



**CALL FOR PLAINTIFFS:
ASYLUM EAD CLOCK CLASS ACTION**

February 9, 2012

In December, 2011, the Legal Action Center (LAC), Northwest Immigrant Rights Project, Gibbs Houston and Pauw, and the Massachusetts Law Reform Project filed a nationwide class action lawsuit on behalf of asylum applicants who have been wrongly denied an employment authorization document (EAD). The lawsuit, *A.B.T., et al. v. USCIS, et al.*, challenges three specific policies that the Executive Office for Immigration Review (EOIR) and United States Citizenship and Immigration Services (USCIS) employ to administer the asylum EAD clock. For a full description of the suit, see “[Frequently Asked Questions about A.B.T. et al. v. USCIS, et al.](http://www.legalactioncenter.org/sites/default/files/docs/lac/FAQ%27s.pdf),” (<http://www.legalactioncenter.org/sites/default/files/docs/lac/FAQ%27s.pdf>) and our webpage entitled [Asylum Clock](http://www.legalactioncenter.org/litigation/asylum-clock), (<http://www.legalactioncenter.org/litigation/asylum-clock>).

We want to hear from attorneys with cases involving any of the following four problems with the asylum EAD clock. Two are issues already addressed in the lawsuit, while the other two are new issues that may be added at a future date. If you have a case that involves one of the four problems described below, please complete the [questionnaire](#) and return to asylumclock@immcouncil.org.

Issue 1 – Prolonged Tolling Policy and Practice (new issue): Under this policy, the asylum EAD clock will start or restart only at a hearing before an immigration judge. Thus, an asylum EAD clock that is properly stopped due to a delay caused by the applicant will not restart until the next hearing, even if the applicant resolves the delay sooner. The next hearing in the case may be scheduled months in the future. EOIR will not start or restart the clock even if the immigration court is on notice that the delay has been resolved and even if the applicant asks for the hearing date to be advanced and for the clock to be restarted. Please contact us if you have a client who satisfies *all* of the following:

- **The asylum EAD clock was stopped due to applicant-caused delay.** We are interested in cases that involve what EOIR actually considers “applicant-caused” delay under its Operating Policies and Procedures Memoranda (OPPM). Common reasons for these delays are requests for additional time to find a lawyer or the refusal to accept the next available hearing date because it does not allow sufficient time for the attorney to prepare the case;¹

¹ Please note that, under [OPPM 11-02](#), EOIR has made clear that applicant-caused delay does not include delay caused by the ICE attorney or the immigration court. OPPM 11-02 at 12. Moreover, neither a respondent’s failure to secure biometrics nor a request to supplement the record is applicant-caused delay if the next scheduled hearing date is not postponed. *Id.* at 13-14. If you have a case in which the clock is stopped even though there was no delay or the delay was not caused by your client, you should contact the court administrator and request that the clock be corrected. *See id.* at 15.

- **The applicant-caused delay is resolved before the next scheduled hearing.** For example, where a continuance is granted for a pro se respondent to obtain counsel, the delay is resolved when the respondent retains you as counsel;
- **The immigration court is on notice that the applicant-caused delay has been resolved.** In the above example, the court would be on notice that the delay was cured when you file a notice of appearance. In all cases, you should notify the court that the delay is cured by filing a motion to advance the next hearing date and explaining what steps have been taken to resolve the delay. *See* OPPM 11-02 at 11-12; and
- **The motion for an advanced hearing date is denied and the applicant's asylum clock remains stopped.**

Issue 2 – Administrative Closure Policy and Practice (new issue): DHS has stated that the asylum EAD clock will stop when a case is administratively closed under the current prosecutorial discretion initiative. Consequently, if an applicant does not have 180 days on the clock at the time that the case is administratively closed, he or she will remain ineligible for an EAD throughout the entire time that the case remains administratively closed. Please contact us if you have a client whose:

- **Case was administratively closed (whether or not you agreed to the closure) and whose asylum EAD clock has stopped at less than 180 days.**

Issue 3 – Hearing Policy and Practice (existing claim in lawsuit): The asylum EAD clock starts when an asylum application is “filed” with the immigration court. Under this policy, an asylum application is considered “filed” for purposes of the asylum EAD clock only at a *hearing* before an immigration judge. Thus, if an applicant files the application with the court clerk prior to a hearing, the clock does not start until the next hearing. At times, applicants must file their applications with the clerk prior to a hearing to satisfy the one-year filing deadline. Sometimes this is referred to a “lodging” the application. Please contact us if you have a client who:

- **Submitted a complete asylum application with the immigration court prior to a hearing; and**
- **Whose asylum clock will not or did not start until the next hearing before an immigration judge.**

Issue 4 – Remand Policy and Practice (existing claim in suit): The asylum EAD clock permanently stops when an IJ denies an asylum application and the asylum EAD clock does not restart after a remand by either the BIA or a federal court. Contact us if you have a client who:

- **Had an asylum application denied by the IJ;**
- **Filed an appeal;**
- **Had the case remanded by either the BIA or a federal court of appeals; and**
- **Whose asylum EAD clock did not start following the remand.**

If your client falls into any of the categories describe above, please email us a completed [questionnaire](#) at asylumclock@immcouncil.org.