

# IMMIGRATION JUSTICE CAMPAIGN

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## **Employment Authorization for People Formerly in MPP: Practice Advisory**

**Last Updated: October 31, 2022**

### **I. What it Means to have an Employment Authorization Document (“EAD”)**

Certain asylum applicants may be eligible to apply for an employment authorization document (“EAD”). EADs, commonly referred to as work permits, are official U.S. government documents issued by U.S. Citizenship and Immigration Services (USCIS) that provide temporary employment authorization to noncitizens in the United States. To request an EAD, qualifying asylum applicants may file Form I-765, Application for Employment Authorization, along with required supporting documents, with USCIS.<sup>1</sup>

This practice advisory will discuss when asylum seekers now in the U.S., who were formerly subjected to the Migrant Protection Protocols (“MPP”), popularly known as the “remain in Mexico” policy, are eligible to seek employment authorization, as well as details on how to file.<sup>2</sup>

### **II. Eligibility**

EAD eligibility rules are found in the regulations at 8 CFR § 274a.12. There are two main categories for EAD eligibility for asylum seekers formerly in MPP. These two categories are found at 8 CFR §274a.12(c)(8), which is for certain people with asylum applications pending, and 8 CFR § 274a.12(c)(11), for certain people who have been allowed into the U.S. in a status known as “parole.” In this Practice Advisory, we will lay out the eligibility requirements, and the filing and documentation requirements for both of these categories, as well as practice pointers and filing considerations.

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<sup>1</sup> The Justice Campaign is grateful to Kids In Need of Defense, the Immigrant Justice Corp, Immigrant Advocates Response Collaborative, and Taylor Levy Law for their important contributions to this Practice Advisory.

<sup>2</sup> This advisory is written for attorneys working with asylum seekers whose applications for asylum were pending with USCIS or the immigration court on or after 2/8/2022. If you are working with a client who applied for asylum before 2/8/22, do not rely on this advisory unless you do additional research.

## 1. *Asylum Pending—Category (c)(8)*

### 1. General Eligibility Rule

Asylum applicants may be eligible to file for employment authorization under category (c)(8) on the I-765, Application for Employment Authorization form. Prior to February 8, 2022, a Trump-administration rule prohibited asylum applicants from filing I-765s with USCIS until 365 days after their asylum applications were deemed “pending,” minus any delays attributed to the asylum applicants. However, a federal court case called [Asylumworks v. Mayorkas](#) restored the pre-Trump rules permitting asylum seekers to apply for employment authorization documents (“EADs”) only 150 days after their I-589s began pending and receive the EAD in as soon as 180 days. Further, the *Asylumworks* decision reimposed the requirement that USCIS process initial work permit applications for asylum applicants within 30-days.<sup>3</sup> This favorable ruling significantly shortens the length of time an applicant must wait between submitting an asylum application and becoming eligible for work authorization.

Under the current regulations, asylum seekers with I-589 applications pending as of February 8, 2022, are eligible to apply for employment authorization after the application has been pending for 150 days and receive an EAD after 180 days. If your client’s case is before the immigration court, their application is considered “pending” beginning on the date that the I-589 was filed with the immigration court.

However, even if an asylum applicant’s I-589 has been pending for 180 or more days, they may not be eligible to receive a work permit if USCIS determines that the client requested or caused a delay to the “180-Day Asylum EAD Clock.” The 180-Day Asylum EAD Clock, also restored by the *Asylumworks* decision, refers to the period of time USCIS requires applicants to wait between submitting an asylum application and receiving an EAD. Under this rule, an applicant becomes eligible to receive an EAD after a minimum of 180-days following USCIS’s receipt of a complete asylum application or the application is filed with the immigration court.<sup>4</sup> The 180-day waiting period includes the 150-days required between filing for asylum and applying for an EAD, plus an additional 30-day minimum eligibility period before receiving the EAD.<sup>5</sup>

If USCIS determines the applicant caused or requested a delay, the 180-Day Asylum EAD Clock pauses and the applicant stops accruing days toward the 180-day waiting requirement. The Clock remains paused until the delay is resolved, thus extending the amount of time one must wait before receiving work authorization. The following examples are reasons USCIS may find an “applicant-caused delay” for cases pending with an asylum office:

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<sup>3</sup> Despite the *Asylumworks* decision, USCIS fails to process all EADs based on a pending asylum application within 30 days. If applying after the required 150-day waiting period, your client has had a pending EAD application for longer than 25 days without response, it is possible they may qualify for expedite as a [Rosario v. USCIS](#) class member. Reference [USCIS’s information about the Rosario class action](#) for eligibility information.

<sup>4</sup> A “complete” asylum application is one submitted to USCIS or the immigration court in the manner described by the [Instructions to the Form I-589, Application for Asylum and for Withholding of Removal](#).

<sup>5</sup> Reference [USCIS’s 180-Day Asylum EAD Clock Notice](#), revised 06/2022, for additional information.

- Request to transfer a case to a new asylum office or interview location;
- Request to re-schedule an interview for a later date;
- Failure to appear at an interview or biometrics appointment;
- Failure to provide a competent interpreter at an interview; and
- Submission of large volumes of evidence immediately before an asylum interview.

For cases pending with EOIR, examples of applicant-caused delays include:

- Asking for additional time to prepare a case at a hearing;
- Requesting administrative closure of the case at a hearing; and
- Filing a motion to change venue or request a continuance.<sup>6</sup>

## 2. Membership in CASA and ASAP and Eligibility to File I-765 after 150 Days

The Asylum Seeker Advocacy Project (ASAP), CASA de Maryland, and several additional organizations filed a lawsuit challenging the new work permit regulations in federal court. The case, [CASA v. Mayorkas](#) (originally called *CASA v. Wolf*), is currently pending in the Southern District of Maryland. On September 11, 2020, Judge Paula Xinis issued a [preliminary injunction](#) in the CASA case, barring the government from enforcing parts of the Trump-era restrictions on members of the plaintiff organizations, including ASAP and CASA. Critically, this injunction protected the eligibility of ASAP and CASA members to apply for a work permit 150 days after filing an I-589, even if they joined ASAP or CASA after the September 2020 injunction, so long as their membership was current at the time the I-765 was filed. Like the general asylum-seeker applicant population following the *Asylumworks* decision, members of CASA and ASAP remain eligible to receive a work permit 180 days after their I-589s are filed.

Although the *Asylumworks* decision has negated the need for preserving the 180-day eligibility period through membership with ASAP or CASA, the government continues to fail to make changes necessary to timely adjudicate work permits for all asylum seekers. If your client is a member of ASAP or CASA, advocates recommend continuing to submit proof of membership with work permit applications to encourage timely processing of the I-785 application.

In recent discussion with ASAP, USCIS presented a goal to consistently process all asylum-seeker EAD applications within 30 days by the end of September 2022. As of October 2022, USCIS continues to fail to process asylum seekers' initial work permits within 30-days. However, USCIS has updated the work permit form and instructions to reflect accurate, updated information. The official instructions now make it clear that 1) asylum seekers can apply for work authorization 150 days after filing an asylum application and 2) that asylum seekers' initial work permits *should* be processed within 30-days.<sup>7</sup>

As of October 31, 2022, USCIS has made available an [updated version of the I-765](#) that reflects the *Asylumworks* changes. This version of the form no longer includes questions about an applicant's method of entry, as recorded in the former version of the form at question 30b.-g.

<sup>6</sup> See [USCIS's 180-Day Asylum EAD Clock Notice](#), revised 06/2022, for additional information on applicant-caused delays in both affirmative and defensive proceedings.

<sup>7</sup> See [Updates for ASAP Members about Work Permit Advocacy, October 13, 2022](#).

## How to Join ASAP and CASA:

ASAP is a non-profit organization that welcomes new members who: (1) have sought or are seeking asylum in the United States, (2) are 14 years old or older, and (3) believe in ASAP's mission. ASAP does not currently charge a membership fee. For additional information about ASAP and instructions on how to become a member of ASAP, please click [here](#).

Additionally, ASAP has created a [website](#) to provide updates and information to people formerly in MPP. Migrants entering the U.S. as former MPP enrollees are being given a postcard with information about this website. The website encourages users to join ASAP to receive updates and information.<sup>8</sup>

**CASA de Maryland** is an advocacy organization for immigrants. Members are currently charged a \$35.00 annual fee. For additional information on CASA and instructions on how to become a member, please click [here](#).

In addition to having the right to apply for a work permit 150 days after filing an asylum application and becoming eligible after 180 days, ASAP and CASA members, along with the general asylum-seeker applicant population following the *Asylumworks* decision, have these additional rights under the *CASA v. Mayorkas* preliminary injunction:

- Their I-765 applications should be processed within 30 days;
- They may apply for an EAD even if they have filed an asylum application more than a year after arriving in the United States;
- They do not need to pay the \$85 biometrics fee;
- They will not be subject to a discretionary denial of their I-765 application.

### 3. Updates to Rules Excluding Certain Asylum Seekers from Obtaining Work Permits

The August 2020 revised work permit regulations barred certain categories of asylum applicants from obtaining work permits based on their pending I-589 applications. As a result of the 2022 *Asylumworks* decision, the regulations have reverted to the pre-Trump version to restore work authorization eligibility for several sub-populations of asylum-seeker applicants:

- ***Applicants with pending asylum cases are no longer barred from receiving employment authorization if they entered or attempted to enter the United States between ports of entry (commonly referred to as “entered without inspection” or “EWI’d”).***
  - USCIS no longer requires applicants to answer Questions 30b.-g. on Form I-765. Information about the method of entering the U.S. (inspected, admitted, paroled, etc.) is not considered as part of the EAD adjudication process based on the (c)(8) category.

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<sup>8</sup> Your client may already be a member of ASAP. To check their membership status with ASAP, click [here](#).

- ***Filing for asylum after the one-year filing deadline is no longer automatic grounds for ineligibility for work authorization.***
  - Asylum seekers who file asylum applications after one year from entering the United States remain eligible for receiving an EAD based on a pending asylum application.
- ***Certain criminal acts and convictions are no longer grounds for ineligibility.***
  - The Trump-era rules vacated by *Asylumworks* prevented asylum-seekers convicted of certain crimes from pursuing work authorization. Now, only aggravated felony convictions will bar an applicant from eligibility for work authorization based on a pending asylum application.
  - “Aggravated felony” is an immigration law term that describes a wide category of criminal convictions under state and federal law. It is very important to be aware that crimes that may not be classified as an “aggravated felony” under state or federal law (and may in fact be classified as misdemeanors under the applicable law) fall under the immigration law heading of “aggravated felony.” If your client was convicted of a crime, it will be extremely important to obtain your client’s criminal records and analyze any convictions to see if they are classified under immigration law as an “aggravated felony.” If you are not experienced with criminal immigration issues, it will be important to consult an experienced mentor.
- ***If USCIS denies the asylum application, the EAD will not automatically terminate on the denial date.***
  - ***If the applicant who was denied asylum is in lawful immigration status,*** the EAD issued based on the asylum application will terminate 60 days after the denial decision, or on the expiration date of the EAD, whichever is later.
  - ***If the applicant is referred to the immigration judge and is not in lawful immigration status,*** the EAD remains valid through the date of expiration.
  - ***If an immigration judge denies the asylum application,*** work authorization terminates on the expiration date printed on the EAD, unless the applicant appeals the immigration judge’s decision to the Board of Immigration Appeals (BIA).<sup>9</sup>

#### 4. ***212(d)d(5) Parole, Category (c)(11)***

##### 1. Eligibility

Not all those who enter through the MPP program will be immediately eligible for an asylum-

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<sup>9</sup> For more information, see [USCIS Stops Applying Certain EAD Provisions for Asylum Applications](#).

pending EAD, either because they have not yet filed an asylum application, or because their asylum application has not been pending for long enough. For those who are not eligible (or not yet eligible) for an EAD in the asylum pending category, there is another EAD category under which they may apply: parole. Although it is likely parole has now expired for those who entered the U.S. from the MPP-program, this information remains relevant to individuals who may have outstanding parole eligibility or who extended their parole period.

“Parole” is a temporary immigration status that DHS can give people either at the border or when ICE releases them from detention. The statutory authority for this type of parole is found at INA 212(d)(5), which says, “The Attorney General may...in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.”

People who entered the U.S. from the MPP program should have been given 212(d)(5) parole when they entered the U.S. Your client’s electronic I-94 record should indicate that your client was paroled into the U.S. under INA Sec. 212(d)(5). You can retrieve a copy of your client’s electronic I-94 [here](#).<sup>10</sup> If your client was paroled into the U.S., the “class of admission” on the I-94 will be listed as “D-T.”<sup>11</sup>

People granted this type of parole are eligible for work authorization under category c (11). The relevant text in the regulations (8 CFR 274a.12(c)(11)) provides that:

“(11) Except as provided in paragraphs (b)(37) and (c)(34) of this section, [8 CFR 212.19\(h\)\(4\)](#), and except for aliens paroled from custody after having established a credible fear or reasonable fear of persecution or torture under [8 CFR 208.30](#), an alien paroled into the [United States](#) temporarily for urgent humanitarian reasons or significant public benefit pursuant to section 212(d)(5) of the [Act](#) [is eligible to apply for employment authorization].”

The first exceptions—paragraphs b(37) and c(34)—relate to immigrant entrepreneurs, and are not relevant in this context. As to the second exception, anyone paroled from ICE custody following a positive credible or reasonable fear interview is not eligible for a parole EAD – but it is important to note that people enrolled in MPP were NOT given credible or reasonable fear interviews. Therefore, anyone paroled into the U.S. through MPP *should* be eligible for a parole- based EAD.

### 1. Special Considerations

There are several caveats to note when applying for an EAD in the (c)(11) parole category. First, applicants must pay a fee of \$410, absent qualifying for a fee waiver. Second, although USCIS

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<sup>10</sup> Instructions on accessing the I-94 can be found in English [here](#) and in Spanish [here](#).

<sup>11</sup> Several other admissions codes also refer to parole, including “CH.” If you are unsure whether your client was paroled into the United States, please consult a mentor.



has publicized its intention to streamline applications in the (c)(11) category, applicants continue to experience barriers throughout the application and adjudication processes (see later section on streamlined processing for parolees). Third, a parole-based EAD is only granted until the date of the parole's expiration, while an asylum-based EAD is granted for two years. While asylum-based EAD's have automatic employment authorization extensions for timely-filed renewals, ICE is usually unwilling to renew parole documents provided at the border. Without an extension of the parole status, an asylum seeker will be not eligible for extensions of a parole-based EAD.

Nevertheless, for those completely ineligible for an asylum-pending EAD, the parole category will be the only way to obtain an EAD unless and until the applicant is granted long-term immigration relief, such as asylum. For applicants who have asylum applications pending, you and your client will want to evaluate whether it is worth applying in the parole category. If, for example, your client has two months until she is eligible for an asylum-pending EAD, it might make sense to wait to apply under the (c)(8) asylum pending eligibility category.

- ❖ **Practice Pointer:** If your client is currently eligible for a work permit under (c)(11) as a parolee but has not reached the 150-day mark to apply under category (c)(8), they may want to apply for an EAD under (c)(11) first. Then, when their (c)(11) permit expires, they can apply under (c)(8).

### **III. How to Apply**

#### ***1. Form I-765: Application for Employment Authorization***

To obtain employment authorization, an asylum applicant must file a signed [Form I-765](#), Application for Employment Authorization, and supporting documents with USCIS. If you are an attorney representing a client in their I-765 application, you must file a [G-28](#) (Notice of Entry of Appearance as an Attorney) along with the I-765.

The [instructions](#) for Form I-765 are lengthy and complicated. We have distilled some of the most important pieces of information below. However, it is crucial that you also consult the I-765 instructions at the time of filing your client's I-765 to ensure you have all the requisite documentation and proper filing address.

The [USCIS web page on the I-765](#) also contains important information about where to file, how to pay the fees, and more. Make sure to carefully review the information on that page before filing.

#### ***2. Required documents<sup>12</sup>***

##### ***1. Asylum Pending, (c)(8)***

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<sup>12</sup> These are the requirements for asylum applicants at the immigration court level. Applicants who have had their claims denied and have appeals pending before the BIA or Circuit Courts, or who have had their claims remanded to the immigration court, need to submit additional documentation. Please see page 4 of the [I-765 instructions](#) for more details.

- a. Completed and signed I-765, Application for Employment Authorization<sup>13</sup>
- b. Proof of ASAP or CASA membership, if applicable (*not required but recommended*)—place immediately behind I-765
  - Copy of ASAP or CASA membership card OR
  - A letter from ASAP or CASA certifying the asylum applicant’s membership

*Note: Children under 21 may instead submit proof of their parent’s membership along with evidence establishing the parent-child relationship such as a copy of the child’s birth certificate*

- c. Copy of acknowledgement of receipt of your application from the Immigration Court or other evidence that the asylum applicant’s I-589 was filed.
  - Some clients may have a date-stamped copy of the first page of the I-589. If so, you will want to send a copy of that page, along with the hearing notice for their next hearing.
  - If your client does not have a date stamped copy of their I-589 your options include (1) calling the immigration court administrator to ask if they can send a copy of the date stamped I-589 to you; (2) mailing the court administrator a request for a date stamped I-589 with a self-addressed, stamped envelope; (3) requesting to review the client’s file (known as the record of proceedings or “ROP”) at the immigration court and making a copy of the date-stamped I-589 or virtually requesting the ROP from the immigration court via email<sup>14</sup>, or (4) [filing a Freedom of Information Act Request with EOIR](#).<sup>15</sup>
- d. A copy of one of the following identity documents:
  - A printout of the asylum applicant’s [electronic Form I-94](#) OR
  - Asylum applicant’s passport OR
  - Asylum applicant’s travel document
- e. Two identical color passport-style photos
- f. Documentation relating to arrests, convictions, and criminal charges (if applicable)<sup>16</sup>
  - Documentation relating to traffic incidents where there was no physical arrest and the fine was less than \$500 does not need to be submitted unless the incident resulted in criminal charges or involved alcohol, drugs, or injury to a person or property.
  - If the asylum applicant has any criminal history in the United States and you are not an

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<sup>13</sup> See [IJC’s Sample EAD for Post-MPP Cases](#)

<sup>14</sup> Additional information about requesting an ROP can be found [here](#). Prior to submitting a request via email, reference the varying instructions for directing your request to the [immigration court](#) or the [BIA](#). The request will be most easily processed if the requestor attaches a completed [EOIR 59](#) to the email.

<sup>15</sup> If you are not entering your appearance before the Immigration Court, some of these strategies may be harder. You may need to call the Court with the client on the phone or help the client prepare a *pro se* FOIA request instead.

<sup>16</sup> We recommend submitting only official, court documentation related to criminal activity – not police reports.



experienced immigration practitioner, we recommend that you consult with a mentor.<sup>17</sup>

- ***Evidence of arrests and convictions***
  - If the asylum applicant was EVER arrested or detained by a law enforcement officer for *any reason in any country*, they must submit an original or certified copy of the complete arrest report and an official statement by the arresting authority or an applicable court order that indicates the final disposition of the arrest or detention.
  
- ***Evidence of criminal charges***
  - If the asylum seeker was ever charged for *any reason in any country*, they need to provide (1) an original or certified copy of the complete arrest report, (2) certified copies of the indictment information, or other formal charging document, and (3) the final disposition of each charge.
  
- ***Evidence Relating to Alternative Sentencing or Rehab Programs***
  - If the asylum seeker was ever convicted or placed in an alternative sentencing or rehab program (i.e. drug treatment, community service, etc.) in *any country*, they need to provide: (1) an original or certified copy of the arrest report, (2) certified copies of the formal charging document; any plea agreement; and the final disposition for each incident, and (3) an original or certified copy of the probation or parole record showing that the asylum applicant completed the mandated sentence or program.
  
- ***Vacated, Sealed, Expunged or Removed Arrests and Convictions***

Asylum applicants who have had arrests or convictions vacated, set aside, sealed, expunged, or otherwise removed from their records need to provide (1) a certified or original copy of the complete arrest report, formal charging document, any plea agreement, and the final disposition of the incident and (2) a certified copy of the court order removing the arrest or conviction from the asylum applicant's record.

If the above evidence cannot be obtained, asylum applicants should submit (1) an explanation explaining why the evidence is not available, (2) secondary evidence showing the disposition of the case, or (3) one or more written statements by someone who has personal knowledge of the disposition.

- ❖ ***Practice Pointer:*** If your client was arrested, detained, or charged with a crime in their home country, your client may not have any documents relating to this, and it may not be safe for their family members or friends back home to obtain this documentation. In fact, their arrest, detention, and criminal charges may be a reason they are seeking asylum in the United

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<sup>17</sup> Figuring out whether you need to submit documents relating to criminal history can be tricky. Applicants with pending asylum applications are not subject to discretionary denials of EAD applications. They are, however, barred from obtaining an EAD if the crime is considered an aggravated felony or particularly serious crime.

States. You should explain this on the I-765 form.

Also note that if your client was arrested, charged and/or convicted for reasons connected to the request for asylum, it will be very important to ensure that any response on the I-765 to this question is consistent with what your client wrote in the pending I-589 asylum application submitted to the Immigration Court. If you are not an experienced immigration practitioner, it will be important to consult with an experienced practitioner if your client is in this situation.

2. Parole, (c)(11)

a. A copy of one of the following identity documents showing that the asylum applicant was paroled into the United States pursuant to INA 212(d)(5):

- A printout of the asylum applicant's [electronic Form I-94](#)<sup>18</sup> OR
- Applicant's passport showing parole stamp OR
- Applicant's travel document

❖ **Practice Pointer:** The EAD will only last the length of the asylum applicant's parole period, if they file under the (c)(11) category. If the end of the client's parole period is approaching, you should discuss with them whether it is worthwhile to apply for an EAD given the cost and risk that they will not have enough time to actually receive the EAD and/or find employment.

b. Two identical color passport-style photos

c. \$410 filing fee (or Form I-912, Request for Fee Waiver)<sup>19</sup>

d. [Form I-912, Request for Fee Waiver](#) (optional). If your client is not able to pay the fees, she may be able to qualify for a fee waiver. To be eligible for a fee waiver, an applicant must provide evidence that:

- The applicant, her or his spouse, or the head of household living with the applicant, currently receives a means-tested public benefit; OR
- The applicant's household income is at or below 150 percent of the current Federal Poverty Guidelines at the time of filing; OR
- The applicant is currently experiencing financial hardship that prevents the applicant from paying the filing fee; this includes unexpected medical bills or emergencies.

\*Note that for each of these fee waiver categories, the applicant will have to provide specific

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<sup>18</sup> The I-94 is a document that DHS issues to noncitizens that allows entry into the U.S.; it contains a person's name, the date of entry, and the immigration category in which the person is being allowed to enter the U.S., as well as the date that immigration status will expire. For asylum seekers entering from MPP, the I-94 should indicate that they are being allowed to enter as 212(d)(5) parolees.

<sup>19</sup> The payment can be made as a check or money order payable to U.S. Department of Homeland Security.

supporting documentation. See [this page](#) on the USCIS website for detailed information about what documentation is needed and how to file a fee waiver request. This includes filing a [Form I-912](#) and required supporting documents.

❖ **Practice Pointer:** Submitting a fee waiver will likely delay adjudication of the I-765. If the fee waiver is denied, the entire application will be returned and will need to be re-submitted. As a result, many asylum applicants choose to just pay the EAD filing fee when at all possible.

#### **IV. Filing the Application**

Both you and your client must sign the I-765 application form. If an interpreter assisted, the interpreter would also need to sign. Each person must sign his or her own name (in other words, you cannot sign the form on your client's behalf), but the signature on the form does not have to be original. USCIS explains [here](#) exactly what types of signatures it will and will not accept.

You will file the application with USCIS. Check [here](#) for an updated list of filing addresses for all the different EAD categories. Make sure to send the application using a method that allows you to track delivery of the application.

##### **1. Streamlined Processing for Parolees**

USCIS recently introduced its plan to implement a streamlined adjudication process for all new EAD applications for those applying under the (c)(11) eligibility category. With this process, USCIS intends to employ “technological solutions and efficiencies to reduce processing times” by allowing parolees to file Form I-765 online through the individual's [myUSCIS](#) account.<sup>20</sup> Submission through myUSCIS also allows applicants to communicate with USCIS about the application through a secure inbox in lieu of navigating the burdensome USCIS customer service phone system.<sup>21</sup>

Although the development of a streamlined application platform is beneficial for many parolees, those seeking a fee waiver cannot take advantage of this system. In its current form, the online filing system does not allow simultaneous submission of an EAD application and fee waiver request. This means that parolees who are requesting waiver of the \$410 fee must continue to apply by mailing paper EAD and fee waiver applications together to USCIS. USCIS states they are committed to streamlined processing for all parolees, regardless of application method, but applicants filing via mail should be aware it is likely their application will pend longer than those filed online.<sup>22</sup>

#### **V. What to Expect After Filing EAD Application**

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<sup>20</sup> See USCIS news alert, [Parolees Can Now File Form I-765 Online](#), July 28, 2022.

<sup>21</sup> Online filing of I-765 applications remains unavailable to those filing based under eligibility category (c)(8) based on a pending asylum application. See USCIS's [Forms Available to File Online page](#) for additional categories eligible for online filing.

<sup>22</sup> If the fee waiver is denied, the entire EAD application will be rejected and the applicant is required to start the process over.

## ***1. EAD adjudication overall***

USCIS adjudicates EAD applications at several “Service Centers” around the country. USCIS officers adjudicate the applications. Typically within one month, but possibly longer, after filing an EAD application, both the attorney recorded on the G-28 and the applicant should receive a [Form I-797C, Notice of Action](#) from the USCIS Service Center that is processing the case. The Notice of Action serves as a physical receipt that your client filed an I-765 application and will show the date it was received at the Service Center. Following the Notice of Action, you may receive either a Request for Evidence (RFE) requesting further documents, a denial of the application, or your client’s EAD card if the application is approved.

The Notice of Action also contains a receipt number. Using this number, applicants can look up the status of their case using [USCIS’s Case Status Online](#) tool.<sup>23</sup> This tool will show at what stage the application is in the adjudication process. Several outcomes are possible when requesting a case status update with this tool. Most commonly, the search results will show the case remains pending, an RFE has been issued, an EAD has been mailed or delivered, or that the EAD application has been denied.

## ***2. Issues to watch out for***

### ***1. Receipt delays***

When an applicant sends an EAD application to USCIS, USCIS should soon thereafter issue a Notice of Action that serves as a receipt that the application was received and is now in process. Especially since the start of the pandemic, this process has drastically slowed at some service centers, and numerous advocates have experienced months-long delays in receiving Notices of Action from USCIS Service Centers.

### ***2. Requests for Evidence (RFEs)***

At some point after the Notice of Receipt is issued, a USCIS adjudications officer will review the case and either make a decision or request further evidence in order to make the decision. If that officer believes that one or more pieces of required evidence is missing from the file, he or she may issue a Request for Evidence, known as an RFE. An RFE should contain a list of the documents the adjudicator believes is missing. The RFE will also have a deadline for responding to it.

It is not uncommon to receive an RFE for a document that you already sent with the initial application. If this happens, you must still respond to the RFE by the deadline. Best practice is to make another copy of the requested document and include that with your response.

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<sup>23</sup> Reference [USCIS’s Instructions for Checking Your Case Status Online](#) for more information.

### 3. Adjudication delays

Throughout the preceding two years, applicants and advocates have experienced increasingly long delays in the adjudication of EAD applications. USCIS publishes the current processing times for all case types [here](#). As of August 2022, USCIS reported processing times of between 5.5 and 12.5 months for EAD applications, including EAD applications for asylum seekers and parolees. Despite a mandate to process EADs based on pending asylum applications for all (c)(8) applicants (regardless of ASAP or CASA membership) within 30 days, significant delays remain common. If you are representing an asylum applicant in applying for an initial EAD that has not been processed within 30 days, please consult [this](#) practice advisory created by the American Immigration Council and colleague organizations.

### 4. Errors in Biographical Information on EAD Card

Applicants for work authorization may notice biographical information errors upon receipt of the physical EAD card. Most commonly, cards may show a misspelled name or incorrect date of birth. ***You do not have to submit a new Form I-765 or pay a fee to request a corrected card.***

If your client's EAD contains incorrect information or an error, you must submit to USCIS:

- The original card containing the error;
- A detailed explanation of the card error (such as incorrect name, date of birth, etc.);
- Applicant's U.S. mailing address; and
- Copies of supporting documentation of the correct information.

Supporting documentation could include primary or secondary documents with the correct information. If submitting any of the secondary documents listed below, you should also include an explanation about why primary documents are unavailable.

- Primary documents:
  - Passport;
  - Foreign identification document;
  - Birth certificate.
- Secondary documents:
  - Driver's license;
  - Biographic information or supporting documents provided for prior USCIS or U.S. government applications or petitions, or other official records including:
    - Form I-589;
    - Religious or medical records containing applicant's name and date of birth; or
    - School or employment records containing applicant's name and date of birth; or
  - A notarized affidavit of birth, which should include:

- Applicant's date of birth, place of birth, and correct, full name spelling;
- The full names of both of applicant's parents; and
- How the affiant knows of applicant's birth.

If you are unable to provide any of the above requested documents or notarized affidavits, provide a detailed written explanation describing why you are unable to provide them.<sup>24</sup> Include the following information in your explanation:

- Applicant's correct full name, date of birth, and place of birth; and
- Applicant's parents' full names, their dates of birth, and their place of birth.

The applicant should also attest to the validity of the statement that you are unable to provide primary or secondary documentation. The attestation should state that the information in the statement provided is valid. You must sign your attestation, but it does not need to be notarized.

Send this information to the service center originally responsible for adjudicating the EAD application.

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<sup>24</sup> Sample [Explanation of Unavailability of Documents](#) including attestation.