

January 22, 2007

The Honorable Edward Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

I am writing to urge you to support legislation that would provide for derivative Temporary Protected Status (TPS) for children whose parents are granted TPS.

Children travel to the United States alone each year, seeking to reunify with their parents who have TPS. TPS provides temporary refuge to those already in the US who cannot safely return home due to ongoing armed conflict, natural disasters, or other extraordinary circumstances.¹ For each country designated for TPS, there are initial and extension registration dates. Currently, children who arrive after the initial registration date for their countries are denied TPS, even if their parents have lawful status. As a result, they face both traumatic separation from their parents and deportation to often dangerous conditions at home.

Children who remain in their countries without their parents face extraordinary risks to their emotional and physical well-being, including violence and extreme poverty. Some children whose parents fled to the United States, and were later granted TPS, were physically unable to make the journey with their parents at the time. With no legal mechanism for uniting these children with their parents, these families will be kept apart indefinitely. Forcing prolonged separation of families is antithetical to core US immigration laws and policies.²

¹ 8 U.S.C. §1254a(b)(1), INA §244. The following countries are currently designated for TPS: Burundi, El Salvador, Honduras, Nicaragua, Somalia and Sudan. TPS is granted on a yearly basis for a period of 6 to 18 months with the possibility of an extension. TPS grantees are authorized to work in the United States, and TPS is not a path to a long term immigration benefit or citizenship. 8 U.S.C. §1254a(c)(1)(A), INA §244(c)(1)(A) requires an applicant for TPS to demonstrate continuous presence and residence in the US since a certain date, admissibility as an immigrant, and registration for TPS during the prescribed registration period.

² "[t]he legislative history of the Immigration and Nationality Act clearly indicates that the Congress intended to provide for a liberal treatment of children and was concerned with the problem of keeping families of U.S. citizens and immigrants united." *See Godoy v. Rosenberg*, 415 F.2d 1266, 1271 (9th Cir. 1969) (citing H.R.Rep. No. 1199, 85th Cong., 1st Sess., p. 7 (1957), U.S. Code Cong. & Admin. News 1957, p. 2020). *See also Fornalik v. Perryman*, 223 F.3d 523, 525-526 (7th Cir. 2000) (discussing "general principle in the U.S. immigration law that sets family unity as one of the principal goals of the statutory and regulatory apparatus").

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Amending the existing statute to allow for derivative TPS is entirely consistent with other family-based status provisions in our immigration laws³. Furthermore, TPS is a form of humanitarian relief designed to protect particularly vulnerable groups who face significant hardships in their countries. Children whose parents are eligible for TPS endure the very same hardships that have led their parents to seek protection, in addition to separation from their parents. As outlined in the attached paper, the language we are proposing would apply prospectively and would help protect children at risk and keep families together. We urge you to support including a provision to amend the TPS statute as suggested above in any comprehensive immigration reform legislation that is considered this year.

Thank you for your consideration of this important issue and your continued efforts to improve our nation's immigration system.

Sincerely


Robert D. Evans

Enclosure

³ See 8 USC §11609(c)(2)(B)(i); 8 USC §1182(3)(D)(iv), 8 USC §1182(9)(B)(iii)(III), 8 USC §1227(a)(1)(E)(iii), 8 USC §1254a, 8 USC §1255, 8 USC §1255a, 8 USC §1157 (c)(3), 8 USC §1159(c). As early as 1957, Congress passed legislation allowing the spouses and unmarried minor children of refugees (including step-children and adopted children) to enjoy derivative refugee status. (Pub.L. No. 85-316, 71 Stat. 639). Derivative status is available to family members who arrive after the principal beneficiary is granted status as well as to family members who arrive with the beneficiary or prior to the grant of status. Similar examples of family unity provisions include those found in the Violence Against Women Act of 1994 (VAWA), the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), immigrant family preference categories 1-4; immigrant employment based preference categories 1-5, and many non-immigrant statuses such as F-1/F-2, H-1/H-4, and L-1/L-2, where urgent humanitarian concerns may not be at stake.