



October 31, 2011

Executive Summary

Employment Authorization Document and the Asylum Clock Engagement

Overview

On September 19, 2011, USDOJ Executive Office for Immigration Review (EOIR), USCIS Asylum Division, USCIS Service Center Operations, USCIS Office of Chief Counsel, and USCIS Office of Public Engagement (OPE) hosted a stakeholder engagement regarding Employment Authorization Documents (EAD) and the asylum clock. The purpose of the session was for EOIR and USCIS to listen to the views and experiences of individual stakeholders. EOIR and USCIS were particularly interested in hearing from stakeholders their views and concerns regarding the asylum clock, employment authorization, and existing asylum clock policies. The session was not used for the purpose of obtaining group or consensus advice.

Principal Themes

- **Who has the power to restart the asylum clock in immigration court?**

Stakeholders stated that it is often unclear who controls the asylum clock in immigration court. After an improper clock stoppage, some immigration judges refer attorneys to the court administrator. Some court administrators refuse to correct the asylum clock and refer attorneys back to the immigration judge.

- **Overly broad interpretation of “delay requested or caused by the applicant”**

Stakeholders repeatedly commented that immigration judges use an overly broad interpretation of the regulatory language, “delay requested or caused by the applicant.” Stakeholders commented that immigration judges will rule in varying ways on what a delay is and who caused it in order to determine whether or not to stop the asylum clock. For example, some immigration judges stop the asylum clock when respondents decline to take the next “open date” on the court’s calendar for the merits hearing. The asylum clock stops if a respondent declines an offer of the next open date because these immigration judges view the respondent’s rejection of the proposed hearing date as “alien caused delay.” Stakeholders would like to see a policy where rejecting the next hearing date for good cause and for a legitimate reason does not result in a stoppage of the asylum clock.

- **Unclear asylum clock policies**

- Participants also raised concerns regarding the interpretation of the regulations regarding the asylum clock and appeals. Stakeholders noted that, when a case is remanded to the immigration court from the Board of Immigration Appeals (BIA) or federal court, the immigration judge will not re-start the clock. Participants believe that as a result of this interpretation, an applicant is ineligible for work authorization.
- Stakeholders also noted that asylum clock policies surrounding unaccompanied alien children (UACs) applying for asylum with USCIS under the initial jurisdiction provision of the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA) are unclear. Attorneys and applicants are often unaware of when the clock starts or what events trigger the asylum clock to stop.
- Stakeholders also noted that asylum clock policies surrounding defensive asylum applicants who began in the Credible Fear screening process are unclear. Attorneys and applicants are often unaware of when the clock starts or what events trigger the asylum clock to stop.
- One individual commented that aliens who had prior removal orders and were eligible for an EAD under an Order of Supervision may become ineligible for an EAD when their asylum cases are reopened by EOIR. An alien who was able to work with an EAD under a final order is not eligible for employment authorization for the first 180 days while his reopened case is pending. The alien is still required to attend regular check-ins with Immigration and Customs Enforcement (ICE). Additionally, the alien may encounter difficulties in continuing to work with an employer with whom they had prior work authorization.

- **Problems associated with EOIR's case completion goals**

Participants reported that they are concerned about the potential link between immigration judges case completion goals and the asylum clock. According to stakeholders, some immigration judges seem to believe that they are forced to choose between meeting case completion goals and allowing the applicant's asylum clock to run. Stakeholders believe that the pressure of case completion goals results in frequent and improper stopping of the asylum clock.

Suggestions on ways to improve the asylum clock

Stakeholders provided suggestions to EOIR and USCIS on ways to improve the asylum clock.

- **EOIR**

- Stakeholders requested increased training for immigration judges and court administrators regarding asylum clock policies.
- Stakeholders would like for EOIR to develop clear guidelines detailing when immigration judges should stop and re-start the asylum clock.
- Stakeholders believe that EOIR and USCIS should maintain two separate clocks, an asylum adjudications clock and an EAD clock.

- Finally, stakeholders requested guidance on who to contact at EOIR for problems related to the asylum clock. EOIR representatives stated that if a party believes there is a problem with the asylum clock, the first step is to try to resolve the issue locally. If the concern arises during a hearing, it should be addressed with the immigration judge. If the concern arises after a hearing, it should be addressed with the court administrator. If necessary, the question may also be raised with the Assistant Chief Immigration Judge having jurisdiction over the particular court. For cases that are pending before the BIA, asylum clock questions should be directed to the attention of the Office of General Counsel (OGC), which works with Office of the Chief Immigration Judge (OCIJ) to respond appropriately to the clock inquiry.

- **USCIS**
 - Stakeholders requested that USCIS develop a mechanism that keeps applicants better informed about the status of their asylum clock.

 - Finally, participants requested guidance on who to contact at USCIS for problems related to the asylum clock. USCIS representatives stated that if a party believes there is a problem with the asylum clock while the case is/was pending with the Asylum Division, the first step is to try to resolve the issue at the local Asylum Office. The correct person can be reached by asking for the “EAD point of contact (POC)” or “Clock POC.” Asylum Employment Authorization and Clock Contacts can be found [here](#). If the Asylum Office is unable to resolve your problem within a reasonable time period, please contact headquarters at: asylumhq.eadclock@dhs.gov.