human rights *first*

American ideals. Universal values.

January 9, 2020

Submitted via www.regulations.gov

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW, Mailstop #2140
Washington, D.C. 20529

RE: **DHS Docket No. USCIS-2019-0011, Human Rights First's Comment in Response to Proposed Rulemaking: Asylum Application, Interview, and Employment Authorization for Applicants**

Dear Ms. Deshommes:

Human Rights First submits these comments in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking published in the Federal Register on November 14, 2019, by which DHS proposes to ban asylum seekers from legally working in the United States one year or longer. The rule would: (1) prohibit asylum seekers from receiving legal authorization to work in the "asylum applicant" category for over a year after they file for asylum; (2) severely limit and impede asylum seekers' eligibility for employment authorization; and (3) make changes to asylum application processing that will result in numerous arbitrary, counterproductive and unfair denials of asylum claims. The rule also proposes to apply these changes to asylum seekers who filed for asylum under current law and based on the understanding that—after the 180-day waiting period required by statute—they would be able to support themselves lawfully through work while their applications were pending.

Human Rights First strongly opposes this proposed rule and urges the agency to abandon it. Through our pro bono refugee representation program, Human Rights First and our volunteer lawyers see first-hand how difficult it already is for asylum seekers to survive in the early stages of the asylum application process, even with the current six-month wait for work authorization. The proposed rule would ban asylum seekers from legally working in the United States for at least one year and often for many years, making it difficult to impossible for them to feed and support themselves and their families and threatening the health, safety, and very lives of the refugees requesting protection in the United States. The multi-year backlogs at the asylum office and immigration courts would further heighten the already harmful impact of the proposed changes. Moreover, the retroactive application of these disadvantages to asylum seekers who made the decision to file for asylum under the current employment authorization regulations, will be cruelly disruptive of the lives of many asylum applicants with valid claims, some of whom

have been living, working, and bringing up their children in the United States for years while waiting for the adjudication of their asylum claims.

The explanation to the proposed rule is riddled with inaccuracies and politicized rhetoric disparaging the asylum claims pending before the Department of Homeland Security (DHS) and the immigration courts. The DHS proposed rulemaking falsely paints increases in asylum filings as the result of fraud, ignoring regional displacement that has prompted people to flee to the United States and other countries in the region from Cuba, Venezuela, Nicaragua and the Northern Triangle of Central America. This displacement – along with the asylum and immigration court backlogs - can and should be managed in ways that treat people seeking refuge humanely. While the proposal purports to be aimed at asylum seekers who "file frivolous, fraudulent or non-meritorious cases to obtain employment authorization," DHS and U.S. Citizenship and Immigration Services (USCIS) have many tools to counter fraud, and the proper focus for those tools is the adjudication of the asylum claim itself.

Instead, this proposed rule targets all asylum seekers for harsh treatment without regard to the validity of their claim to refugee protection, confirming that it is an improper attempt to discourage all asylum seekers from requesting, and to punish those who do request, U.S. protection by making it impossible for them legally to work in this country to feed and support themselves and their families for prolonged periods of time while their cases are stuck in U.S. processing backlogs.

Instead, DHS and the Department of Justice (DOJ) should:

- improve work authorization processing so that asylum seekers receive their work authorization immediately after the 180-day statutory period expires, withdrawing its proposed regulation[1] to eliminate the 30-day processing deadline for initial employment authorization applications as well;
- address the asylum office and immigration court backlogs in ways that ensure fair and timely adjudications – including through adequate staffing and other changes outlined by Human Rights First and other organizations;[2]
- create an application route for cancellation of removal cases, such as through a USCIS application and adjudication unit;[3]

[1] Department of Homeland Security, United States Citizenship and Immigration Services, "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications," 84 FR 47148 (Sep. 9, 2019), *available at* https://www.federalregister.gov/documents/2019/09/09/2019-19125/removal-of-30-day-processing-provision-for-asylum-applicant-related-form-i-765-employment.
[2] Human Rights First, "Protecting Refugees and Restoring Order: Real Solutions to the Humanitarian Crisis" (June 2019) *available at,* www.humanrightsfirst.org/sites/default/files/Protecting-Refugees-Restoring-Order.pdf.
[3] Migration Policy Institute, "The U.S. Asylum System in Crisis: Charting a Way Forward" (Sep. 2018), *available at* https://www.migrationpolicy.org/research/us-asylum-system-crisis-charting-way-forward.

- manage asylum requests in orderly and humane ways consistent with U.S. laws and treaty commitments, as spelled out in the recommendations issued by Human Rights First and other organizations in June 2019.[4]

The proposed rule would leave refugees and other legitimate asylum seekers without the ability to feed and house their families or to begin to rebuild their shattered lives while waiting for an adjudication of their asylum cases. The United States and DHS should be protecting refugees consistent with U.S. treaties and law, not thwarting their ability to survive. The proposal should not be promulgated.

Human Rights First and its interest in this issue

For over 40 years, Human Rights First has provided pro bono legal representation to refugees seeking asylum in the United States and advocated for the protection of the human rights of refugees. Human Rights First grounds its work in the legal standards of the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol, and other international human rights instruments, and we advocate adherence to these standards in U.S. law and policy.

Human Rights First operates one of the largest and most successful *pro bono* asylum representation programs in the country. Working in partnership with volunteer attorneys at many of the nation's leading law firms, we provide legal representation, without charge, to hundreds of refugees each year through our offices in California, New York, Texas, and Washington D.C. This extensive experience dealing directly with refugees seeking protection in the United States is the foundation for our advocacy and informs the comments that follow.

Day in and day out our refugee clients suffer while they wait for work authorization. The ways in which they and their families suffer, and will suffer more if this rule proceeds, are detailed below. In addition, if asylum seekers are deprived of work authorization for even longer, our non-profit agency and volunteers will be heavily affected. For example, we will have to devote more time and staff to attempting to locate shelters that can house asylum seekers and medical providers willing to assist asylum seekers with serious medical needs despite their lack of resources or benefits. These are often time-consuming endeavors as the very limited resources available fall far short of meeting the needs.

Harms to asylum seekers banned from work for over one year

The proposed rule seeks to double the already lengthy and harmful six-month waiting period to be allowed to apply for a work permit to one year, effectively banning asylum seekers from legal work authorization for over one year after they file their asylum applications.[5] The revised rule

[4] *See* Human Rights First, *supra* note 2.

[5] DHS's earlier proposal to eliminate any regulatory time limit on the adjudication of such employment authorization applications once they are filed would, if adopted in conjunction with the present proposal, make this waiting time completely open-ended. The stress—both material and mental—that this situation would cause to survivors of forced migration desperate to regain some measure of control over their lives cannot be overstated.

would – at 8 C.F.R. § 208.7 – provide that "[a]n applicant for asylum cannot apply for initial employment authorization earlier than 365 days after the date USCIS or the immigration court receives the asylum application …." Human Rights First opposes this change as it would leave asylum seekers struggling to survive and to feed and support their families for even longer.

Asylum seekers already suffer severely while waiting even six months for work authorization. Some refugees suffer abuse and exploitation as undocumented workers in the labor market while waiting for work authorization.[6] Some become homeless, live in overcrowded or unsafe conditions, and lack basic necessities like food and clothing. While they await adjudication of their asylum cases and receipt of work authorization, the United States government provides asylum seekers neither with financial support or housing nor with the right to support themselves through employment. As a result, asylum seekers during this period are forced to turn to friends, relatives, or even chance acquaintances for support. As the months wear on, even those lucky enough to have local support networks begin to exhaust those sources of support.

For example, one Human Rights First client, an older man and a survivor of torture with no family in the United States, spent the first several months of our representation sleeping under the kitchen table of a member of his community who took pity on his plight. But as the asylum process dragged on, he found himself unable to impose further, and for much of the remainder of that process he spent his nights on the public transit system. Once he finally obtained work authorization, he found employment, and was able to house himself in more dignified conditions. He was subsequently granted asylum, but that early experience took a lasting toll on him.

Other asylum seekers, unable to house themselves because they are not allowed to work and have no income and resources, find themselves forced into living situations that are actively abusive. Another Human Rights First client, a survivor of rape in her home country who was suffering from the continuing medical consequences of that trauma, had to beg for hospitality in the United States from people she did not know, ending up in a household where she was again sexually assaulted. She was granted asylum shortly after applying, and became work-authorized at that point, enabling her to extricate herself from this nightmarish living situation and attain self-sufficiency.

Without work authorization, asylum seekers cannot purchase health insurance under the Affordable Care Act or obtain a social security number, and often cannot apply for a state-issued identification card or driver's license, which further limits access to transportation, banking, and private support services.[7] Lack of income also hinders opportunities to find and retain competent legal counsel.

Human Rights Watch, in a 2013 report, documented the hardships asylum seekers face in four major areas as a consequence of being denied work authorization: psychological harm and

[6] Human Rights First, "Callous and Calculated: Longer Work Authorization Bar Endangers the Lives of Asylum Seekers and their Families" (April 2019), *available at* https://www.humanrightsfirst.org/sites/default/files/Work_Authorization.pdf.
[7] *Id.*

interference with the ability to heal after torture and persecution; economic hardships and vulnerability to further victimization; the physical and health-related hardships created by an inability to provide for oneself; and difficulties with access to legal counsel in pursuit of asylum claims and work authorization.[8] Human Rights First has also shared other examples of asylum seekers, represented through its pro bono refugee representation project, who suffered severely while awaiting work authorization under the six-month ban.[9]

The inability to work legally also takes a psychological toll on survivors of trauma, torture and displacement. Those who are in the United States with their spouses and/or children suffer severely at their inability to support their families and create some semblance of normalcy for them in the first year or so of their experience as refugees. This affects both those who were doing very well economically in their home countries and providing their families with a comfortable existence, and those who in their countries of origin lived much more modest lives but derived a sense of purpose and dignity from succeeding in providing for their children's needs. Those asylum seekers who were forced to leave their families behind also suffer from their sense of powerlessness and depression when they find themselves unable to meet the needs of their loved ones, particularly when they are already suffering emotionally from their separation. Human Rights First has seen clients panicked at their inability to send money to close relatives suffering a medical emergency, to pay school fees in order to avoid having their own exile derail their children's education, or simply to provide regular support for the daily needs of family members from whom they are now separated for an indefinite period.

In its discussion of the proposed rule, DHS fails to address the harms asylum seekers will suffer, barely acknowledging in passing that "individuals with meritorious claims … may also experience economic hardship …" and dismissing the "potential economic hardship" suffered by legitimate asylum seekers as outweighed by the "urgency to maintain the efficacy and the very integrity of the US asylum and immigration system."[10] As noted above, there are many steps that should be taken to maintain the effectiveness and integrity of the US asylum system. This is *not* one of them.

Economic impact on communities and U.S. citizens

The proposed rule will harm Americans – including the family members, friends, and supporters of some asylum seekers – as well as states and local communities. Many of Human Rights First's asylum-seeking clients have dependent children who are United States citizens, who will also be made to suffer by this rule.

---

[8] Human Rights Watch, "'At Least Let Them Work': The Denial of Work Authorization and Assistance for Asylum Seekers in the United States" (Nov. 12, 2013), *available at* https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united.

[9] Human Rights First, "Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families" (April 29, 2019), *available at* https://www.humanrightsfirst.org/resource/callous-and-calculated-longer-work-authorization-bar-endangers-lives-asylum-seekers-and.

[10] 84 Fed. Reg. 62374, 62389 (Nov. 14, 2019).

The Attorneys General of 19 states opposed a separate, but related, DHS proposal that would make asylum seekers wait longer to get their work authorization by eliminating the 30-day processing deadline for asylum related Employment Authorization Documents ("EAD" or "work permits").[11] These states – New Jersey, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Vermont, Virginia, and Washington – reported that they were home to the majority of people granted asylum by USCIS.

The Attorneys General from these states explained in detail the many ways in which that proposed rule, which – like this one - would make it harder for asylum seekers to work, "lower tax revenue for the States, harm the States' industries, increase reliance on State-funded programs, and make it harder for the States to enforce their labor and civil rights laws." This rule would have similar harsh impacts on U.S. states, communities and citizens.

In the supplementary information to this proposed regulation, USCIS declines to estimate a number of the costs this regulation would impose on asylum applicants and their actual and potential employers. USCIS says it does not know "how many of the 14,451 pending EAD filings would be impacted by the criminal and one-year filing provisions." It "does not know know" what the next best alternative would be for companies who "would be losing the productivity and potential profits the asylum applicant would have provided." The agency argues that costs to companies unable to find replacement labor might be minimized if one considers the actual unemployment rate in the United States according to a measurement that would make it out to be nearly twice as high as the official unemployment rate of 3.7%.[12] Human Rights First does not purport to have expertise in labor market statistics, but missing from all this—whatever the unemployment rate is taken to be—is a full recognition of the costs to employers of being required to hire new staff, or of the disruptive effect--both to employers and to those who rely on the services they provide--of abruptly losing existing employees, which the retroactive application of this rule to persons with pending asylum applications and who had previously been granted employment authorization would bring about.

Penalizing asylum seekers who enter "other than lawfully"

The proposed rule would bar asylum seekers from work authorization – as proposed 8 C.F.R § 208.7 states – if they "entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry" – unless they had "good cause" and met other requirements. Human Rights First opposes this ban as it would leave asylum seekers without legal authorization for what could be years as their cases make their way through the courts and would penalize asylum seekers for their illegal or improper entry or presence in violation of U.S. legal obligations under the Refugee Convention and Protocol. In addition, Human Rights First

[11] The State of New Jersey Office of the Attorney General and The State of California Office of the Attorney General, "Comments *on Removal of 30-Day Processing Provision for Asylum Applicant Related Form I–765 Employment Authorization Applications*, 84 Fed. Reg. 47,148 (Sept. 9, 2019), RIN 1615–AC19" (Nov. 8, 2019), *available at* https://www.nj.gov/oag/newsreleases19/2019.11.08-EAD-Comment_States-AG_Final.pdf.
[12] 84 Fed. Reg. at 62380.

has serious concerns that the limited exceptions the proposed rule claims to allow would be unworkable in practice.

Many asylum seekers now wait years for their asylum applications to be resolved due to large backlogs in the immigration courts. For example, the latest government data released by Syracuse University's TRAC indicates that asylum seekers can wait up to four years for a decision from the immigration courts.[13] Depriving asylum seekers of the ability to work legally in this country while their claims are pending would subject refugee and asylum seeking families to devastating long term harms as they will be unable to feed and support their families, unable to afford housing for their families, and unable to afford medical care.

The move to ban asylum seekers who cross the border between ports of entry is particularly perverse and improper as DHS has actively prevented asylum seekers from approaching U.S. ports of entry through a series of policies and actions. United States Customs and Border Protection (CBP) has significantly reduced the number of asylum seekers it will allow even to approach U.S. ports of entry, through a policy that it has dubbed "metering." CBP officials launched their metering policy knowing full well that it would encourage crossing between ports of entry, and statistics confirm that the policy did indeed trigger increases in border crossings.[14] CBP has also asked Mexican migration officials to prevent asylum seekers from approaching U.S. ports of entry, except to the extent CBP decides to allow a certain (reduced) number to approach under metering or other policies.

Asylum seekers who do wait months to approach a U.S. port of entry through "metering," are then turned back to Mexico to wait many months more for an immigration court hearing date. Asylum seekers are often left to wait in Mexico under these combined metering and return policies, sometimes for over a year.[15] DHS has directed that asylum seekers be returned to places in Mexico that are notoriously dangerous. For example, CBP is returning asylum seekers to Tijuana – recently described as one of the most dangerous cities in the world – and to Matamoros and Nuevo Laredo – both in the state of Tamaulipas, which the State Department had given a Level 4 "do not travel" threat assessment, the same violence level assessed for Syria, Afghanistan, Iraq and Yemen. As Human Rights First has documented, asylum seekers returned to Mexico by DHS have been kidnapped, raped, and attacked. As of December 4, Human Rights First tracked over 600 public reports of kidnappings and attacks on asylum seekers returned to Mexico by DHS – including over 130 accounts of kidnappings or attempted kidnappings of

[13] Syracuse University, "Immigration Court Processing Time by Outcome," *available at* https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php.
[14] Department of Homeland Security, Office of the Inspector General, "Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy" (Sep. 27, 2018), *available at* https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf; CATO Institute, "Obama Tripled Migrant Processing at Legal Ports—Trump Halved It" (Feb. 8, 2019), *available at* https://www.cato.org/blog/obama-tripled-migrant-processing-legal-ports-trump-halved-it.
[15] Human Rights First, "Human Rights Fiasco: The Trump's Administration's Dangerous Asylum Returns Continue," 6 (December 2019), *available at* www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf.

children.[16] Given these acute dangers, some asylum seekers who had attempted to seek protection at an official port of entry eventually gave up and attempted to cross into the United States between ports of entry.

This work authorization ban would also constitute a prohibited penalty under Article 31 of the Refugee Convention and Protocol. Drafted in the wake of World War II, when states refused to allow refugees fleeing Nazi persecution to cross into their countries, Article 31 of the Refugee Convention generally prohibits the United States and other states from imposing penalties on asylum seekers "on account of their illegal entry or presence," "provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."[17] Article 31's protection applies to asylum seekers. As the UNHCR's Handbook explains: "A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined." [18]

The word 'penalties' in Article 31 "has a broad meaning and is not limited to criminal penalties, but includes any administrative sanction or procedural detriment imposed on a person seeking international protection."[19] The denial of economic rights such as the right to work - and the denial of the right to life itself, given the lack of U.S. government services to assure that asylum seekers can eat, receive shelter and survive during this time – would constitute a "penalty" in breach of Article 31, if imposed due to illegal entry or presence.[20]

While DHS asserts that the proposed rule is consistent with the Refugee Convention and Protocol because it exempts asylum seekers who establish "good cause for the illegal entry or attempted entry," the rule does not provide guidance on "good cause" that is consistent with the Convention. As a recent UNHCR study explained, "fleeing persecution constitutes itself a 'good cause', as does failing to comply with immigration requirements due to fear of summary rejection at the border."[21] Instead, DHS, in its discussion of the proposed rule, cites as examples only justifications such as "requiring immediate medical attention or fleeing imminent serious

---

[16] Human Rights First, "Orders from Above: Massive Human Rights Abuses under Trump Administration Return to Mexico Policy" (October 2019), *available at* www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf.
[17] Convention relating to the Status of Refugees, Article 31, 189 UNTS 137 (July 28, 1951), *available at* www.unhcr.org/en-us/3b66c2aa10.
[18] UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees" (1979), *available at* https://www.unhcr.org/4d93528a9.pdf ("Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee").
[19] UNHCR, "Legal considerations on state responsibilities for persons seeking international protection in transit areas of 'international' zones at airports" (Jan. 17, 2019), *available at* https://www.refworld.org/docid/5c4730a44.html.
[20] Cathryn Costello, "Legal and Protection Policy Research Series: Article 31 of the 1951 Convention Relating to the Status of Refugees," UNHCR 32-3; 37 (July 2017), *available at* https://www.refworld.org/pdfid/59ad55c24.pdf.
[21] *Id.* at 31; *see also* Convention relating to the Status of Refugees, 189 UNTS 137, Article 31 (July 28, 1951), *available at* www.unhcr.org/en-us/3b66c2aa10 ("being a refugee with a well-founded fear of persecution is generally accepted as sufficient good cause . . . ").

harm." A "good cause" exception limited to such extreme examples would not protect refugees as required under Article 31.

Moreover, Human Rights First has serious concerns that this "good cause" exception and the accompanying requirement that asylum seekers have "presented themselves without delay" to U.S. immigration authorities and indicated an intention to apply for asylum or a fear of persecution or torture, would be unworkable in the context of a work permit adjudication. The overwhelming majority of asylum seekers Human Rights First has represented in recent years who entered the United States without inspection were doing so *in order to surrender themselves to U.S. immigration authorities* and seek protection, but this fact is not always obvious from the face of their A files. We have seen numerous instances where asylum seekers who were credibly insistent that they had in fact expressed a fear of return to CBP officers were initially recorded as having expressed no such fear.[22] In the normal course of things, these issues are addressed as part of the adjudication of the asylum claim before the asylum officer or the immigration judge. They are not amenable to fair determination in a purely paper-based adjudication process for an employment authorization document that many asylum applicants apply for without the assistance of counsel.

Adding these additional layers to the application for employment authorization will also further complicate the application process even for those unaffected by this subsection of the proposed rule. The Form I-765 used by all non-citizens—not just asylum seekers—to apply for employment authorization, which was a one-page document within the memory of those commenting on this proposed rule, is now seven pages long. The instructions to the form are 27 pages. Human Rights First's experience training and overseeing the work of volunteer lawyers representing asylum applicants indicates that not only recently arrived refugees but U.S.-trained lawyers find these forms confusing as they stand. The burden of wading through the additional complexities created by this rule will fall not only on asylum seekers and their counsel but also on applicants for employment authorization generally, who are routinely distracted and confused by questions on this and other USCIS forms that do not actually pertain to the category in which they are applying.

Denying work authorization to asylum seekers affected by the one-year filing deadline

The proposed rule at 8 C.F.R. § 208.7 would also ban from work authorization an asylum seeker who "filed his or her asylum application beyond the one-year filing deadline, unless and until the asylum officer or Immigration Judge determines that the applicant meets an exception for late filing . . . ." Human Rights First strongly opposes this proposed change. The change would punish asylum seekers with valid claims to U.S. refugee protection who will ultimately be found to meet an exception to the one-year deadline, including many who did not apply for asylum

[22] Like other organizations, Human Rights First has seen cases where the "sworn statements" placed in the applicants' files by CBP contained statements that were clearly never made by the asylum applicant. One Human Rights First client was deaf mute and unable to communicate in any language, yet CBP claimed to have interviewed him at great length, in Spanish, through another migrant who was a fellow traveler but no relation of the client yet whom CBP described (also incorrectly) as the applicant's brother-in-law.

sooner—in some cases, based on the advice of counsel—because they were in other valid immigration status for a year or more after their arrival in the United States.

As Human Rights First found after conducting in-depth research on the one-year asylum filing deadline, many asylum seekers with well-founded fears of persecution have their cases rejected by the Asylum Office based on the filing deadline and are then pushed into the overburdened immigration courts.[23] Many of these same applicants are subsequently found to meet an exception to the filing deadline, but receiving this determination from the Immigration Judge may take years. These determinations tend to be heavily fact-based and are in many cases bound up in the facts of the asylum applicant's experience of persecution. Moreover, as Human Rights First's research on the subject showed, the asylum applicants affected by the one-year deadline are often the most vulnerable and those whose experiences of past persecution were severe. Their vulnerability to harm would only be increased by being effectively prevented from accessing employment authorization throughout the adjudication of their cases.

In addition, it has been the longstanding policy of the Department of Homeland Security and its predecessor the Immigration and Naturalization Services (INS) not to force refugees who are in the United States with other forms of lawful status to apply for asylum in ways that could prove premature. This policy was reflected in the regulations implementing the one-year filing deadline, which recognized such situations as valid exceptions to the deadline.[24] As the then-INS noted at the time, the U.S. government has no interest in forcing a foreign student who became a refugee *sur place* during a long course of graduate study, for example, to apply for asylum as soon as such circumstances arose (much less to penalize him for not having applied earlier), since by the time he received his Ph.D. several years later, many things might happen: the circumstances leading to his fear of return to his home country might resolve themselves in his favor, or other lawful immigration options might become available.[25] Indeed, a good many refugees, including many with extremely strong protection claims, delay applying for asylum while they have other options, with this very hope in mind.

Human Rights First has for example represented a number of human rights defenders with obviously strong asylum claims who were reluctant to label themselves as refugees because that was for them a recognition that they were giving up the possibility of return to their home countries for the foreseeable future, or casting themselves among the victims whose rights they had dedicated themselves to defending. We have worked with applicants in this situation while they were covered by other forms of status, sometimes representing them in asylum claims later down the road. We have also seen some asylum seekers from Syria, for example, who initially applied for Temporary Protected Status rather than asylum because they were confident that the government that was persecuting them was likely to fall in the foreseeable future, allowing them to return home.

---

[23] Human Rights First, "The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency" (Sep. 2010), *available at* https://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf.
[24] 8 C.F.R. 208.4(a)(5)(iv).
[25] *See, e.g.*, 65 Fed. Reg. 76121, 76123 (Dec. 6, 2000).

Consistently with this, many lawyers have advised their asylum seeking clients who were here in long-term non-immigrant status (including for example F-1 student status or Temporary Protected Status) that such status effectively tolls the one-year filing deadline for asylum, and that if they do ultimately find themselves obliged to apply for asylum, they will not be penalized for doing so as long as they file while their current status is still valid or within a "reasonable time" of its expiration. This proposed regulation would upset all these reasonable expectations, based on existing law, to the great detriment of those who relied on them.

When the then-INS originally adopted regulations to impose a waiting period on asylum seekers seeking employment authorization, in 1994, it applied the new rules to persons whose *applications for asylum* were filed on or after January 1, 1995. The proposed rule under consideration here, by contrast, would apply to any application for *employment authorization* filed on or after the effective date of the new regulation, and for two categories of cases, including those affected by the one-year filing deadline, it would apply even to applications for employment authorization pending on such date. This is a cruel and unnecessary shattering of settled expectations that will wreak havoc with the lives of asylum applicants whose applications for asylum have been pending for years—typically in the Asylum Office backlog--and who have been living and working legally and productively for much of that time. This approach should be abandoned.

Even asylum seekers who will ultimately satisfy an exception to the filing deadline will remain without work authorization. These also include, for example, applicants whose asylum filings are rejected for technical reasons by the USCIS service centers that receive affirmative applications or, less commonly, by the immigration courts when filed by mail. USCIS service centers can be fanatical in their insistence on completeness of I-589 Applications for Asylum and Withholding of Removal, a fanaticism that seems to apply to these forms more than to other USCIS filings.[26] The regulations have long recognized that when a filing is bounced back for technical reasons, the original date of receipt should be treated as the filing date as long as the application is resubmitted within a reasonable time of the original rejection. Under this proposed regulation, an asylum seeker in this situation whose case is currently in the asylum office backlog could find herself deprived of employment authorization for a period of years, for reasons entirely beyond her control.

The proposed rule asserts that "the Asylum Division reports that a contributing factor to the asylum backlog is an increase in the number of applicants who file skeletal or fraudulent asylum applications affirmatively to trigger removal proceedings before the immigration court where they can apply for cancellation of removal, a statutory defense against removal and pathway to lawful permanent resident status available to those who have at least ten years of physical

[26] By way of illustration, a Human Rights First attorney had an I-589 filing bounced back as incomplete for having left blank one box on the form, pertaining to the principal applicant's spouse. The question asked, "If previously in the U.S., date of previous arrival." As the couple had arrived in the United States together and the derivative spouse had never been in this country previously, counsel had left that box blank. Unsurprisingly, asylum seekers trying to apply without counsel regularly see their affirmative applications rejected for reasons they do not understand.

presence in the United States and meet additional eligibility criteria." DHS claims that depriving all asylum seekers of work authorization when they apply after one year "will address" the cancellation of removal practice. But this is not a "solution" to the lack of application routes and timely adjudication for cancellation of removal claims, and will harm many applicants who are genuinely seeking adjudication of their asylum claims, including those who, having been in this country for far less than 10 years, are clearly not using the asylum application process as a path to apply for cancellation of removal.

Instead, the agency should address the underlying long-standing problem of the lack of a formal application route for cancellation of the removal relief – and the long-term refusal of ICE to issue notices to appear upon request to put these individuals into removal proceedings. Human Rights First and other groups have recommended that DHS create an application route for cancellation of removal cases. [27] The Migration Policy Institute has pointed out that in addition to ICE using its authority to issue Notices of Appear in such cases, a new adjudication unit could be created at USCIS to adjudicate cancellation of removal cases. [28]

Inconsistent with U.S. law and treaty commitments

The 1951 Convention Relating to the Status of Refugees and its Protocol protect refugees from return to persecution, prohibit states from penalizing them due to illegal entry or presence, and provide refugees with a series of rights, in addition to those applicable to all individuals. Article 17 of the Convention provides refugees "lawfully staying" in a territory "the right to engage in wage-earning employment."[29]

The United Nations High Commissioner for Refugees (UNHCR) has explained that the term "stay" should be interpreted to "embrace both permanent and temporary residence," while "lawful" should be determined by the circumstances, "including the fact that the stay in question is known and not prohibited."[30] As one leading legal noted scholar has explained, a refugee is lawfully staying, for purposes of the Refugee Convention, when he or she is granted asylum, or when he or she "enjoys officially sanctioned, ongoing presence in a state party."[31] Given that international refugee law makes clear that an individual is a refugee as soon as he or she meets the refugee definition, as opposed to when a state recognizes his or her status as such, an asylum seeker should be considered as "lawfully staying" when he or she initiates his or her asylum application. Indeed, filing an application for asylum gives the asylum seeker the right to remain in the United States until there is a final administrative decision on the case; the applicant upon

[27] Human Rights First, "The Real Solution: Regional Response Rather than Border Closures, Mass Incarceration, and Refugee Returns" (April 2019), *available at* https://www.humanrightsfirst.org/sites/default/files/The_Real_Solution.pdf.
[28] Migration Policy Institute, *supra* note 3, at 27-8.
[29] Convention Relating to the Status of Refugees, 189 UNTS 137, Article 17 (July 28, 1951), *available at* www.unhcr.org/en-us/3b66c2aa10.
[30] UNHCR, "'Lawfully Staying'-A Note on Interpretation" (May 3, 1988), *available at* http://www.unhcr.org/refworld/docid/42ad93304.html.
[31] James C. Hathaway, *The Rights of Refugees Under International Law*, 730 (New York: Cambridge University Press, 2005).

filing of the application is present in the United States with the consent of the U.S. government, and the filing receipts USCIS issues to asylum applicants reflect this.

Denying work authorization to those who amend or supplement their asylum applications

The proposed rule seeks to deny both initial and renewal employment authorization document (EAD) applications if there are any "unresolved applicant-caused delays" with respect to the underlying asylum case on the date of the EAD adjudication. Human Rights First opposes this change that would result in arbitrary EAD denials as well as increased inefficiency of asylum adjudication.

Under current rules, the 180-day "Asylum EAD Clock" establishing an asylum seeker's eligibility for the initial EAD stops if the applicant causes certain delays, e.g. fails to appear for a biometrics appointment or asylum interview, or requests that the interview be rescheduled.[32] The clock restarts once the issue has been resolved, e.g. asylum seeker appears for the rescheduled interview. The clock is irrelevant for renewal EADs.

The proposed rule – at 8 C.F.R. § 208.4 and § 208.9 — seeks to make substantive and procedural changes that are unreasonable and likely to create legal confusion. It has long been the rule that when an asylum applicant requests leave to amend or supplement the application for asylum, this will stop the EAD clock *if the request actually results in a delay in the adjudication.* A typical example would be where an applicant for asylum who filed affirmatively without counsel appears in immigration court for the first time with a lawyer, and counsel requests a continuance of the initial master calendar hearing in order to submit an amended application for asylum. Such a request stops the clock under the current regulations, and this has been the case for many years.

The misguided novelty of this proposed regulation would be to treat as an applicant-caused delay any request to amend or supplement a pending asylum application that simply happened to be pending with the immigration court or USCIS at the time of adjudication of the application for employment authorization. That is most puzzling. At the affirmative level, amendments and supplements to asylum applications are generally filed in order to keep USCIS up to date regarding any relevant changes in the asylum seeker's life (for example, legal name change or change in marital status accompanied by a request to add the new spouse as a derivative applicant) and/or country conditions. Far from causing delays, such filings are aimed at more efficient adjudication of asylum claims. For example, USCIS' Affirmative Asylum Procedures Manual (AAPM) makes it clear that even though a principal asylum applicant can add a

[32] *See* Executive Office for Immigration Review & U.S. Citizenship and Immigration Services, "The 180-day asylum EAD clock notice" (May 10, 2017), *available at* https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice_-_revised_05-10-2017.pdf; *see also* U.S. Citizenship and Immigration Services, Asylum Division, "Affirmative Asylum Procedures Manual," II.I.2.b.i.(a) (May 2016), *available at* https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AAPM-2016.pdf.

derivative applicant "at any time prior to the rendering of a final decision by the Asylum Office,"[33] including after the interview, adding a derivative sooner rather than later is more efficient, triggering immediate biometrics data collection and background checks of the derivative. Indeed, as per the AAPM, a recently-added derivative's failure to comply with fingerprinting requirements prior to an interview is considered an applicant-caused delay which may result in a rescheduled interview and stopping the EAD clock.[34] In this context, the proposed rule's intent to punish asylum applicants for timely amendments is incomprehensible.

For cases pending before the immigration court, lawyers (and unrepresented applicants) seeking to *avoid* delaying the adjudication process will frequently schedule an individual hearing on the merits of the claim, and, in advance of that date, submit amendments and supplements to the pending asylum application. Asylum seekers do this with the permission of the Immigration Judge, but that permission is typically tacit, and reflected in the Immigration Judge's agreement to schedule the case for an individual hearing, usually accompanied by some statement as to the call-up date for submission of any additional documents. This proposed regulation could result in a perverse situation where an applicant who appears at a master calendar hearing in March 2019, schedules an individual hearing for the first available date, in June 2021, submits supplemental documentation and an amended I-589 form in July 2019, and who then becomes eligible to apply for employment authorization in August, could be denied EAD because the Immigration Judge had not separately "ruled" on the "request" to amend/supplement the application, even though the court was certainly expecting such filings to be made and had no plan to do anything with them until shortly before the individual hearing in 2021.

By proposing to deny an EAD application if there are any unresolved amendments (or other such requests deemed to be applicant-caused delays) on the date the EAD application is adjudicated, DHS is essentially planning to penalize asylum seekers for unpredictable processing times over which asylum applicants have no control whatsoever. One Human Rights First attorney previously represented a client whose repeated requests to amend their asylum application to reflect their new legal name somehow never appeared to be processed and USCIS kept sending its notices with the client's former name until the record was set straight at the eventual asylum interview. Would a situation like this be treated as an "unresolved applicant-caused delay" resulting in EAD denials? Clearly, there would be no justification for this. In the same vein, EAD renewal applications currently take roughly four to six months but when exactly a particular EAD application will be adjudicated is obviously unknown to the asylum applicant who has no control over what is or is not unresolved at that particular moment. In short, the proposed rule would result in completely arbitrary EAD denials.

Moreover, there appears to be some ambiguity as to what this section of the proposed rule would mean for applicants seeking to renew existing EAD's that they were issued prior to any change in the regulation. Although the supplemental information to the proposed regulation (at page 62404) states that the 365-day waiting time does not apply to applications to renew employment

[33] U.S. Citizenship and Immigration Services, at III.E.1.
[34] *Id.*, at II.I.2.b.i.(d).

authorization, the text of the regulation itself, at proposed 8 C.F.R. § 208.7(a)(v), in a subsection separate from the one providing for the 365-day waiting period, states that "[a]ny delay requested or caused by the applicant on his or her asylum application that is still outstanding or has not been remedied when USCIS adjudicates the application for employment authorization . . . will result in a denial of such application." If this is to mean that person who filed for asylum three years ago, has been issued EAD twice since then, and has submitted an amendment to his long-pending application that has not yet been ruled on at the time his renewal EAD is adjudicated, would abruptly be denied EAD, this would be incomprehensibly arbitrary and unfair. If on the other hand this is not what the rule intends, its text should be clarified.

Denying or terminating work authorization upon denial by the Asylum Office or on appeal to federal court

The proposed rule would immediately terminate employment authorization in a situation where the Asylum Office denied the application, as happens to applicants whose cases are not granted by the asylum office but are not referred into removal proceedings because they have another form of continuing legal status, in contrast to the current situation where the EAD remains valid for 60 days or until its expiration, whichever is longer. Human Rights first opposes this change as unnecessarily disruptive to asylum seekers and their employers: asylums seekers who are subject to denial, rather than referral, by the Asylum Office are asylum seekers who have other forms of lawful immigration status such that they are not removable. In many cases, that other status provides them with an alternative basis for employment authorization. Human Rights First has a number of clients for example who have pending affirmative asylum applications but also hold valid Temporary Protected Status which will continue regardless of what the Asylum Office does with their applications for asylum. Asylum seekers in this situation have a choice whether to apply for EAD based on the TPS or other non-immigrant status, or based on asylum. The current rule gives them a window in which to apply for employment authorization on the alternative basis, so as to avoid disruption to their employment. The present rule is in the public interest, and the proposed alternative would serve only to penalize people who quite aside from their applications for asylum are lawfully present in this country, and their families and their employers.

The proposed rule would also prohibit an asylum applicant who was previously work-authorized from renewing an application for employment authorization while his or her case is on appeal (via petition for review) to a federal court. The proposed rule would provide at 208.7(b)(1) that "[employment authorization is not permitted during any period of judicial review, but may be requested if a Federal court remands the case to the Board of Immigration Appeals." This change would leave asylum seekers who have been working legally during the pendency of their asylum cases without legal work authorization for extended periods of time while awaiting federal court rulings. These wait times can range from one to four years depending on the circuit. Being able to apply for employment authorization again if the petition for review is granted would be cold comfort to asylum applicants who would become homeless in the meantime along with their families.

Congress gave most asylum applicants an appeal as of right to the Court of Appeals if their cases are denied by the Board of Immigration Appeals (BIA). To the extent DHS or DOJ believe that an asylum applicant's petition for review is without merit, the remedy allowed by statute would be for the agency to oppose the petition and seek to remove the applicant, not to subject all asylum applicants seeking judicial review to a form of extrajudicial trial by ordeal, where the applicants who ultimately prevail will not be those with the strongest cases, but those who are able to survive without working for however long the appellate process may take.

Human Rights First has over the years represented a good number of asylum applicants in successful petitions for review. These included a family of three from Colombia, targeted for political reasons by a guerilla group in that country; the BIA's decision in that case was so deficient that government counsel at oral argument declined to defend much of it. The federal court granted the appeal, and the family, who had by that point built a solid existence for themselves based on the father's wages, was able retain their apartment and their hard-won sense of stability during this process, before they were finally granted asylum and then permanent residence. Without employment authorization, they would have suffered lasting damage as a result of legal errors that were not their fault, and which the federal court ultimately corrected.

Excluding asylum seekers convicted or charged of a broad range of offenses

The proposed regulation would greatly expand the range of criminal offenses conviction of which in the United States would bar an asylum applicant from employment authorization, extending this to convictions that are not bars to asylum itself. It would also allow USCIS officers with no background in such assessments to deny applicants employment authorization based on foreign criminal convictions deemed to be for serious non-political crimes, or even for foreign criminal charges deemed to be non-political (apparently regardless of whether or not they are serious). Finally, it would allow these same USCIS adjudicators to deny asylum seekers employment authorization based only on having been charged with a crime, if the charges are still pending when the application for employment authorization is adjudicated.

First, the proposed regulation would make anyone convicted in the United States of any crime that is a felony (that is, a crime for which the maximum sentence available by law is more than one year, regardless of the sentence actually imposed on the applicant) ineligible for employment authorization during the pendency of the asylum claim. This would be the case even for convictions that would not be bars to asylum. U.S. criminal law includes a vast number of crimes for which the maximum sentence theoretically available is in excess of one year—failure to disclose the origin of a recording is a class E felony under New York law, for example, as is computer trespass (knowingly using or accessing a computer without authorization)—which are not bars to asylum. It is unclear what legitimate public purpose would be served by prohibiting an asylum applicant with such a conviction from obtaining employment authorization pending adjudication of his claim.

Second, the regulation would bar from employment authorization any asylum applicant convicted of "public safety offense involving" domestic violence or domestic assault, child abuse

or child neglect, or controlled substances (including simple possession and without limitation as to the type of drug or quantities involved), or driving under the influence of alcohol or drugs. The definitions of the offenses covered by these proposed provisions are unclear ("or any other domestic or spousal-battery type offense"), and the one limitation to the bar for "domestic or spousal-battery type" convictions, for situations where "the applicant has been subjected to extreme cruelty, is not and was not the primary perpetrator of the violence in the relationship, and is not otherwise ineligible," seems unworkable in the context of a paper-based adjudication of a work permit by a USCIS service center.

Third, the proposed regulation would allow an application to be denied where the applicant has been charged—not convicted—of any of the types of offenses referred to in the preceding paragraph, and those charges are still pending at the time the application for employment authorization is adjudicated. This penalizes asylum applicants for the vagaries of the criminal court process, where defendants, and particularly defendants who do not wish to plead guilty, may wait months or longer for a resolution even of fairly minor criminal charges. It also flies in the face of the presumption of innocence. Human Rights First has represented asylum applicants who were falsely accused of several of the categories of offenses targeted by this proposed rule, and who were ultimately acquitted or saw the charges against them dropped after prosecutors came to realize that they were baseless. These results did not happen fast, however, and had these same applicants—now asylees—had the misfortune to be seeking work authorization in the midst of that process, they would have found their penal nightmares compounded by suddenly being unable to work.

Fourth, the proposed regulation would bar from employment authorization any asylum applicant convicted abroad of a serious non-political crime. The assessment of the seriousness and non-political nature of the offense—a fairly complicated question in U.S. and international refugee law—would be left to USCIS adjudicators who have no background in this area. This is particularly troubling in view of the fact that the governments of a number of countries whose citizens seek refugee protection in the United States on a regular basis use criminal prosecution as a tool for suppressing dissidence. Some of these countries prosecute people for political reasons using charges whose political nature is clear from the description of the offense (e.g. "subversion"), others may also attack dissidents with trumped-up charges that on their face do not seem political, or may bring charges whose legitimacy is an ultimate issue in the underlying asylum claim. It is the job of the Asylum Office and the Immigration Courts adjudicating the asylum claim to separate out legitimate prosecution from illegitimate persecution. The evidence required can be extensive and Human Rights First is deeply skeptical that USCIS service centers will be able to complete this analysis accurately, or that they should be asked to attempt this, given their current workloads and lack of experience with these issues.

Fifth, the proposed regulation would enable USCIS officers to deny employment authorization to anyone convicted of *any* non-political criminal offense in a foreign country, regardless of the seriousness the offense, or who was charged with such an offense where those charges had not been resolved. This measure would lead to completely unjustified denials of work authorization to persons with valid asylum claims, and making such decisions a matter of agency discretion

would, again, impose on the staff of USCIS service centers complicated legal and factual analysis that they are ill-equipped to undertake. The Egyptian government, for example, in 2011 brought criminal charges against dozens of people, including both Egyptian and U.S. citizens, for receiving foreign funding (including U.S. funding) for the work of non-governmental organizations operating in Egypt.[35] These prosecutions continued for a full seven years before ending in the acquittal of most of the defendants, some of whom had been obliged to flee the country.[36] While the political nature of those charges should be clear, Human Rights First is not confident that this would be apparent to the first-level staff charged with adjudicating employment authorization applications, in a case like this or in other more complicated ones, and is concerned that the need to sort out these situations would result in significant processing delays and erroneous conclusions. Moreover, some asylum seekers may have old convictions in their home countries for offenses that were not political but were also not serious at all and were frequently remote in time. What public purpose is served by denying work authorization to an asylum applicant, now 50 years old, because he reports having been convicted of a petty offense in his home country at the age of 18?

Ending issuance of recommended approvals

The proposed rule would do away with recommended approvals. Human Rights First opposes this change in the present environment where the identity and background checks may and do take years.

Under current rules, asylum officers can issue recommended approvals to asylum seekers who have met their evidentiary burdens, and to whom the officer would grant asylum, but for the still-pending background checks. Waiting for these checks to clear can take months or even years, leaving the asylum-worthy applicant who has done everything that was asked of them, in a legal limbo. With recommended approval, the applicant at least becomes immediately eligible for an EAD and can start rebuilding their life.

Human Rights First urges DHS and the other relevant government agencies to improve their ability to conduct and clear security and background checks in a timely manner. Unless and until these processes can be completed by the time the asylum decision is made, USCIS will need to continue its practice of recommended approvals.

Making work authorization decisions "discretionary"

The proposed rule seeks to make asylum-based EAD approvals discretionary. Human Rights First strongly opposes this change which would introduce an inordinate amount of arbitrariness and uncertainty into a process which should be guided by clear rules.

---

[35] Shaimaa Fayed & Maggie Fick, *Egypt Sentences 43, Including Americans, in NGO Case*, Reuters, June 4. 2013.
[36] Amina Ismail & Haitham Ahmed, *Egyptian Court Acquits 40 NGO Workers in Case that Strained Ties with U.S.*, Reuters, Dec. 20, 2018.

Discouraging fraud

DHS claims that this rule is needed to "reduce incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications intended primarily to obtain employment authorization …" and "help mitigate the crisis that our immigration and asylum systems are facing …." But the proposed rule is not a targeted fraud-prevention tool (indeed DHS already has numerous fraud-prevention tools). Instead, this sweeping rulemaking proposes changes that would cause refugees with well-founded fears of persecution – and their families – to suffer severely.

Much of the petition reflects Trump administration rhetoric disparaging asylum claims, and inaccurately portraying them as largely fraudulent or meritless. But the skewed statistical assertions proffered by DHS in support of this regulation are inaccurate. For instance, DHS claims that less than 20 percent of asylum cases that began with a credible fear interview are successful.[37] In fact, nearly one-third of asylum applications adjudicated in immigration court that originated through a fear screening were granted in fiscal year 2019.[38] Moreover, while there has been a drop in asylum grant rates, that drop has followed (i) new Trump administration policies that have purposefully limited asylum eligibility and (ii) statements disparaging asylum claims from the Trump administration officials who lead the very agencies that are adjudicating these cases. [39] Moreover, even if asylum adjudicators are currently denying asylum to most asylum seekers cases, that *does not mean* that protection claims are not motivated by genuine fears of persecution and DHS should not punish asylum seekers who have genuine fears of harm because they are not found to meet the requirements of U.S. law and have no way to understand the intricacies of complex U.S. asylum law without a U.S. asylum lawyer.

Asylum interview evidence submitted 14 days in advance

The proposed rule would require documentary evidence in support of the asylum claim to be submitted to the asylum office no later than 14 calendar days before the interview, amending 8 C.F.R. § 208.4 and 8 C.F.R. § 208.9. Human Rights First opposes this rule because it would be simply unworkable in the majority of cases due to delayed interview notices.

Asylum interview notices are currently issued 21 days before the scheduled interview. As per the AAPM, the interview notices have to be mailed within three days of printing, i.e. no later than 18 days before the scheduled interview.[40] It is unclear how often that actually happens, since Human Rights First can attest to the fact that our clients and we as their representatives usually receive

[37] See 84 Fed. Reg. 62385.
[38] Executive Office for Immigration Review Adjudication Statistics, "Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim" (Oct. 23, 2019) *available at* https://www.justice.gov/eoir/page/file/1062976/download (8,457 asylum applications that began with a credible fear interview were granted in immigration court and 17,621 denied during fiscal year 2019).
[39] Human Rights First, "Central American were Increasingly Winning Asylum Before President Trump Took Office" (Jan. 2019), *available at* https://www.humanrightsfirst.org/sites/default/files/Asylum_Grant_Rates.pdf.
[40] U.S. Citizenship and Immigration Services, *supra* note 32, at II.G.3.

the interview notices 14 days before the scheduled interview, and sometimes even closer to the interview. In short, under the present time frame, it would be impossible in many cases to meet the proposed deadline for evidence submission. The proposed rule does not contemplate any changes to the current interview notice issuance system. A 14-day call-up date for evidence could be doable if interview notices started to issue 45 or even 30 days before the scheduled interview. It should also be noted that while some local asylum offices request that supporting evidence be submitted in advance of the interview, others do not assign cases to officers until the morning of the interview, with the result that advance submission of such material does not in fact facilitate the process.

No notification of missed interviews

The proposal would revise 8 C.F.R. § 208.10 to provide that USCIS is not obligated to notify an applicant about a failure to appear at an asylum interview (or a scheduled biometrics appointment) before dismissing the asylum application or referring the case to the immigration court. Human Rights First supports USCIS's current practice of sending out notices to asylum applicants who miss an interview date, and recommends that this practice be encouraged and continued and this proposed regulation abandoned, as the current practice helps catch some cases where the original interview notice went astray.

Human Rights First is constantly working with USCIS to sort out issues with client and/or attorney notices lost in the mail. This is a chronic problem and cannot be ignored in this rulemaking. We have represented many clients who have promptly informed USCIS of their address change, only to learn later that interview notices were still sent to the former address. On several occasions, it has been the notice regarding a failure to appear at an asylum interview that has informed an asylum seeker for the first time about a scheduled interview. Under these circumstances, it would be deeply irresponsible for USCIS to stop sending notifications of missed interviews before dismissing applications or referring asylum seekers to immigration court.

Conclusion

For the reasons outlined above, Human Rights First recommends that DHS abandon this proposed rule and provide work authorization to asylum seekers promptly upon expiration of the current 180-day wait period.

Sincerely,

Senior Director
Refugee Protection