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Policy Brief: H.R. 1325, Asylum Seeker Work Authorization Act of 2023

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Overview: The Asylum Seeker Work Authorization Act of 2023 would simultaneously allow asylum seekers to find stability and self-sufficiency through access to work, help businesses hire and maintain much-needed workers, boost local economies, free up taxpayer dollars in states and localities, help nongovernmental services providers better serve those in need, and relieve backlogs at U.S. Citizenship and Immigration Services (USCIS).

What [H.R. 1325, the Asylum Seeker Work Authorization Act of 2023](#) does:

- **Ensures access to employment authorization for asylum seekers.** While still ensuring that asylum seekers receiving employment authorization are not frivolously filing asylum claims to access employment authorization.
- **Enables asylum seekers to seek employment authorization and achieve stability and self-sufficiency sooner.** Shortens by statute the waiting time for work permit eligibility from 180 days to 30 days after applying for asylum. This cuts 5 months off the forced inability to work that is currently required of asylum seekers under the law.
- **Helps businesses and employers hire and keep much-needed workers.** This bill avoids asylum seekers' need to repeatedly apply for work permit renewals by having work permits last for the entire length of time it takes to adjudicate an asylum application, including any appeals. The renewal process can lead to gaps in employment authorization due to USCIS backlogs and force employers to lay off valuable employees.
- **Frees up USCIS resources to adjudicate other applications and address its existing backlog** by removing the need to repeatedly adjudicate applications to renew asylum-based employment authorization.
- **Relieves strain on states, localities, and nongovernmental organizations** by creating an opportunity for asylum seekers - who want to work to support themselves and their families - to secure work authorization sooner and maintain it without interruptions caused by USCIS delays.

Problems with the current system for work authorization for asylum seekers:

- **More than six-month waiting periods:** Current law leaves asylum seekers who want to work, find secure housing, and support their families in needless limbo for at least six months after they file an asylum application. Given current USCIS backlogs and delays, people are more likely to wait eight months to a year or beyond without a work permit. To survive, they are forced to look to charitable organizations and benefits. Meanwhile, businesses across the country are badly in need of workers.

- **Work permit renewals:** After receiving a work permit, the current system requires renewals, which can cause upheaval in the asylum seeker’s life and unnecessary burdens and confusion to their employers.
 - Despite efforts to clarify and educate employers, employers are regularly confused about the auto-extension receipt notice for the purpose of work authorization. This results in some employers letting asylum seekers go based on the erroneous assumption that they do not have work authorization, or to not hire an asylum seeker who has the auto-extension receipt.
 - State policies vary, but the auto-extension receipt notice can cause problems in maintaining or renewing a driver’s license.
- **USCIS backlogs:** The current system contributes to backlogs at USCIS, as USCIS officers are required to adjudicate these renewal applications when their efforts could be better spent addressing initial applications for Form I-765. Under regulation, initial asylum-based work authorization applications are required to be adjudicated within 30 days. However, USCIS’s rate of compliance with this timeline is only 14.9% as of January 2023.

How is the House version of the Asylum Work Authorization Act different from the Senate version?

- The Senate bill would add unnecessary bureaucracy, complexity, and adjudicatory time by creating two separate pathways for employment authorization for asylum seekers based on whether the asylum seeker entered at a port of entry or between ports of entry. These two pathways will add additional time to the adjudication process and create barriers for asylum seekers without an attorney to secure work authorization.
- The two-year term of employment proposed in the Senate bill will not reduce the USCIS backlog because it maintains current timelines. Additionally, by proscribing two-year work permit terms by statute, the bill may negatively impact the USCIS backlog by constraining the agency’s ability to prioritize its backlogs.
- The Senate version also would not relieve administrative burdens on employers related to renewal periods and given backlogs. This creates a risk of gaps in work authorization, which harms both employees and businesses.

Background: How work authorization works for asylum seekers currently

- The statute states that an asylum seeker is not entitled to work authorization, but the Secretary of the Department of Homeland Security (DHS) may provide it through regulation. INA § 208(d)(2). The statute also prevents employment authorization from being granted prior to 180 days after the date of filing the application for asylum. The term and other details of an asylum seeker’s work authorization beyond this statute are currently set by regulation.
 - This 180-day statutory language works with regulations to create a complex system called the “asylum clock.” Asylum seekers cannot apply for work authorization until 150 days after they have filed their asylum application under regulation, and it cannot be granted until 180 days from the date of filing under this statute. USCIS and EOIR have created a complex list of reasons why this clock can stop, which [includes](#) moving to a different jurisdiction, asking for more time to find a lawyer, and government error, among others.
- The initial Form I-765, Application for Employment Authorization is free for asylum seekers. Once the application is adjudicated, an employment authorization document (EAD) is printed, usually with an expiration date two years away.
- Renewals are significantly backlogged, and it now routinely takes well over a year for USCIS to issue an EAD based on a renewal application. In recognition of these significant backlogs, last

year USCIS listed asylum seekers as a category eligible for an automatic 540-day extension. Under this regulation, if an asylum seeker files for renewal before their prior EAD expires, they receive this extension through their renewal receipt notice.

- An asylum seeker may require multiple renewals. The length of time an asylum application takes to adjudicate varies depending on when the asylum seeker applied, their nationality, their location, and whether they're before USCIS or the immigration court.
 - USCIS "[does not](#) estimate the time it will take to schedule an initial interview for these asylum applicants, though historically the delay could reach four years." However, many asylum seekers have had cases pending with USCIS for more than a decade due to the use of "last in, first out" processing of asylum applications.
 - Before the immigration court, the [average case](#) is pending for over four years, with some jurisdictions seeing wait times longer than 5.4 years.

Questions?

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