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Office of Public Engagement
United States Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, DC 20529
Via e-mail: opefeedback@uscis.dhs.gov

**Re: AILA Comments on USCIS Interim Memorandum:
Issuance of Advance Parole Employment Authorization
Document; Revisions to *Adjudicator's Field Manual* (AFM)
Chapters 54.2(b), 54.3(d)(3), 54.3(e)–(h), and 55.3, and
Appendices 55-4, 55-5, 55-6, and 55-7 (AFM Update AD07-
27)**

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS interim memorandum, "Issuance of Advance Parole Employment Authorization Document," AFM Update AD07-27.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this interim memorandum and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

Introduction

We thank USCIS for providing the new option for certain adjustment of status and registry applicants to apply for and obtain a combined advance parole/employment authorization document (AP/EAD). This will undoubtedly prove to be a significant benefit for many individuals who will no longer be required to carry a separate paper-based AP document, which can be easily misplaced or damaged. The EAD card, which can now be issued with AP authorization, is compact, tamper-resistant, and secure. We also appreciate that USCIS has made the combined AP/EAD optional, and will allow individuals to continue to

apply for and receive separate documents if they choose to do so. If implemented according to the terms of the memorandum, we believe that this new benefit will be very well-received.

Concerns Relating to the Timely Adjudication of AP/EAD Documents

AILA has received ongoing reports of sporadic processing problems and delays in the adjudication of stand-alone EAD applications. By regulation, USCIS is required to adjudicate an EAD application within 90 days of filing.¹ AILA has received numerous reports of EAD applications that remain pending beyond the 90-day timeframe, due to problems with initial processing, or delays in scheduling biometrics. This is especially problematic for aliens who do not have work authorization incident to their nonimmigrant status (e.g., H-1B, L-1, etc.). In addition, a request to expedite an EAD is discretionary, and cannot be submitted until the application has been pending for 75 days. While AILA fully supports the issuance of a combined AP/EAD document, we express our concern that the existing problems with EAD processing will be exacerbated in the processing of the combined document, or that new problems will surface if proper measures are not put in place.

AILA members have also reported numerous cases involving delays in the issuance of AP documents. We appreciate the detailed approach to expedite requests that USCIS has outlined in the memorandum. The provision for the issuance of a single-entry I-512 when an expedite is warranted, and the combined AP/EAD document cannot be timely adjudicated, should assist many in ensuring that processing delays do not disrupt emergent travel. However, noting that expedite requests are discretionary, and that a need to travel that does not rise to the criteria required for an expedite may nonetheless be urgent, we ask that USCIS put measures in place to ensure that combined AP/EAD documents are adjudicated in a timely manner, well within normal processing times.

In addition, at present, USCIS will not accept an application to extend an EAD or AP filed more than 120 days from the date the current document expires. To avoid unnecessary gaps in work and travel authorization, we urge USCIS to accept extension applications filed as early as 180 days prior to the current document's expiration.

INA §212(a)(9) Travel Warnings

The memorandum provides, under AFM Chapter 54.3(d)(3)(A):

The instructions for Form I-485 and Form I-131 advise applicants about the risks of traveling, if one has accrued unlawful presence. The standard Form I-512 and the notice that accompanies the issuance of the AP EAD also provide this information.

¹ 8 CFR §274a.13(d).

We applaud USCIS for recognizing the dire consequences of traveling on advance parole when an adjustment of status applicant has accrued 180 days or more of unlawful presence. By including the travel warnings where appropriate, it is hoped that unsuspecting individuals will avoid triggering the unlawful presence bars. This is particularly important for those individuals who are not represented by counsel. We ask that the travel warning on the notice that accompanies the AP/EAD card be prominently placed, in bold lettering to grab the attention of the recipient so that the message is clearly conveyed.

In addition, we recognize that regardless of whether the EAD and AP are issued separately or in the new combined format, adjudication of the two ancillary benefits are conducted separately, and there are instances where, an EAD may be approved and AP denied, and vice versa. While “[i]nadmissibility under section 212(a)(9)(B) or (C) does not necessarily preclude a grant of advance parole,” we hope that USCIS would take every precaution to prevent the issuance of an AP/EAD card, as well as an individual AP document, where the evidence indicates that the applicant would be subject to the unlawful presence bars.

Training of U.S. Customs and Border Protection

We ask that USCIS engage in adequate cross-training with U.S. Customs and Border Protection to ensure that inspections officers are able to properly identify and accept the new AP/EAD document as proof of permission to enter the United States.

Conclusion

AILA appreciates the opportunity to comment on this interim memorandum, and we look forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION