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Melissa Lin, Branch Chief,
Policy Development and Coordination Division,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security,
5900 Capital Gateway Drive,
Camp Springs, MD 20746

Submitted via <http://www.regulations.gov>

Re: National Immigration Project of NLG's Comment on Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants DHS Docket No. USCIS-2022-0002

Dear Ms. Lin:

The National Immigration Project of the National Lawyers Guild (NIPNLG) submits this comment in response to the request for further comments United States Citizenship and Immigration Services (USCIS) on the Temporary Final Rule Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, (DHS Docket No. USCIS-2022-0002) 87 Fed. Reg. 26614 (May 4, 2022).

NIPNLG is a national nonprofit membership organization that provides support, referrals, and legal and technical assistance to attorneys, community organizations, families, and advocates seeking to advance the rights of noncitizens. NIPNLG focuses especially on the immigration consequences of criminal convictions, and its mission is to fight for justice and fairness for noncitizens who have contact with the criminal legal system. Additionally, we fight for fairness and transparency in immigration adjudication systems and believe that all noncitizens should be afforded the right to fair adjudications of their claims to remain in the United States.

NIPNLG commends USCIS for its careful review of the comments submitted at its request and supports the Temporary Final Rule, which extended the extension period of employment authorization and documentation from 180 days to 540 days for certain applicants seeking to renew their employment authorization document (EAD). While we are very concerned by the current delays in EAD authorizations and renewals and USCIS's ability to meet

the needs of those who rely on having valid EADs to work lawfully, this temporary final rule is a good stop gap measure to ensure noncitizens' ongoing ability to work as the agency rebuilds its staff and infrastructure. This comment will focus on the impacts the USCIS work authorization backlog has on the immigrant community and why we fully support the expansion of the automatic extension period.

The decision to expand the automatic extension period of employment authorization as a Temporary Final Rule under the “Good Cause Exception” of the Administrative Procedure Act per 5 U.S.C. 553(b)(B) and (d)(3) was crucial considering the significant number of applicants who, due to severe delays and backlogs, were unable to support themselves or their families. It also provides much needed relief for U.S. employers already facing a labor shortage and the ongoing impact of the COVID-19 global pandemic. To delay the effective date of this temporary change to allow for notice and comment would be both impracticable and contrary to public interest.

Already, the U.S. economy is facing a surplus of jobs without enough workers. The *Washington Post* reports that there are currently 11 million job openings available, and only 6.5 million unemployed individuals to fill them.¹ Further, there are 1.6 million backlogged employment authorizations or reauthorizations currently barring noncitizens who are able and willing to work from participating in the economy.² By expanding the automatic extension period of employment authorization as a Temporary Final Rule, noncitizens will be able to seek or retain employment without experiencing gaps in their employment authorization.

Not only will expanding the temporary final rule benefit the job market, but it will also help add stability to the millions of hard-working noncitizens who are affected by delays in renewing their work permits. A few examples of the human impact of losing employment authorization are highlighted below. One individual interviewed by CBS News, a political dissident from Nicaragua who worked as a roofer in Miami, has been waiting almost a year for his EAD to be renewed. Once it expires, he will lose his work authorization and driver's license, which is tied to the permit, because USCIS has not sent him his renewal in time. He said, “It is stressful. You're always worried. Being out of work triggers a chain reaction: there's no income, there's no money for rent, there's no food.”³ Other noncitizens whose EAD renewals have been delayed also speak of the difficulties they are facing as a result of the backlog and express fear that they will not be able to support their families and may face homelessness and hunger.⁴ One individual interviewed by *Bloomberg* was placed on unpaid leave from her job working at a major health insurance provider while she waited for her EAD renewal to be approved.⁵ Another

¹ See Washington Post Editorial Board, *The U.S. needs more workers. Too bad our legal immigration is a mess.* WASHINGTON POST, Apr. 5, 2022, <https://www.washingtonpost.com/opinions/2022/04/05/fixing-legal-immigration-help-worker-shortages/>.

² *Id.*

³ Camilo Montoya-Galvez, *U.S. immigration agency moves to cut 9.5 million-case backlog and speed up process.* CBS NEWS, Mar. 29, 2022, <https://www.cbsnews.com/news/immigration-uscis-case-backlog-processing-delays/>.

⁴ *Id.*

⁵ See Dara Lind, *U.S. Work-Permit Backlog is Costing Immigrants Their Jobs.* BLOOMBERG BUSINESSWEEK, Mar. 15, 2022, <https://www.bloomberg.com/news/articles/2022-03-15/u-s-work-permit-backlog-costing-immigrants-their-jobs?sref=iRPGYJiK>.

woman who worked at a bank was also placed on unpaid leave.⁶ She and her husband are trying to purchase a new home, but because she is still waiting for her renewal to be processed, her inability to work could throw the sale into jeopardy; she is not allowed to drive since her EAD expired either, forcing her to remain at home.⁷ Others are fired, lose their income, and are forced to spend their own savings, max out credit cards, or borrow money from friends to make ends meet.⁸ If USCIS amends the existing regulation to automatically extend expiring EADs from 180 days to 540 days, individuals requiring work authorization will not be put in this difficult position, forced to wait for their renewals to be processed and unable to work in the increasingly long interim.

Since 2019 the wait time for EAD renewals has increased from three months to anywhere from seven-and-a-half to twelve months in 2021.⁹ Wait time varies by state; it can range from nine to twelve-and-a-half months in Vermont, to upwards of twenty-one and-a-half months in California.¹⁰ The current backlog for EAD renewals is close to 300,000 cases.¹¹

Processing delays for EAD reauthorization also pose a unique harm to asylum seekers. The median processing time for I-765 applications based on a pending asylum application rose 318%, from 1.7 months in fiscal year 2017 to 7.1 months in fiscal year 2022.¹² Delays in renewing work authorization pose unique harms to this population because they have typically suffered trauma in the past and often do not have any existing financial support system in the United States.¹³ The number of work authorizations for asylum seekers has also grown substantially from 110,000 I-765 applications filed in 2014 to 556,000 in 2019.¹⁴ An asylum seeker from Venezuela, who worked as a behavioral health therapist for children with special needs, was forced to leave her job after her EAD expired after an eight-month delay during which she waited for renewal even though she timely submitted her renewal application.¹⁵ Not only does this have economic consequences, as she was the primary breadwinner for her family, but the wait threatens her ability to maintain her professional license in the long-term, possibly curtailing future employment opportunities.¹⁶

Another challenge facing noncitizens who need EAD renewal is the difficulty they face trying to contact USCIS. Noncitizens are not formally allowed to inquire about the delays in their cases until they have waited for longer than the posted wait times, and when they do attempt to

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² USCIS, *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year* (May 31, 2022) <https://egov.uscis.gov/processing-times/historic-pt>.

¹³ *Asylum Seekers Face Loss of Work, Pay as Paperwork Delays Mount*. BLOOMBERG LAW, Nov. 26, 2021, <https://news.bloomberglaw.com/daily-labor-report/asylum-seekers-face-loss-of-work-pay-as-paperwork-delays-mount>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

contact USCIS, they struggle to speak with a knowledgeable representative on the phone.¹⁷ In an interview with *Bloomberg*, one man said he repeatedly called USCIS before his EAD expired, but he was unable to reach a human representative and only ever reached a pre-recorded, automatic response.¹⁸ He was forced to leave his job at a mall cellphone-repair store because his EAD was not processed in time, despite asking USCIS to expedite his renewal request.¹⁹ The USCIS website states that “The need to obtain employment authorization by itself, without evidence of other compelling factors, does not warrant expedited treatment.”²⁰ Even those whose permits had not yet expired still struggle to get any kind of response from USCIS. A woman from Syria, who is a healthcare worker, said that she is struggling from the impact the renewal delay has had on her.²¹ She came to the United States to seek asylum in 2018 and filed her EAD renewal in February 2021, prior to its expiration. Her original work authorization expired in July 2021 and her renewal is still pending, with no word from USCIS on when she will receive her EAD renewal. Her employers keep asking about the EAD and she lives in fear that she will lose her job and face poverty or have no choice but to return to Syria.²² The consequences of this delay and the effects it undoubtedly has and will have on noncitizens are stark.

In closing, NIPNLG supports USCIS for taking action to provide relief to EAD renewal applicants and U.S. employers by issuing this Temporary Final Rule. It is essential that U.S. employers are able to continue their operations with fewer interruptions during this crucial time and that workers waiting for EAD renewal are able to continue supporting their families while USCIS addresses its severe backlogs. Please do not hesitate to contact Victoria Neilson at victoria@nipnl.org if you have any questions or need any further information.²³

Victoria Neilson, Supervising Attorney
National Immigration Project of the National Lawyers Guild

¹⁷ See Dara Lind, *U.S. Work-Permit Backlog is Costing Immigrants Their Jobs*, BLOOMBERG BUSINESSWEEK, Mar. 15, 2022, <https://www.bloomberg.com/news/articles/2022-03-15/u-s-work-permit-backlog-costing-immigrants-their-jobs?sref=iRPGYJiK>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Asylum Seeker Advocacy Project, *Members Speak About Renewal Delays* (Oct. 1, 2021) <https://www.asylumadvocacy.org/asap-members-speak-out-against-renewal-delays/>.

²² *Id.*

²³ We would like to thank legal intern Clare Noone, Boston College School of Law, for her contributions to this comment.