



Web Seminar on Immigration
**Training on Legal Assistance for
Temporary Protected Status**

January 22, 2010
3:00 p.m. EST





www.sps.cuny.edu



www.cuny.edu/citizenshipnow



www.legal-aid.org

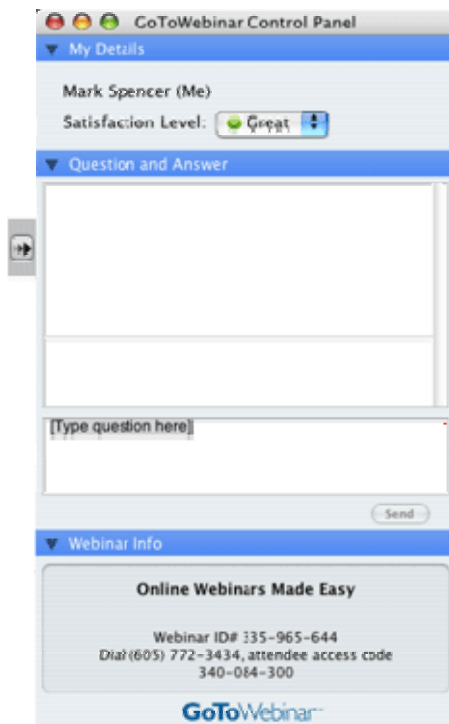


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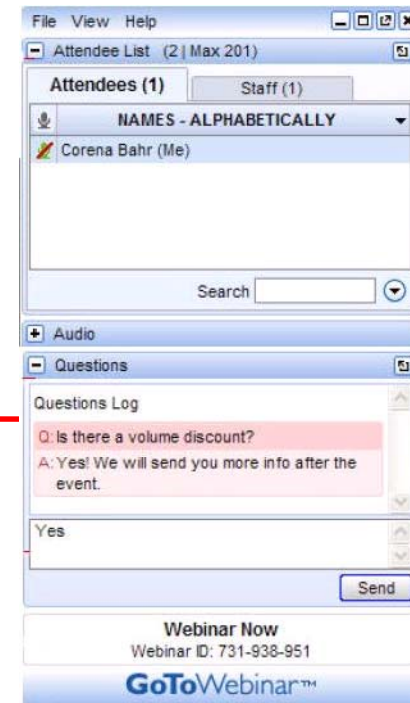
www.nyc.gov/html/imm/html/home/home.shtml

How to Ask Questions During the Seminar



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Press 1 for GotoWebinar
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Allan Wernick

*Director,
CUNY Citizenship Now!*





Jay Hershenson

*Senior Vice Chancellor for
University Relations and
Secretary of the Board of
Trustees, City University
of New York*





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Subject: Immigration Law

Immigration is one of the most pressing contemporary issues in the United States. The foreign-born now represent about 13 percent of the population. Together with their American-born children, this group constitutes a quarter of the United States — more than 65 million people. In New York, Los Angeles, Miami, and Chicago, the number of immigrants peaks at approximately forty percent. Suburbs too are seeing surges in new immigrant families. With little prior history of immigrant issues, cities like Atlanta, Sacramento, Charlotte, and Dallas are emerging as destination centers for newcomers.

Professionals from across the country, in many different fields, are faced with immigrant employment and family issues on a regular basis. Increasingly paralegals, social workers, lawyers, community advocates, and government officials are turning to The City University of New York School of Professional Studies to learn about the complex and ever-changing field of immigration law and regulation.

These innovative courses offer a unique opportunity for those working with immigrants and their employers and families to:

- Understand law and regulations governing immigration and citizenship
- Learn how to comply with rapidly evolving immigration policies
- Learn how to file petitions and applications

Immigration Law Studies Certificate Program

Basic Course

- **Introduction to Immigration Law**

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- **Proceedings in Immigration Court**
- **Naturalization and Citizenship**



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Saturday, January 30

10 a.m.-5 p.m.

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(between Montgomery and Crown
Streets)

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Saturday, February 6

10 a.m.-5 p.m.

PS 181

1023 New York Avenue

(between Snyder and Tilden
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Today's Presenters



Jojo Annobil
Attorney in Charge,
Immigration Law Unit,
Legal Aid



Julie Dinnerstein
Co-Director,
Immigration Intervention Project,
Sanctuary for Families



Training on Legal Assistance for Temporary Protected Status



1. **What is TPS?**
 - a. Benefits/downsides
 - b. Eligibility
 - c. Requirements
2. **Where to file.**
 - a. Fees/Fee Waivers
 - b. Post filing
3. **Crimes and Inadmissibility**



Julie Dinnerstein

*Co-Director,
Immigration Intervention
Project, Sanctuary for
Families*



What is TPS?



Julie Dinnerstein



- **TPS stands for Temporary Protected Status.**
- **TPS is a status which allows noncitizens to live and work in the United States.**
- **TPS is a nonimmigrant status defined by INA §244 and described by 8 CFR §244.1 - .20.**
- **TPS is, from time to time, offered to nationals (and stateless residents) of designated countries for specific periods of time by DHS where there has been a natural disaster or catastrophic civil unrest.**



Haitian TPS



Julie Dinnerstein

- **Designation of Haiti for Temporary Protected Stats, 75 Fed. Reg. 3476-3479 (Jan. 21, 2010)**

- **Per the Federal Register,**

Nationals of Haiti (and aliens having no nationality who last habitually resided in Haiti) who have been “continuously physically present” in the United States since January 21, 2010 and have “continuously resided” in the United States since January 12, 2010, may apply for TPS within the registration period that begins on January 21, 2010 and ends on July 20, 2010.

This designation of Haiti for TPS is effective on January 21, 2010, and will remain in effect through July 22, 2011. The 180-day registration period for eligible individuals to submit their TPS applications begins January 21, 2010, and will remain in effect until July 20, 2010.



What is TPS not?



Julie Dinnerstein



- TPS is not a travel document.
- TPS is not lawful permanent resident (LPR, aka “green card”) status.
- TPS does not lead to LPR status or U.S. citizenship.



Benefits of applying for TPS



Julie Dinnerstein

- Under 8 CFR §244.5(b), a TPS applicant who has established prima facie eligibility for TPS “shall be afforded temporary treatment benefits” which include:
 - temporary stay of deportation (8 CFR §244.10(e)(1)(i)); and
 - temporary employment authorization (8 CFR §244.10(e)(1)(ii))
- Under N.Y. Soc. Serv. Law § 122(c), as modified by *Aliessa v. Novello*, 96 N.Y.2d 418 (2001), a New York resident TPS applicant is eligible for New York funded Medical Assistance (known popularly as “Medicaid,” although not federally funded).
- TPS applicants maintain these benefits once granted TPS.



Downside to applying for TPS



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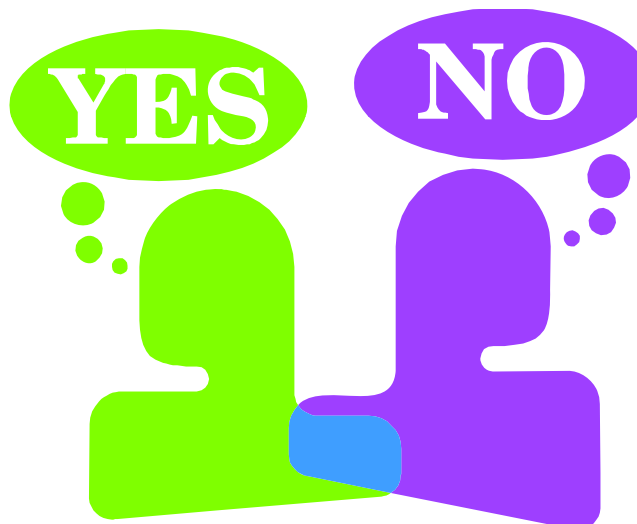
- Applicants will be fingerprinted by USCIS.
- Applicants with criminal records that may make them ineligible for TPS and other benefits flag their criminal histories.
- Applicants whose applications are denied may be placed in removal proceedings (8 CFR §244.18) which can lead to detention and deportation.
- Applicants who knowingly provide fraudulent information on applications may be subject to criminal liability.



Who is eligible to apply for TPS?



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- Haitian nationals (and stateless individuals who last habitually resided in Haiti) who:
 - have been continuously residing in the United States since January 12, 2010;
- and**
- are not ineligible
 - based on a single felony or two misdemeanor convictions; or
 - based on other criminal and security grounds of inadmissibility



Poll Question



Julie Dinnerstein

Jose was born and raised in the Dominican Republic but when he was 15 he moved to Haiti, though he never became a Haitian citizen. He lived in Haiti until 2007, when he came to the U.S. at age 35.

Can Jose apply for TPS?



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What is required to file for TPS?



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All TPS applicants must file:

- Form I-821
- Form I-765 (answer C19 to Question #16)

and include:

- Evidence establishing Haitian nationality (or statelessness with Haiti as the country of last habitual residence);
- Evidence establishing continuous physical presence since January 12, 2010
- \$50 fee or request for fee waiver
- Additional requirements, depending on age of applicants



What else is required to file for TPS?

Applicants 13 and younger



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- No extra fees (other than the \$50 fee or fee waiver request) required.
- 2 passport style pictures if an Employment Authorization Document (EAD) is requested. (Always request an EAD – it is a significant ID, even for babies and young children.)
- EAD is free.



What else is required to file for TPS?

Applicants 14 - 65



Julie Dinnerstein



- In addition to the basic \$50 fee or fee waiver request, other fees are required
- \$80 biometric fee (or fee waiver request)
- If an EAD is requested (and always request an EAD),
 - 2 passport style photos;
 - \$340 EAD application fee (or fee waiver request).



What else is required to file for TPS?

Applicants 66 and older



Julie Dinnerstein



- In addition to the basic \$50 fee or fee request, other fees are required
- \$80 biometric fee (or fee waiver request)
- If an EAD is requested (and always request an EAD), 2 passport style photos.
- EAD is free.



Establishing Haitian nationality



Julie Dinnerstein



Primary evidence under 8 CFR §244.9(a)(1)

- Passport (whether or not expired);
- Birth certificate (with certified translation) accompanied by photo identification;
- Any national identity document from Haiti bearing photo and/or fingerprints.



Establishing Haitian Nationality (Cont.)



Julie Dinnerstein

Regulations on secondary evidence

- **TPS rule:**

"If any required document is unavailable, an affidavit or other credible evidence may be submitted."

8 CFR § 244.9(a)

- **General evidentiary rule:**

"If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances."

8 CFR § 103.2(b)(2)(i)



Establishing Haitian Nationality (Cont.)



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Some brainstorming suggestions

- Birth certificates of children born in New York list the country of birth of both parents;
- A person may FOIA his/her FBI records, which records may contain information on country of birth (and, as a plus, may provide sufficient information to a would-be Haitian TPS applicant such that he or she realizes that her criminal history will preclude the grant of TPS and thus the individual should not file for TPS).
- Government records from Haiti (marriage, divorce, tax records, etc.).



Poll Question



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Which of the following would you use to establish your Haitian nationality? A statement from:



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Establishing Haitian Nationality (Cont.)



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Work with the Haitian Consulate in NYC and Embassy in DC

- **New York City**
271 Madison Avenue, 5th Floor
New York, NY 10016
(between 39th and 40th)
Telephone : 212.697.9767
E-mail: contact@haitianconsulate-nyc.org
- **Washington DC**
2311 Massachusetts Ave., N.W.
Washington, DC 20008
Telephone: 202-332-4090
Email: embassy@haiti.org



Practice Tip



Julie Dinnerstein



After submitting a TPS application, a Haitian without a current, valid passport may wish to obtain one to facilitate subsequent fingerprinting appointments and other interactions with government officials requiring photo ID. Individuals who can afford to travel to Washington D.C. and can arrive at the Haitian Embassy early in the morning may be able to get same day service on passport applications.



Establishing presence on January 12, 2010 and continuing residence under 8 CFR §244.9(a)(2)



Julie Dinnerstein



- As a general rule, documents that establish entry into United States pre-1/12/10 or ongoing presence pre-1/12/10 tend to suggest presence on 1/12/10 and continuing presence.
- Immigration documents:
 - I-94 card establishing pre-1/12/10 entry;
 - Passport stamp establishing pre-1/12/10 entry;
 - Filings from United States with U.S. immigration authorities;
 - Documents and correspondence received from U.S. immigration authorities

Establishing presence on January 12, 2010 and continuing presence: USCIS suggestions (Cont.)



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- Employment and tax records;
- Gas, electric, phone, rent bills, etc.;
- School records (for self and children);
- Medical records (for self and children);
- Birth certificates of children born in the United States
- Attestations by officials from churches, unions and other organizations;
- Financial records;
- Vehicle/driving records;
- Miscellaneous government records;
- Correspondence sent to TPS applicant in United States



Fees and Fee Waivers



Julie Dinnerstein



- Fees are paid to the **Department of Homeland Security** and may be paid by personal check or money order.
- Fees are required for each applicant individually (not, for example, for all members of a family).
- Fee waivers are available for all fees associated with TPS.
- Fee waiver applications can slow down processing.



General Fee Waiver Rules: 8 CFR §103.7(c)(1)



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“The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the application, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. The officer of the Department of Homeland Security having jurisdiction to render a decision on the application, petition, appeal, motion, or request may, in his or her discretion, grant the waiver of fee. . . .”



TPS Fee Waiver Rules: 8 CFR §240.20(e)



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For purposes of this section, the following documentation shall be required:

- (1) The applicant seeking a fee waiver must submit an affidavit, under penalty of perjury, setting forth information to establish that he or she satisfies the requirements of this section. The affidavit shall individually list:
 - (i) The applicant's monthly gross income from each source for each of the three months prior to the filing of the fee waiver request;
 - (ii) All assets owned, possessed, or controlled by the applicant or by his or her dependents;



TPS Fee Waiver Rules: 8 CFR §240.20(e) (cont.)



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- (iii) The applicant's essential monthly expenditures, itemized for each of the three months prior to the filing of the fee waiver request, including essential extraordinary expenditures; and
 - (iv) The applicant's dependents in the United States, his or her relationship to those dependents, the dependents' ages, any income earned or received by those dependents, and the street address of each dependent's place of residence.
- (2) The applicant may also submit other documentation tending to substantiate his or her inability to pay.



Recent statements by U.S. Citizenship and Immigration Services on Fee Waivers for TPS



Julie Dinnerstein

- You may request a waiver of TPS-related application fees and/or the biometrics fee by submitting a fee waiver request with proper documentation of inability to pay. Such documentation would include:
- Receiving a federal/state benefit that is determined by your level of income, or
- Evidence of household income that is below Federal poverty guidelines; or
- Evidence of extraordinary expenses incurred when compared to income such as high medical bills



Recent statements by U.S. Citizenship and Immigration Services on Fee Waivers for TPS (Cont.)



Julie Dinnerstein

- Fee waivers may also be given for humanitarian reasons such as disability, homelessness or age. Documentation must also be provided to support these claims. All documentation must be in English or translated into English.
- An individual who requests a fee waiver must state exactly which fees (e.g., Form I-821 application fee, Form I-765 application fee; and/or the biometrics services fee) he or she wants waived. In order to obtain a fee waiver, you must submit, with these forms, a written statement, made under oath, affirmation, or pursuant to 28 USC 1746, under penalty of perjury. In the written statement you must state that you believe you are eligible for TPS and that you want the fees waived. You must also explain why you are unable to pay the required fees.



Fee Waivers: Practice Tips



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- This is not a tax filing – specific figures do not have to be exact as long as you indicate that the figures are an approximation and indicate the basis of approximation (for those without W-2 wages, that is usually memory, consideration of expenses and how they were paid, etc.)
- USCIS is expected to interpret fee waiver liberally and provide guidance through fact sheets and other information posted



Poll Question



Julie Dinnerstein

Marie, a single woman with no children, has been working off the books as a home aide and makes about \$400 a week. She makes about two times the poverty level but money is tight because she sends most of her money home to her elderly parents.

Should she qualify for a fee waiver?



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Where to file?



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- New York State residents

By mail:

USCIS
PO Box 660167
Dallas, TX 75266- 0167

By courier:

USCIS
Attn: Haiti TPS
2501 S. State Hwy.
121 Business, Suite 400
Lewisville, TX 7506

- Residents all other states have distinct mailing addresses. Check the USCIS web site or the Federal Register.



Practice Tips



Julie Dinnerstein



- Never send original documents (birth certificates, property deeds, passports, etc.), just copies.
- ALWAYS keep copies of all filings.
- Submit applications by return receipt.
- Submit only one application per mailing envelope (i.e., 4 family members = 4 separate envelopes with 4 separate applications and fees or fee waivers).



Post-filing



Julie Dinnerstein

- If TPS applicant moves, he or she must file a Change of Address on Form AR-11 within 10 days. If AR-11 is filed on-line, the change of address can be linked directly to the pending TPS application (if application remains pending at time of move).
- Once receipt for TPS application is received, New York resident TPS applicants are eligible for government funded health insurance in New York.
- Once EAD is received, noncitizen may apply for and obtain Social Security Number (SSN). Brooklyn and Queens residents must apply at designated Social Security Administration offices. See <http://www.socialsecurity.gov/cardcenters/cardcenterinfo.html>. (All others may apply at any Social Security Administration office.)



Post-filing (Cont.)



Julie Dinnerstein

- All non-citizen males between the ages of 18-26 in the US, even those without any immigration status at all, **MUST** register for Selective Service. Do not wait until TPS application is filed and even those ineligible for TPS must file. Applications available on-line at www.sss.gov and at any U.S. Post Office; note that online filing may not be available for noncitizens without SSNs or where the SSN was recently issued. Note that despite registration requirement, most persons who are not USCs or LPRs, including most persons in TPS status, are not eligible to volunteer for the armed forces.
- Persons who have lived in New York State for more than a year and are granted TPS are eligible for in-state tuition.





Jojo Annobil

*Attorney in Charge
Immigration Law Unit,
Legal Aid*



Criminal and Inadmissibility Bars to Temporary Protected Status



Jojo Annobil



Have you ever been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance?

If client answers NO follow with these additional questions.

- Have you ever been fingerprinted?
- Have you ever been stopped by the police?
- Have you ever been detained by the police?
- Have you ever been questioned by the police?

To obtain criminal record ask client to go to courthouse where case was heard and ask court clerk for a certified certificate of disposition



Poll Question



Jojo Annobil

Philippe is not sure if he was arrested. He was with a group of friends on the corner and the police rounded them all up and brought them to the precinct. Actually, he was pretty drunk and cannot remember if he was even fingerprinted.

What should he do?



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Criminal Bars to TPS



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INA §244(C)(2)(B)(i), 8 CFR §244.4(a)

- **Conviction of:**
 1. **One felony or**
 2. **Two or more misdemeanors makes a person ineligible for TPS**

Felony = any crime which is punishable by imprisonment of more than one year irrespective of actual confinement

Misdemeanor = any crime which is punishable by up to a year in jail

- **In New York an A or B misdemeanor conviction**
- **Any crime punishable by a maximum of 5 days or less imprisonment is not a felony or misdemeanor**



Offenses That Do Not Constitute Misdemeanors



Jojo Annobil



New York non criminal violations including:

- Traffic violations
- Disorderly conduct
- Loitering
- Harassment
- Speeding
- Driving while ability impaired
- Littering in the NYC subway

*** Beware of unlawful possession of marijuana a violation NYPL§221.05



Poll Question



Jojo Annobil

Jean Claude was convicted of a misdemeanor for assault and also for disorderly conduct.

Is Jean Claude eligible for TPS?



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What criminal convictions will trigger inadmissibility for clients seeking TPS?



Jojo Annobil



INA 212(a)(2)(A),(B)&(C)

Conviction or admission to commission of

- 1. Controlled substance offense**
- 2. Crime involving moral turpitude
(Petty Offense and youth exception)**
- 3. Conviction of two or more offenses
with an aggregate sentence of
5 years**
- 4. Reason to believe a drug trafficker**

**THESE INADMISSIBILITY GROUNDS
CANNOT BE WAIVED**



Is Client's Criminal Disposition a "Conviction" for Immigration Purposes?



Jojo Annobil



"Conviction" is defined at INA §101(a)(48) to include

1. A judgment of guilt entered by a court

or

2. Where adjudication has been withheld after a finding of guilt by a court or jury or

the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt and

A judge has ordered some form of punishment, penalty or restraint on the aliens liberty to be imposed



Punishment, Restraint or Penalty Include



Jojo Annobil



- Incarceration
- Probation
- Suspension of drivers' license
- Community service
- Costs surcharges and fines
- Drug program or other rehabilitative programs
- Term of imprisonment – includes suspended sentences

What Dispositions Constitute a Conviction for Immigration Purposes



Jojo Annobil

- | | |
|--|--|
| 1. Conviction | 1. Not a Conviction |
| 2. Formal judgment of guilt | 2. Family court disposition |
| 3. Deferred adjudication | 3. Deferred Adjudication |
| 4. (drug treatment, anger management family counseling) after plea or admission of guilt | 4. (drug treatment, anger management family counseling) with out plea or admission of guilt) |
| 5. Conviction on collateral attack | 5. Conviction on direct appeal |
| 6. Criminal disposition vacated expunged in interest of justice | 6. Criminal disposition vacated on legal defect in criminal act |
| 7. Court Martial | 7. Juvenile delinquent |
| 8. Juvenile Offender | 8. Youthful Offender Adjudication (YO) |



What is a CIMT



Jojo Annobil



- **Definition:** any conduct that is inherently base, vile or depraved and contrary to the accepted rules of morality and the duty owed among men and to society

What constitutes a CIMT is usually based on case law and by looking at the elements of the statute

- **Common CIMT's**
 - any crime with an intent element rather than recklessness or negligence i.e.,
 - intent to steal (petty larceny)
 - intent to damage property (arson)
 - Intent to defraud (welfare, insurance, mail or bank fraud)
 - Bodily harm- intentional assault
 - Recklessly causing serious physical injury
 - Sex offenses
 - Identity of victim, child could make a difference



Exceptions to CIMT



Jojo Annobil



- **Petty Offense: One single CIMT punishable by a maximum sentence of not more than one year and any sentence is not in excess of six months.**
- **Juvenile exception**
- **How to determine if an offense is a CIMT**
- **Categorical Approach – elements of the offense**
- **Modified categorical approach – divisible, multi-sectional – record of conviction (plea and sentence minutes, indictment or complaint. Cannot consult police reports or pre sentence reports**



Controlled Substances



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“Controlled substance” offenses includes:

- marijuana
- possession of drug paraphernalia
- driving under the influence (drugs)
- Solicitation relating to drugs



Grounds of Inadmissibility That May Be Waived



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Conviction or admission not required:

- Prostitution or commercialized vice
- Alien smuggling
- False claim US citizen
- Drug Abuse or Addiction
- Order of deportation within past year
- Deported at government expense within past 5
- years or within past 20 years if Aggravated felony Offense
- Immigration Fraud

Waiver: public interest, humanitarian purposes or to assure family unity

To apply for waiver use Form I-601



Poll Question



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Isabelle was forced into prostitution by a terrible aunt who she was living with. She was arrested and convicted of prostitution four separate times.

Can Isabelle apply for TPS?



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Other Bars to TPS



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INA 244(c)(2)(B)(ii) and 208(b)(2)(A)

- Anyone who has persecuted others
- Conviction of “particularly serious crime” (Aggravated felony)
- Committed a serious nonpolitical crime outside the United States
- Constitutes a danger to security of the United States



Removal/Deportation Proceedings



Jojo Annobil



- **Applicant has a final order of removal/deportation from IJ or BIA**
- **The US Government has suspended deportation of all Haitians with final orders of removal/deportation**
- **If detained with final order, Haitians may be released on an Order of Supervision and may apply for Employment Authorization (Form I-765)**
- **ICE will make release determination on a case by case basis.**
- **If not detained, but under a final order, Haitian nationals eligible for TPS may apply and also may apply for Employment Authorization (Form I-765).**



Removal/Deportation Proceedings (CON'T)



Jojo Annobil



- Applicant has Pending Removal Proceedings in Immigration Court
- EOIR required to give written notice to Haitian nationals in removal proceedings
- Haitian nationals can request a continuance to apply for TPS and then
 - Request Administrative Closure – case removed from IJ's active docket
 - Or
 - If eligible for TPS and has an application pending, request administrative closure (provide proof of filing I-797 Notice of Action).
- ICE has to agree to administrative closure and on condition that pleadings will be taken and removability determined



Poll Question



Jojo Annobil

Michel came to the U.S. in a boat in 1991 from Haiti. He was caught by immigration on the beach at Miami and given a court date and released. He moved to NYC and never went to his court date. He was ordered deported in absentia for not showing up.

Can Michel apply for TPS?



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Attention



Jojo Annobil

DON'T TRY AND GUESS IF CLIENT'S CRIMINAL DISPOSITION WILL TRIGGER A BAR TO TPS CONSULT AN IMMIGRATION SPECIALIST

For assistance call the Legal Aid Society's Immigration Law Unit at (212) 577 3300 or the Immigrant Defense Project Hotline at (212) 725 6422 on Tuesdays and Thursdays, 1:30pm-4:30pm. Please have criminal dispositions and any other details on the criminal matter available when you call.



Q&A: Our Panel of Experts



Allan Wernick
Director
*CUNY Citizenship and
Immigration Project*



Jojo Annobil
Attorney in Charge,
*Immigration Law Unit,
Legal Aid*



Julie Dinnerstein
Co-Director,
*Immigration Intervention Project,
Sanctuary for Families*



Recorded Web Seminar



- An e-mail with instructions on how to access this Web seminar and related links will be sent to you shortly

Help the Haitian Community by Volunteering

Saturday, January 30

10 a.m.-5 p.m.

Medgar Evers College

1650 Bedford Ave

Founders Auditorium

(between Montgomery and Crown
Streets)

Brooklyn, NY 11225

Saturday, February 6

10 a.m.-5 p.m.

PS 181

1023 New York Avenue

(between Snyder and Tilden
Avenues)

Brooklyn, NY 11226

Visit www.cuny.edu/citizenshipnow to sign up



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