

Secretary Alejandro Mayorkas
Department of Homeland Security
Washington, DC 20528, USA

Director Ur Jaddou
United States Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746, USA

December 12, 2022

Re: Addressing the Inefficiencies and Inequities in the Processing of Form I-765, Applications for Employment Authorization

Dear Secretary Mayorkas and Director Jaddou:

The undersigned 113 legal services, direct service providers, resettlement agencies, membership and advocacy organizations call on the Department of Homeland Security (DHS) to speed up work permit processing, as well as address the inefficiencies and inequities in the policies and regulations on the processing of and access to employment authorization documents (EADs).

U.S. Citizenship and Immigration Services (USCIS) is facing a significant backlog in processing Form I-765, Application for Employment Authorization (EAD application) for certain categories of applicants. We acknowledge the ongoing efforts of USCIS to address backlogs more generally by developing technology and hiring additional staff, including significant reductions to other specific backlog categories.¹ Despite these efforts, the backlogs and delays in EAD application processing continue to persist. In turn, these delays wreak havoc on the lives of asylum seekers and parolees, as well as their employers and their local economies. In our experiences serving people seeking protection in the U.S., we have found they are eager to work to support themselves and their families, as well as contribute to their new home. At the same time, employers face a historic labor shortage.² Addressing the work permit backlog will help get work permits into the hands of asylum seekers as soon as possible while expanding the workforce at a critical time.

The current policy and regulatory structure around adjudicating EADs contribute to this backlog, creating unnecessary delays, inefficiencies, and expenses for USCIS. The following are policy and regulatory actions DHS can and should take in order to shape a more efficient and humane EAD adjudicatory

¹ USCIS, “USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders,” Mar. 29, 2022, <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work>.

² See e.g., Jeannette Neumann and Martine Paris, “Wait Times Exacerbated by Labor Shortage: Black Friday Update,” *Washington Post*, Nov. 25, 2022, https://www.washingtonpost.com/business/on-small-business/wait-times-exacerbated-by-labor-shortage-black-friday-update/2022/11/25/95bf53f8-6cd0-11ed-8619-0b92f0565592_story.html; Rolando Hernandez, “In Eastern Oregon, a labor shortage is making it harder to remove snow and ice from state highways,” *Oregon Public Broadcasting*, Nov. 22, 2022, <https://www.opb.org/article/2022/11/22/eastern-oregon-jobs-labor-shortage-snow-plow-ice-winter/>; Milton Ezrati, “Roots Of America’s Labor Shortage,” *Forbes*, May 30, 2022, <https://www.forbes.com/sites/miltonezrati/2022/05/30/roots-of-americas-labor-shortage/?sh=3b3dba1a2d7a>.

system. These recommendations are informed in part by asylum seekers themselves.³ USCIS can implement several of the recommendations immediately to speed up work permit processing, and we do not believe that it is necessary to slow down the processing of any other categories in order to achieve this. Taken as a whole, these recommendations will reduce workload and increase USCIS capacity across all categories. The recommendations are divided into two parts: first, policy actions that USCIS can take immediately; second, regulatory changes that the agency should make to improve the system in the long term.

I. Policy Actions USCIS Should Take Immediately

- **Devote sufficient resources to achieve the 30-day mandated processing time for asylum seeker initial EAD applications.** USCIS is currently out of compliance with the 30-day mandated processing times for asylum seeker initial EAD applications that is required by regulation.⁴ USCIS must surge resources to speed up work permit processing for people seeking asylum or other forms of safety in the United States.⁵
- **Shorten Form I-765 Application for Employment Authorization.** To make processing faster, USCIS should revert to using the prior 2-page form.⁶ Once the EAD application became 7 pages under the prior administration, USCIS staff estimated it took three times longer to adjudicate than the previous work permit form.⁷ The additional pages take up the valuable time of USCIS officers and do not add information that is worth tripling the length of time it takes to adjudicate the application.
- **Issue I-589 asylum application receipt notices in a timely manner.** In order to submit an asylum-seeker-based EAD application, proof of submission of the I-589 is required. However, in many cases, USCIS takes months to issue a receipt notice, with American Immigration Lawyer Association (AILA) attorneys reporting delays longer than 180 days to receive a USCIS I-589 receipt notice after filing the asylum application. Due to these delays in issuing receipt notices, asylum seekers are often well after the 150-day mark⁸ before they receive a receipt notice and thus cannot file an EAD application despite being eligible to apply, further delaying their asylum EAD application process. USCIS should take all means available to alleviate these delays, including assigning and hiring more adjudicators to review applications and authorizing overtime.

³ ASAP asked 350,000 asylum seekers what they would change about the asylum process. Nearly 80,000 replied. Their number 1 priority was for the government to speed up processing times for work permits and asylum interviews. *See 5 Ways to Change the Asylum Process*, Asylum Seeker Advocacy Project, <https://help.asylumadvocacy.org/5-ways-to-change-the-asylum-process/> (last updated Sept. 7, 2022). ASAP also incorporated other recommendations specific to work permit processing from asylum seekers into this document, including requests to lengthen the work permit grant from 2 years to at least 5 years.

⁴ USCIS, “Table 1: I-765 - Application for Employment Authorization Eligibility Category: C08, Pending Asylum Initial Permission to Accept Employment Completions by Processing Time Buckets August 1, 2020 - October 31, 2022 Aggregated by Fiscal Year and Month Potential *Rosario* Class Members,” Oct. 31, 2022, https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/defendants_october_2022_compliance_report_nov_4_2022.pdf.

⁵ This recommendation is also being made by asylum seekers who started a petition demanding USCIS reduce long processing times, garnering over 24,000 signatures. Change.org, “Reduce USCIS’ Application Processing Times,” <https://www.change.org/p/reduce-uscis-application-processing-times-inefficiencies>.

⁶ USCIS should return to the 07/17/17 edition of the I-765 Application for Employment Authorization.

⁷ This estimate is based on data provided in USCIS declarations in several lawsuits. For an explanation, see [Plaintiffs’ Reply Memorandum in support of their Motion for Summary Judgment](#), at pg. 16 n.16, *Casa de Maryland v. Mayorkas*, Case No. 8:20-cv-02118.

⁸ 150 days is the earliest time an asylum seeker can submit an asylum based EAD.

- **Issue initial work permits for asylum seekers that have a longer validity period.** A work permit in the (c)(8) category is valid for two years, with a 540-day automatic extension if a renewal application is timely filed. Issuing an EAD valid for 5 years or longer would in turn decrease the number of renewal applications USCIS is required to process, freeing up agency time and resources.
- **Implement online filing for all categories of I-765 work permit applications and fee waivers.** USCIS recently transitioned certain categories of EAD applications online. However, one of the largest categories—the (c)(8) category for people with a pending asylum claim—can only be filed physically. Additionally, because an online fee waiver does not currently exist, e-filing is currently limited to individuals who do not need fee waivers. Creating an online fee waiver form will expand access to e-filing to more EAD applicants. Ensuring access to e-filing for all EAD applicants, including for applicants who apply for a fee waiver, will eliminate USCIS staff time devoted to opening, scanning, and unclipping physical applications.
- **Publicly post up-to-date processing times for initial EAD applications based on (c)(8) and (c)(11) applications.** Currently, inaccurate or unavailable information for the processing times of these categories leads many applicants to submit multiple applications or submit inquiries. Publicly posting accurate information will diminish USCIS staff time devoted to answering inquiries.⁹
- **Automatically re-issue I-765 renewal receipt notices for every applicant eligible for an automatic extension that clearly indicates that their employment authorization has been extended for 540 days, in line with the regulatory extension.** Even when applicants qualify for the auto-extension under the regulation, many employers and state Departments of Motor Vehicles refuse to accept an expired EAD without a receipt notice that explicitly confirms that the EAD remains valid for the 540-day extension.
- **Lengthen the I-94 work eligibility period for refugee applicants and partner with the State Department to reduce work permit application processing times initiated in START.** Refugees resettled through the U.S. Refugee Admissions Program (USRAP) are authorized to work upon arrival. Refugees can work with a Form I-94 for 90 days before they must produce additional valid documents, like a work permit. Because of the delay in processing work permit applications, many refugees cannot get a work permit before the 90 days expire. USCIS should lengthen the I-94 work eligibility document for at least 180 days to give refugees enough time to work with an I-94 while the work permit application is processed. USCIS should also meaningfully partner with the State Department to address the root cause of the work permit delays for refugee arrivals.

II. Regulatory Action USCIS Should Take to Improve the Adjudication of EADs Long Term

- **Issue a regulation expanding the definition of “asylum application” to allow applicants to apply for a work permit earlier.** This could include a positive Credible Fear or Reasonable Fear decision, a parole request, or the filing of a defensive asylum application for biometrics with USCIS for purposes of work permit eligibility. The Interim Final Rule on Procedures for Credible

⁹ Asylum seekers are also petitioning USCIS to provide applicants with “more detailed and accurate information about their case.” Reduce USCIS’ Application Processing Times, Change.org, <https://www.change.org/p/reduce-uscis-application-processing-times-inefficiencies>.

Fear Screening partially implements this change, but it is currently only applied to the small subset of applicants who are referred for Asylum Merits Interviews.¹⁰

- **Issue a regulation eliminating the “Asylum Clock.”** USCIS should amend its EAD regulations to eliminate the “asylum clock” for asylum seeker EADs. While the Immigration and Nationality Act (INA) provides that asylum seekers are eligible for an EAD, it limits eligibility for asylum seeker EADs to 180 days after filing the asylum application. However, the statute does not require USCIS to stop and start the clock based on “applicant-caused delays.” USCIS and the Executive Office for Immigration Review also expend enormous resources to keep track of each applicant’s asylum clock and respond to inquiries from advocates when the clock is wrongly stopped or wrongly not restarted. Given changes in scheduling asylum interviews and long adjudication delays that are not applicant-caused, the clock is unnecessary and further contributes to agency processing delays.
- **Expand the category of individuals who are eligible for an auto-extension of their work permits.** USCIS has extended many asylum seekers’ work permits for up to 540 days after the EAD expiration date if they timely filed applications for renewal.¹¹ This should be expanded to apply to individuals of other categories, as well as those who applied to renew their work permits after their current permits’ expiration date. Excluding these individuals leaves thousands in limbo and causes employers to lose valued employees. Many such individuals have been unfairly punished and are unable to receive the automatic extension because they had to re-file after their renewal application was rejected due to erroneous USCIS instructions or who have reasonable explanations for the delay.¹²
- **Authorize those granted INA § 241(b)(3) withholding of removal or protection under the Convention Against Torture (CAT) to work immediately, by making these “incident to status” work authorization categories.**¹³ This regulatory change will allow people to use their Form I-94 as proof of employment authorization without the need to file an I-765 form for a separate work permit. Allowing these individuals to work without requiring USCIS to adjudicate an application will preserve resources and decrease the number of work permit applications requiring USCIS officer time and attention.
- **Expand work authorization incident to status for all people granted humanitarian parole.** USCIS recently announced that certain people with parole from Ukraine and Afghanistan are authorized to work without applying for a work permit. USCIS should issue regulations that authorize all nationalities granted parole to work immediately without applying for a work permit.

These immediate policy actions and suggested regulatory actions will improve the adjudication process of Form I-765, Application for Employment Authorization, increasing efficiency every step of the way. Most

¹⁰ Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078 (published Mar. 29, 2022), at pg. 18085.

¹¹ USCIS News Release, *USCIS Increases Automatic Extension Period of Work Permits for Certain Applicants* (May 3, 2022).

¹² For more information, see ASAP’s Comment to the Temporary Final Rule: Temporary Increase of the Automatic Extension Period of Employment Authorization, <https://www.asylumadvocacy.org/wp-content/uploads/2022/07/ASAP-Comment-on-TFR-re-EAD-540-day-Auto-Extension.pdf>, at 9-12.

¹³ See 8 C.F.R. § 274a.12 for the list of noncitizens with employment authorization incident to status. Incident to status applicants may apply for work permits but are authorized to work immediately on the basis of their immigration status.

importantly, these actions will support a humane adjudication process that will contribute to creating stability in the lives of asylum seekers, their families, and their communities. Please contact Amy Grenier, agrenier@aila.org, Conchita Cruz, conchita.cruz@asylumadvocacy.org, or Aaron Reichlin-Melnick, areichlin-melnick@immcouncil.org with any questions or to arrange for stakeholder engagement.

Sincerely,

Adhikaar

African Communities Together

African Human Rights Coalition

Al Otro Lado

Alianza Americas

American Friends Service Committee (AFSC)

American Immigration Council

American Immigration Lawyers Association

Americans for Immigrant Justice

Asian Americans Advancing Justice | AAJC

Asylum Seeker Advocacy Project

AsylumWorks

Ayuda

Boise Unitarian Universalist Fellowship (Boise, ID)

Building Organizational Capacity

Cameroon Advocacy Network

Capital Area Immigrants' Rights Coalition

Catholic Charities Community Services, Archdiocese of New York

Catholic Charities of the Archdiocese of Chicago

Catholic Legal Immigration Network

Catholic Migration Services, New York

Catholic Social Services, Diocese of Fall River

Center for Gender & Refugee Studies

Central American Resource Center - CARECEN

Central American Resource Center of Northern CA - CARECEN SF

Church of Our Saviour/La Iglesia de Nuestro Salvad

Church World Service

Coalition for Humane Immigrant Rights (CHIRLA)
Columbia Law School Immigrants' Rights Clinic
Community Refugee & Immigration Services (CRIS)
Cornell Asylum and Convention Against Torture Appeals Clinic
Dorothy Day House, Washington DC
DRUM - Desis Rising Up & Moving
Empowering Pacific Islander Communities
Exodus Refugee Immigration
Freedom Network USA
Furniture Friends
Global Cleveland
Haitian Bridge Alliance
Hampton Roads Refugee Relief
HIAS
Hispanic Federation
Hope Acts
Houston Immigration Legal Services Collaborative
Human Rights First
Human Rights Initiative of North Texas
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defenders Law Center

Immigrant Justice Initiative of The Community Church of Chapel Hill UU
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center
Immigration Hub
IMPRINT Coalition
Innovation Law Lab
Institute for Justice & Democracy in Haiti
Interfaith Welcome Coalition - San Antonio
International Institute of New England
International Refugee Assistance Project
International Rescue Committee

IntWork, LLC
Jewish Family and Career Services, Louisville
Jewish Family Service of San Diego
Journey to Asylum, WUU
Justice Action Center
Justice in Motion
Kids in Need of Defense
LGBT Asylum Task Force
Lutheran Immigration and Refugee Service
Maine AFL-CIO
Maine Business Immigration Coalition
Maine Equal Justice
Maine Immigrants Rights Coalition
Massachusetts Immigrant and Refugee Advocacy Coalition
Massachusetts Law Reform Institute
Midcoast Literacy
Migrant Center for Human Rights
NAFSA: Association of International Educators
National Immigrant Justice Center
National Immigration Forum
National Immigration Law Center
National Immigration Project (NIPNLG)
National Network for Arab American Communities (NNAAC)
National Network for Immigrant and Refugee Rights
National Partnership for New Americans
National TPS Alliance
New Mainers Resource Center, Portland Adult Education
New York Immigration Coalition
Presbyterian Disaster Assistance
ProsperityME
Quality Housing Coalition
Quixote Center

RAICES

Refugee Congress

Refugees International

Rian Immigrant Center

Rocky Mountain Immigrant Advocacy Network

Sanctuary for Families

Saratoga Immigration Coalition

Sisters of Mercy of the Americas Justice Team

Tahirih Justice Center

The Advocates for Human Rights

The Black Alliance for Just Immigration (BAJI)

U.S. Committee for Refugees and Immigrants (USCRI)

UCSF Health and Human Rights Initiative

Unitarian Universalist Service Committee

United Stateless

Upwardly Global

Venezuelans and Immigrants Aid (VIA)

Welcoming America

Wind of the Spirit Immigrant Resource Center

Witness at the Border

Women's Refugee Commission

World Education Services

Cc:

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