



*Protecting Immigrant
Women and Girls
Fleeing Violence*

November 8, 2019

Submitted via www.regulations.gov

Samantha Deshommnes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comments in Response to Proposed Rulemaking: Removal of 30- Day Processing Provision for Asylum Applicant - Related Form I-765 Employment Authorization Applications, DHS Docket No. USCIS-2018-0001; 84 F.R. 47148

Dear Chief Deshommnes:

The Tahirih Justice Center (Tahirih) is pleased to submit the following comments in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM) on Removal of 30-Day Processing Provision for Asylum Applicant – Related Form I-765 Employment Authorization Applications, DHS Docket No. USCIS-2018-0001; 84 F.R. 47148.ⁱ

I. Introduction

Tahirih is a national, nonpartisan policy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence (GBV) over the past twenty-two years. Our clients endure horrific abuses such as human trafficking, domestic violence, sexual assault, forced marriage, and honor crimes. Many of our asylum-seeking clients are indigent and have limited support systems to assist them while awaiting employment authorization from United States Citizenship and Immigration Services (USCIS). Currently, regulations require USCIS to adjudicate an asylum applicant's initial application for an Employment Authorization Document (EAD) within 30 days of filing.ⁱⁱ **DHS' proposal through this NPRM to eliminate this requirement will severely disadvantage survivors of GBV such as our clients. We therefore strongly oppose DHS' proposed rule and instead urge you to maintain the 30-day adjudication deadline currently required by the regulations.**

II. DHS' Justifications for Issuing the Proposed Rule are Arbitrary and Capricious and Do not Outweigh the Harm the Rule will Unnecessarily Cause to Survivors of GBV

A. The Proposed Rule is Arbitrary and Capricious

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DHS asserts that eliminating the 30-day EAD adjudication period is necessary to make USCIS' fraud detection efforts more effective. Yet, USCIS is already permitted to take more time for EAD processing, by requesting additional documents from an applicant where deemed necessary, for example, where fraud is suspected. The proposed rule cannot, therefore, be justified on this basis and is arbitrary and capricious.

B. Delaying EADs will Further Harm Traumatized Survivors of GBV

Under the proposed rule, asylum seekers will be forced to wait for EADs indefinitely, with no recourse or end in sight. While DHS considered replacing the 30-day adjudication timeframe with 90-days,ⁱⁱⁱ DHS ultimately proposes no timeframe at all, such that significant delays could be the new, acceptable norm.

Yet, survivors of GBV applying for asylum who have endured severe trauma are in desperate need of resources to rebuild their lives. Survivors who have little or no support network to rely on will face significant financial hardship. This includes the chronic threat or lived reality of homelessness, and the hunger and health problems that accompany it for both themselves and their children. Furthermore, asylum applicants are ineligible for federal public assistance. With their ability to earn income delayed or worse - effectively foreclosed, survivors will be unable to access much-needed mental and physical health services. If *pro bono* or low-cost legal services are unavailable where a survivor lives, she will be unable to pay for a lawyer. Survivors' cases are complex, and representation often means the difference between safety or return home to face additional violence or even death.^{iv} Keeping survivors in poverty further compounds and prolongs healing and prevents them from integrating into society, depriving communities of their contributions and productivity as members of the work force.

Indigent individuals are also often highly vulnerable to exploitation because they depend on others for survival. Through no fault of their own, asylum seekers forced to participate in the 'shadow economy' in order to survive are at the mercy of unscrupulous employers. Some withhold wages, pay much less than originally agreed to, demand very long hours, impose abusive conditions, or threaten or perpetrate violence against workers in this situation who have, or believe they have, no recourse. Working without authorization also jeopardizes asylum claims, yet the alternative might be living on the streets.

Finally, work authorization for asylum applicants simultaneously facing domestic violence in the US can literally mean the difference between life or death. It is no surprise, least of all to abusers, that close to 100% of survivors of domestic violence report suffering financial abuse,^v and 75% of women report staying in abusive relationships due to economic barriers.^{vi} Delaying EADs for survivors under these circumstances rewards perpetrators, giving them critical leverage to further manipulate their victims. Conversely, if those facing domestic violence are authorized to work, then abusers are deprived of a primary tool of abuse – the threat of reporting the survivor to DHS.

III. **The Proposed Rule Poses a Burden for Tahirih**

If USCIS' EAD adjudication timeframe is no longer in effect as proposed by DHS, asylum seekers' need for longer-term non-legal assistance will increase. Tahirih's social services staff will undoubtedly lack the capacity to effectively meet the needs of current and future clients who will now need more help avoiding homelessness and hunger while waiting for work authorization.

IV. Conclusion

Keeping asylum seekers in a state of poverty while waiting for their claims to be heard will not deter them from escaping life-threatening persecution at home. Furthermore, the current 30-day EAD adjudication timeline does not compromise the effectiveness of USCIS' current fraud detection measures. The proposed rule is simply unnecessary and confers minimal, if any, benefit for the government, while punishing survivors who already endure chronic economic instability and for which taxpayers and communities ultimately pay the price. **We urge DHS to abandon the proposed rule and maintain the current 30-day regulatory timeframe for initial asylum seeker EAD processing.**

We look forward to your detailed feedback on these comments, and please contact me at irenas@tahirih.org or 571-282-6180 for additional information.

Respectfully,



Irena Sullivan
Senior Immigration Policy Counsel

*Pseudonym

ⁱ <https://www.govinfo.gov/content/pkg/FR-2019-09-09/pdf/2019-19125.pdf>

ⁱⁱ 8 CFR 208.7(a)(1).

ⁱⁱⁱ NPRM at p. 47166-47167.

^{iv} Less than 3% of families without lawyers succeed in winning asylum throughout the country.

^v See, e.g., Postmus, J. L., Plummer, S. B., McMahon, S., Murshid, N. S., & and Mi Sung Kim, M. S. (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3),411–430, Adams, A, Sullivan, C, Bybee, D, & Greeson, M. (2008), Development of the scale of economic abuse. *Violence Against Women*, 13, 563-588.

^{vi} The Mary Kay Foundation. (2012). 2012 Mary Kay Truth About Abuse Survey Report available at: <http://content2.marykayintouch.com/Public/MKACF/Documents/2012survey.pdf>