



# National Immigrant Justice Center

## **Employment Authorization for Asylum Applicants Frequently Asked Questions**

*The filing instructions, location, and fee for the employment authorization application (form I-765) may have changed after the publication of this document. Attorneys should consult [www.uscis.gov](http://www.uscis.gov) for the current filing instructions, location, and fee prior to preparing any immigration applications.*

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**1) Q. I have heard that my asylum client's ability to obtain employment authorization depends on how many days she has on her "asylum clock." What is this clock?**

- A. When an asylum applicant files her asylum application, a "clock" begins to track the number of days that have passed since the application was filed to determine whether the asylum adjudication goal is being met in the case (adjudicators must adjudicate all asylum applications within 180 days of filing, except in exceptional circumstances). This clock is also used to determine whether an asylum applicant is eligible for employment authorization.

For more information regarding the immigration court's use and interpretation of the clock, please see the Executive Office for Immigration Review Operating Policies and Procedures Memorandum 11-02 *The Asylum Clock* (Nov. 15, 2011), available at <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>.

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**2) Q. I am in the process of filing an affirmative (asylum office) asylum application for my client and my client wants to know when she will be able to work.**

- A. An asylum applicant can apply for an employment authorization document (EAD) when she has accrued 150 days on her asylum clock. U.S. Citizenship and Immigration Services (USCIS) can grant employment authorization once 180 days have accrued on the clock. The only exception is for an asylum applicant who receives a recommended approval from the asylum office. An asylum applicant who receives a recommended approval can apply for an EAD immediately upon receiving the recommended approval, even if she does not have 150 days on her clock.

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**3) Q. I filed an affirmative asylum application for my client and we are waiting to receive the interview notice. What can make my client's clock stop at this stage?**

- A. Your client's employment clock will stop accruing days if:
- 1) Your client requests to reschedule the date of her asylum interview. The clock should restart on the date of the next interview.
  - 2) Your client misses her fingerprint appointment.

- 3) Your client fails to appear for the asylum interview. However, if your client establishes exceptional circumstances for failing to appear or if improper notice of the interview was provided, the clock should restart on the date of the next asylum interview.
- 4) Your client fails to appear to pick up the asylum decision from the asylum office.
- 5) The asylum office issues a final denial in your client's asylum case because your client has other legal immigration status in the United States.

See OPPM 11-02 at § IV(A).

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**4) Q. My client filed her asylum application before I began representing her. How can I find out how many days have accrued on my client's clock?**

- A. If your client is in immigration court removal proceedings, you can find out how many days have accrued on your client's clock by calling the EOIR Automated Information Line at 1-800-898-7180 and choosing the "case processing" option (option 2). If your client's case is before the asylum office, contact NIJC to discuss the best way to determine the number of days on the clock.

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**5) Q. The asylum office referred my client's asylum case to the immigration court. Will this referral stop my client's clock?**

- A. A referral to the immigration court will not stop your client's clock unless the case was referred because your client failed to appear for the asylum interview.

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**6) Q. My client's asylum application was referred to the immigration court. What will make my client's clock stop at this stage?**

- A. Your client's clock will stop if your client causes a delay in the adjudication of her asylum application before the immigration court. Requesting a continuance or declining an expedited hearing constitute such delays and will stop the clock. Requesting a change of venue also stops the clock. At the next hearing after the "delay," the clock will either remain stopped or will restart, depending on whether your client continues to cause a delay. See OPPM 11-02 at § VI.

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**7) Q. I began representing my client after she already had several hearings before the immigration court. I called the EOIR Automated Information Line and it says my client's clock has stopped. Why would that be and how can I get the clock restarted?**

- A. Many of NIJC's clients appeared before the immigration court pro se before NIJC began representing them and the immigration judge (IJ) continued their cases so they could find representation. A continuance to find representation stops the clock. At the next master calendar hearing you attend with your client, the clock will remain stopped or will restart depending on whether your client continues to cause a delay in the adjudication of her case. Unless the clock was stopped in error, the IJ will not restart the clock before the next hearing. If you believe the clock was stopped in error, please see question 8 for information about adjusting the clock.

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**8) Q. I think that the IJ improperly stopped my client’s clock. How can I correct the error and get the clock restarted?**

A. If your client has an upcoming master calendar hearing, you can address the clock error with the judge during the hearing. Otherwise, you should send a letter to the Chicago Immigration Court Administrator, Christine Epstein, explaining the error and requesting that the clock be restarted. If the judge or court administrator fails to respond to your request, you may need to contact the Assistant Chief Immigration Judge (ACIJ) for Chicago. Please contact Ashley Huebner at [ahuebner@heartlandalliance.org](mailto:ahuebner@heartlandalliance.org) if you believe that you need to contact the ACIJ about your client’s clock. See OPPM 11-02 at § VII.

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**9) Q. My client was placed in removal proceedings before she filed for asylum and we are now filing a defensive asylum application with the immigration court. When will my client’s employment clock start accruing days?**

A. Your client’s clock will start accruing days when the application is filed with the immigration court, meaning the court receives the application. According to EOIR, an asylum application is not “filed” until it is received by the judge in open court. Therefore, according to this policy, if you must file your client’s asylum application with the court clerk in order to meet your client’s one-year filing deadline or for some other reason, the clock would not start running until the judge accepts the application as filed at your client’s next master calendar hearing. There is no basis in the statute or regulations for EOIR’s requirement that asylum applications be filed in open court. NIJC encourages attorneys who must file their client’s asylum application with the court clerk to argue that the court should start their client’s clock on the date the application is received by the court at the clerk’s window, rather than at the next master calendar hearing.

Even when your client’s application is accepted as filed by the judge in open court, your client’s clock may not start running if your client causes a delay in the adjudication by, for example, declining an expedited hearing

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**10) Q. My client’s clock has accrued 150 days. How do I file for employment authorization for my client?**

A. To obtain employment authorization, you need to file Form I-765, Application for Employment Authorization, and supporting documents with U.S. Citizenship and Immigration Services (USCIS). This form is available on the USCIS website, [www.uscis.gov](http://www.uscis.gov). For more information on filing form I-765, please see NIJC’s asylum manual. A sample I-765 cover letter is available in the appendix to the manual.

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**11) Q. How much does it cost to apply for employment authorization?**

- A. An asylum applicant does not have to pay a filing fee the first time she applies for employment authorization. After the first application, the filing fee is \$380.00. If an applicant can demonstrate an inability to pay the filing fee, then she may file a fee waiver request with the I-765 application.

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**12) Q. How do I file a fee waiver request for my client?**

- A. To request a waiver of the filing fee for your client’s I-765 application, use form I-912. You may also want to include an affidavit from your client with additional details regarding her inability to pay the filing fee.

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**13) Q. I just filed the employment authorization application for my client. How long will it take for my client to receive her EAD?**

- A. It generally takes about 90 days from the filing date for an applicant to receive her EAD.

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**14) Q. My client already obtained employment authorization based on her asylum application. For how long is her EAD valid?**

- A. An EAD is valid for one year.

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**15) Q. My client’s clock has already accrued 180 days and my client has employment authorization. Will declining an expedited hearing have any effect on her employment authorization?**

- A. Since your client has already accrued 180 days and has employment authorization, declining an expedited hearing will not affect your client’s current employment authorization or her ability to renew her EAD in the future.

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**16) Q. How do I renew my client’s EAD?**

- A. You can renew your client’s EAD so long as your client’s asylum application remains pending before the immigration court, the Board of Immigration Appeals, or a U.S. Court of Appeals. The renewal application should be filed 90 days before the previously issued EAD expires to avoid any gaps in employment authorization. To renew the EAD, you must file form I-765, the filing fee, and supporting document, with USCIS. For more information, please see NIJC’s asylum manual and [www.uscis.gov](http://www.uscis.gov)

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**17) Q. The IJ denied my client's applications for asylum. I am appealing the immigration judge's decision to the Board of Immigration Appeals. Is my client still eligible for employment authorization?**

A. Your client is only eligible for employment authorization if she accrued 180 days on her clock prior to the IJ's denial.

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**18) Q. Where can I find the law on obtaining an EAD?**

A. The laws regarding employment authorization for asylum applicants can be found in 8 C.F.R. §§ 208.7 and 274a.12(c)(8).

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*If you have any additional questions,  
please contact Claire Coogan at 312-660-1307 or [ccoogan@heartlandalliance.org](mailto:ccoogan@heartlandalliance.org).*