

Samantha Deshommes, Chief  
Regulatory Coordination Division,  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services, Department of Homeland Security  
20 Massachusetts Avenue NW, Mailstop #2140  
Washington, D.C. 20529-2140

**Re: Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants, DHS Docket No. USCIS-2019-0011 84 F.R. 62374**

Dear Chief Deshommes:

On behalf of the Human Rights Campaign's nearly 3 million members and supporters nationwide, we submit these comments in opposition to the Department of Homeland Security's Notice of Proposed Rulemaking and Request for Comment on Asylum Application, Interview, and Employment Authorization for Applicants, DHS Docket No. USCIS-2019-0011 in the Federal Register at 84 F.R. 62374, issued November 14, 2019. As the nation's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, we strongly oppose any rule that would threaten the health or safety of asylum seekers fleeing persecution. Facing violence and persecution in many parts of the world, LGBTQ people often flee to the United States to find safety and make a better life for themselves. Our nation must uphold its international commitments and provide pathways for them to support themselves and their families while their claims are adjudicated.

**I. The Rule**

Currently, migrants seeking asylum in the United States may file an employment authorization document (EAD) if their asylum applications have not been adjudicated within 180 days, or if they've been recommended for approval but have not yet received a grant of asylum or withholding of deportation. This permits asylum seekers to support themselves and their families financially while awaiting the outcome of their case.

The proposed rule would disrupt this process and burden new and existing asylum seekers in several key ways, including: (1) extending the waiting period before an applicant can apply for work authorization from five months to a year after the filing of their asylum application; (2) with minimum exceptions, bars asylum seekers from work authorization if they have "entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry"; and (3) unless otherwise determined to meet an exception for late filing by an asylum

officer or Immigration Judge, prohibit asylum seekers who have filed their asylum applications past the one-year deadline from receiving work authorization<sup>1</sup>.

## **II. Extension of Waiting Period**

The extension of the waiting period to apply for a work permit from five months to one year could leave hundreds of thousands of vulnerable migrants in limbo and unable to support their families. Even now, the current waiting period has contributed to the financial insecurity of asylum seekers who are prohibited from working and exacerbates poor socio-economic conditions.<sup>2</sup> Prolonging their ability to seek adequate employment would further erode asylum seekers fragile status in the United States and could have a devastating impact on their ability to support themselves and their families.

Individuals who are prohibited from earning a living may be unable to afford healthcare costs, housing, or basic necessities such as food or clothing. They may find it difficult or impossible to obtain transportation, legal counsel, or proper identification.

For the most vulnerable of asylum seekers, like those fleeing anti-LGBTQ discrimination in their home countries, these additional requirements are a matter of life and death. It may not be an objective of this administration, but the commitment of the United States to asylum seekers fleeing persecution does not include the abandonment of them at our shores.

## **III. Denial of Employment Authorization as a Result of Arrival**

The administration claims that barring individuals who entered the United States at a place or time other than a U.S. port of entry (POE) would “reserve integrity to the asylum system and lessen the incentive to file an asylum application for the primary purpose of obtaining work authorization”.<sup>3</sup> This claim ignores the danger that migrants crossing the border in pursuit of asylum are leaving behind, oftentimes without adequate time to prepare for their departure. It should not be the case that individuals who have had no choice but to seek shelter in the U.S., and who are willing and capable of working, should have that option revoked because of the manner in which they arrived.

## **IV. Late Filing**

The proposed rule would also effectively bar asylum seekers who have filed for employment authorization outside of the one-year filing deadline, with an exception only if it is the

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<sup>1</sup> 84 Fed. Reg. 62374, 62389 (Nov. 14, 2019).

<sup>2</sup> Human Rights First, “Callous and Calculated: Longer Work Authorization Bar Endangers the Lives of Asylum Seekers and their Families” (April 2019), available at [https://www.humanrightsfirst.org/sites/default/files/Work\\_Authorization.pdf](https://www.humanrightsfirst.org/sites/default/files/Work_Authorization.pdf).

<sup>3</sup> 84 Fed. Reg. 62374, 62389 (Nov. 14, 2019).

determination of the asylum officer or Immigration Judge that the applicant has met the exception for late filing.<sup>4</sup> This means, even if an asylum seeker has well-founded fears that they will be persecuted if they remain in their home country, and would otherwise have a valid claim for asylum, they would be unable to file for employment authorization. These rules would leave a vulnerable and traumatized population struggling to care for themselves and their families as they await the adjudication of their asylum cases.

## **V. Conclusion**

Besides creating a source of hardship for migrants attempting to apply for employment authorization, the proposed rules additionally place a substantial burden on organizations and businesses providing legal aid, housing, and other important resources to asylum seekers. Migrants who are unable to apply for or renew a work permit will have no choice but to rely on outside help. This will naturally lead many individuals who are unable to find support into unsafe and unfair working conditions. It must not be the policy of the current administration to drive asylum seekers into dangerous work and domestic conditions, especially when an obvious solution to this problem would be to provide work permits in the first place.

We continue to strongly oppose any rule that closes the door on some of the world's most vulnerable populations, including migrants seeking work, families, and LGBTQ migrants. It is imperative that America remain a safe haven for those fleeing danger both across the world and below our southern border.

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<sup>4</sup> 8 C.F.R. § 208.7