

ABT Claim Form

As part of a settlement of the class action lawsuit, *ABT, et al., v. U.S. Citizenship and Immigration Services, et al.*, 11-cv-02108 (W.D. Wash.), U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR) have agreed to change certain procedures that will affect the eligibility of some asylum applicants for employment authorization documents (EAD). A full description of these changes can be found in the *ABT* Settlement Agreement. A copy of the Settlement Agreement can be found at any of the following websites: www.nwirp.org, www.americanimmigrationcouncil.org, www.mlri.org, www.ghp-law.net, www.uscis.gov, www.usdoj.gov/eoir.

This claim form is for individual *ABT* class members who believe that they have been denied the relief afforded under Section III of the *ABT* Settlement Agreement, and who are entitled to review under Section II.C.11.b. of the *ABT* Settlement Agreement (“Individual *ABT* Claim Review”). This form may *not* be used to seek review of any other matter, including but not limited to:

- **Appeal the denial of an asylum application.**
- **Appeal the denial of an EAD filed by an asylum applicant in a case not covered by the *ABT* Settlement Agreement.**

Please read the instructions carefully to see if you fit within the *ABT* class and have a claim that may be raised through this process.

INSTRUCTIONS:

Please complete the applicable section(s) of the *ABT* Claim Form if you believe you are a Class Member in *ABT* and you believe you were denied relief under Section III of the *ABT* Settlement Agreement.

Two agencies are involved in this lawsuit. EOIR will review any claim that is submitted in Section I of this form. USCIS will review any claim that is submitted in Sections II or III of the form. Each section has to do with a different type of claim under the Settlement Agreement. Complete only the section(s) of the form that relates to your claim. Answer all questions to the best of your ability. When finished, please sign and date the section(s) of the form that you completed. Staple the section(s) of the form to the top of any attachments. Forward the section(s) of the completed form, with any attachments, to USCIS or EOIR, according to the instructions listed at the end of the relevant section(s). You must only submit the section(s) of the form that you complete.

In the *ABT* Claim Form, the following terms apply:

- “Asylum Application” refers to the Form I-589, *Application for Asylum and Withholding of Removal*.
- “EAD Application” refers to the Form I-765, *Application for Employment Authorization*.

The three sections of the *ABT* Claim Form relate to the following claims:

Section I. Use this section for either or both of two types of claims before EOIR.

The first EOIR claim relates to “lodging” an asylum application with a clerk at the immigration court window. Under the Settlement Agreement, lodging occurs before an asylum application is filed with the immigration judge at a hearing. Lodging is where the asylum applicant gives the immigration court clerk a complete asylum application at the immigration court window, and the clerk stamps the application “lodged not filed” and returns the stamped copy to the applicant. When the applicant is eligible to apply for employment authorization, and submits a copy of the lodged asylum application stamped “lodged not filed” with the application for employment authorization, USCIS then uses the date on which the asylum application was lodged to calculate the time accrued toward employment authorization eligibility.

The “lodging” claim is that the clerk at the immigration court window failed to either: 1) stamp an applicant’s complete asylum application “lodged not filed,” or 2) after properly stamping an applicant’s complete asylum application as “lodged not filed,” return the stamped application to the applicant.

To submit this claim, an asylum applicant must:

- be in removal proceedings;
- have not filed an asylum application with USCIS;
- have lodged or attempted to lodge a complete asylum application with the immigration court clerk;
- have done this at a time other than at a hearing before an immigration judge; and either
 - have had the clerk refuse to stamp the application “lodged not filed”; or
 - have had the clerk refuse to provide the applicant with the asylum application stamped “lodged not filed.”

The second EOIR claim is that EOIR did not make a notice containing information about employment authorization for individuals with pending asylum applications (“Notice”) available to the asylum applicant. Under the settlement agreement, EOIR has agreed to provide this Notice to an applicant who lodges an application with the court clerk and/or when an applicant files an asylum application with the immigration judge. EOIR also has agreed to make the Notice available at all immigration court hearings.

To submit this claim, an asylum applicant must:

- be in removal proceedings;
- be a member of one of the Sub-Classes as defined on pages three (3) and four (4) of the Settlement Agreement; and either
 - not have been provided the Notice when the applicant lodged his or her complete asylum application with the immigration court clerk or when the applicant filed his or her asylum application with the immigration judge at a hearing; or

- not have had the Notice made available at a hearing before an immigration judge.

Section II. This section concerns two types of denials of EAD applications by USCIS.

The first EAD-related claim is that USCIS denied an EAD application because USCIS did not use the date on which the asylum applicant lodged a complete asylum application with the immigration court clerk in determining EAD eligibility.

To submit these claims, an asylum applicant must:

- be in removal proceedings;
- have submitted an EAD application to USCIS, along with a copy of a complete asylum application, stamped “lodged not filed” by the immigration court clerk; and
- have had USCIS deny the EAD application because, in determining EAD eligibility, USCIS did not use the date on which the asylum applicant lodged a complete asylum application with the immigration court clerk.

The second EAD-related claim is that, in cases where the BIA remanded an applicant’s case for adjudication of an asylum claim to an immigration judge, the asylum applicant’s EAD application was denied because USCIS did not credit the time from the initial immigration judge denial to the date of the BIA remand order in determining EAD eligibility.

To submit these claims, an asylum applicant must:

- be in removal proceedings;
- have submitted an EAD application to USCIS, along with a copy of the complete BIA order remanding the applicant’s case to an immigration judge for adjudication of an asylum claim; and
- have had USCIS deny the EAD application because, in determining EAD eligibility, USCIS did not credit the time from the initial immigration judge denial of the applicant’s asylum application to the date of the BIA remand order.

Section III. This section involves two types of claims related to the USCIS Asylum Division.

The first Asylum Division claim is that USCIS failed to take certain steps that it agreed to after an asylum applicant misses an interview with a USCIS Asylum Office. These steps ensure that the applicant may seek to reschedule an interview before the applicant’s case is referred to an immigration judge for removal proceedings, if appropriate. In cases that have been referred, these steps also ensure that the applicant has an opportunity to demonstrate that his or her failure to appear for the asylum interview was the result of “exceptional circumstances.”

To submit these claims, an asylum applicant must:

- have filed an asylum application with USCIS;
- have missed his or her scheduled asylum interview with USCIS; and
- *one* of the following must have occurred:

- USCIS did not mail a failure to appear warning letter to the asylum applicant, at the last address provided to USCIS by the asylum applicant, after he or she failed to appear at an asylum interview;
- the asylum applicant was not afforded 45 days after a missed interview before his or her case was referred to an immigration judge;
- in cases where the asylum applicant missed an asylum interview and did not reschedule that interview within 45 days, the applicant did not receive a referral notice for failure to appear with the charging documents referring the asylum application to an immigration judge;
- following referral of the asylum application to an immigration judge, the asylum applicant requested that USCIS make a determination as to whether he or she established exceptional circumstances for missing the asylum interview with an asylum office, and USCIS failed to issue a determination letter to the applicant and/or representative of record with notification of the determination to U.S. Immigration and Customs Enforcement's Office of the Principal Legal Advisor ("ICE OPLA"); or
- following a USCIS determination that exceptional circumstances existed for missing the asylum interview, and after the immigration proceedings were dismissed by an immigration judge and the USCIS Asylum Office reopened the asylum application, USCIS did not restart the time period for determining asylum adjudication and employment authorization eligibility on the date the applicant appeared for the rescheduled interview with the asylum office.

The second Asylum Division claim is that USCIS did not provide a notice containing information about employment authorization for individuals with pending asylum applications ("Notice") to the asylum applicant when it referred his or her case to the immigration court.

To submit this claim, an applicant must:

- be a member of one of the Sub-Classes as defined on pages three (3) and four (4) of the Settlement Agreement;
- have filed an asylum application with USCIS; and
- have had his or her application referred to an immigration judge by USCIS; and
- have not been provided the Notice by USCIS when USCIS referred his or her asylum application to an immigration judge.

SECTION I – CLAIMS BEFORE EOIR

This section should be completed for claims that pertain to: (1) lodging or the attempt to lodge an asylum application with an immigration court clerk at a time other than an immigration hearing; and/or (2) receipt of the Notice regarding employment authorization for individuals with pending asylum applications.

Name:

Last

First

Middle

Date of Birth:

(MM/DD/YYYY)

A Number:

Claim regarding the lodging of an asylum application with the immigration court clerk:

- I have been placed in removal proceedings;
- I have not filed an asylum application with USCIS;

AND one of the following applies to me:

- I lodged or attempted to lodge a complete asylum application at the immigration court clerk's window, and:
 - The clerk refused to stamp my application "lodged not filed"; or
 - The clerk refused to provide me with my asylum application stamped "lodged not filed."

Claim regarding denial of Notice:

- I believe that I am a member of one or more of the following Subclasses as defined on pages three (3) and four (4) of the *ABT* Settlement Agreement (CHECK ALL THAT APPLY):
 - Hearing Subclass; and/or
 - Prolonged Tolling Subclass; and/or
 - Missed Asylum Interview Subclass; and/or
 - Remand Subclass;

AND the following apply to me:

- I was not provided with a notice containing information about employment authorization for individuals with pending asylum applications when I lodged my asylum application with the immigration court clerk.

SECTION I – CLAIMS BEFORE EOIR (CONT.)

AND/OR

- After lodging or filing an asylum application with the immigration court, a notice containing information about employment authorization for individuals with pending asylum applications was not available at a hearing before the immigration judge.

On a SEPARATE SHEET OF PAPER, please describe the facts supporting your claim. Please be specific and detailed so that EOIR may investigate and respond.

PLEASE SUBMIT copies of the following documents along with your claim worksheet:

- Your Form I-862, *Notice to Appear*, or Form I-863, *Notice of Referral*;
- For lodging claims, your complete asylum application that you attempted to lodge with the clerk; and
- Any other documents or information you believe support your claim.

Please note: you may not use the *ABT* Claim Review to challenge:

- Whether an immigration judge made the reason(s) for the case adjournment clear on the record; or
- For non-detained cases, whether the immigration judge offered you an expedited hearing date that was a minimum of forty-five (45) days from the last master calendar hearing.

CERTIFICATION

I certify that the above statements are true and correct to the best of my knowledge. I authorize the release of any information from my records that the Department of Homeland Security or the Executive Office for Immigration Review requires to verify my claim under the *ABT* Settlement Agreement.

Signature

Date

Please submit your signed *ABT* Claim Form regarding denial of Section I relief, with all requested documents and attachments in your possession, to EOIR at the following address:

**Executive Office for Immigration Review
Office of General Counsel
ABT Claim Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 20530**

SECTION II – CLAIMS BEFORE USCIS; EAD DENIALS

This section should be completed for either of two types of claims regarding EAD denials: (1) cases in which an asylum applicant claims that USCIS did not use the date on which the asylum applicant lodged a complete asylum application with the immigration court in determining EAD eligibility; and/or (2) cases in which the BIA remanded for adjudication of an asylum claim, and in which an asylum applicant alleges that USCIS did not credit the time from the initial immigration judge denial to the date of the BIA remand order in determining EAD eligibility.

Name:

_____ Last

_____ First

_____ Middle

Date of Birth:

_____ (MM/DD/YYYY)

A Number: _____

Claim relating to EAD denials involving an asylum application that was lodged with the immigration court clerk:

- I was issued a Form I-862, *Notice to Appear*, or a Form I-863, *Notice of Referral*, to appear before an immigration judge;
- I lodged a complete asylum application at the immigration court clerk's window;
- I filed an EAD application with USCIS based on my status as an asylum applicant;
- My EAD application was denied by USCIS; and
- I believe that USCIS did not use the date on which I lodged my complete asylum application with the immigration court in determining my eligibility for employment authorization.

Claims relating to EAD denials where the BIA remanded an applicant's case to an immigration judge for adjudication of an asylum claim:

- I filed an asylum application with USCIS and/or EOIR;
- My asylum application was denied by an immigration Judge and I appealed that denial;
- As a result of my appeal, the BIA remanded my asylum claim back to an immigration judge, either after review of the initial immigration judge decision or following a remand from a circuit court of appeals;
- Following the remand, I filed an EAD application with USCIS;

SECTION II – CLAIMS BEFORE USCIS; EAD DENIALS (CONT.)

- USCIS denied my EAD application; and
- I believe that, in determining my eligibility for employment authorization, USCIS did not credit the time from the initial immigration judge denial to the date of the BIA remand order.

On a SEPARATE SHEET OF PAPER, please describe the facts supporting your claim. Please be specific and detailed so that USCIS may investigate and respond.

PLEASE SUBMIT copies of the following documents along with your claim form:

Claim relating to EAD denials involving an asylum application that was lodged with the immigration court clerk:

- Your Form I-862, *Notice to Appear*, or Form I-863, *Notice of Referral*;
- The complete asylum application that you lodged with an immigration court clerk stamped “lodged not filed;”
- The EAD application you filed with USCIS, or if this is unavailable, other proof that you filed an EAD application with USCIS;
- USCIS’s denial of your EAD application, or if this is unavailable, other proof that USCIS denied your EAD application; and
- Any other documents or information you believe support your claim.

Claims relating to EAD denials involving an asylum application that was remanded by the BIA to an immigration judge:

- Your pending asylum application;
- The BIA’s order remanding your case to an immigration judge for adjudication of an asylum claim;
- The EAD application you filed with USCIS following the BIA’s remand;
- USCIS’s denial of your EAD application, or, if this is unavailable, other proof that USCIS denied your EAD application; and
- Any other documents or information you believe support your claim.

CERTIFICATION

I certify that the above statements are true and correct to the best of my knowledge. I authorize the release of any information from my records that the Department of Homeland Security or the Executive Office for Immigration Review requires to verify my claim under the *ABT* Settlement Agreement.

Signature

Date

SECTION II – CLAIMS BEFORE USCIS; EAD DENIALS (CONT.)

Please submit your signed ABT Claim Form regarding denial of Section II relief, with all requested documents and attachments in your possession, to the USCIS Nebraska Service Center at the following address:

DHS USCIS - Nebraska Service Center
P.O. Box 87526
Attn: ABT Claim Review
Lincoln, NE 68501

SECTION III – CLAIMS BEFORE USCIS; MISSED INTERVIEW AND NOTICE
(CONT.)

- Following a USCIS determination that exceptional circumstances existed for missing my asylum interview, my immigration proceedings were dismissed by an immigration judge and the USCIS Asylum Office reopened my asylum case. USCIS then did not restart the time period for determining asylum adjudication and employment authorization eligibility on the date I appeared for my rescheduled interview with the Asylum Office.

Claim regarding denial of Notice:

- I believe I am a member of one or more of the following Subclasses as defined on pages three (3) and four (4) of the *ABT* Settlement Agreement; and (CHECK ALL THAT APPLY):
- Hearing Subclass; and/or
 - Prolonged Tolling Subclass; and/or
 - Missed Asylum Interview Subclass; and/or
 - Remand Subclass.

AND the following apply to me:

- I filed an asylum application with USCIS;
- USCIS issued a decision referring my asylum application to an immigration judge; and
- USCIS did not provide a notice containing information about employment authorization for individuals with pending asylum applications to me upon referral.

On a SEPARATE SHEET OF PAPER, please describe the facts supporting your claim. Please be specific and detailed so that EOIR may investigate and respond.

PLEASE SUBMIT copies of the following documents along with your claim form:

- Your Form I-862, *Notice to Appear*, or Form I-863, *Notice of Referral*;
- Your pending asylum application; and
- Any other documents or information you believe support your claim.

SECTION III – CLAIMS BEFORE USCIS; MISSED INTERVIEW AND NOTICE
(CONT.)

CERTIFICATION:

I certify that the above statements are true and correct to the best of my knowledge. I authorize the release of any information from my records that the Department of Homeland Security or the Executive Office for Immigration Review requires to verify my claim under the *ABT* Settlement Agreement.

Signature

Date

Please submit your signed *ABT* Claim Form regarding denial of Section III relief, with all requested documents and attachments in your possession, to the USCIS Asylum Office where you missed your asylum interview, at one of the following addresses:

USCIS Arlington Asylum Office
Attn: ABT Claim Review
1525 Wilson Blvd., Suite 300
Mailstop 2500
Arlington, VA 20598-2500

USCIS Miami Asylum Office
Attn: ABT Claim Review
99 S.E. 5th Street
Miami, FL 33131-1600

USCIS Chicago Asylum Office
Attn: ABT Claim Review
181 W. Madison, Suite 3000
Chicago, IL 60602

USCIS Newark Asylum Office
Attn: ABT Claim Review
1200 Wall Street West, Fourth Floor
Lyndhurst, NJ 07071

USCIS Houston Asylum Office
Attn: ABT Claim Review
P.O. Box 670626
Houston, TX 77267-0626

USCIS New York Asylum Office
Attn: ABT Claim Review
One Cross Island Plaza, 3rd Floor
133-33 Brookville Blvd
Rosedale, NY 11422

USCIS Los Angeles Asylum Office
Attn: ABT Claim Review
P.O. Box 65015
Anaheim, CA 92815-5015

USCIS San Francisco Asylum Office
Attn: ABT Claim Review
P.O. Box 77530
San Francisco, CA 94107-0430