



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

March 2, 2021

Tracy Renaud
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., NW
Washington, DC 20529

Re: Receipt Notice Delays Impacting Stakeholders' Ability to Demonstrate Employment Eligibility for Purposes of Form I-9

Dear Ms. Renaud:

On behalf of the American Immigration Lawyers Association (AILA) and our more than 15,000 members, we write to express concern relating to, and offer a practical solution for, what has become over the past few months a crisis situation for both U.S. employers and employees with regard to significant delays in the issuance of receipt notices by the United States Citizenship and Immigration Services (USCIS).

In particular, in recent months, stakeholders have been experiencing significant delays in receiving receipt notices from USCIS for applications and petitions submitted to USCIS Lockbox facilities. Certain categories of applications filed at USCIS Lockbox facilities, including Form I-765, Application for Employment Authorization; Form I-485, Application to Register Permanent Residence or Adjust Status; and Form I-751, Petition to Remove Conditions on Residence are taking at least 90 days, and in some cases significantly longer, for USCIS to issue a Form I-797 notice of receipt. These receipt notices are then delivered by the U.S. Postal Service via regular mail to the applicant or attorney of record. USCIS has acknowledged these delays, noting that a significant increase in filings and facility capacity restrictions as a result of the COVID-19 pandemic are causing "significant delays for processing receipt notices" for forms and applications filed with the USCIS Lockbox.¹

Slow USCIS receipt notice issuance creates a particularly acute problem where the receipt notice is required as proof of current work authorization established by the timely filing of a related extension application, a common requirement for several categories of Employment Authorization Documents (EADs) that are eligible for an auto-extension if timely filed. Receipt notices also serve as proof of status in situations where a lawful permanent resident applies to remove conditions on his or her legal permanent resident (LPR) status.

¹ *USCIS Lockbox Updates*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Jan. 8, 2021), <https://www.uscis.gov/news/alerts/uscis-lockbox-updates>.

In order to prevent continued business operations, U.S. employers and employees must be able to rely on and accept a timely issued Form I-797 receipt notice, both for purposes of updating Form I-9, and also to provide assurance that the application has been accepted by USCIS for adjudication and will not be rejected as a result of an incomplete form, deficient payment, etc. Of particular concern to AILA is that USCIS is currently taking up to 90 days or more to reject some applications and petitions that were filed with USCIS as far back as October or November 2020. The untimely issuance of receipts by USCIS has resulted in employees being unable to provide sufficient evidence to demonstrate employment eligibility, where required, for Form I-9 purposes. The inability of employees to demonstrate evidence of their employment eligibility to their U.S. employer has resulted in gaps in work authorization, with some employees having to be taken off of payroll, and in some extreme situations being terminated from their job altogether. This has a profoundly negative impact on the impacted employee and their families, who are often not only impacted by the loss in employment, but also the loss of associated health insurance and related benefits. The loss in work authorization is also disruptive to U.S. employers who rely on the continued employment of their workforce to ensure the continuity of their business operations.

We appreciate and applaud the flexibilities announced by USCIS on February 26, 2021 related to F-1 Optional Practice Training (OPT) and STEM OPT applicants.² While these flexibilities are an important step, we urge USCIS to take additional measures to address receipt notice delays more broadly by adopting and implementing flexibilities related to the Form I-9 employment verification process for all applicants impacted by these receipt delays. In particular, to address the crisis-level receipt delays and the resulting impact of those delays on employment eligibility, AILA urges USCIS to adopt Form I-9 flexibilities to mitigate this situation, such as allowing applicants to present proof of delivery to USCIS of the immigration application or petition as a List C employment authorization document from the date of the USCIS announcement through whatever period is required until USCIS can resume the timely issuance of receipt notices after working through its current intake backlog. To that end, we urge USCIS to permit the acceptance of proof of delivery of an immigration petition or application as a List C document as quickly as possible to alleviate this problem, while also continuing to implement steps to reduce the delays in receipt notice issuance as quickly as possible. Moreover, we urge USCIS to take immediate steps to more quickly intake applications and petitions and issue receipt notices to avoid applicants and petitioners from suffering other harms due to the significant gap between the physical receipt of the application or petition by USCIS and the issuance of a receipt notice. We also urge USCIS to develop flexibilities to accept refiled applications and petitions for all applicants and petitioners whose application or petition was rejected by USCIS after October 1, 2020, given that many applicants have missed their opportunity to refile because of significant USCIS intake delays.

We thank you for your consideration of this matter. If you require any additional information or clarification, please contact Sharvari (Shev) Dalal-Dheini at (202) 507-7621 or by email at sdalaldheini@aila.org or Diane Rish at (202) 507-7642 or by email at drish@aila.org.

² *USCIS Extends Flexibilities to Certain Applicants Filing Form I-765 for OPT*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Feb. 26, 2021), <https://www.uscis.gov/news/alerts/uscis-extends-flexibilities-to-certain-applicants-filing-form-i-765-for-opt>.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

cc: Felicia Escobar, Chief of Staff, USCIS
Connie Nolan, Acting Associate Director, Service Center Operations Directorate
Amanda Baran, Chief, Office of Policy and Strategy
Carrie M. Selby, Acting Associate Director, External Affairs Directorate, USCIS
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Elissa McGovern, Chief of Policy, Office of the Citizenship and Immigration Services
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