrat) who have been granted TPS and who are eligible for reregistration.

(3) In order to be eligible for TPS during the period from August 27, 2001, to August 27, 2002, a national of Montserrat (or an alien who has no nationality and who last habitually resided in Montserrat) who has already received a grant of TPS under the Montserrat TPS designation must re-register for TPS by filing a new Application for Temporary Protected Status, Form I-821, along with an Application for Employment Authorization, Form I-765, within the 90-day period beginning on August 3, 2001 and ending on November 1, 2001. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2(f)(2).

(4) At least 60 days before this extension terminates on August 27, 2002, the Attorney General will review the designation of Montserrat under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the Montserrat TPS program will be available at local INS offices upon publication of this notice and on the INS website at <http://www.ins.usdoj.gov>.

Dated: July 30, 2001.

Larry D. Thompson,
Acting Attorney General.

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