

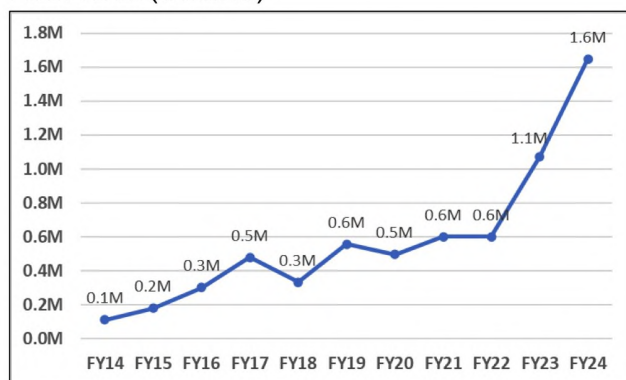
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Employment Authorization for Asylum Applicants

Aliens (i.e., persons who are not U.S. citizens or nationals) in the United States who are unable or unwilling to return to their country of nationality or last habitual residence due to persecution or a well-founded fear of persecution may apply for asylum. While asylum applicants await adjudication of their claims, they may receive temporary employment authorization by applying for an employment authorization document (EAD).

The availability of employment authorization for asylum applicants has been scrutinized for several decades. Congressional interest has been particularly acute in recent years, as EAD applications have grown concomitantly with the swell of migrants arriving at the U.S.-Mexico border who are seeking asylum and the increasing backlogs of asylum claims before the Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR) and the Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS). Since the mid-2010s, the number of asylum applicant requests for EADs has increased precipitously (**Figure 1**). Since FY2016 (with the exception of FY2017 and FY2018), asylum applicants have accounted for the highest share of all EAD applicants (see data cited in **Figure 1**).

Figure 1. Total EAD Applications Received from Noncitizens with Pending Asylum Cases FY2014-2024 (in millions)



Source: CRS analysis of USCIS employment authorization data, FY2003-FY2022, FY2023, FY2024.

Notes: Data includes initial, renewal, and replacement EAD receipts.

Two viewpoints have generally motivated interest in reforming asylum applicants' access to work authorization. Some lawmakers and other observers argue that some migrants may file non-meritorious asylum claims merely in order to obtain employment authorization. According to this view, restricting asylum applicants' access to EADs would discourage irregular migration. Others argue that EADs should be more readily available to asylum seekers to

promote their self-sufficiency as well as broader economic and humanitarian interests.

Statutory and Regulatory Overview

Generally, aliens who are present in the United States or at a port of entry may apply for asylum regardless of immigration status by filing Form I-589. Aliens who are in removal proceedings before the EOIR may file a defensive asylum claim. Aliens who are not in removal proceedings may file an affirmative asylum claim with USCIS. Both defensive and affirmative asylum applicants may apply for employment authorization. If approved, an asylum applicant's EAD may be valid for five years while the asylum claim is pending.

Under the Immigration and Nationality Act (INA), asylum seekers may not receive employment authorization prior to 180 days after the date of filing an asylum application. The INA does not guarantee employment authorization to asylum applicants; rather, it allows DHS to provide such authorization by regulation. Under current DHS regulations, asylum applicants may apply for an EAD 150 days after filing Form I-589. USCIS then has 30 days to adjudicate an employment authorization request, filed through Form I-765, after it has been received. Applicable regulations also include the following provisions:

- Asylum applicants who are aggravated felons are ineligible for employment authorization.
- A pending EAD application is denied if an asylum officer or immigration judge denies the asylum claim.
- Employment authorization may be renewed while the asylum claim is pending.

USCIS adjudicates all EAD applications. The agency has experienced delays in processing Form I-765. As of the date of this report, USCIS processes 80% of asylum applicants' initial EAD applications within 30 days and 80% of renewal or replacement applications within 10 months. In FY2024, USCIS processed approximately 1.64 million EAD applications from asylum seekers (including initial and renewal applications), approving 88% of them.

In certain cases, asylum applicants may be able to pursue employment authorization by other means. For example, asylum applicants may simultaneously hold another status, such as Temporary Protected Status, immigration parole, or nonimmigrant (temporary) status, which may provide eligibility for employment authorization through regulations not governed by the 180- and 150-day provisions.

The Asylum EAD Clock

To track progress toward the 150- and 180-day benchmarks, asylum applicants depend on the *asylum EAD clock* administered by USCIS or EOIR. The asylum EAD clock starts and stops for a variety of reasons, and USCIS and EOIR regulate the clock differently. Because the clock is subject to various rules and regulations, an asylum applicant awaiting initial approval of Form I-765 may experience disruptions in progress to the 150- and 180-day targets.

The clock begins when USCIS or EOIR receives an asylum application by mail, in person, or electronically. Generally, the asylum clock stops as a result of applicant actions, such as failure to appear for an interview or improper submission of evidence. USCIS and EOIR explain several of the start/stop events in their respective Form I-765 instructions and policy manuals. Applicants may submit clock inquiries to both agencies.

For many years, some observers have complained that a lack of clarity and numerous clock-triggering events cause confusion among applicants. Some Members of Congress raised concerns in 2024 to USCIS about the clock's administrative opaqueness, as well as other barriers that prevent asylum applicants from receiving work authorization in a timely fashion. Additionally, recent litigation challenged how USCIS and EOIR administer the clock. A 2024 settlement agreement as a result of that litigation entitles applicants to access information about the status of their asylum EAD clock and reasons for stoppages, and gives applicants the ability to contest stoppages.

Evolution of Current Policy

Introduction of EAD Waiting Periods for Asylum Applicants, 1995-1996

In the 1990s, some lawmakers and the Clinton Administration raised concerns that numerous non-meritorious asylum applications were being filed for the express purpose of obtaining a work permit, contributing to a case backlog. To deter non-meritorious filings, DOJ's Immigration and Naturalization Service (the precursor to USCIS) issued regulations and Congress enacted legislation to establish mandatory waiting periods for asylum applicants seeking work authorization. A final rule that took effect in 1995 prescribed the 150-day EAD application waiting period and the 30-day processing window for initial EAD applications. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (P.L. 104-208) codified the 180-day waiting period for receiving an EAD in the INA.

Reactions to the introduction of waiting periods for work authorization into the asylum system were varied and illustrated the broad issues of the policy debate. Advocates of waiting periods argued they would be an effective way to combat abuse of the asylum system. Some observers favored even more restrictive measures to stem non-meritorious asylum filings. Others argued that restrictions on work permits would unfairly penalize bona fide asylum seekers and cause economic hardship.

Regulatory Changes, 2020-2025

DHS made regulatory changes to the EAD application process for asylum seekers in 2020. Under the first Trump Administration, DHS issued final rules that dismantled the 30-day processing window for asylum applicants' initial EAD requests; replaced the 150- and 180-day EAD timeframes with a 365-day waiting period before asylum applicants could request an initial EAD; and introduced other restrictions, including barring aliens who entered the country without inspection from receiving EADs.

DHS argued that the new regulations would disincentivize irregular migration, allow for the reallocation of resources, reduce processing backlogs, and aid immigration officers in identifying national security and fraud threats. Some observers agreed with DHS that restricting asylum seekers' access to EADs would effectively reduce the case backlog and deter non-meritorious asylum applications.

Other lawmakers, some legal scholars, and immigrant advocates objected to the rules. Some argued that the rules would cause asylum seekers financial hardship, or that further restrictions on asylum seekers' access to employment unfairly punished those with meritorious claims. Other arguments asserted that restricting asylum applicants' access to legal employment would negatively affect the U.S. economy and labor market.

The rules were challenged in court, and a district court found, among other things, that the Acting Secretary of Homeland Security at the time the rules were issued had not been lawfully appointed. The rules were ultimately removed by a 2022 final rule published pursuant to the district court's ruling vacating the 2020 rules. The 2022 final rule restored the regulations predating the 2020 final rules.

In late 2024 under the Biden Administration, DHS issued a final rule to address EAD processing delays. The rule, which applies to certain EAD renewal applicants, including those with pending asylum applications, increases the automatic extension period of EADs from 180 to 540 days. The rule is designed to shorten EAD processing times and to lessen the chances that eligible noncitizens experience economic hardship as they await EAD renewal. Some Members of Congress expressed support for the extension, arguing that it would benefit EAD recipients as well as employers. Other Members have proposed rescinding the rule, arguing that it obstructs effective immigration enforcement.

Proposed Legislation

Over the years, several Members of Congress have introduced bills to reform the employment authorization process for asylum applicants. Some recent bills variously proposed to amend the INA to shorten asylum applicants' EAD waiting periods, lengthen these waiting periods, and limit the duration of asylum applicants' EADs.

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