

MINNPOST

Permanently temporary: Liberian case demonstrates perils of relying on U.S. temporary immigration status

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April 6, 2018

Trump announced the end to protected status for Liberians in the U.S., citing progress in Liberia on “restoring stability and democratic governance.”

It’s a cycle that has become familiar in the era of Donald Trump: the administration announces it is ending “temporary” legal status for a group of immigrants, setting up a hard deadline by which they must leave the U.S.

The group responds in protest, and the media is flooded with stories of immigrants being forced to leave behind full lives they have established in America. And, then, lawmakers who represent them vow to push for solutions in Washington — passing a law, lobbying the administration — to stave off the deportation of members of their community.

Over the past year, this cycle has swept up immigrants from El Salvador, Haiti, Honduras, and as of last week, Liberia. On March 27, the administration announced it would end a program called Deferred Enforced Departure, or DED, a program that has permitted several thousand Liberians to remain in the U.S. since 2007. Since the administration of George H.W. Bush, Liberians have had some kind of protected status, allowing them to remain in the U.S. without fear of being sent back to Liberia.

For over two decades, there’s been good reason to grant them this protection: the small, west African nation — founded by former African-American slaves — has, since the late 1980s, experienced two lengthy and brutal civil wars that killed hundreds of thousands of people; more recently, it was struck with a deadly outbreak of the Ebola virus.

During this period, the Liberian community in the U.S. has grown to about 60,000, with roughly half of them living and working in the Twin Cities metropolitan area. At least 1,000 Liberians currently have DED, and many of them have lived in the U.S. for decades, working jobs, paying mortgages, and raising children.

With the stroke of a pen, the Trump administration has decided that the conditions in Liberia no longer warrant protected status: they argue these designations are temporary, and they should be enforced that way. Liberians here under DED now have a year to pack up their lives, or to prepare for a new life in the shadows, as undocumented immigrants.

The suddenness of that change raises an issue at the heart of these temporary programs: the failure to update federal policy to ensure long-term protections for these immigrants, which has left them vulnerable to an administration with a far starker outlook on immigration than those that came before it.

The why of TPS

The memo that came from the White House announcing the decision on DED was clear: “I have been informed that conditions in Liberia have improved. Liberia is no longer experiencing armed conflict and has made significant progress in restoring stability and democratic governance,” Trump stated.

“I find that conditions in Liberia no longer warrant a further extension of DED, but that the foreign policy interests of the United States warrant affording an orderly transition (‘wind-down’) period to Liberian DED beneficiaries.”

There will be a year, Trump went on, for that “wind down” to take place — for Liberian beneficiaries of DED to leave the U.S., and for the Liberian government to prepare to reintegrate them.

DED and Temporary Protected Status, or TPS, are two of the main programs that permit immigrants to remain in the U.S. on a temporary basis. (The other big one in the news is Deferred Action for Childhood Arrivals, which applies to young, undocumented immigrants brought here as children. Trump terminated DACA in September 2017, but federal courts have blocked that move, and the issue is unlikely to be resolved until the Supreme Court weighs in.)

TPS, which was enabled by an act of Congress in 1990, is currently granted to immigrants from 10 countries, but the Trump administration has already moved to terminate that for five of them: El Salvador, Haiti, Sudan, Honduras, and Nicaragua.

It was granted for El Salvador and Haiti after earthquakes in those countries in 1991 and 2010, respectively. Hurricane Mitch, which devastated Central America in 1999, prompted TPS status for Nicaragua and Honduras. Extreme levels of gang violence and crime prompted extensions of TPS for El Salvador, Honduras, and Nicaragua. Sudan, which has experienced civil war, famine, and flooding in the last decade, will see the TPS status its nationals have had since 1997 end.

The countries whose TPS statuses have not been terminated are Nepal, which suffered a major earthquake in 2015, and South Sudan, Somalia, Syria, and Yemen, which are all experiencing bloody civil wars or violent unrest. Liberians are the only group to have DED.

Over 320,000 immigrants in the U.S. currently have TPS or DED. The main difference between the two programs is administrative: DED can be extended directly by the president, while TPS is extended by the Secretary of Homeland Security.

The programs accomplish the same goal: allowing a national of a country covered by the program to remain legally in the U.S., for one or more periods of 12 to 18 months, until conditions in their home countries improve.

Immigrants from TPS or DED countries cannot come to the U.S. to claim the status — it simply protects from deportation those who are already here, and have been here since a certain date. While here, TPS or DED holders are eligible to work, study, and travel outside the U.S.

Decades of war, disease warranted special status

The temporary designations carry with them a high level of uncertainty: since they are renewed every 12 to 18 months, immigrants have had to hang on decisions from Washington as to whether they'd be able to remain in the U.S. for another year.

Until now, presidential administrations have preferred to avoid terminating temporary status designations, even if the conditions that give rise to them have subsided. That is not to say Trump's is the only administration to end TPS for immigrants: a dozen countries' nationals have seen their TPS status end since 1991, such as Kuwait, Lebanon, and Kosovo, each of which experienced war in the 1990s.

But the George W. Bush and Barack Obama administrations kept TPS in effect for the Central American countries, allowing over 300,000 people to build lives in the U.S. through programs designed to be temporary. Trump's recent moves, if they go forward, will cut the number of people with TPS or DED status in the U.S. by over 90 percent by the end of 2019.

With Liberia, the administration is correct in stating that the dire conditions that had given Liberians protected status for the last 27 years have largely subsided. When George H.W. Bush granted Liberians TPS, in 1991, the country was in the midst of a civil war that would claim the lives of 250,000 people and displace an additional one million.

TPS status continued to be granted to Liberians through the Bill Clinton and George W. Bush administrations, as Liberia was consumed with a second civil war and subjected to the horrors of the regime of dictator Charles Taylor, who was recently sentenced to 50 years in prison for war crimes.

After Bush created DED in 2007, it continued to be extended through the Obama administration, which became essential during his second term, as the Ebola virus claimed the lives of over 5,000 Liberians and infected many more.

Today, Liberia has made significant progress recovering from Ebola, and recent years have seen relatively stable democratic governance in the country, which is Africa's first republic. (However, Liberia remains very poor — 60 percent of the country's 4.6 million people live in poverty.)

'This isn't a new problem'

That Liberia is no longer a war zone and that El Salvador and Haiti are no longer disaster areas misses the point, say immigration experts and lawyers.

The issue is that the continued granting of temporary status by sympathetic administrations allowed immigrants to put down roots in the U.S., until an administration with a different approach to immigration moved swiftly to rescind those protections.

John Keller of the Minnesota Immigration Law Center says “the challenge really becomes when you have individuals who have been here for close to two, three decades. There’s nothing contemplated in something temporary when that condition has lasted that long,” he said.

Keller is representing a Minnesota resident from Liberia who has had a combination of TPS and DED for 27 years. “On the one hand, these programs are supposed to be temporary. On the other hand, the crises in some of these places are ongoing... there’s a lack of ability to adapt the humanitarian protections to more permanent protections at some point.”

“This isn’t a new problem,” he said. “What’s missing is any sort of empathy and relatability with two or three decades worth of being refugees inside the U.S. from the executive branch.”

David Bier, who studies immigration issues at the Cato Institute, a libertarian think tank, says past administrations have been reluctant to end TPS or DED even if the worst conditions in immigrants’ home countries have subsided.

“There’s enough people in the U.S. who could be targets for deportation that administrations have said, these people already gave status, just continue to renew that,” Bier said. “That is probably not the intent of the program as originally envisioned, but there is always a justification. That’s why it’s been extended so often.”

Congress failing to establish ground rules, or a path to permanent legal status, for migrants who have spent many years in the U.S. is a huge problem, Bier says.

“The solution is, really, we need to have a part of our immigration system that just says, if you’ve lived in the U.S. for more than a decade, that’s it. We’re just not going to deport you. It’s just inhumane to root out people who have built their lives here for such a long period.”

Congress: could act, but probably won’t

The administration’s line on DED and TPS has been that it is Congress’ responsibility to pass a law securing any long-term status for TPS and DED beneficiaries.

“Only Congress can legislate a permanent solution addressing the lack of an enduring lawful immigration status for those currently protected by DED who have lived and worked in the United States for many years,” Trump said in his statement.

Minnesota’s members of Congress said in the wake of Trump’s decision that they would push for legislation to block the deportation of Liberians, which could begin a year from now. Sen. Amy Klobuchar has introduced legislation in the U.S. Senate to give Liberians a path to permanent status, while 5th District Rep. Keith Ellison has introduced similar legislation in the U.S. House of Representatives.

“We have a year before the status expires and during that time I will do everything to find a solution for these families,” Klobuchar said in a statement.

Third District Rep. Erik Paulsen, a Republican who represents communities like Brooklyn Park that are home to many Liberians, cast the Trump decision as a “reprieve.” (Liberians’ DED status was set to end on March 31, and the administration delayed it a year as opposed to letting the termination take effect immediately.)

“While I’m encouraged that Liberian families no longer face an imminent threat of deportation, there’s still more work to do,” Paulsen said in a statement. “The additional year gives me and my colleagues on both sides of the aisle more time to work toward a permanent solution.”

Most observers are pessimistic that Congress will be able to do anything for the Liberians, or Salvadorans, Haitians, Nicaraguans, and Sudanese, who are facing down difficult decisions within the next year — leave a place that is now home, or risk being undocumented in Trump’s America.

“The votes in Congress are largely subject to the whims of the administration,” Bier says. “The Republican Party controls both houses at the moment, and until that changes, I don’t see any legislation moving that would deal with these issues.”

Further out of the question is lobbying the administration to extend DED or TPS to groups for which it has terminated them: “I don’t think there’s any changing the administration’s mind on this,” he says.

Keller and other immigration attorneys plan to lobby on Capitol Hill next week on DED, TPS and other immigration issues. He is not expecting Congress to move swiftly on the topic, particularly after what happened with DACA. After the administration said Congress needed to pass legislation granting status to the Dreamers or else let the program expire, lawmakers failed: three bills with DACA provisions failed on the Senate floor in February, while the House has not taken the issue up at all.

Action on these issues, Keller says, is “unlikely to happen without dramatic change in Trump and [Attorney General Jeff] Sessions’ views. There’s no indication it’s going in the right direction.”

Nevertheless, Minnesota’s Liberian community is mobilizing, and advocates have rallied in St. Paul and met with lawmakers in Washington. They are making the case that Liberians are a pillar of the Minnesota community and economy — particularly in sectors like health care, where Liberian workers comprise a significant portion of the elder care and home nursing workforces.

It’s possible, as has been the case with DACA, that resolutions could come from the courts: in March, a group of Florida Haitians filed a lawsuit against the administration over its termination of TPS.

“It was a temporary program, but our client, having lived here for 27 years, is simply not gonna be able to cope, and maybe not even survive, heading back to the conditions that sent him out,” Keller says of his Liberian client.

But uncertainty is a fact of life in these populations that have lived and died on 12 to 18 month extensions of their lives in the U.S. for decades.

“Who knows how much money they’ve spent either through attorneys’ fees, administrative fees, to maintain their status and work authorization in the U.S.,” Bier says. “At this point, they’re used to uncertainty.”