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Submitted via www.regulations.gov

Charles Nimick
Chief, Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive, Camp Springs, MD 20746

Re: DHS Docket No. USCIS–2024–0002, Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants

Dear Chief Nimick,

The Women’s Refugee Commission respectfully submits the following comment in response to the U.S. Citizenship and Immigration Services (“USCIS”) request for comment on the Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document (“EAD”) Renewal Applicants, 89 Fed. Reg. 24628 (Apr. 8, 2024) (to be codified at 8 C.F.R. pt. 274a) (DHS Docket No. USCIS–2024–0002).

The Women’s Refugee Commission is submitting this comment to ensure that no asylum seekers or immigrants lose their jobs because of government processing delays. We call on the government to (1) issue a longer and permanent automatic work permit extension period that covers all eligible workers; and (2) ensure that it can process work permit renewal applications for any other immigrants in danger of losing their jobs. We are responding to the three relevant questions asked by USCIS, as well as suggesting changes USCIS should make before finalizing the rule in order to keep immigrant workers in the formal workforce.

I. Executive Summary

The Department of Homeland Security (“DHS”) and USCIS are requesting public comments on the temporary extension, and specifically requesting responses to the following three questions:

- (1) Whether DHS regulations should be revised to permanently lengthen the period of the automatic extension period to up to 540 days for employment authorization and/or EAD validity for eligible renewal applicants;

- (2) Whether a different permanent extension period should be implemented, for some or all applicants covered by the automatic extension provision on either a temporary or permanent basis; and
- (3) Whether other solutions should be considered to mitigate the risk of expiring employment authorization and/or EAD validity for some or all applicants covered by the automatic extension provision.

The Women's Refugee Commission recommends the following solutions which would protect all eligible work permit renewal applicants, and benefit immigrant workers and employers alike:

- DHS should permanently revise its regulations to lengthen the period of automatic extension to 540 days or longer.
- USCIS should ensure that all eligible work permit renewal applicants are protected from loss of work authorization while they wait for the government to process their renewal applications. As such, USCIS should increase the automatic extension to 730 days, which would protect the 260,000 applicants the agency projects will lose work authorization in spite of this temporary rule.
- In order to mitigate the risk of expiring work permits, USCIS should begin to build much-needed technology described in the temporary rule to identify and prioritize those applicants whose work authorization will lapse if not processed. Since the rule estimates it will take a year to create this much-needed technology, USCIS should, in the meantime, create a clear and easy mechanism for immigrant workers, including DACA recipients and others not covered under this rule, to alert USCIS if they are in danger of losing their job and require expedited processing.
- Additionally, USCIS should reissue 540-day (or longer) receipt notices to all eligible applicants who received 180-day receipt notices between October 27, 2023 - April 8, 2024, but who are currently eligible for the 540-day extension. Alternatively, USCIS should provide a mechanism for individuals to request new receipts as evidence of the longer automatic extension period.

II. The Women's Refugee Commission applauds DHS for issuing this automatic extension of work permits to keep 800,000 immigrant workers in the formal economy.

The Women's Refugee Commission thanks the DHS and USCIS for the opportunity to comment on the Temporary Final Rule ("TFR") extending work permits. WRC is a nonprofit 501(c)(3) organization that seeks to improve the lives and protect the rights of displaced women, children, and youth. Within WRC, the Migrant Rights and Justice program has long engaged in researching, monitoring, and advocating for the safe, orderly, and dignified reception of people seeking asylum at the U.S.-Mexico border and for community-based support for people

navigating the immigration process. WRC has done extensive research and advocacy on programs to support both the short and long-term reception of newcomers including the Case Management Pilot Program (CMPP)¹ and Shelter and Services Program (SSP).² As part of this long-standing work, in November 2023, WRC visited four cities in the interior to evaluate how newcomers are being received. We engaged in direct interviews with asylum seekers, immigrants, and local organizations providing direct services to migrants in New York, Chicago, Denver, and Portland, Maine. Based on our research in these cities, WRC identified the need for a long-term and sustainable model that can address the ongoing reality of people coming to the U.S. to seek safety.³ In our monitoring trips to all four cities, we noted the importance of access to work authorization for newcomers. Work authorization allows newly arrived asylum seekers to pursue formal employment opportunities and to obtain greater levels of economic self-sufficiency which in turn increases their access to permanent housing, healthcare, and other necessities. For all migrants, whether they arrived in the U.S. months or years ago, work authorization is crucial for them to support themselves and their families. As the United States continues to contend with a housing and cost of living crisis, it is all the more important that immigrants' ability to work are not curtailed due to delays in processing.

Based on our expertise on policies and practices that support the dignified reception of asylum seekers and newcomers, and our long-standing work on humane and commonsense immigration policies, WRC is uniquely positioned to offer insight into the questions presented by USCIS and DHS.

A. The Women's Refugee Commission has a strong interest in ensuring immigrant workers do not fall out of the formal workforce.

WRC has a strong interest in seeing immigrant workers continue to work legally and contribute to the U.S. economy. WRC understands the vulnerabilities that newcomers, especially women (many of whom faced significant gender based violence in their home countries and on their journey to the U.S.)⁴ face when navigating complex legal processes. Newcomers without

¹ See Women's Refugee Commission & American Immigration Lawyers Association, *The Case Management Pilot Program*, (Nov. 29, 2023),

<https://www.womensrefugeecommission.org/research-resources/the-case-management-pilot-program/>.

² See Women's Refugee Commission, et. al *Sustainable, Orderly, and Safe Reception at the US-Mexico Border: Recommendations for the Shelter and Services Program*. (Apr. 19, 2023),

<https://www.womensrefugeecommission.org/research-resources/sustainable-orderly-and-safe-reception-at-the-us-mexico-border-recommendations-for-the-shelter-and-services-program/>.

³ See Women's Refugee Commission, *Opportunities for Welcome: Lessons Learned for Supporting People Seeking Asylum in Chicago, Denver, New York City, and Portland, Maine*. (Nov. 30, 2023),

<https://www.womensrefugeecommission.org/research-resources/opportunities-for-welcome-lessons-learned-for-supporting-people-seeking-asylum-in-chicago-denver-new-york-city-and-portland-maine/>.

⁴ See Women's Refugee Commission, *Desperation at the Border: Findings and Recommendations from a Monitoring Visit to Arizona and Sonora, Mexico*. (May 22, 2024),

durable, pre-existing connections in the U.S. are also particularly vulnerable as they face uncertain and often limited access to housing and other essential services. Work authorization empowers newcomers to pursue formal work opportunities that can serve to stabilize their access to housing, healthcare, and childcare. Immigrants also make extensive economic contributions to the U.S. economy, contributing significantly more than what they take away from state benefits or other state run programs.⁵ In addition, immigrant workers fill industries experiencing labor shortages such as jobs in service industries, healthcare, warehouses, and so on, helping to drive economic growth and create more job openings.⁶

In addition, based on our monitoring trips to New York City, Chicago, Denver, Portland, Maine, and our research on different approaches to welcoming newcomers throughout the country, we found promising strategies to reduce EAD application processing times and ensure newcomers are able to access work authorization and employment in the formal workforce. For instance, efforts by DHS to decrease processing times for some newcomers will alleviate significant burdens for migrants and their families.⁷ Additionally, efforts in interior cities to facilitate the EAD application process, including by having USCIS staff on site at work permit clinics hosted by NGOs and city governments in places such as New York City are a promising tool to help newcomers and migrants more easily and quickly navigate applying for work authorization.⁸

B. A longer work permit extension is much needed to ensure immigrant workers do not fall out of the workforce.

The temporary extension of work permits will bring much needed relief to hundreds of thousands of asylum seekers and other immigrant workers. In fact, the agency estimates that the automatic extension will protect approximately 800,000 people from losing their work authorization due to USCIS processing delays.⁹

<https://www.womensrefugeecommission.org/research-resources/desperation-at-the-border-findings-and-recommendations-from-a-monitoring-visit-to-arizona-and-sonora-mexico/>.

⁵ See Fwd.us, *Immigration Facts: The Positive Economic Impact of Immigration*. (Jul. 21, 2020),

<https://www.fwd.us/news/immigration-facts-the-positive-economic-impact-of-immigration/>.

⁶ See Wiseman & Salomon, *How Migrant Workers Have Contributed to Strong U.S. Job Growth*, PBS (Apr. 12, 2024). <https://www.pbs.org/newshour/economy/how-migrant-workers-have-contributed-to-strong-u-s-job-growth>

⁷ See Department of Homeland Security, *Fact Sheet: The Biden - Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act*. (Sept. 20, 2023),

<https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border>.

⁸ See Women's Refugee Commission, *Opportunities for Welcome: Lessons Learned for Supporting People Seeking Asylum in Chicago, Denver, New York City, and Portland, Maine*. (Nov. 30, 2023),

<https://www.womensrefugeecommission.org/research-resources/opportunities-for-welcome-lessons-learned-for-supporting-people-seeking-asylum-in-chicago-denver-new-york-city-and-portland-maine/>.

⁹ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 Fed. Reg. 24628, 24628 (Apr. 8, 2024).

Immigrants will not only be able to work as a result of this lengthened extension; they will keep their drivers' and professional licenses valid for longer. This is an important issue for all immigrant workers, but of particular importance for those individuals who need drivers' and professional licenses in order to work, such as doctors, truck drivers, ride-share drivers, and delivery service workers.

This rule also protects up to 82,000 employers.¹⁰ Furthermore, DHS estimates that these businesses and organizations employing affected immigrant workers would have incurred approximately \$17.4 billion in labor turnover costs if people were to lose their work authorization.¹¹

III. DHS should permanently extend the automatic extension period of work permits to 540 days and implement solutions that protect all eligible applicants from lapsing work authorization.

While WRC commends DHS for issuing this temporary regulation, it is clear from the rule that this extension does not fully address the issue it purports to solve. First, this rule should be permanent. Second, this rule must protect the 260,000 people still at risk of losing work authorization despite this rule.

A. DHS should revise its regulations to permanently lengthen the automatic extension period to 540 days for all eligible renewal applicants.

This is the second temporary rule that DHS has had to issue in less than 2 years. Furthermore, there is no reason to believe DHS will not have to issue a third temporary rule when this rule expires. Since there is not a clear plan for fully eliminating the work permit processing backlog within the next 2 years, DHS should change its regulation to permanently lengthen the automatic extension period to 540 days (or 730 days), providing stability to immigrant workers and employers alike.

DHS should make this regulation permanent in order to ensure immigrant workers do not lose work authorization in 2026. USCIS has an obligation to process work permit applications received 90 days before an individual's work permit expires.¹² After October 2025, USCIS will revert to the 180-day work permit extension.¹³ In April 2026, individuals who received a 180-day work permit extension after October 2025 would lose their work authorization if backlogs

¹⁰ *Id.* at 24652.

¹¹ *Id.*

¹² 8 C.F.R. pt. 208.7(d).

¹³ 89 Fed. Reg. at 24629.

persist.¹⁴ DHS has not indicated that USCIS will have fully addressed the work permit backlogs by April 2026, and thus, should make the longer extension permanent.

Immigrant workers — and their families and communities — benefit from a permanent 540-day (or longer) extension because it gives them long-term predictability, and mitigates potential lapses in work authorization after the temporary extension expires. Having a permanent extension of 540 days (or longer) would alleviate anxiety and worry for immigrant workers as they would no longer need to contend with the possibility of losing their jobs in the coming years because of USCIS work permit renewal processing delays. It will also contribute to the long-term financial stability of immigrants and their families. Employment is essential to maintaining stable housing, purchasing necessities like groceries, and for access to healthcare and childcare. Moreover, community partners like NGO employees and volunteers have routinely stood up to welcome with dignity asylum seekers and other immigrants in need of support by providing help with temporary housing solutions, food assistance, and more. Communities and NGOs are best able to serve asylum seekers and migrants when there are clear pathways to self-sufficiency, like stable and consistent work authorization, for migrants.

Similarly, employers benefit from the stability and clarity that a permanent change to the automatic extension would provide. Since 2021, employers across the country have dealt with the stress of employing individuals whose work authorization lapsed, or was on the verge of lapsing.¹⁵ In some cases, employers lost critical immigrant workers due to lapsing work authorizations.¹⁶ By making the extension 540 days (or longer) permanently, the business community would know that their employees will be less likely to lose work authorization due to processing backlogs. Furthermore, having a permanent 540-day (or longer) extension would create more clarity, rather than forcing employers to carefully track whether some individuals have received a 540-day or 180-day work permit extension moving forward.

B. DHS should increase the auto-extension to 730 days for all eligible applicants.

DHS estimates that despite the 540-day extension, about 260,000 applicants are still at risk of losing their work authorization.¹⁷ This means the 540-day extension is not long enough.

¹⁴ We recognize that the number of renewal applications are set to decrease significantly between April 2025 and March 2028, due to the switch to five-year work permits for many categories of immigrants. *See* 89 Fed. Reg. at 24640. However, without a permanent rule, those who do not fall into the five-year categories are likely to start experiencing lapses in employment in April 2026; this population of immigrants experiencing lapses will increase when five-year work permits are also up for renewal in 2028.

¹⁵ *See* Michelle Hackman, *Immigrants to Get Extension for Expiring or Expired U.S. Work Permits*, Wall St. J. (May 3, 2022, 12:41 PM),

<https://www.wsj.com/articles/immigrants-to-get-extension-for-expiring-or-expired-u-s-work-permits-11651579201>.

¹⁶ Rafael Bernal, *Biden Extends Some Immigrant Work Permits, Potentially Saving Thousands of Jobs*, The Hill (Apr. 4, 2024, 9:00 AM), <https://thehill.com/latino/4573404-biden-immigrant-work-permits/>.

¹⁷ 89 Fed. Reg. at 24655.

These workers will lose their jobs, access to medical care, risk homelessness, and it will severely impact the industries they work in. There are families, employers, and local communities relying on these 260,000 immigrant workers. We strongly urge the agency to prevent this crisis from happening and to protect these 260,000 immigrant workers and their employers – rather than knowingly allow them to lose their work authorization. To do so, DHS should revise its regulations to increase the automatic extension period to 730 days.

Specifically, we urge the administration to lengthen the automatic work permit extension to 730 days for all eligible applicants. All individuals who have received the automatic extension should receive a 730-day extension. This includes lengthening the work permit extension to 730 days for those immigrants who previously received a 540-day extension under the 2022 TFR. This would create unified guidance for employers and individuals while ensuring that immigrant workers do not fall out of the workforce due to processing delays.

It would hurt the economy, businesses, and local communities for 260,000 immigrant workers to fall out of the workforce due to processing backlogs. Immigrant workers are key to the success of many industries, including construction, medicine, technology, and trucking, which have been essential to boost our economy. A longer extension means that employers will be able to keep 260,000 immigrants employed, and will minimize disruption to industries already struggling with labor shortages.

C. USCIS should create mechanisms to help immigrant workers stuck in backlogs who do not benefit from the work permit extension, including DACA recipients.

Not all immigrant workers will benefit from this current work permit extension. For example, DACA recipients, and individuals who apply for a work permit renewal after their work authorization has expired, are not included in this rule. Furthermore, the rule states that approximately 260,000 immigrant workers may fall out of the workforce because the 540-day extension will not be enough to ensure their work permits are processed before expiring.¹⁸ We implore USCIS to prioritize processing work permit applications so that no immigrants lose their jobs as a result of processing backlogs.

The rule contemplates creating technology to adjudicate work permit applications in the order in which individuals' work permits will expire — stating it will take one year to build.¹⁹ We recommend that DHS mitigate the risk of immigrants losing their work authorization by: (1) immediately creating a mechanism for immigrant workers to identify themselves to USCIS if they have a work permit that will expire in less than 30 days; and (2) building technology to identify and adjudicate applications based on their expiration date long-term.

¹⁸ 89 Fed. Reg. at 24647 n.193.

¹⁹ 89 Fed. Reg. at 24643.

Employers would greatly benefit from this mechanism and new technology. If USCIS implements these systems, fewer employees will lose their work authorization due to processing delays, which reduces disruptions to the labor force. Businesses who employ applicants ineligible for the work permit extension would especially benefit from new systems that allow workers to stay on the job without interruption.

IV. Conclusion

WRC urges the agency to prioritize the following solutions to ensure that no immigrant workers lose work authorization due to work permit renewal processing delays. First, this regulation should be permanent. Second, DHS should uniformly increase the auto-extension to 730 days to prevent 260,000 immigrants from falling out of the workforce due to processing delays. Last, USCIS should use and invest in creating mechanisms to prioritize identifying and processing work permit applications for individuals whose work permits are about to expire. Implementing these changes will benefit immigrant workers and businesses alike, and will ensure that newcomers in particular are able to become and remain economically self-sufficient. This will help to reduce the vulnerabilities and barriers that newcomers and other immigrants face, leading to greater protections for vulnerable groups and helping communities that support newcomers.