



U.S. Citizenship and Immigration Services

How the Agreement Affects Adjudication of Asylum and EAD Applications

The Agreement applies to

- EAD applications filed by asylum applicants on or after December 3, 2013; and
- Asylum applications filed affirmatively with USCIS or defensively with EOIR on or after December 3, 2013.

The Agreement will affect:

- **Affirmative Asylum Applications filed with USCIS**
By December 3, 2013, USCIS asylum offices will:

- **Mail a “Failure to Appear Warning Letter”** – As soon as possible after an asylum applicant misses an asylum interview.
 - The letter will explain how to reschedule a missed asylum interview and how missing the interview affects EAD eligibility.
 - The letter will also list the steps the applicant must take to establish good cause for failing to appear at the asylum interview, as well as the effect of not responding to the warning letter within the required 45-day period.
- **Mail a “Referral Notice for Failure to Appear”** – If more than 45 days have passed since the missed interview and the asylum office has not received a rescheduling request.
 - This notice explains how EAD eligibility is affected once USCIS has referred the case to the immigration court.
 - This letter also explains the steps the asylum applicant must take to establish that failure to appear at the asylum interview was because of exceptional circumstances, which is a higher standard than good cause for failing to appear. More information is available in the “Missing Your Interview” section of the Preparing for Your Asylum Interview web page.
- **Determine Whether Exceptional Circumstances Exist for Failure to Appear** – Upon request by an asylum applicant following referral to immigration court, if the asylum office finds that the asylum applicant missed the interview because of exceptional circumstances, the asylum office will issue a determination letter to the applicant and his or her representative and notify U.S. Immigration and Customs Enforcement Office of Chief Counsel (ICE OCC). The applicant may then request ICE OCC’s agreement to join in a motion to terminate the removal proceedings.
 - If the immigration judge dismisses the removal proceedings, and the asylum application is returned to the asylum office, the asylum office will reopen the asylum application and take jurisdiction over the applicant’s case.
 - The 180-day asylum EAD Clock, which stopped on the date of the applicant’s failure to appear for the asylum interview, will restart on the date the applicant appears for the rescheduled interview at an asylum office.

- **Defensive Asylum Applications Filed with EOIR**

By December 3, 2013, EOIR will do the following for individuals placed in removal proceedings before an immigration judge:

- **Revise the Operating Policies and Procedures Manual (OPPM) 11-02 – The Asylum Clock** from Chief Immigration Judge Brian O’Leary to state that an immigration judge must make the reasons for a case adjournment clear on the record. The revised OPPM will also provide that an immigration judge must allow a minimum of 45 days between the date of the last master calendar hearing and the individual hearing date when setting individual hearing dates in expedited non-detained cases with a pending asylum application. The revised OPPM (OPPM 13-02, *The Asylum Clock*), can be found at www.justice.gov/eoir.
- **Lodged not Filed Applications:** EOIR immigration court clerks will date stamp and stamp “lodged not filed” on a complete asylum application brought to an immigration court window before a hearing, and will send the lodging date to USCIS. USCIS will treat the lodging date as the filing date for EAD eligibility purposes, and the applicant will begin to accrue time toward employment authorization eligibility from that date forward (excluding delays requested or caused by the applicant after the application is lodged). Individuals must still file the asylum application with the immigration judge at a hearing.

- **Adjudication of Form I-765 by USCIS Service Centers**

Beginning on December 3, 2013, the Agreement will affect the adjudication of EAD applications by USCIS service centers in the following ways:

- The Agreement requires USCIS service centers to treat the lodging date on applications “lodged not filed” under the new procedure as the filing date for purposes of calculating EAD eligibility.
 - Applicants will accrue time creditable toward EAD eligibility from the new lodging date and going forward, excluding any delays requested or caused by the applicant.
 - Once eligible to apply for employment authorization, applicants who have lodged an asylum application may submit an application for employment authorization to USCIS, and should include with their submission a copy of the asylum application that the EOIR immigration court clerk stamped “lodged not filed,” which will be considered as evidence of filing for employment authorization purposes only under the new procedure.
- The Agreement requires USCIS service centers to credit asylum applicants in the United States whose cases are remanded to an immigration judge for adjudication of an asylum claim with the number of days elapsed between the date the asylum application was initially denied by an immigration judge and the date of the Board of Immigration Appeals (BIA) remand order. This includes BIA remands to an immigration judge following an appeal to a U.S. Court of Appeals. The asylum applicant will continue accrue time creditable toward employment authorization going forward from the date of the BIA remand order, excluding any delays requested or caused by the applicant.
 - When eligible to apply for employment authorization, an applicant whose case has been remanded must attach to his or her application for employment authorization a copy of the complete Board of Immigration Appeals (BIA) order remanding his or her case to the immigration court for adjudication of the asylum claim, as evidence that the case

remains under administrative review.

- **Joint Notice and Contact Information**

EOIR and USCIS will provide a Joint Notice to asylum applicants. The Joint Notice will contain general information on employment authorization, including:

- Information on where to obtain case-specific information;
- How hearing adjournment codes affect EAD eligibility; and
- Where to direct requests to correct hearing adjournment codes and inquiries relating to EAD eligibility.

This website contains information that will help you:

- Determine if You are an ABT Class Member,
- Prepare for Your Asylum Interview ,
- Establish Good Cause and Providing Exceptional Circumstances,
- Find Definitions for Certain Words, and
- File an ABT Claim.

More information on the Joint Notice, the “Failure to Appear Warning Letter,” the “Referral Notice for Failure to Appear,” and the new exceptional circumstance procedures is available on the Establishing Good Cause and Providing Exceptional Circumstances Web Page.

Additional information regarding the dispute resolution process, including the complete ABT Settlement Agreement and the ABT Claim Form, may also be found on the class counsel websites at www.nwirp.org, www.americanimmigrationcouncil.org, and <http://www.gibbshoustonpauw.com/>, or see the links on the right.

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