

**Employment Authorization for Asylum Seekers in Removal Proceedings**  
**May 12, 2023**

**Question & Answers Written Responses**

<b>ASYLUM CLOCK ISSUES</b>
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**USCIS vs. EOIR: What Happens To The Clock When...**

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***I-589 filed with USCIS. Then, NTA is filed with EOIR.***

- Q: What happens if a person files their I-589 with USCIS just before the case is docketed with EOIR? Do we need to refile the copy with EOIR?**

**A:** If the I-589 was filed with USCIS 21 calendar days or fewer after the date the NTA was filed and docketed with EOIR, USCIS will send the I-589 to the immigration court where the person's proceedings are pending and send a notification by mail. The receipt date by USCIS will serve as the filing date for purposes of the asylum one-year filing deadline, so the argument should be made that applies for the asylum clock as well. If the I-589 was filed 22 calendar days or more after the NTA was filed and docketed with EOIR, USCIS will reject your I-589 and return it to you, in which case you must re-file the copy with EOIR and restart the asylum clock.

For more information, see USCIS' website at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/what-happens-after-you-file-form-i-589-with-uscis> and <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf>.

- Q: The asylum applicant, after submitting his I-589 with USCIS, was served with an NTA. He submitted his I-589 within 21 days from being served with the NTA. Does the EAD clock start to run when USCIS received his I-589? Or does he need to re-file his I-589 with EOIR?**

**A:** See the answer to Question 1 – Because the I-589 was submitted within 21 days of being served the NTA, USCIS should send the asylum application to the immigration court and the EAD clock should begin on the date USCIS received the I-589.

- Q: When the I-589 is initially filed with USCIS, then the NTA is filed with EOIR, does the clock stop?**

**A:** It depends on whether the NTA was filed within 21 days of USCIS receiving the I-589. See the answer to Question 1.

***I-589 filed with USCIS. NTA is not filed with EOIR.***

- Q: With the asylum applicants that have come through the border and whose NTA has not been filed yet, we have been filing the I-589 with USCIS and then when we filed the I-765, the I-765s are now being denied b/c the 180 days have not elapsed according to USCIS. Do you know why this is happening?**

**A:** If the NTA is not yet filed then USCIS has jurisdiction over the I-589, so the filing of the I-589 with USCIS should start the asylum clock. So long as the NTA is not later filed with EOIR, the asylum applicant should be eligible to file for a I-765 under category (c)(8) after 150 days (and eligible for adjudication of the I-765 after 180 days). A denial of the I-765 seems to be erroneous so we would encourage you to try the advocacy strategies explained in the webinar.

5. **Q: We filed I-589 with USCIS because the NTA was never filed with the Court. The I-765 was denied because it should have been filed with the Court? Yet, other ones with the same scenario had been approved. What is your take?**

**A:** See the answer to Question 4. If the NTA is still not filed with EOIR, then it is correct that USCIS has jurisdiction so it seems that the I-765 was erroneously denied. We would encourage you to try the advocacy strategies explained in the webinar.

*I-589 filed with USCIS and was later referred to EOIR. NTA has not been filed with EOIR.*

6. **Q: What about EADs which are denied because the person received a referral from the asylum office, but an NTA was never filed with EOIR?**

**A:** A referral to the immigration court should not stop a person's asylum clock regardless of whether the NTA is filed with EOIR after the case is referred, unless the case was referred because your client failed to appear for the asylum interview.

### **Determining Number Of Days On The Asylum Clock / Asylum Clock Pauses**

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7. **Q: When does the clock start for affirmative asylum applicants?**

**A:** The clock for affirmative cases will start at the date of filing the I-589 with USCIS otherwise known as the "Received Date" on the I-589 receipt notice.

8. **Q: If the case doesn't have an eROP, there's no way to see how many days there are on the asylum clock, it's only for cases with eROP?**

**A:** If you call the EOIR hotline, you can use the "case processing information" option to find out the current days on the clock.

9. **Q: Does USCIS actually call the system to check the court clock?**

**A:** It seems that "EOIR provides DHS with access to its asylum adjudications clock for cases pending before EOIR." See Immigration Practice Manual 4.15(l), available at <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/15>.

### *Derivatives*

10. **Q: If a respondent is a derivative on a previously filed I-589 application and then files their own I-589, can we use the clock from the previous application?**

**A:** Yes. Derivatives with a pending I-589 are eligible for a (c)(8) EAD, so you may use the receipt date of the I-589 on which the respondent was a derivative.

11. **Q: Any specific issue why the EAD for asylum derivatives applicants (not the principal) in most cases are taking more than 90 days?**

**A:** EAD applications – regardless of whether the applicant is a principal or derivative asylum applicant – typically take longer than 90 days. You may try to submit a [Service Request](#) online to USCIS.

### *Lodging at court window*

12. **Q: With no clock on Court system, what are chances of EAD approval on basis of court window lodged 589 six months ago?**

**A:** It seems likely that an application lodged six months ago would satisfy the clock requirements as all days the application spent lodged count toward the clock!

13. **Q: What if the I-589 was lodged after the 150 days on the asylum clock have passed?**

**A:** So long as proof is provided to USCIS that the I-589 was lodged 150 days ago, then those 150 days should suffice for time on the asylum clock.

### *Change of Venue*

14. **Q: What about when a motion to change venue is granted and then the asylum application is filed after that but before a hearing in the new venue?**

**A:** Current rules stop the EAD clock when a Motion for Change of Venue is granted and the clock will re-start following the next hearing, assuming the reason for adjournment is not attributable to the respondent (ex; if respondent is granted more time to find a lawyer at the next hearing, the clock would remain paused.). Stopping the clock for a granted Change of Venue is a subject of the ongoing *Garcia Perez v. USCIS and the Asylum EAD Clock* litigation.

15. **Q: What if a COV/COA is requested by applicant? Clock stops, right?**

**A:** Same as Question 14 - Current rules stop the EAD clock when motion for COV is granted. This is being challenged by the litigation discussed in the webinar.

16. **Q: When does the clock restart after COV?**

**A:** Upon the conclusion of the next hearing, the clock will start again if the reason for adjournment is not accredited to the respondent.

17. **Q: What happens to the EAD Clock when the Judge denied a Motion to Change Venue and demanded that an asylum application be filed first, then the motion to change venue? The clock was stopped in one of my cases based on that scenario although the IJ asked it to be done in that order.**

**A:** Based on the EAD Clock guidance, the clock should have resumed at the denial of the motion and only stopped again once the subsequent Motion to Change Venue was granted. If you disagree with the amount of time the clock was paused, you can submit your concerns in writing to the court administrator or to the judge at an upcoming hearing.

### *Other Asylum Clock Pause Questions*

18. **Q: Does a Motion to Consolidate stop the clock?**

**A:** A Motion to Consolidate between hearings should not stop the clock, but if a hearing is adjourned for the purpose of allowing cases to consolidate, that will stop the clock as it is considered a respondent requested adjournment.

19. **Q: Is the clock paused while an appeal is pending even if the applicant was granted relief by the IJ and DHS is the one who appealed?**

**A:** No. The clock should continue if the IJ granted relief even if an appeal is pending.

### **Proof Of Time On The Asylum Clock**

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#### *Proof from USCIS*

20. **Q: Do you know why someone would receive a receipt notice from USCIS of the filing of the I-589 when the I-589 was filed with the immigration court?**

**A:** When you fee-in the I-589 with USCIS, you receive a receipt notice noting the case is with EOIR.

21. **Q: If we do not have a receipt notice would we be able to send just the biometrics notice?**

**A:** Yes, the biometrics notice should be sufficient proof that the I-589 was filed.

#### *Proof from EOIR*

22. **Q: With online filings, what is the best way to prove filing of the application?**

**A:** This question was answered live during the webinar. If you don't have a court stamp or receipt notice, another option is to consider taking a screen shot showing the filing. The biometrics notice is another option, but something linking the filing to court directly is preferable.

In addition, during the webinar, others shared that when the form is accepted by ECAS, it has the line across the top and the stamp on the side which says EOIR. A copy of that PDF should also suffice as proof of when the I-589 was e-filed with EOIR.

23. **Q: USCIS denied an I-765 and they're asking for proof there are more than 150 days. The asylum clock in court and via phone say more than 150 days but I wanted to get document proof to send. I went to court and talked to clerk. However, your presenters give the impression you can get the proof via ECAS. Did I misunderstand?**

**A:** If you filed the I-589 via ECAS, you may be able to provide a screenshot that includes when it was filed or a copy of the PDF that includes a line at the top that indicates when the filing was accepted by EOIR.

24. **Q: Is it possible to e-file an I-765 when I-589 was filed with the court, and there is no I-797 from USCIS confirming receipt of a copy of the asylum application?**

**A:** This question was answered live during the webinar. You could also consider the time-stamped I-589 and first few pages of the I-589. For online filing, a screenshot showing the filing and that the case is pending in court. Or a biometrics notice is another option, but better to show something directly linking the 589 to the court filing.

25. **Q: Have you had issues with only submitting proof of an upcoming hearing? (If I recall correctly they want to see proof of the application is stamped)**

**A:** It may depend on the court and the judge. As stated above, if available, it would be best to provide a date or time-stamped application whether it be a physically stamped copy or one with a date/time stamp from ECAS.

### **Advocating If Asylum Clock Is Incorrect**

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26. **Q: Is the court clerk responsible for starting/stopping the clock? I believe the number of days on my client's clock is incorrect. Who do I contact about getting it corrected?**

**A:** This question was answered live during the webinar - ask the immigration judge or ask questions in writing to the court administrator. There is no motion or formal filing available to address EAD clock. You could also contact Assistant Chief Immigration Judge in writing.

27. **Q: I had 2 I-765s denied which were filed more than 150 days after the I-589 were date-stamped at the immigration court clerk office. Rather than try to correct the clock I just refiled the I-765s but precious time was lost by having to start over. The clock was not stopped, and the explanation given was that the clock was at a number of days less than 150.**

**A:** If USCIS determines the asylum clock has not run despite sufficient proof that the I-589 was filed over 150 days prior to the I-765 filing date, then we encourage you to try advocacy strategies explained during the webinar. Those steps can be taken at the same time as re-filing the I-765 in case USCIS does not fix its error.

28. **Q: For those who apply EAD under Asylum pending and receive EAD denial, what should they do?**

**A:** If the asylum application was submitted to EOIR and the EAD was denied due to an asylum clock issue, confirm whether the number of days on the asylum clock is correct. Ask the immigration judge or ask questions in writing to the court administrator. There is no motion or

formal filing available to address EAD clock. You could also contact Assistant Chief Immigration Judge in writing. You may try e-mailing [lockbox@uscis.dhs.gov](mailto:lockbox@uscis.dhs.gov) with proof of the asylum clock and a detailed explanation as to why the time on the asylum clock is sufficient. Other options are to submit an ombudsman request, congressional inquiry, or re-file – though all these options may take longer than waiting to file when USCIS deems 150 days has passed on the asylum clock.

## I-765 APPLICATIONS

### Category Issues

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29. **Q: I have submitted AOS with EAD and I needed to submit them under A05 b/c C09 did not appear to apply for asylees adjusting**  
**A:** Yes, thank you for this clarification. The I-765 instructions state on pg. 11: "NOTE: If you are an asylee or refugee and have applied to adjust to lawful permanent resident status on Form I-485, file Form I-765 under category (a)(5) as an asylee or (a)(3) as a refugee. Do not file under eligibility category (c)(9)."
30. **Q: Applicant had EAD under (c)(8) and when the IJ granted asylum, EAD was expiring, so applicant filed for renewal of EAD but erroneously entered (c)(8), instead of (A)(5). What is the practical consequence of this? Given that the applicant is eligible to apply for AOS very soon, should the applicant refile & re-pay \$495 for an EAD with the proper category?**  
**A:** Because asylees should apply for EADs under category (a)(5) and not (c)(8), USCIS should deny this application. You can write to USCIS immediately about the mistake and request an amendment to the application to be considered as an initial application under category (a)(5) (assuming it is the applicant's first I-765 application under category (a)(5)). While you are waiting for USCIS' response to the amendment, you could submit an initial application under category (a)(5), which would not require a fee.
31. **Q: We received an RFE on a (c)(9) EAD application. Unfortunately, the attorney incorrectly selected (c)(9) when he meant to file a (c)(8) category. Can we simply re-apply for a (c)(8) EAD and ignore the RFE?**  
**A:** It might be possible to respond to the (c)(9) RFE along with a request to change the requested category of the I-765 application. However, this might result in a denial which would require re-applying for a (c)(8). Alternatively or simultaneously, as you stated – you can re-apply for (c)(8) and ignore the RFE (or withdraw the application) in which case USCIS will eventually deny it.

### Applying For An Initial I-765 Under Category (C)(8)

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32. **Q: What if the applicant is a child who is applying with parents and does not have any photo ID because they 4-5 years old, what can we submit?**  
**A:** If the child was ever in ORR custody, the UC Portal page or ORR Verification of Release document should suffice. Otherwise, you could try obtaining a copy of the child's passport (if it contains a picture), birth certificate (if it contains a picture), or school ID. As a last resort, try submitting a copy of the submitted page 9 of the I-589 with the passport-style photo attached.
33. **Q: Can only attorneys create a MyUSCIS profile?**  
**A:** Clients may also create a MyUSCIS account. When creating it, it prompts the user to choose whether they are the applicant or the representative.

34. **Q: My client's asylum case was dismissed by the court in June 2022, and her original EAD terminated on March 2023. I re-submitted an I-589 for her in January 2023. Can I submit a new I-765 for her without a fee?**

**A:** If you are submitting a second I-765 application under category (c)(8), then it is an application for a renewal and thus requires the fee regardless of whether or not the I-765 (c)(8) applications are based on the same asylum application.

35. **Q: For electronic filings, do you get emails notifying you of receipt/approval notices, or do you have to affirmatively check your account for them?**

**A:** For electronic filings, there are no email notifications net to the attorney or the client about the receipt or approval of an application. You will need to affirmatively check your account for updates. If you are filing with the paper mailing route and would like electronic notifications, you can file a Form G-1145 to indicate to USCIS that you would like electronic notifications (email or text message) about the status of the filing.

### **Applying For A Renewal I-765 Under Category (C)(8)**

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36. **Q: Client did not provide paperwork on a timely manner to file for a renewal of EAD (c)(8), what is the consequence of this gap between the expiration of the initial EAD and her new card?**

**A:** The client is not eligible for the automatic extension (currently at 540 days) for the initial EAD to be valid pending adjudication of the renewal EAD application. This would particularly be an issue if the client were to start a new job that requests documentation to prove they have valid work authorization.

37. **Q: The 540-day extension does not apply to c18, does it?**

**A:** It doesn't. It does apply to I-765s under category (c)(8).

38. **Q: What does renewal mean? Is it only for the same category? So, an application for another category would be a new I-765 application?**

**A:** Correct. The first-time filing under another category would be an initial application in that new category.

<b>MISCELLANEOUS</b>
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39. **Q: Can someone with an I-94 with the class DT apply for an EAD?**

**A:** Yes, they can apply for work authorization under the (c)(11) eligibility category. However, the work authorization will only be valid for the duration of the DT parole, which is likely going to be one year. It is also likely the I-765 will take several months to adjudicate, leaving the DT parolee with only a couple of months to actually use the EAD. If your client is currently eligible for a work permit under (c)(11) as a parolee but has not reached the 150-day mark to apply under category (c)(8) for asylum seekers, they may want to apply for an EAD under (c)(11) first. Then, prior to their (c)(11) permit expiring, they can apply under (c)(8).

40. **Q: Someone who crossed the Mexico border and they got inspected by CBP and they got a I-94 with class DT is applying for EAD. Is this person qualified to apply for a EAD with his I-94? I know two people who applied, one got denied and the other one never get any answer since 10 months now.**

**A:** This is outside the scope of this webinar, which focuses on EADs for asylum seekers and we cannot provide advice on a specific case without knowing more detail. But generally, parolees can file for EADs and the EAD will be valid as long as the parole status is valid. See the answer to Question 39.

41. **Q: Can an employer refuse to hire a Ukrainian refugee with a EAD solely because he doesn't have a green card? The employer in question is a contractor for the US Navy. What about other kinds of employers? I believe that it is illegal to refuse to hire a refugee who is a US person with an EAD but no green card.**

**A:** Generally, employers cannot limit jobs to U.S. citizens unless U.S. citizenship is required by law or government contract. Employers cannot discriminate when hiring, firing, or recruiting because of someone's citizenship, immigration status or type of employment authorization. U.S. citizens, noncitizen nationals, asylees, refugees, and recent permanent residents are protected from this type of discrimination, but other populations of job seekers may have varying levels of rights. [More information found here.](#)