CENTER FOR IMMIGRATION STUDIES

April 24, 2026

Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Employment Authorization Reform for Asylum Applicants, DHS Docket No. USICS-2025-0370, RIN 1615-AC97

Dear Chief Deshommes,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the U.S. Citizenship and Immigration Services (USCIS) in response to the Department of Homeland Security (DHS)'s notice of proposed rulemaking (NPRM), *Employment Authorization Reform for Asylum Applicants*, DHS Docket No. USICS-2025-0370**,** as published in the Federal Register on February 23, 2026.

CIS is a national, nonprofit, public-interest organization comprised of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. CIS examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America's environmental, societal, and economic interests today and into the future.

I. Background

Under the Immigration and Nationality Act (INA), asylum is a discretionary immigration benefit available to aliens physically present in the United States or arriving at its borders who demonstrate that they are refugees.[1] Under federal law, an alien is a "refugee" if they are unable or unwilling to return to their home country due to past persecution or a well-founded fear of future persecution on account of a protected ground (race, religion, nationality, political opinion, or membership in a particular social group).[2] The requirement that the fear be on account of one of the five grounds is commonly called the "nexus requirement."

[1] See INA § 208.
[2] *See* INA § 101(a)(42).

The "well-founded fear" standard is not a particularly high one. The regulations governing asylum eligibility explain: An applicant has a well-founded fear of persecution if: (A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; (B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and (C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.[3] The first and third factors above are subjective, that is, individual to the applicant. The second is objective, meaning that the adjudicator must conclude that such persecution would occur, not just that the applicant thinks it would.

Aliens may affirmatively apply for asylum with USCIS or defensively seek asylum in removal proceedings before an immigration judge within the Executive Office for Immigration Review (EOIR). The statutory and regulatory framework contemplates a case-by-case adjudication process that is both fact-intensive and resource-dependent, requiring credibility determinations, country conditions analysis, and, frequently, corroborating evidence.[4]

Pending asylum applicants may also seek discretionary employment authorization documents (EADs) pursuant to 8 C.F.R. § 274a.12(c)(8). These "asylum-based EADs" are not mandated or automatic.[5] Eligibility generally vests only after an application has been pending for at least 180 days (the statutory minimum), subject to certain tolling provisions for applicant-caused delay. While the INA does not mandate employment authorization for asylum applicants, DHS has exercised its regulatory authority to permit such authorization as a matter of policy.[6] As a result, asylum-based EADs are tied to the pendency of an asylum application, and have become, in some instances, a primary incentive to file an asylum application, including for weak, frivolous or fraudulent claims.

Available government data demonstrate that the current asylum and employment authorization document (EAD) backlogs are not solely the product of temporary surges but also reflect a persistent structural imbalance that has placed extraordinary strain on the immigration system.[7]

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[3] 8 C.F.R. §§ 208.13(b)(2)(i), 1208.13(b)(2)(i).
[4] *See, e.g.*, U.S. Citizenship & Immigr. Servs., RAIO Directorate, Decision Making Lesson Plan (last revised Dec. 6, 2024).
[5] *See* INA § 208(d)(2).
[6] *See* 8 C.F.R. §§ 208.7, 274a.12(c)(8).
[7] *See, e.g.,* U.S. Customs & Border Prot., *Nationwide Encounters* (Apr. 9, 2026); Exec. Off. for Imm. Rev., *Adjudication Statistics, Total Asylum Applications* (Jan. 26, 2026); U.S. Citizenship & Immigr. Servs., "Form I-765, Application for Employment Authorization Counts of Pending Applications by Days Pending and by filing type for All Eligibility Categories and (c)(8) Pending Asylum Category (Fiscal Year 2025, Quarter 1)" (Apr. 30, 2025); U.S. Citizenship & Immigr. Servs., All USCIS Application and Petition Form Types (Fiscal Year 2025, Quarter 4) (Mar. 20, 2026) (contains performance data on all application and petition form types submitted to USCIS for

Between 2021 and 2024, the United States experienced a sustained surge in encounters at the southwest border, placing unprecedented strain on the immigration system. During this period, U.S. Customs and Border Protection (CBP) recorded historically high numbers of encounters, totaling as many as 10.8 million during this timeframe, many involving aliens who subsequently expressed a fear of return and were referred into the asylum screening process.[8]

This influx materially expanded the population of aliens eligible to file asylum applications and, by extension, to seek asylum-based EADs. DHS reported that in fiscal year (FY) 2022, USCIS received 247,790 affirmative asylum receipts, in FY 2023 received 464,398 asylum receipts, and in FY 2024 received 422,457 asylum receipts.[9] EOIR also "more than tripled their asylum application receipts," going from 265,632 if FY 2022 to 905,632 in FY 2024.[10] DHS reported that, as a result of this volume, the average processing time for an affirmative asylum case in FY 2024 was 1,287 days.[11]

The operational consequences of this surge were substantial and are still impacting the immigration system's functionality today. USCIS currently faces a 1.45 million case backlog in its affirmative asylum portfolio – a historic high. In FY2022, FY2023, and FY2024, the average processing time for asylum applications that received a final decision (approval, administrative closure, or denial/referral) was 35.5 months, 25.0 months, and 22.8 months, respectively.[12]

Currently, the average processing time for an affirmative asylum case is 1,287 days.[13] However, DHS now also reports that an alien who filed an asylum application in the first quarter of FY 2025 should expect USCIS to take 765.75 months, or 63 years to adjudicate their application.[14]

As of the first quarter of FY 2026, the immigration court (defensive) asylum backlog is over 2.4 million cases.[15] Many of these applicants will wait years, in some cases more than a decade, before their first immigration court hearing.

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adjudication, including applications and petitions received, approved, denied, pending, and processing time by quarter and fiscal year to date).

[8] *See* H. Comm. On Homeland Sec., STARTLING STATS FACTSHEET: FISCAL YEAR 2024 ENDS WITH NEARLY 3 MILLION INADMISSIBLE ENOCUNTERS, 10.8 MILLION TOTAL ENCOUNTERS SINCE 2021 (Oct. 24, 2024).

[9] U.S. Citizenship & Immigr. Servs., OPQ DATA, "By Fiscal Year, Data Type, and Deny/Referral Reasons" (May 22, 2025).

[10] EOIR, *Adjudication Statistics: Total Asylum Applications* (July 31, 2025).

[11] 91 Fed. Reg. 8616, 8649 (Feb. 23, 2026).

[12] U.S. Citizenship & Immigr. Servs., OPQ DATA, "I-589 Processing Time With and Without Admin Closed by Fiscal Year (FY2022-2025) (May 27, 2025). DHS clarified that these processing times are under LIFO processing, so these are still the "newer" cases being adjudicated. Further, these adjudications are not reducing the overall size of the asylum backlog.

[13] 91 Fed. Reg. 8616, 8649 (Feb. 23, 2026).

[14] 91 Fed. Reg. 8616, 8649 (Feb. 23, 2026).

[15] Exec. Off. for Imm. Rev., *Adjudication Statistics, Total Asylum Applications* (Jan. 26, 2026).

The backlog in asylum adjudications directly drives and exacerbates the backlog in employment authorization requests. As explained above, many asylum applicants become eligible to apply for work authorization after the statutorily mandated waiting period expires. Because asylum adjudications now routinely take years to complete, asylum applicants are able to file for renewable EADs for extended periods, compounding USCIS's overall workload. This results in large volumes of Form I-765, Application for Employment Authorization, filings.

DHS reported, for instance, that for the first quarter of FY 2025 alone, USCIS received 387,015 asylum-based EAD applications.[16] Asylum applicants make up USCIS's largest category of aliens requesting EADs, more than double the next largest volume EAD category and comprising almost half of all EAD renewal requests.[17] This continuous inflow of cases has consistently matched or exceeded adjudicatory capacity, preventing any meaningful reduction in the backlog or processing times.

USCIS reported that at the beginning of FY 2026, the agency had a total of 1,046,156 pending initial EAD applications (including all EAD categories), with 136,932 of those pending applications in category (c)(8) (derived from a pending asylum application). This does not include the 679,822 total pending renewal applications (all categories), of which 111,461 were category (c)(8). The agency also reported that 556,798 initial EAD applications and 395,519 renewal applications had been pending with the agencies for more than 180 days.[18]

These conditions strongly support the need for both regulatory and legislative reform. The current regulatory scheme has shifted the incentive structure to the detriment of the asylum program's integrity. As DHS explained in this proposal, "Due to how long it can take to adjudicate an affirmative asylum application, and because of the significant disparity in the eligibility requirements between an asylum application and [an asylum-based] EAD, there is little to dissuade an alien from filing an asylum application for the sole purpose of obtaining employment authorization, even when an alien is statutorily ineligible for asylum or there is minimal likelihood that asylum would be granted."

Taken together, these data points demonstrate that the asylum and EAD backlogs are mutually reinforcing. Delays in asylum adjudication increase the number of individuals seeking employment authorization, while the resulting surge in EAD filings further strains USCIS

[16] U.S. Citizenship & Immigr. Servs., *Form I-765, Application for Employment Authorization Counts of Pending Applications by Days Pending and by filing type for All Eligibility Categories and (c)(8) Pending Asylum Category (Fiscal Year 2025, Quarter 1)* (Apr. 30, 2025).
[17] *Id*.
[18] U.S. Citizenship & Immigr. Servs., I-765, *Application for Employment Authorization, Counts of Pending Petitions by Days Pending for All Eligibility Categories and (c)(8) Pending Asylum Category as of September 30, 2025* (Mar. 24, 2026).

resources. This feedback loop contributes to longer processing times across multiple benefit categories and undermines the efficient functioning of the immigration system as a whole.

II. DHS Should Amend 8 C.F.R. § 208.7(A) to Require All Applicants for a (C)(8) EAD, Including Renewal Applicants, to Submit Biometrics.

CIS supports amending 8 C.F.R. § 208.7(A) to require all applicants for a (c)(8) EAD, including renewal applicants, to submit biometrics. Under this proposal, if an alien fails to appear for biometrics submission, the alien's application for employment authorization would be denied under 8 C.F.R. 103.2(b)(13)(ii), in a manner similar to USCIS's processing of other benefit requests.[19] The current regulatory framework governing the asylum program, however, does not uniformly require updated biometric collection for renewal applicants. This has created a gap in DHS's ability to ensure continued eligibility, identity verification, and national-security vetting throughout the lifecycle of an asylum-based EAD.

Requiring biometrics for all (c)(8) EAD applicants would align with DHS's longstanding statutory mandate to ensure that immigration benefits are granted only after appropriate screening and vetting.[20] Biometrics are a foundational component of that vetting regime, enabling DHS to conduct fingerprint-based criminal history checks, confirm identity across multiple databases, and detect fraud or misrepresentation.[21]

Moreover, expanding the biometrics requirement will reduce security gaps in the asylum system. Because of the asylum EAD filing and approval clock, affirmative and defensive asylum applicants may frequently obtain a (c)(8) EAD before a biometric-based criminal history check can be completed.[22] Accordingly, this DHS proposal would prevent applicants from delaying scheduling their biometrics appointments to avoid he aggravated felony bar or other factors that may negative impact the adjudication of their EADs.

CIS also supports including the biometric requirements for renewal applicants. New derogatory information may become available between the point an alien first applies for their asylum-based EAD and the time they submit their renewal application. Requiring updated biometrics at each application stage would provide DHS with a consistent mechanism to re-screen applicants against current law enforcement and intelligence holdings, reducing the likelihood that aliens who have become ineligible due to criminal activity, identity discrepancies, or other disqualifying factors continue to receive employment authorization. Under the scheme proposed

[19] 91 Fed. Reg. 8616 (Feb. 23, 2026).
[20] *See* INA §§ 103(a), 103(b).
[21] *See* U.S. Dep't of Homeland Sec., Off. of Biometric Identity Mgmt., *Biometrics* (Aug. 28, 2025).
[22] *See* 8 C.F.R. § 208.7(a)(1)-(2); 91 Fed. Reg. 8616, 8657 (Feb. 23, 2026).

by DHS, it will also facilitate more expeditious denials of EAD and asylum applications by aliens who are ultimately ineligible for asylum.[23]

III. DHS Should Restrict EAD Eligibility from Aliens who are *Prima Facie* Ineligible to Receive Asylum.

DHS should therefore restrict EAD eligibility for applicants who are *prima facie* ineligible for asylum because, as a matter of law, such individuals cannot ultimately obtain the underlying relief that serves as the predicate for the employment authorization benefit. Restricting eligibility in this manner will ease administrative strain and reduce abuse of the overall system.

First, CIS believes that this proposal is lawful and consistent with the overall statutory scheme. There is no statutory entitlement to employment authorization for asylum applicants.[24] Congress created that work authorization in this context to be a discretionary, ancillary benefit that DHS may grant under its general authority to administer the asylum program. Congress made clear that it intended the executive branch to issue EADs to asylum applicants sparingly, generally in only "exceptional" cases. This is evident by the asylum statute's requirement that USCIS, in the absence of "exceptional circumstances," adjudicate asylum applications within 180 days while simultaneously prohibiting the agency from issuing EADs to asylum applications until 180 days after the date the alien files their asylum application.[25] Accordingly, DHS retains broad discretion to define reasonable eligibility limitations, including conditioning access on threshold indicia of legal viability.[26] CIS believes that excluding applicants who are *prima facie* barred from asylum, such as those subject to mandatory statutory bars (e.g., firm resettlement, persecutor bar, or certain criminal grounds), from EAD eligibility as well is a rational exercise of that discretion.

Moreover, permitting *prima facie* ineligible applicants to obtain EADs undermines the integrity of the asylum system by strengthening incentives to file or maintain fraudulent, frivolous, or otherwise non-meritorious applications. Restricting EAD eligibility in these cases appropriately aligns incentives with the statutory purpose of asylum: protection for aliens who meet the legal definition of a refugee. This alignment is particularly important given system-wide backlogs, where delays can allow applicants with nonviable claims to retain work authorization for extended periods.

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[23] *See* new 8 C.F.R. § 208.7(a)(iii)(D)(3)(v)(allowing USCIS to prioritize the adjudication of an asylum application if USCIS obtains derogatory information during the adjudication of an application for employment authorization document for that applicant.).
[24] *See* INA § 208(d)(2) ("An applicant for asylum is not entitled to employment authorization….").
[25] *See* INA § 208(d)(2), (d)(5)(A)(iii).
[26] *See* INA §§ 103(a), 103(b).

Finally, CIS believes that this proposal is operationally feasible and will not impose significant administrative burdens on USCIS. Asylum officers are already trained to assess and apply threshold bars and legal sufficiency standards at various stages of the asylum process.[27] Incorporating a similar preliminary screening for EAD eligibility would not require a full merits adjudication but rather a limited determination based on readily ascertainable facts and statutory criteria. This approach would conserve adjudicatory resources by sparing the agency from expending time processing and renewing EADs for individuals who cannot ultimately prevail on their asylum claims.

IV. USCIS Should Not Accept EAD Applications When Affirmative Asylum Processing Times Exceed 180 days.

CIS supports DHS's proposal to prohibit USCIS from accepting EAD applications when affirmative asylum application processing times exceed 180 days. Under this proposal, after such a pause is implemented, acceptance of initial (c)(8) EAD applications would resume when the average processing time for affirmative asylum application adjudications over a consecutive period of 90 days is less than or equal to 180 days. The USCIS Director's determination to pause and restart (c)(8) EAD acceptances would be based solely on the affirmative asylum application processing times, and not subject to discretion. Any pause of initial (c)(8) EAD applications would not apply to any renewal (c)(8) EAD applications.[28] CIS believes this reform is consistent with the statutory framework and will curb abuse of the asylum system.

CIS believes that this proposal will bring USCIS practice back in line with the statutory scheme. Congress intended the issuance of an asylum-based EAD to be an exception, not the rule. This is evident from the language of INA § 208. Specifically, Congress intended that the Immigration and Naturalization Service (INS), now USCIS, would adjudicate an asylum application with 180 days.[29] Moreover, INA § 208(d)(2) also prohibits an asylum applicant from receiving employment authorization until 180 days had elapsed since the submission of their application. What can be reasonably inferred, then, is that Congress only intended that INS (now USCIS) issue employment authorization only in exceptional cases that exceeded the statutory deadline either because of the cases' complexity or other extraordinary factors.

The current regulatory framework, coupled with USCIS and EOIR's asylum backlog, has created strong incentives for aliens to file asylum applications, even where the alien does not have a claim with a high (or any) likelihood of success. When adjudications routinely extend well beyond 180 days, the availability of employment authorization becomes effectively decoupled

[27] *See* 8 C.F.R. §§ 208.13, 208.16, 208.30; U.S. Citizenship & Immigr. Servs., *Credible Fear of Persecution and Torture Determinations, RAIO Directorate Lesson Plan* (Feb. 28, 2014) (as revised).
[28] 91 Fed. Reg. 8616 (Feb. 23, 2026).
[29] INA § 208(d)(5)(A)(iii).

from the timely resolution of the underlying protection claim, allowing the collateral benefit to be transformed into a primary incentive for filing. In high volumes, the issue compounds. USCIS processing times increase while the incentive to file to receive access to the labor market strengthens.

System overload has allowed the availability of employment authorization eligibility to increase abuses of the asylum system. The high volume of asylum application submissions has made it impossible for USCIS to comply with the statutory 180-day deadline given the agency's limited resources. As discussed above, DHS reported that in fiscal year (FY) 2022, USCIS received 247,790 affirmative asylum receipts, in FY 2023 received 464,398 asylum receipts, and in FY 2024 received 422,457 asylum receipts.[30] DHS reported that, as a result of this volume, the average processing time for an affirmative asylum case in FY 2024 was 1,287 days.[31] EOIR also "more than tripled their asylum application receipts," going from 265,632 if FY 2022 to 905,632 in FY 2024.[32]

Moreover, in FY2022, FY2023, and FY2024, the average processing time for asylum applications that received a final decision (approval, administrative closure, or denial/referral) was 35.5 months, 25.0 months, and 22.8 months, respectively.[33] DHS now also reports that an alien who filed an asylum application in the first quarter of FY 2025 should expect USCIS to take 765.75 months, or 63 years to adjudicate their application.[34]

A pause in accepting EAD applications during periods of excessive processing delays would realign incentives. Applicants with bona fide claims would remain motivated to pursue protection because they will be able to remain in the United States without accruing unlawful presence, while the diminished immediacy of work authorization (that could be renewed until the alien received a final decision on their application) would reduce the attractiveness of filing weak, bogus, or non-meritorious applications solely for the purpose of obtaining employment eligibility. This approach targets the root cause of opportunistic filings, primarily the availability of work authorization untethered from USCIS's adjudicative capacity. Pausing the acceptance of

[30] U.S. Citizenship & Immigr. Servs., *OPQ DATA, By Fiscal Year, Data Type, and Deny/Referral Reasons* (May 22, 2025).
[31] 91 Fed. Reg. 8616, 8649 (Feb. 23, 2026).
[32] U.S. Dep't of Justice, Exec. Off. For Immigr. Review, *Adjudication Statistics: Total Asylum Applications* (July 31, 2025).
[33] U.S. Citizenship & Immigr. Servs., *OPQ DATA, I-589 Processing Time With and Without Admin Closed by Fiscal Year (FY2022-2025)* (May 27, 2025). DHS clarified that these processing times are under LIFO processing so these are still the "newer" cases being adjudicated. Further, these adjudications are not reducing the overall size of the asylum backlog.
[34] For new filers in FY 2025 Q2, USCIS expects processing to take approximately 562.25 months, or more than 46 years. 91 Fed. Reg. 8616, 8649 (Feb. 23, 2026).

EAD applications would therefore function as a more tailored deterrent to this concern than eliminating eligibility entirely.

Such a policy would also promote administrative efficiency. Accepting EAD applications when asylum adjudications are significantly backlogged imposes additional burdens on USCIS resources by requiring the agency to process large volumes of benefits that do not advance case resolution. By contrast, suspending the intake of EAD applications during periods of elevated processing times would allow USCIS to reallocate personnel and adjudicative resources toward adjudicating the underlying asylum applications.

This prioritization is consistent with sound administrative policy. USCIS should focus limited resources on adjudicating affirmative asylum applications rather than ancillary benefits when system constraints are binding. USCIS should not prioritize the adjudication of discretionary, ancillary benefits in a manner that invites systematic abuse.

CIS also believes that this proposal is lawful. As explained above, Congress made clear that "an applicant for asylum is not entitled to employment authorization."[35] Employment authorization, therefore, is a discretionary benefit that may only be granted after the passage of at least 180 days and in accordance with rules established by the Attorney General and/or Secretary of Homeland Security by regulation.[36]

CIS believes that a suspension of EAD-application intake in these circumstances is therefore a rational, targeted, and legally supportable measure to restore coherence between adjudication timelines and ancillary benefits. Requiring USCIS to pause acceptance of EAD applications when affirmative asylum processing times exceed 180 days will allow the agency to focus more resources on adjudicating the underlying asylum applications and restore the overall integrity of the program.

V. DHS Should Increase the EAD Waiting Period.

DHS should exercise its regulatory authority to increase the waiting period before asylum applicants become eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8). Extending this period would better align employment authorization with the statutory structure of asylum, reduce incentives to file non-meritorious claims, and help restore operational integrity to an overburdened adjudication system.

First, the current framework allows applicants to obtain employment authorization based solely on the pendency of an asylum application for at least 180 days, rather than on any merits determination. While DHS has discretion to authorize employment incident to a pending asylum

[35] INA § 208(d)(2).
[36] *Id*.

application, the INA does not require such authorization.[37] The existing waiting period, which is currently set at the statutory minimum waiting period of 180 days, has proven insufficient in the current enforcement environment, where adjudication timelines routinely extend well beyond that threshold. As noted above, the current average processing time for an affirmative asylum case is 1,287 days.[38]

Second, a longer waiting period would mitigate incentives for individuals without meritorious protection claims to file for asylum primarily to obtain work authorization. The significant increase in asylum filings between 2021 and 2024, driven primarily by high levels of border encounters and expansive abuse of DHS's parole authority, expanded the population eligible for (c)(8) EADs. Where applicants can reasonably expect to receive employment authorization within a relatively short period,[39] irrespective of ultimate eligibility for asylum, the status quo currently encourages aliens to file asylum applications to obtain access to the labor market, without first demonstrating a genuine need for protection.

Extending the waiting period would reduce this incentive and help ensure that the asylum system is reserved for those with bona fide claims. By requiring applicants to demonstrate a sustained commitment to pursuing their asylum claim before becoming eligible for employment authorization, the rule helps ensure that access to the U.S. labor market is reserved for those with bona fide protection claims rather than those seeking to exploit procedural timelines.

Third, like the proposals discussed above, increasing the waiting period would help alleviate administrative burdens on USCIS. The surge in asylum filings has correspondingly increased the volume of EAD applications, contributing to processing delays and diverting agency resources from core adjudicative functions. Extending the waiting period would promote more efficient allocation of limited agency resources. By discouraging the filing of weak, bogus, or dilatory claims, DHS can better focus adjudicative capacity on meritorious cases, thereby reducing overall system backlogs and improving adjudication timelines. This reform is consistent with DHS's broader effort to prioritize timely, accurate decision-making and to preserve the asylum system for those it is intended to protect.

Asylum is a protection-based, not employment-based, benefit. While employment authorization may be appropriate in certain circumstances to prevent undue hardship during prolonged adjudications, it should remain ancillary to the core purpose of the statute and the humanitarian

[37] INA § 208(d)(2).
[38] 91 Fed. Reg. 8616, 8649 (Feb. 23, 2026).
[39] *See* U.S. Citizenship & Immigr. Servs., *Case Processing Times, Form I-765, Application for Employment Authorization* (last visited Apr. 23, 2026) (indicating that the USCIS Service Center Operations Directorate is currently completing 80% of initial asylum-based EAD applications within 1 month).

protection itself. Extending the waiting period would preserve this distinction and reduce the risk that the availability of interim work authorization will distort migration incentives.

VI. DHS Should Restrict Asylum-Based EAD Eligibility from Illegal Entrants.

CIS supports DHS's proposal to restrict asylum-based EAD eligibility from aliens who enter the United States illegally. The proposed restriction on EAD eligibility for aliens who entered unlawfully is both legally supportable and sound policy.

As an initial matter, there is no statutory entitlement to employment authorization for asylum applicants. The INA does not confer a right to work authorization during the pendency of an asylum application; instead, employment authorization in this context exists solely by virtue of the Secretary's discretionary regulatory authority.[40] The implementing regulations likewise make clear that asylum-based EADs are discretionary, not mandatory. Accordingly, DHS retains broad authority to define, condition, or restrict eligibility for such benefits, including drawing distinctions based on manner of entry.

CIS disagrees with commenters that contend that restricting asylum-based EADs from aliens who cross the border illegally violates the United States' commitments under international protection treaties, including the 1951 Convention Relating to the Status of Refugees and its incorporated provisions through the 1967 Protocol Relating to the Status of Refugees.

Consistent with this framework, U.S. courts, including the Supreme Court of the United States, have repeatedly recognized that the Protocol does not itself create enforceable rights beyond those implemented through the INA.[41] Congress implemented the United States' core non-refoulement obligations through statutory provisions authorizing withholding of removal, not INA § 208, and it did not mandate the provision of ancillary benefits such as employment authorization during the pendency of an application.[42] Because these treaties are not self-executing, they do not constrain DHS's authority to define the eligibility requirements for discretionary benefits such as asylum-based EADs.[43]

That discretionary framework is particularly salient where the class of applicants at issue, those who enter unlawfully and subsequently pass a credible fear screening, has a demonstrably low

[40] *See* INA § 208(d)(2).
[41] *See*, *e.g.*, *INS v. Stevic*, 467 U.S. 407, 428 n.22 (1984) (finding domestic law controlling, stating "…the language of Article 34 was precatory, and not self-executing."); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987) (explaining that Congress implemented U.S. obligations under the Protocol through the Refugee Act of 1980).
[42] *Id*.
[43] *See* INA §§ 103(a), 103(b).

rate of ultimate asylum approval.[44] Credible fear is intentionally designed as a low threshold screening standard, requiring only a "significant possibility" that the alien could establish eligibility for asylum.[45] It is not a final agency decision, nor is it predictive of an applicant's ultimate success on the merits of their asylum application. Government data consistently shows that a substantial majority of individuals who receive positive credible fear determinations (about 86 percent) ultimately do not obtain asylum following full adjudication before an asylum officer or immigration judge.[46] This attrition reflects, among other factors, the low evidentiary threshold at the screening stage, the absence of full record development, and the incentives to assert claims sufficient to pass the initial screening.

The current regulatory scheme, which allows broad access to employment authorization for this population, despite the low rate of asylum grants, undermines the integrity of the system by extending an important discretionary benefit to individuals who, in most cases, will not qualify for asylum. It thereby creates a strong incentive for unlawful entry followed by initiation of the credible fear process, as the prospect of relatively prompt work authorization can function as a pull factor independent of the underlying merits of a protection claim. Restricting (c)(8) EAD eligibility in this context reduces incentives to exploit a screening mechanism that was not designed to serve as a gateway to employment authorization.

VII. DHS Should Prioritize the Adjudication of Asylum Applications from Applicants with Derogatory Information.

CIS supports DHS's proposal to prioritize for adjudication an asylum application in which derogatory information is encountered during any (c)(8) EAD adjudications. Under this proposal, if USCIS discovers that the applicant is ineligible for asylum because of a statutory ineligibility ground, USCIS should flag the corresponding asylum application so that the asylum adjudicator can more rapidly schedule the case for an interview and make a final decision on the case.[47]

Mandatory denial of an asylum application is required where the applicant is statutorily barred from relief under INA § 208(b)(2). These bars include the persecutor bar (where the applicant has ordered, incited, assisted, or otherwise participated in the persecution of others on account of a protected ground); conviction of a "particularly serious crime," including any aggravated felony deemed per se particularly serious; commission of a serious nonpolitical crime outside the

[44] *See* U.S. Dep't of Justice, Exec. Off. For Immigr. Review, *Credible Fear and Asylum Process: Fiscal Year (FY) 2008 – FY 2019* (generated Oct. 23, 2019) (only 14 percent of aliens who claimed credible fear and 16.86 percent of aliens found to have credible fear were ultimately granted asylum).
[45] INA § 235(b)(1)(B)(v).
[46] *See* U.S. Dep't of Justice, Exec. Off. For Immigr. Review, *Credible Fear and Asylum Process: Fiscal Year (FY) 2008 – FY 2019* (generated Oct. 23, 2019) (only 14 percent of aliens who claimed credible fear and 16.86 percent of aliens found to have credible fear were ultimately granted asylum).
[47] 91 Fed. Reg. 8616 (Feb. 23, 2026).

United States prior to arrival; and terrorism-related inadmissibility grounds, including providing material support to a terrorist organization. In addition, an alien is ineligible for asylum if they are firmly resettled in a third country prior to arriving in the United States, or where the alien may be removed to a safe third country pursuant to a bilateral or multilateral agreement. Separate threshold bars also require denial, absent a statutory exception, if the application is not filed within one year of arrival, or if the applicant previously applied for and was denied asylum. Where any of these grounds applies, an adjudicator lacks discretion to grant asylum, regardless of the strength of the underlying persecution claim.

By allowing asylum adjudicators to more quickly adjudicate applications that USCIS already knows are unlikely to be meritorious, USCIS will simultaneously allow DHS to more quickly remove aliens who pose national security or public safety threats to the United States and increase overall adjudicatory efficiency. While CIS agrees that this proposal may initially lead to slightly longer processing times for aliens without derogatory information, this reform will more quickly shorten the agency's "backlog" and corresponding processing times in the long term. This is in part because the proposal will reduce incentives for aliens who are likely to be ineligible to file applications in the first instance.

VIII. Additional Reforms to Strengthen the Asylum System

To further reinforce the integrity of the asylum system and ensure that employment authorization availability does not become a primary incentive for filing an asylum application that has little or no likelihood of success, the DHS should adopt additional reforms within the asylum-based EAD framework.

A. Expand In-Person Interview Requirements to All Asylum-Based EAD Applicants, Including Renewal Applicants

DHS should require in-person interviews for all applicants seeking asylum-based EADs under category (c)(8), including renewal applicants. Current regulations permit many applicants to obtain and repeatedly renew EADs without appearing before an immigration officer.[48] This creates a structural vulnerability in identity verification, fraud detection, and national security screening.

In-person interviews would serve several critical functions. First, they would allow officers to verify identity through direct observation and comparison with submitted biometrics and documentation. Second, they would provide an opportunity to assess indicia of fraud or inconsistencies in an applicant's representations. Third, interviews would facilitate real-time vetting against updated intelligence and law enforcement databases. Importantly, extending this

[48] *See* 8 C.F.R. §§ 208.7, 103.2(b)(1), 103.2(b)(9).

requirement to renewal applicants ensures that DHS maintains continuous oversight over a population that may remain in the United States for years while their asylum claims are pending. Given the extended processing times in the asylum system, periodic in-person interaction is a reasonable safeguard to ensure that continued eligibility for employment authorization remains justified.

B. Eliminate the Asylum EAD Clock

DHS should eliminate the "EAD clock," the self-imposed adjudicatory timeframe governing when asylum applicants may apply for and receive employment authorization.[49] The current regulatory framework ties EAD eligibility to the passage of a fixed number of days (currently 150/180 days) following the filing of an asylum application, regardless of the substantive merits of that application or the applicant's compliance with procedural requirements.

This construct creates perverse incentives. It encourages the filing of non-meritorious or incomplete asylum applications for the primary purpose of obtaining work authorization, rather than protection. It also constrains DHS's ability to prioritize adjudications based on risk, fraud indicators, or national security concerns.

Eliminating the EAD clock would restore adjudicative discretion to DHS, allowing the agency to condition employment authorization on meaningful progress in the underlying asylum case, compliance with procedural requirements, and successful completion of vetting processes. It would also better align the issuance of EADs with the statutory framework, which does not mandate employment authorization for asylum applicants.

C. Reduce the Validity Period for Asylum-Based EADs

DHS should shorten the validity period of asylum-based EADs to enable more frequent re-screening of applicants for identity, security, and eligibility concerns. Under current policy, EADs may be issued for extended periods, reducing opportunities for DHS to reassess whether an applicant continues to warrant employment authorization.

Shorter validity periods would provide several operational and security benefits. They would require applicants to re-engage with DHS at regular intervals, allowing for updated biometric collection, database checks, and review of any intervening criminal, immigration, or national security developments. This is particularly important given the dynamic nature of risk profiles and the length of time many asylum cases remain pending.

Additionally, more frequent renewal cycles would create natural checkpoints for DHS to identify cases where applicants have failed to pursue their asylum claims diligently, have become

[49] 8 C.F.R. § 208.7(a)(1).

ineligible for relief, or present fraud indicators. This would enhance overall program integrity while ensuring that employment authorization remains contingent on continued compliance and eligibility.

IX. Conclusion

Collectively, these measures would recalibrate the asylum-based employment authorization system toward greater integrity, accountability, and alignment with Congress's statutory objectives. They would reduce incentives for misuse, strengthen identity and security screening, and ensure that DHS retains appropriate discretion over the issuance and continuation of employment authorization.