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October 18, 1991

To: HDB

From: Sandy

Re: Temporary Protected Status (TPS) for Yugoslavs

In order to secure Temporary Protected Status for Yugoslavs, a letter needs to be drafted to the Attorney General of the United States that clearly defines according to the INS regulations that due to the current civil strife it is unsafe to return to Yugoslavia. I will draft the letter Monday. Copy of the regs is attached.

The evidence presented (according to the Office of Legal Council for INS) could be substantiated by attaching and referring to your two speeches on conditions in Yugoslavia presented on the House floor. Copies of the speeches should be attached to expedite the approval as the research on persecution already has been completed by our office.

Your position as the only Serbian member of Congress helps you take the lead in asking for TPS for all Yugoslavs. The enforcement division of INS suggested you request TPS for all Yugoslavs as there would be a problem with enforcement. That is, unless the Republic of Serbia is included in the Yugoslavian passport, once TPS is granted, all Yugoslavs, not just Serbians, currently in the U. S. could apply.

TPS could be granted for a 6-18 month period and is renewable year by year based on the current conditions. Employment is authorized during the TPS period. If TPS is granted, INS then prints the regs in the Federal Register and then INS administers the program throughout the United States.

It would mean that any Yugoslavs now in the United States would be allowed to remain and TPS is renewable year by year. A second idea would be for you to take the lead in forming an umbrella organization to assist Serbian Refugees. Forming this organization would enable Yugoslavs the time for an organization of a Serbian American group in assisting them to find permanent jobs, housing, language assistance, and INS direction to secure permanent residence if desired.



APR 19 1991

# IMMIGRATION AND NATURALIZATION UPDATES

Office of the Commissioner

425 Eye Street N.W.  
Washington, D.C. 20536

Number 28

Congressional Affairs

Bonnie Derwinski, Director

Feb./March 1991

**IMMACT 90** This combined issue of *Updates* is again packed with news concerning the Immigration Act of 1990 (ImmAct 90). Things are changing at a fast rate around INS. The regulation writing teams are working to bring us into full operations under the new law. If you have specific questions concerning this or any other INS matter, please contact us.

**TEMPORARY PROTECTED STATUS** ImmAct 90 provides for a temporary protected status (TPS) for nationals of countries that are designated by the Attorney General and meet certain requirements. TPS provides for a stay of deportation and employment authorization. On March 27 notice was published in the *Federal Register* designating Kuwait, Lebanon, and Liberia as TPS countries. In order for a person to be eligible for this program the person must:

- be a national of a designated country;
- have been continuously in the U.S. since 3-27-91;
- not have been convicted of any felony or two or more misdemeanors in the U.S.;
- must be admissible as an immigrant and not excludable under 212(a)(9), (10), (23), (27), (29), and (33);
- must not be an alien described in section 243(h)(2) of the INA (relates to persons who committed persecution, are criminals who constitute a danger to the community, committed a serious nonpolitical crime outside the U.S., or would be a danger to the security of the U.S.).

Application period: 3-27-91 to 3-27-92

Application forms: I-104, I-821, I-765(for employment authorization)

In order to be eligible for the program, a national of a designated country must register during the application period. A qualified alien will receive voluntary departure and employment authorization valid until 3-27-92. The local INS offices will determine the best method for filing of these applications. The INS will guarantee that an applicant will be interviewed no later than 30 days from the date of filing of the application. Applicants are encouraged to utilize voluntary agencies to aid them in preparing their forms. There is a fee of \$50 to cover registration and employment authorization.

**FEES** A final rule was published in the *Federal Register* on March 27, 1991, which adjusts most fees charged by the Service for applications and petitions. The new fee schedule is effective on 4-11-91. The new fees are:

I-17	\$130	I-191	\$90	I-538	\$70	N-400	\$90
I-90	70	I-192	85	I-539	70	N-402	80
I-102	50	I-193	90	I-600	140	N-455	90
I-129F	75	I-212	90	I-600A	140	N-470	90
I-129H	80	I-485	120	I-601	90	N-600	90
I-129L	80		95	I-612	90	N-643	85
I-130	75	I-485A	120	I-751	65	Parole Request	65
I-131	65		95	I-752	85	N-300/315	70
I-140	70	I-506	70	I-765	60	N-405/407	70

# Rules and Regulations

Federal Register

Vol. 56, No. 96

Wednesday, May 22, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 91-067]

#### Pink Bollworm; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the pink bollworm regulations by removing a portion of Desha County, Arkansas, from the list of suppressive areas, and by removing Arkansas from the list of States quarantined because of the pink bollworm. We have determined that the pink bollworm has been eradicated from Arkansas. The rule we are affirming removes unnecessary restrictions on the interstate movement of regulated articles.

**EFFECTIVE DATE:** June 21, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPO, APHIS, USDA, room 844, Federal Building, 8505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule published in the Federal Register and effective March 6, 1991, (56 FR 9273-9274, Docket Number 91-015) we amended the pink bollworm regulations (7 CFR 301.52 et seq.) by removing a portion of Desha County, Arkansas, from the list of suppressive areas in § 301.52-2a, and by removing Arkansas from the list of States in

§ 301.52(s) quarantined because of the pink bollworm.

Comments on the interim rule were required to be received on or before May 8, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have no effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Desha County in Arkansas. There are nine cotton growers, processors, and seed producers within this area who will experience a modest economic benefit as a result of the interim rule, since they are no longer required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately \$100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V.)

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.52(s) and 301.52-2a that was published at 56 FR 9273-9274 on March 6, 1991.

Authority: 7 U.S.C. 1505b, 1505d, 1505e, 1505f, 181, 182, and 184-187; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 16th day of May, 1991.

Robert McEand,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-1262 Filed 5-21-91; 8:45 am]

GRLING CODE 140-34-0

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Parts 2, 103, 240, 274a, and 299

[RIS No.: 1400-01; AG Order No. 1495-91]

#### Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

**SUMMARY:** This rule implements new section 244A of the Immigration and Nationality Act (the Act), as added by section 302 of the Immigration Act of 1990 (IMMACT), Public Law 101-640, (November 29, 1990), and implements section 303 of IMMACT. The rule sets forth the procedures for applying for Temporary Protected Status (TPS) and provides, in accordance with the

provisions of the Act and IMMACT, an opportunity for eligible individuals temporarily to remain in and to work in the United States, until the end of the period designated by the Attorney General. In addition to the procedures for applying for Temporary Protected Status (TPS), this rule also references those forms and fees that are required as a part of the application process. This rule also contains conforming amendments to other parts of Title 8 of the Code of Federal Regulations.

**EFFECTIVE DATE:** May 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, suite 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041, telephone number (703) 750-8470; Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 7042, Washington, DC 20538, telephone number (202) 514-2895; or Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone number (202) 514-8888. 9587

**SUPPLEMENTARY INFORMATION:** On January 7, 1991, an interim rule with request for comments was published in the Federal Register at 56 FR 618. The comment period expired on February 6, 1991. The Immigration and Naturalization Service (the Service) received over 1,000 comments, representing the views of alien advocacy organizations, state and Federal Government agencies, Members of Congress, attorneys and individuals. The Service believes that the widest range of opinions has been expressed and greatly appreciates these comments. Each comment has been considered and many commenters will see the effects of their comments in this rule.

Almost all of the commenters stated that the fees to be charged by the program should be reduced and that a "family cap" should be instituted so that the cost of the Program is not prohibitive for large families. Additionally, commenters requested that no fee be charged for re-registration. After review of the comments and fee structure, the Service will maintain the initial registration filing fee for Alien Address Report Card, Form I-104, at \$75 for nationals of El Salvador but will institute a "family cap" of \$225 and will not charge an additional fee for the re-registration process. The family cap will mean that only the first three members of a family who apply for TPS as nationals of El Salvador will be charged the fee. Unmarried children under the

age of 21 will be considered part of the family. Applicants will be required to pay the appropriate fee for issuance and extension of employment authorization.

Commenters also complained that the waiver of fees for applications has not been uniformly applied by District Offices and suggested that the regulations be amended to provide guidance to officers. Commenters further suggested that the Service use the economic necessity guidelines in 8 CFR 274a.12(d). The Service is mindful of the fact that some applicants will be unable to pay the prescribed fees. The Service has the authority to waive fees, pursuant to 8 CFR 103.7(c), when an applicant is able to substantiate the inability to pay the prescribed fees. The Service will consider all requests to waive fees and will act favorably when an applicant meets the regulatory requirements. The Service will determine inability to pay using the Public Welfare, Poverty Guidelines as provided in Title 45, Code of Federal Regulations, part 1060.2, which are the same guidelines used in determining economic necessity under 8 CFR 274a.12(d).

One commenter stated that the definitions of felony and misdemeanor should be clarified to state that the crimes refer only to "final" convictions. The definitions cited in this rule are identical to those used in other parts of Service regulations and have not been the source of confusion. The Service will use the definition of conviction as found in 8 CFR 242.2(b). Additionally, the issue of what constitutes a final conviction has been addressed in judicial decisions and, therefore, it is not necessary for the regulations to be amended further.

A few commenters requested that the definition of *prima facie* be changed, deleting the phrase "if un rebutted" and inserting "on its face," because the current definition implies that the Service may delay TPS benefits in order to locate potential rebuttal evidence. The commenters believe that such action is only appropriate when making the ultimate determination of TPS eligibility. Making the change suggested would require the Service to accept the statements made by an applicant, even when the Service has evidence in its possession establishing that the applicant is ineligible for TPS. The Service must be able to use independent evidence, such as a criminal conviction, when making its determination. Therefore, the definition of *prima facie* has not been changed.

Commenters stated that the definition of brief, casual and innocent absence is too subjective. The Service believes the definition must be broad to allow for

flexibility. To do otherwise would require the Service to establish a specific time limit, which may cause some applicants to be disadvantaged. Therefore, this portion of the regulation has not been changed.

One commenter suggested that the regulations include a definition of the term "armed conflict," based on the Geneva Convention. The statute gives the Attorney General the authority, in his discretion, to designate any foreign state to be eligible for the TPS program. The purpose of the regulation is to state the requirements for administering the TPS program, not to limit the authority of the Attorney General. Therefore, it is unnecessary to provide a definition as requested by the commenter.

Several commenters suggested that the Service delete references to a District Director having any discretion in the granting of TPS. The commenters believe that there is no discretion to deny TPS if an applicant establishes eligibility based on the requirements of the statute. Another commenter believes that certain language in §§ 240.42(a) and 240.43 of the regulations is misleading and implies that the District Director enjoys special discretionary powers independent of the statute. The Service believes the statute is clear that a decision to grant TPS benefits is a discretionary decision. The phrase "to the satisfaction of the district director," however, has been removed from the sections discussed by the commenter because it is redundant.

Commenters stated that the Service has the authority to issue regulations relating to the dates by which aliens must have arrived in the United States and that the regulations should be promulgated without cut-off dates for arrival. The Service disagrees and believes that section 244A(c)(1)(A)(i) of the Act requires aliens to be physically present in the United States by the effective date of the most recent designation of the state. The effective date of a designation will be determined by the Attorney General as provided in section 244A(b)(2)(A) of the Act. No change has been made to § 240.2(b) of the regulations.

One commenter suggested that waivers of grounds of ineligibility should always be granted on humanitarian grounds, unless the individual is also ineligible or excludable on a non-waivable ground. The Service believes that discretion should be exercised on a case-by-case basis. Adopting the commenter's suggestions would take discretion away from the Service. Another commenter stated that no separate waiver



October 18, 1991

To: HDB

From: Sandy

Re: Temporary Protected Status (TPS) for Yugoslavs

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# IMMIGRATION AND NATURALIZATION UPDATES

Office of the Commissioner

425 Eye Street N.W.  
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Number 28

Congressional Affairs

Bonnie Derwiniski, Director

Feb./March 1991

## IMMACT 90

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- have been continuously in the U.S. since 3-27-91;
- not have been convicted of any felony or two or more misdemeanors in the U.S.;
- must be admissible as an immigrant and not excludable under 212(a)(9), (10), (23), (27), (29), and (33);
- must not be an alien described in section 243(h)(2) of the INA (relates to persons who committed persecution, are criminals who constitute a danger to the community, committed a serious nonpolitical crime outside the U.S., or would be a danger to the security of the U.S.).

Application period: 3-27-91 to 3-27-92

Application forms: I-104, I-821, I-765(for employment authorization)

In order to be eligible for the program, a national of a designated country must register during the application period. A qualified alien will receive voluntary departure and employment authorization valid until 3-27-92. The local INS offices will determine the best method for filing of these applications. The INS will guarantee that an applicant will be interviewed no later than 30 days from the date of filing of the application. Applicants are encouraged to utilize voluntary agencies to aid them in preparing their forms. There is a fee of \$50 to cover registration and employment authorization.

## FEES

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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-067]

Pink Bollworm; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the pink bollworm regulations by removing a portion of Desha County, Arkansas, from the list of suppressive areas, and by removing Arkansas from the list of States quarantined because of the pink bollworm. We have determined that the pink bollworm has been eradicated from Arkansas. The rule we are affirming removes unnecessary restrictions on the interstate movement of regulated articles.

**EFFECTIVE DATE:** June 21, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, FPO, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

### SUPPLEMENTARY INFORMATION:

#### Background

In an interim rule published in the Federal Register and effective March 6, 1991, (56 FR 9273-9274, Docket Number 91-015) we amended the pink bollworm regulations (7 CFR 301.52 et seq.) by removing a portion of Desha County, Arkansas, from the list of suppressive areas in § 301.52-2a, and by removing Arkansas from the list of States in

§ 301.52(a) quarantined because of the pink bollworm.

Comments on the interim rule were required to be received on or before May 8, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Desha County in Arkansas. There are nine cotton growers, processors, and seed producers within this area who will experience a modest economic benefit as a result of the interim rule, since they are no longer required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately \$100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.925 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 301.5, subpart V.).

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.52(a) and 301.52-2a that was published at 56 FR 9273-9274 on March 6, 1991.

Authority: 7 U.S.C. 1505b, 1505d, 1505e, 1505f, 181, 182, and 184-187; 7 CFR 2.17, 2.31, and 271.2(c).

Done in Washington, DC, this 20th day of May, 1991.

Robert McLeod,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-12081 Filed 5-21-91; 8:45 am]

BILLING CODE 3410-34-45

## DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

6 CFR Parts 2, 103, 240, 274a, and 299

[INS No. 1495-91; AG Order No. 1495-91]

### Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

**SUMMARY:** This rule implements new section 244A of the Immigration and Nationality Act (the Act), as added by section 302 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, (November 22, 1990), and implements section 303 of IMMACT. The rule sets forth the procedures for applying for Temporary Protected Status (TPS) and provides, in accordance with the



provisions of the Act and IMMACT, an opportunity for eligible individuals temporarily to remain in and to work in the United States, until the end of the period designated by the Attorney General. In addition to the procedures for applying for Temporary Protected Status (TPS), this rule also references those forms and fees that are required as a part of the application process. This rule also contains conforming amendments to other parts of Title 8 of the Code of Federal Regulations.

**EFFECTIVE DATE:** May 22, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, suite 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041, telephone number (703) 750-3470; Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 7048, Washington, DC 20538, telephone number (202) 514-2895; or Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20538, telephone number (202) 514-9998. 9589

**SUPPLEMENTARY INFORMATION:** On January 7, 1991, an interim rule with request for comments was published in the Federal Register at 56 FR 618. The comment period expired on February 6, 1991. The Immigration and Naturalization Service (the Service) received over 1,000 comments, representing the views of alien advocacy organizations, state and Federal Government agencies, Members of Congress, attorneys and individuals. The Service believes that the widest range of opinions has been expressed and greatly appreciates these comments. Each comment has been considered and many commenters will see the effects of their comments in this rule.

Almost all of the commenters stated that the fees to be charged by the program should be reduced and that a "family cap" should be instituted so that the cost of the Program is not prohibitive for large families. Additionally, commenters requested that no fee be charged for re-registration. After review of the comments and fee structure, the Service will maintain the initial registration filing fee for *Alien Address Report Card*, Form I-104, at \$75 for nationals of El Salvador but will institute a "family cap" of \$225 and will not charge an additional fee for the re-registration process. The family cap will mean that only the first three members of a family who apply for TPS as nationals of El Salvador will be charged the fee. Unmarried children under the

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Commenters also complained that the waiver of fees for applications has not been uniformly applied by District Offices and suggested that the regulations be amended to provide guidance to officers. Commenters further suggested that the Service use the economic necessity guidelines in 8 CFR 274a.12(d). The Service is mindful of the fact that some applicants will be unable to pay the prescribed fees. The Service has the authority to waive fees, pursuant to 8 CFR 103.7(c), when an applicant is able to substantiate the inability to pay the prescribed fees. The Service will consider all requests to waive fees and will act favorably when an applicant meets the regulatory requirements. The Service will determine inability to pay using the Public Welfare, Poverty Guidelines as provided in Title 45, Code of Federal Regulations, part 1060.2, which are the same guidelines used in determining economic necessity under 8 CFR 274a.12(d).

One commenter stated that the definitions of felony and misdemeanor should be clarified to state that the crimes refer only to "final" convictions. The definitions cited in this rule are identical to those used in other parts of Service regulations and have not been the source of confusion. The Service will use the definition of conviction as found in 8 CFR 242.2(b). Additionally, the issue of what constitutes a final conviction has been addressed in judicial decisions and, therefore, it is not necessary for the regulations to be amended further.

A few commenters requested that the definition of *prima facie* be changed, deleting the phrase "if un rebutted" and inserting "on its face," because the current definition implies that the Service may delay TPS benefits in order to locate potential rebuttal evidence. The commenters believe that such action is only appropriate when making the ultimate determination of TPS eligibility. Making the change suggested would require the Service to accept the statements made by an applicant, even when the Service has evidence in its possession establishing that the applicant is ineligible for TPS. The Service must be able to use independent evidence, such as a criminal conviction, when making its determination. Therefore, the definition of *prima facie* has not been changed.

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flexibility. To do otherwise would require the Service to establish a specific time limit, which may cause some applicants to be disadvantaged. Therefore, this portion of the regulation has not been changed.

One commenter suggested that the regulations include a definition of the term "armed conflict," based on the Geneva Convention. The statute gives the Attorney General the authority, in his discretion, to designate any foreign state to be eligible for the TPS program. The purpose of the regulation is to state the requirements for administering the TPS program, not to limit the authority of the Attorney General. Therefore, it is unnecessary to provide a definition as requested by the commenter.

Several commenters suggested that the Service delete references to a District Director having any discretion in the granting of TPS. The commenters believe that there is no discretion to deny TPS if an applicant establishes eligibility based on the requirements of the statute. Another commenter believes that certain language in §§ 240.42(a) and 240.43 of the regulations is misleading and implies that the District Director enjoys special discretionary powers independent of the statute. The Service believes the statute is clear that a decision to grant TPS benefits is a discretionary decision. The phrase "to the satisfaction of the district director," however, has been removed from the sections discussed by the commenter because it is redundant.

Commenters stated that the Service has the authority to issue regulations relating to the dates by which aliens must have arrived in the United States and that the regulations should be promulgated without cut-off dates for arrival. The Service disagrees and believes that section 244A(c)(1)(A)(i) of the Act requires aliens to be physically present in the United States by the effective date of the most recent designation of the state. The effective date of a designation will be determined by the Attorney General as provided in section 244A(b)(2)(A) of the Act. No change has been made to § 240.2(b) of the regulations.

One commenter suggested that waivers of grounds of ineligibility should always be granted on humanitarian grounds, unless the individual is also ineligible or excludable on a non-waivable ground. The Service believes that discretion should be exercised on a case-by-case basis. Adopting the commenter's suggestions would take discretion away from the Service. Another commenter stated that no separate waiver