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Laura Dawkins
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington DC 20529

**Re: Retention of EB-1, EB-2 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers.**
**DHS Docket Number USCIS-2015-0008**

Dear Chief. Dawkins:

I am an immigration lawyer based in Tennessee and handle business and employment immigration matters for clients in all 50 states. We offer the following comments in response to the Proposed Rule issued by the Homeland Security Department on December 31, 2015, titled "Retention of EB-1, EB-2 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers".

While a rule on the subjects covered in the proposal is sorely needed and a few of the changes are positive, we are deeply disappointed that a regulation that was supposed to make lives for backlogged immigrants easier, to improve the prospects for would be entrepreneurs in that community, to make our immigration system work more efficiently and, most importantly, to carry out the promises made by the President in his November 2014 executive action announcements, largely does none of those things and will actually make the situation worse in many respects. At best, one could say this proposed regular misses the mark in one place after another. At worst, it appears that USCIS has sabotaged the President's efforts to reform the system, particularly as it relates to the employment authorization proposal for backlogged immigrant workers and the proposal on revocation of I-140s. We hope USCIS carefully considers comments such as ours and makes serious changes to the proposed regulation. In the past, even when thousands of comments have been received by the agency on a regulation (such as relating to the H-4 employment authorization regulation), the agency has ignored virtually every suggestion. We hope this time the comments from the public are read with a more open mind.

**Proposed 8 CFR §205.1(a)(3)(iii)(C) and (D) having to do with revocation**

USCIS is to be commended for most of the proposed changes related to the consequences of an employer's attempts to revoke an I-140 approval of an employee. USCIS has stated that it is a laudable policy goal to make it easier for people in long immigration backlogs to have the ability to move between employers and the ability to retain a priority date and an I-140 approval is critical to achieving this objective.

Unfortunately, the proposed language contains a provision that will dramatically reduce the number of people who will take advantage of being able to retain a priority date. The language "If an employment-based preference petition on behalf of an alien is withdrawn, the job offer of the petitioning employer is rescinded and the alien must obtain a new employment-based preference petition on his or her behalf in order seek adjustment-based preference petition on his or her behalf in order to seek adjustment of status or issuance of an immigrant visa…" will have a dramatic chilling effect on people taking advantage of the proposed change because filing a new green card petition is a huge and scary undertaking and many will not want to take a chance on re-filing.

Perhaps USCIS thought that this would not be a major barrier to using the new provisions to transfer employers. But that is what the language does. An employee who changes employers will have to depend on a new employment-based petition being approved, something that is far from certain given the complexities and challenges inherent in the immigration system. PERM petitions can take years if one is subjected to an audit. And it also assumes the new employer will even agree to and follow through in filing a new petition. In other words, it requires a major leap of faith on the part of the worker and involves serious risks. A great number of people will simply choose the safer path which is terribly unfortunate. There is nothing in the statute that mandates the filing of a new petition.

Section 245(a) of the Immigration and Nationality Act only requires that "the alien is eligible to receive an immigrant visa" and if the I-140 is still considered valid that would satisfy the requirements of the statute. Mandating a new I-140 be approved is not necessary and defeats the policy objective behind the regulation.

Furthermore, the statute absolutely does NOT require this. The relevant provision in AC21 states "A *petition* under subsection (a)(1)(D) for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the *petition* was filed." USCIS routinely allows the filing of adjustment applications without an approved new I-140 because it allows the filing of concurrent I-140 and I-485 petitions. In short, mandating that a new I-140 be filed and approved before allowing one to file an adjustment application is unwarranted.

The proposed regulation also states that a priority date will be lost is a petition is revoked because of a "determination by USCIS that petition approval was in error." USCIS should not be in a position to make an immigrant pay for its mistakes. Many types of petitions require USCIS to make determinations of complex requirements and it is not rare for USCIS to revoke a petition based on a re-evaluation of the law. And even if USCIS has made an error in an adjudication, the immigrant has relied on that determination. It may be that a person has foregone changing employers and could lose years of time waiting in line for a mistake that may have been made by an employer or a USCIS examiner and which is totally beyond the control of the immigrant. It is fundamentally unfair and unjust to make the immigrant pay the price for the error. Perhaps require a new petition, but at least allow the priority date to be retained if a revocation based on error takes place.

The proposed rule also requires the I-140 be approved for 180 days to be eligible for portability. This will have the effect of causing workers to routinely pay for premium processing as a routine matter to provide insurance against a layoff or termination. This is an unnecessary expense and the 180-day requirement should be eliminated.

**Comment on Proposed 8 CFR §204.5(p)(1); Proposed 8 CFR §204.5(p)(3)(i); Proposed 8 CFR §204.5(p)(5); Proposed 8 CFR §204.5(p)(4); and Proposed 8 CFR §204.5(p)(2) – Employment Authorization for Employment-based Nonimmigrants**

Perhaps the most surprising and upsetting language in the proposed regulation relates to the much anticipated program to provide employment authorization for employment-based non-immigrants. We know that Administration had determined by May 2015 that a broad and generous employment authorization policy is authorized under the law.[1] That policy could have covered the vast majority of people stuck in the backlogs. USCIS has not bothered to even assert in the preamble that it lacks the authority to implement the broader policy envisioned in the legal memorandum so one is left concluding that USCIS simply doesn't *want* to issue work cards to this population. And that is a travesty.

USCIS has instead opted for a highly restrictive policy that will benefit few. The preamble to the regulations suggests that 150,000+ individuals will be able to procure work authorization, but this seems to be wildly optimistic. We believe that only a few thousand people at most will be able to meet the extremely restrictive requirements. As USCIS is required by law to estimate the affected population, it should explain how it came up with this estimate.

Most of the requirements in this proposed rule are pulled out of thin air and will not make the regulation less vulnerable to a lawsuit. Instead, they simply appear designed to keep people stuck in the employer-controlled non-immigrant system.

Most of the restrictions in the proposed rule should simply be eliminated including the following:

- Requiring that the individual be in a non-immigrant status at the time the application is made

While it will likely be common that people would be in one of the listed non-immigrant categories at the time an application is filed, this would allow employers to render a worker ineligible to file for the work card simply by terminating them before they are able to file for the benefit. It is true that the new grace period might make this less of a problem, but since the grace period is valid for only a one-time use and backlogged workers may be waiting for decades before they file for this benefit, that protection may not be available.

- Requiring an individual demonstrate "compelling circumstances"

There is no requirement in the Immigration and Nationality Act requiring a demonstration of compelling circumstances. The only reason for such a requirement is to cull the number of potential applicants despite the President having the authority to be as generous as he wishes.

The examples of compelling circumstances provided by USCIS in the preamble provide cold comfort that many people will be eligible for the new benefit. Only a tiny number of people would ever fit in under the enumerated examples. The entire background of this proposed change was focused on it being fundamentally unfair for workers to have to work for decades for an employer because of the per country limits and that alone is enough to justify approval of a work card. In short, being stuck in a green card backlog itself is "compelling." This requirement needs to be eliminated as it is not required under the law and defeats the objectives of the President.

[1] In May 2015, an internal DHS legal memorandum explaining why a broad employment authorization policy that would cover most people covered by the I-140 backlog was leaked to me. That memorandum is described and linked on my blog at http://blog.ilw.com/gregsiskind/2015/05/15/white-house-proposal-would-grant-work-cards-to-backlogged-employment-green-card-applicants/.

In the preamble, USCIS states that the proposal was limited because it would lead to workers relinquishing nonimmigrant status and losing the ability to adjust status in the United States: "Accepting the employment authorization under this proposal, for example, would generally require the worker to forego adjusting status in the United States and instead seek an immigrant visa abroad through consular processing." This explanation is patronizing. USCIS does not assert – as it should not – that using the work card would trigger a reentry bar. So consular processing instead of adjusting status simply means that a worker has to pay the costs of traveling to the home country and spending a few days or weeks going through the final processing of an immigrant visa. For many, this concern rings as ridiculous since the work card will often mean people can command much higher salaries with new employers. Second, as the adjustment of status fees are far higher than the fees for consular processing an immigrant visa, a cynic might say that USCIS is simply trying to protect its turf and keep fees churning from continuous H-1B renewals and preventing DOS from getting the fees for the final step in the green card process.

The proposed rule's provision allowing for extensions is also greatly concerning. First, a new examiner has to agree that compelling circumstances continue. This allows for havoc to be wreaked when two examiners disagree on what is compelling. It is easy to see immigrants being punished unjustly because of this. This is one more reason the entire concept of showing "compelling circumstances" is so unworkable.

The requirement that for an initial application that an applicant's priority date be a year or more later than the current cutoff dates for a given category and that for an extension, the difference between the immigrant's priority date and the date upon which immigrant visas are available be a year or less also appears to be an invention designed to ensure that few people will want to apply for the benefit since it dramatically increases the odds that an extension is not going to be permitted. Aside from this language being extremely confusing, USCIS offers a bizarre reason for the requirement – "DHS believes this outer limit would discourage individuals from relying on the proposed employment authorization in lieu of completing the employment-based immigrant visa process." The idea that people would prefer a work card that can be revoked at any time to an actual green card is ludicrous.

This proposal should have been written with the goal of moving as many people as possible in to an employment-authorized status that provided maximum mobility for immigrant workers. This would be good for US workers since it would greatly increase the bargaining power of these backlogged immigrant workers and driven up salaries (which in turn will drive up US worker salaries). And it would be good for employers who would save the thousands of dollars spent on regular H-1B renewals.

One winner in this proposal is the group of abusive employers who prefer keeping workers in H-1B status and unable to move to better jobs. Another is USCIS itself which will receive millions and millions in additional fees by forcing people to unnecessarily maintain H-1B status.

**Comments on Proposed 8 CFR §214.2(h)(13)(iii)(D) - AC21 §104(c) and §106(a) and (b)**

Section 104(c) of the American Competitiveness Act of the 21st Century Act allows for extending an individual's H–1B nonimmigrant visa status beyond the general 6-year maximum for H–1B nonimmigrant workers who have approved EB–1, EB–2, or EB–3 immigrant visa petitions but are subject to backlogs due to application of certain ''per-country'' limitations on immigrant visas.

Sections 106(a) and (b) of AC21 is similar to Section 104(c) and authorizes the extension of H–1B status beyond the general 6-year maximum for H–1B nonimmigrant workers who have been sponsored for

permanent residence by their employers and who are subject to certain lengthy adjudication or processing delays.[2]

The proposed regulation limits the extension benefits of AC21 to just the principal H-1B visa holder. However, the language of the statute does not contain such a limitation. Furthermore, USCIS' narrow reading is inconsistent with other sections of the Immigration and Nationality Act such as Section 203(d) which requires spouses and children to receive the same benefits as a principal applicant.

Proposed rules 8 CFR§214.2(h)(13)(iii)(D)(9) and 8 CFR§214.2(h)(13)(iii)(E)(6) should be changed to cover both the principal beneficiary and any derivative beneficiary.

The proposed regulation also is contrary to the statute because it now requires a demonstration of a lack of availability of an immigrant visa at the time the H-1B is *adjudicated* as opposed to the current practice of considering availability at the time of *filing*. The statute grants the benefit of an extension until "adjustment of status has been processed" but USCIS only grants extensions in three year increments and is now opening the possibility that it would deny an extension if a priority date is available at the time of an extension of the H-1B. This might mean a person is without work authorization for months while waiting on an employment card to be adjudicated. USCIS has stated in the preamble to this regulation that it does not want to encourage people to be in a situation where they are failing to maintain a non-immigrant status, but that is precisely what this change would do. And employers may not want to take advantage of the H-1B portability rules and hire individuals knowing that they could be facing months long gaps in their employment authorization.

The proposed regulation also bars individuals from obtaining a one-year H-1B extension based on AC21 when the applicant has not filed an application to adjust status "within 1 year of an immigrant visa becoming immediately available." While that may be authorized under the statute for cases of one-time

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[2] AC21 Sec. 104(c) provides:

*(c) ONE-TIME PROTECTION UNDER PER COUNTRY CEILING- Notwithstanding section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. §1184(g)(4)), <u>any alien</u> who--*

*(1) <u>is the beneficiary of a petition</u> filed under section 204(a) of that Act for a preference status under paragraph (1), (2), or (3) of section 203(b) of that Act; and*

*(2) is eligible to be granted that status but for application of the per country limitations applicable to immigrants under those paragraphs, may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.*

AC21 Sec. 106(a) provides:

*a) EXEMPTION FROM LIMITATION- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. §1184(g)(4)) with respect to the duration of authorized stay shall not apply to <u>any nonimmigrant alien</u> previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of that Act <u>on whose behalf a petition under section 204(b) of that Act to accord the alien immigrant status under section 203(b) of that Act</u>, or an application for adjustment of status under section 245 of that Act to accord the alien status under such section 203(b), has been filed,*

extensions based on an immigrant visa being unavailable, there is nothing in the statute that indicates this was intended by Congress for AC21 Section 106 cases. And because priority dates progress and retrogress, the regulation would be extremely confusing to implement. Does the clock reset each time visa numbers become unavailable or retrogress? What about cases where a petition has been "downgraded" to another category where visa availability is more readily available? Which date applies? And what about cases where adjustments are not filed concurrently with an I-140 and the I-140 has taken longer than a year to adjudicate? Will a person be forced to file an adjustment application concurrently just to get this benefit? This proposed regulation contains numerous examples where unnecessary applications need to be filed with USCIS and this is just one of them.

**Comments on Proposed 8 CFR §245.25(a) – Implementing INA §204(j) "same or similar"**

AC21 §204(j) allows for certain people who have employment-based adjustment applications pending 180 days or more to change employers if the new position is in the same or a similar occupation. Proposed 8 CFR §245.25(a)(ii) states

> (ii) An explanation from the new employer establishing that the new employment offer and the employment offer under the approved petition are in the same or similar occupational classification, which may include material and credible information provided by another Federal government agency, such as information from the Standard Occupational Classification (SOC) system, or similar or successor system, administered by the Department of Labor;

This language "which may include material and credible information provided by another Federal government agency, such as information from the Standard Occupational Classification (SOC) system, or similar or successor system, administered by the Department of Labor" is unduly restrictive and makes the current system more confusing and is more restrictive than what was intended by Congress.

USCIS has stated that the goal of the regulation is to make it easier for people to change employers, but the stated regulation will have the opposite effect. The language quoted above should be eliminated.

Furthermore, USCIS should establish a system for allowing people to receive a determination of portability before they change positions. Once an individual changes employers, they are taking an enormous risk if USCIS disagrees that the new position is the same or similar. Consequently, they don't move and remain in a position that may hinder their career development or is otherwise not ideal.

**Proposed 8 CFR §214.2(h)(2)(i)(H) – implementing AC21 §105(a) and current guidance on concurrent employment**

Section 105 of AC21 allows people in H-1B status to accept new employment in H-1B status upon the filing of an H-1B petition by a prospective new employer. The proposed regulation requires that the applicant be currently in H-1B status in order to benefit from Section 105. This is not required in the language of AC21 and it precludes people who have legitimate reasons for having an intervening status – such as B-2 status – who should benefit. For example, if a woman having a difficult pregnancy ends her job and switches to visitor status for a few months until she has her child, it is unfair for her to preclude her from benefiting from Section 105 especially when Congress didn't include such a restriction.

**Proposed 8 C.F.R. 214.2(h)(8)(ii)(F)(1–2) – "Cap exemption based on affiliation or relationship"**

The H-1B cap exemption language in the Immigration and Nationality Act allows non-profit employers who are affiliated with or related to a university or research institution. The proposed rule fleshes out the exemption with the goal, as noted by USCIS to "*provide much needed flexibility"*. But, unfortunately, the

proposed rule has the opposite effect and will end up barring from H-1B cap exemption many employers that should not be.

The proposed rule states that to claim cap exemption based on affiliation *"a primary purpose of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education."* This doesn't comport with reality for many non-profit institutions around America that are training the country's university students. A college that educates teachers of deaf students may send its students to train at a school for deaf children. But the primary purpose of the school is to educate the deaf children, not train the teacher. A teaching hospital that is hosting medical students and physicians receiving graduate medical education is serving an extremely important public policy role by training our country's physician work force. But a teaching hospital's primary role is to treat patients. There are numerous other examples like this. USCIS is reading in language that does not exist and it runs counter to good public policy. It may actually run counter to public policy as teaching hospitals and schools receive federal funds to train doctors and teachers and USCIS denying H-1B petitions interferes with this purpose.

The language of the regulation should instead read as follows:

"(iv) the nonprofit has entered into an affiliation with an institution of higher education that establishes an active working relation between the nonprofit entity and the institution of higher education.

**Proposed Rule 8 C.F.R. 214.2(h)(8)(ii)(3) – Definition of "Nonprofit", "Nonprofit research organization" and "governmental research organization."**

The proposed 8 C.F.R. 214.2(h)(8)(ii)(F)(3) covering cap exemption adopts the definition of "nonprofit and governmental research organization" found at 8 C.F.R. 214.2(h)(19)(iii)(C) which covers H-1B fee exemptions. The fee exemption definition requires a governmental research organization be "primarily" engaged in research. There is no reason to believe Congress intended such a restriction to exist and USCIS reading in such a restriction will impede our country's government agencies from hiring key employees needed to serve the public. The proposed regulation should remove the word "primary."

**Proposed Rule 8 C.F.R. 214.2(h)(8)(ii)(F)(4) – "Employed At" Cap Exemption**

The proposed 8 C.F.R. 214.2(h)(8)(ii)(F)(4) adds takes Congress' mandate that cap exemption is to can be determined by where a worker is employed rather than who employs the worker and adds requirements beyond what Congress required. The proposed regulation requires that the employee spend a majority of his or her time at the qualifying institution and that the work further the "essential purpose, mission, objective or functions of the qualifying institution." This is far more restrictive than what the statute requires and that alone is reason for taking out this language. Furthermore, there are instances where one works less than 50% of their time at a qualifying institution, but the work is certainly essential to the institution. For example, a physician may be spending the majority of his or her time in an office not located in a university hospital, but provides critical clinical services at the hospital.

**Other suggestions relating to H-1B cap exemption**

The following are suggestions for rulemaking to improve the H-1B program which are not covered in the proposed regulations and which would not require statutory changes:

1. Deferring to other government agencies - We would also suggest deferring to other government agencies and organizations that have expertise in a particular industry and track affiliations

between non-profit institutions and institutions of higher education. For example, the US Department of Health and Human Services looks to the Accreditation Council for Graduate Medical Education (ACGME) teaching hospitals database to determine how to allocate Medicare funds that subsidize the training of physicians in this country. That database is available at https://apps.acgme.org/ads/public/. More detailed information on affiliations is available to subscribers and USCIS could easily gain access to this.

2. Deference to prior USCIS determinations - USCIS should institute a permanent policy of deferring to prior determinations of cap exemption. USCIS has had such a policy for determinations made before 2006 and that policy has provided needed predictability to institutional employers. We would suggest making such a policy permanent and establish a system of only having to periodically re-qualify for cap exemption. An analogy would be the R-1 visa program where employers are inspected once every five years.

3. Pre-qualifying for cap exemption – USCIS should establish a mechanism for employers to file in advance to determine cap exemption.

4. The allotment of H-1B cap numbers should be distributed quarterly instead of annually. This will make it much easier for smaller and occasional H-1B employers to have access to the allotment of H-1B visas. Large-scale H-1B filers are in a better position to file once a year, but smaller employers who only occasionally need an H-1B employee usually don't offer employment so far in advance. Such a system also would have the advantage of making it possible for USCIS to follow the law and add back to the annual cap H-1B visas that are revoked either by USCIS or by an employer who terminates an employee or revokes an offer of employment.

**Proposed 8 CFR §214.1(l)(i); Proposed 8 CFR §214.1(l)(ii) – Grace Periods**

USCIS is to be commended for establishing a 60-day grace period for workers who are laid off to find new employers and file a new petition to resume employment. 60 days is normally a reasonable amount of time, but there are circumstances where that amount of time is not reasonable. For example, an employee who is in a profession requiring a license and who must relocate to a new state may not be able to procure a new license quickly enough to meet the 60 day requirement. Sometimes a husband and wife are each employed in a non-immigrant status and must re-locate together. It may not be possible for both to procure new employment and get new petitions in place in 60 days. We recommend increasing the grace period to 120 days and giving USCIS the authority to extend further on a case-by-case basis.

We would also recommend not limiting this benefit to a one-time use. We understand that USCIS is concerned about potential abuse where someone ought to be in a visitor status rather than a work status. However, as many employees are in backlogged green card categories and may be working for decades in a non-immigrant status waiting on a priority date to become current, the one-time limit can be viewed as fundamentally unfair and discriminatory to people from countries that are backlogged. We recommend simply scrapping the one-time requirement or, at a minimum, allowing it to be used once within a period of time (such as within a three-year period). And we would allow the period of time in the grace period to be split up rather than used one time during that period.

**Proposed 8 CFR §214.2(h)(4)(v)(C)(2) – Licensure**

8 CFR §214.2(h)(4)(v)(C)(2)largely implements USCIS' current policy regarding issuing H-1Bs in the "chicken and egg" situation where a state will not issue a license without demonstrating a non-immigrant status has been approved and USCIS will not issue a status approval without proof of licensure. USCIS partially solved this problem by approving an H-1B for a year when a petitioner supplies proof from a state that the only thing holding up issuance of the license is the immigration approval. In such cases, USCIS approves the H-1B petition for a year.

While this is one solution to the problem, a better one would be to approve the H-1B for the period suggested and then to send a request for proof of licensure at the point that is one year after approval of the H-1B. If proof is not provided at that point, the H-1B could be revoked. This has the advantage of not having an employer have to spend $1000s of dollars seeking an H-1B extension and also gives the employee a lot more flexibility since the worker's visa stamp and I-94 will be for a normal length of time.

The regulation also should clearly state that it is not necessary for the license to be valid for the duration of the H-1B approval. While USCIS officers generally issue approvals for the fully requested period, there have been instances in the recent past where officers issued an approval only for the duration of the license. In most states, once a professional license has been issued, extensions are routine and it is rare that one is not approved. Requiring extensions when licenses are expired would be a serious waste of time and money both for the petitioners and USCIS and would be a disservice to taxpayers.

**Proposed 8 CFR §274a.13(d)(1), Proposed 8 CFR §274a.13(d)(3); Proposed 8 CFR §274a.13(d)(4); Current 8 CFR §274a.13(d) and current 8 CFR §274a.13(d) eliminated. Employment Authorization Adjudication**

The proposals to alter the rules on the required adjudication period for employment authorization documents appear to be an attempt to make a lawsuit against USCIS go away. And claiming security as the reason for abolishing the 90-day adjudication requirement is, to be frank, disingenuous and demonstrates that the agency is trying to abdicate its responsibilities. There is nothing that requires USCIS to adjudicate an EAD in 90 days or less when there are security concerns so to claim this rule is necessary in order to protect the public is simply trying to gin up fear in order to excuse the agency's failure to do its job.

If a lack of resources is the real reason behind the proposal, USCIS should adjust application fees to fully fund the cost of doing the agency's job in a timely manner. The issues involved in adjudicating an I-765 are not terribly complicated and the only reasons an application cannot be adjudicated in a timely manner are that there is a security concern, the underlying application that demonstrates eligibility for the work card is still being adjudicated or because the agency lacks the funds or competence to do the job in 90 days or less. Regarding the first two, if the agency wants to have a regulation that allows for a delay if it has failed to receive the proper clearances from the FBI or other law enforcement bodies or is still adjudicating the underlying benefit, that would be reasonable. But to otherwise kill the 90-day requirement is not.

Aside from the hardships imposed by having to wait more than 90 days to be able to legally work, there are a host of other benefits that are also delayed when a work authorization document is still pending. Chief among them is the ability to obtain a driver's license in many states. In many parts of the US, the inability to be able to legally drive essentially cuts a person off from their community. Also, an F-1 student needs an EAD in order to get a new F-1 visa stamp at a US consulate when traveling abroad.

Furthermore, not only should the 90-day requirement be retained, but applicants should be permitted to schedule Infopass appointments at local USCIS offices around the country and be granted interim

employment authorization stamps in their passports to allow them to work while waiting on a card. If there is a security hold, the local office should be able to see this in their computer system and deny the request.

The idea of automatically extending an EAD when a timely filed application is made by an applicant is an excellent idea. However, there should not be a time limit of 180 days in these cases. The extension should be unlimited. Under the proposed regulation, someone who's EAD application has not been adjudicated in 180 days would then become unauthorized to work and there are no provisions to extend. This is not a theoretical and far-fetched possibility. A similar policy has been in effect in TPS cases and after 180 days, many applicants were left unauthorized to work with no guidance or help from the agency.

Also, there are too many exceptions to this policy. The proposed regulation lists one category after the next that will not benefit from the 180-day automatic extension. If the agency cannot do its job in a timely manner, it should be more generous in extending this policy to a broader population. But there is also a more practical problem with having all of these exceptions. How will employers completing a Form I-9 know whether a renewal applicant is covered under the rule or not? The I-797 EAD extension receipts do not list the category that is the basis for an extension. Will they need to consult an attorney just to figure this out? If so, that's an unreasonable burden to place on employers.

Thank you for considering these comments to the proposed rule-making.

Respectfully,

Gregory H. Siskind