

November 17, 2021

Hon. Alejandro N. Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528
By Email

Ur Mendoza Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, Maryland 20588

Dear Secretary Mayorkas and Director Jaddou,

We, the 75 undersigned organizations, write to urge the Department of Homeland Security (DHS) to eliminate - rather than continue to embrace - the draconian rules promulgated by the Trump administration that prevent many asylum seekers from earning a livelihood to support themselves and their families while their cases are being decided. Instead of rescinding these regulations, to date the Biden administration has continued to implement and defend them in court, subjecting asylum seekers to unbearable wait times to secure employment authorization documents (EADs) and denying many the ability to work altogether. DHS should take immediate action to rescind these regulations and take steps, including by issuing rules, that make the EAD process more efficient and fair.

The [sweeping regulations](#) issued by the Trump administration doubled the already punishingly long wait for asylum seekers to be eligible for work authorization from six months to one year after submitting an asylum application, eliminated rules that required efficient processing of these applications, and barred broad categories of asylum seekers from employment authorization altogether. The devastating effects of these delays on asylum seekers are clear. As a Nicaraguan asylum seeker and member of the Asylum Seeker Advocacy Project (ASAP) explained: “Leaving your home, your studies, and friends behind due to the selfish acts of those who have no appreciation for human life hurts but, being denied the ability to work to provide for your loved ones, hurts even more. USCIS [U.S. Citizenship and Immigration Services] needs to stop delaying our right to earn a living. Many employers are seeking people who really want to work, we are those people who want to work.”

These barriers punish asylum seekers with valid claims to U.S. protection who will ultimately be found eligible for asylum. By denying work authorization to asylum seekers who enter without inspection, they also violate Article 31 of the [Refugee Convention](#), which prohibits countries from penalizing asylum seekers based on their manner of entry. Moreover, the regulations require complex and time-consuming legal and fact-based analysis to implement, and are not amenable to fair determination in a purely paper-based adjudication process, especially because asylum applicants often apply for employment authorization without the assistance of counsel.

A federal court partially [enjoined](#) the regulations, holding that they were likely unlawful under the Administrative Procedure Act and that DHS had “simply paid lip service” to the devastating economic hardship the rules would inflict on asylum seekers, including the inability to afford the costs of seeking asylum such as hiring legal counsel. Indeed, when the Trump administration proposed these regulations, the Attorneys General of 19 states wrote to [oppose](#) the proposed rule because it would make it harder for asylum seekers to work, “lower tax revenue for the States, harm the States’ industries, increase reliance on State-funded programs, and make it harder for the States to enforce their labor and civil rights laws.” Yet since President Biden took office, DHS has doubled down on these restrictions by [ratifying](#) the EAD processing rule, defending the regulations in court, and continuing to deny EADs to asylum seekers based on these Trump-era regulations.

The inability to work for many months after requesting asylum leaves many asylum seekers, who are often traumatized, in anxiety-filled [prolonged limbo](#) and vulnerable to severe deprivations such as being homeless, unable to feed themselves and their children, or struggling to get health care. An ASAP member and asylum seeker from Hong Kong noted the hardship of “[t]he wait to be processed, and the inability to work legally to pay for healthcare, rent, and food while I wait to be processed. I have a graduate degree obtained in the States. Before my life unraveled, I had a decent-paying job, and contributed by paying taxes and making donations to my church and other worthy causes. I can’t do it now. I can’t even work at Safeway or McDonald’s. I worry about getting COVID. I worry about getting sick since I am uninsured.”

Even before the Trump administration promulgated these regulations, asylum seekers already had to wait five months after filing an asylum application before they could even submit an application for an EAD, and only became eligible to receive an EAD six months after applying for asylum. Many [refugees](#) have struggled to survive while waiting for employment authorization prior to the Trump-era regulations. For instance, a Salvadoran asylum seeker who fled domestic violence and death threats was forced to live with an abusive man in the United States because she lacked work authorization and had nowhere else to go, and a torture survivor from the Central African Republic ended up homeless until he received work authorization.

DHS should fully rescind the Trump-era rules that create work authorization deprivations and take additional steps, including by issuing regulations, to establish a more humane and efficient EAD process:

- **Automatically issue EADs to applicants who have filed a Form I-589, Application for Asylum, or otherwise indicate an intent to apply for asylum, without requiring a separate EAD application form.** USCIS could, for example, permit asylum seekers to apply for EADs by checking a box on the I-589 or consider a positive credible fear [determination](#),

filings the first three pages of an asylum application for biometrics, or lodging of an asylum application with the immigration court to meet the filing requirement for purposes of EAD eligibility. This would significantly reduce the administrative burden on USCIS in processing EAD applications.

- **Alternatively, shorten and simplify the Form I-765, Application for Employment Authorization**, which ballooned during the Trump administration from two to seven pages in length. Some of the added questions and required evidence pertain to new and harmful regulatory barriers that USCIS should rescind, while others do not even appear relevant to EAD eligibility. The needless complexity of the current form creates barriers for asylum seekers, particularly those not fluent in English or not represented by an attorney, and leads to inadvertent mistakes and increased bureaucratic delays in processing applications.
- **Issue EADs valid throughout the pendency of an applicant's asylum case** (including administrative and judicial appeals) to ensure that asylum seekers do not have gaps in employment authorization, to reduce the financial burden imposed by exorbitant renewal fees, and to reduce the administrative burden on USCIS to process renewal applications.
- **Ensure that the USCIS website, forms, and instructions are available in languages commonly spoken by asylum seekers and accept forms in these languages** so that applicants are not forced to complete forms and swear to the accuracy of their statements on forms in unfamiliar languages. Establish a translation service for all other languages to assist asylum seekers with completing forms.
- **Eliminate EAD application fees for all asylum seekers**, which are burdensome and often prevent people from applying. This includes the fees imposed by the Trump administration, fees for (c)(11) parole-based EADs, as well as the \$410 application fee for asylum-based EAD renewals (to the extent that the agency declines to make EADs valid for the pendency of the applicant's asylum claim, as recommended).
- **Eliminate the bar to EAD eligibility for asylum seekers with convictions that USCIS adjudicators believe constitute "aggravated felonies,"** a notoriously complex legal question that has been the subject of extensive case law. When an EAD application is mistakenly denied on these grounds, it may be years before the error can be fixed, during which time the asylum seeker is unable to support themselves or their family.
- **Allocate sufficient staff and resources to timely process asylum-based EAD initial applications and renewals** and require, by regulation, that all protection-based EADs, including the (a)(5), (a)(10), (c)(8), and (c)(11) categories, are processed within 30 days.

USCIS continues to fail to adhere to its legal mandate to timely process initial (c)(8) EAD applications within 30 days of receipt. Protection-based EAD applications should be processed within this timeframe and promptly mailed to applicants.

- **Ensure that the I-765 application includes more accurate gender designations**, as it currently allows applicants to indicate only male or female gender designations, unlike U.S. passports, for which the State Department recently began to provide an “X” gender marker option.

We also urge the administration to support legislative change to eliminate the statutory 180-day waiting period for asylum-based work authorization that imperils the lives and wellbeing of asylum seekers in the United States who are unable to support themselves and their families while they wait for their cases to be decided. While the 180-day EAD bar remains in statute, USCIS should:

- **Develop an alternative means to consider an asylum application to be filed for purposes of EAD eligibility.** It often takes asylum seekers months to complete and submit their asylum applications because these applications are difficult to complete without an attorney, require significant detail, and must be completed in English. As noted above, USCIS could consider a positive credible fear determination (to the extent DHS chooses to employ expedited removal, which it should not), the filing of the first three pages of the asylum application for biometrics, the lodging of an asylum application with the immigration court, or other events signalling an asylum seeker’s intent to request protection in the United States as satisfying the filing requirement.
- **Accept and process EAD applications any time after the filing requirement is met** and immediately issue an EAD when the statutory waiting period has ended.
- **Employ a straight-forward calendar-day-based system (i.e. counting from the day of filing) to calculate eligibility for employment authorization**, rather than the former EAD clock system or the current “applicant-caused delays” system. A calendar-day-based system would be simpler, more efficient and straightforward, and would reduce mistaken denials, which are often extremely difficult and time-consuming for asylum seekers and their advocates to correct.

We respectfully request an opportunity to discuss these and other ways in which DHS and USCIS can strengthen and improve the U.S. asylum system.

Respectfully,

Al Otro Lado
Aldea - The People's Justice Center
Alianza Nacional de Campesinas
American Immigration Council
American Immigration Lawyers Association
Arizona Justice For Our Neighbors
Asylum Seeker Advocacy Project (ASAP)
Bellevue Program for Survivors of Torture
Black Alliance for Just Immigration (BAJI)
Bridge to Rutland
Catholic Charities of Southern New Mexico
Catholic Legal Immigration Network, Inc.
Center for Gender & Refugee Studies
Center for Victims of Torture
Chicago Jewish Coalition for Refugees
Church World Service
Columbia Law School Immigrants' Rights Clinic
Community Asylum Seekers Project
Comunidad Maya Pixan Ixim
DC Volunteer Lawyers Project
Disciples Immigration Legal Counsel
Disciples Refugee & Immigration Ministries
Doctors for Camp Closure
Economic Policy Institute
Florence Immigrant & Refugee Rights Project
FORA
Freedom Network USA
HIAS
Hispanic Federation
Human Rights First
Human Rights Initiative of North Texas
Human Rights Watch
ICNA Relief
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defenders Law Center
Immigrant Legal Resource Center
Immigration Equality
Immigration Hub
Innovation Law Lab
International Refugee Assistance Project (IRAP)

International Rescue Committee
Justice Action Center
Justice in Motion
Kids in Need of Defense
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Make the Road Nevada
Make the Road New Jersey
Make the Road New York
Migrant Center for Human Rights
Mississippi Center for Justice
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)
National Network for Immigrant and Refugee Rights
National Partnership for New Americans
Niskanen Center
Oasis Legal Services
Project Corazon/Lawyers for Good Govt
Quixote Center
RAICES
Rainbow Beginnings
Refugee Action Network
Refugee Education & Adventure Challenge (REACH)
RefugeeOne
Rocky Mountain Immigrant Advocacy Network
Service Employees International Union (SEIU)
SHARe
Southern California Immigration Project
Tahirih Justice Center
The Advocates for Human Rights
United Stateless
We Are All America
Wind of the Spirit Immigrant Resource Center
Witness at the Border
Women's Refugee Commission