

Submitted via Federal eRulemaking Portal

November 8, 2019

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

Re: Agency DHS, Docket No. USCIS-2018-0001- Public Comment Opposing the Proposed Removal of the 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications. In the Federal Register at 84 F.R. 47148.

Dear Ms. Deshommes:

The five national torture treatment programs below respectfully submit this comment to oppose the Department of Homeland Security's Notice of Proposed Rulemaking on Removal of 30- Day Processing Provision for Asylum Applicant- Related Form I-765 Employment Authorization Applications, DHS Docket No. USCIS-2018-0001, issued September 9, 2019.

The proposed rule will be extremely detrimental to survivors of torture. It is yet another step by the administration to punish asylum seekers for seeking refuge in the United States. In addition, as torture survivors' ability to work is key to their mental health and wellbeing, allowing USCIS to delay the delivery of work authorizations to asylum seekers will obstruct their healing and place them in further danger. Some may have no option but to seek work in the informal economy.

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 in their home countries.

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.

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DETAILED COMMENTS in opposition to DHS, Docket No. USCIS-2018-0001. Public Comment Opposing the Proposed Removal of the 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications.

The five (5) undersigned Torture Treatment Programs welcome the opportunity to comment on the proposed removal of the 30-day processing provision for Asylum applicant-related Form I-765 Employment Authorization Applications, DHS Docket No. USCIS-2018-0001 (“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 the provision of mental health to survivors of torture and other trauma, we are intimately familiar with the profound effects that this proposed rule will have on our clients. It is also of great concern to us that this rule is yet another step by the Trump administration to disintegrate our asylum process.

I. Background

On September 9, 2019, the Department of Homeland Security (DHS) published a notice of Proposed Rulemaking to remove the requirement that an application for Employment Authorization Document (EAD) be processed within 30 days of receipt of the application by the U.S. Citizenship and Immigration Services. The rule will also remove the provision allowing the asylum seeker to submit a renewal of the EAD 90 days before the current authorizations expires.

Currently, asylum seekers whose asylum cases have been pending without a decision for at least 150 days are eligible to apply for an EAD (if the applicant has caused delays in their asylum case, they must wait longer). Pursuant to a regulation in place since 1994, USCIS is required to adjudicate the EAD application within 30 days of receiving it. One of the “chief purposes” of the 30-day deadline was “to ensure that bona fide asylees [and asylum-seekers] are eligible to obtain employment authorization as quickly as possible.” (See p. 47153, fn. 11 of the Notice).

DHS explains that it seeks to eliminate the 30-day processing deadline because the regulatory deadline does “not provide sufficient flexibility” to the agency to address (1) the “increased volume of affirmative asylum applications and accompanying Applications for Employment Authorization”; (2) “changes in intake and EAD document production” over the last two decades; and (3) “the need to appropriately vet applicants for fraud and national security concerns.” (See p. 47155 of the Notice).

The rules will result in lasting negative consequences for survivors of torture.

II. This rule is another step 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 south of our border from accessing the U.S. asylum process at all, much less actually obtaining asylum. These actions form the backdrop to the proposed rule—which is just another step towards the administration’s goals— include the following:

Changing asylum immigration law: The attorney general certified 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 took 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.¹

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.²

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

Asylum Ban 2.0: In July 2019, the administration disqualified from asylum any individual who transited 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.⁴

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

¹ <https://www.cvt.org/AsylumFact4>

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

³ <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>

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

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.

III. The proposed rule will lead to significant delays, or even a full stop, in the provision of work permits to asylum seekers

DHS has proposed no alternative to the current 30-day rule for adjudication EADs. Although it considered replacing the current rule with a 90-day limit (see p. 47166-47167 of the Notice), instead DHS is proposing to remove a timeframe entirely, suggesting that the agency anticipates these applications will at least be significantly delayed. Of greater concern, the absence of any adjudication deadline permits—and given the context of the proposed rule as described in section II above, implicitly incentivizes—USCIS not to provide EADs to asylum seekers at all.

IV. A delay or full stop in the grant of EADs to asylum seekers will have lasting and detrimental consequences to the health of survivors of torture and severe trauma

A delay in, or the elimination of, granting employment authorization to asylum seekers (including survivors of torture and others who have suffered severe trauma) will harm them, in particular their mental health. Clinicians who provide rehabilitation services to this population explain why below:

Andrea Northwood, Director of Client Services at CVT states:

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 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.

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, who are in this country legally while their claims are submitted and pending with the federal government. 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.

Ariel Zarate, MA, MSW, Survivors of Torture Clinical Case Manager at the IRC in Denver states:

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.⁵

For torture survivors, work is a path to reassert their humanity, to 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

⁵ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, Article 24.

survivors a goal and a focal point outside of these experiences. Work gives survivors hope.

Gwen V. Mitchell, PsyD Assistant Professor/Director of Field Placements MA International Disaster Psychology (MAIDP) Graduate School of Professional Psychology University of Denver also explains:

I am concerned about the proposed changes to the statute on issuing work permits for asylum seekers. From a psychosocial and mental health perspective, work permits and the solidification of meaningful employment is an essential component to a recently arrived asylum seeker's recovery and adjustment to the United States. The World Health Organization (WHO) defines "[t]he conditions in which people are born, grow, live, work and age" as social determinants of health. Work permits and the subsequent aftereffects of obtaining and sustaining gainful employment are an essential part of healing and recovery for the asylum seekers we work with.

The proposed rule would cause significant financial hardship to asylum applicants who are unable to work and to those who depend on them financially, which in turn would destabilize their basic needs, like health and housing. The proposed rule would also burden and stretch the capacity of charities and non-profit service providers: if asylum-seekers are unable to obtain an EAD in a timely manner, they are forced to rely on other forms of support, including organizations that provide financial, housing, legal, or other forms of assistance.

Jordan N. Enger, MA, LPC Psychosocial Support and Survivors of Torture Clinical Care Coordinator from the International Rescue Committee (IRC) in Denver states:

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.

Amanda McDonald, Social Worker & Targeted Case Management Supervisor from the Center for Victims of Torture (CVT) states that:

Many clients are unable to provide for their own basic needs so many live couch to couch, on the floor of basements or in common rooms. Many only eat when they are offered meals resulting in minimal access to food. A lack of income means a lack of access to transportation so some are unable to take the bus to vocational services that will prepare them for work. CVT can bridge the gap by providing referrals to food shelves, and bus cards but unmet needs remain and many suffer in silence. Once clients receive a work permit some report feeling like they are safer here because they have a card that reflects their legal presence, which aids in sleep and stress reduction. Clients are motivated to work quickly and do. It has been astounding to me how eager clients are to work in mostly difficult, grueling roles as many first receive employment in manual labor at factories, restaurants, etc. Once clients are working they are able to discontinue use of CVT donated bus cards and food which contributes to their sense of independence and self-efficacy. Most notably to their mental health, it allows them to send money back home which often pays basic needs like food, rent and medical care for their children or relatives.

Caitlin Tromiczak LICSW-C, LCSWC, Health and Psychological Wellness Program Manager, Creator & Facilitator of Torture Abolition and Survivors Support Coalition (TASSC) Training Program TASSC International in Washington DC also states:

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.

A delay in obtaining, or the inability to obtain at all, a work permit could lead asylum seekers to look for work in the informal sector of the economy, a decision that places already vulnerable individuals at risk of re-victimization and exploitation. Laura Rambikur, LCSW from IRC Arizona explains it best:

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.

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,

Center for Survivors of Torture
Center for Victims of Torture
IRC, AZ
IRC Denver
TASSC