



Office of the
Citizenship and Immigration Services Ombudsman

U.S. Department of Homeland Security
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**Homeland
Security**

RECOMMENDATIONS ON USCIS PROCESSING DELAYS FOR EMPLOYMENT AUTHORIZATION DOCUMENTS

October 2, 2008

I. EXECUTIVE SUMMARY

The Citizenship and Immigration Services Ombudsman (Ombudsman) has recently received many complaints from foreign nationals stating that they have lost, or are in danger of losing, their jobs in the United States because U.S. Citizenship and Immigration Services (USCIS) is not timely issuing applications for Employment Authorization Documents (EADs) within 90 days of receipt, and is not granting interim EADs, as required by regulation. USCIS has posted processing dates over 90 days for EADs at service centers¹ but has not provided the public sufficient explanation on the delays or consistent information on alternative measures that may assist in addressing EAD delays. However, in a preliminary response to this recommendation, USCIS has informed this office during consultations October 1, 2008, that it will immediately (1) audit its caseload to determine which cases have been pending for more than 70 days, (2) process service requests at 75 days rather than 90 days, and (3) adjudicate EADs that are outside normal processing times within four hours for customers that appear at local offices.

To address long-term trends in EAD processing, and to maintain confidence in the work authorization system, the Ombudsman recommends that USCIS:

- adhere to regulations that state USCIS shall issue EADs within 90 days, or issue interim EADs, to prevent unnecessary loss of employment;
- expeditiously provide information to the public stating the cause of EAD processing delays and how the delays will be addressed;
- ensure USCIS provide consistent guidance to the public regarding EADs pending more than 90 days via the National Customer Service Center toll-free number and local offices; and,
- reconsider Ombudsman recommendation FR2006-25 to issue multi-year EADs.

Additionally, the Ombudsman suggests that USCIS consider the following operational procedures to issue interim EADs when applications are pending over 90 days:

- modify USCIS I-797 Receipt Notices for Form I-765 (Application for Employment Authorization) to provide for continued employment authorization; and,
- affix fraud proof stickers to expired EADs upon determination of an applicant's eligibility for an extension.

¹ As of October 1, 2008.

Recommendation from the CIS Ombudsman to the Director, USCIS
September 18, 2008
Page 2 of 6

To obtain authorization to work legally in the United States, certain individuals must file Form I-765. Often, individuals file the Form I-765 with other applications. Upon submission of a work authorization application, USCIS sends an I-797 Receipt Notice; upon approval, USCIS sends an EAD. EADs generally are valid for renewable periods of one year. Due to an unusually large influx of employment-based visa applications in summer 2007,² many applicants have had to reapply for their EAD while their applications remained pending and their EAD has or is about to expire.

USCIS is required by regulation to process EADs within 90 days.³ If USCIS is unable to process the EAD within 90 days, it is required to grant an interim EAD not to exceed 240 days. Local USCIS offices no longer issue interim EADs. The Ombudsman has learned through meetings with USCIS and during field visits that service centers rarely issue interim EADs, but rather focus on trying to process the actual EAD application. USCIS directs individuals to call the National Customer Service Center (NCSC), or visit their local office, if their EAD has been pending more than 90 days.

A high percentage of inquiries received by the Ombudsman within the last few months involve cases in which EAD applications have been pending for more than 90 days. These applicants have lost, or are at risk of losing, their jobs without the proper documentation to show they are authorized to work. There also have been numerous complaints that USCIS customer service avenues are inconsistent and unclear as to how applicants can address this delay.

II. BACKGROUND

The EAD processing delays may be a result of the surge in applications during summer 2007. USCIS has not been able to process the primary benefit application and, as a result, individuals must re-apply for EADs before they expire. Those applicants who filed their primary benefit application before July 30, 2007 (or before August 17 for certain green card applicants) must submit the EAD application fee to apply for a renewal. Applicants may only file their renewal EAD applications 120 days before the expiration of their current cards.⁴ USCIS is required to process EADs within 90 days or issue an interim EAD.⁵

Currently, where an EAD application is pending longer than 90 days, an individual may contact the NCSC toll free number, or schedule an INFOPASS appointment with a field office. The NCSC will either issue a service request through the Service Request Management Tool (SRMT) system to expedite processing, or will ask the caller if he or she wants to request an interim EAD. The local office also can request that the Service Center with appropriate jurisdiction issue an interim EAD. In field visits, the Ombudsman noted that the service centers only issue interim

² According to USCIS, the agency received nearly three million applications from June to August 2007, compared to 1.8 million filings during the same period of the previous year. Ombudsman's Annual Report 2007, p. 8.

³ 8 C.F.R. §274a.13(d). "*Interim employment authorization.* The district director shall adjudicate the application within 90 days from the date of receipt of the application by the INS, except in the case of an initial application for employment authorization under §274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and §274a.12(c)(9) insofar as it is governed by §§245.13(j) and 245.15(n) of this chapter. Failure to complete the adjudication within 90 days will result in the grant of an employment authorization document for a period not to exceed 240 days. Such authorization shall be subject to any conditions noted on the employment authorization document. However, if the director adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the interim employment authorization granted under this section shall automatically terminate as of the date of the director's adjudication and denial."

⁴ USCIS Frequently Asked Questions, "How Do I Get A Work Permit (EAD)?" www.uscis.gov. (Accessed Sept. 12, 2008).

⁵ See *supra* note 2.

Recommendation from the CIS Ombudsman to the Director, USCIS

September 18, 2008

Page 3 of 6

EADs in rare situations. Rather, when the service center receives the request, the center tries to adjudicate the delayed EAD application. The Ombudsman further understands through frequent customer inquiries that not all customer service avenues are handling EAD delays in the same manner, and that the NCSC is not expediting all cases.

Processing times posted on the USCIS website, as of September 15, 2008, indicate that several service centers are delayed in processing EAD applications beyond the 90 days allotted. For example, the California Service Center indicates that it is currently processing EAD applications filed on May 1. However, the Ombudsman understands from USCIS that posted processing times are actually 45 days old due to data verification procedures. USCIS plans to add an explanation to its website regarding the processing time data, but to date the posted times as presented have added to the confusion.

III. ANALYSIS

To address USCIS processing delays for EADs, the Ombudsman recommends that USCIS:

(1) *Adhere to regulations that state USCIS shall issue EADs within 90 days, or issue interim EADs, to prevent unnecessary loss of employment.*

USCIS' failure to process EADs within the regulatory 90 day timeframe negatively impacts individuals and employers. Furthermore, as USCIS promotes and supports stricter employment verification through its E-Verify program, it is essential that USCIS be able to provide eligible customers with the necessary documentation in a timely manner.

(2) *Expediently provide information to the public stating the cause of EAD processing delays and how the delays will be addressed.*

USCIS should provide to applicants information on the cause of the EAD issuance delays and an explanation of how this issue will be addressed. Public information would decrease the anxiety and frustration of many customers with delayed EAD applications. Currently, applicants are utilizing multiple USCIS customer service avenues in an effort to obtain their EAD before the possible loss of employment. Providing public notice may decrease customer inquiries and USCIS workload, and improve customer service.

(3) *Ensure USCIS provide consistent guidance to the public regarding EADs pending more than 90 days via the National Customer Service Center toll-free number and local offices.*

USCIS should review scripts at the NCSC, information posted on USCIS website, and guidance provided to local offices for consistency regarding EADs pending more than 90 days. Each USCIS representative should follow the same expedite protocol for an EAD application pending more than 90 days. USCIS also should remind customers that local offices do not issue interim EADs, but that local offices can request that processing of the application be expedited at the appropriate service center.⁶

(4) *Reconsider Ombudsman recommendation FR2006-25 to issue multi-year EADs.*

In the 2008 Annual Report, the Ombudsman suggested USCIS revisit the Ombudsman's March 19, 2006, recommendation that USCIS begin immediate issuance of multi-year EADs.⁷ In the Report, the Ombudsman

⁶ See Ombudsman's Annual Report 2008, Recommendation 4, 2008.

⁷ Ombudsman's Annual Report 2008, p.12.

Recommendation from the CIS Ombudsman to the Director, USCIS

September 18, 2008

Page 4 of 6

observed that applicants would need to reapply for EADs to remain authorized to work due to projected processing delays, as is now occurring. Although USCIS implemented multi-year EADs for limited applications,⁸ the agency should re-consider this recommendation and apply the multi-year EAD to more applications, given recent and possible future processing delays.

Additionally, the Ombudsman suggests that USCIS consider the following operational procedures to issue interim EADs when applications are pending over 90 days.

(a) *Modify I-797 Receipt Notices for EAD applications to provide language for continued employment authorization.*

Modify the Form I-797 Receipt Notice for EAD applications by adding language similar to: "This Receipt Notice, when presented in combination with an expired EAD card (or a student visa and OPT I-20, in the case of OPT) issued to a beneficiary with the same name, shall serve as an Interim Employment Authorization Document for a period not to exceed 240 days from 90 days after the receipt date." When a conditional resident files the Form I-751 (Petition to Remove the Conditions on Residence), regulations provide for continued proof of employment authorization.⁹ The I-797 Receipt Notice language extends this eligibility for one year; the same language could be used on the receipt notice for EAD applications. These measures would eliminate the need for an interim card.

(b) *Assign fraud proof stickers noting employment authorization extension.*

Authorize a protocol at field offices to determine the eligibility of an applicant's case, and if the case is pending over 90 days, affix an appropriate fraud proof sticker to the applicant's expired EAD. Such pre-produced stickers should bear an exact issuance and expiration date and be made transfer resistant. This process has already been used by USCIS to extend Temporary Protected Status EAD cards during service center backlogs.¹⁰ The Ombudsman understands that such stickers currently are available at USCIS Application Support Centers.

IV. USCIS PRELIMINARY RESPONSE

In a preliminary response to this recommendation, USCIS has informed this office during consultations October 1, 2008, that it will immediately (1) audit its caseload to determine which cases have been pending for more than 70 days, (2) process service requests at 75 days rather than 90 days, and (3) adjudicate EADs that are outside normal processing times within four hours for customers that appear at local offices.

V. CONCLUSION

USCIS is legally obligated to issue an EAD within 90 days, but does not consistently meet this requirement. By implementing these recommendations, USCIS would bring itself into compliance with applicable regulations, reduce the anxiety of potential job loss, and substantially eliminate actual employment interruption and job loss. Implementation of these recommendations would assist employers in hiring and retaining individuals in the

⁸ According to current USCIS policy, only applicants with an approved I-140 (Immigrant Petition for Alien Worker) may qualify for a multi-year EAD.

⁹ 8 C.F.R. §216.4(a) states "Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition."

¹⁰ See generally "Extension of the Designation of El Salvador for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries" 72 Fed. Reg. 46649-46653 (Aug. 21, 2007).

Recommendation from the CIS Ombudsman to the Director, USCIS

September 18, 2008

Page 5 of 6

workforce, and minimize avoidable disruptions in the continuity of employment. In the event of future surges or possible system glitches, USCIS should have a strategy in place to ensure that eligible applicants are not at risk of losing employment. This office recognizes that issuance of actual interim EADs may cause an increase of workload, and a proliferation of documents used in work authorization process, and therefore urges USCIS to instead process EADs within 90 days.

Recommendation from the CIS Ombudsman to the Director, USCIS

September 18, 2008

Page 6 of 6

Subject: EAD Formal Recommendations

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