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U.S. Citizenship and Immigration Services
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U.S. Citizenship
and Immigration
Services

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Memorandum

TO: Debra Rogers
Acting Citizenship and Immigration Services Ombudsman

FROM: Lori Scialabba *Lori Scialabba*
Deputy Director

SUBJECT: Response to Recommendation 49, Employment Authorization Documents (EADs):
Meeting the 90-Day Mandate and Minimizing the Impact of Delay on Individuals
and Employers

Recommendations

The CIS Ombudsman recommends that USCIS:

- Establish methods at local offices to facilitate immediate resolution;
- Establish a uniform processing time goal of 45 days for adjudication and 60 days for issuance of an EAD;
- Improve monitoring and ensure real-time visibility through an automated system for tracking processing times;
- Follow established internal procedures for issuing interim EADs in cases where background checks are pending; and
- Issue replacement EADs with validity dates beginning on the date the old EAD expires.

USCIS Response to Recommendations

USCIS thanks the CIS Ombudsman for the recommendations provided in her report and provides responses to the individual recommendations below. As the CIS Ombudsman recognizes, the overwhelming majority of applications for employment authorization (Form I-765) are processed well within the 90-day regulatory processing timeframe. The processing times for all four Service Centers and the National Benefits Center (NBC) are regularly under two months.

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Service Request inquiries to the National Customer Service Center (NCSC) can provide some information about customers experiences with EAD applications, however, not all Service Requests are associated with processing delays. For FY2011, USCIS received 923,351 applications for employment authorization. During that same period, USCIS received 15,705 "Beyond Regulatory Processing Time" Service Requests from customers. This represents only 1.7% of the total number of cases USCIS received.¹ When USCIS includes "Approaching Regulatory Processing Time" Service Requests (7,875)² and expedite requests (21,613),³ this sum represents only 4.9% of the total number of cases. USCIS is aware that EAD-related Service Requests for FY2011 are slightly higher than the previous year. In FY2010, USCIS received 1,280,726 applications for employment authorization. The 9,652 "Beyond Regulatory Processing Time" Service Requests represent .7% of the cases received. When "Approaching Regulatory Processing Time" Service Requests (6,482) and expedite requests (19,017) are included, the sum represents 2.7% of the cases. As discussed below, USCIS continues to seek ways to improve monitoring and tracking of these cases.

In many instances, however, customers do not understand that the 90-day clock is suspended while USCIS awaits response to a Request for Evidence (RFE). To assist customers, USCIS has posted a tip sheet on its website explaining the impact of an RFE on the 90-day clock. USCIS would also like to remind customers that Form I-765 can be filed up to 120 days prior to the expiration of the current EAD. Filing in advance will help minimize the potential for any gaps in employment authorization.

Minor technical corrections to the report can be found in Appendix A.

1. Establish methods at local offices to facilitate immediate resolution.

USCIS concurs in part with this recommendation. The agency concurs that Field Offices should assist customers with delayed Forms I-765, however, Field Offices will not be able to ensure that all issues are immediately resolved. The August 18, 2006 memorandum, "Elimination of Form I-688B, Employment Authorization Card," ended the practice of producing EADs locally at Field Offices. Manual EAD production at Field Offices was subject to numerous vulnerabilities, including inconsistent document quality, limited security measures, and various issues related to outdated document production equipment. While actual EAD production no longer takes place at Field Offices, these local sites still play a role in assisting customers with Form I-765 issues. Customers can make an InfoPass appointment at a local Field Office and request adjudication of a Form I-765 that has been pending more than 75 days.⁴ The Field Office will notify the

¹ USCIS recognizes that a certain percentage of the Service Requests received in FY 2011 relate to applications filed in FY2010. However, USCIS does not believe the data is skewed in a manner that discounts the extent of the problem.

² Customers can request an "Approaching Regulatory Processing Time" Service Request if Form I-765 has been pending more than 75 days.

³ Customers can request expedited processing at any time after filing (provided the request meets one of the expedite criteria, which can be found on USCIS.gov).

⁴ As an alternative, customers can call the NCSC and submit a Service Request to inform the Service Center or NBC that their Form I-765 is pending over 75 days.

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appropriate Service Center or NBC of the inquiry and they will prioritize the case for review. Per the August 18, 2006 memorandum, the Field Office should receive an update within 24 hours for cases pending more than 90 days.

2. Establish a uniform processing time goal of 45 days for adjudication and 60 days for issuance of an EAD.

USCIS does not concur with this recommendation. While USCIS will make every effort to process applications for employment authorization expeditiously, circumstances exist that make uniform Form I-765 adjudication within 45 days impractical. USCIS would need to augment its Service Center and NBC staff to consistently provide for the adjudication of all Forms I-765 within 45 days. Furthermore, a 45-day timeframe is not always sufficient to obtain all information, biometrics, and background check results required to make a final decision on the case. USCIS will continue to conduct "sweeps" for any applications that have been pending more than 60 days to ensure that cases are adjudicated and cards produced within 90 days.

3. Improve monitoring and ensure real-time visibility through an automated system for tracking processing times.

USCIS concurs with this recommendation. The Service Centers and NBC regularly report the number of Forms I-765 that have been pending for 75-90 days and the number that have been pending for over 90 days. However, these reports only show the total number of calendar days a Form I-765 has been pending since the time of filing. They do not subtract the time the Form I-765 or the principal application (e.g., Form I-485) is pending an RFE response, during which time the 90-day clock is suspended. USCIS is currently validating an updated report that will account for the days in which the case is on hold pending an RFE response, and will begin using the new report once it has been fully vetted. An automated system to track processing times will be implemented as part of USCIS's Transformation initiative.

4. Follow established internal procedures for issuing interim EADs in cases where background checks are pending.

As noted previously, the goal is to adjudicate all Forms I-765 within the 90-day regulatory timeframe. If a case is brought to USCIS's attention that is outside of that 90-day period, USCIS believes it is more efficient to adjudicate that application to completion rather than issue an interim card and adjudicate the application separately. However, on a case-by-case basis, USCIS will determine if issuing an interim card is appropriate.

5. Issue replacement EADs with validity dates beginning on the date the old EAD expires.

USCIS is exploring the feasibility of implementing this recommendation for Form I-765 renewals.

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Appendix A: Technical Corrections

USCIS would like to clarify the following items in the report:

- Footnote 1 should be 8 CFR § 274a.12.
- Employment authorization is not only issued as an ancillary benefit to a primary immigration benefit. For example, individuals on an Order of Supervision and those with deferred action are eligible to apply for employment authorization. Neither an Order of Supervision nor deferred action is an immigration benefit.
- In Footnote 13, the CIS Ombudsman lists “expedite requests” as one of the three types of data that “indicate processing delays.” An expedite request can be made at any time after filing. In some instances, a customer may be eligible for both an expedite request and a “Beyond Regulatory Processing Time” Service Request. At this time, USCIS would need to conduct a manual review to determine whether a particular expedite request was tied to a processing delay.