

The Honorable James L. Robart
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.A., *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, *et al.*,¹

Defendants.

Case No. 2:15-cv-00813-JLR

**Defendants’ Motion to Supplement the
Administrative Record**

**Note on Motion Calendar:
December 22, 2017**

Pursuant to the parties’ agreement stated in the Joint Status Report and Discovery Plan, ECF No. 101, and the Court’s Order, ECF No. 102, Defendants respectfully move this Court to supplement the administrative records (“AR”) of all Plaintiffs and class members with the documents described below and attached hereto.

I. Legal Background

In cases challenging agency action or delay under the Administrative Procedure Act (“APA”),² the Court “shall review the whole record or those parts of it cited by a party”

¹ On July 31, 2017, Elaine C. Duke became Acting Secretary of the U.S. Department of Homeland Security, automatically substituting for John F. Kelly, former Secretary, as a party in accordance with Federal Rule of Civil Procedure 25(d). On October 8, 2017, L. Francis Cissna was sworn in as Director of U.S. Citizenship and Immigration Services, automatically substituting for James McCament, former Acting Director, as a party in accordance with Federal Rule of Civil Procedure 25(d).

² Claims seeking relief under section 706(1) of the APA and under the Mandamus Act are coextensive. *See Indep. Mining Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997)

1 5 U.S.C. § 706. The “whole record” connotes the administrative record. *See Fla. Power & Light*
 2 *Co. v. Lorion*, 470 U.S. 729, 743-44 (1985).

3 The Ninth Circuit has recognized certain circumstances in which an agency may
 4 supplement an administrative record. *See Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th
 5 Cir. 2005) (describing the narrow exceptions which permit supplementation). The “limited
 6 exceptions operate to identify and plug holes in the administrative record.” *Id.* Where the
 7 lawsuit is a challenge to agency inaction, “review is not limited to the record as it existed at any
 8 single point in time, because there is no final agency action to demarcate the limits of the
 9 record.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 560 (9th Cir. 2000) (citing
 10 *Independence Mining Co., Inc. v. Babbitt*, 105 F.3d 502, 511 (9th Cir. 1997)). Instead, courts
 11 have permitted agencies to supplement the administrative record to explain the inaction or delay.
 12 *See San Francisco BayKeeper v. Whitman*, 297 F.3d 877, 886 (9th Cir. 2002) (“[W]hen a court is
 13 asked to review agency inaction before the agency has made a final decision, there is often no
 14 official statement of the agency's justification for its actions or inactions.”). This
 15 supplementation falls within the limited exceptions which permit supplementation to “plug holes
 16 in the administrative record” and explain the basis for the agency’s inaction or delay. *Lands*
 17 *Council*, 395 F.3d at 1030; *see also Independence Mining Co., Inc.*, 105 F.3d at 511-12; *Seattle*
 18 *Audubon Society v. Norton*, No. C05-1835, 2006 WL 1518895, at *3 (W.D. Wash. May 25,
 19 2006) (“Indeed, it seems clear that in cases where plaintiff complains of a failure to act, there is a
 20 greater chance that some extraneous piece of information might be necessary to shed light on the
 21 agency's inaction-there simply are more holes in the administrative record for the parties to
 22 identify and plug. . . . This supplementation, however, is best pursued on a case-by-case basis,
 23 using the administrative record as the presumptive limitation of scope.”); *City of Santa Clarita v.*
 24 *U.S. Dep't of Interior*, No. CV 02-0697 DT(FMOX), 2005 WL 2972987, at *2 (C.D. Cal. Oct.
 25 31, 2005).

26 **II. Procedural History**

27 On August 25, 2015, and April 18, 2016, Defendants filed the ARs associated with the
 28 individual Plaintiffs under seal. *See* ECF Nos. 38, 67. At the time Defendants filed each AR,

1 U.S. Citizenship and Immigration Services (“USCIS”) had adjudicated the employment
2 authorization document (“EAD”) applications. A.A. A.R. at 1; W.H. A.R. at 3, Machic Yac
3 A.R. at 1. The ARs contained the records relied on by USCIS in adjudicating each application.
4 ECF Nos. 38, 67.

5 On July 18, 2017, the Court certified a class consisting of “[n]oncitizens who have filed
6 or will file applications for employment authorization that were not or will not be adjudicated
7 within . . . 30 days . . . and who have not or will not be granted interim employment
8 authorization. [This class] consists of only those applicants for whom 30 days has accrued or
9 will accrue under the applicable regulations, 8 C.F.R. §§ 103.2(b)(10)(i), 208.7(a)(2), (a)(4).”
10 ECF No. 95 (omissions and second alteration in original). No individualized ARs regarding the
11 class members have been submitted. Instead, Defendants hereby submit the attached documents
12 as the AR for the class members and named Plaintiffs regarding any delay in adjudication of
13 their applications.

14 **III. Argument**

15 In order for the Court to review the administrative record which underlies the alleged
16 “agency action unlawfully withheld or unreasonably delayed,” i.e., the backlog in processing
17 initial EAD applications based on pending asylum applications, Defendants seek to admit the
18 attached documents which are further described below. These documents fall within the narrow
19 exception described above in which an agency is permitted to submit supplemental documents in
20 the administrative record to explain the alleged inaction or delay. *See San Francisco BayKeeper*,
21 297 F.3d at 886. These documents show the various factors and considerations that cause
22 USCIS to be unable to adjudicate all initial asylum-based EAD application within the 30-day
23 regulatory time period.

24 A. PowerPoint: Form I-765, Application for Employment Authorization, (c)(8) Asylum 25 and Withholding of Removal

26 The Form I-765, Application for Employment Authorization, (c)(8) Asylum and
27 Withholding of Removal presentation is attached as Exhibit A. This document describes the
28

1 procedures followed by USCIS adjudicators at the Texas Service Center (TSC) in adjudicating
2 these applications.

3 B. Statistics regarding number of initial EAD applications based on a pending asylum
4 application from FY13 to FY17

5 A spreadsheet showing the number initial EAD applications based on a pending asylum
6 application received by USCIS on a monthly basis is attached as Exhibit B. These data indicate
7 that since October 2012, the number of initial asylum-based EAD applications has increased
8 substantially. In Fiscal Year 2017, USCIS received approximately 261,447 applications,
9 compared the approximately 41,024 applications received in Fiscal Year 2013.

10 C. Statistics regarding results of efforts to bring initial EAD applications based on a
11 pending asylum application into compliance with regulatory deadline

12 A spreadsheet showing the results of concerted effort by USCIS service centers to
13 comply with the 30-day regulatory deadline is attached as Exhibit C. The efforts undertaken to
14 produce this result are described by Mr. Neufeld in his declaration.

15 D. Statistics regarding processing timelines for initial EAD applications based on a
16 pending asylum application

17 A spreadsheet showing the processing times of initial EAD applications based on a
18 pending asylum application, aggregated quarterly, from Fiscal Year 2010 to Fiscal Year 2017 is
19 attached as Exhibit D. These data indicate that while not all applications are adjudicated within
20 30 days, a large percentage of them are adjudicated within 60 days.

21 E. Affirmative Asylum Scheduling Bulletin

22 A printout of the USCIS website regarding the timeline for scheduling interviews for
23 asylum applications filed with USCIS is attached as Exhibit E. This website is available at
24 [https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-](https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin)
25 [bulletin](https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin). This information shows that asylum applicants currently wait between two and four
26 years for an interview. Mr. Neufeld discusses the impact of this fact on EAD applications based
27 on a pending asylum application in his declaration.
28

1 F. Declaration of Donald W. Neufeld

2 Attached as Exhibit F is the Declaration of Donald W. Neufeld. Mr. Neufeld is currently
3 the Associate Director for Service Center Operations at USCIS. In his declaration, Mr. Neufeld
4 describes the circumstances that led USCIS to end the issuance of interim EADs almost
5 completely. Ex. F ¶¶ 4-10. He also explains the considerations made in adjudicating an EAD
6 application, including how background check issues are resolved and how the asylum-clock
7 calculations are dealt with. *Id.* ¶¶ 16-30. Mr. Neufeld discusses the drastic and unprecedented
8 increase in the number of asylum applications filed with both USCIS and the Executive Office
9 for Immigration Review and the corresponding increase in initial EAD applications based on a
10 pending asylum application. *Id.* ¶¶ 31-35. He explains how this increase in applications affects
11 USCIS's ability to adjudicate initial EAD applications based on a pending asylum application
12 within the 30-day regulatory window. *Id.* ¶¶ 36-40. Mr. Neufeld also details the efforts that
13 USCIS has made to attempt to quickly and efficiently adjudicate initial EAD applications based
14 on a pending asylum application in the face of this increasing workload, including recent efforts
15 to eliminate the backlog of initial EAD applications based on a pending asylum application and
16 adjudicate the incoming applications within 30 days. *Id.* ¶¶ 42-55. He further describes how
17 resources were shifted and procedures were altered to try to accomplish this goal and the results
18 of this effort. *Id.* Finally, he explains that due to security and technological changes, complex
19 adjudications, and the increased workload, USCIS is not currently able to adjudicate all initial
20 EAD applications based on a pending asylum application within 30 days, but attempts to do so as
21 an aspirational goal. *Id.* ¶ 59.

22 **IV. Conclusion**

23 Defendants submit each of the documents described above to supplement the
24 administrative record because they explain the basis for the agency's delay in adjudicating some
25 initial asylum-based EAD applications. *See San Francisco BayKeeper*, 297 F.3d at 886.
26 Therefore, the Court should grant Defendants' motion to supplement the administrative record.
27
28

1 DATED: October 20, 2017

Respectfully submitted,

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4 Director

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7 *s/Adrienne Zack*
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CERTIFICATE OF SERVICE

1
2 I HEREBY CERTIFY that on October 20, 2017, I electronically filed the foregoing
3 document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document
4 should automatically be served on all counsel of record via transmission of Notices of Electronic
5 Filing generated by CM/ECF.
6

7
8 /s/ Adrienne Zack
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EXHIBIT A

Form I-765, Application for Employment Authorization

(c)(8) Asylum and Withholding of Removal

September 2017



U.S. Citizenship
and Immigration
Services

Introduction

- Aliens who have filed a pending Application for Asylum and Withholding of Removal (Form I-589) may file an Application for Employment Authorization (Form I-765), provided certain requirements are met.

- Form I-765 may be filed (hard copy) with a designated Lockbox.



Introduction (continued)

- If Form I-765 is approved, the alien is issued an Employment Authorization Document (EAD).
- An EAD is evidence that the holder is authorized to work in the U.S. Applicants for asylum are not authorized to work unless they are specifically granted employment authorization with Form I-765.
- Types of EADs: Form I-688, Form I-688A, Form I-688B, Form I-766, or any successor document issued by USCIS.



General I-765 Filing Requirements

The image shows a portion of a form with three rows of requirements. Each row has a label, a selection box, and a red arrow pointing to the right. The first row is labeled 'Image Data Photograph' with a selection box containing the letter 'Y'. The second row is labeled 'Signature' with a selection box containing the letter 'Y'. The third row is labeled 'Fingerprint' with a selection box containing the letter 'W'.

| | | |
|-----------------------|---|---|
| Image Data Photograph | Y | → |
| Signature | Y | → |
| Fingerprint | W | → |

- Properly completed and signed form.
- Two identical passport style color photographs.
 - “Y” will appear in Claims if a photograph is available in the system.
 - Both signature and fingerprint may be waived “W”.



General I-765 Filing Requirements

- Photo identification in the form of a copy of any prior EAD (front and back) OR, if no prior EAD has been issued, a copy of a federal government issued identity document that clearly shows the facial features of the applicant and the biographical information, such as:
 - a passport showing the alien's picture, name, and date of birth;
 - a birth certificate with photo ID;
 - a visa issued by a foreign consulate; or
 - a National ID document with photo and/or fingerprint.
 - Other types of photo identification may be submitted.
- If the Customer Profile Management System (CPMS) or another system is used to verify ID, the officer should annotate the form "ID Verified in CPMS, by ASC, etc."



Filing an I-589

- The I-589, Application for Asylum and Withholding of Removal, is a multi-use form.
- It can be used to request asylum from a U.S. Citizenship and Immigration Services (USCIS) asylum office. This is known as an affirmative filing.
- It can also be used to request asylum, withholding of removal, and/or withholding under the Convention Against Torture (CAT) from an immigration court. The immigration courts are part of the Department of Justice's Executive Office for Immigration Review, or DOJ-EOIR. If the I-589 is filed for the first time with the court, this is referred to as a defensive filing.



150 Clock Day Requirement

- 8 C.F.R. 208.7(a)(1) states that except for an alien whose Form I-589 has been recommended for approval, or who filed Form I-589 prior to January 4, 1995, Form I-765 shall be submitted no earlier than 150 days after Form I-589 is filed.
- Any I-589 filed 1/4/1995 or later must have 150 clock days before the I-765 is filed.
- An applicant whose Form I-589 has been recommended for approval may file Form I-765 when he or she receives notice of the recommended approval, regardless of clock days.



150 Day Requirement (cont)

- 8 C.F.R. 208.7(a)(1) references Forms I-589 filed on or after January 4, 1995.
- the 150-day period commences upon receipt of a complete Form I-589.
- if Form I-589 is denied within the 150-day period, the alien is not eligible for employment authorization.
- note that the 150-day period is not always a calendar count, as applicant and procedural delays are counted against the clock.



180 Clock Day Requirement

8 C.F.R. 208.7(a)(1) states in part:

- no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the asylum application filed on or after April 1, 1997.
- Any I-589 filed 4/1/97 or later must have 150 clock days for the applicant to be eligible to file Form I-765, and must have 180 {150 + 30} clock days before employment authorization can be approved. The I-589 must also remain pending.



Clock Days and Applicant Delays

8 C.F.R. 208.7(a)(2) also references Forms I-589 filed on or after January 4, 1995.

- the time periods within which the alien may not file Form I-765, and within which USCIS must respond to any such application, and within which Form I-589 must be adjudicated shall begin when the alien has filed a complete Form I-589.
- any delay requested or caused by the alien shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing.



Clock Days and Applicant Delays

- Such time periods shall also be extended by the equivalent of the time between the issuance of a request for evidence and the receipt of the alien's response to such request.



Clock Requirement in Summary

- Any I-589 filed on or after January 4, 1995 must have 150 clock days before the applicant can file Form I-765.
- Any I-589 filed on or after April 1, 1997 must have 180 clock days before the applicant's I-765 may be approved.
- Delays caused by an applicant are not counted toward the 150/180 day clock, so a "clock" day is not strictly a calendar day.
- The I-589 must remain pending.



Clock Summary

| I-589 Filing Date | Clock Days to File I-765 (c)(8) | Clock Days to Approve I-765 (c)(8) | Status of I-589 Application |
|---|---------------------------------|------------------------------------|-----------------------------|
| Before January 4, 1995 | N/A | N/A | Pending |
| January 4, 1995 – March 31, 1997 | 150 days | N/A | Pending |
| April 1, 1997 - Present | 150 days | 180 days | Pending |
| <p>No clock days are required if asylum has been recommended for approval, but not yet granted. Once asylum is granted, the applicant is no longer eligible for (c)(8).</p> | | | |



Withholding of Removal

- 8 C.F.R. 208.3(b) states that an asylum application shall be deemed to constitute at the same time an application for withholding of removal, unless adjudicated in deportation or exclusion proceedings commenced prior to April 1, 1997.
- In such instances, the asylum application shall be deemed to constitute an application for withholding of deportation under Section 243(h) of the Act, as that section existed prior to April 1, 1997.
- Where a determination is made that an applicant is ineligible to apply for asylum under Section 208(a)(2) of the Act, an asylum application shall be construed as an application for withholding of removal.



Withholding of Removal (contd)

- Applicants who file Form I-589 for Withholding of Removal are held to a similar standard as those who file for asylum (see the Clock Summary on Slide 13).
- EOIR does not maintain a clock for withholding only cases (where the applicant did not request asylum), but a clock is still required for EAD purposes, and must be calculated manually by USCIS.



Failures to Appear

8 C.F.R. 208.7(a)(4) states:

- An EAD may not be issued to an alien who fails to appear for a scheduled interview before an asylum officer or a hearing before an immigration judge, unless the alien demonstrates that the failure to appear was the result of exceptional circumstances.
- An applicant whose I-589 is “admin closed-interview no show” by the asylum office is not eligible for employment authorization unless the applicant establishes the exceptional circumstances to the asylum office, and the I-589 is reopened.



Failures to Appear

- An applicant whose I-589 is decided “abandoned” by an immigration judge for failure to appear for a hearing is not eligible for employment unless the applicant establishes the exceptional circumstances to the court, and the I-589 is reopened.



I-589 Appeals

8 C.F.R. 208.7(b) states:

- Employment authorization shall be renewable for the continuous period of time necessary for an asylum officer or immigration judge to decide Form I-589 and, if necessary, for completion of any administrative or judicial review.
- This means that an I-589 is still considered pending while an appeal is pending with the Board of Immigration Appeals (BIA) or with a federal court.
- Clock time will not accrue for an applicant while an appeal is pending.



BIA Appeal Decision System (BADs)

- Full decisions rendered by the BIA are available for viewing through the BIA Appeal Decision System (BADs)
- <https://bads.uscis.dhs.gov/>
- Circuit Court decisions will not appear in BADs until the decisions are returned to the BIA



ABC Settlement Agreement

| | |
|---|--|
| ABC Settlement Agreement (identified as ABC, ABR, ABQ, ABN, ABA, or ABB; ABX means not ABC eligible) | |
| Guatemala | I-589 filed before January 4, 1995 |
| El Salvador | I-589 filed before February 1, 1996 |
| Refer to ABC Chart in VSC (c)(8) SOP | |

- Applicants from El Salvador and Guatemala are eligible for benefits under the American Baptist Churches (ABC) settlement agreement. (ABC v. Thornburgh, 760 F. Supp. 976 (N.D. Cal. 1991))
- Applicants are entitled to an EAD without regard to the merits of the asylum claim.
- Must have an asylum application on file with USCIS or EOIR.



ABC Settlement Agreement

- Applicant must have a pending asylum application on file.
- Applicant must annotate “ABC” on top right corner of Form I-765 to indicate they are applying under the ABC settlement agreement.
- Applicants are required to pay a filing fee
 - Note: Applicants may request fee waiver.



ABC Chart (from VSC SOP)

ABC

Refer to the chart below when CSTA shows an ABC*:

| If.. | And.. | Then... |
|---|--|---|
| CSTA indicates a final decision of "Deny ABC-Interview No-Show" | With service and no referral to EOIR | Deny I-765. |
| | With service, shows referral and case is pending before EOIR | Approve I-765 |
| | No service | See C8 POC. |
| CSTA indicates "Admin Closed-Interview No Show" | EOIR is blank | Approve I-765 |
| EOIR has a record | n/a | Go to <i>Determine Pending Proceedings</i> section. |

*NOTE: ABC, ABR, ABQ, ABZ, ABN, ABB and ABA are all ABC designations.



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ABT Settlement Agreement

- As part of the ABT Settlement, USCIS and EOIR agreed to a number of changes in policies and procedures relating to the 180 day Asylum EAD clock.
- ABT Settlement Agreement became effective for USCIS on December 3, 2013, and impacted all I-765s adjudicated on or after that date.
- Notable changes impacting I-765 (c)(8) adjudication are:
 - Use of the new DOJ-EOIR system in PCQS
 - Lodging of I-589 with the court
 - Asylum remands and continuation of the EAD clock



ABT Settlement - Lodging

- Lodging only applies to defensive I-589 applications lodged (with EOIR) on or after the ABT Settlement implementation date (December 3, 2013).
- Lodged cases can be mailed or filed in person with the court.
- Lodging occurs when an I-589 is stamped “lodged not filed” by an immigration court clerk prior to being filed with the immigration court.
- USCIS will consider the date the application was stamped “lodged not filed” as the start date for purposes of calculating the 180-day asylum EAD clock, unless a stop occurs on the date of lodging.



ABT Settlement - Lodging

- Applicant delays caused on the day of, or after lodging are subtracted from the clock calculation.
- Although the lodging date will be recorded in DOJ-EOIR (PCQS), EOIR will not start counting a clock until the I-589 is actually filed, so USCIS will have to credit the lodging time manually.
- Applicants can file the I-765 with USCIS after they have the requisite (150) clock days after lodging, even if the I-589 has not yet been filed with the court.



ABT Settlement - Remands

- On or after the ABT Settlement implementation date (December 3, 2013), asylum or withholding claims remanded from the BIA to the EOIR give applicants creditable time towards the clock.
- EOIR will not normally restart the clock after a judge denies a case, so a manual count is necessary.
- If the BIA remands the case back to the immigration judge for reconsideration of the asylum or withholding claim, adjudicators must manually credit the applicant's clock with the time from the date the I-589 was denied by the judge to the date of the remand to the immigration court.



ABT Settlement - Remands

- Each day between the IJ denial and remand is counted (no applicant delays are subtracted).
- Additionally, adjudicators must count every day after the date of the BIA remand order until a new decision is made on the I-589, not including any delays caused or requested by the applicant.
- Applicants will not get credit for the remand time unless the case is remanded for the asylum/ withholding claim(s).
- A copy of the remand order is required, as the reason for remand is not captured in DOJ-EOIR.
- BIA remand orders are available through BADS.



Unaccompanied Alien Children- UAC

- The March 31, 2017 Memorandum, Jurisdiction and EAD Clock Procedures for Unaccompanied Alien Children (UACs), serves as guidance for calculating the clock. [EAD Clock Procedures for UACs March 2017](#)
- RAPS (CSTA) screen will reflect “Unaccompanied Minor” at the top, and “PRL” appears in “SPEC GRP:”.
- UAC applicants start in removal proceedings, but are allowed to lodge or file Forms I-589 with USCIS, EOIR, or both.
 - The count starts with the earliest I-589 lodging or filing date.
 - Procedural and applicant delays are counted against the clock.
 - Clock credit only accrues at one venue at a time (the applicant does not get “double” the clock for I-589 applications that were filed and pending simultaneously at both venues).

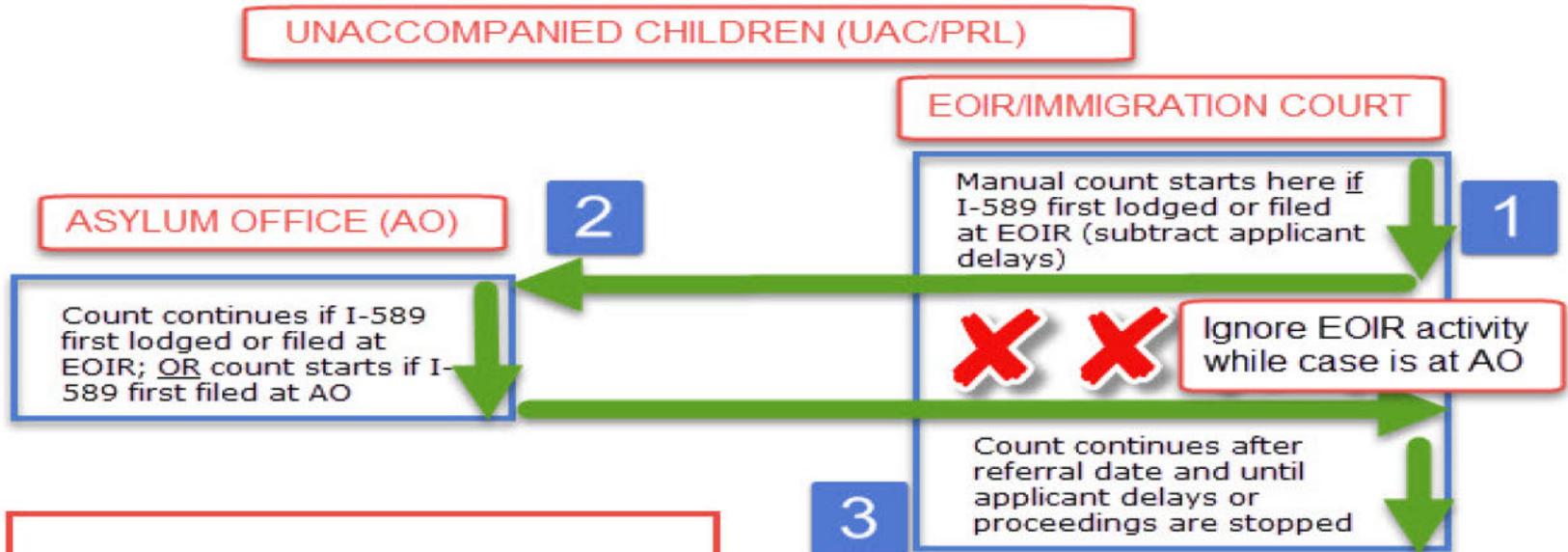


Unaccompanied Alien Children- UAC

- Manual calculations may be required if an I-589 was lodged/filed with EOIR before an I-589 was filed with USCIS, or if a USCIS asylum office referred the I-589 back to EOIR.
- RAPS functionality does not currently allow the asylum office to stop the clock after referring a UAC/PRL back to the court, as the applicant was already in proceedings before filing with the asylum office. Manual count may be required after the referral.



Unaccompanied Alien Children- UAC



What else is different about a UAC/PRL?

An "Admin Close-No/IJ Jurisdiction" is treated the same as a referral, and the clock continues to run between the AO and EOIR.



I-589 Dependents

- All family members must be listed when the principal applicant files Form I-589, whether or not they are riding on the application.
- A copy of Form I-589 is normally filed for each dependent through a designated service center post office box, along with evidence of relationship to the principal applicant.
- Dependents can also be added later, or separated from a principal's I-589 at the asylum office or the immigration court.



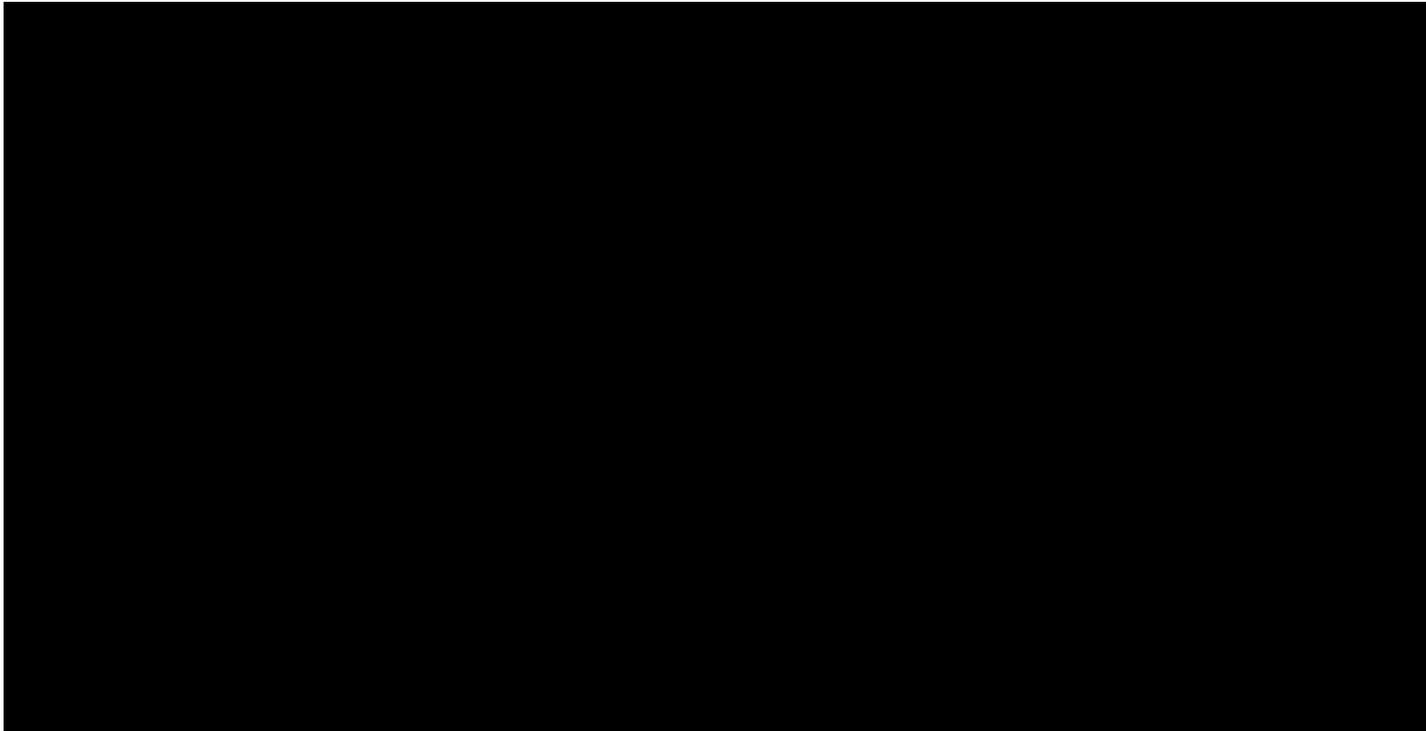
I-589 Dependents

- The office accepting Form I-589 (USCIS or EOIR) must have jurisdiction for the dependent to be added as a rider.
 - Applicants in removal proceedings cannot be riders on a Form I-589 pending at a USCIS asylum office.
 - Applicants cannot be riders on a Form I-589 pending before EOIR unless those applicants are in proceedings before EOIR.
- Once a dependent is properly acknowledged as a rider on Form I-589, an individual alien registration number will be assigned (unless the dependent already had his/her own number), and a record will be created in RAPS or DOJ-EOIR.



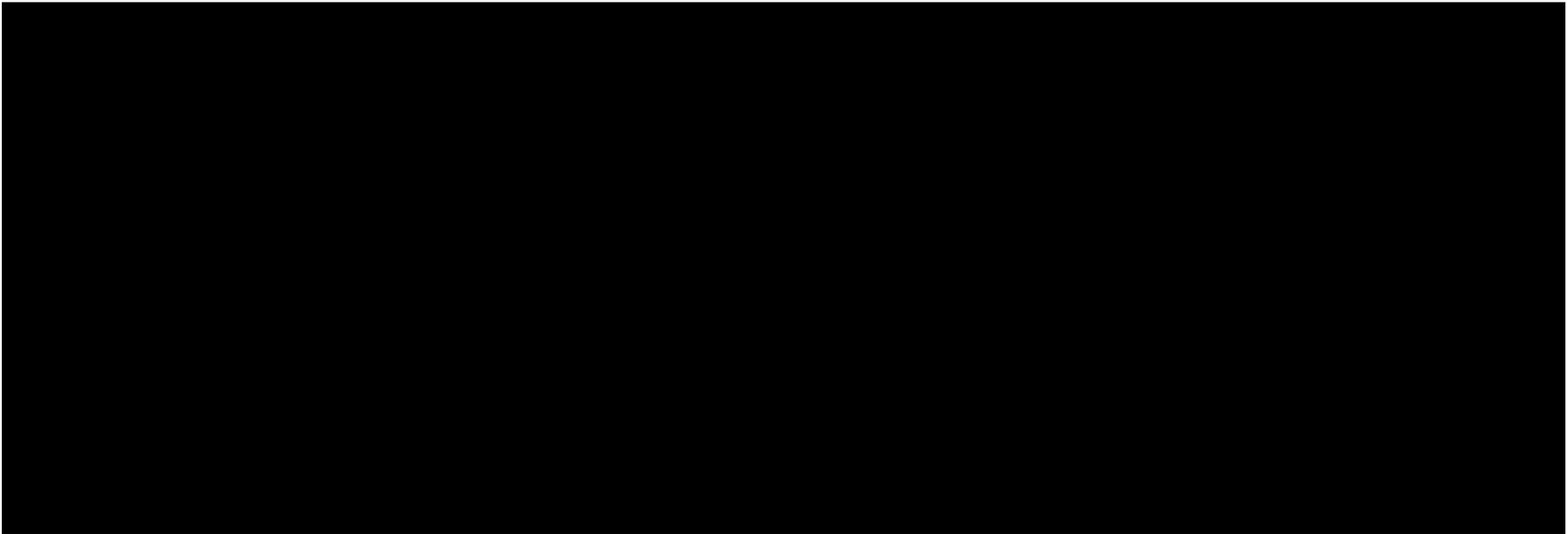
I-589 Dependents

- An independent record of Form I-589 will be created in RAPS for each dependent who has been acknowledged as a rider.
 - Use PF9 key in RAPS/CSTA to see linked family members.



I-589 Dependents

- An independent record of Form I-589 will appear in DOJ-EOIR for a dependent who is in removal proceedings.
 - The DOJ-EOIR “Summary” Table will reflect if the applicant is linked to another record; “Alien Number” and “Lead Alien Number” will be different.
 - The lodged or filed Form I-589 will appear in the “Asylum Clock Status” or “Applications” tables.



I-589 Dependents

- Dependent I-589 applicants will generally benefit from the lodging/filing date and clock time accorded to the principal, as described in these scenarios:
 - Dependent is joined to the principal's I-589 at the time of original filing;
 - Dependent is joined to the principal's I-589 at a later time; or
 - Dependent splits from the principal during proceedings and files his/her own I-589.
- RAPS and DOJ-EOIR can only reflect one record at a time for an applicant, either as a principal or a dependent.
- The RAPS or DOJ-EOIR clocks may be manually adjusted by those offices to reflect credit for an earlier filing date.
 - Adjudicators are urged to check the principal's clock before denying a dependent for insufficient clock days.



Evidence of a Pending Form I-589

- Form I-765 filing instructions no longer require applicants to submit receipts from a USCIS asylum office or stamped copies of an I-589 filed with EOIR.
- Adjudicators may see copies of mailers or receipt notices submitted by applicants.
- Majority of these items are no longer needed because of the more reliable data available in electronic systems, such as RAPS and DOJ-EOIR.
- Unless additional documents are deemed necessary, (c)(8) adjudication is primarily system-based.



NSC Receipt Notices

- A receipt notice from the Nebraska Service Center (NSC) does not constitute conclusive evidence that an individual in proceedings has defensively filed a Form I-589.
- An applicant who files the first three pages of his or her I-589 with the NSC to allow USCIS to conduct security checks does not establish that an application has been filed.
- The actual filing for asylum must take place with the court, either before or after the applicant sends a copy of his or her application to the NSC and receives a receipt.

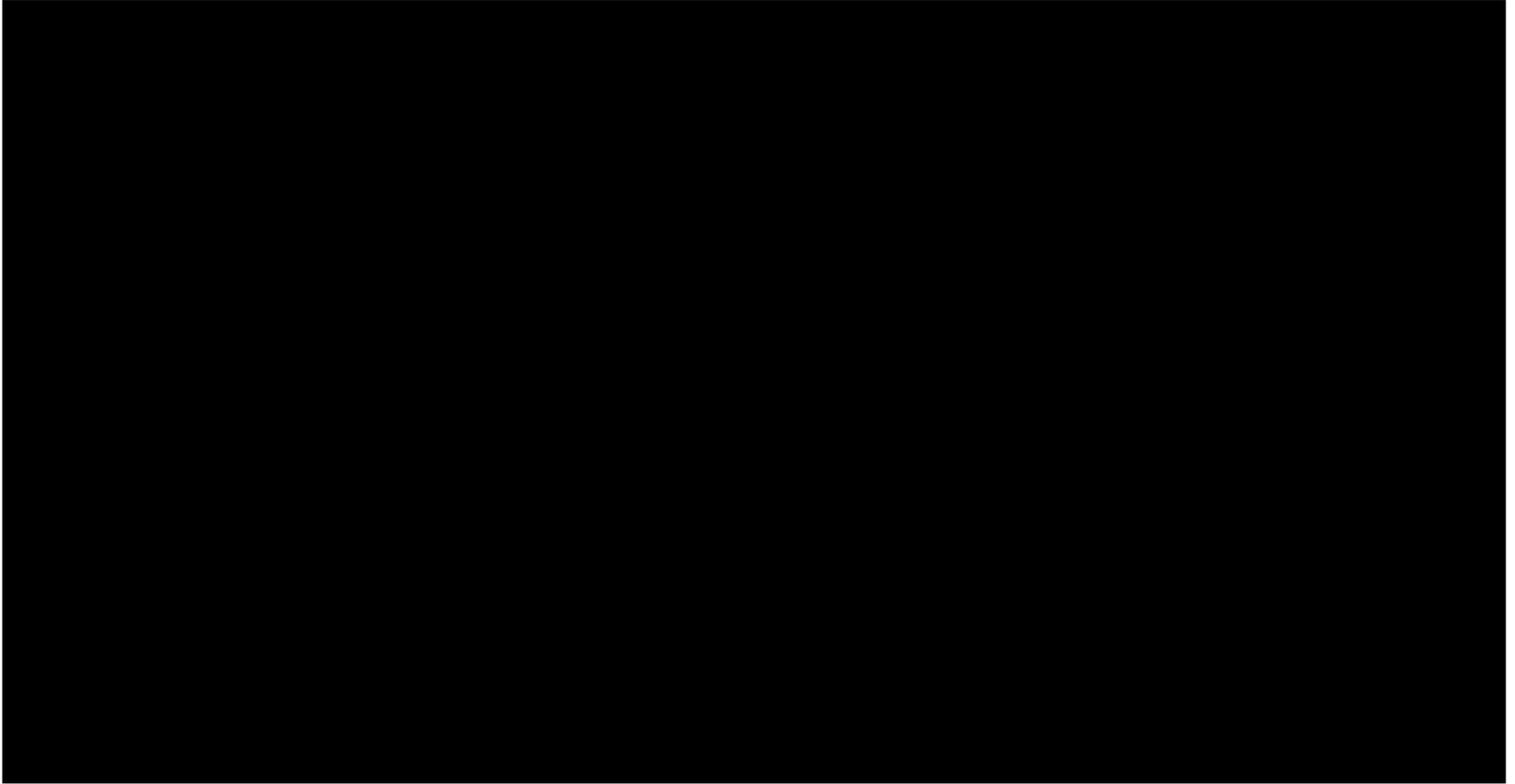


Systems and Sources of Information

- RAPS (CSTA, DSTA, KLOK, CHIS, 8STA, NDOB)
- PCQS (DOJ-EOIR)
- EOIR/BIA
 - 1-800-898-7180
 - 1-703-605-1007
- BIA Decisions- access BADS
- U.S. Court websites, such as:
 - <http://www.uscourts.gov/courtlinks/>
 - <http://www.ca5.uscourts.gov/>
 - <http://www.ca9.uscourts.gov/>



RAPS – Case Status (CSTA)



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RAPS – Clock Screen (KLOK)



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Services

PCQS – DOJ/EOIR



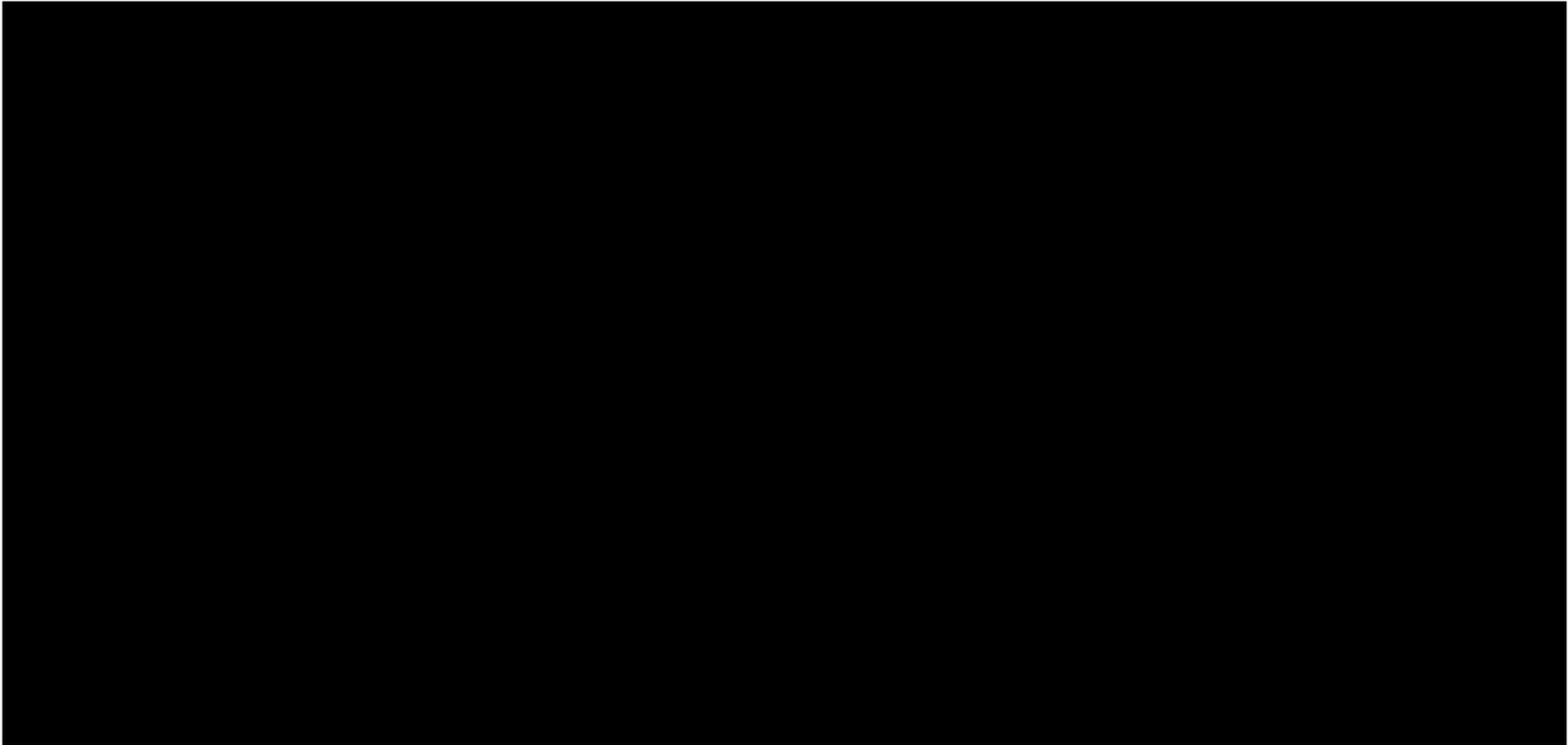
U.S. Citizenship
and Immigration
Services

PCQS – DOJ/EOIR



U.S. Citizenship
and Immigration
Services

PCQS – DOJ/EOIR



U.S. Citizenship
and Immigration
Services

“8A” IJ Completion Prior to Hearing

- Under “Hearing Schedule” in DOJ-EOIR, an “IJ Completion Prior to Hearing”, code 8A, *appears* to be a stop by EOIR.
- This type of decision usually indicates a procedural delay, which may stop the clock.
- An “8A” should be a flag to the officer to reference the “IJ Decisions” table to see who actually caused the stop, and the date it occurred.
 - Rely on the IJ Decisions table for the date the stop occurred, which may be different from the date it was input into the Hearing Schedule.
- This is important to remember when a manual count is required.



“8A” IJ Completion Prior to Hearing

- Examples of IJ Decisions which correspond to an “IJ Completion Prior to Hearing”, code 8A:

| IJ Decision (on the removal proceedings): | Clock Action: | Additional Information: |
|---|---------------|---|
| Transfer | Run | Typically a case moved from a prison/detention facility to a nearby court venue. |
| Change of Venue, Caused by DHS, or Blank | Run | Movement from one immigration court to another. |
| Change of Venue, Caused by Alien | Stop | |
| Administrative Closure, Any Reason | Stop | This type of decision in EOIR is not a final decision. |
| Remove | Stop | These are final decisions which may signify the end of the road for the I-589, unless an appeal is pending. |
| Relief Granted | Stop | |
| Terminated | Stop | This is the end of the road for the I-589. Although the applicant is no longer in removal proceedings, there is no longer a court venue to carry the I-589. |



Changes of Venue

- Change of Venue caused by an applicant will stop the clock (see the “COV by” tab under “IJ Decision”, in DOJ-EOIR).
- Clock will not restart until the applicant appears at a master calendar hearing at the new venue.
- Under “Hearing Schedule” in DOJ-EOIR, a Change of Venue may appear as “IJ Completion Prior to Hearing, 8A, Stop [by EOIR]”. Reference the “IJ Decisions” section to see who actually caused the stop.
- This is important to remember when a manual count is required.



Administrative Closures

- Administrative Closure – Interview/Hearing No Show or other Failure to Appear
 - Stops the clock; Not eligible for employment, regardless of clock days
 - This rule does not apply to ABC cases

- Administrative Closure – Failure to pick up decision/NTA
 - Stops the clock after referral from USCIS
 - Clock may restart before EOIR at initial master hearing
 - May still be approved if sufficient clock days



Administrative Closures

- Administrative Closure – No/IJ Jurisdiction
 - If applicant was in removal proceedings before the I-589 was accepted by the asylum office, or the asylum office does not have jurisdiction over the I-589 for another reason, this action effectively terminates the I-589 before USCIS (filing date/clock days are not considered)
 - I-589 must be re-filed with EOIR
 - This rule does not apply to UAC/PRL cases, as this type of decision is treated as a “referral” instead



Administrative Closures

- Administrative Closure – Prosecutorial Discretion
 - Stops the clock
 - See status of the I-589 to ensure no final decision
 - I-765 may still be approved if sufficient clock days

- Administrative Closure – Other
 - Stops the clock, but not a final decision; may still be approved if sufficient clock days
 - This type of decision is usually a joint agreement by both applicant and the government; Officer discretion to RFE for court decision



Motions

- Some motions have the potential to impact the asylum clock, if a motion is granted after an I-589 has been lodged or filed (unless the I-589 was withdrawn).
 - Motion to Re-Calendar
 - Motion to Reconsider
 - Motion to Reopen
 - Motion to Terminate the Deferral

- The judge has the authority to decide if a granted motion will impact the asylum clock and also has the authority to decide how a granted motion will impact the asylum clock.



Motions

- PCQS DOJ-EOIR display of IJ Motions:

| IJ Motions | | | | | | | |
|-------------------|-----------------------|----------------------|--------------------|---------------|------------------------------------|-----------------------------|-------------------------------------|
| Proceeding Number | IJ Motion Type | IJ Motion Rec'd Date | IJ Motion Dec Date | IJ Motion Dec | Motion Restart Asylum Clock Option | Motion Affects Asylum Clock | Motion Starts/Restarts Asylum Clock |
| 1 | Motion to Re-calendar | 03-29-2017 | 04-03-2017 | Grant | | true | false |

Type of motion is described here.

The motion decision and date of the decision.

The restart option used is described here. When blank, refer to the next two columns.

The judge's decision regarding whether a granted motion actually impacts the clock will be indicated by a "true" or "false". A "true" descriptor means that the clock has been impacted.

If a granted motion has impacted the clock, the judge will then decide if the clock can be restarted immediately following the grant of the motion. A "true" option restarts the asylum clock immediately. A "false" option indicates that the clock may restart at the next hearing.



Motions

| MOTION RESTART ASYLUM CLOCK OPTION | CLOCK ACTION AFTER MOTION IS <u>GRANTED</u> |
|---|--|
| <ul style="list-style-type: none"> Do not restart until next proceeding's hearing | Clock Action = Stop <i>(remains stopped until next event which may change to run, unless another stop occurs)</i> |
| <ul style="list-style-type: none"> Restart from IJ Completion | Clock Action = Run <i>(Clock starts from the previous IJ Completion)</i> |
| <ul style="list-style-type: none"> Restart from MTR completion | Clock Action = Run <i>(Clock starts from the date motion is granted)</i> |
| <ul style="list-style-type: none"> Do not re-start | Clock Action = Stop <i>(remains stopped until next event which may change to run, unless another stop occurs)</i> |
| <ul style="list-style-type: none"> [BLANK] and Motion Starts/Restarts Asylum Clock is "false" | Clock Action = Stop <i>(remains stopped until next event which may change to run, unless another stop occurs)</i> |
| <ul style="list-style-type: none"> [BLANK] and Motion Starts/Restarts Asylum Clock is "true" | Clock Action = Run <i>(Clock starts from the date motion is granted)</i> |



Final Notes on the Clock

- Clock starts running from the date of initial lodging or receipt of a complete Form I-589, unless a stop occurred on the date of lodging or filing.
- Clock stops when the applicant causes delays.
- Clock stops during procedural delays.
 - Administrative closures
 - Granted motions [where the judge does not start the clock]
 - Final decisions [remove, relief granted]
- Clock restarts only when an Asylum Office or EOIR resumes processing of Form I-589.



Final Notes on the Clock

- Clock runs between the Asylum Office and EOIR after a referral.
- Clock stops between the Asylum Office and EOIR after an administrative closure.
- Clock stops if an Asylum Office denies Form I-589.
 - Form I-589 may be re-filed with EOIR, but clock does not restart. Clock starts anew.



Aggravated Felony Stipulation

- 8 C.F.R. 208.7(a)(1) states in pertinent part that an applicant for asylum who is not an aggravated felon shall be eligible to file Form I-765.
- This applies to applications for asylum filed on or after January 4, 1995. 8 C.F.R. 208.7(a)(3)



Aggravated Felony Systems Check

- Check the following system:
 - RAPS
 - CSTA – “FBI RESPONSE:”
 - OR
 - DSTA – “FING RESPONSE”
 - OR
 - FD258 in Claims Nationals
 - OR
 - CPMS



Aggravated Felon Systems Check

- NONIDENT indicates there is no criminal record; proceed with adjudication

- IDENT indicates there is a criminal record
 - Check the applicant's IdHS (Identity and History Summary) [former rap sheet] in CPMS to determine the type of criminal charges and case outcome

 - CPMS can be found at <https://cpms.dhs.gov/>



Aggravated Felony Definition

Aggravated felony is defined in section 101(a)(43) of the Immigration and Nationality Act (INA) as:

- Murder, Rape, or Sexual Abuse of a Minor
- Illicit Trafficking in Controlled Substance
- Illicit Trafficking in Firearms or Destructive Devices
- Money Laundering Offenses (over \$10,000)
- Explosive Materials and Firearms Offenses
- Crime of Violence (imprisonment term of at least 1 yr)
- Theft Offense (imprisonment term of at least 1 yr)



Aggravated Felony Definition

- Demand for or Receipt of Ransom
- Child Pornography Offense
- Racketeering, Gambling (imprisonment term of at least 1 yr)
- Prostitution Offenses (managing, transporting, trafficking)
- Gathering or Transmitting Classified Information
- Fraud or Deceit Offenses or Tax Evasion (over \$10,000)
- Alien Smuggling
- Illegal Entry or Reentry by Removed Aggravated Felon
- Passport, Document Fraud (imprisonment term of at least 1 yr)



Aggravated Felony Definition

- Failure to Appear Sentence (offense punishable by at least 5 yrs)
- Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles
- Obstruction of Justice, Perjury, Bribery of Witness
- Failure to Appear to Court (offense punishable by at least 2 yrs)
- Attempt or Conspiracy to Commit an Aggravated Felony



Initial EAD

- 8 C.F.R. 208.7(a)(1) requires USCIS to adjudicate Form I-765 within 30 days from the date of receipt of a properly filed initial (c)(8) request.
- Initial means that no EAD was previously issued to the applicant under the (c)(8) category.
- No I-765 fee is required for an initial (c)(8), unless the applicant is filing under the ABC Settlement.
- The validity period is two years from the date of adjudication, minus one day.



Renewal EAD

- USCIS processing goal is to adjudicate Form I-765 within 90 days from the date of receipt of a properly filed renewal (c)(8) request.
- Renewal means a previous EAD was issued under the same category.
- An I-765 fee is required for a renewal request.
- Copies of prior EADs should be submitted, or verified in electronic systems, using
 - CIS (9213, or press F9 at 9101);
 - National CLAIMS; or
 - CLAIMS LAN/ GUI



Renewal EAD

- 8 C.F.R. 208.7(c) states that USCIS may require alien to establish that he or she has continued to pursue Form I-589 before an immigration judge or sought administrative or judicial review.
- The validity period is two years from the date of adjudication (minus one day), even if a previous card is still valid.



Renewal EAD Filed Too Early

- If applicant is seeking a renewal under the same filing category, RFE to clarify why the applicant is filing more than 180 days before the prior card expires.
- If the explanation indicates that Form I-765 was a duplicate, and applicant no longer wishes to pursue the case because an EAD has already been issued, then issue an order of withdrawal.
- If the applicant fails to respond with an explanation, and the application is now within 180 days, then adjudicate the case; if not within 180 days, deny as a duplicate filing.
- If the applicant is seeking a replacement, issue a replacement card.



Replacements

- USCIS processing goal is to adjudicate Form I-765 within 90 days from the date of receipt of a properly filed replacement (c)(8) request.

- Evidence must be submitted to establish that the EAD was lost, stolen, mutilated, or contains erroneous information.
 - This may be a letter from the applicant, and may include a police report, or pieces of the mutilated card.
 - Incorrect cards should be returned.



Replacements

- An I-765 fee is required for a replacement request, unless USCIS error on the previous card was the cause for the request.
- If previous EAD has not expired as of the date of adjudication, the validity period will be exactly the same as the previous EAD.
- If previous EAD has expired as of the date of adjudication, process the application as a renewal (if no fee issues exist).



A files

- CIS (9102, 9103, 9106) should be checked to verify the existence of an A file.
- CIS (9101) will indicate if multiple A files have been consolidated into one primary A file.
- All (c)(8) applicants must have an existing alien registration number.



TECS

- Prior to final adjudication, TECS queries must be performed on all name and date of birth variations discovered during the adjudicative process.
- Results of TECS queries are to be documented on a Record of TECS Query (ROIT).
- Follow the guidance found in the NaBISCOP.



RFE vs. NOID

- A Request for Evidence (RFE) is issued to request missing initial or additional evidence.
- A Notice of Intent to Deny (NOID) is issued when a preliminary decision has been made to deny an application based on evidence of ineligibility or derogatory information known to USCIS, but not known to the applicant.



RFE vs. Denial

- If the application lacks the required initial evidence, USCIS may issue an RFE or deny the incomplete application, though adjudicators are urged to exercise this option judiciously.



RFE Guidance

- Evidence or information not submitted with the application, but contained in other USCIS records or readily available from external sources, should be obtained from those sources first rather than going back to the applicant for information or evidence.



Reasons for RFEs (not exclusive)

- Initial evidence is missing.
- A replacement was filed without evidence or explanation to establish that an EAD was lost, stolen, mutilated, or contains erroneous information.
- A renewal was filed more than 180 days before a previous EAD expires and an explanation was not submitted as to why the alien is seeking a new EAD.
- A final decision appears to have been made by an IJ or higher authority, but the final decision is unknown.



RFE – Officer Actions

- Check AR11
- Prepare RFE
- Update CLAIMS LAN/ GUI (RFE ordered)
- Update Batch Status Update (RFE sent)
- Mail RFE, and keep a copy of the RFE on the top-left side of file
- Place a call up sticker on the back of the file and forward to Records



NOID – Officer Actions

- Check AR11
- Prepare NOID & obtain supervisor signature
- Update CLAIMS LAN/ GUI (NOID ordered)
- Update Batch Status Update (NOID sent)
- Mail NOID, and keep a copy of the NOID on the top-left side of file
- Place a call up sticker on the back of the file and forward to Records



Approvals - Naming Conventions

- Any USCIS document must be issued to the alien in his or her full legal name, rather than a name selected due to personal preference.
- Legal name is determined, in order of authority, by the birth certificate, the passport biographical page, and the State Department visa page, and modified by other legal documents such as court name changes, or marriage, divorce, or adoption decrees.
- Before approving a case, verify that the alien's name and date of birth match in CLAIMS LAN/GUI, on Form I-765, and in CIS.



Approvals - Naming Conventions

- Take the appropriate steps to correct any erroneous information.
- NOTE: CIS will not be updated to reflect the issuance of an EAD if the alien's name in CLAIMS LAN/GUI (and on the EAD) does not match the alien's name in CIS.



Approvals – Officer Actions

- Complete A# in the designated box at the top of the form
- Write the class of eligibility as “(c)(8)” in the section of law space
- Check “Application Approved” and circle authorized or extended, as appropriate
- Enter the appropriate validity dates
 - NOTE: Do not backdate any approvals, other than replacements
- Check AR11
- Update CLAIMS LAN/GUI
- Place approval stamp in the Action Block, and sign it in ink



Denials

- Pursuant to 8 C.F.R. 274a.13(c), if Form I-765 is denied, the applicant must be notified in writing of the decision and the reasons for denial.
- There is no appeal from the denial of Form I-765.
- An applicant may file a motion to reopen or reconsider (Form I-290B).



Reasons to Deny (not exclusive)

- The 150-day clock was not met when the I-765 was filed.
- The clock is stopped prior to the expiration of the 180-day period.
- There is no evidence of a lodged or filed Form I-589.
- The I-589 was withdrawn.
- The I-589 was denied, and either no appeal is pending, the appeal was dismissed, or the remand did not include the I-589.
- The applicant is an aggravated felon.
- The applicant did not respond to an RFE/NOID for documents that were material to the decision.



Denials – Officer Actions

- Complete A# in the designated box at the top of the form.
- Write the class of eligibility as “(c)(8)” in the section of law space.
- Check “Application Denied” and check “Failed to establish eligibility under 8 C.F.R. 274a.12 (a) or (c).”
- Check AR11
- Prepare Denial and obtain supervisory signature (if required)
- Update CLAIMS LAN/GUI (denial ordered)
- Update Batch Status Update (denial sent)
- Place denial stamp in the Action Block, and sign it in ink.
- Mail Denial, and keep a copy on the top-left side of file



Reasons to Relocate

- Texas Service Center does not adjudicate the classification that the applicant requested on Form I-765.
- Pending Form I-765 is requested by another office.



Relocations – Officer Actions

- Check AR11
- Complete relocation memorandum
- Update Claims with file transfer ordered
 - Case review; other case review; file transfer ordered-processing not suspended
 - Note: Updating system to reflect file transfer out is a function handled by the contract team
- Security (TECS) checks must be completed and resolved prior to transfer
- Route to file room or Stemmons HUB to process transfer, depending upon current procedures





U.S. Citizenship and Immigration Services

EXHIBIT B

| U.S. Citizenship and Immigration Services | | | | | |
|--|---------------|----------------|---------------|--------------|----------------|
| I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Receipts | | | | | |
| Count of Receipts | Receipt Month | Type | | | |
| FY | | Initial | Renewal | Replacement | Grand Total |
| 2013 | October-12 | 3,253 | 2,601 | 47 | 5,901 |
| | November-12 | 2,758 | 2,386 | 55 | 5,199 |
| | December-12 | 2,739 | 2,603 | 55 | 5,397 |
| | January-13 | 3,220 | 3,296 | 69 | 6,585 |
| | February-13 | 3,195 | 3,154 | 43 | 6,392 |
| | March-13 | 3,518 | 3,867 | 60 | 7,445 |
| | April-13 | 3,609 | 3,514 | 74 | 7,197 |
| | May-13 | 3,445 | 3,457 | 58 | 6,960 |
| | June-13 | 3,280 | 3,088 | 53 | 6,421 |
| | July-13 | 3,803 | 3,541 | 56 | 7,400 |
| | August-13 | 3,947 | 3,216 | 66 | 7,229 |
| | September-13 | 4,257 | 3,139 | 53 | 7,449 |
| 2013 Total | | 41,024 | 37,862 | 689 | 79,575 |
| 2014 | October-13 | 4,490 | 3,409 | 57 | 7,956 |
| | November-13 | 4,735 | 3,005 | 59 | 7,799 |
| | December-13 | 4,727 | 3,088 | 65 | 7,880 |
| | January-14 | 5,213 | 3,815 | 79 | 9,107 |
| | February-14 | 4,627 | 3,761 | 89 | 8,477 |
| | March-14 | 5,333 | 4,415 | 84 | 9,832 |
| | April-14 | 5,098 | 4,086 | 83 | 9,267 |
| | May-14 | 4,814 | 3,703 | 73 | 8,590 |
| | June-14 | 5,115 | 3,965 | 68 | 9,148 |
| | July-14 | 5,573 | 4,170 | 98 | 9,841 |
| | August-14 | 5,736 | 4,563 | 90 | 10,389 |
| | September-14 | 6,709 | 5,125 | 93 | 11,927 |
| 2014 Total | | 62,170 | 47,105 | 938 | 110,213 |
| 2015 | October-14 | 7,042 | 5,679 | 105 | 12,826 |
| | November-14 | 6,431 | 4,688 | 98 | 11,217 |
| | December-14 | 7,717 | 5,231 | 111 | 13,059 |
| | January-15 | 7,590 | 5,321 | 102 | 13,013 |
| | February-15 | 8,041 | 5,577 | 102 | 13,720 |
| | March-15 | 10,575 | 7,062 | 121 | 17,758 |
| | April-15 | 9,510 | 5,880 | 121 | 15,511 |
| | May-15 | 8,906 | 5,579 | 144 | 14,629 |
| | June-15 | 10,152 | 7,180 | 202 | 17,534 |
| | July-15 | 9,858 | 6,746 | 178 | 16,782 |
| | August-15 | 10,024 | 7,065 | 168 | 17,257 |
| | September-15 | 10,156 | 6,591 | 153 | 16,900 |
| 2015 Total | | 106,002 | 72,599 | 1,605 | 180,206 |

| Count of Receipts FY | Receipt Month | Type | | | |
|-------------------------|---------------|----------------|----------------|---------------|------------------|
| | | Initial | Renewal | Replacement | Grand Total |
| 2016 | October-15 | 11,306 | 7,076 | 139 | 18,521 |
| | November-15 | 11,841 | 6,997 | 168 | 19,006 |
| | December-15 | 12,382 | 7,568 | 145 | 20,095 |
| | January-16 | 11,736 | 9,313 | 147 | 21,196 |
| | February-16 | 13,983 | 12,238 | 167 | 26,388 |
| | March-16 | 14,955 | 13,778 | 195 | 28,928 |
| | April-16 | 14,013 | 11,743 | 187 | 25,943 |
| | May-16 | 15,749 | 12,664 | 208 | 28,621 |
| | June-16 | 14,667 | 11,873 | 188 | 26,728 |
| | July-16 | 14,904 | 11,007 | 209 | 26,120 |
| | August-16 | 17,347 | 12,742 | 265 | 30,354 |
| | September-16 | 17,086 | 11,608 | 263 | 28,957 |
| 2016 Total | | 169,969 | 128,607 | 2,281 | 300,857 |
| 2017 | October-16 | 17,916 | 13,186 | 295 | 31,397 |
| | November-16 | 17,297 | 14,807 | 317 | 32,421 |
| | December-16 | 18,284 | 18,051 | 401 | 36,736 |
| | January-17 | 20,827 | 15,988 | 300 | 37,115 |
| | February-17 | 18,661 | 18,758 | 411 | 37,830 |
| | March-17 | 23,622 | 26,272 | 440 | 50,334 |
| | April-17 | 20,322 | 21,078 | 423 | 41,823 |
| | May-17 | 27,112 | 28,770 | 500 | 56,382 |
| | June-17 | 25,064 | 24,075 | 457 | 49,596 |
| | July-17 | 25,424 | 16,759 | 501 | 42,684 |
| | August-17 | 25,293 | 10,184 | 463 | 35,940 |
| | September-17 | 21,625 | 5,095 | 445 | 27,165 |
| 2017 Total | | 261,447 | 213,023 | 4,953 | 479,423 |
| Grand Total | | 640,612 | 499,196 | 10,466 | 1,150,274 |

Please note:

1) The data is as current as the day it was pulled

Data generated October 18, 2017

Report created October 18, 2017

System C3 Consolidated/SMART

Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER), SN

Parameters:

Form Type I-765

Class Preference: C8

Data Type Receipts

Date Range: FY2010 - FY2017

HAC CFDO: FF1; BCU: FF5; RFE: FBA, FBB, FBC, IK, IKA

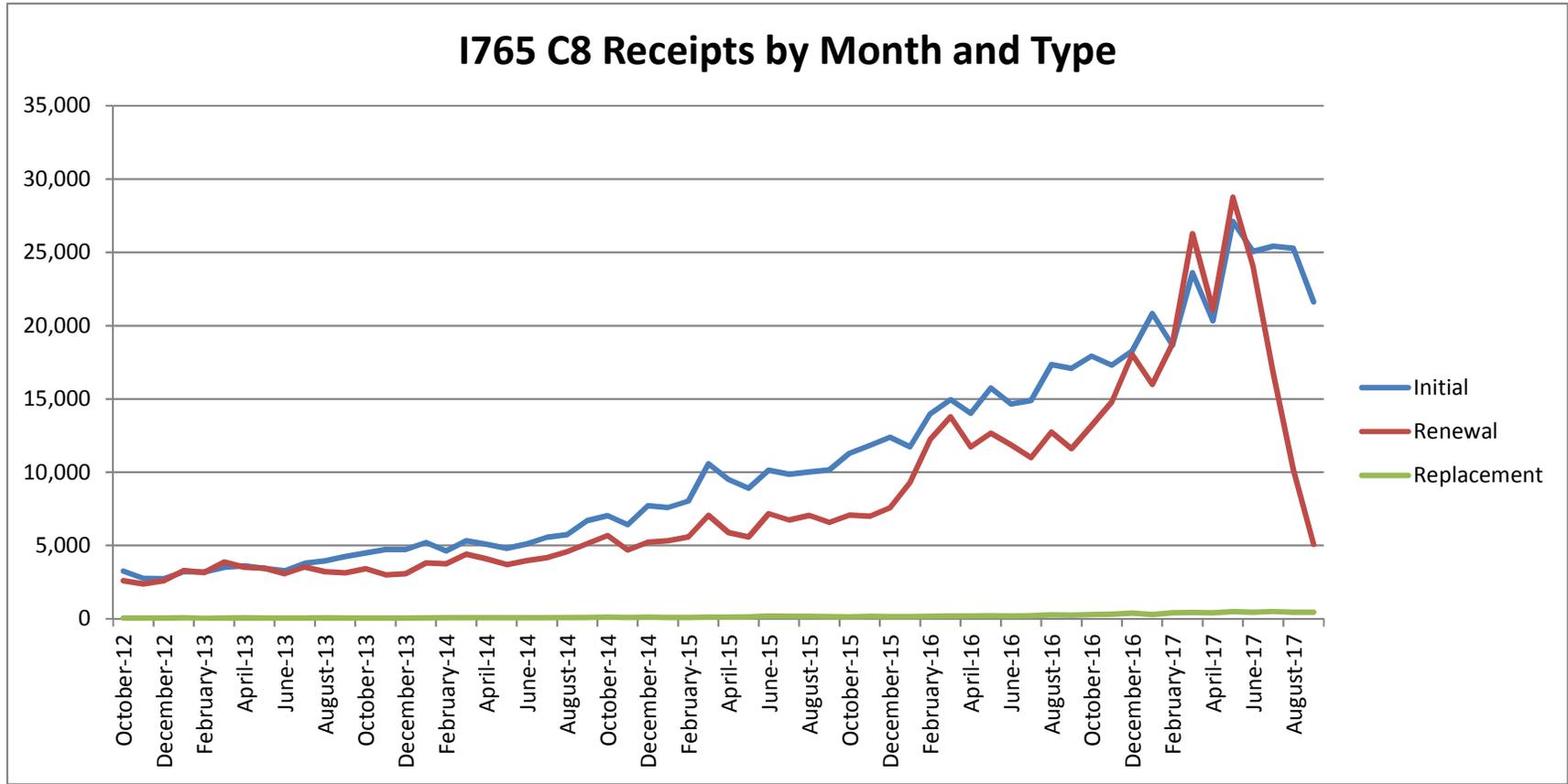


EXHIBIT C

This data represents the number of Initial Pending I-765 with a class preference of C8 and of those, the number that also have an RFE, BCU, or CFDO.

| U.S. Citizenship and Immigration Services Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Pending | | | | | | | | |
|--|---------------|--------------|-----------------------|----------------------------------|--------------|-----------|----------------------------|---------------------------------------|
| Pending Bucket | All Pending | RFE | Pending Excluding RFE | % of Total Pending Excluding RFE | BCU | CFDO | Pending Excluding BCU/CFDO | % of Total Pending Excluding BCU/CFDO |
| 000-030 DAYS | 15,703 | 443 | 15,260 | 60.5% | 470 | 3 | 15,233 | 60.4% |
| 031-060 DAYS | 5,719 | 1,141 | 4,578 | 18.1% | 644 | 3 | 5,073 | 20.1% |
| 061-090 DAYS | 1,834 | 903 | 931 | 3.7% | 384 | 5 | 1,449 | 5.7% |
| 091-120 DAYS | 1,310 | 617 | 693 | 2.7% | 244 | 9 | 1,066 | 4.2% |
| 121+ DAYS | 659 | 423 | 236 | 0.9% | 173 | 14 | 484 | 1.9% |
| Over 30 Days | 9,522 | 3,084 | 6,438 | 25.5% | 1,445 | 31 | 8,072 | 32.0% |
| Grand Total | 25,225 | 3,527 | 21,698 | 86.0% | 1,915 | 34 | 23,305 | 92.4% |

Please note:

- 1) The data is as current as the day it was pulled
- 2) A single case may have actions in each of the RFE, BCU, and/or CFDO buckets
- 3) Card Produced, Approval Notice Sent, and Denial Notice Sent included in completion actions

Data generated October 3, 2017

Report created October 3, 2017

System C3 Consolidated/SMART

Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER)

Parameters:

Form Type I-765

Class Preference: C8 Initial

Data Type Pending

Date Range: Receipt date since FY2010

HAC CFDO: FF1; BCU: FF5; RFE: FBA, FBB, FBC, IK, IKA

| U.S. Citizenship and Immigration Services Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) sent to BCU/CFDO FY2017 | | |
|--|---|-------------------------------|
| Total Completions | Completions sent to BCU/CFDO | % sent to BCU/CFDO |
| 255,535 | 32,804 | 12.8% |

Please note:

- 1) *The data is as current as the day it was pulled*
- 2) *A case with both BCU and CFDO referral is only counted once*

Data generated October 3, 2017

Report created October 3, 2017

System C3 Consolidated/SMART

Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER)

Parameters:

Form Type I-765

Class Preference: C8 Initial

Data Type Completions

Date Range FY17

HAC CFDO: FF1; BCU: FF5;

EXHIBIT D

This data represents the number of completions by Quarter for Initial I-765 with a class preference of C8 grouped by processing days (Received Date to Decision Date)

| U.S. Citizenship and Immigration Services Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Completions | | | | | | |
|--|-----------------|-----------------|-----------------|-----------------|--------------|---------------|
| Count of Completions | Processing Days | | | | | Grand Total |
| | 000-030 DAYS | 031-060 DAYS | 061-090 DAYS | 091-120 DAYS | 121+ DAYS | |
| FY/Quarter | | | | | | |
| FY 2010 | 5,040 | 12,562 | 4,535 | 1,515 | 1,066 | 24,718 |
| Q1 | 1,424 | 2,837 | 1,085 | 437 | 323 | 6,106 |
| Q2 | 1,022 | 3,517 | 1,040 | 351 | 258 | 6,188 |
| Q3 | 642 | 3,658 | 1,454 | 331 | 212 | 6,297 |
| Q4 | 1,952 | 2,550 | 956 | 396 | 273 | 6,127 |
| FY 2011 | 7,290 | 12,449 | 4,032 | 1,961 | 1,081 | 26,813 |
| Q1 | 1,491 | 2,810 | 920 | 685 | 334 | 6,240 |
| Q2 | 1,613 | 3,727 | 1,009 | 463 | 285 | 7,097 |
| Q3 | 1,940 | 2,973 | 973 | 460 | 233 | 6,579 |
| Q4 | 2,246 | 2,939 | 1,130 | 353 | 229 | 6,897 |
| FY 2012 | 10,160 | 16,732 | 4,781 | 1,132 | 1,308 | 34,113 |
| Q1 | 1,545 | 2,963 | 1,607 | 307 | 244 | 6,666 |
| Q2 | 2,022 | 4,991 | 1,147 | 289 | 362 | 8,811 |
| Q3 | 3,034 | 4,443 | 952 | 199 | 345 | 8,973 |
| Q4 | 3,559 | 4,335 | 1,075 | 337 | 357 | 9,663 |
| FY 2013 | 10,373 | 16,696 | 5,407 | 2,058 | 1,987 | 36,521 |
| Q1 | 2,578 | 3,735 | 1,017 | 299 | 346 | 7,975 |
| Q2 | 3,423 | 3,806 | 1,238 | 450 | 505 | 9,422 |
| Q3 | 2,212 | 4,647 | 1,333 | 403 | 428 | 9,023 |
| Q4 | 2,160 | 4,508 | 1,819 | 906 | 708 | 10,101 |
| FY 2014 | 10,892 | 26,938 | 11,084 | 4,567 | 4,272 | 57,753 |
| Q1 | 3,076 | 5,603 | 2,471 | 1,098 | 1,199 | 13,447 |
| Q2 | 3,487 | 6,676 | 1,953 | 1,091 | 1,145 | 14,352 |
| Q3 | 1,775 | 7,005 | 3,367 | 1,098 | 877 | 14,122 |
| Q4 | 2,554 | 7,654 | 3,293 | 1,280 | 1,051 | 15,832 |
| FY 2015 | 6,987 | 49,063 | 25,772 | 10,542 | 5,638 | 98,002 |
| Q1 | 1,216 | 9,178 | 4,393 | 1,571 | 1,095 | 17,453 |
| Q2 | 1,175 | 6,959 | 6,297 | 3,929 | 1,367 | 19,727 |
| Q3 | 1,923 | 17,999 | 7,804 | 2,601 | 1,733 | 32,060 |
| Q4 | 2,673 | 14,927 | 7,278 | 2,441 | 1,443 | 28,762 |

| U.S. Citizenship and Immigration Services Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Completions | | | | | | |
|--|------------------------|----------------|----------------|----------------|---------------|----------------|
| Count of Completions | Processing Days | | | | | |
| | 000-030 | 031-060 | 061-090 | 091-120 | 121+ | Grand |
| FY/Quarter | DAYS | DAYS | DAYS | DAYS | DAYS | Total |
| FY 2016 | 31,543 | 55,621 | 37,662 | 26,804 | 9,135 | 160,765 |
| Q1 | 3,794 | 13,346 | 7,366 | 2,379 | 1,628 | 28,513 |
| Q2 | 7,117 | 12,060 | 12,340 | 5,607 | 2,043 | 39,167 |
| Q3 | 8,912 | 11,423 | 4,826 | 10,535 | 2,188 | 37,884 |
| Q4 | 11,720 | 18,792 | 13,130 | 8,283 | 3,276 | 55,201 |
| FY 2017 | 72,344 | 119,276 | 40,296 | 17,392 | 10,103 | 259,411 |
| Q1 | 7,309 | 40,197 | 5,937 | 1,461 | 2,122 | 57,026 |
| Q2 | 20,854 | 28,736 | 4,210 | 1,293 | 1,537 | 56,630 |
| Q3 | 19,366 | 23,481 | 10,838 | 1,936 | 1,985 | 57,606 |
| Q4 | 24,815 | 26,862 | 19,311 | 12,702 | 4,459 | 88,149 |
| Grand Total | 154,629 | 309,337 | 133,569 | 65,971 | 34,590 | 698,096 |

Please note:

- 1) The data is as current as the day it was pulled
- 2) Card Produced, Approval Notice Sent, and Denial Notice Sent included in completion actions

Data generated October 18, 2017

Report created October 18, 2017

System C3 Consolidated/SMART

Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER)

Parameters:

Form Type I-765

Class Preference: C8 Initial

Data Type Completions

Date Range: FY10-FY17

This data represents the number of completions by Quarter for Initial I-765 with a class preference of C8 grouped by processing days (Received Date to Decision Date), excluding any case with an Initial or Additional RFE

| U.S. Citizenship and Immigration Services Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Completions Excludes cases with an Initial or Additional Request for Evidence (RFE) | | | | | | |
|--|-----------------|-----------------|-----------------|-----------------|--------------|---------------|
| Count of Completions | Processing Days | | | | | Grand Total |
| | 000-030 DAYS | 031-060 DAYS | 061-090 DAYS | 091-120 DAYS | 121+ DAYS | |
| FY/Quarter | | | | | | |
| FY 2010 | 5,035 | 12,272 | 3,832 | 1,014 | 618 | 22,771 |
| Q1 | 1,424 | 2,780 | 931 | 343 | 237 | 5,715 |
| Q2 | 1,022 | 3,457 | 899 | 247 | 139 | 5,764 |
| Q3 | 640 | 3,596 | 1,214 | 168 | 105 | 5,723 |
| Q4 | 1,949 | 2,439 | 788 | 256 | 137 | 5,569 |
| FY 2011 | 7,285 | 12,043 | 3,395 | 1,351 | 494 | 24,568 |
| Q1 | 1,491 | 2,734 | 781 | 524 | 189 | 5,719 |
| Q2 | 1,611 | 3,618 | 830 | 306 | 102 | 6,467 |
| Q3 | 1,938 | 2,881 | 827 | 320 | 103 | 6,069 |
| Q4 | 2,245 | 2,810 | 957 | 201 | 100 | 6,313 |
| FY 2012 | 10,147 | 15,746 | 3,509 | 529 | 352 | 30,283 |
| Q1 | 1,544 | 2,860 | 1,371 | 158 | 96 | 6,029 |
| Q2 | 2,018 | 4,737 | 845 | 151 | 104 | 7,855 |
| Q3 | 3,029 | 4,140 | 588 | 83 | 78 | 7,918 |
| Q4 | 3,556 | 4,009 | 705 | 137 | 74 | 8,481 |
| FY 2013 | 10,350 | 15,609 | 3,113 | 784 | 375 | 30,231 |
| Q1 | 2,574 | 3,444 | 573 | 120 | 56 | 6,767 |
| Q2 | 3,416 | 3,457 | 619 | 213 | 113 | 7,818 |
| Q3 | 2,210 | 4,366 | 734 | 98 | 79 | 7,487 |
| Q4 | 2,150 | 4,342 | 1,187 | 353 | 127 | 8,159 |
| FY 2014 | 10,858 | 25,072 | 7,917 | 2,287 | 944 | 47,078 |
| Q1 | 3,068 | 5,212 | 1,701 | 379 | 342 | 10,702 |
| Q2 | 3,477 | 6,260 | 1,000 | 570 | 174 | 11,481 |
| Q3 | 1,769 | 6,449 | 2,542 | 607 | 202 | 11,569 |
| Q4 | 2,544 | 7,151 | 2,674 | 731 | 226 | 13,326 |
| FY 2015 | 6,972 | 47,312 | 21,670 | 7,242 | 1,652 | 84,848 |
| Q1 | 1,208 | 8,716 | 3,597 | 919 | 295 | 14,735 |
| Q2 | 1,172 | 6,542 | 5,600 | 3,205 | 392 | 16,911 |
| Q3 | 1,920 | 17,757 | 6,646 | 1,780 | 614 | 28,717 |
| Q4 | 2,672 | 14,297 | 5,827 | 1,338 | 351 | 24,485 |

| U.S. Citizenship and Immigration Services | | | | | | |
|---|-----------------|----------------|----------------|---------------|---------------|----------------|
| Initial I-765 Application for Employment with a Classification of Asylum | | | | | | |
| Applicant with Pending Asylum Application (C8) Completions | | | | | | |
| Excludes cases with an Initial or Additional Request for Evidence (RFE) | | | | | | |
| Count of Completions | Processing Days | | | | | |
| | 000-030 | 031-060 | 061-090 | 091-120 | 121+ | Grand |
| FY/Quarter | DAYS | DAYS | DAYS | DAYS | DAYS | Total |
| FY 2016 | 31,448 | 52,881 | 32,843 | 22,548 | 3,171 | 142,891 |
| Q1 | 3,790 | 12,752 | 6,528 | 1,423 | 446 | 24,939 |
| Q2 | 7,095 | 11,291 | 10,565 | 4,221 | 499 | 33,671 |
| Q3 | 8,859 | 10,710 | 3,733 | 9,662 | 695 | 33,659 |
| Q4 | 11,704 | 18,128 | 12,017 | 7,242 | 1,531 | 50,622 |
| FY 2017 | 72,249 | 116,564 | 34,117 | 13,831 | 4,434 | 241,195 |
| Q1 | 7,306 | 39,755 | 4,461 | 573 | 501 | 52,596 |
| Q2 | 20,823 | 27,985 | 2,373 | 469 | 436 | 52,086 |
| Q3 | 19,343 | 22,715 | 9,057 | 924 | 575 | 52,614 |
| Q4 | 24,777 | 26,109 | 18,226 | 11,865 | 2,922 | 83,899 |
| Grand Total | 154,344 | 297,499 | 110,396 | 49,586 | 12,040 | 623,865 |

Please note:

- 1) The data is as current as the day it was pulled
- 2) Card Produced, Approval Notice Sent, and Denial Notice Sent included in completion actions

Data generated October 18, 2017

Report created October 18, 2017

System C3 Consolidated/SMART

Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER)

Parameters:

Form Type I-765

Class Preference: C8 Initial

Data Type Completions

Date Range: FY10-FY17

RFE HACs: FBA, FBB, FBC, IK, IKA

EXHIBIT E



U.S. Citizenship and Immigration Services

Affirmative Asylum Scheduling Bulletin

This bulletin explains how the Asylum Division prioritizes the adjudication of affirmative applications for asylum. On December 26, 2014, we began prioritizing asylum applications for interview scheduling as follows:

- 1.) Applications that were scheduled for an interview, but the interview had to be rescheduled at the applicant's request or the needs of USCIS;
- 2.) Applications filed by children; and
- 3.) All other pending affirmative asylum applications in the order they were received, with oldest cases scheduled first.

Generally, applicants in the first and second categories are scheduled promptly.

The table below lists how the asylum offices are currently scheduling asylum interviews for applications pending in the third category. It provides the filing dates (month and year) of most asylum applications scheduled for local interviews during that particular month. We have created this system to provide applicants in the third category an estimate for when they might expect their interview to be scheduled. The approximations provided in the table are based on interviews scheduled during the listed month and future movement will be determined by each office's caseload and resources. For example, in June 2015, the Arlington Asylum Office conducted interviews for applications filed in August 2013. It currently does not include asylum interviews occurring outside of the eight asylum offices or the Boston sub-office (e.g. interviews occurring on circuit rides). Asylum offices schedule circuit ride interviews as resources permit. Please contact the asylum office with jurisdiction over your case for more detailed information.

Asylum office directors may consider applicants' requests for urgent interview scheduling outside of the prioritization categories on a case-by-case basis. Please submit any urgent interview scheduling requests in writing to the asylum office with jurisdiction over your case. Go to the [USCIS Service and Office](#) locator page for contact information.

Please Note: The table does not include interviews for [Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal \(Pursuant to Section 203 of Public Law 105-100 \(NACARA\)\)](#).

Interview Schedule for Affirmative Asylum Applicants in Category 3

This chart will be updated monthly. Please check back each month for updated information.

| If you live under the jurisdiction of... | We scheduled interviews in... | For people who filed in... |
|--|-------------------------------|----------------------------|
| Arlington, VA | September 2017 | June 2014 |
| | August 2017 | June 2014 |
| | July 2017 | June 2014 |
| Boston, MA | September 2017 | October - December 2013 |
| | August 2017 | October - November 2013 |
| | July 2017 | September - October 2013 |
| Chicago, IL | September 2017 | March - May 2015 |
| | August 2017 | March - May 2015 |
| | July 2017 | February - March 2015 |
| Houston, TX | September 2017 | June - July 2014 |
| | August 2017 | June 2014 |
| | July 2017 | June 2014 |
| Los Angeles, CA | September 2017 | October - November 2013 |
| | August 2017 | September - November 2013 |
| | July 2017 | June - September 2013 |

| If you live under the jurisdiction of... | We scheduled interviews in... | For people who filed in... |
|--|-------------------------------|------------------------------|
| Miami, FL | September 2017 | June 2013 |
| | August 2017 | June 2013 |
| | July 2017 | May – June 2013 |
| Newark, NJ | September 2017 | January – May 2015 |
| | August 2017 | December 2014 – January 2015 |
| | July 2017 | November – December 2014 |
| New Orleans, LA | September 2017 | January – June 2015 |
| | August 2017 | July 2013 – December 2014 |
| | July 2017 | June 2013 – October 2014 |
| New York, NY | September 2017 | September 2015 |
| | August 2017 | April – August 2015 |
| | July 2017 | March – August 2015 |
| San Francisco, CA | September 2017 | May – July 2015 |
| | August 2017 | April – June 2015 |
| | July 2017 | April – June 2015 |

Note: The filing dates of scheduled interviews may not change every month for every office. This can occur when an office is conducting more credible and reasonable fear interviews, has a large number of category 1 and 2 affirmative asylum cases, or has a large number of pending category 3 cases with filing dates from that particular month. Some affirmative asylum interviews were scheduled outside of the above date ranges.

Last Reviewed/Updated: 10/12/2017

EXHIBIT F

The Honorable James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

| | | |
|---------------------------|---|----------------------------|
| A.A., et al., |) | Case No. 2:15-cv-00813-JLR |
| |) | |
| Plaintiffs, |) | DECLARATION OF DONALD W. |
| |) | NEUFELD |
| v. |) | |
| |) | |
| UNITED STATES CITIZENSHIP |) | |
| AND IMMIGRATION SERVICES, |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |

I, Donald W. Neufeld, hereby declare and say:

1. I am the Associate Director for Service Center Operations (SCOPS) for U.S. Citizenship and Immigration Services (USCIS), a component within the U.S. Department of Homeland Security (DHS). I have held this position since January 2010. In this position, I oversee all policy, planning, management, and execution functions of SCOPS. My current job duties include overseeing a workforce of more than 5,800 government and contract employees at the five USCIS Service Centers located in California, Nebraska, Texas, Vermont, and Virginia. These five service centers adjudicate over six million immigration-related applications, petitions, and requests annually, including applications for work authorization.

2. I was previously the Deputy/Acting Associate Director for USCIS Domestic Operations from June 2007 to January 2010 where I oversaw all immigration adjudication activities at USCIS's four Service Centers and 87 field offices throughout the United States,

as well as 130 Application Support Centers, four Regional Offices, two Call Centers, the Card Production Facility, and the National Benefits Center (NBC). From January 2006 to June 2007, I was the Chief of USCIS Field Operations managing and overseeing the 87 field offices delivering immigration benefit services directly to applicants and petitioners in communities across the United States and the NBC which performs centralized front-end processing of certain applications and petitions. My career with USCIS and the legacy Immigration and Nationality Service (INS) spans more than 30 years, where I have held several leadership positions including Deputy Assistance District Director for the Los Angeles District, Assistant District Director, and later District Director of the Miami District, and Service Center Director for the California and Nebraska Service Centers. I began my career in 1983, initially hired as a clerk in the Los Angeles District, then serving as an Information Officer, then an Immigration Examiner, conducting interviews and adjudicating applications for immigration benefits.

3. I make this declaration on the basis of my personal knowledge and information made available to me in the course of my official duties.

History of Processing and Adjudicating Applications for Employment Authorization

4. Before 1997, the issuance of employment authorization documents (EADs) was decentralized within the former INS. Individual field offices were able to print EADs in their offices on Form I-688B. Thus, when an individual inquired about an EAD or requested an interim EAD and was eligible to receive it, a field office was able to print out the EAD and provide it to the individual on that same day.

5. In January 1997, the former INS began issuing a new, more secure EAD from a centralized location and gave it a new form number (I-766) to distinguish it from the less

secure, locally produced Forms I-688B EADs. However, field offices continued to produce EADs on Form I-688B for limited purposes, including for interim EADs. Decentralized production provided efficient customer service; however, EADs that continued to be produced at the field offices did not have the same security features as cards produced from the centralized location. The cards produced at the field office were vulnerable to tampering and counterfeiting.

6. On August 18, 2006, due to concerns about the quality of the Forms I-688Bs, fraud, and security, then Acting Director of Domestic Operations, Michael Aytes, issued a memorandum entitled "Elimination of Form I-688B, Employment Authorization Card" (Aytes Memo). This memorandum directed USCIS to stop accepting Form I-765, Application for Employment Authorization (Form I-765) at field offices for the production of Forms I-688Bs by September 30, 2006.

7. Because local field offices were no longer able to issue print and issue interim EADs, if an individual were to come to the local field office to request one, the Aytes Memo directed that a service center or the NBC was responsible to either adjudicate the pending Form I-765 or issue an interim EAD.

8. Although individuals could no longer receive immediate customer service and obtain an EAD at a field office, the new process greatly reduced the risk of tampering and counterfeiting. This meant that EADs were more trustworthy and reliable for employers and individuals.

9. Although the Aytes Memo did not direct that the issuance of interim EADs be eliminated altogether, it precluded Form I-688B interim EADs from being issued locally, and gave instructions on how to handle requests for interim EADs, including a direction to

complete Form I-765 adjudications expeditiously to the extent possible in order to minimize the necessity to issue interim EADs.

10. Over time, it became rarer for service centers or the NBC to issue interim EADs. USCIS learned that it requires almost the same amount of resources to issue an interim EAD as it does to issue and adjudicate an EAD of full duration, partly because once all EADs were processed at the central location, interims EAD had to contain all of the same security and anti-counterfeiting features as an EAD of full duration. Therefore, USCIS determined that it was often more efficient and less resource-intensive to prioritize the adjudication of the EAD application, rather than issue an interim EAD. However, in limited circumstances, where appropriate, interim EADs continued to be issued.

11. All EADs are now printed at a card production facility. The card facility produces a tamper-proof card reflecting the specific employment authorized category, conducts quality control, and mails that card to the applicant.

12. On December 23, 2015, USCIS issued a Notice of Proposed Rulemaking (NPRM) to eliminate the regulatory provision that provided for interim EADs and to eliminate the 90-day processing period that governed the processing of most EAD applications, excluding initial EAD applications filed by individuals with a pending asylum application. The NPRM also provided that certain individuals renewing an EAD application could have that EAD auto-extended. In the NPRM, USCIS explained its purpose in eliminating the 90-day processing period was to “reduc[e] opportunities for fraud and protect[] the security-related processes undertaken for each EAD application.” Notice of Proposed Rulemaking, “Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements

Affecting High-Skilled Nonimmigrant Workers; Proposed Rules,” 80 Fed. Reg. 81903 (Dec. 23, 2015).

13. The proposed rule also articulated that the 90-day processing period no longer reflected operational realities for USCIS due to national security, fraud, and technological changes since the regulation first went into effect more than 20 years ago. *Id.* 81928-29. The proposed rule explained that providing more flexibility with processing times “reduc[es] opportunities for fraud and better accommodate[es] increased security measures, including technological advances that utilize centralized production of tamper-free documents.” *Id.* at 81928.

14. On November 18, 2016, a final rule was published which included the relevant provisions in the NPRM. “Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,” 81 Fed. Reg. 82398 (Nov. 18, 2016) (Final Rule). It went into effect 60 days later.

15. Although the Final Rule did not encompass the 30-day processing period for employment authorization applications filed by individuals with a pending asylum application under 8 C.F.R. § 208.7(a), the same operational realities, fraud and national security concerns, and technological changes have affected the processing of those EADs.

Employment Authorization Applications for Individuals with Pending Asylum Applications

16. In addition to the history affecting all employment authorization applications, it is helpful to understand the nuances of the particular employment authorizations at issue in this litigation.

17. Applications for employment authorization filed by individuals applying based on a pending asylum application are commonly known as category C-8 applications (C-8). This

is because the authorization to work while an asylum application is pending is found at 8 C.F.R. § 274a.12(c)(8).

18. Unlike some other eligibility categories for employment authorization, issuance of C-8 EADs is not discretionary. Instead, if the individual is eligible to receive the EAD, then USCIS will issue it.

19. Under 8 C.F.R. § 208.7(a), an individual applying for a C-8 EAD is ineligible if he or she is an aggravated felon.

20. The service centers and NBC run certain background checks in order to determine if someone may be an aggravated felon. If certain derogatory information is uncovered, then the case is routed to the Background Check Unit (BCU)/Center Fraud Detection Operations (CFDO).

21. USCIS must also verify an individual's identity before granting him or her an immigration benefit, and ensure that the benefit is being provided to the individual who is actually eligible for it. In cases where USCIS suspects fraud, such as an identity issue, the case is also routed to the BCU/CFDO.

22. On some occasions, the BCU/CFDO is able to quickly review and resolve the issue. In that instance, the case is routed back to an adjudicator for final adjudication. Other cases are more complex, and may require additional time to resolve for further investigation and vetting.

23. If the BCU/CFDO is able to determine from the derogatory information that the individual has committed an aggravated felony, fraud, or that there are factual issues that could lead to a determination that the individual has committed an aggravated felony or engaged in fraud that makes the individual ineligible for the benefit. The BCU/CFDO

provides that information to the adjudicator, who, as appropriate, denies the case or issues a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to the applicant.

24. It necessarily takes additional time and investigation to adjudicate an application that is routed to the BCU/CFDO. However, it is also necessary to resolve any issues regarding background checks before the case is adjudicated, to ensure that the individual is actually eligible for the benefit sought, and that USCIS is not providing employment authorization to aggravated felons, as required by regulation. Cases routed to the BCU/CFDO may take more than 30 days to adjudicate.

25. When 8 C.F.R. § 208.7(a), the regulation that provides for the 30-day processing period for Form I-765 C-8 applications, was first issued, it was far simpler to resolve potential aggravated felony issues and adjudicate the case within 30 days as there was an automated system for checking RAPS sheets (criminal background checks). As USCIS made improvements to its security processes, it implemented a new more secure system, Benefits Biometrics Support System (BBSS). As a result, resolving criminal background checks and identity issues became much more complicated, often times taking more than 30 days to resolve. Last year USCIS upgraded to the Customer Profile Management (CPMS) System. This system replaces the BBSS and automates the background check portion so that it can be resolved more quickly.

26. Calculating how long the underlying asylum application has been pending can also be complex. For a Form I-765 C-8 application to be filed, the underlying asylum application must be pending for 150 days, and it may not be approved until the underlying asylum application has been pending for 180 days.

27. Individuals who seek asylum and are not in removal proceedings must file an affirmative application directly with USCIS. However, individuals who are in removal proceedings and wish to seek asylum must file a defensive asylum application with Executive Office of Immigration Review (EOIR), a component of the Department of Justice (DOJ). Individuals are eligible to file a Form I-765 C-8 application when an asylum application has been pending for 150 days or more, regardless of whether the asylum application is affirmative or defensive. Calculating the amount of time that an asylum application has been pending is typically less complicated if the asylum application is affirmatively filed with USCIS.

28. For defensive immigration filings, USCIS must examine information from EOIR to determine whether the proper amount of time has passed since the asylum application was filed, such that the individual may apply for an EAD. Determining the number of days an asylum application has been pending is generally referred to as a clock calculation.

29. The relevant information from EOIR contains substantially more adjudicative codes for clock calculations, often across multiple proceedings that must be examined comprehensively, rather than serially, in order to properly calculate the amount of time applicants' asylum applications have been pending. Accordingly, the calculations for individuals in EOIR proceedings, either as defensively-filed asylum applications or as affirmatively-filed applications that have since been referred to EOIR, are typically more labor intensive adjudications. The more labor intensive review process may result in a longer adjudication timeframe for these cases.

30. An additional complication may arise with these cases when the Form I-765 C-8 application is filed at exactly or around the day that the underlying asylum application has

been pending for 150 days. If Day 180, when USCIS may issue an approval on the application, arrives on a holiday or weekend, the decision in the case will necessarily be issued when the Form I-765 has been pending for slightly longer than 30 days.

Increase in the Number of Initial C-8 Employment Authorization Applications

31. In recent years, the volume of individuals applying for asylum in the United States has increased drastically. As the number of asylum applications has increased, the processing times for USCIS or EOIR to adjudicate those asylum applications has also increased.

32. USCIS statistics currently show that individuals are waiting two to four years even to be interviewed on their asylum application. *See* Exhibit E, submitted concurrently with this declaration. This statistic does not take into account how long it is taking for EOIR to process defensive asylum applications.

33. With the increase in filings for asylum applications in recent years, and the resulting backlog, the number of Form I-765 C-8 applications also has risen markedly. *See* Exhibit B, submitted concurrently with this declaration.

34. For example, in April 2014, USCIS received 5,098 initial Form I-765 C-8 applications. By April 2015, the month before this lawsuit was filed, that number had almost doubled to approximately 9,510 applications received in that month. The next year, in April 2016, USCIS received 14,013 initial Form I-765 C-8 applications, almost triple the rate of applications it had been receiving two years earlier. Finally, this April 2017, USCIS received 20,322 initial Form I-765 C-8 applications in a single month, more than five times as many as it had received only three years before. *See* Exhibit B.

35. From 2010-2014, the yearly number of asylum applications may have risen somewhat, but mostly remained steady. *See* Exhibit D, submitted concurrently with this declaration. The increase in the number of initial Form I-765 C-8 applications that USCIS has seen in the past three years is unprecedented. *See* Exhibit B.

36. USCIS has tools to be flexible and respond to changing demands, but it is simply impossible to predict when or if the number of initial Form I-765 C-8 applications may stabilize. This historic increase has made it increasingly difficult to manage the workload.

37. When 8 C.F.R. § 208.7(a) was initially drafted and went into effect, not only was it simpler to process and provide EADs to individuals due to decentralized processing, the volume of applications was also much smaller, because overall asylum applications receipts were smaller, and they were often adjudicated within 180 days. The most recent time that the regulation was updated, in 2011, USCIS was not experiencing and could not predict the rapid increase in filings that is currently occurring.

38. As an added complication, USCIS is a fee-based agency, and the fees that individuals pay for benefits covers the cost of the adjudication. However, for certain humanitarian benefits, USCIS does not charge a fee. Instead, the fees from other application types cover the costs of those adjudications. USCIS does not charge a fee for filing an asylum application, or for filing an initial Form I-765 C-8 application.

39. When the workload increases for other benefit types that require a fee, the fees help offset the costs of additional employees, overtime costs, or other needs. However, because USCIS does not charge a fee for initial category C-8 EAD applications, or for asylum applications, it has not received any additional funds to cover the approximately 500 percent increase in the rate of Form I-765 C-8 filings from 2014 to 2017.

40. Further, SCOPS is currently receiving higher than expected receipt volumes across many other workloads, in addition to I-765 C8s, which impacts our capacity at all service centers across all workloads. SCOPS is responsible for adjudicating about 60 form types, several of which contain either a statutory or regulatory processing time requirement to adjudicate and manage.

41. While USCIS is cognizant of the strain that increased processing times may put on individuals who are seeking employment, and is attempting to manage this historic workload to the best of its ability, I cannot predict when or if the number of receipts will stabilize, or whether it will continue to rise.

Efforts to Improve Processing Times

42. As SCOPS has handled the increased C-8 workload in the past few years, it has undertaken efforts to improve its process and increase efficiencies.

43. On October 5, 2016, USCIS increased the validity period of an initial C-8 EAD from one to two years. In the past, not many individuals needed to renew their C-8 EAD, because the underlying asylum application was adjudicated before the EAD expired. The 2016 change was made in recognition of the fact that asylum applications have been taking longer than one year to adjudicate, and that a substantial number of individuals who applied for an initial C-8 EAD had to file for a renewal card. The change was also intended to alleviate the drain on resources that were being used to adjudicate renewal C-8 EADs.

44. As mentioned before, USCIS also issued a Final Rule in 2016 that eliminated the availability of interim EADs, eliminated the 90-day processing period for most EAD applications, and allowed auto-extensions for many renewal EAD categories. The elimination of the 90-day processing period and provision allowing for auto-extensions

provides SCOPS with flexibility to respond to ever-changing demands and workload fluctuations. This increases efficiency at the service centers, leading to lower costs and better results for applicants. Renewal C-8s are one of the categories that are eligible to have their EAD auto-extended if the application for renewal is filed before the current EAD expires.

45. SCOPS also recognized last year that for certain EAD categories, applicants were regularly making filing errors that slowed down the adjudication process and diverted resources to address those errors.

46. To respond to this problem, SCOPS created Optional Checklists for EAD categories in which there were the most filing errors. SCOPS created four of these checklists, which it posted to the USCIS.gov website. <https://www.uscis.gov/i-765>. One of the optional checklists was for C-8 filings. The checklist provides reminders to applicants regarding how to accurately complete the application, and provide supporting documentation, as needed.

47. Finally, on July 26, 2017, SCOPS instructed the Texas and Nebraska Service Centers (the two centers who were then adjudicating Form I-765 C-8 applications) to undertake additional efforts to adjudicate all of their initial Form I-765 C-8 applications within 30 days. The service centers were instructed to complete efforts by the end of the fiscal year, September 30, 2017. This effort was intended to determine what resources would be required for service centers to become current in processing times, and what impediments existed to doing so. To comply with this instruction, the service centers reallocated resources, moving additional adjudicators onto the Form I-765 C-8 workload, and instructing certain adjudicators, who were already assigned to this and other workloads, to focus all of

their attention on Form I-765 C8s. The centers also considered innovative ways to improve processing times.

48. On October 3, 2017, SCOPS received the results of that effort. SCOPS learned that of currently pending cases, approximately 60 percent of pending cases that had not been subject to an initial or additional request for evidence were within 30 days of filing, and about 78 percent were within 60 days of filing. *See* Exhibit C, submitted concurrently with this declaration.

49. SCOPS also identified a few of the major impediments to decreasing the processing times for the Form I-765 C-8 workload.

50. First, in Fiscal Year 2017, about 12.8 percent of Form I-765 C-8 cases were routed to the BCU/CFDO. *See* Exhibit C. As explained earlier, because BCU/CFDO cases take longer to adjudicate than other cases, it is not possible to resolve all ineligibility concerns within the 30 day regulatory time. Even if the concern itself takes fewer than 30 days to resolve, the additional time it takes to resolve the concern at the BCU/CFDO, along with the regular processing time, may mean the overall adjudication takes longer than the 30 day regulatory period. In my judgement, USCIS's obligation to ensure that only individuals who are eligible to receive a benefit do so, and to protect the integrity of the immigration system from fraud, would be undermined if USCIS were not able to thoroughly vet these cases.

51. Next, Form I-765 C-8 applications involving an underlying defensive asylum application are more complicated to adjudicate than cases involving an affirmatively filed asylum application because of the more complicated manual clock calculations. This can lead to longer processing times for those cases.

52. Additionally, when an individual files a Form I-765 C-8 application at or shortly after the underlying asylum application has been pending for 150 days, the case may necessarily be adjudicated shortly after the 30 day processing period expires if the 180th day falls on a holiday or weekend.

53. Finally, USCIS's resources are strained with the increased level of receipts in this workload. The service centers were not able to assign sufficient adjudicators to the Form I-765 C-8 workload for the long-term without other workloads suffering. The lack of a fee in these cases makes additional hiring more difficult. While service centers requested and received approval for some additional hiring for Fiscal Year 2018, it is likely not sufficient to sustain significantly reduced processing times across the Form I-765 C-8 application workload.

54. The results of this effort did result in a long-term process improvement. When a Form I-765 is filed with USCIS, the form instructions and USCIS website provide instructions to mail it to one of three USCIS "lockbox" facilities. The lockbox facility logs each filing and reviews it. Appropriately filed applications are then forwarded to service centers for adjudication. Mailing the filing from the lockbox to the service center can take several days, which is problematic for Form I-765 C-8s, which have such a short processing time. Beginning October 2017, all Form I-765 C-8 applications were moved to the Texas Service Center (TSC) for adjudication because USCIS was able to negotiate with the Dallas Lockbox. Instead of mailing the Form I-765 C-8s to the service center, the Dallas Lockbox now drives receipts to the TSC on a daily basis, as the two locations are within an hour of one another. This new process saves crucial days of the regulatory processing period that were previously spent on mailing.

55. SCOPS continues to seek process improvements and innovations to allow our work to improve and to assist us in reaching our mission to provide eligible individuals with benefits in a timely manner.

56. Unfortunately, as I explained above, current security realities and resource strains mean that there is no easy fix that would allow the service centers to adjudicate all initial Form I-765 C-8 applications within the 30 day regulatory period, one hundred percent of the time.

57. If USCIS were required to maintain perfect compliance with the 30-day regulatory period for initial C-8s, it would most certainly divert significant resources from other product lines that could make it impossible for USCIS to keep up with other regulatory and statutory deadlines, and potentially other court orders.

58. Further, if USCIS were required to maintain perfect compliance with the 30-day regulatory period for initial C-8s, it would not be possible to resolve background check issues for all cases within 30 days. While some information uncovered in background checks is straightforward and able to be resolved within a matter of days or weeks, others are complicated and required coordination with other law enforcement agencies. In these circumstances USCIS would be forced to decide between three untenable choices: 1) deny the EAD application even though the individual may ultimately be eligible; 2) grant the EAD application to an individual who may not be eligible, and may pose public safety or other risks; or 3) possibly fail to comply with the thirty-day regulatory processing period in order to complete vetting before the application is adjudicated.

59. In conclusion, while SCOPS continues to attempt to adjudicate Form I-765 C-8 applications within the 30 day regulatory period as an aspirational goal, security and technological changes, complex adjudications, and the unprecedented increase in the volume

of Form I-765 C-8 applications has made it increasingly difficult, if not impossible, to adjudicate all applications within that timeframe.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

10/20/17
DATE



Donald W. Neufeld
Associate Director, SCOPS
Washington, DC