



June 7, 2024

Submitted via www.regulations.gov

Charles Nimick,
Chief, Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Department of Homeland Security Docket No. USCIS–2024–0002, Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants

Dear Chief Nimick,

Immigrant Defenders Law Center (ImmDef) hereby submits the following comment in response to the United States Citizenship and Immigration Services (“USCIS”) request for comment on the Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document (“EAD”) Renewal Applicants, 89 Fed. Reg. 24628 (Apr. 8, 2024) (to be codified at 8 C.F.R. pt. 274a) (DHS Docket No. USCIS–2024–0002).

Immigrant Defenders Law Center is the largest removal defense organization in Southern California. We have offices in Los Angeles, Santa Ana, Riverside, and San Diego. We provide full-scale deportation defense, legal representation, legal education, and connections to social services to approximately 3,000 detained or non-detained adults and children annually. ImmDef submits this comment to urge that USCIS ensures that the proposed rule protects immigrants from exploitation in the workplace, from the risk of losing their employment, and from the loss of employment due to processing delays at USCIS. Access to employment is a fundamental need for immigrants to survive and thrive in their new home. ImmDef requests that the government 1) issue work permits for a longer period and 2) issue a longer and permanent automatic work permit extension period that covers all eligible workers.

I. Questions and Summary of Recommendations

After issuing an extension of a temporary rule impacting employment authorization documents, the Department of Homeland Security (“DHS”) and USCIS are requesting public comments. DHS seeks public comments on the temporary extension of employment authorization documents, and the following questions:

- (1) Whether DHS regulations should be revised to permanently lengthen the period of the automatic extension period to up to 540 days for employment authorization and/or EAD validity for eligible renewal applicants;
- (2) Whether a different permanent extension period should be implemented, for some or all applicants covered by the automatic extension provision on either a temporary or permanent basis; and
- (3) Whether other solutions should be considered to mitigate the risk of expiring employment authorization and/or EAD validity for some or all applicants covered by the automatic extension provision.

Immigrant Defenders Law Center recommends the following solutions to protect immigrants and their families:

- DHS should revise its regulations to make work permits valid for a longer time.
- DHS should revise its regulations to lengthen the period of automatic extension to 730 days (2 years) to protect the 260,000 applicants that the agency has projected will lose work authorization despite this temporary rule.

II. DHS should make work permits valid for a longer period and permanently extend the automatic extension period of work permits to 730 days to protect immigrant workers.

The Temporary Final Rule automatic extension for work permits is anticipated to provide assurances to hundreds of thousands of asylum seekers and other immigrant workers that they will remain authorized to work. Agency estimates project that the automatic extension will protect approximately 800,000 people from losing their work authorization due to USCIS processing delays.¹ USCIS currently estimates the processing time to complete 80% of EAD renewal applications for pending asylum seekers to be 14-15 months, with the remaining renewals exceeding that timeframe.² DHS should revise its regulations to make work permits valid for a longer time and make the automatic extension period permanent and lengthened to 730 days. Extending the validity period of work authorization will allow these asylum seekers and immigrant workers to experience greater economic stability for themselves and their families, as well as more easily integrate into society.

¹ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 Fed. Reg. 24628, 24628 (Apr. 8, 2024).

² “Processing Times,” USCIS, <https://egov.uscis.gov/processing-times/> (last accessed June 7, 2024).

A. *DHS should revise regulations to make work permits valid for longer periods of time and valid for the entire period of time it takes to adjudicate cases before USCIS and in immigration court.*

Increasing the validity period for work permits supports immigrant workers in their ability to work and sustain themselves and families in their new home. Access to employment is a necessity and immigrant workers should be able to obtain employment authorization with little concern or risk that their work authorization may lapse for an unknown period. Employers may be hesitant to hire asylum seekers and other immigrants if it appears that maintaining their employment may be subject to lapses in authorization.³ Longer periods of work authorization would provide greater clarity to immigrant workers about their work authorization status and the duration that their work permit is valid. In addition, these revisions would mitigate confusion and harm caused by potential lapses in an immigrant's work authorization, reducing risks of labor exploitation and uncertainty caused by regulatory changes and backlog delays that are no fault of their own.

The lengthened extension of employment authorization provides incredibly important benefits beyond the ability to be employed that directly affect the ability of immigrants to live in and contribute to their communities in the United States. It also allows immigrants to maintain their driver's and professional licenses for longer. This is of great importance to immigrant workers who work in vital positions in the economy and who depend on these licenses for their livelihood and to support their families.

The rule and an extended period of work authorization is estimated to protect around 82,000 employers.⁴ Employers are more willing to hire immigrants when provided with greater assurances that immigrants will remain authorized to work since continuing employment of an employee without work authorization may subject the employer to criminal and/or civil penalties.⁵ Expanded periods of work authorization and extensions support employers by allowing them to fill vacant positions and protecting them against the risk of disruption from turnover due to work permit expirations. DHS estimates that businesses and organizations employing immigrant workers would suffer a loss of almost \$17.4 billion in labor turnover costs if immigrant employees affected by the rule were to lose their work authorization.⁶

Longer periods of work permit validity would also contribute to greater resource efficiencies for USCIS. In February 2024, there were around 1.4 million pending EAD cases, with over 400,000 of those being pending auto-extension EAD renewal applications.⁷ Even with the current automatic extension rule and other efforts by the agency to address this growing backlog,

³ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 Fed. Reg. at 24645.

⁴ *Id.* at 24652.

⁵ USCIS Form I-9, "Employment Eligibility Verification," <https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf>.

⁶ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 Fed. Reg. at 24652.

⁷ *Id.* at 24636.

there needs to be a substantial effort to decrease processing times.⁸ Fully eliminating the current backlog of cases requires greatly increasing agency efficiency.⁹ By making the current automatic extension rule permanent and by further increasing the period of work permits and the extension period to 730 days (two years), the agency could make inroads in its efforts to decrease the backlog and processing times. This extension provides USCIS time to create and implement a plan to completely address the growing backlog and strain from the increases in initial EAD applications,¹⁰ while mitigating harm to immigrants, employers, and the economy due to potential work authorization lapses from these processing delays. Through longer initial work permits and a lengthened permanent automatic extension, USCIS would be able to reduce its backlog and redirect resources spent on initial and renewal work permit applications. Decreasing the filing requirements and approval needed by DHS would address these backlogs and would allow the agency to direct resources to other vital areas, such as processing family visas.

The initial Temporary Final Rule extending work permits was implemented in response to the growing backlog in cases and this inquiry into permanently increasing the automatic extension period for work is in response to the continued increase in time before final adjudication of cases. The growing backlog trend has also continued to increase. Nationally, there are over three million pending immigration cases, with the national backlog increasing by almost one million from 2022 to 2023 and again from 2023 to 2024.¹¹ In California, the backlog in immigration court increased by 26% from 2023 to 2024.¹²

DHS should revise its rules to increase the duration of work permits, ensuring that immigrants are authorized for the entire period in which their case is processing. This would provide immigrants with stability and a greater ability to be employed due to clarity to employers and to the immigrants themselves about the duration of their work authorization and a decreased risk of lapses.

DHS should revise its regulations to make certain that the validity period of work authorization matches either the duration of an immigrant's status or the average time it takes to adjudicate cases before USCIS and in immigration court. This would help ensure continued protection for immigrants and employers from future changes in adjudication time and assuage uncertainty from having to rely on DHS to issue a new rule. This change will help mitigate the risk of the current extension periods of work authorization from becoming deficient if adjudication wait times continue to increase and would allow for DHS to avoid having to continually implement temporary rules and extensions. By having the period for employment extend to the entirety of an immigrant's status or time of adjudication before USCIS and in immigration court, immigrant workers would be able to experience stability and assurance that their work authorization will not lapse.

⁸ *Id.*

⁹ *Id.* At 2645-46.

¹⁰ *See Id.* at 24636.

¹¹ Transactional Records Clearing House, "Immigration Court Backlog," Syracuse Univ.

<https://trac.syr.edu/phptools/immigration/backlog/>.

¹² *Id.*

B. *DHS should make the automatic extension permanent and increase the extension to 730 days.*

DHS should make permanent the Temporary Final Rule providing an automatic 540-day extension to work authorization, and DHS should increase the automatic extension period to two years (730 days). Increasing the extension period to two years would account for the 260,000 applicants who would remain at risk of having their work authorization lapse under the 540-day extension period.¹³ This extension period increase provides USCIS with time to move through its backlogs and to develop a clearer plan to eliminate processing delays, while concurrently mitigating the harm and costs these backlogs will create for immigrants and their employers.

Immigrants would benefit from a permanent extension because it would provide long-term predictability and mitigate potential lapses in work authorization after the temporary extension expires. Having a permanent extension of two years ensures that the greatest number of immigrants can experience decreased anxiety that the work authorization they depend on will lapse due to USCIS processing delays. These benefits extend to employers and to the economy by alleviating the negative effects to operational stability, including economic stress and loss of vital immigrant workers caused by uncertainty and danger of lapses in work authorization.¹⁴

III. Conclusion

Immigrant Defenders Law Center implores USCIS to implement reasonable employment authorization measures that protect workers and help our economy. It is unconscionable for an immigrant to lose their job or be subjected to labor exploitation because of government delays in processing initial work permits and work permit renewals. Work authorization permits should be issued for longer periods of time to help reduce backlogs. The extension of time for work permit validity should become permanent. DHS must increase the auto-extension of work permits to 730 days so that the 800,000 immigrants covered under the temporary rule and an additional 260,000 immigrants can remain employed.

¹³ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 Fed. Reg. at 24637.

¹⁴ See Michelle Hackman, *Immigrants to Get Extension for Expiring or Expired U.S. Work Permits*, Wall St. J. (May 3, 2022, 12:41 PM), <https://www.wsj.com/articles/immigrants-to-get-extension-for-expiring-or-expired-u-s-work-permits-11651579201>; Rafael Bernal, *Biden Extends Some Immigrant Work Permits, Potentially Saving Thousands of Jobs*, The Hill (Apr. 4, 2024, 9:00 AM), <https://thehill.com/latino/4573404-biden-immigrant-work-permits/>.