



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20528

RECEIVED

By ESEC at 9:45 am, Oct 20, 2023

October 19, 2023

Dear Secretary Mayorkas,

On behalf of the American Immigration Lawyers Association, and its nearly 17,000 practicing immigration attorneys and law professor members, we commend the Administration, and in particular the Department of Homeland Security, for its efforts to partner with local governments and non-profit organizations in New York, Boston, Chicago, Denver and other cities that are experiencing significantly increased arrivals of migrants. AILA, through our New York Chapter, was pleased that many AILA members volunteered for the emergency 2-week EAD clinic in New York City, serving as preparers, supervising attorneys, and organizers of the effort to facilitate employment authorization applications for eligible migrants. Ensuring that eligible individuals are authorized to work not only helps the migrants but helps the local economies in which they are settling.

We recognize how urgent the situation is in NY and other U.S. cities, which is why AILA is doing everything it can to help with the EAD clinics. At the same time, it is critical to ensure that within our immigration community, groups are not pitted against each other – meaning those who have been waiting months or years for immigration benefits being put behind very recent arrivals. AILA members represent people and businesses in every aspect of immigration and advocates for improvements that benefit all groups, including applicants for nonimmigrant status, adjustment of status, and advance parole. By expediting processing for one group, USCIS must shift resources away from other services which leads to greater delays or hardship for other groups. Currently there are many individuals who are waiting many months, if not years, for employment authorization renewals who are at risk of losing their work authorization and their jobs.

Recommendations

While our ultimate desire is for USCIS processing for all application and petition types to come within the cycle times goals it had set for itself, we understand that this may take time and resources the agency currently lacks. However, as the Administration plans the expansion of EAD clinics in other states, we think it is imperative that the Biden administration simultaneously take these additional policy actions outlined below that will concretely and

quickly ease work authorization processing delays for other applicants at the same time. These actions are an all of government approach involving multiple agencies in addition to USCIS, such as CBP, EOIR, and DOS, to convey the message that America is stronger when we stand together.

- **Renew the [Temporary Final Rule \(TFR\)](#) providing an automatic work authorization renewal for 540 days** (which is set to expire on October 26) to ensure there is no gap in employment authorization for individuals who have previously been authorized. Applicants applying for EADs based on a pending adjustment of status application and renewal for asylum can take up to 16 months, so this extension is imperative¹. The longer USCIS waits to renew the TFR the more anxiety and delay it imposes on people who have already entered the workforce and our depending on the income earned.
- **Ensure DHS handles [biometrics expeditiously](#) for people with removal cases before the immigration court.** Where applicable, DHS should refresh existing fingerprints. If that is not possible, ICE should prompt USCIS to send biometrics notice by mail 6 months in advance of a merits hearing. The failure by USCIS to schedule appointments and complete biometrics is forcing immigration judges to continue cases after merits hearings because they cannot issue decisions. In some cases, judges are even ordering people removed.
- **Extend [DOS interview waiver authority](#) which is set to expire on December 31, 2023.** DHS must come to the table and allow DOS to continue exercising broad interview waiver authority to ensure that they can continue to reduce consular processing delays. Without this authority, processing times for those seeking lawful pathways at U.S. consulates will increase significantly.
- **Extend the time limit for all parolees to two years upon entry to the United States.** Currently, CBP is granting parole for recent arrivals for a wide range of periods up to two years. Recent arrivals are allowed to apply for EADs but, processing times for EADs is so delayed that, by the time they receive their work permit, their parole status expires and their EAD with it. In addition, CBP should consistently issue I-94s to parolees and instructions on how they can retrieve their I-94 numbers. I-94 numbers are crucial evidence that an immigrant entered the United States through a port of entry and was inspected by a border official.
- **Allow for electronic filing of fee waiver applications, Form I-912,** which would enable Form I-765 applications for those eligible for a fee waiver to be filed online. Online filing can be more efficient and streamlined, which will save the time and resources for the agency, as well as the applicants and those assisting with their filings.
- **Issue guidance that would allow the Form I-797 Receipt Notice for Adjustment of Status applicants to serve as interim proof of work authorization and advanced parole,** to ensure that individuals on the path to permanent residency have the freedom to

¹ See <https://egov.uscis.gov/processing-times/>.

work and travel, as well as reduce pressures on USCIS adjudicators. Eligibility for work authorization and travel is based primarily on the fact that an application for adjustment of status is pending and does not require further consideration. When issuing the employment authorization document, it should be issued as a combined document with the advanced parole, to ensure that these two documents are timely processed together.

- **Authorize premium processing for the longest delayed Employment Authorization Document** application categories, such as (c)(8) renewal asylum applicants and (c)(9) adjustment of status applicants pursuant to 8 CFR 106.4(c)(21) to allow for adjudication within 30 days pursuant to 8 CFR 106.4(d)(21). USCIS is already taking steps to reduce delays for other EAD applicants and should make this option available to those who may be willing and able to pay the premium fee.
- **Prioritize technology enhancements that will enable attorneys to file cases electronically as a G-28 representative.** Currently, applicants who have G-28 representation cannot use the online filing system, which unnecessarily adds up to weeks of additional processing time for intake. This benefits attorneys, their clients, and USCIS.
- **Provide transparency and clarity into USCIS processing times,** as current data provided does not allow applicants to appropriately plan for their future. AILA provided [recommendations](#) to USCIS on August 4, 2023.

AILA believes that these recommendations are sensible and effective solutions to ensure that processing times and access to the benefits immigration system are not impeding the ability of individuals from gaining or keeping lawful status. We are available to discuss these recommendations and the impact it would have on our members and the clients that they serve.

Sincerely,



Ben Johnson

Executive Director

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: Ur Jaddou, Director U.S. Citizenship and Immigration Services

Kristi Canegallo, Acting Deputy Secretary of Homeland Security

Royce Murray, Counselor to Secretary Mayorkas



**U.S. Citizenship
and Immigration
Services**

January 3, 2024

Ben Johnson
Executive Director
American Immigration Lawyers Association (AILA)
1331 G Street NW, Suite 300
Washington, DC 20005

Dear Mr. Johnson:

Thank you for your October 19, 2023 letter to the Department of Homeland Security (DHS) regarding the processing of requests for work authorization. I am responding on behalf of the Department.

We appreciate the concerns you shared and your interest in reducing processing times for the issuance of Employment Authorization Documents (EADs). U.S. Citizenship and Immigration Services (USCIS) recognizes the ramification of gaps in employment authorization caused by backlogs and has dedicated significant resources to reduce backlogs and improve processing times while ensuring consistency in adjudications. In fiscal year (FY) 2023, the number of applications for employment authorizations have significantly increased from the prior year (from 2.3 million applications to 3.5 million applications). Despite the increase, USCIS worked to reduce the median processing time for all EADs from 5.2 months in FY 2022 to 2.1 months in FY 2023. We have also taken several steps to reduce the risk that eligible individuals might experience a lapse in their employment authorization.

On February 7, 2022, USCIS updated guidance in the USCIS Policy Manual to increase the maximum EAD validity period for several employment authorization categories from one year to two years and updated the maximum validity period for initial and renewal EADs for employment authorization under the parole and deferred action categories (category (c)(11) and category (c)(14), respectively) to the end date of the authorized parole or deferred action period. Furthermore, on September 27, 2023, USCIS issued updated guidance in the Policy Manual increasing the maximum validity period to five years for EADs issued to refugees and asylees; noncitizens paroled as refugees; recipients of withholding of removal; and noncitizens with pending applications for asylum, adjustment of status, cancellation of removal, or withholding of removal. Increasing the maximum EAD validity period will also significantly reduce the number of new applications USCIS receives for renewal EADs over the next several years, contributing to our efforts to reduce associated processing times and backlogs.

On May 4, 2022, USCIS published a Temporary Final Rule (TFR) that temporarily increased the automatic extension period for employment authorization for certain renewal applicants from up to 180 days to up to 540 days. This temporary increase helped avoid gaps in employment for certain noncitizen applicants with pending EAD renewal applications. As announced in the 2022 TFR, automatic extensions of employment authorization and EAD validity will be the original up to 180-day period for those eligible applicants who file a Form I-765 renewal applications on or after October 27, 2023. This change is not retroactive, which means it does not affect previous automatic extensions of up to 540 days, which will remain in place. USCIS is in the process of determining whether there is a need for a new regulatory action similar to the May 2022 TFR, notwithstanding past and ongoing operational improvements and efforts to accelerate EAD processing more broadly.

In addition, on September 20, 2023, DHS announced a series of border actions and accelerated processing for employment authorization applications.¹ As a result, USCIS is accelerating processing of EAD applications filed by individuals granted parole after presenting at a U.S. port of entry with an appointment scheduled through the CBP One app. USCIS also has dedicated additional personnel and implemented processing improvements to decrease the median processing time for these EAD applications from 90 days to 30 days. USCIS is working to reduce the median processing time to 30 days for EAD applications for individuals granted parole after presenting at a U.S. port of entry with advance travel authorization through the processes for Cubans, Haitians, Nicaraguans, and Venezuelans.

In your letter, you suggest USCIS should not prioritize resources for recent arrivals at the expense of those whose applications may already be outside of normal processing times, and propose DHS implement several measures to address the timely processing of EADs. You recommended USCIS: (1) renew the TFR providing certain renewal applicants an automatic extension of employment authorization of up to 540 days, (2) provide expedited biometrics processing for individuals in removal proceedings, (3) extend the Department of State (DOS) interview waiver authority, (4) extend the length of parole to two years for recent arrivals, (5) allow for electronic filing of Form I-912, Request for Fee Waiver, (6) prioritize technology enhancements to make it easier for attorneys and accredited representatives who file Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, to file cases online for their clients, (7) permit noncitizens to use their Form I-797 receipt notice as proof of interim employment authorization, and (8) authorize premium processing for the longest delayed EAD application categories.

I welcome and appreciate your feedback and recommendations. My team was pleased to further discuss these recommendations with your staff at a virtual meeting in mid-December. USCIS is actively considering and working to implement those that are in our authority and are operationally feasible. For example, USCIS is prioritizing the implementation of a paperless filing option for the Form I-912 and technology enhancements to make it easier for G-28 representatives to file cases for their clients online. USCIS is also evaluating whether further

¹ Department of Homeland Security, *Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act*, available at: <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>.

rulemaking efforts are necessary to mitigate the risk that certain applicants who filed EAD renewal applications on time may experience gaps in employment authorization or EAD validity due to USCIS processing delays. USCIS will continue to explore solutions to address the timely processing of requests for employment authorization and renewal EADs. Furthermore, USCIS will consult with our partners at DOS to evaluate interview waiver requirements for certain nonimmigrant visa applicants, in addition to working with our local ICE offices to ensure timely biometrics processing for noncitizens in removal proceedings.

With regard to standardizing a two-year parole period for recent arrivals, USCIS would note the length of parole is part of the discretionary determination made at the port of entry by U.S. Customs and Border Protection and is considered on a case-by-case basis depending on the circumstances of the individual case. Furthermore, USCIS is not presently considering expanding premium processing to the parole-based or asylum-based EAD application categories. USCIS is also not presently considering designating the Form I-797 receipt notice for a Form I-485, Application to Register Permanent Residence or Adjust Status, as evidence of interim work authorization and advance parole. However, USCIS believes recently implemented policy guidance and processing enhancements will contribute to the broader effort to reduce processing times.

USCIS has allocated additional resources to address the influx of applications from recent arrivals, and we remain committed to implementing policy changes and operational solutions to reduce the EAD backlog for all applicants, which includes a focus on adjudicating applications that may be outside of normal processing times. USCIS will continue to employ all available tools and resources to reduce the processing time of EAD applications and otherwise eliminate unnecessary barriers, restore faith in the immigration system, and improve transparency, efficiency, and integrity in the system.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director