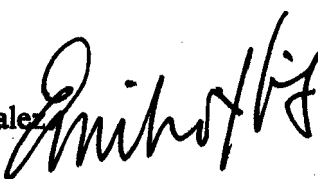




U.S. Citizenship  
and Immigration  
Services

## Interoffice Memorandum

To: Prakash Khatri  
USCIS Ombudsman

From: Dr. Emilio T. Gonzalez  
Director, USCIS 

Date: June 20, 2006

Subject: Response to Recommendation #25, Employment Authorization Documents

On March 20, 2006, the Ombudsman made three recommendations regarding issuance of Employment Authorization Documents (EADs).

**First, the Ombudsman recommended that USCIS begin issuance of multi-year Employment Authorization Documents.**

USCIS does issue multi-year employment authorization documents (EADs) to certain asylees and aliens who have been granted Family Unity benefits. Absent these exceptions, USCIS does not issue multi-year EADs to aliens who are authorized employment incident to their immigration status. Aliens who are issued an EAD incident to their status, pursuant to 8 C.F.R. §274a.12(a), include: asylees, refugees, parolees, certain nonimmigrants, lawful temporary residents, and aliens in Temporary Protected Status (TPS). A one-year period of employment authorization generally meets the needs of this diverse group of aliens.

On July 30, 2004, USCIS published an interim rule, "Employment Authorization Documents," at 69 Fed. Reg. 45555. The rule provides USCIS with the authority to issue EADs for validity periods other than one year, and establishes criteria to determine the appropriate length for an EAD. These criteria include: the applicant's immigration status; general processing time for the underlying application or petition; required background checks and response times by other agencies; and other security considerations and factors as deemed appropriate by USCIS. In considering the possibility of granting multi-year EADs to additional groups in accordance with the criteria outlined in the interim rule, USCIS has evaluated certain applicant groups and determined that issuing multi-year EADS is operationally impractical. For instance, it is not possible to project when the adjudication of a particular adjustment of status application (Form I-485) will be completed. Therefore, issuing a multi-year card in such an instance is not practicable, especially

when considering the diminishing USCIS backlog and the decrease in adjudication times for I-485s which is falling below one year. Revising current EAD policy and operational practice to address a temporary situation does not seem a prudent use of resources.

USCIS has approved a plan to issue I-766s for a two-year validity period to individuals granted asylum by USCIS. To implement this plan, in March 2006 USCIS instituted an automated card issuance pilot program in the Arlington Asylum office. The pilot program allowed individuals to receive their EAD cards (I-766), valid for two years, in the mail within five (5) to seven (7) days of being granted asylum status. This pilot program is expected to be fully operational in all asylum offices by next fiscal year. Until the program is fully operational, the I-688B EAD cards valid for 1-year are still available to asylees. Eventually the I-688B will be phased out in lieu of the more secure I-766 EADs with two-year validity periods. Although the *REAL ID Act of 2005* eliminated the asylum adjustment cap, asylees still must wait one year after their grant of asylum before becoming eligible to apply for adjustment to lawful permanent resident (LPR) status. Once they have applied for adjustment of status, asylees must wait approximately six (6) months for case processing. The longer validity period will allow many applicants to pursue adjustment of status without having to apply for a renewal of their EADs. This change in initial asylee EAD validity period will provide better customer service to asylees and reduce the EAD renewal adjudication burden on Service Centers, as it is not necessary for the asylee to apply for employment authorization once he or she adjusts to LPR status. While the automated EAD card issuance process is presently limited to individuals granted asylum at the Arlington Asylum Office, eventually the automated I-766 will be available to those individuals who are granted asylee status in all USCIS Asylum Offices. In the long term, USCIS will seek to implement this automated I-766 issuance process to individuals granted asylum in the immigration courts.

**Second, the Ombudsman recommended that USCIS issue Employment Authorization Documents valid as of the date any previous EAD expires.**

USCIS processes a large number of applications for EADs through a highly productive automated batch processing system, which has significantly decreased EAD processing times and allowed for resources to be devoted to other adjudication tasks, thereby resulting in improved customer service. At present, the validity period on these batch processed EADs begins on the date that the application is approved, not the date that a previous EAD expired. Abandoning automated batch processing would require USCIS to divert immense resources from adjustment applications to the adjudication of interim benefits (i.e., EAD applications). Although some customers would benefit from receiving an EAD that is valid from the date their current EAD expires rather than the date their EAD applications are approved, the overall result would be quite negative since it would divert adjudicative resources to interim benefit processing. Not only would USCIS and its customers be ill-served by such a change in the process, but such a change would run contrary to the Ombudsman's recommendation that USCIS devote more resources to up-front processing of adjustment applications and less to the processing of interim benefits.

USCIS does agree with the Ombudsman that when a customer files a timely renewal application for an EAD, it would be preferable to synchronize the validity dates of new and expiring EADs. USCIS believes that improved productivity through technology and automation is the future of immigration benefit adjudication, and that the batch process is an important step in that direction.

Accordingly, USCIS is assessing the possibilities of integrating synchronization of EAD validity dates into the present batch system. USCIS will keep the Ombudsman apprised of any significant progress on this front.

**Third, the Ombudsman recommends that USCIS amend the regulations such that K-1 nonimmigrants are not subject to breaks in employment authorization.**

Pursuant to 8 C.F.R. § 214(d) and 8 C.F.R. § 274a.12(a)(6), USCIS currently provides employment authorization to K-1 nonimmigrants for duration of status of up to 90 days, upon approval of an application for employment authorization (Form I-765). Such employment authorization is discretionary in nature and is not mandated by statute. Employment authorization for K-1 nonimmigrants is not granted automatically incident to status, and once obtained, the employment authorization cannot be extended beyond the 90-day duration of status. Accordingly, K-1 nonimmigrants seeking adjustment of status to permanent residence as a spouse of a U.S. citizen must submit a separate application for employment authorization once they file for adjustment.

USCIS does not consider automatic employment authorization for K-1 nonimmigrants to be consistent with the intent of the underlying benefit. The K-1 nonimmigrant visa is designed to enable an alien with a bona fide intention to marry a U.S. citizen to enter the United States and enter into a valid marriage in the United States within 90 days after the alien's arrival. (See 8 C.F.R. § 214(d)). Thus, the purpose of the K-1 visa is to provide a family-based benefit in facilitating marriage between a foreign national and a U.S. citizen. Its purpose is not to provide an avenue for employment within the United States. This interpretation is supported by the short 90 day duration of the K-1 nonimmigrant visa with no opportunity for an extension. By contrast, granting employment authorization automatically to K-1 aliens appears to conflict with the temporary, nonimmigrant and family-based nature of the K-1 visa. USCIS instead plans to propose to eliminate employment eligibility for K-1 nonimmigrants, in order to be more consistent with the overall intent of the K-1 visa.