

**The Asylum Clock
and 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 for the current filing instructions, location, and fee prior to preparing any immigration applications.

Q1. 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. The asylum clock is an electronic tracking system managed by the asylum office and the Executive Office for Immigration Review (EOIR), which tracks how many days have elapsed since an asylum applicant filed a complete asylum application (form I-589) with the asylum office or the immigration court. It can be stopped and started depending on what happens in the course of the application period. An asylum applicant becomes eligible to file for an Employment Authorization Document (EAD) 150 days after filing a “complete” asylum application and can receive an EAD 180 days after filing a “complete” asylum application.

Q2. What is the asylum clock settlement?

- A. *B.H., et al. v. USCIS, et al.*, (also known as the ABT asylum clock lawsuit) is a lawsuit that challenged the way that U.S. Citizenship and Immigration Services (“USCIS”) and EOIR interpreted rules regarding eligibility for employment authorization during the asylum application process. The case was filed in district court in Seattle, Washington, and it resulted in a settlement that addresses five issues. Prior to the settlement:
- 1) Asylum applications for individuals in removal proceedings were not considered “filed” for EAD purposes unless they were filed at a hearing with the immigration judge.
 - 2) Attorneys and pro se applicants who declined an expedited merits hearing stopped the asylum clock from accruing time. However, expedited hearing dates often did not allow attorneys or pro se applicants adequate time to prepare for the merits hearing.
 - 3) Cases that were appealed to the Board of Immigration Appeals (BIA) and subsequently remanded to the immigration judge were not eligible to have the asylum clock started or re-started.
 - 4) There was not a clear procedure to recapture a missed asylum office interview at the asylum office.
 - 5) Asylum applicants were not provided notice of the way in which the asylum clock worked and the actions that could result in stopping the clock.

The settlement addresses each of these issues.

Q3. Why does it matter when an asylum application was considered “filed”?

- A. The date an asylum application was “filed” is important for two reasons: 1) it is the date the asylum clock starts running and 2) it determines whether or not the asylum applicant met the one-year

filing deadline for asylum eligibility (*i.e.*, filed the asylum application within one year of the applicant's last date of entry into the United States). For an affirmative (asylum office) case, an asylum application is deemed "filed" when it is received by USCIS. For a defensive (immigration court) case, EOIR policy states that an asylum application will not be considered "filed" until it is received by an immigration judge in open court.

Due to court backlogs and hearing delays, asylum applicants in removal proceedings often have to wait long periods of time for a hearing with the immigration court, which impacts their ability to file for asylum within the one-year deadline period and start the clock for their employment authorization eligibility. For example, an individual might be set for an initial master calendar hearing more than one year after the individual was placed in removal proceedings, and during that period the individual could not "file" the asylum application or start the asylum clock.

Q4. 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 EAD when she has accrued 150 days on her asylum clock and USCIS can grant an EAD 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.

Q5. 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 asylum 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 rescheduled interview.
 2. Your client misses her fingerprint appointment.
 3. Your client fails to appear for the asylum interview. However, if your client establishes an exception 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. Please see the answer to question #6 below for more information.
 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.

Q6. What happens to the clock if an applicant misses her asylum interview?

- A. After an affirmative asylum applicant misses her scheduled interview, the asylum office will mail a "failure to appear" warning letter, advising the applicant of the procedural steps the applicant must take within 45 days to establish "good cause" for missing the interview. If the applicant responds within 45 days and demonstrates "good cause," the asylum office will treat the response as a request to reschedule the interview and the clock will restart on the date of the rescheduled interview.

If the applicant does not respond within 45 days or fails to establish good cause, USCIS will send the applicant a "Referral Notice for Failure to Appear" and charging documents, and will refer the applicant to immigration court. The notice will also explain the procedures for establishing "exceptional circumstances" for missing the interview. If the applicant responds and establishes

that exceptional circumstances exist, the asylum office will issue a determination letter to the applicant and her attorney of record and provide notice to the Immigration and Customs Enforcement (ICE) Office of Chief Counsel of the determination. The applicant can then request that ICE join in a joint motion to terminate immigration proceedings and if the immigration judge grants the motion, the asylum office will reopen the asylum application. The asylum clock will then restart on the date the applicant appears for a rescheduled interview with the asylum office.

Q7. 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. Please see the answer to question #6 above for more information about the impact of missing an asylum office interview.

Q8. The asylum office referred my client’s asylum case 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 to find an attorney, declining an expedited hearing, or requesting a change of venue are examples of such delays that will stop 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 (Operating Policies and Procedures Memorandum) 13-02.

Q9. What do I do if I want to file my asylum application before my next hearing date to meet my one-year filing deadline or start my asylum clock?

- A. Pursuant to the asylum clock settlement, asylum applicants in removal proceedings may now “lodge” their applications with the immigration court in advance of the hearing. The application will still need to be “filed” at a subsequent hearing with an immigration judge; however, the asylum clock will begin to run on the “lodged” date. The settlement does not provide a mechanism to file an asylum application with the court prior to a hearing in order to meet the one-year deadline, but there are certain steps attorneys should take when “lodging” the application to establish that they attempted to meet the one-year deadline.

Q10. How do I lodge my application?

- A. The Immigration Court Practice Manual, [Chapter 4.15\(l\)](#), provides the instructions for lodging an asylum application with the immigration court. To lodge an application, you should follow the following steps:
1. Prepare the original form I-589 and a cover letter stating that the form is being submitted for the purposes of lodging. Take the original I-589 and cover letter to the window at the immigration court and “lodge” them in person.
 2. The court clerk will stamp “lodged but not filed” and note in their database that the application has been lodged. The court will not keep a copy and will return the original stamped application to you, so it is important that you retain the stamped I-589 for your records.
 3. Although certificate of service is not required when lodging an asylum application, NIJC recommends serving a copy of the lodged application on ICE and doing so electronically so that you have confirmation of receipt. Serve these documents electronically

to Chicaooocfillings@ice.dhs.gov. Please see the [Chicago Office of the Chief Counsel E-Service Fact Sheet](https://www.immigrantjustice.org/legal-materials) at <https://www.immigrantjustice.org/legal-materials> for more instructions.

4. If your client's next hearing will not occur until after the client's one-year filing deadline for asylum, you should also take an addition step to demonstrate that you have attempted to meet the one-year deadline.
 - a. If there is significant time until your client's one-year deadline and you are prepared to move forward with your client's case, you should file a motion to advance your client's hearing to a date before the one-year filing deadline.¹
 - b. If there is little time before your client's one-year deadline or if the judge has not responded to your motion to advance and the one-year deadline is approaching, you should attempt to file your client's original I-589 and a "motion for leave to file form I-589 with the court clerk" at the court window.² Be sure to bring a copy of the motion and I-589 so that you can get it date-stamped and keep it in your records.
 - c. Most likely, the clerk will keep the motion, but will separate the I-589 and return it to you (and stamp it as lodged, if you have not previously lodged the application).
 - d. Once you have filed the I-589 and motion for leave with the clerk, be sure to serve a copy on ICE electronically.

Q11. Will lodging an asylum application satisfy the one-year filing deadline?

- A. Technically no. The Court's OPPM states, "The lodged date is not the filing date and a lodged asylum application is not considered filed." Despite this language, immigration judges can consider the legal effect of the lodging date on the one-year deadline. See OPPM 13-3 at 6. NIJC believes that if an attorney is not able to secure a hearing date prior to the applicant's one-year deadline, but the attorney lodges the I-589 and also submits a "motion for leave to file form I-589 with the court clerk" prior to the applicant's one-year deadline, the immigration judge will find that the one-year deadline was met.

Q12. Does the asylum clock settlement address issues related to the scheduling of merits hearings?

- A. Yes. Before the settlement, many applicants would be forced to decline an expedited merits hearing because the expedited date offered (often one or two weeks after a master calendar hearing) did not provide enough time to prepare the asylum case, and as a result applicants were forced to accept non-expedited merits hearing dates that were often more than two years away. By declining an expedited hearing, the applicant caused the asylum clock to stop, which meant that the applicant could not apply for work authorization while waiting years for the merits hearing.

Now, pursuant to the settlement, immigration judges must offer eligible, non-detained asylum applicants an expedited hearing date that is at least 45 days after the master calendar hearing. Note, however, that if your client did not file (or lodge) an asylum application within one year of her date of entry, a judge may determine that your client is not "eligible" for asylum and thus not eligible for an expedited hearing date. If you are an NIJC *pro bono* attorney and your case involves a one-year deadline issue, please contact NIJC in advance of the master calendar hearing to prepare to address this issue in court.

¹ A sample motion to advance can be found in NIJC's motions bank at <https://www.immigrantjustice.org/attorney-resources-registered-users>.

² A sample motion for leave to file form I-589 can be found in NIJC's motions bank at <https://www.immigrantjustice.org/attorney-resources-registered-users>.

Q13. How can I find out how many days are on my client's asylum clock?

- A. It depends on where your client is in the asylum process.
- If your client's case is pending before the asylum office, you will need to count the number of days that have passed since the date the I-589 was received by USCIS as noted on the I-589 receipt notice.
 - If your client is in removal proceedings and has lodged her application with the court, but the application has not yet been received as filed in open court, you will need to count the number of days from the lodged date stamped onto the I-589.
 - If your client is in removal proceedings and her application has been accepted as filed in open court, you can call the EOIR Automated Information Line at 1-800-898-7180 and choose option #2.

Q14. 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 their cases were continued 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 judge will not restart the clock before the next hearing. If you believe the clock was stopped in error, please see the answer to question #15 below for information about adjusting the clock.

Q15. I think that the immigration judge improperly stopped my client's clock. How can I correct the error and get the clock restarted?

- A. Note that as a result of the asylum clock settlement, immigration judges must state on the record their reason(s) for stopping the clock. If your client has an upcoming master calendar hearing, you should 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.³ 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. See OPPM 13-02. If you are an NIJC *pro bono* attorney and you believe that you need to contact the ACIJ about your NIJC client's clock, please contact NIJC.

Q16. My client's clock has accrued 150 days. How do I file for employment authorization for my client?

- A. To obtain employment authorization, you must file Form I-765, Application for Employment Authorization, and supporting documents with USCIS. This form is available on the USCIS website, 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.

Please note that *pro bono* attorneys should file the employment authorization application on behalf

³ A sample letter to the court administrator regarding an asylum clock error can be found in NIJC's motions bank at <https://www.immigrantjustice.org/attorney-resources-registered-users>.

of their clients and include an appearance form; represented individuals should not file this form on their own.

Q17. 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.

Q18. 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.

Q19. 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 60-90 days from the filing date for an applicant to receive her EAD.

Q20. 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.

Q21. 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.

Q22. 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 (BIA), or a U.S. Court of Appeals. The renewal application should be filed at least 90 days, but no more than 120 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.

Q23. The judge denied my client's applications for asylum. I am appealing the immigration judge's decision to the BIA. 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 judge's denial. If you believe an error occurred with the asylum clock prior to the immigration judge's decision, you can still address those issues while the case is pending at the BIA. Please see OPPM 13-02 and the answer to question #15 above for more information about addressing clock errors.

Q24. The BIA just remanded my client's case back to the immigration judge. Will my client's clock start to run again?

- A. In the past, the asylum clock permanently stopped on the date the immigration judge issued a decision and would not be restart upon remand. Now, pursuant to the asylum clock settlement, the asylum clock will restart on the date the BIA remands a case back to the immigration court if the case was remanded for consideration of the asylum claim (as opposed to withholding of removal or Convention Against Torture relief). On the date of the remand, the clock will be credited with the number of days that have passed since the initial immigration judge decision.

Q25. How do I demonstrate to that the clock has been restarted because of a BIA remand when applying for work authorization?

- A. When filing the application for a work permit (form I-765), attach a copy of the BIA order remanding the case to the immigration judge.

Q26. Does the clock also restart when an asylum applicant's case is remanded from the court of appeals to the BIA?

- A. No. It only starts when remanded from the BIA to the immigration judge.

Q27. What kind of information must the immigration court and USCIS now provide an asylum applicant about the asylum clock?

- A. The settlement made many changes to the information available to the asylum applicant and the ways in which the applicant can appeal decisions made regarding the asylum clock. The immigration court must now provide written notice to asylum applicants about the asylum clock and immigration judges must state on the record their reason(s) for stopping the asylum clock. USCIS must revise their denial letters to explain why they've denied an EAD application. Both USCIS and the immigration court will provide contact information for certain types of follow-up inquiries related to the asylum clock.

Q28. What recourse does an applicant have if she believes the terms of the settlement have been improperly applied in her case?

- A. If the asylum clock or EAD decision occurred after December 3, 2013 (the date the settlement went into effect), then an administrative review process exists. Under this process, you must file a claim form (available at www.uscis.gov) within 180 days of the EAD denial. The claim form should be filed with the appropriate agency having jurisdiction over your case (EOIR, the Nebraska Service Center, or the asylum office). If you are an NIJC *pro bono* attorney, please contact NIJC before pursuing a claim under the settlement agreement.

Q29. Where can I find the law and regulations on obtaining an EAD?

- A. The laws and regulations regarding employment authorization for asylum applicants can be found in INA § 208(d)(2) and 8 C.F.R. §§ 208.7 and 274a.12(c)(8).

Q30. Where can I find more information about the asylum clock settlement and EOIR and USCIS guidance?

A. [The Immigration Court Practice Manual](#)

Memorandum from the Executive Office for Immigration Review, Operating Policies and Procedures Memorandum 13-03: [Guidelines for Implementation of the ABT Settlement Agreement](#) (Dec. 2, 2013)

Memorandum from the Executive Office for Immigration Review, [Operating Policies and Procedures Memorandum 13-02: The Asylum Clock](#) (Dec. 2, 2013)

USCIS policy memorandum, [Issuance of Revised Procedures Regarding Failure to Appear and Reschedule Requests](#) (Oct. 17, 2013)

USCIS policy memorandum, [Application of the 'Exceptional Circumstances' Standard in Cases Where an Applicant has Failed to Appear for an Asylum Interview](#) (Oct. 17, 2013)

[B.H., et al. v. USCIS asylum clock complaint and settlement documents](#)

If you have any additional questions, please contact Carolina Ramazzina Van Moorsel at 312-660-1307 or cramazzinavanmoorsel@heartlandalliance.org.

Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education. For more information, visit www.immigrantjustice.org.