



U.S. Department of Justice
Immigration and Naturalization Service



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Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

March 10, 2003

MEMORANDUM FOR ALL REGIONAL DIRECTORS

FROM: William Yates /s/
Acting Associate Director, Operations
Bureau of Citizenship and Immigration Services

SUBJECT: The Meaning of 8 CFR 274a.12(a) as it Relates to Refugee and Asylee
Authorization for Employment.

I. Introduction

On June 17, 2002, the Immigration and Naturalization Service (INS) Office of General Counsel forwarded to the Office of Policy and Planning a legal opinion entitled "Employment Authorization of Aliens Granted Asylum." The opinion stated that, as a legal matter, aliens who have been granted asylum are authorized to work in the United States whether or not they have obtained an Employment Authorization Document (EAD, Forms I-766 or I-688B). The BCIS concurs with the Office of General Counsel's conclusions and asks that all offices conduct their affairs in such a way as comports with the instructions in this memorandum.

II. Employment Authorization of Asylees and Refugees

8 CFR 274a.12(a) states that all aliens listed under 274a.12(a) are "employment authorized incident to status" and that they are "authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes." Asylees are one of the classes listed under 274a.12(a) at (a)(5). Therefore, asylees belong to the classes of aliens who are "employment authorized incident to status."

There has been some confusion, however, on this point since the employment authorization regulations at 274a.12(a) appears to require asylees to apply for an employment authorization document:

(a) *Aliens authorized incident to status*

* * *

(5) An alien granted asylum under Section 208 of the Act for the period of time in that status, *as evidenced by an employment authorization document issued by the Service;*" 8 CFR 274a.12(a)(5) [Emphasis added]

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Further, the last sentence of the introductory paragraph to 274a.12(a) states that an alien asylee, among others, "who seeks to be employed in the United States must apply to the Service for a document evidencing such employment."

These last two points read alone appear to suggest that the Service has the discretion to withhold employment authorization from asylees, and that asylees must first apply to the Service and be granted employment authorization in order to work. This is a misconception. The Service does not have the discretion to withhold employment authorization from any asylee, pursuant to INA 208(c)(1)(B). In fact, by regulation at 8 CFR 274a.12(a), such authorization is granted automatically upon the individual attaining asylee status.

The confusion, therefore, seems to arise from a blurring of the distinction between an alien having employment authorization versus an alien having *evidence* of employment authorization. However, this distinction must be maintained. In the case of asylees, the distinction is made both by statute in INA 208(c)(1)(B), which directs the Attorney General to authorize employment to asylees and issue documentation evidencing this fact, and by regulation at 8 CFR 274a.12(a). This distinction is further reinforced by regulation in 274a.13(a), which describes how aliens authorized to be employed incident to status, such as asylees, may "obtain documentation evidencing *this fact*" of employment authorization.

Once an individual receives asylee status, by regulation, that asylee is authorized to work as of the date of the grant. This is true regardless of whether the Service has issued the asylee an EAD. But if the asylee wishes to receive an EAD from the Service, the regulations prescribe an application process for the asylee to follow. There may be a number of reasons why an asylee will choose to seek to obtain an EAD from the Service, such as, to satisfy the identity and employment authorization documentation requirements of the Form I-9, Employment Eligibility Verification form, the registration requirements of INA 264(e), or the requirements of a state benefits or licensing agency. However, failure to obtain an EAD does not result in a lack of employment authorization.

Because the regulatory sections concerning refugees parallel that of asylees on these points, the same conclusion is applicable to refugees. Just as asylees, refugees are employment authorized incident to their status and do not need to obtain an EAD in order to be considered authorized to work by the Service. Refugees are listed as a class of aliens authorized to work incident to status in 8 CFR 274a.12 at (a)(3) and (a)(4).

III. Instructions

INS officers are mandated to update and clarify the information that they provide other government entities and the public regarding the employment authorization of asylees and refugees. The date employment authorization begins for asylees and refugees is the date on

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which they attained their asylee or refugee status irrespective of the issuance of an EAD, and continues for so long as they are in that status. Upon adjustment to lawful permanent resident status, their work authorization further continues.

The Office of Operations requests your assistance in disseminating these instructions and attached guidance from the former INS' Office of the General Counsel to your respective offices. Questions regarding the above policy can be directed to Michael Hardin, Office of Adjudications, (202) 514-4754.

Attachment