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THE NEW ASYLUM EAD RULES: PRACTICE TIPS & LITIGATION UPDATES
Immigration Advocates Network Webinar, September 17, 2020

Answer Sheet

Note: On September 11, 2020, a U.S. District Court enjoined certain provisions of the new asylum EAD rules for members of the Asylum Seeker Advocacy Project (ASAP) and CASA de Maryland. The following case examples assume that the applicants are not *yet* members of either organization.

Elena's Case: Waiting Period

1. Elena filed her asylum application on March 27, 2020. Her initial EAD application was postmarked on August 24, 2020 (150 days later). Can USCIS approve her EAD application?

Yes because (a) Elena's EAD application was postmarked before August 25, 2020, when the new EAD rule went into effect, and (b) the 150-day waiting period under the prior regulations had lapsed before that date.

2. If Elena mails her initial EAD application on September 18, 2020 (175 days later) instead, can USCIS approve it?

No. Even though the 150-day waiting period lapsed before August 25, 2020, the application was not postmarked until after that date. Elena will have to wait until March 27, 2021 to apply for an initial EAD.

Oscar's Case: Waiting Period

1. Oscar filed his asylum application on March 30, 2020. His initial EAD application was postmarked on March 30, 2020. His initial EAD application was postmarked on August 24, 2020 (147 days later). Can USCIS approve his EAD application?

No. Even though Oscar's EAD application was postmarked before August 25, 2020, when the new EAD rule went into effect, the 150-day waiting period under the prior regulations had not yet lapsed until after that date. Oscar will have to wait until March 30, 2021 to apply for an initial EAD.

2. If Oscar mails his initial EAD application on September 18, 2020 (172 days later) instead, can USCIS approve it?

No. Even though the 150-day waiting period under the prior regulations has lapsed by now, the application was not postmarked until after August 25, 2020, when the new EAD rule went into effect. Oscar will have to wait until March 30, 2021 to apply for an initial EAD.

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Aisha's Case: One-Year Filing Bar

Note: Assume that Aisha is not an unaccompanied child.

1. Aisha entered the US on January 1, 2019. She filed her asylum application on May 1, 2020. Could she be eligible for an initial EAD in the future?

Yes. Even though Aisha missed her one-year filing deadline for asylum, she filed her asylum application before August 25, 2020, when the new EAD rule went into effect. However, she will have to wait until May 1, 2021 to apply for an initial EAD.

2. If Aisha files her asylum application on September 18, 2020 instead, could she be eligible for an initial EAD in the future?

No because (a) Aisha missed her one-year filing deadline for asylum, and (b) she filed her asylum application after August 25, 2020. She cannot apply for an initial EAD unless/until an asylum officer or immigration judge determines that she meets an exception to the one-year filing deadline for asylum.

Raul's Case: One-Year Filing Bar

Note: Assume that Raul is not an unaccompanied child.

1. Raul entered the US on January 1, 2017 and filed his asylum application on June 1, 2018. He applied for and received an EAD valid from December 1, 2018 to December 1, 2020. Raul's renewal EAD application was postmarked on August 24, 2020. Can USCIS approve his renewal application?

Yes. Even though Raul missed his one-year filing deadline for asylum, he filed his asylum application before August 25, 2020, when the new EAD rule went into effect. He can file a renewal application up to 180 days before the expiration of his current EAD.

2. If Raul mails his renewal application on September 18, 2020 instead, could USCIS approve it?

Yes. Even though Raul missed his one-year filing deadline and mailed his renewal application after August 25, 2020, when the new rule went into effect, he filed his asylum application before that date. The controlling date for the one-year filing bar is the filing date of the asylum application, not the postmark date of the EAD application. Raul can file a renewal application up to 180 days before the expiration of his current EAD.

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Henri's Case: EWI Bar

1. Henri entered the US without inspection on January 1, 2020 and did not present himself to a DHS agent. He is planning to apply for asylum affirmatively. Would he be eligible for an initial EAD in the future?

Yes. Even though Henri did not enter at a port of entry or present himself to a DHS agent, he entered the US before August 25, 2020, when the new rule went into effect. However, he would have to wait 365 days from the date he files his asylum application to apply for an initial EAD.

2. If Henri entered the US without inspection under the same circumstances on September 1, 2020 instead, would he be eligible for an initial EAD in the future?

No. Henri entered without inspection after August 25, 2020, when the new rule went into effect, so the entry without inspection bar to EAD eligibility applies to him. Because he did not present himself to a DHS agent, he does not meet an exception to the bar. He cannot apply for an initial EAD anytime in the future, even 365 days after he files his asylum application.

Sam's Case: EWI Bar

1. Sam entered the US without inspection on March 1, 2018 and filed for asylum on May 1, 2018. They applied for and received an EAD valid from November 1, 2018 to November 1, 2020. Sam's renewal application was postmarked on August 24, 2020. Can USCIS approve their renewal application?

Yes. Even though Sam entered without inspection, they entered the US before August 25, 2020, when the new rule went into effect. They can file a renewal application up to 180 days before the expiration of their current EAD.

2. If Sam mails their renewal application on September 18, 2020 instead, can USCIS approve it?

Yes. Even though Sam entered without inspection and mailed their renewal application after August 25, 2020, when the new rule went into effect, they entered the US before that date. The controlling date for the EWI bar is the date of entry, not the postmark date of the EAD application. Sam can file a renewal application up to 180 days before the expiration of their current EAD.

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Maria's Case: Criminal Bars

1. Maria filed for asylum on July 1, 2018. She later applied for and received an EAD valid from January 1, 2019 to January 1, 2021. In March 2020, she was convicted of an aggravated felony. Can she renew her EAD?

No. Aggravated felony convictions were already a bar to EAD eligibility under the prior regulations. Even if Maria filed her renewal application before August 25, 2020, when the new EAD rule went into effect, USCIS would have rejected her application because of the aggravated felony conviction. In fact, USCIS may even terminate her existing EAD.

2. Can Maria renew her EAD if she was convicted of a particularly serious crime, but not an aggravated felony?

Yes. Even though Maria was convicted of a non-aggravated felony particularly serious crime, the conviction took place before August 25, 2020, when the new EAD rule went into effect. The controlling date for the particularly serious crimes bar is the date of conviction, not the postmark date of the EAD application. Maria can file a renewal application up to 180 days before the expiration of her current EAD.

CGRS's Technical Assistance Program

CGRS has released two practice advisories on the June 26, 2020 asylum EAD rule.

- Advocates may request CGRS's practice advisory, ***Restrictions on Employment Authorization for Asylum Seekers: Overview of USCIS's June 26, 2020 Final Rule*** at this [link](#).
- Advocates may request CGRS's practice advisory, ***Restrictions on Employment Authorization for Asylum Seekers: Frequently Asked Questions*** at this [link](#).

Please do not circulate or distribute these materials or share the download links without authorization from CGRS.

To request additional resources or assistance from CGRS in a new fear-of-return case, please fill out an assistance request form [here](#).