New Rule Eliminating 30 Day Processing Deadline for Adjudication of Employment Applications Filed by Initial Asylum Applicants

Impact on Rosario Class Members

Practice Alert¹

June 29, 2020

On June 22, 2020, the Department of Homeland Security (DHS) published a rule that removes the 30 day processing deadline for the adjudication of employment authorization document (EAD) applications filed by initial (first time) asylum applicants. 8 Fed. Reg. 37,502-37,546 (June 22, 2020) (eliminating 30 day deadline in 8 C.F.R. § 208.7(a)(1)). Currently, U.S. Citizenship and Immigration Services (USCIS) is required to adjudicate initial asylum applicant EAD applications within the 30 day regulatory deadline pursuant to a court order in Rosario v. USCIS, a certified nationwide class action. 365 F. Supp. 3d 1156 (W.D. Wash. 2018).² The new rule is set to take effect on August 21, 2020. 8 Fed. Reg. at 37,502.

In light of the new rule, practitioners are advised as follows:

- The Rosario order remains in place. All initial asylum applicants who properly submit complete EAD applications before August 21, 2020 are entitled to have those applications adjudicated within 30 days. See 8 Fed. Reg. at 37,507 (“Rosario class members who have filed their initial EAD applications prior to the effective date of the rule will be grandfathered into the 30-day adjudication timeframe”). Rosario class members must

¹ Questions about this Practice Alert may be directed to Rosario class counsel at asylumEAD@nwirp.org.
² The Rosario class is defined as: “Noncitizens who have filed or will file applications for employment authorization that were not or will not be adjudicated within . . . 30 days . . . and who have not or will not be granted interim employment authorization. [This class] consists of only those applicants for whom 30 days has accrued or will accrue under the applicable regulations, 8 C.F.R. §§ 103.2(b)(10)(i), 208.7(a)(2), (a)(4).” 365 F. Supp. 3d at 1159.
ensure that their applications are received by USCIS before August 21, 2020, not just mailed by that date.

- On August 21, 2020, absent court intervention, there will be no regulatory requirement that USCIS process initial asylum applicant EAD applications within any period of time. The Rosario order only requires compliance with the regulation; therefore, USCIS will not be required to process EAD applications filed on or after August 21, 2020 within 30 days.

- Rosario class members must submit EAD applications so that they are received by USCIS before August 21, 2020 to benefit from the Rosario order and have their applications adjudicated within 30 days.

- Rosario class members should carefully review all instructions and scrupulously complete Form I-765, Application for Employment Authorization, to ensure that the application is accepted before August 21, 2020.

As part of the implementation of the Rosario settlement, the parties established a plan for applications that were approaching the 30 day mark without adjudication by USCIS. For information about what to do if a Rosario class member has an EAD application that has been pending for 25 days or more, please see question 7 of the linked FAQs.