

*Submitted via Federal eRulemaking Portal*

January 13, 2020

Samantha Deshombres, Chief, Regulatory Coordination Division,  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS)

**Re: Agency DHS, Docket No. USCIS-2019-0011 Public Comment Opposing the Changes to the Asylum Application, Interview, and Employment Authorization of Applicants. In the Federal Register at 84 F.R. 62374**

Dear Ms. Deshombres:

The eight (8) national torture treatment programs below respectfully submit this comment to oppose the Department of Homeland Security's Notice of Proposed Rulemaking on the changes to Asylum Application, Interview, and Employment Authorization of Applicants. We are particularly concerned by the exponential increase in the waiting period to obtain work permits for asylum seekers, the bars disqualifying some from obtaining work permits, and the discretion in decreasing the validity period for work permits, DHS Docket No. USCIS-2019-0011, issued November 14, 2019.

The proposed rule is yet another step by the administration to punish asylum seekers for seeking refuge in the United States. It will be especially detrimental to survivors of torture, who comprise a shocking percentage of the refugee and asylum seeking populations. Their ability to work is key to their mental health and wellbeing, and so this rule will hinder survivors' healing and further expose them to re-traumatization and re-victimization.

For the reasons detailed in the comments that follow, DHS and USCIS should immediately withdraw their current proposal and dedicate their efforts to advancing policies that safeguard individuals fleeing persecution, including torture.

Thank you for the opportunity to submit comments on this proposed rule. Please do not hesitate to contact us with any questions or for further information.

Andrea Carcamo /s/  
Andrea Carcamo  
Senior Policy Counsel  
[acarcamo@cvt.org](mailto:acarcamo@cvt.org)



**DETAILED COMMENTS in opposition to DHS, Docket No. USCIS-2019-0011. Asylum Application, Interview, and Employment Authorization for Applicants.**

The eight undersigned torture treatment programs welcome the opportunity to comment on the proposed changes to the asylum application requirements and accompanying work authorization bars, and the doubling of the period an asylum seeker will have to wait before receiving a work authorization, DHS Docket No. USCIS-2019-0011 (“the proposed rule,” or “the rule”).

The signatory organizations seek to advance the knowledge, technical capacities and resources devoted to the care of torture survivors living in the United States and act collectively to prevent torture worldwide.

As experts in providing mental health and other rehabilitation services to survivors of torture and other trauma, we are intimately familiar with the profound effects that this proposed rule will have on our clients, including making the U.S. asylum process effectively insurmountable for many of them.

**I. Background**

Currently, asylum seekers whose asylum cases have been pending without a decision for at least 150 days from the date the asylum application was filed can submit an application to receive an Employment Authorization Document (EAD)—they qualify for a work authorization at 180

days, but they are allowed to submit the application for processing 30 days earlier. Once granted, an EAD is generally valid for a period of two years.

On November 14, 2019, the Department of Homeland Security (DHS) published a notice of Proposed Rulemaking. The proposed rule seeks to, among other things:

- increase the waiting period for asylum seekers to obtain a work permit from 180 to 360 days;
- bar asylum seekers who cross or attempt to cross between ports of entry from obtaining a work permit; and
- bar from obtaining work permits those who submit the asylum application beyond the one-year deadline.
- Decreases the time for which the permit is valid by giving discretion to USCIS officers and allowing a maximum of one year.

## **II. This rule is part of a larger scheme by the administration to punish asylum seekers who come to the United States, and to deter others from trying**

Through the establishment of policies, agreements, and dubious unilateral changes to well-settled asylum law, it is clear that the Trump administration seeks to prevent individuals—especially, but not only, those arriving at our southern border—from accessing the U.S. asylum process at all, much less actually obtaining asylum. These actions form the backdrop to the proposed rule and include the following:

**Changing asylum immigration law:** The attorney general certified to himself several immigration court cases and decided them in a way that upends longstanding law. In overruling *Matter of A-B-* and *Matter of L-E-A-*, the attorney general made it significantly more difficult for individuals from Central America to win their asylum cases, since they largely rely on these two cases.

**Zero Tolerance leading to Family Separation:** The administration adopted a policy of pursuing criminal charges against every individual who crossed the border outside of a port of entry, then forcibly separated children from the parents who were subjected to criminal proceedings. Family separation was a cruel practice that traumatized both children and parents. It will have long lasting consequences for asylum seekers and for the United States.<sup>1</sup>

**Asylum Ban 1.0:** In November 2018, the president issued a proclamation banning individuals who enter the United States between ports of entry from asylum.<sup>2</sup>

**Migrant Protection Protocols:** Established in January 2019, this policy forces asylum seekers to wait in dangerous Mexican border cities during the pendency of their cases. Besides placing

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<sup>1</sup> Center for Victims of Torture. Asylum Fact 4. Available at <https://www.cvt.org/AsylumFact4> (last accessed on 12/30/2019).

<sup>2</sup> <https://www.federalregister.gov/documents/2018/11/09/2018-24594/aliens-subject-to-a-bar-on-entry-under-certain-presidential-proclamations-procedures-for-protection>.

asylum seekers in danger, it undermines their ability to obtain assistance of counsel, greatly diminishing their ability to win their case.<sup>3</sup>

**Asylum Ban 2.0:** In July 2019, the administration disqualified from asylum any individual who transits through a third country before arriving at the United States southern border. This disqualifies all but Mexican asylum seekers arriving at our southern border from asylum.<sup>4</sup>

**Agreements with other countries:** The Trump administration continues to attempt to enter into “safe third country” agreements with countries that simply are not safe—from which people are fleeing violence and persecution that these countries’ governments cannot, or will not, effectively address—including El Salvador, Guatemala, and Honduras. These agreements would essentially trap asylum seekers in the countries where they are being persecuted or are otherwise at significant risk of harm.

**Work Authorization Restrictions:** In addition to the restrictions imposed by the proposed rule—discussed below—in a separate rule the administration proposed a prohibitive fee for work authorizations of \$490 and \$50 for asylum applications. Yet a third proposed rule eliminates entirely the time limit previously imposed on USCIS to adjudicate work authorization applications, which implicitly authorizes the agency to delay any such adjudication indefinitely.

### **III. The proposed rule violates the 1951 Refugee Convention, which was adopted and codified by the United States through the Refugee Act of 1980**

Article 31 of the 1951 Refugee Convention states that “[t]he Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”<sup>5</sup> The Department of Homeland Security (DHS) specifies that the purpose of the rule is to “reduce incentives for [asylum-seekers] to file frivolous, fraudulent, or otherwise non-meritorious asylum applications...and **to discourage illegal entry into the United States.**” In taking away the ability of asylum seekers to obtain a livelihood—by barring them from obtaining a work permit—specifically because they cross the border other than through ports of entry, the administration is effectively violating Article 31 of the 1951 Refugee Convention and Protocol.

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<sup>3</sup> Human Rights First. *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process.* Available at <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf> (last accessed on 12/30/2019).

<sup>4</sup> <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>

<sup>5</sup> <https://www.unhcr.org/en-us/3b66c2aa10>

**IV. The proposed rule will have profound health consequences for asylum-seeking survivors of torture and trauma, and it will subject them to heightened risk of exploitation.**

In justifying this rule, the administration claims it will “reduce incentives for [asylum seekers] to intentionally delay asylum proceedings in order to extend the period of employment authorization based on the pending application.” However, there are already rules in place to prevent purposeful delays. For example, the Executive Office for Immigration Review and the Asylum Office keep a “clock” tracking the number of days since the filing of an asylum application to determine when applicants qualify for work permits. Once the “clock” gets to 180 days, individuals can obtain work authorization (at 150 days they can submit the EAD application). However, there are several reasons for which the “clock” will be stopped, including “any delays requested or caused by an applicant while his or her asylum application is pending...”<sup>6</sup>

The decrease in the period for which work permits are valid—which will require more work permit holders to re-apply with more frequency—will also exacerbate the detrimental effects of another proposed rule published the same day as this one, which imposes a fee of \$490 for the initial *and subsequent* EADs. In addition, legal service providers will have to spend more time filing these applications.

This rule will have devastating human consequences, both for those whom it deters from applying for asylum at all, and for those who pursue the process notwithstanding the needless and punitive conditions the rule imposes. The overwhelming majority of asylum seekers arrive to the United States having suffered traumatic experiences, whether in the country from which they fled or on the often-perilous journey in search of safe haven, with no more than the possessions they can carry. According to the Department of Health and Human Services, research “suggests that 44% of refugees, asylees, and asylum seekers living in the U.S. have experienced torture.”

Clinicians and their colleagues from torture treatment programs across the United States engage with this population every day. They know from first-hand experience how important employment is for effective rehabilitation, and the consequences for refugee and asylum-seeking trauma survivors who do not receive timely work authorization—from obstructing their recovery to forcing them into an underground economy where they risk being re-victimized. They also recognize that the bars imposed by the proposed rule will prevent many from even a *chance* at obtaining work authorization, and thereby healing from trauma.

The following clinicians offer their views directly on the proposed rule:

*Andrea Northwood, Director of Client Services (Center for Victims of Torture)*

For torture survivors who have fled for their lives into exile, the period of time between arriving in a country of refuge and obtaining asylum is one of extreme

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[https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum\\_Clock\\_Joint\\_Note\\_-\\_revised\\_05-10-2017.pdf](https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Note_-_revised_05-10-2017.pdf)

psychological vulnerability and fragility. This is when survivors are most at risk, most distraught by recent trauma and losses, and least supported: they lack adequate food, clothing, shelter, health care, social support, employment authorization, legal support and legal assistance. They usually have medical and psychological wounds from their torture that have not received any treatment. This often puts their lives literally at risk: they can present at our doors with life-threatening physical conditions and life-threatening psychological symptoms, including suicidality and torture-related flashbacks that result in dangerous activities such as walking into traffic or leaving shelter at night in a semi-conscious state.

Just a delay in the grant of a work authorization will deliberately increase this period of extreme risk, which is both immoral and inhumane. This will have a direct and immediate harmful effect on the lives of our asylum-seeking clients . . . We believe such an inhumane measure is also a fundamental violation of human rights, which include the right to seek asylum and the right to be free from torture. It punishes those who have come forward with honesty and presented their cases lawfully, making no distinction between cases with merit (in our case, this can include forensic evidence such as medical documentation of scars from torture) and the so-called frivolous claims the policy purports to address.

In addition to the basic necessity of income in order to survive and support a family in danger back home, sitting around all day with nothing to do is described as a major stressor (at best) and even a cause of insanity (“going crazy”) by our asylum-seeking trauma survivors, as they use “keeping busy” and meaningful activity to distract themselves from involuntary, disturbing traumatic memories as well as profound sadness and loss. One of the first priorities of rehabilitation at CVT is to rebuild meaningful activity into the lives of asylum seekers by helping them with employment-readiness activities until their work permit arrives and, as soon as it does, employment itself. This is because this change alone produces a reduction in emotional distress and calms people down.

*Anne Eichmeyer, MSW, LICSW and Vivienne Namujuzi, MSW, LGSW (Center for Victims of Torture)*

A client from a country in Southeast Asia has struggled with severe PTSD and Depression from his torture, including nightmares, flashbacks, inability to sleep, and significant suicidal ideation. His identity is strongly connected to his profession, and prior to receiving his work permit in the US he faced very high levels of stress and shame because he was unable to work. He faced multiple delays in receiving his work permit from the government. Once he received his work permit he received a job offer within a couple of weeks. Since receiving this offer his symptoms have improved significantly. He is able to sleep better because of the reduction in stress; this in turn has increased his capacity to address his PTSD, and he had learned coping skills to deal with flashbacks and anxiety. When he first came to the US he was forced to work illegally in order to provide

for his basic needs. Since finding a legal job he expresses pride in being able to give back to the country that does not persecute and torture him for being who he is.”

*Alison Beckman, M.S.W., L.I.C.S.W, Senior Clinician for External Relations (Center for Victims of Torture)*

His face dropped when I told him he would have to wait 180 days after the submission of his asylum application to apply for a work permit. He owned two businesses in his country, lived a good life with his family. He had to flee because he was targeted and tortured on multiple occasions for assumed affiliation with an opposition party. He had been in the US for many months, finding an attorney and meeting with him when the attorney was available to fill in the details for his asylum application. This is common among our clients: they often wait months before the application is complete. Then they wait another 180 days to apply for a work permit, and then they wait another month or more to receive it by mail from the US government. Any money he might have fled with is likely long gone. He is ineligible for public benefits, living with extended family and depending on their generosity, which will likely wane as the months go by and the strain of adding additional dependents weighs on families already living on the edge of poverty. These are the kinds of scenarios we work with on a daily basis at CVT.

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Most of our clients have Posttraumatic Stress Disorder and Major Depressive Disorder. The symptoms related to these diagnoses are maintained and worsened when clients have nothing to do all day long. Many of our clients sit alone during the day at whatever temporary place they are staying doing nothing. And doing nothing brings back reminders of their torture experiences, increased guilt for not being able to help family members back home, increased hopelessness about a future. Work helps counterbalance all of this. We see a return to a sense of self, meaning, purpose for our clients who can work. They are actively contributing to US society both in their needed labor and in paying taxes. Why would we want these talented individuals to be idle and potentially pull on systems as their health worsens?

*Ariel Zarate, MA, MSW, Survivors of Torture Clinical Case Manager (International Rescue Committee, Denver)*

Many of the torture survivors that the Survivor Wellness Center at IRC Denver supports are asylum seekers who want nothing more than to recreate safe, meaningful lives. They want to contribute to their community and to care for their families. They want to rebuild themselves, separate from the abuses they and their families have endured. Key to this is the ability to work. Work is more than a means to financial stability but an element of human dignity and a Universal Human Right.<sup>7</sup> For torture survivors, work is a path to reassert their humanity, to

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<sup>7</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, Article 24.

*take back agency that was lost as they were tortured.* When meeting with clients, the primary, consistent stressor is work. Second only to housing and food, work is what keeps clients up at night, and what triggers anxiety, depression and traumatic withdrawal.

*“I am just sitting here like nothing; I don’t want to just sit; I want to do.”*

This sentiment is universal; as is the aversion to “hand – outs.”

*“If I were not desperate, if I had another choice, I would never beg.”*

Beyond this, work is a way for survivors to buffer themselves against the intrusive, disruptive and dysregulating memories of their torture. Images of the ways that their bodies, minds and lives were damaged can be persistent and very distressing. Work gives survivors a goal and a focal point outside of these experiences. Work gives survivors hope.

*Jordan N. Enger, MA, LPC Psychosocial Support and Survivors of Torture Clinical Care Coordinator (International Rescue Committee, Denver)*

My clients are survivors of torture as defined on the 18 U.S. Code §2340 which we use to determine eligibility and admission into our program at the International Rescue Committee in Denver, CO. Since starting the program in October 2018, there are approximately 42 survivors to whom we are providing biopsychosocial and legal support, most with pending asylum applications. Asylum seekers do not meet the criteria to receive temporary assistance through the government with medical issues, food, childcare or money for housing. *The time our clients spend without a work permit causes significant stress for them. They are unable to find safe and sanitary housing, unable to cover their medical bills, unable to pay for groceries to support themselves and family members—and these compounding effects fill the days they cannot work with anxiety.* Having a work authorization not only bridges asylum seekers with basic needs, but it also engages their minds, allowing them to feel as if they can regain control over their lives. *A work authorization offers a sense of hope to asylum seekers, something that they may not have experienced since they were tortured and had to flee their home country.* Clinically we have seen many clients become more isolated while awaiting work authorization, which is counter-productive when working toward wellness and holistic well-being. Having the ability to be productive and financially independent initiates hopefulness, which matches with determination to build a safe opportunity to live for themselves and their family, and can lead to a stronger mental outlook and dedication to their community. I strongly encourage these benefits to be prioritized as they affect asylum seekers significantly as well as our community.



*Caitlin Tromiczak LICSW-C, LCSWC, Health and Psychological Wellness Program Manager, Creator & Facilitator of Torture Abolition and Survivors Support Coalition (TASSC) Training Program (TASSC)*

At TASSC, we provide holistic services to support survivors of torture; many of whom are seeking asylum and struggling to create stability during the extensive process of waiting for interviews and court dates. While we offer support in the form of therapeutic services, cultural orientation, legal support, and career development, what we cannot do is provide financially for them. More importantly, we cannot restore in our clients the sense of dignity and self-worth that comes from being able to work for oneself. Although a great deal of our survivors bring impressive resumes with high levels of education and professional accomplishments, without a work permit they are unable to support themselves or contribute to society as they so desperately desire. Many basic necessities such as housing and food are provided by generous members of the community including religious and diaspora groups, however generosity has its limits and without the ability to work, our survivors are at extreme risk of homelessness, illness, and hopelessness. Some of our survivors have been waiting several years for their asylum interview or court date and if they were unable to obtain a work permit the cost to their mental, emotional, and physical wellbeing would be severe. There is no psychological support we can offer to offset these detrimental effects of abject poverty. Access to a work permit is essential for survival.

*Laura Rambikur, LCSW & MDiv, Clinical Therapist (International Rescue Committee, Arizona)*

For our clients a job is more than just a way to earn money, it represents the restoration of human dignity and healing. It symbolizes the essence of American values: to be able to work, contribute to society, and participate as a member of the community. The proposed changes that were announced earlier in September that eliminate the requirement that USCIS process work permit applications for asylum seekers within 30 days of filing will have a detrimental impact on our asylum seeking communities. At best, this policy will paralyze asylum seekers. At worst, it has the potential to create a market for labor exploitation that will force asylum seekers to engage in harmful, unlawful, and risky forms of employment, which could endanger their legal claims. This policy hurts immigrants who are within the boundaries of the legal structures that exist in our current immigration system. Exploitation and abuse will be a direct result of this policy. Healing happens in stable environments when one is able to provide for oneself and when people are recognized not by their past trauma and suffering, but by their resiliency and ability to contribute, find meaning, and create a new identity.

*Maria Childress, MSW, LCSW - Director, St. Louis Partnership for Survivors of Torture (Bilingual International Assistant Services)*

Bilingual International's St. Louis Partnership for Survivors of Torture and War Trauma provides integrated services to torture survivors in an effort to assist

survivors with healing from the past and creating meaningful lives in the present. While the agency supports asylum seekers who have fled torture with support through therapy, case management, legal assistance and psychiatry, it cannot provide survivors with the financial support required to meet their basic needs.

*The proposed rule will significantly harm survivors of torture. Earning money through work is an essential element in the ability of torture survivors to heal from past victimization and build safer lives.* Survivors are especially vulnerable while waiting to obtain asylum. During this time, they struggle with the physical and psychological consequences of torture, as they try to meet the basic needs of housing and food for themselves and their families. In the agency's experience, asylum seekers are willing and eager to work. The legitimate ability to work provides an initial sense of safety, furthering the healing process.

*Jennifer Scofield, MSW, LGSW and Amy Kamel, MA, MSW, LICSW (Center for Victims of Torture)*

In exchange for shelter and the limited food from her host, one of our clients is expected to provide child care at all times to the host's young child. Often the client will wake up in the morning and find that she is alone with the child, and she is therefore unable to leave in order to attend scheduled medical or mental health appointments. The client has stated that this is expected of her because she does not pay rent.

This client is Christian and has a strong connection to her faith, but she cannot access her faith community in the US because of exploitation and control from her host.

This client received her work permit 8 months after applying for asylum. She was a successful professional in her home country, but has not been able to continue in her field in the US. Her ability to leave home is extremely limited, but she is connected with a vocational rehabilitation counselor, and is working with a social worker to apply for jobs. Her HIV is worsening, and she is in constant pain. She suffers from a lack of independence because of the exploitation and control in her living situation, and PTSD symptoms have shown little to no improvement. She has ongoing nightmares of her torture, made worse by the stress of her living situation. Had she been able to access a work permit sooner, this client could potentially have found employment while she was physically well; this would have increased her access to basic needs, medical care, mental health care, and shelter, and therefore she may have avoided exploitation, isolation, and the decline in her physical and mental health.

*Clients who are forced to wait longer for work permits, or who cannot access money to apply for work permits, are susceptible to exploitation in return for basic needs being met.* In addition, a lack of independence and lack of access to medical and mental health care may result in significant declines in functioning.

## **Conclusion**

The administration must abstain from implementing the proposed rule, which will continue to harm the asylum system, asylum seekers generally, and survivors of torture specifically.

Sincerely,

Bilingual International Assistant Services  
Center for Survivors of Torture  
Center for Victims of Torture  
IRC, AZ  
IRC Denver  
Mount Sinai Human Rights Program  
Partnership for Trauma Recovery  
TASSC