

United States Senate

WASHINGTON, DC 20510

May 23, 2019

The Honorable L. Francis Cissna
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, D.C. 20529

Dear Director Cissna,

We write today to express our concerns about an administrative processing error that caused some work authorization applications for Liberian individuals with Deferred Enforced Departure (DED) status to be mistakenly rejected. While we are glad to hear that U.S. Citizenship and Immigration Services (USCIS) identified and corrected the computer error at issue, we strongly urge USCIS to take further steps to address the impact of this administrative error by automatically extending employment authorization for Liberians with DED.

Although USCIS has notified affected individuals that their applications were mistakenly rejected and invited them to reapply, more must be done to mitigate the impact of this error. According to USCIS data, the current estimated processing time for Form I-765 is 11.5 months.¹ Since Liberia's DED designation is currently set to expire on March 20, 2020 — a date which we hope will be extended further until a permanent pathway for Liberians can be enacted— individuals who were affected by this error may not receive their employment authorization until after their status expires.² We therefore strongly urge you to automatically extend employment authorization for Liberians with DED status through March 20, 2020.

Over the past year, uncertainty about the fate of DED for Liberia has caused severe anxiety and confusion throughout communities in our states. Liberians with DED status are deeply involved in our civic, business and faith communities; they are our families, coworkers, neighbors and friends. Due to ongoing political and socioeconomic instability in their home country, many have been in the United States for over twenty years. It is unacceptable that an error they could neither prevent nor avoid would deny them the opportunity to continue providing for themselves and their families. Undue delays in processing work authorization applications will cause further disruption, stress, and financial hardship for many families in our states.

The negative impact of the computer error that led USCIS to mistakenly reject some applications for work authorization will be compounded by the current long processing times for Form I-765.

¹ *Check Case Processing Times*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (accessed May 16, 2019), <https://egov.uscis.gov/processing-times/>.

² *DED Granted Country – Liberia*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-liberia/ded-granted-country-liberia>.

Therefore, it is clear that an automatic extension of employment authorization for Liberians with DED warranted and necessary through March 20, 2020.

Additionally, we request that you respond in writing to the following questions by June 7, 2019.

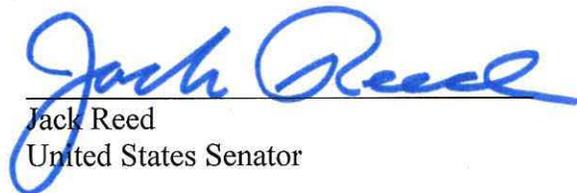
1. To date, how many individual Liberian DED applications were affected by this error?
2. What steps has USCIS taken to ensure that all those affected have received actual notice of the error, and information about how to reapply?
 - a. Will USCIS conduct outreach via USCIS community relations officers, social media, email and other channels?
3. What steps has USCIS taken to verify that all application fees have been returned to those who were affected by the error?
 - a. Will USCIS work to ensure that anyone who was affected by the error and reapplies will not be charged twice for their applications?
4. Has USCIS taken any steps to expedite processing for individuals who have already reapplied after their applications were mistakenly rejected? If no, why not?
5. Does USCIS have the ability to identify new applications from individuals who were previously mistakenly rejected, and refer them for expedited processing?
6. Will USCIS consider issuing a Federal Register Notice automatically extending EADs for Liberian DED holders through March 20, 2020?
 - a. If USCIS automatically extends employment authorization for Liberian DED holders, will USCIS remit the application fees of individuals who were affected by the error and had already reapplied? If no, why not?
7. Has USCIS identified the cause of the error and taken steps to ensure that it does not occur again? If yes to either, please provide further background.

Thank you for your consideration. We look forward to your response.

Sincerely,



Tina Smith
United States Senator



Jack Reed
United States Senator



Amy Klobuchar
United States Senator



Sheldon Whitehouse
United States Senator



U.S. Citizenship
and Immigration
Services

July 19, 2019

The Honorable Tina Smith
United States Senate
Washington, DC 20510

Dear Senator Smith:

Thank you for your May 23, 2019 letter regarding extending employment authorization for Liberians with Deferred Enforced Departure (DED).

Due to a system update error, U.S. Citizenship and Immigration Services (USCIS) Lockbox facilities erroneously rejected 155 applications for employment authorization (Form I-765) filed by certain Liberians covered by DED, which was originally announced in 2007 and for which President Trump recently announced an extension of the “wind-down” period through March 30, 2020. *See Presidential Memorandum on Extension of Deferred Enforced Departure for Liberians*, dated March 28, 2019. As your letter notes, USCIS identified the error and took proactive measures to address the error by issuing individual notices to the impacted individuals inviting them to re-submit their applications.

USCIS issued a Federal Register Notice on April 3, 2019, which automatically extends the Employment Authorization Documents that were to expire March 31, 2019 for current DED-eligible Liberians for an additional 180 days through September 27, 2019. *See* 84 FR 13059. USCIS is committed to the timely processing of DED-related applications for employment authorization. Please find enclosed responses to your questions.

Thank you for your letter and interest in this important issue. The co-signers of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ken Cuccinelli II".

Ken Cuccinelli II
Acting Director

Enclosure

**The Department of Homeland Security's Response to
Senator Smith's May 23, 2019 Letter**

1. To date, how many individual Liberian DED applications were affected by this error?

USCIS records indicate that 155 applications for employment authorization from DED-eligible Liberians were erroneously rejected. These records have been verified through the automated intake system.

2. What steps has USCIS taken to ensure that all those affected have received actual notice of the error, and information about how to reapply?

USCIS issued individual notices to the affected applicants and their attorneys/representatives of record on May 9, 2019, inviting them to re-submit their applications. The individual notices were verified by associating the notices to the automated intake system records.

a. Will USCIS conduct outreach via USCIS community relations officers, social media, email and other channels?

USCIS shared this information with our engagement teams, including community relations officers in the jurisdictions with highest concentration of Liberians. We also continue to maintain relationships with community organizations that serve the DED Liberian population.

3. What steps has USCIS taken to verify that all application fees have been returned to those who were affected by the error?

USCIS returned all fees submitted with the original, rejected application along with the rejection letter. The standard intake procedure for rejected applications does not allow for acceptance of fees on rejected applications. Therefore, all fees associated with the mistakenly rejected applications were returned to the applicant and not accepted during the intake process.

a. Will USCIS work to ensure that anyone who was affected by the error and reapplies will not be charged twice for their applications?

Applicants are only charged when USCIS accepts their applications. Applicants must resubmit the payment that USCIS returned with the rejected application when they resubmit their application.

4. Has USCIS taken any steps to expedite processing for individuals who have already reapplied after their applications were mistakenly rejected?

USCIS is able to identify re-filed applications from the affected applicants and is working to process all re-filed applications in an expeditious manner. USCIS is confident that all timely re-filed applications submitted by eligible applicants will be processed prior to the expiration of the current automatic extension of employment authorization for DED-eligible Liberians on September 27, 2019. Additionally, USCIS is committed to the timely processing of all other DED-related applications for employment authorization that were timely submitted by DED-eligible Liberians.

5. Does USCIS have the ability to identify new applications from individuals who were previously mistakenly rejected, and refer them for expedited processing?

USCIS can identify new applications that were mistakenly rejected. As noted in our response to question 4, USCIS is identifying re-filed applications and working to process these applications in an expeditious manner. USCIS is confident that all timely re-filed applications submitted by eligible applicants will be processed prior to September 27, 2019. USCIS is committed to the timely processing of all other DED-related applications for employment authorization that were timely submitted by DED-eligible Liberians.

6. Will USCIS consider issuing a Federal Register Notice automatically extending EADs for Liberian DED holders through March 20, 2020?

The April 3, 2019 Federal Register Notice (FRN) extending the 12-month DED wind-down period through March 30, 2020, extended DED-related employment authorization documents with a printed expiration date of March 31, 2019, for an additional 180 days through September 27, 2019, for eligible Liberians. Liberians covered under DED may show their EAD bearing a March 31, 2019 expiration date along with the FRN to employers as proof of continued employment eligibility through September 27, 2019. The FRN also provides instructions for eligible Liberians on how to apply for evidence of continued employment authorization through March 30, 2020. USCIS does not anticipate the need to issue a subsequent FRN to further automatically extend employment authorization documents for eligible Liberians before the DED period ends.

a. If USCIS automatically extends employment authorization for Liberian DED holders, will USCIS remit the application fees of individuals who were affected by the error and had already reapplied? If no, why not?

As noted above, USCIS returned all fees submitted with the original, rejected application along with the rejection letter. See above response.

7. Has USCIS identified the cause of the error and taken steps to ensure that it does not occur again? If yes to either, please provide further background.

USCIS has identified the cause of the error as code in the Lockbox program that was inadvertently overwritten during a code update. Successful steps have been taken to ensure this does not happen in the future, which include additional storage of program codes before and after all updates, additional program testing, and additional staff training.