

Employment Authorization for Asylum-Seekers in Removal Proceedings

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Overview of Presentation

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Availability of EADs in Removal Proceedings

Employment Authorization Document

EAD Category	Application for Relief
(c)(8)	Asylum (I-589)
(c)(9)	Adjustment of Status (I-485)
(c)(10)	Cancellation of Removal (EOIR-42B)
(c)(18)	Order of supervision



180-Day Asylum EAD Clock

What is it and how does it work?

Suggested Resource: [USCIS's
180-Day Asylum EAD Clock Notice](#)

- The “180-day Asylum EAD Clock” measures the time period during which an asylum application has been pending with the USCIS asylum office and/or an Immigration Court with the Executive Office for Immigration Review (EOIR).
- An asylum seeker can file an application for work authorization, Form I-765, based on asylum-seeker status using the (c)(8) eligibility category **150 days after filing for asylum.**
- However, the applicant cannot receive the EAD until **the asylum application remains pending for an additional 30 days, for a total of 180 days.**
- Accruing time toward the 180-day waiting period pauses for delays requested by the applicant while the asylum application is pending.

180-Day Asylum EAD Clock

150 Days

30 Days

180 Days

Applicant files I-765 150 days after asylum application filed with the court (or USCIS)



Applicant waits an additional 30 day adjudication period



Eligible for (c)(8) asylum-seeker employment authorization document

Excluding any time during which the EAD Clock is stopped for applicant-requested delays

180-Day Asylum EAD Clock

What starts the clock?

For asylum applications first filed with the immigration court, USCIS calculates the 180-day clock in one of two ways:

1. The applicant will start to accumulate time toward eligibility for employment authorization on the date that a complete asylum application is filed with the immigration court.
2. If a complete asylum application was previously “lodged”* with the immigration court, whether at the court window or by mail, the applicant will start to accumulate time toward eligibility for employment authorization on the date of lodging.

*Note that after the 2016 policy change, most applicants no longer “lodge” an asylum application with the court as the application is now considered filed even if it was submitted to the court prior to a hearing.

180-Day Asylum EAD Clock

What stops the clock?

The 180-day Asylum EAD Clock does not include any delays the applicant requests or causes while the asylum application is pending with USCIS and/or EOIR.

- At the conclusion of each hearing, the judge will determine the reason for adjournment. If the adjournment is attributed to the applicant, the clock will pause until the next hearing.
- If the adjournment is attributed to the court, the clock will continue to accumulate time.
- If the applicant is an asylum seeker who was released from detention and whose case is automatically transferred to a non-detained hearing location, the clock will continue to run.

180-Day Asylum EAD Clock

What stops the clock?

Examples of “applicant attributed” adjournment outcomes that will stop the EAD clock:

- Asking for the case to be continued to find an attorney;
- Asking for additional time to prepare the case; or
- Requesting administrative closure of the case

Examples of “applicant attributed” delays between hearings:

- Filing a motion that delays proceedings and the immigration judge grants the motion
 - Ex; Motion to change venue or motion for a continuance

The EAD clock will stop when the motion is granted and start again after the next hearing, assuming the adjournment of that hearing is not applicant attributed.

180-Day Asylum EAD Clock

What stops the clock?

The EAD clock stops on the date the immigration judge issues a decision on the asylum application.

- If asylum is denied before 180 days have accrued, ineligible for work authorization.
- Filing a motion to reopen or reconsider does not restart the clock as the asylum application is not considered pending at that time. Only upon a grant of either motion does the clock restart.
- If the decision is appealed and remanded to either the BIA or an IJ, the clock will be credited the total number of days on appeal (ex; time between the IJ's decision and the BIA's remand order). The clock continues to accrue time after the remand order until another decision is made.

180-Day Asylum EAD Clock

*How do I check how many days
have accrued on the clock?*

- Call the EOIR Automated Case Information system at 800-898-7180 and enter in respondent's A-number
 - After entering A#, choose option #2 for "Case Processing Information"
 - System will either report how many days are on the clock or state "There is no clock."
- In some cases, the number of days reported by the EOIR hotline does not include the actual number of days accrued on the clock. The hotline does not include:
 - Time accumulated when the asylum application was lodged with the immigration court prior to filing the application with the immigration court
 - Applicants who lodged an application with the immigration court should add the number of days between the date of lodging and when the application was filed with the court
 - The time accreditable to the clock if the asylum application was remanded either to the BIA or IL for further adjudication
 - Time is retroactively added upon remand order

180-Day Asylum EAD Clock

What do I do if there seems to be an error in the calculation of the time on the EAD Clock?

- Address questions to the immigration judge during an upcoming hearing, or in writing to the court administrator.
- There is no motion or formal filing available to address issues with the EAD Clock.
- If the immigration court does not properly address the problem, contact the Assistant Chief Immigration Judge in writing.
- For cases on appeal, contact EOIR's Office of the General Counsel in writing.

180-Day Asylum EAD Clock

*Ongoing Litigation:
Garcia Perez v. USCIS and the
Asylum EAD Clock*

Garcia Perez v. USCIS and the Asylum EAD Clock

- *Garcia Perez* is a lawsuit filed in federal district court by five asylum applicants on behalf of a national class challenging the policies and practices of USCIS and EOIR preventing them from obtaining authorization to work while their asylum claims are pending. ([Link to Complaint](#))
- *Garcia Perez* challenges EOIR's and USCIS's failure to provide adequate notice of decisions to stop the EAD clock and failure to provide a viable method for asylum seekers to challenge these decisions

180-Day Asylum EAD Clock

*Ongoing Litigation:
Garcia Perez v. USCIS and the
Asylum EAD Clock*

Garcia Perez v. USCIS and the Asylum EAD Clock additionally challenges three policies that prevent asylum seekers from accruing time on the EAD clock;

- 1) *The Remand Subclass*: Failing to restart the EAD clock where an IJ denies an asylum application, but the applicant then prevails on appeal to the BIA.

The [USCIS EAD Clock Notice](#) has been updated to state the EAD clock will restart from either a Court of Appeals to BIA remand, or a BIA to IJ remand. The clock will be credited with all time the case pended on appeal.

- 2) *The Venue Subclass*: Stopping the EAD clock where the asylum applicant seeks a change of venue to another immigration court. Current rules stop the clock when a Motion to Change Venue is granted.
- 3) *Unaccompanied Children Subclass*: Stopping the EAD clock where the application is transferred from the immigration court to USCIS or initially filed with USCIS

Settlement negotiations remain ongoing.

Additional Considerations for Asylum-Based EAD Applications

- No filing fee for initial filings for (c)(8) EADs
 - Check “**What is the Filing Fee**” section of the [I-765 instructions](#)
- Automatic extension for (c)(8) EADs
 - Work authorization maintained while renewal application pending
 - File renewal application **before** expiration date of current EAD
 - Normally 180-day extension, but currently, 540-day extension until October 26, 2023
 - Check the [USCIS website](#)
- 30-day adjudication period for *initial* (c)(8) EADs

Prosecutorial Discretion (*PD*)

- PD is not a sole basis for an EAD - need underlying application to apply for an EAD
- Depending on jurisdiction, consider requesting administrative closure rather than termination to maintain the client's EAD

Filing the I-765

Required Documentation

Check the “**Required Documentation**”
section of the [I-765 instructions](#)

- Filing fee (*renewals* only for (c)(8) EADs)
- Copy of I-94, passport, travel document
- Copy of EAD (*renewals* only)
- Passport-style photo (two copies for paper filings)
- Proof of pending I-589 with Immigration Court
 - Time-stamped I-589
 - Receipt notice
 - Biometric notice

Filing the I-765

Filing Pointers: Online Filing

Online filing now an option for (c)(8) EADs!

- Quick processing times
- Attorney and client must create MyUSCIS accounts
- Applicant's passport photo is still needed
- For **initial applications**, indicate it is an **initial application** to avoid paying the filing fee before submission

Filing the I-765

Filing Pointers: Paper Filing

Suggested Resource: [ASAP's Sample I-765 Application Packet](#)

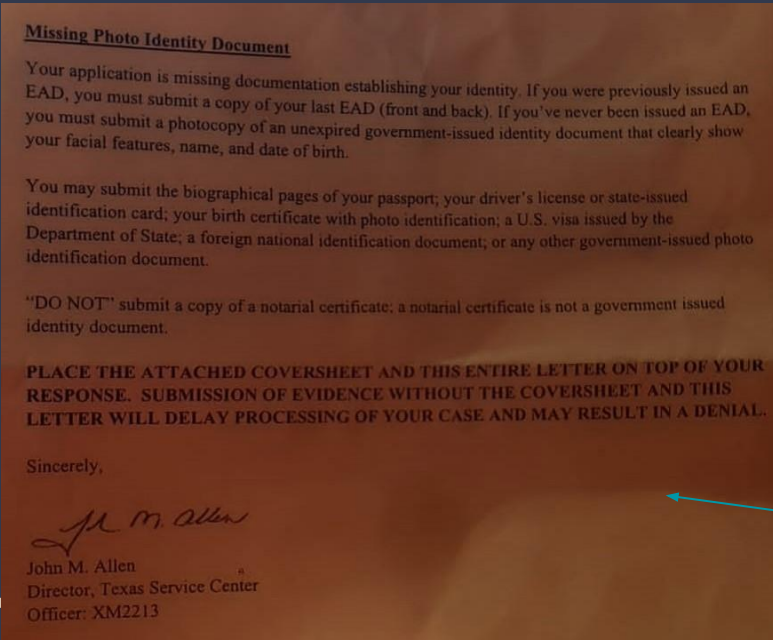
Assemble and mail the EAD application packet as follows:

- [Form G-28](#), if applicable
- [Form G-1145](#) (optional) if you would like to receive notices about the application via text or email
- [Form I-765](#), Application for Employment Authorization
- Proof of relationship if applying for child: include copy of birth certificate with [certificate of English translation](#)
- 2 passport photos with name and A# written on the back. Attach photos to top right corner of first page of I-765 with a paperclip.
- Copy of passport or other government issued ID (see next slide if unavailable)
- Evidence of asylum application, if applicable (ex; stamped first page of I-589 from court, notice of next hearing in immigration court)

Filing the I-765

Filing Pointers: Paper Filing

Sample Request for Evidence Excerpt:



By nature of their status, asylum seekers may not have a photo ID or the opportunity to apply for a passport from their country of origin. If no government-issued form of ID is available,

- I-765 instructions state the applicant may also present a birth certificate in addition to a secondary type of photo ID
- Some social service organizations will issue photo IDs to client
- School or work IDs can also be used as secondary form of photo ID
- Try submitting a combination of whatever is available.
- If USCIS needs additional documentation, you will receive a request for evidence (RFE).

Filing the I-765

Fees & Fee Waivers

If a fee is required for the EAD application, the applicant can request a fee waiver using [Form I-912, Request for Fee Waiver](#)

- Applicants whose household income falls under 150% of the federal poverty guidelines and/or are experiencing a “financial hardship” may qualify
- Household income is calculated using the number of people physically residing in the home with the applicant who are dependent on their income - *dependent spouses or children not residing in the home do not count*
- Financial hardship refers to, for example, medical expenses of family members, unemployment, eviction, and homelessness.
 - May also complete this section if income is above 150 percent of the Federal Poverty Guidelines and you believe you have special circumstances that warrant a fee waiver.
- Reminder for asylum seeker (c)(8) applicants:
 - No fee for initial EAD application
 - \$410 fee for renewal application

After Filing

What to Expect After Submitting the I-765

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

Receipt Number: **Your Receipt Number** Case Type: I-589 - APPLICATION FOR ASYLUM AND FOR WITHHOLDING OF REMOVAL

Received Date: [Redacted] Priority Date: [Redacted] Applicant: [Redacted] **Your A number**

Notice Date: [Redacted] Page: 1 of 1

Notice Type: Receipt Notice

We have mailed an official notice about this case (and any relevant documentation) according to the mailing preferences you chose on Form G-28, Notice of Entry of Appearance in Attorney or Accredited Representative. This is a courtesy copy, not the official notice.

What the Official Notice Said

*** ACKNOWLEDGEMENT OF RECEIPT ***

The date your application was received

Your complete Form I-589 Application for Asylum and Withholding of Removal was received and is pending as of [Redacted]. You may remain in the U.S. until your asylum application is decided. If you wish to leave while your application is pending, you must obtain advance parole from USCIS. If you change your address, send written notification of the change within 10 days to the Asylum Office at the below address or using the USCIS Online Change of Address system at <https://gov.uscis.gov/online/COA/Form.do>. You will receive a notice informing you when you and those listed on your application as a spouse or child dependents must appear at an Application Support Center for biometrics collection. You will also receive a notice informing you when you and those listed on your application as a spouse or dependents must appear for an asylum interview. Those notices will contain instructions for what to bring to your ASC appointment and what to bring to your asylum interview.

WARNING: Failure to appear at the ASC for biometrics collection or for your asylum interview may affect your eligibility for employment authorization, and may also result in the dismissal of your asylum application or referral of your asylum application to an immigration judge.

Alien Number: [Redacted] Name: [Redacted]

Please see the additional information on the back. You will be notified separately about any other cases you filed.

Arlington Asylum Office
U. S. CITIZENSHIP & IMMIGRATION SVC
1235 Wilson Boulevard, Suite 300
MS 2300
Arlington VA 20198-2500
USCIS Contact Center: www.uscis.gov/contactcenter

If this is an interview or biometrics appointment notice, please see the back of this notice for important information. Form I-797C 04/01/19

- Timeline
 - Inconsistent, but ideally receipt notice received within 30 days
 - Despite 30 day adjudication period for asylum seekers, that is rarely honored
- Receipt Notice
 - Notice of Action I-797C
 - Use receipt number to track EAD progress on [USCIS's Case Lookup Tool](#)
 - Case lookup tool will indicate when the EAD has been approved, denied, mailed, etc.
- Update address with USCIS using [Form AR-11](#) if applicant moves at any point after filing
- Request for Evidence
- Denial
 - No appeal process available
 - Can file motion to reopen or reconsider using [Form I-290B](#) within 33 days if you disagree with the decision or have additional evidence
 - Denial is without prejudice, so you could also just re-apply

After Filing

Troubleshooting for Long-Pending EAD Applications

If no receipt notice received within 30 days, try emailing lockboxsupport@uscis.dhs.gov. Include

- Applicant's full name and A Number
 - Mailing address
 - Any tracking number for sending the application
 - Date delivered to USCIS
 - Can also attach a screenshot of the tracking webpage showing delivery confirmation
 - Explanation that you have not received a receipt notice
-
- 1) [Check estimated processing times](#) for the EAD category on the USCIS website
 - 2) If outside the normal processing time, [submit online inquiry to USCIS](#) or call the USCIS Contact Center

After Filing

Fixing Typos on EADs

- Wrong birth date, misspelled name, etc.
- Make a copy of front and back of EAD with the typo

If USCIS error:

- [Submit request online](#) to USCIS
 - Provide description of the error
 - Provide necessary correction
- Mail request to USCIS
 - Include cover letter detailing the error
 - Provide copy of EAD with typo
 - Provide proof of necessary correction

Questions?