



Submitted via www.regulations.gov

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RE: DHS Notice of Proposed Rulemaking for Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, DHS Docket No. USCIS-2018-0001

Dear Ms. Deshommes:

The Young Center for Immigrant Children’s Rights (“Young Center”) appreciates the opportunity to submit this comment on the Notice of Proposed Rulemaking (“the NPRM” or “the proposed rule”) on the Removal of the 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications (“EAD application”), published by the Department of Homeland Security (“DHS”) and the United States Citizenship and Immigration Services (“USCIS”) on September 9, 2019. We respectfully urge the Department to withdraw the proposed rule in its entirety, for the reasons outlined below.

I. The Young Center’s Interest in this NPRM

The Young Center serves as the federally appointed, independent best interests guardian ad litem (“Child Advocate”) for trafficking victims and other vulnerable unaccompanied children as authorized by the Trafficking Victims Protection Reauthorization Act (“TVPRA”).¹ The role of the Child Advocate is to advocate for the best interests of the child. Since 2004, Health and Human Services’ Office of Refugee Resettlement (“ORR”) has appointed Young Center Child Advocates for thousands of unaccompanied children in ORR custody. Many of these young people—and particularly, teenagers—apply both for asylum and I-765 Employment Authorization Applications. Thus, we have a particular interest in the proposed rule and insight into its potential impact.

¹ See 8 U.S.C. § 1232(c)(6).



The ability to work during the prolonged asylum application process is a critical resource for teenage asylum-seekers and their families. Meaningful employment provides teens and young adults with the opportunity to develop skills, gain work experience, earn wages, and receive employee benefits. With the money they earn, teens and young adult asylum-seekers can also contribute to the economy and support local businesses in their communities. In turn, the federal government benefits through the collection of federal income taxes. We therefore offer the following comments urging the agency to withdraw the NPRM in its entirety to ensure that asylum-seekers' EAD applications are adjudicated quickly and effectively.

II. The proposed rule undermines young people's safety and well-being, fails to account for significant costs including those born by young people and the communities where they live, and lacks a reasoned justification given the significant impact on youth who may wait years for their asylum case to be heard.

A. The proposed rule will impact the safety and well-being of teenage asylum-seekers, including those served by the Young Center.

Under the proposed rule, teenage (and adult) asylum-seekers will have no certainty regarding when they will receive permission to work. Work is a critical means of support for young people.² Work also fosters stability, which is important to young people's academic achievement and mental health.³ In our experience, most teenaged asylum-seekers EAD applications are approved. In other words, these youth are eligible to work, and no one benefits from delayed adjudication of their work authorization. The sooner teenage asylum-seekers work, the more they are able to support themselves and contribute to their families while completing their education. This is particularly critical when young people face considerable delays in the adjudication of their claims for protection.

For the teenage asylum-seekers the Young Center serves, the ability to work during the asylum application process is central to their financial, physical, and emotional well-being. Their experiences exemplify how this rule could inject unnecessary instability into the lives of other young people who fled violence in their home countries, who are committed to their education, but who nevertheless depend on their ability to work in order to be safe.

² U.S. Department of Labor, Bureau of Labor Statistics, *College enrollment and work activity of high school and college graduates* (Apr. 25, 2019), <https://www.bls.gov/news.release/pdf/hsgec.pdf>.

³ See, e.g., Anna Sutherland, *How Instability Affects Kids*, Institute for Family Studies, (July 29, 2014), <https://ifstudies.org/blog/how-instability-affects-kids>.



For example, the Young Center was appointed as independent Child Advocate for a teenage asylum-seeker from Central America who'd been abandoned by her family and who was brutally assaulted in her country. She fled to the United States seeking protection for herself and the baby she had as a result of the assault. Having an EAD while waiting for her asylum hearing allows her to take better care of herself and her child. She works at a store within her community and reports that she feels both empowered and proud to be able to care for herself and her baby, and to not have to rely constantly on others for help.

Another child survivor of sexual violence who came to the United States seeking protection as a teenager filed a *pro se* claim for asylum and was released from custody shortly before her 18th birthday. Her ability to work while her asylum application is pending will provide her with the most basic necessities and allow her to rely on her small community of friends and family for emotional rather than financial support.

These young people—who arrive as children and seek asylum based on past persecution or a well-founded fear of persecution they experienced as children—are often squarely in between childhood and adulthood. They are pursuing their education but live in communities where many families struggle to make ends meet. Lawful employment brings much needed stability and safety to a young person. Ending a policy of prompt EAD authorization is simply bad policy—for these young people, their families, and the community at large.

B. The proposed regulation fails to account for critical costs—including the costs to young people and the organizations who serve them.

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 requires that, when engaging in rulemaking, each agency must make a “reasoned determination that [a regulation’s] benefits justify its costs.”⁴ It also states that “each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”⁵

The proposed rule fails to conduct a sufficient and reasoned cost-benefit analysis. DHS states in the proposed rule that when examining the costs and benefits it measured the impacts of the rule against a baseline assumption “of what would occur if the proposed rule is adopted.”⁶ USCIS

⁴ Exec. Order No. 13563, 76 FR 3821 at Sec. 1(b) (Jan. 18, 2011).^[L]

⁵ *Id.* at Sec. 1(c).^[L]

⁶ 84 Fed. Reg. 47,149 (Sept. 9, 2019).^[L]



assumes that in the absence of a timeframe for adjudicating EAD applications, “adjudications will align with DHS processing times achieved in FY 2017 (before the *Rosario v. USCIS* court order).”⁷ However, this assumption fails to account for “the historic asylum application backlog”⁸ that has increased over the past five years, which according to DHS is one of the reasons cited for eliminating the 30-day deadline. Thus, DHS attempts to justify this rulemaking with a cost-benefit analysis that relies on a flawed assumption.

The cost-benefit analysis also omits entirely any mention of the significant costs the rule would impose on asylum-seekers’ family members and their communities. Although the proposed rule discusses the lost compensation to asylum-seekers, it fails to include a discussion of additional costs the proposed rule would impose on them. Without a timeframe for adjudicating EAD applications and associated access to employment, asylum-seekers would experience difficulty obtaining drivers’ licenses, banking services, health care, and legal counsel for their asylum applications. Additionally, lost wages to asylum-seekers would likely result in losses to small businesses in asylum-seekers’ communities.

The proposed rule also fails to mention the costs that would be imposed on organizations that provide services to asylum-seekers as a result of the increase in time to adjudicate EAD applications. If asylum-seekers are unable to obtain an EAD in a timely fashion, they are forced to rely on other forms of support, including organizations that provide financial, housing, legal, or other forms of assistance, which would burden and stretch the limited capacity of charities and non-profit service providers. While the proposed rule states that “there may also be state and local income tax losses that would vary according to the jurisdiction,”⁹ it omits a discussion of the costs of the loss of income tax revenue to local, state, and federal governments.

C. The rule lacks a reasoned justification for abandoning a standard that benefits asylum-seekers and the communities in which they live, and is inconsistent with USCIS’s mission.

There is simply no evidence that DHS needs be exempted from the regulatory provision requiring USCIS to grant or deny an initial EAD application within 30 days of when the asylum-seekers filed the application. DHS justifies the elimination by stating that the regulatory deadline does “not provide sufficient flexibility”¹⁰ to the agency to address: (1) the “increased volume of affirmative asylum applications and accompanying Applications for Employment

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 47,150.

¹⁰ *Id.* at 47,155.



Authorization;”¹¹ (2) “changes in intake and document production”¹² over the last two decades; and (3) “the need to appropriately vet applicants for fraud and national security concerns.”¹³

However, the changes identified by DHS in intake and document production have existed for over a decade; the changes began in 1997 and were fully implemented by 2006. Additionally, the fraud and national security vetting discussed in the proposed rule has been implemented since September 11, 2001 and the Office of Fraud Detection and National Security was created in 2004.

USCIS is deciding over 99 percent of EAD applications within the 30-day processing timeline. Thus, DHS is able to address fraud and security vetting concerns within the current 30-day timeframe.¹⁴ The proposed rule fails to provide a “reasoned explanation” for disregarding the fact that even with the decades old production and vetting changes, USCIS has complied for over a year with the July 2018 court order in *Rosario*, requiring the agency to process initial EAD applications in 30-days. Further, if USCIS requires additional documentation from an applicant, the agency could send a request for evidence and pause the 30-day timeframe until the requested additional documentation was received.

The proposed rule also includes no reasoned explanation justifying DHS’ decision to propose no alternative timeframe for replacing the 30-day timeframe for adjudicating EADs. In the proposed rule, DHS states that the 90-day alternative “would not provide USCIS with the certainty and flexibility it needs to fulfill its core mission.”¹⁵ Yet, USCIS’ mission is to “efficiently and fairly adjudicat[e] requests for immigration benefits.”¹⁶ Removing the timeframe for adjudicating EAD applications will only increase delays in adjudicating EAD applications.

¹¹ *Id.*

¹² *Id.* at 47,153.

¹³ *Id.* at 47,155.

¹⁴ U.S. Citizenship and Immigration Services, *Defendants’ July 2019 Compliance Report* (Aug. 26, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/nirp_v_uscis_defendants_july_2019_compliance_report.pdf.

¹⁵ *Id.* at 47,167.

¹⁶ U.S. Citizenship and Immigration Services, *About Us* (Mar. 6, 2018), <https://www.uscis.gov/aboutus>.



III. Conclusion

We urge DHS to withdraw the proposed rule in its entirety. As written, the proposed rule would undermine young people's safety and well-being. It also fails to account for significant costs including those born by young people and the communities where they live, and lacks a reasoned justification given the significant impact on youth who may wait years for their asylum case to be heard.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jennifer Nagda".

Jennifer Nagda
Policy Director