

Asylum EAD Changes

The summary below is for the EAD changes occurring on both Aug 21 and Aug 25th. Please read the attached word document (below) for more details and explanations.

Major Changes Summary:

1. Establishes a 365-day wait to file for EADs for persons with pending asylum claims
2. Requires additional biometrics collection (and related fee) for applicants seeking initial and renewal asylum based EADs.
3. Eliminates "Recommended Approvals" process and related early EAD approval.
4. Establishes EWI bar. Limited Exceptions are detailed in the attached document.
5. Establishes One-year bar prohibition on EAD applications - until IJ or Asylum Officer has determined that an exception applies to the one-year filing deadline.
6. Establishes Criminal bars to eligibility (for certain lesser crimes committed after/on August 25, 2020 and all aggravated felonies regardless of date committed)
7. Applicant-caused delays will not toll the EAD clock but applicant caused delays that are outstanding or not remedied at the time the initial EAD application is filed will result in denial of the EAD application.
8. USCIS can now return incomplete applications past the initial 30-day period - no more automatic "complete" applications.
9. New EAD termination process after asylum denial (detailed in attached document under "Termination of EAD")
10. Effective date of this rule: ANY EAD applications received on or after August 25, 2020 will be subject to these new regulations.

This website is also very helpful in understanding these change:

<https://www.ilcm.org/latest-news/new-rules-for-asylum-applicants-filing-for-an-ead-frequently-asked-questions/>



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This document outlines the new changes and procedures for EAD applications based on Asylum.

AUGUST 21, 2020

USCIS will no longer process I-765 (Employment Authorization Applications) within thirty days of the initial filing beginning on August 21, 2020. USCIS will no longer provide any guarantees that USCIS will process the application within any specified timeframe. This rule also removes the requirement that an EAD renewal application must be received 90 days before the previous EAD expires.

AUGUST 25, 2020

EAD applications, including renewals, postmarked, or electronically submitted on or after August 25, 2020 will be subject to the new rules.

1. USCIS will no longer issue “**recommended approvals**” for asylum. Individuals with “recommended approvals” used to be allowed to apply early for an EAD.
2. USCIS can now return **incomplete applications** past the initial 30-day period. Asylum applicants will no longer have their applications automatically deemed complete if USCIS fails to return the incomplete application to the applicant within a 30-day period.
3. **Applicant-caused delays** that are unresolved by the time the EAD application is filed will result in denials of the EAD application. Delays caused by the applicant will no longer toll the EAD clock but rather result in denials of the EAD application.
 - a. Examples of “applicant-caused delays”
 - i. Requests to amend/supplement asylum applications if unresolved by the time the EAD application is adjudicated.
 - ii. Submitting additional documentary evidence fewer than 14 calendar days prior to the asylum interview.
 - iii. Applicant’s failure to appear to receive and acknowledge receipt of the decision following an interview and a request for extensions to submit additional documentary evidence
 - iv. Applicants failure to appear for asylum interview or biometric services appointment could lead to the dismissal of their cases and may be deemed an applicant-caused delay affecting EAD eligibility.
 - v. Applicants request to reschedule interviews for a later date
 - vi. Request to transfer a case to a new asylum office or interview location (including when transfer based on a new address)
 - vii. Applicants failure to provide a competent interpreter at an interview
4. **Eligibility for EAD**
 - a. **Extends the 180-day EAD clock to 365 calendar days** from the receipt of the asylum application.
 - b. Applicants who fail to file their asylum application within one year of arrival will not be eligible for EADs until an IJ or an Asylum Officer determines that an exception to the One-year filing deadline applies OR applicant is an unaccompanied minor child on the date the asylum application was first filed.
 - c. Applicants who are convicted of an aggravated felony and those who “have committed certain lesser criminal offenses on or after the effective date” of August 25, 2020 will not be allowed to receive EAD.

- i. Felony in the US
 - ii. Serious non-political crime outside of the US
 - iii. Convictions in the US of public safety offense such as domestic violence, assault, child abuse and neglect, possession or distribution of controlled substances, or DUI.
- d. Applicants who entered without inspection will not be allowed EAD. Limited exceptions apply to this rule.
 - i. Exception: (1) Presented himself or herself without delay but no later than 48 hours after the entry or attempted entry to the Secretary of Homeland Security or his or her delegate; (2) Indicated to the Secretary of Homeland Security or his or her delegate an intention to apply for asylum or expresses a fear of persecution or torture; and (3) Has good cause for the illegal entry or attempted entry, provided such good cause does not include the evasion of U.S. immigration officers, convenience, or for the purpose of circumvention of the orderly processing of asylum seekers at a U.S. port of entry
- e. Applicants who are paroled after being found to have a credible fear of persecution or torture are still eligible for an EAD under (c)(8) as long as they meet the other requirements and wait for the 365-day period.

5. Termination of EAD

- a. Asylum applicant's EAD's will be terminated on the same date that the asylum application is denied or dismissed by a USCIS asylum officer.
 - i. If asylum officer refers to an IJ, then the applicant will still have their EAD while the IJ adjudicates the asylum application.
 - b. After denial by IJ, applicant will have 30 days left on their EAD to allow for a timely appeal to the BIA. If a timely appeal is filed, the EAD would continue through the BIA appeal.
 - c. After Asylum application denial is affirmed by the BIA, then the EAD would expire on its expiration date and no EAD renewals would be granted UNLESS case is remanded back to the DOJ-EOIR for a new decision.
- 6. EAD validity periods will be left to USCIS discretion BUT will not exceed two years. USCIS may set shorter eligibility periods.
 - 7. Biometrics must be submitted for the EAD application, on top of the asylum application biometrics appointment. Applicants will have to pay a separate biometric services fee.
 - 8. Grants discretion to USCIS to grant asylum EAD applications. Before USCIS did not have discretion to grant asylum EAD applications. This means that USCIS can reject perfectly filled asylum EAD applications under their discretion.

General Thoughts

The Last in/First Out policy is still in place with USCIS. They believe that this policy, along with other changes, will allow them to adjudicate meritorious asylum applications within one year without providing further explanation.

Page Numbers for the Attached Federal Register Rules and Regulations

General Chart: 38598-38600

Actual Rules: 38626-38628