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*Submitted via [www.regulations.gov](http://www.regulations.gov)*

January 13th, 2020

**Re: DHS Docket No. USCIS-2019-0011  
84 F.R. 62374**

**Notice of Proposed Rulemaking and Request for Comment on Asylum Application,  
Interview, and Employment Authorization for Applicants**

Dear Chief Deshommes,

The Michigan Immigrants Rights Center (“MIRC”) respectfully submits the following comments regarding the Department of Homeland Security’s (“DHS”) Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants, DHS Docket No. DHS-2019-0011, 84 F.R. 62374, issued November 14, 2019. MIRC strongly opposes proposals that would limit access to employment authorization for our nations’ most vulnerable immigrants, particularly in light of the historic delays in current asylum processing.

MIRC is a nonprofit legal services provider and resource center for Michigan’s immigrants and community advocates, with offices in Ypsilanti, Detroit, Grand Rapids, and Kalamazoo. MIRC serves all persons across the state of Michigan whose income is less than 200% of the federal poverty guidelines. MIRC receives grants to focus its services on vulnerable populations and seek immigration benefits on their behalf. These grants allow MIRC to serve survivors of sexual assault and domestic violence, unaccompanied children, and survivors of torture, among other populations. The proposed changes would have a devastating impact on the survivors of persecution that our organization serves, many of whom are parents of US citizens.

### **I. General Comments**

The proposed rule will completely eliminate access to work authorization for many asylum seekers, significantly delay access to work authorization for all asylum seekers, and will add a substantial adjudicative burden on United States Citizenship and Immigration Services (“USCIS”) at a time where processing times are growing longer across the board. It will

discourage asylum applicants from taking critical action on their asylum cases, such as making reasonable requests to reschedule their hearings or supplement their applications. It will force asylum seekers to cope with forced unemployment by utilizing community resources, by subjecting themselves to exploitation in the shadow labor market, or by abandoning valid claims and returning to life-threatening conditions in their home country. The children of asylum seekers, many who are born in the US during the years-long wait for an asylum hearing, will suffer substantial collateral damage as a result of their parent's inability to work. Lastly, the proposed new rules will add to USCIS' adjudicative burden with respect to I-765 applications, strain legal service and social service organizations, and will limit asylum-seekers' ability to effectively pursue their claims, making asylum adjudications burdensome for asylum officers and immigration judges. For all these reasons, MIRC vigorously opposes the proposed rule.

### **III. DHS Proposal to Extend the Waiting Period to 1 Year Will Burden Asylum-Seekers and US Taxpayers**

DHS proposes to extend the waiting period before an asylum seeker can apply for an Employment Authorization Document ("EAD") from 5 months to one year. In conjunction with the significant adjudicative burden imposed on USCIS by the new requirements of this proposed rule, and USCIS' proposal to eliminate the 30-day processing requirement for (c)(8) EADs<sup>1</sup>, it is guaranteed that asylum-seekers will be waiting much longer than a year for their work authorization. The burden of extending the waiting period and forcing asylum seekers to be jobless will be borne by community resources that are already stretched thin. Additionally, asylum seekers will be severely prejudiced upon entering the US labor market after living for well over a year without any income or an employment record.

DHS alleges that it formulated the 365-day period "based on an average of the current processing times for asylum applications which can range anywhere from six months to over 2 years, before there is an initial decision."<sup>2</sup> DHS provides no explanation as to why the waiting period for employment authorization should be predicated on current processing times. Additionally, it is absurd to penalize asylum applicants for DHS' own processing backlog. As per the Immigration and Nationality Act ("INA") § 208(d)(5)(A)(iii), Congress envisioned the asylum process to produce a final administrative decision within 180 days of filing the application, absent extraordinary circumstances. The fact that USCIS has failed tremendously to meet this legislative imperative is not a logical basis to delay access to employment authorization. Contrastingly, a logical response would be to utilize the resources and time put toward developing and implementing these new rules towards reducing the asylum backlog.

DHS also asserts, with no evidence to support this claim, that the proposed rule "will reduce the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum

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<sup>1</sup> See Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, DHS Docket No. USCIS-2018-0001, in the Federal Register at 84 F.R. 47148.

<sup>2</sup> Department of Homeland Security's Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants, DHS DocketNo. DHS-2019-0011, 84 F.R. 62374 at 62377, issued November 14, 2019.

applications intended primarily to obtain employment authorization.”<sup>3</sup> DHS offers no evidence regarding the prevalence of the filing of frivolous asylum applications in order to obtain work authorization. Additionally, DHS offers no evidence to support the idea that a one-year waiting period, versus a six-month waiting period, will be a meaningful deterrent to those desperate enough to commit fraud. DHS proposes to deny access to work authorization for over a year to all asylum seekers, including those with valid claims who have suffered extreme violence and persecution in their home countries, to deter a completely speculative population of allegedly frivolous asylum-seekers. The US government already has tools to deter frivolous applications for asylum, including criminal and civil penalties.

DHS suggests that these “administrative reforms will . . . provide qualitative benefits to asylum seekers, communities where they live and work, the U.S. government, and society at large.” It is difficult to understand how forcing vulnerable asylum-seekers to live for well over a year without the ability to lawfully work could benefit asylum seekers or their communities. One of MIRC’s clients is a single mother of three children who fled to the United States from her home country in South Asia after surviving extreme sexual and physical violence. One of her children was born in the United States. Our client only had limited resources upon arriving to the United States, as her persecutors restricted her ability to sell her property and access her funds.

Our client is still not eligible for a work permit as she is waiting for the 150 days to pass under the current rules. In the meantime, our client is caring for her three children through the generosity of private citizens and community groups. Our client has a university-level education, is fluent in English, was a government employee in her home country and would be highly employable if authorized to work. Instead, she is forced to literally beg to scrape by until she has her work authorization, and to siphon resources from community service providers that could be serving individuals whose needs are not a product of government policy. Our client suffers from Post-Traumatic Stress Disorder, and additionally would benefit from physical therapy as a result of the physical violence she endured. However, she will be unable to access any care with respect to these medical issues without an income or the ability to afford insurance. Our client, like all others in her circumstances, is forced to forego preventative care without an income, which increases the likelihood that she will need to utilize tax-payer funded emergency services. The idea that more than doubling the amount of time that our client will have to wait for work authorization will somehow benefit her, or the community service providers that are currently supporting her, is nothing short of absurd.

### **III. DHS Proposal to Eliminate Access to Work Authorization for Some Asylum Seekers is Contrary to Public Policy**

DHS proposes to prevent asylum seekers from getting work authorization if they have done any of the following:

- (i) crossed the border outside an official port of entry;
  - (iii) did not file for asylum within one year of their last entry into the U.S.;
- or

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<sup>3</sup> *Id.* at 62383

(iii) have been convicted of certain crimes, including:

- Any felony in the United states
- Domestic violence offenses
- Any offense against a child
- Controlled substances offenses
- Operating while impaired/intoxicated.

MIRC vigorously opposes the categorical denial of work authorization to a substantial proportion of asylum seekers, who regularly wait years for a decision on their asylum applications. For the reasons already delineated above, denial of work authorization provides no benefit to the applicants or society and instead requires the use of community and taxpayer resources to service individuals who are ready and willing to work.

Barring work authorization for individuals who miss the one-year filing deadline is an unnecessarily punitive measure against some of the most vulnerable asylum seekers. MIRC represents survivors of domestic and sexual violence who missed the one-year deadline as a result of extraordinary circumstances related to their abuse. MIRC's attorneys have represented a client who survived severe domestic violence as a teenager on account of her sexual orientation fled to the United States at age 19, coping with Post-Traumatic Stress Disorder and unaware that asylum was even available to her. She filed for asylum several years after entering the United States and was eventually granted asylum. Those who miss the one-year deadline, like this client, often do because of trauma and lack of privilege, and categorically denying these individuals employment authorization is simply unjust.

Further, denying work authorization to asylum seekers with criminal convictions defies logic. Work requirements for parolees are a regular feature of the US criminal justice system in recognition of the obvious fact that unemployment contributes to recidivism. More importantly, MIRC has served many survivors of domestic and sexual violence with the enumerated criminal convictions on their record as a consequence of abuse. For example, MIRC has a client with a strong asylum claim as a Syrian Christian. She also is a survivor of domestic violence in the United States. She has a controlled substances conviction for possession of a small amount of marijuana that was placed in her purse by her abusive husband. Her husband controlled her criminal proceedings and she ultimately pleaded guilty. She has subsequently divorced her husband and obtained sole custody of their two United States citizen children. Her husband provides no child support as he ceased employment to become judgment-proof. Under DHS' proposed rules, this client would be categorically barred from employment authorization based on her conviction. She would be waiting years for a decision on her asylum case without work authorization to care for her US citizen children, particularly as a citizen of a country that elicits heightened security checks. The ripple effects of these circumstances are immeasurable. Her ability to enter the US labor force after years of unemployment and housing instability will be severely constricted. Her US citizen children will experience the consequences of growing up in poverty for the rest of their lives, as documented in countless studies.<sup>4</sup>

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<sup>4</sup> National Center for Children in Poverty, *Childhood and Intergenerational Poverty*, November 2009, available at: [http://www.nccp.org/publications/pdf/text\\_909.pdf](http://www.nccp.org/publications/pdf/text_909.pdf)

Similarly, MIRC has represented survivors of domestic violence who were arrested for or convicted of domestic violence offenses as a direct result of their abuse. MIRC has represented a client who was attacked by her husband, acted in self-defense, called the police herself and was perplexingly arrested by police instead of the perpetrator. While the proposed regulations provide for an exceptions process, it requires applicants to show that they have “been subjected to extreme cruelty” and were “not the primary perpetrator of the violence in the relationship.” Requiring this level of documentation for a work permit application is a substantial burden on the applicant, on USCIS line-level adjudicators, and on legal service organizations like MIRC that will have to divert limited resources to formerly straightforward work permit applications.

#### **IV. Denying Work Authorization to Asylum Seekers who “Cause a Delay” in their Asylum Case is a Due Process Issue**

Denying work authorization to asylum applicants who may cause a delay in their asylum case out of necessity will create due process issues, as asylum applicants in desperate financial straits may prioritize work authorization over taking an action critical to their case. DHS proposes to deny EAD applications if, at the time of EAD adjudication, the asylum seeker is currently causing a “delay” in their asylum case. “Delay” may include providing essential supplementary information about the family members on the case or changed country conditions, requesting rescheduling of an asylum interview, or requesting a change of venue. As a result of the proposed rule to eliminate the 30-day processing timeline for DHS to adjudicate EAD applications, applicants will have no way to know at what point USCIS will be adjudicating a properly-filed EAD application. As a result, applicants may hesitate to take critical action on their asylum case for fear of jeopardizing their work authorization, which applicants typically spend over a year waiting for after entering the United States. For example, an applicant who may be ill, or whose attorney may have a scheduling conflict, may choose not to reschedule their case and attend their interview unrepresented or while sick to avoid jeopardizing their employment authorization. They may also forgo providing critical supplementary information for their case for fear of jeopardizing their employment authorization. Creating this tangle of conflicting incentives will actually make the jobs of asylum adjudicators more difficult. USCIS officers and immigration judges can make better and more efficient decisions with a full record, with applicants who are healthy and prepared to testify, and who are represented.

#### **V. DHS’ Proposed Rule will Increase USCIS Processing Times, Reduce the Impact of Legal Service Organizations, and Reduce the Quality of Asylum Adjudications**

DHS’ proposed new rule introduces a host of new eligibility requirements that will negatively impact USCIS processing times, the capacity of legal service providers, and the quality of asylum adjudications. The complexity of the proposed new rule will require more time devoted to (c)(8) EAD applications and sophisticated legal analysis from line-level USCIS officers, at a time when USCIS processing times and backlogs are at a historic high.<sup>5</sup> Similarly, legal service

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<sup>5</sup> USCIS, *Hearing on Policy Changes and Processing Delays at USCIS before the House Committee on the Judiciary Subcommittee on Immigration And Citizenship*, July 16, 2019, available at: <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-p>



organizations such as MIRC will have to devote additional time and resources to putting together (c)(8) EAD applications, which will reduce the number of clients we can serve. Lastly, asylum adjudications are more efficient when applicants have the ability to work, hire counsel, obtain driver's licenses, transport themselves to the hearing, and pay for professional translators and interpreters.

DHS' proposed new rule requires an unprecedented level of legal analysis for employment authorization applications. For example, it will require a USCIS officer to determine (1) whether an individual was convicted of a domestic violence offense; (2) whether the applicant has been subjected to extreme cruelty (3) whether the applicant was the primary perpetrator of the violence in the relationship (4) and that the applicant is not otherwise ineligible. For individuals with pending criminal matters, it requires adjudicators to "exercise discretion" in electing to grant work authorization. It requires adjudicators to determine whether an individual who entered without inspection: (1) presented themselves to DHS officers; (2) expressed fear of returning to their home country, and (3) has "good cause" for the illegal entry. This is a poor use of resources at a time where USCIS processing times are steadily increasing despite a drop in receipt volume.<sup>6</sup> Additionally, determinations with respect to domestic violence matters, such as whether an individual has suffered "extreme cruelty", are generally made by specialized humanitarian units within USCIS. It is unclear how the government intends to make sure that EAD adjudicators have the appropriate training to make these highly sensitive legal determinations. The burden placed on USCIS by these new analytical and documentary requirements will analogously fall upon legal service providers as well, and will reduce the number of clients we are able to serve.

Further, the proposed restrictions on work authorization will reduce the quality of asylum adjudications. Due to backlogs in both the immigration courts and the USCIS asylum office, many asylum applicants are waiting years for their asylum hearings. Protracting the amount of time applicants will remain indigent and jobless, or completely barring applicants from employment authorization, will impact the quality of asylum adjudications. For example, applicants who are work authorized could spend the years preceding their hearings earning money to hire counsel. Legal representation has proven to improve outcomes for asylum applicants, but it also provides a benefit to adjudicators as well. An asylum applicant who is prepared to testify by counsel and has provided a fully developed evidentiary record can significantly reduce the length of time a hearing may otherwise take. Additionally, the collateral effects of indigency - including housing instability, health issues, and lack of transportation - can create complications for both the applicant and the government. For example, an individual with unstable housing may not receive their hearing notice. The applicant may be able to demonstrate good cause, and the government will expend additional resources adjudicating whether good cause existed and then reopening the case. Additionally, our clients in Michigan who file affirmatively must travel to the Chicago asylum office to attend their hearings. From Detroit,

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[rocessing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019](#)

<sup>6</sup> American Immigration Lawyers Association, *AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration*, January 30th, 2019, AILA Doc. No. 19012834

this is a 5 hour drive by car, and much longer by bus or train. Applicants who have income are more likely to be able to attend their asylum interviews on time and appropriately prepared, reducing delays and complications for the asylum office as well. These are just a handful of the many examples of how work authorization contributes to a better-functioning asylum system.

## **VI. Conclusion**

This proposed rule, at best, deters a speculative number of frivolous asylum applicants. However, even at best, the negative effects include but are not limited to forcing bona-fide asylum applicants to live in poverty, unnecessarily diverting community resources to individuals who are ready and willing to work, straining immigrant legal service providers, adding significant adjudicative burden on USCIS, reducing the preparedness of asylum seekers for their asylum hearings, discouraging asylum seekers from taking critical actions on their applications, encouraging asylum seekers to enter the shadow economy where they face exploitation, and forcing US citizen children of asylum seekers to live in poverty. MIRC encourages DHS to utilize existing tools or develop narrower measures to address the issues it seeks to combat with this proposed rule, as this rule will impact all asylum applicants, including the most vulnerable.

For the above reasons, MIRC urges the Department of Homeland Security to retain the current processing regulations for work authorization and asylum.

Respectfully submitted on behalf of the Michigan Immigrant Rights Center.



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