DHS Proposes Major Changes to Asylum-Based Work Authorization, Including Likely Pause on New EAD Applications

March 30, 2026

By: Gregory d'Agincourt

The Department of Homeland Security (DHS) has issued a Notice of Proposed Rulemaking (NPR) that would significantly change employment authorization eligibility for individuals with pending asylum applications. Employers who employ such individuals should take stock of these potential changes and work proactively with affected employees.

Traditionally, individuals who applied for asylum, even those who entered without inspection, would be eligible for work authorization after their asylum application had been pending for 180 days. The proposed rule would modify several aspects of the asylum-based employment authorization document (EAD) process, including extending waiting periods, introducing new eligibility restrictions, and allowing DHS to pause acceptance of new EAD applications based on affirmative asylum processing times.

If finalized, the rule will substantially delay or limit access to work authorization for asylum applicants.

Public comments are due April 24, 2026.

Key Proposed Changes

Likely Pause on New Asylum-Based EAD Applications

The proposed rule would allow DHS to pause acceptance of initial asylum-based work authorization applications when the average processing time for affirmative asylum applications exceeds 180 days over a 90-day period. Acceptance would resume only when processing times fall to 180 days or less. While the pause is based on the processing time for affirmative asylum applications, it would also apply to those who are already in removal proceedings and file defensive applications.

DHS admits that processing times for affirmative applications already significantly exceed the 180 days and states that the pause could last years.

Impact: With the initial pause potentially lasting years, new asylum applicants will not receive employment authorization for an indefinite period.

Longer Waiting Period for Work Authorization

The rule would extend the current 180-day asylum work authorization eligibility to 365 days. Therefore, under the proposed rule, asylum applicants could not apply for work authorization until 365 days after filing for asylum. In addition, United States Citizenship and Immigration Services (USCIS) is currently required to adjudicate asylum work authorization requests in 30 days. The proposed rule would extend the adjudication timeframe to 180 days, leading to a potential 545 (365 + 180) day wait for applicants to receive work authorization after filing for asylum.

Impact: Even after the pause ends, new asylum applicants will have to wait an additional one to one and a half years for work authorization.

New Eligibility Restrictions

The proposed rule would introduce several additional eligibility limitations for asylum-based EADs. The two most impactful restrictions are:

1. *One-Year Filing Deadline.* Applicants who file asylum more than one year after entering the United States would generally be ineligible for employment authorization, unless they qualify for an exception to the asylum filing deadline. This is a significant change, as currently, anyone can obtain work authorization if their asylum application has been pending for 180 days, regardless of how long they have been in the United States.
2. *Illegal Entry Restrictions.* Applicants who entered the United States without inspection would generally be ineligible for work authorization unless they expressed fear of persecution within 48 hours of entry or demonstrated good cause for the manner of entry. This is another significant change, as an individual's manner of entry now impacts their ability to receive work authorization.

Impact: A huge portion of asylum applicants will no longer be eligible for work authorization based on their time and manner of entry into the United States.

Mandatory Biometrics and Discretionary Approval.

The proposed rule would require biometrics submission for all asylum applicants seeking work authorization, including renewals. In addition, instead of being presumed to be valid, an asylum applicant's work authorization request could be denied on a discretionary basis.

Impact: Beyond initial asylum work authorization applications, this will significantly delay renewal applications, leading to gaps in employment authorization if renewals are not approved before an employee's current work authorization expires.

Revised Termination Rules

The proposed rule would also clarify when asylum-based work authorization ends. Employment authorization would terminate immediately after a denial of the asylum claim becomes final (30 days after an Immigration Judge denies the asylum claim without appeal, or after the Board of Immigration Appeals dismisses an appeal).

Impact: Depending on the outcome of the employee's asylum hearing, their work authorization may terminate prior to the expiration date listed on their work authorization document.

Practical Implications

If finalized, the proposed rule would significantly limit the availability of employment authorization for asylum applicants. The changes would result in:

- Substantially longer wait times before asylum applicants can obtain work authorization
- Reduced access to work authorization for individuals with pending asylum claims
- For employers that rely on workers with asylum-based employment authorization, there will be fewer available workers, and even those who are available may have gaps in their work authorization

What Comes Next

Public comments are due April 24, 2026. If finalized, the rule will likely face challenges under the Administrative Procedure Act, including that the rule is arbitrary or capricious or exceeds DHS's statutory authority under the Immigration and

Nationality Act. This litigation could delay implementation of the rule or lead to injunctions affecting the whole rule or certain parts.

Recommendation

Employers who rely on workers with asylum-based employment authorization should plan for potential staffing shortages, enhance their I-9 compliance systems, and consider proactively communicating with impacted employees about renewal timing.