



Explainer: Asylum Work Authorization Rulemaking

Introduction

On February 23, 2026, the Department of Homeland Security (DHS) issued a proposed rule that would make it much more difficult for asylum seekers to obtain and renew work authorization. The Notice of Proposed Rulemaking, entitled [Employment Authorization Reform for Asylum Applicants](#), would make asylum seekers wait longer before being able to apply for employment authorization documents (EADs) and halt the acceptance of new applications until the processing time for affirmative asylum applications is significantly reduced.

DHS and USCIS argue that the rule will discourage the filing of meritless asylum filings, reduce fraud, and free up agency resources for the existing asylum backlog as well as other priorities not related to asylum. [Critics](#) have [noted](#) that the impact of the rule would greatly lengthen overall [wait times](#) for asylum seekers applying for EADs, potentially for decades, with notable impacts on the legal workforce.

This explainer highlights the major changes in the proposed rule and some of the potential implications if it were to become a final rule.

Key Provisions of the Proposed Rule

The proposed rule can be divided into three primary areas of change.

Extended Wait Time For Applying

Currently, an asylum seeker [must wait 180 days](#) to apply for employment authorization. Under the theory that some asylum applicants are motivated to file meritless petitions solely to obtain work authorization, the proposed rule would instead extend the wait time, making asylum seekers wait 365 days to apply – doubling the current wait time. It does not appear that DHS or USCIS have data substantiating the notion that the current 180-day wait, incentivizes the filing of weak asylum petitions. Notably, [bipartisan legislative proposals](#) introduced in Congress in the recent past have called for shortening the wait time to receive work authorization, prioritizing the need for asylum applicants to be [self-sufficient and join the workforce](#).

Processing Stopped Until Backlog Addressed

The proposed rule would stop the processing of new asylum work authorizations whenever asylum processing times for affirmative asylum claims exceed 180 days. According to the proposed rule, “[d]efensive cases would not be subject to the proposed 180-day asylum process time requirement.”

From the statistics found in the proposed rule, and as a point of reference, processing times in FY2024 were on average 1,287 days (approximately 3.5 years). DHS and USCIS assert that the halt would allow this extensive backlog of current petitions to be reduced. However, in halting the acceptances of new work authorizations, backlogs for new petitions would grow dramatically.

As of February 2026, USCIS has an affirmative asylum filing backlog of [1.4 million asylum claims](#). The proposed rule estimated that would mean “it may take between 14 and 173 years to reach a 180-day processing time,” the latter of which far exceeds a human lifespan.

New Discretionary Eligibility Determinations

Currently, prior to the proposed rulemaking, if the asylum seeker is here legally and has waited 180 days the law requires they be granted work authorization – essentially a mandatory requirement to issue work authorization in cases where a decision has not yet been reached. The new proposed rule would be a significant departure, affording asylum officers with discretionary authority to determine if an asylum seeker is eligible for work authorization.

The discretionary authority granted to asylum officers in the proposed rule is on a case-by-case basis and they who would be permitted to deny work authorization for numerous reason.

The proposed rule also sets out criteria for denials for both new applicants for work authorization and renewals, including entering the U.S. at a place other than lawfully through a port of entry (with limited exceptions), filing for work authorization beyond the one-year filing deadline, or being subject to newly issued criminal bars to work authorization.

Of note, absent the passage of legislation, conditioning work authorization on lawful crossing through a U.S. port of entry appears to be in tension with [federal law](#) permitting individuals to seek protection “whether or not at a designated port of arrival . . . irrespective of such alien’s status.” That said, the new rule does not impact those individuals’ ability to claim asylum – just work authorization.

Potential Problems and Areas of Concern

This new proposed rule will have numerous adverse implications not only for the asylum seeker but also for businesses needing workers, and the broader economy. By cutting off access to work authorization for large swaths of asylum seekers, the legal workforce will be reduced, with subsequent impacts on tax revenue and spending power.

The rule will, in effect:

- Prevent asylum seekers from working for at least one year. In extreme scenarios, where the processing of affirmative asylum applications never falls below 180 days, the work authorization pause for new petitions could exceed a human lifetime (“up to 173 years”).
- Make it impossible for asylum seekers to work legally to support themselves. This will promote their dependency on charities, local governments, families and others as it increases the probability of poverty and homelessness.
- Incentivize unlawful work, as it could drive asylum seekers to seek “under the table” employment in a black market, undermining the rule of law and increasing

opportunities for bad actor employers to exploit this workforce and/or outcompete employers who follow the law.

- Harm economic and fiscal health by removing asylum seekers from the legal workforce.
 - The proposed rule estimates that the lost compensation from asylum seekers not working would be somewhere between \$34.6 billion to \$126.6 billion annually.
 - Downstream economic impacts include consumer spending, as well as federal and state tax revenue (including social security revenue). The proposed rule estimates that the loss to the federal government could be as high as \$7.43 billion.
 - Other impacts include lost opportunity costs for businesses forced to scale back operations because they lack sufficient workers.

* If finalized, the changes proposed through this rule may face legal challenges, creating additional uncertainty for asylum seekers, businesses, and communities. Given recent [legal precedent](#) limiting agency action in the absence of explicit congressional authorization, several elements of the rule may be enjoined through litigation.