



MEMORANDUM

TO: All Immigration Court Personnel

FROM: Sheila McNulty
Chief Immigration Judge

DATE: December 19, 2024

RECISSION: None

SUBJECT: Operating Policies and Procedures Memorandum 25-01:
Asylum EAD Clock in Immigration Court Proceedings

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I. Introduction

This Operating Policies and Procedures Memorandum (OPPM) provides directives on the proper handling of the Asylum Employment Authorization Document (EAD) Clock in immigration court proceedings and within the immigration courts.

Certain noncitizens with pending asylum applications¹ are eligible to receive employment authorization from the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS). To assist USCIS with adjudicating applications for employment authorization, the Executive Office for Immigration Review (EOIR) currently maintains an “Asylum EAD Clock,” which tracks information pertaining to the length of time asylum applications have been pending.

On June 9, 2022, plaintiffs in the *Garcia Perez, et al. v. USCIS, et al.*, No. 2:22-cv-00806-JHC (W.D. Wash.) class action litigation filed a complaint challenging EOIR and USCIS policies and practices for administering the Asylum EAD Clock. On September 26, 2024, the district court granted final approval of the settlement agreement, which is effective nationwide. For settlement purposes, the parties agreed to the certification of a nationwide class and three subclasses (Remand, Unaccompanied Children, and Change of Venue), the definitions of which can be found in section II.A.11 of the settlement agreement. Importantly, the nationwide class is defined as:

All noncitizens in the United States who have filed or will file with USCIS or EOIR a complete Asylum Application and who would be eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8) but for the fact that their Asylum EAD Clock was stopped or not started prior to 180 days after the date the noncitizen filed a complete Asylum Application.

This OPPM discusses EOIR’s Asylum EAD Clock and sets out guidelines for providing noncitizens and representatives of record with information regarding the clock, consistent with EOIR’s obligations under the *Garcia Perez* settlement agreement.

II. Background

Section 208(d)(2) of the Immigration and Nationality Act (INA or “the Act”) states as follows:

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by [DHS]. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

¹ “Asylum application” as referenced in this memo refers to a complete application for asylum or withholding of deportation or removal. See 8 C.F.R. § 274a.12(c)(8).

In turn, USCIS's regulations specify that, "[s]ubject to the restrictions contained in sections 208(d) and 236(a) of the Act, an applicant for asylum who is not an aggravated felon shall be eligible . . . to request employment authorization." 8 C.F.R. § 208.7(a)(1); see also 8 C.F.R. § 274a.12(c)(8) (stating that, subject to conditions, a noncitizen "who has filed a complete application for asylum or withholding of deportation or removal pursuant to 8 CFR part 208" may apply with USCIS for employment authorization).

USCIS is solely responsible for adjudicating applications for employment authorization filed by asylum applicants. Noncitizens may file a Form I-765, Application for Employment Authorization, with USCIS 150 days after filing an asylum application and are eligible to receive an EAD once their asylum application has been pending for a total of 180 days. 8 C.F.R. § 208.7(a)(1). However, USCIS's regulations specify that "[t]he time periods within which the [asylum applicant] may not apply for employment authorization and within which USCIS must respond to any such application" do not include "[a]ny delay requested or caused by the applicant . . . including delays caused by failure without good cause to follow the requirements for fingerprint processing." 8 C.F.R. § 208.7(a)(2).

To assist USCIS with adjudicating such applications for employment authorization, EOIR currently maintains an "Asylum EAD Clock" in its electronic case management system, known as the "Case Access System for EOIR" (CASE). The Asylum EAD Clock tracks the length of time between the filing of the asylum application and the immigration judge's decision, not including any delays requested or caused by the applicant. EOIR provides this information electronically to USCIS, which may reference it in determining eligibility for employment authorization. EOIR's clock does not provide a dispositive determination of time for employment authorization purposes, and USCIS has the discretion, in adjudicating any given application for employment authorization, to reference or disregard EOIR's clock.

III. The Asylum EAD Clock

EOIR's Asylum EAD Clock tracks the length of time asylum applications have been pending, not including delays requested or caused by the applicant, for all cases before EOIR with asylum applications, except those where the application was filed (1) before January 4, 1995, or (2) pursuant to the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).

A. Applications Filed before USCIS²

Where a noncitizen applies for asylum before USCIS and USCIS declines to grant the application, USCIS refers the application to EOIR and electronically transmits the number of days the application was pending before USCIS. In turn, EOIR's Asylum EAD Clock credits the noncitizen with the time the application was pending before USCIS.³ This applies regardless of whether the noncitizen applies for asylum with USCIS by filing a Form I-589 or USCIS, under the Asylum Procedures Rule⁴, treats the noncitizen's positive credible fear determination as an asylum application. For example, if a noncitizen applies for asylum with USCIS, asylum is not granted, and their asylum application is referred to EOIR for proceedings 95 days later, EOIR's Asylum EAD Clock begins running at 95 days on the date EOIR receives the charging document with the referred application. The clock subsequently runs or stops depending on the events that transpire before EOIR, as discussed below.

B. Applications Filed before EOIR

In cases where the noncitizen applies defensively for asylum with EOIR, the EOIR Asylum EAD Clock starts on the date the application is filed.⁵ It subsequently runs or stops depending on the events that transpire in the case, as discussed below.⁶

² Pursuant to the settlement agreement for the nationwide class action *Mendez Rojas et al., v. Wolf et al.*, 2:16-cv-01024-RSM (W.D. Wash. Nov. 4, 2020), the Uniform Procedural Mechanism (UPM) was implemented to address issues related to filing the Form I-589, Application for Asylum and for Withholding of Removal, with USCIS and EOIR. The UPM and its affiliated guidance remains in effect and is discussed in detail in the EOIR Policy Memorandum (PM) 21-01, *Guidelines for the Implementation of the Settlement Agreement in Mendez Rojas v. Wolf* (Nov. 5, 2020), available at <https://www.justice.gov/eoir/page/file/1334796/dl?inline>.

³ Cases sent to EOIR pursuant to the *Mendez Rojas* UPM are transferred with a coversheet reflecting the USCIS receipt date, which may predate when the NTA was filed, and the number of accrued days on the Asylum EAD Clock.

⁴ See 87 Fed. Reg. 18078 (Mar. 29, 2022); see also Director's Memorandum (DM) 22-08, *The Asylum Procedures Rule* (Aug. 26, 2022), available at <https://www.justice.gov/media/1248066/dl?inline>.

⁵ EOIR has at times in the past required that defensive asylum applications be filed in court during hearings. While this policy was in effect, EOIR permitted noncitizens in immigration court proceedings to "lodge" asylum applications at the court's window. The lodging of an asylum application was not a filing, but USCIS treated the lodging date as the filing date for employment authorization purposes. EOIR no longer requires defensive asylum applications to be filed in court. Rather, such applications may also be filed at the court's window, by mail or courier, or electronically.

⁶ There are two exceptions. First, USCIS's regulations provide that employment authorization "may not be granted to [an asylum applicant] who fails to appear for a scheduled interview before an asylum officer . . . unless the applicant demonstrates that the failure to appear was the result of exceptional circumstances." 8 C.F.R. § 208.7(a)(4). Thus, if a noncitizen fails to appear for their USCIS asylum interview, USCIS may refer the case to EOIR and report to EOIR that the noncitizen stopped accruing time toward employment authorization on the day of the scheduled interview. As a result, the clock does not run while the application is pending before EOIR. The noncitizen, however, may request that USCIS reopen the asylum proceedings. See USCIS Affirmative Asylum Procedures Manual ("USCIS Manual"), Section III.M. (Aug. 31, 2023), available at <https://www.uscis.gov/sites/default/files/document/foia/AffirmativeAsylumProceduresManual.pdf>.

Second, USCIS's regulations provide that if a noncitizen fails to appear at an appointment to receive USCIS's

C. Running and Stopping the Clock

While a case has a pending asylum application before EOIR, the Asylum EAD Clock is programmed to run and stop depending on adjournment codes inputted into CASE by EOIR personnel. These codes reflect the various reasons an immigration court hearing may be adjourned, and EOIR maintains a full list of the codes in the Immigration Court Practice Manual, Shared Appendix O, Immigration Court Adjournment Codes, available at <https://www.justice.gov/eoir/reference-materials/general/shared-appendices/o>. At the end of each hearing, the immigration judge must clearly articulate the reason for the case adjournment on the record and memorialize the code under case notes in Judicial Tools or in the notes on the left side of the Record of Proceedings for paper cases. Court personnel must then enter the appropriate adjournment code into CASE. Each code either: (1) runs the clock, (2) stops the clock from running, or (3) is neutral, meaning the code does not affect the clock. The list referenced above states, for each code, whether it runs the clock, stops the clock, or is neutral. In general terms, consistent with the USCIS regulations at 8 C.F.R. § 208.7(a)(2), an adjournment code stops the clock if the code reflects a delay caused by the noncitizen; codes that do not reflect such a delay permit the clock to run or are neutral.

For example, Code 01 (respondent to seek representation) is entered where a hearing is adjourned to allow a noncitizen an opportunity to seek legal representation. Code 01 stops EOIR's Asylum EAD Clock. Thus, if an asylum application is pending, the clock will stop on the date of the hearing if it was previously running, and it will remain stopped if it was previously stopped. As another example, Code 13 (insufficient time to complete hearing) is entered where a hearing is adjourned because it cannot be completed within the allotted time. Code 13 runs the clock. If an asylum application is pending, the clock will start running on the date of the hearing if it was previously stopped, and it will remain running if it was previously running.

When a master calendar hearing is adjourned and an individual calendar hearing is scheduled, Code 17 is generally the appropriate code with which to adjourn the master

asylum decision, this failure "will be treated [by USCIS] as a delay caused by the applicant for purposes of [8 C.F.R.] § 208.7," which governs employment authorization. 8 C.F.R. § 208.9(d)(2). Accordingly, where a noncitizen fails to appear at an appointment to receive USCIS's asylum decision, USCIS may, if the noncitizen is placed in EOIR proceedings, report to EOIR that the noncitizen stopped, on the day of the scheduled appointment, accruing time toward employment authorization. If USCIS does so, EOIR's Asylum EAD Clock reflects the time that elapsed between the dates of the asylum application and the scheduled pick-up appointment. The clock is not running at the start of EOIR proceedings but may restart when the individual appears for their scheduled court proceedings, depending on the events that transpire before EOIR. See USCIS Manual, Section III.I(4).

calendar hearing, unless the noncitizen or their counsel caused a meaningful delay⁷ by rejecting a proposed hearing date. Code 17 runs EOIR's Asylum EAD Clock.⁸

When a scheduled hearing is cancelled, an adjournment code is entered for that hearing, even though the hearing did not take place. For example, if a scheduled hearing is cancelled because the immigration court is closed due to inclement weather, the hearing is appropriately adjourned using Code 59 (court closure/postponement). Code 59 runs EOIR's Asylum EAD Clock. Accordingly, where a scheduled hearing is cancelled due to inclement weather, if an asylum application is pending, the clock will start running on the date of the scheduled hearing if the clock was previously stopped, and the clock will remain running if it was previously running. As another example, if a scheduled hearing is cancelled because an immigration judge has granted a motion to advance the hearing, the hearing is appropriately adjourned using Code 5A (respondent's motion) or Code 5D (DHS's motion), and an earlier hearing is scheduled. Both Codes 5A and 5D are neutral. If the noncitizen is in proceedings before EOIR, with an asylum application pending on the date of the cancelled hearing, the cancelled hearing does not affect the clock. If the clock is running on the date of the cancelled hearing, it will continue running; if it is stopped, it will remain stopped.

EOIR's Asylum EAD Clock stops on the date the immigration judge grants or denies an asylum application, deems an asylum application abandoned or withdrawn, or dismisses or terminates the case. Additionally, granted motions to administratively close a case stop the clock. Where a noncitizen applies for asylum and related protection, typically withholding of removal under the INA and protection under the Convention Against Torture, an immigration judge may sometimes deny an asylum application but allow the applications for related protection to remain pending. For example, an immigration judge may deny an asylum application on the grounds that it is untimely under section 208(a)(2)(B) of the Act but defer adjudication of the noncitizen's applications for related protection. In such a situation, the clock stops on the day the immigration judge denies the asylum application, even though the applications for related protection remain pending.

D. Changes of Venue and Transfers

In a case with a pending asylum application, where EOIR's Asylum EAD Clock is stopped and an immigration judge grants a motion to change venue, the clock begins running on the day the judge grants the motion. If the clock is running when the judge grants the motion, the clock continues to run. In both instances, the clock runs until the first scheduled hearing at the new immigration court, at which point it may stop or continue running depending on

⁷ In assessing what constitutes a "meaningful delay," immigration judges exercise their independent judgment and discretion and may take any action consistent with their authorities. 8 C.F.R. § 1003.10(b).

⁸ At times in the past, EOIR has instructed immigration judges to inquire, in scheduling individual calendar hearings in cases with pending asylum applications, whether the noncitizen wants an expedited or a non-expedited hearing date. Immigration judges should no longer do so. Rather, except in streamlined removal proceedings, immigration judges should schedule individual calendar hearings in asylum cases in accord with this OPPM and any other current EOIR guidance.

the adjournment code used.⁹ In addition, EOIR sometimes transfers cases between two hearing locations that share administrative control of cases. Typically, these hearing locations are geographically close to one another, and one of them is in a detention facility. Such transfers are done without motions to change venue. In a case with a pending asylum application, where the clock is stopped and EOIR transfers the case between hearing locations, the clock runs beginning on the day of the transfer. If the clock is running on the day of the transfer, the clock continues running. In both instances, the clock runs until the first scheduled hearing at the new location, at which point it may stop or run, depending on the adjournment code used.

E. Unaccompanied Children

Given that USCIS has initial jurisdiction over an asylum application filed by an unaccompanied child (UC), if such a child is in EOIR proceedings before an immigration judge, and if the child has not yet applied for asylum and wishes to do so, the judge must permit the child to apply for asylum before USCIS. See INA § 208(b)(3)(C). In this situation, the immigration judge has the discretion, pursuant to a motion filed by a party or the parties jointly, to dismiss or terminate the child’s case, to administratively close the case, or to continue the case. How best to proceed will depend on the specific facts of the case. As with all applications for employment authorization based on pending asylum applications, USCIS’s policies and guidelines control determinations as to whether UCs with pending asylum applications are eligible for employment authorization.¹⁰ Pursuant to USCIS policy, in the case of UCs, EOIR adjournment codes associated with the transfer of jurisdiction from EOIR to USCIS do not stop the Asylum EAD Clock. However, if a UC’s case is referred by USCIS to EOIR, applicant-caused delays may stop the clock while the asylum application is pending before EOIR.¹¹

F. Appeals and Remands

EOIR’s Asylum EAD Clock does not run while an appeal of an immigration judge’s decision is pending with the Board of Immigration Appeals (“Board”), nor while a petition for review is pending with a federal circuit court of appeals. However, under the *Garcia Perez* class action settlement agreement, where proceedings are remanded to the Board or an immigration court for further consideration of an asylum application, USCIS will credit the noncitizen’s Asylum EAD Clock with the total number of days on appeal. For USCIS to credit the noncitizen’s Asylum EAD Clock, the noncitizen is to provide a copy of the remand order

⁹ See *Garcia Perez, et al. v. USCIS, et al.*, 2:22-cv-00806-JHC (W.D. Wash. Sept. 26, 2024) (“Settlement Agreement”) at Section III, D.

¹⁰ *Id.* at Section III, C.

¹¹ *Id.*

to USCIS with their employment authorization application (Form I-765). More information is available on USCIS's website.¹²

G. Motions to Reopen

In a case where the noncitizen has filed an asylum application before EOIR, if an immigration judge grants a motion to reopen, the judge must select one of three options for EOIR's Asylum EAD Clock and include this selection in the order.

- *Restart from immigration judge completion* – The clock will run from the date of the judge's decision ending the prior proceedings. It will continue running until the first scheduled hearing in the reopened proceedings, at which point it may stop or continue running, depending on the adjournment code used.
- *Restart from motion completion* – The clock will start on the date the motion to reopen is granted. It will continue running until the first scheduled hearing in the reopened proceedings, at which point it may stop or continue running, depending on the adjournment code used.
- *Do not restart* – The clock will remain stopped until the first scheduled hearing in the reopened proceedings, at which point it may start or remain stopped, depending on the adjournment code used.

The immigration judge has the discretion to select which of the above options is appropriate for a given case. In making this selection, the judge should be cognizant of the principle that the purpose of the clock is to assist USCIS in adjudicating applications for employment authorization, and that an asylum applicant does not accrue time toward such authorization during “[a]ny delay requested or caused by the applicant.” 8 C.F.R. § 208.7(a)(2).

IV. Asylum EAD Clock Information

In a case before EOIR with a pending asylum application, the immigration judge must, at the end of each hearing, clearly articulate on the record the reason for the case adjournment.¹³ The judge may, in their discretion, inform the parties whether EOIR's Asylum EAD Clock is running or stopped.¹⁴

EOIR provides attorneys and accredited representatives, through its EOIR Courts and Appeals System (ECAS) Case Portal, with access to case-specific adjournment code history relating to EOIR's Asylum EAD Clock. This information is accessible to attorneys and

¹² <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf>.

¹³ See Settlement Agreement at Section III.A.1.i.

¹⁴ *Id.*

accredited representatives for each case in which they have entered an appearance with EOIR.¹⁵ Additionally, EOIR's ECAS Respondent Access Portal (RAP) displays the same information for those pro se respondents who are eligible to access the RAP.

EOIR has also recently updated CASE to enable immigration court personnel to provide unrepresented noncitizens in EOIR proceedings with a printout of their case-specific adjournment code history relating to EOIR's Asylum EAD Clock. An unrepresented noncitizen may request such a printout orally or in writing. Where an unrepresented noncitizen requests such a printout orally in person, court personnel must, at the time of the request, provide the noncitizen with the printout. Where an unrepresented noncitizen requests such a printout orally but not in person, e.g. over the telephone, court personnel must mail the printout to the noncitizen's address on record with EOIR within 25 business days of receipt of the request, absent exceptional circumstances.¹⁶ Where an unrepresented noncitizen requests such a printout in writing, court personnel must respond to the noncitizen's address on record with EOIR within 25 business days of receipt of the request, absent exceptional circumstances.¹⁷

V. Requests to Correct the Clock

If a noncitizen or their representative of record believes EOIR's Asylum EAD Clock is incorrect in their case, they may request that EOIR adjust the clock, as follows.

A noncitizen or their representative of record may request, orally at a hearing, that EOIR's Asylum EAD Clock be adjusted. When this happens, the immigration judge should address the request on the record at the hearing.¹⁸ For such oral requests during hearings, immigration judges will limit their ruling to the adjournment code at that particular hearing. The immigration judge's ruling on the adjournment code shall be memorialized under case notes in Judicial Tools or in the notes on the left side of the Record of Proceedings for paper cases. For historical clock correction requests from pro se respondents, the immigration judge must provide a handout with instructions about sending their Asylum EAD Clock Correction Request to the appropriate email box or by mail. For historical clock requests from represented respondents, the immigration judge should inform the attorney to submit the request to the appropriate email box or by mail. This includes past adjournment code determinations by previous immigration judges assigned to the case.

A noncitizen or their representative of record may also request in writing that EOIR's Asylum EAD Clock be adjusted. If the case is pending at the immigration court, the request should be addressed to the court administrator of the relevant court. The request may be submitted

¹⁵ *Id.* at Section III.A.1.ii.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at Section III.A.2.ii.

by mail,¹⁹ or it may be submitted by email to a designated “Asylum EAD Clock Correction Request” email box that EOIR has established for each immigration court.²⁰ Regardless of whether the request is submitted by mail or email, the court must respond in writing within 25 business days of receipt of the request, absent exceptional circumstances.²¹ If the court declines to adjust the clock as requested or rejects the request, the court’s response will explain the court’s reasoning.²²

If the case is pending on appeal, the written request should be directed to EOIR’s Office of the General Counsel (OGC).²³ Although EOIR’s Asylum EAD Clock does not run while a case is on appeal, a noncitizen or their representative of record may argue to EOIR, while a case is on appeal, that more time should have accrued on the clock before the appeal was filed. Where a noncitizen or their representative of record submits a request to OGC to adjust the clock, OGC must respond in writing within 25 business days of receipt of the request, absent exceptional circumstances. If OGC declines to adjust the clock as requested or rejects the request, OGC’s response will explain its reasoning.²⁴

Requests to adjust EOIR’s Asylum EAD Clock should contain the applicant’s name and A number, address, the immigration court that has jurisdiction over the case or whether the case is on appeal, as much information as possible as to the case history, the status of the clock, why the requestor believes the clock should be adjusted, and how much time the requestor believes should be on the clock.²⁵

EOIR’s Asylum EAD Clock is an administrative function, and decisions pertaining to the clock are not adjudications. Therefore, noncitizens and their representatives of record should not submit motions pertaining to the clock. Rather, requests to adjust the clock should be made as described above. Immigration judges should not issue orders addressing the clock. If court personnel receive a paper motion to adjust the clock, they should scan the motion and forward it to the court’s “Asylum EAD Clock Correction Request” email box for response. Court personnel will also be required to send a standard letter informing the representative or noncitizen that the motion is being rerouted to the Asylum EAD Clock mailbox. For electronic motions, court personnel should save a copy of the motion before rejecting. When rejecting, court personnel will use standard language informing the representative or noncitizen that the motion is being rerouted to the Asylum

¹⁹ The mailing address for each immigration court is available on the EOIR public internet website at <https://www.justice.gov/eoir/find-immigration-court-and-access-internet-based-hearings>.

²⁰ The designated email for each immigration court is listed under the corresponding court administrator’s contact information, available in the court staff directory by clicking on the name of the court on the EOIR public internet website at <https://www.justice.gov/eoir/find-immigration-court-and-access-internet-based-hearings>. See also Settlement Agreement at Section III.A.2.iii.

²¹ *Id.* at Section III.A.2.v.

²² *Id.* at Section III.A.2.vi.

²³ *Id.* at Section III.A.2.iii. OGC’s contact information for requests to adjust EOIR’s Asylum EAD clock is located at <https://www.justice.gov/eoir/asylum-ead-clock-requests>.

²⁴ *Id.* at Section III.A.2.v, vi.

²⁵ *Id.* at Section III.A.2.i.

EAD Clock mailbox. The 25 business day response period begins on the date the “motion” is received. Court personnel must reroute all requests expeditiously.

VI. Conclusion

If you have questions about the purpose and functioning of EOIR’s Asylum EAD Clock, or the guidelines for providing information about the clock and responding to clock-related requests, please contact your supervisor.²⁶

²⁶ This memorandum is not intended to, does not, and may not be relied up on to, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States; its departments, agencies, or entities; its officers, employees, or agents; or any other person. Immigration judges and appellate immigration judges must always exercise their independent judgment and discretion in adjudicating cases, consistent with the law. See 8 C.F.R. §§ 1003.1(d)(1)(ii), 1003.10(b).