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U.S. Citizenship
and Immigration
Services

Memorandum

TO: Michael T. Dougherty
Citizenship and Immigration Services Ombudsman

FROM: Michael Aytes /s/ Rendell L. Jones
Acting Director

DATE: January 2, 2009

SUBJECT: Response to Recommendation 35, Recommendations on USCIS Processing Delays
for Employment Authorization Documents

CIS Ombudsman Recommendation 35

The CIS Ombudsman recommends that USCIS:

- Adhere to regulations that state USCIS shall issue Employment Authorization Documents (EADs) within 90 days, or issue interim EADs, to prevent unnecessary loss of employment;
- Expediently provide information to the public stating the cause of EAD processing delays and how the delays will be addressed;
- Ensure USCIS provide consistent guidance to the public regarding EADs pending more than 90 days via the National Customer Service Center (NCSC) toll-free number and local offices; and
- Reconsider Ombudsman recommendation FR2006-25 to issue multi-year EADs.

The CIS Ombudsman also suggests that USCIS consider the following operational procedures to issue interim EADs when applications are pending over 90 days:

- Modify USCIS I-797 Receipt Notices for Form I-765 (Application for Employment Authorization) to provide for continued employment authorization; and
- Affix fraud-proof stickers to expired EADs upon determination of an applicant's eligibility for an extension.

USCIS Response

We appreciate the CIS Ombudsman's interest in the adjudication of Form I-765, Applications for Employment Authorization, or EAD applications. We acknowledge that, unfortunately, there is a small percentage of applicants whose cases are not adjudicated timely, and we understand that this imposes a significant burden on them, but we respectfully disagree with the perception that EAD processing, as a whole, is a significant issue.

In Fiscal Year 2008, USCIS received 1,144,374 Forms I-765. During this same period, the NCSC toll-free number received 15,551 service requests relating to Form I-765 applications beyond the normal processing time. These requests constitute only 1.3% of the total applications received. In addition, the current cycle time, as of November 1, 2008, for the processing of EAD applications is 1.9 months—within the 90-day limit. Although we do not have quantifiable data available, we believe that a significant number of these service requests pertain to cases that are not outside of normal processing times. In many instances, the service requests come from applicants who:

- Are requesting a status on a card that is pending more than 75 days but still within the 90-day requirement;
- Do not understand that the 90-day clock was suspended while USCIS waits on additional evidence from the applicant; or
- Had an employment document issued, but it was returned to USCIS as non-deliverable.

With at least a 98.7% compliance rate for FY08, we do not believe there is a systemic problem. We will continue to further tighten our controls in an effort to minimize the number of cases adjudicated outside the required timeframe. The four parts of the recommendation, as well as the CIS Ombudsman's suggestions for issuing interim EADs, are addressed separately below:

1. Adhere to regulations that state USCIS shall issue EADs within 90 days, or issue interim EADs, to prevent unnecessary loss of employment.

To accomplish EAD issuance within 90 days as required by regulation, USCIS is taking a multi-faceted approach. First, we will continue to conduct routine sweeps of our systems to determine the Form I-765 applications which have been pending for at least 60 days and have not been assigned to an Immigration Officer (IO). These sweeps are conducted at least weekly and more frequently if necessary. Applications that have not been assigned will be forwarded to an IO to facilitate adjudication within the required timeframe.

We also have updated customer call scripts at the NCSC to state that service requests can be accepted when an EAD application has been pending for at least 75 days. Service requests accepted by the NCSC will be forwarded to the Service Centers and the National Benefits Center (NBC). The Service Centers and the NBC will be required to prioritize these cases and have them adjudicated prior to the 90th day.

We will also issue guidance to the Service Centers, the NBC, and Field Offices regarding requests on EAD applications that have not been adjudicated within 90 days. Applicants who have not received a decision on their Form I-765 application after 90 days can call the NCSC to request expedited processing or go to their local office via an InfoPass appointment. Because interim cards are produced by the appropriate Service Center or the NBC and field offices no longer produce EADs on-site as of August 2006, we recommend that EAD applicants may prefer to call the NCSC rather than visit the local Field. The NCSC has created a new service request category specific to EAD-related inquiries: Outside Regulatory Processing Time. These requests will be forwarded to the appropriate Service Center or NBC. For all requests that are forwarded from either the NCSC or the Field Offices, Service Centers and the NBC will either adjudicate the application or issue an interim card within 10 days of receiving the request. Interim cards will only be issued when adjudication of an application is delayed beyond 90 days due to the required reviews leading to a final decision that will exceed outside of that timeframe.

2. Expediently provide information to the public stating the cause of EAD processing delays and how the delays will be addressed.

When processing delays result from issuance of a Request for Evidence (RFE), USCIS will explain how the issuance of the RFE affects the 90-day period. When issuing an RFE for initial information, USCIS will advise the applicant that the 90-day period is automatically rescinded and that, upon receipt of the requested information, a new 90 day period begins. Likewise, when an RFE is issued for additional information, USCIS will advise the applicant that the 90-day period is automatically suspended and that, upon receipt of the requested information, the 90-day period will continue from the point of interruption.

3. Ensure USCIS provide consistent guidance to the public regarding EAD applications pending more than 90 days via the National Customer Service Center toll-free number and local offices.

This recommendation is currently in place, and information is available to the public. On August 28, 2008, USCIS issued and posted on its website at www.uscis.gov an EAD fact sheet which explains the steps an applicant may take if his or her Form I-765 application has been pending for more than 90 days.

In addition, the NCSC toll-free number has been updated to accept service requests for any I-765 applications pending more than 75 days. An internal announcement within the NCSC has been made, and customer scripts used by Tier 1 representatives have been modified to reflect the new service request requirement for Form I-765 applications. USCIS also plans to issue guidance to the Service Centers, NBC, and Field Offices regarding consistent handling of expedite requests.

4. Reconsider Ombudsman recommendation FR2006-25 to issue multi-year EADs.

USCIS currently issues multi-year EADs in some circumstances. The 2-year EAD is available to pending Adjustment Of Status (AOS) applicants who have filed for an EAD under Title 8,

Code of Federal Regulations (C.F.R.) 274.a.12(c)(9) and who are currently unable to adjust status because an immigrant visa number is not currently available. Two-year EADs are currently being issued in these circumstances. USCIS will continue to grant EADs that are valid for 1 year for adjustment applicants who have an available immigrant visa number and are filing for employment authorization under 8 C.F.R. 274a.12(c)(9). In order to be eligible for an EAD with a 2-year validity period, an applicant's Form I-140, Immigrant Petition for Alien Worker, must be approved.

USCIS also currently issues EADs valid for 18 months to applicants with valid Temporary Protected Status (TPS). USCIS welcomes suggestions from the Ombudsman regarding which eligibility categories should merit consideration for multi-year EADs, recognizing that an across-the-board extension of EAD validity periods is not possible since some applicants are prohibited from receiving multi-year EADs because of their status. Many employment authorization categories are linked to specific periods of eligibility which can vary greatly from case to case and are very often for periods of less than a year in duration.

5. Modify USCIS I-797 Receipt Notices for Form I-765, Application for Employment Authorization, to provide for continued employment authorization.

Since 2006, we have streamlined our approach to enhance our ability to process these applications within the 90-day timeframe which minimizes the need for an interim EAD as well as produce a more secure document. USCIS is unable to modify an I-797 Receipt Notice to serve as an interim extension of an Employment Authorization Document for several reasons, including fraud which would pose a threat to national security and confusion that this action would likely cause employers.

6. Affix fraud proof stickers to expired EADs upon determination of an applicant's eligibility for an extension.

USCIS believes it would be more efficient, secure, and customer-friendly to issue a new EAD rather than to place a sticker on an expired one. EADs are adjudicated at service centers, not at the Field Offices. Unlike placing a service request with the NCSC, use of a sticker to extend employment authorization to applicants would require that applicants schedule an appointment and visit their local office. This could be burdensome for many applicants, where the local office is some distance from the applicant's residence or the applicant has children; and, it likely would not be any quicker than if USCIS mailed them new card upon approval. Additionally, mailing a new card would be more secure as the applicant would only have one valid EAD at a time. With a sticker, there would likely be some overlap and one person could have two valid EADs.