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Congress of the United States
House of Representatives
Washington, DC 20515

September 14, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Ur Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

RECEIVED
By ESEC at 4:13 pm, Sep 14, 2023

Dear President Biden, Secretary Mayorkas, and Director Jaddou:

Thank you for your recent efforts to notify hundreds of thousands of eligible migrants, in New York and around the country, of their ability to apply for work permits. I understand that these notices are the start of a government-wide effort to integrate newly arrived non-citizens into the American workforce, and I look forward to working with you on other initiatives to expedite work permits for asylum seekers.

In similar vein, I write to you today to urge your administration to swiftly rescind the current regulatory 150-day regulatory waiting period that asylum applicants must undergo between submitting their applications for asylum and submitting their applications for work authorization in the United States. Furthermore, I strongly encourage the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) to act with all deliberate speed, within the confines of notice and comment rulemaking, to replace this regulation with a new rule which allows asylum seekers to submit *both* their applications for asylum and their applications for employment authorization documents (EADs) to USCIS on the same day. Doing so would significantly ease the hardship placed on asylum applicants seeking work authorization in the U.S., while allowing the administration to remain in full compliance with Section 208(d)(2) of the Immigration and Nationality Act (INA). Such action by the Administration would also help ease the financial and logistical burdens that the nation's current influx of asylum seekers has placed on states and local governments—specifically, by allowing more asylum seekers to begin working to support their families as expeditiously as possible.

I recognize the current DHS regulation establishing this 150-day waiting period is reflective of DHS's earnest attempt to enforce the 180-day statutory waiting period imposed by Section 208(d)(2) of the INA (8 U.S.C. 1158(d)(2)), and I remain fully supportive of the administration's efforts to enforce this law of the land. However, upon examination, Section 208(d)(2)'s statutory waiting period merely requires asylum seekers to wait 180 days to receive their EADs after they first submit their applications for asylum

with USCIS; what the statute does not require is that asylum seekers must undergo the additional burden of submitting two separate applications with USCIS at different, months-long intervals.

To DHS's credit, I have been made aware that—in order to expeditiously issue work permits within the confines of both Section 208(d)(2)'s 180-day statutory period and DHS's own 150-day regulatory period—USCIS has prioritized providing asylum seekers with a quick, approximately 30-day turnaround time for decisions regarding their EAD applications. Indeed, I fully commend the agency in the event that USCIS has consistently been able to meet this 30-day turnaround time for a majority of recent asylum seeker EAD applications. Moreover, I further applaud the agency for the commencement of its recent informational campaign to inform asylum seekers, via text messaging and e-mail, of their EAD eligibility and their ability to apply following this 150-day regulatory window. Nevertheless, in my opinion, improvements to this regulatory regime could go even further to ensure asylum seekers can legally work to support their families as quickly as possible within the confines of Section 208(d)(2)'s mandatory waiting period.

I continue to call on Congress to act to re-examine and reform Section 208(d)(2) of the INA; however, until this occurs, it remains binding law that, in my view, hinders immigrant communities' ability to work. As such, I believe this law requires a regulatory regime that reduces the additional burdens on asylum seekers as much as possible. Without a doubt, your administration has proven itself as one that cares deeply about the plight of asylum seekers with a demonstrated track record of addressing the informational barriers, access to counsel issues, and other problems that this community faces. It is with this in mind that I come to your administration with a humble request on behalf of my constituents.

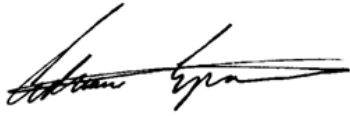
According to feedback I've received from my constituents, their families, and our newest New York City residents who are looking to swiftly apply for both asylum and work authorization, the process of both learning—and remembering—to submit two separate applications with USCIS no less than 150 days apart can be perceived as overly burdensome. Thus, as an alternative, I recommend that the administration consider issuing updated regulations which allow asylum seekers to submit asylum applications and EAD applications with USCIS at the same time. In doing so, I am confident that USCIS could continue to enforce Section 208(d)(2)'s mandatory 180-day waiting period, while further reducing red tape for asylum seekers and allowing even more members of the asylum seeker community to receive work authorization without delay on day 180.

This action by DHS would also help assist the numerous states and cities across the nation that are currently struggling to provide the financial and humanitarian resources needed to care for these asylum seekers. In particular, my home City of New York has now received over 110,000 new asylum seekers since Spring 2022. In response, the City has opened up over 200 new emergency shelters and over a dozen large-scale humanitarian relief centers to house these migrants in their hour of need. However, these actions come at a cost, as the City is projected to incur a total financial burden of \$12 billion through mid-2025 in order to continue providing adequate shelter and services for its continued influx of asylum seekers. Statutory burdens such as INA Section 208(d)(2), coupled with Congress's polarizing environment surrounding immigration and INA reform, in my opinion, undoubtedly bears the blame for a significant portion of this financial burden, as these issues continue to bar eager asylum seekers from working to support themselves and their families. In turn, I encourage DHS to pursue any and all actions to eliminate red tape for migrants seeking work permits for my community and for other communities around the country—including by eliminating the 150-day waiting period for asylum seekers to apply for work authorization.

Both the Executive Branch and Congress must be doing all it can at this moment to alleviate the burdens faced by asylum seekers and localities like New York City that are welcoming them with open arms. As such, I wholeheartedly encourage your administration to do away with the current 150-day regulatory period separating asylum applications and asylum seeker EAD applications and to issue new regulations which allow asylum seekers to submit both applications to USCIS concurrently.

I sincerely thank your administration for its ongoing efforts to treat immigrant communities with compassion. I look forward to your prompt reply, and I thank you for your continued engagement on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Adriano Espaillat", with a long horizontal flourish extending to the right.

Congressman Adriano Espaillat



**U.S. Citizenship
and Immigration
Services**

January 2, 2023

The Honorable Adriano Espaillat
U.S. House of Representatives
Washington, DC 20515

Dear Representative Espaillat:

Thank you for your September 14, 2023 letter to the Department of Homeland Security (DHS) regarding employment authorization for asylum applicants. I am responding on behalf of the Department.

We recognize the importance of timely access to employment authorization for noncitizens with pending asylum applications and will continue to explore all available avenues to eliminate unnecessary barriers and improve transparency, efficiency, and customer experience.

As you note, Section 208(d)(2) of the Immigration and Nationality Act states that employment authorization shall not be granted to an asylum applicant prior to the expiration of the 180-day period after the asylum application was filed. We appreciate your continued call on Congress to re-examine and reform INA 208(d)(2), and acknowledge your request that DHS rescind the regulatory requirement that asylum seekers wait at least 150 days after filing an asylum application before filing Form I-765, Application for Employment Authorization. U.S. Citizenship and Immigration Services (USCIS) will take this recommendation under advisement as it continues to explore all available avenues to eliminate unnecessary barriers and improve transparency, efficiency, and customer experience. Of note, the overall requirement that asylum seekers may only become eligible for work authorization after their asylum application has been pending more than 180 days is statutory.

We appreciate your recognition of the efforts DHS is undertaking to raise awareness of the eligibility and timeline criteria for noncitizens with pending asylum applications to apply for employment authorization. As you mentioned, in September USCIS sent email and text message notifications to explain the Employment Authorization Document (EAD) process to individuals with a pending affirmative asylum application, as well as those who are employment authorization eligible because of their entry to the United States through lawful pathways, who have not yet filed for an EAD. DHS targeted applicants with a pending asylum application at the 140-day mark and reminded these individuals that they can file for an EAD after their asylum application has been pending at least 150 days. These notifications were sent in English and Spanish, with a 98 percent email message delivery rate and a 99 percent text message delivery

rate; in Haitian Creole, with a 99 percent delivery rate for both email and text messages; in Ukrainian, with a 97 percent email message delivery rate and a 98 percent text message delivery rate; and in Russian, with an 89 percent email message delivery rate and a 99 percent text message delivery rate. USCIS continued this messaging effort with a renewed set of notifications in early November as well.

USCIS previously hosted and will continue to host several EAD information sessions for migrants who may be eligible for employment authorization in various cities, including New York City. From September 12 to October 13, 2023, USCIS conducted information sessions and distributed materials at eight locations in New York City and served over 2,800 migrants. Additionally, on September 19, 2023, USCIS hosted an information session to provide additional clarification on procedures for asylum seekers to apply for employment authorization while their asylum applications are pending. USCIS has also developed guidance and published reference materials on its website on employment authorization and associated requests for fee waivers. USCIS remains committed to engaging the public to raise awareness among asylum seekers about how and when to apply for employment authorization and will continue these important and targeted outreach efforts. USCIS welcomes the opportunity to brief you and your Congressional staff on our efforts in New York at a mutually convenient date and time.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a horizontal line extending to the right.

Ur M. Jaddou
Director