

EXHIBIT 87

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

DECISION

MEMORANDUM FOR THE SECRETARY

FROM: James W. McCament
Acting Director

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

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.¹

U.S. Citizenship and Immigration Services (USCIS) has completed a review of the current 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). In its recommendation DOS notes the achievement of progress in certain areas under the statutory basis for designation. DOS also assesses sufficient ongoing factors such that the statutory conditions supporting Sudan's TPS designation continue to be met. Deputy Secretary Sullivan therefore recommends a 6-month extension of Sudan's designation for TPS.

¹ 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.

INTERNAL PRE-DECISIONAL RECOMMENDATION

Background: On November 4, 1997, the Attorney General designated Sudan for TPS due to ongoing armed conflict and extraordinary and temporary conditions in Sudan.² 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.³ 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,⁴ 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.⁵

Country Conditions

USCIS and DOS have each conducted a thorough review of conditions in Sudan. The country condition reports, upon which this recommendation is based, can be found in Attachments B and C. The conditions reflect emerging progress and improvement in certain areas while noted challenges remain.

Since the last extension, armed conflict between government forces and opposition groups in certain parts of Sudan has continued, while the Five Track Engagement Plan (5STEP) has

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

³ 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).

⁴ 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.

⁵ 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.

achieved progress in several key areas since June 2016. These areas of progress include dampening armed conflict in Sudan between the government and armed opposition groups. In addition, government forces have not undertaken offensive military actions in Darfur from June 2016 to the present. Furthermore, the government and armed opposition groups in the Two Areas both have declared unilateral cessations of hostilities since late 2015.

DOS further notes that while there is an ongoing lack of security and safety for civilians in those conflict-affected regions, there are no longer reports of the government targeting civilians in aerial bombing campaigns. In 2016, the government of Sudan undertook an aerial bombardment campaign that resulted in civilian casualties and leveled numerous villages. However, there have been no such credible reports since late 2016, largely as the result of the 5TEP engagement with the government to maintain a cessation of hostilities.

While ongoing armed conflict does not persist throughout the entire country, there is conflict in Darfur and the Two Areas (South Kordofan and Blue Nile states). As a result, more than 630,000 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 to those areas of the country due to persistent insecurity. Over 100,000 Sudanese have been newly displaced since 2016.

That said, although there was some additional displacement from Darfur in 2016, approximately 38,150 persons have reportedly returned. In addition, Sudan is host to more than 550,000 refugees, mostly from South Sudan and Eritrea; this number is expected to grow as the situation in South Sudan deteriorates.

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. 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, 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.

Heavy rains and flash flooding that began in 2016 also resulted in over 100 deaths and thousands of homes destroyed. However, while the 2016 flooding resulted in a substantial but temporary disruption of living conditions in the area affected, the DOS analysis

INTERNAL PRE-DECISIONAL RECOMMENDATION

Sudan's Designation for Temporary Protected Status
Page 4

indicates that the drought and flooding that occurred in 2016 no longer prevent Sudan from adequately supporting the return of its nationals. And that the government is able to handle adequately the return of its nationals to Sudan in relation to this environmental disaster.

With respect to its populations, the United States has pressed Sudan to improve its human rights records. Pre-dating and apart from the Five Track plan, the United States has pressed Sudan to improve its human rights record. Despite this, Sudan's overall human rights and religious freedom records remain extremely poor. The government continues to violently suppress protests and abuse members of certain populations, including activists, youth, journalists, and those belonging to, or perceived as belonging to, political opposition groups. 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. Other reported violations and abuses have raised significant human rights concerns.

We note that 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 continues to be underdeveloped, and much of the labor force is employed in the informal sector. However, recent analyses indicate that the unemployment rate has decreased and GDP growth rate is up. In addition, according to the African Development Bank Group, the economy is projected to improve: Economic growth slowed in 2016 to an estimated 3% as a result of the decline in oil production and macroeconomic imbalances and is projected at 3.4% in 2017 and 3.6% in 2018 on the back of improved performance in the non-oil sector and temporary lifting of US sanctions.

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, the TPS designation will be extended for an additional period of 6 months, or in your discretion, 12 or 18 months. DOS assesses that the statutory bases for Sudan's TPS designation continue to be met. Accordingly, Deputy Secretary Sullivan recommends a 6-month extension of Sudan's designation for TPS.

From an operational perspective, extension periods of less than 18 months for large numbers of aliens are challenging given the significant workload and timeframes involved in receiving and adjudicating re-registration applications and issuing new employment

INTERNAL PRE-DECISIONAL RECOMMENDATION

authorization documents. Here, the number of individuals is relatively small. That said, 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. Accordingly, a 12-month extension would generally be needed to provide sufficient time to restart and complete this deliberative review process. A 12-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 November 2, 2018.

2) *Redesignate Sudan for TPS*

If you determine the conditions for a designation extension have been met, you may also, in your discretion, redesignate Sudan for TPS. Historically, the act of redesignation of a country for TPS is used sparingly, usually in association with a significant deterioration of conditions since the most recent designation.

The act of redesignation 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. The USCIS review of the country conditions indicates no 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.

If you decide to terminate Sudan's designation, you may determine the appropriate effective date of the termination. The effective date could be delayed to a time period subsequent to the date of the decision in order to provide for an orderly transition period (e.g., 6, 12, or 18 months), following which the TPS documentation will expire.

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

INTERNAL PRE-DECISIONAL RECOMMENDATION

announcing the termination is published or, if later, the expiration of the most recent previous extension.

Timeliness: You are required to provide timely notice of whether existing TPS designations will be extended or terminated through publication in the *Federal Register*.⁶ 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.⁷

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:

1. There were unilateral ceasefires in October 2016 which led to a reduction in violence and rhetoric from the conflict parties.
2. There is ongoing conflict in some regions, but not the entire country.
 - a. 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.
 - b. 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.
3. Access for humanitarian actors to provide humanitarian assistance has improved.
4. Unemployment rate has decreased; GDP growth rate is up.
https://theodora.com/wfbcurrent/sudan/sudan_economy.html
5. According to the African Development Bank Group, the economy is projected to improve: Economic growth slowed in 2016 to an estimated 3% as a result of the decline in oil production and macroeconomic imbalances and is projected at 3.4% in 2017 and 3.6% in 2018 on the back of improved performance in the non-oil sector and temporary lifting of US sanctions.
6. Deputy Secretary Sullivan recommends a short 6-month extension, and notes that the 5STEP has achieved progress in several key areas since June 2016, including dampening armed conflict in Sudan between the government and armed opposition groups. Government forces have not undertaken offensive military actions in Darfur from June 2016 to the present. Furthermore, the government and armed opposition groups in the Two Areas both have declared unilateral cessations of hostilities since late 2015. DOS further notes that:

⁶ See INA § 244(b)(3)(A).

⁷ See INA § 244(b)(3)(A), (C).

Sudan's Designation for Temporary Protected Status

Page 7

- There are no longer reports of the government targeting civilians in aerial bombing campaigns.
- Although there was some additional displacement from Darfur in 2016, approximately 38,150 persons have reportedly returned.
- Sudan is host to more than 550,000 refugees, mostly from South Sudan and Eritrea; this number is expected to grow as the situation in South Sudan deteriorates.
- Above average harvests have moderately improved food security across much of the country. Additionally, the degree to which drought and flooding contribute to food insecurity has declined.

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 _____

INTERNAL PRE-DECISIONAL RECOMMENDATION

Sudan's Designation for Temporary Protected Status

Page 8

Attachments:

Attachment A: Temporary Protected Status Legal Authority

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

Attachment C: Department of State Recommendation Regarding Extension of Temporary Protected Status for Sudan

Attachment D: Demographic Data

INTERNAL PRE-DECISIONAL RECOMMENDATION