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i Final Rule to Restore Asylum Regulations Consistent with *Asylumworks Vacatur*

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On Sept. 21, 2022, DHS announced publication of a [final rule](#) consistent with the court-ordered vacatur in *Asylumworks et al. v. Mayorkas et al.* The final rule removes certain regulatory text governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application. Relevant regulatory text is restored to appear as it did before the effective dates of the vacated rules. The final rule is effective on Feb. 7, 2022.

See the *Asylumworks* page below for more information on the order and how it affects (c)(8) Employment Authorization Document applicants, the application process, and USCIS processes.

Effective Feb. 8, 2022, USCIS has stopped applying two rules:

1. The [Removal of 30-day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications](#) Rule (also known as the Timeline Repeal Rule); and
2. The [Asylum Application, Interview, and Employment Authorization for Applicants](#) Rule (also known as the Broader Asylum EAD Rule).

Following the Feb. 7, 2022 decision in *Asylumworks v. Mayorkas* which vacated the 2020 final rules, USCIS has been and will continue applying the provisions governing asylum applications, interviews, and employment authorization eligibility in the (c)(8) category (based on pending asylum applications) that were in place before the above final rules took effect in August 2020. See 8 CFR §§ 208 and 274a.

This change applies to adjudications of [Form I-765, Application for Employment Authorization](#), and [Form I-589, Application for Asylum and for Withholding of Removal](#), that were pending with USCIS as of Feb. 8, 2022, as well as to adjudications of Forms I-765 and Forms I-589 received on or after that date.

Revised Form I-765 and Form I-589 are available.

USCIS has published revised editions of Form I-589 and Form I-765 (dated 07/26/22). The edition date is found at the bottom of the page on the form and its accompanying instructions. Effective Nov. 7, 2022, USCIS will only accept the 07/26/22 editions of the Form I-589 and Form I-765. Until then, you can submit either the new editions, or the previous editions of Form I-589 (dated 08/25/20) and Form I-765 (dated 05/31/22 and 08/25/20). Please be mindful, however, that the previous editions contain various instructions that have been rendered obsolete in light of the *Asylumworks* vacatur.

If you submit a prior edition of Form I-589 or Form I-765 before Nov. 7, USCIS will not consider information submitted on these forms based on the vacated rules when we decide your application. For example, when adjudicating your Form I-765 based the (c)(8) category, we will not consider whether you lawfully entered the U.S. through a port of entry.

The preliminary injunction in *CASA de Maryland. v. Mayorkas* has not yet been dissolved.

The decision in *Asylumworks* means that, although the CASA preliminary injunction has not been formally vacated, CASA and ASAP members no longer need to provide evidence of CASA or ASAP membership with their initial C8 EAD applications.

You may apply for employment authorization 150 days after you file your asylum application instead of waiting 365 days.

You may file a Form I-765 based on your pending asylum application 150 days after you file your asylum application. You are not eligible to receive an Employment Authorization Document (EAD) until your asylum application has been pending for a total of 180 days. The 150-day waiting period and the 180-day eligibility period, commonly referred to as the 180-Day Asylum EAD Clock, do not include delays that you request or cause while your asylum application is pending with an asylum office or with the immigration court.

We no longer require you to pay a biometric services fee or attend a biometric services appointment associated with your Form I-765.

If you are requesting either initial or renewal employment authorization based on your pending asylum application, **do not** submit the \$85 biometric services fee with your Form I-765. If you submit the \$85 biometric services fee, we may reject your application for overpayment.

Also, you no longer need to appear for a biometric services appointment, also known as an Application Support Center (ASC) appointment, specifically related to your Form I-765. However, you **must** appear for biometric services appointments related to your asylum application (Form I-589) or any other applications you have filed. Check [the receipt number](#) on your appointment notice to determine which application it relates to. The receipt number is a unique 13-character identifier that USCIS provides for each application or petition it receives. It consists of three letters followed by 10 numbers. If the receipt number listed on your appointment notice is not related to the Form I-765 you filed requesting employment authorization in the (c)(8) category, you must still appear for your appointment.

Please continue to Respond to Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs).

You may have received a [Request for Evidence \(RFE\)](#) or a [Notice of Intent to Deny \(NOID\)](#) in connection with your Form I-765 that relates to information previously required under the Asylum EAD Rule or other requirements. We will not deny your Form I-765 based on the now-vacated rule, but you should respond to any RFEs or NOIDs you received in order to prevent adjudication delays. You must respond to items related to current eligibility criteria in full to avoid a denial for abandonment or a second RFE

or NOID. Review your RFE or NOID carefully to determine which items pertain to [the vacated rules](#) and which pertain to [current eligibility criteria](#).

If the items in your RFE or NOID pertain **only** to requirements in the Asylum EAD Rule, please send a response to the RFE or NOID acknowledging you received the RFE or NOID. You do not need to provide substantive information related to the items in the RFE or NOID that pertain to the Asylum EAD Rule. We will not deny your case based on the requirements in the Asylum EAD Rule. Your response acknowledging receipt of the RFE or NOID will allow us to take timely action on your application rather than waiting until the RFE or NOID deadline has passed for adjudication of your application to resume. For items in your RFE or NOID that do not relate to the vacated rules, we will consider your response addressing those items in full a complete response; you do not need to address the RFE items related to the vacated rules.

You do not need to answer questions on the Form I-765 about whether you lawfully entered the U.S. through a port of entry.

You are no longer barred from receiving employment authorization based on your asylum application if you entered or attempted to enter the United States between ports of entry. If you submit a prior edition of Form I-765 (dated 05/31/22 or 08/25/20) before Nov. 7, 2022, you do **not** need to answer Questions 30b.–g. on Form I-765. We no longer consider responses to these questions—which ask about the way you entered the United States and whether you were inspected, admitted, or paroled—when we adjudicate your Form I-765 based on the (c)(8) category.

You may be granted employment authorization based on your pending asylum application even if you did not file for asylum within 1 year after you entered the United States.

Asylum seekers who file asylum applications after the one-year filing deadline are no longer barred from receiving an EAD based on a pending asylum application.

Eligibility criteria related to certain criminal acts and convictions are no longer applicable.

The now-vacated Asylum EAD Rule prevented asylum applicants who were convicted of certain criminal offenses, convicted of a particularly serious crime, or committed a serious non-political crime from receiving employment authorization. However, because the court vacated the Asylum EAD Rule, only aggravated felony convictions will make you ineligible for employment authorization based on your pending asylum application.

If we deny your asylum application, your EAD will not automatically terminate on the date we deny your application.

If you are in lawful immigration status (or have parole), and an asylum officer denies your asylum application, your EAD issued based on your asylum application will terminate 60 days after the denial decision or on the expiration date on your EAD, whichever is later. If you are not in lawful immigration status (or do not have parole), and an asylum officer “refers” your asylum application to an immigration judge for further consideration, your EAD remains valid (through the date of expiration, unless renewed). If an immigration judge denies your asylum application, your employment authorization will terminate on the expiration date printed on your EAD, unless you appeal the immigration judge’s decision to the Board of Immigration Appeals (BIA) or, after BIA review, you appeal the BIA’s decision to a federal circuit court.

You may file to renew your employment authorization if you timely appealed to a U.S. Court of Appeals and that decision remains pending.

The now-vacated Asylum EAD Rule prohibited applicants from renewing employment authorization

based on a pending asylum application after the BIA made a decision. Now, you may renew your EAD based on your pending asylum application if you timely appeal the BIA's decision to a federal circuit court, as long as the appeal remains pending. You may continue to renew your EAD if your asylum application is remanded back to the immigration court for further review of your asylum claim.

The 30-day processing requirement has been reinstated for initial employment authorization requests based on a pending asylum application.

Now that the [Timeline Repeal Rule](#), which removed the 30-day timeline for deciding initial (c)(8) category employment authorization applications, has been vacated, generally USCIS must adjudicate initial Form I-765s based on pending asylum applications within 30 days. The prior, vacated regulation can be found at [8 CFR § 208.7 \(Aug. 20, 2020\)](#). Please see our [Rosario Class Action](#) webpage for more information on the 30-day processing time frame.

Employment authorization decisions for the (c)(8) category are no longer discretionary.

The now-vacated Broader Asylum EAD Rule allowed USCIS officers, as a matter of discretion, to deny individuals who were eligible for an initial or renewal EAD based on a pending asylum application. The [regulation now in effect](#) removes an officer's ability to deny the EAD where individuals meet all eligibility criteria.

USCIS must “deem complete” certain asylum applications.

The rule that allowed USCIS to reject asylum applications not properly filed more than 30 days after we received the application is no longer in effect. If within 30 days of when we receive your asylum application, we do not issue you a notice informing you why we cannot accept your asylum application, we will deem the asylum application complete. If your application is incomplete, we will contact you to let you know about any missing information we need to accept your application.

Asylum officers will consider all evidence you submit before or during your interview.

Asylum officers will consider all evidence you submit before and at your asylum interview. An asylum officer may postpone your scheduled asylum interview if they are not able to review your evidence submission before the interview because you did not submit it in advance of the interview. For information on when and how to submit additional evidence in advance of your interview, please contact the asylum office with jurisdiction over your case. To find information about an asylum office, visit the [USCIS Service and Office Locator](#).

Additionally, an asylum officer may decide to grant you an extension of time to submit additional evidence after the interview. If we postpone your asylum interview for review of evidence due to your late submission, or if we give you an extension of time to submit additional evidence after your interview, the delay in the adjudication of your asylum application may stop your 180-Day Asylum EAD Clock and may affect your eligibility for employment authorization.

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