



SCOTT D. POLLOCK
& ASSOCIATES PC

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

Impact on *Rosario* Class Members

Practice Alert¹

June 29, 2020

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

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

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

¹ Questions about this Practice Alert may be directed to *Rosario* class counsel at asylumEAD@nwirp.org.

² The *Rosario* class is defined as: “Noncitizens who have filed or will file applications for employment authorization that were not or will not be adjudicated within . . . 30 days . . . and who have not or will not be granted interim employment authorization. [This class] consists of only those applicants for whom 30 days has accrued or will accrue under the applicable regulations, 8 C.F.R. §§ 103.2(b)(10)(i), 208.7(a)(2), (a)(4).” 365 F. Supp. 3d at 1159.

ensure that their applications are *received* by USCIS before August 21, 2020, not just mailed by that date.

- On August 21, 2020, absent court intervention, there will be no regulatory requirement that USCIS process initial asylum applicant EAD applications within *any* period of time. The *Rosario* order only requires compliance with the regulation; therefore, USCIS will not be required to process EAD applications filed on or after August 21, 2020 within 30 days.
- *Rosario* class members must submit EAD applications so that they are *received* by USCIS before August 21, 2020 to benefit from the *Rosario* order and have their applications adjudicated within 30 days.
- *Rosario* class members should carefully review all instructions and scrupulously complete Form I-765, Application for Employment Authorization, to ensure that the application is accepted before August 21, 2020.

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