

**WORK PERMIT “Q & A”:**  
**For Children in DUCS Foster Care**

**Employment Authorization**

A work permit (or employment authorization) is often more important to teenagers than to the adults who work with them. The adults are typically focused on long-term legal status, while the youth themselves are focused on the immediate, tangible ability to work, either to send money back to support friends and family, to feel productive, or to feel like they have achieved something in the U.S. On a practical level, the work permit also serves as an important form of identification for children who have few forms of official ID.

A work permit can provide a child with hope, so that they are more willing to wait out the lengthy legal process for SIJS and a green card. Questions about the status of work permit applications (form I-765) are one of the more frequent inquiries that children make of their attorneys and caseworkers.

The questions below were answered by Professor James Eyster, of Ave Maria School of Law, with additional input from immigration attorneys Sarah Bronstein of Catholic Legal Immigration Network, Inc. (CLINIC)/San Francisco, Anne Chandler of the University of Houston Law Center, Deborah Lee of Florida Immigrant Advocacy Center, and Ave Maria law student Amanda Caldwell.

***1. When can children apply for work authorization? Is there any difference for an asylum applicant vs. an SIJS applicant?***

Children applying for (1) lawful permanent residence (I-485), or (2) asylum and withholding, are eligible for employment authorization. Children applying for SIJS alone (Form I-360) are generally not eligible to apply until the I-485 is submitted.

It is important to obtain this authorization even if a child does not intend to work because the employment authorization document (EAD) gives a child an identity document and the ability to apply for a Social Security number. Asylum seekers and individuals looking to adjust status both need to have an EAD in order to work. Once granted asylum, asylees are automatically eligible to work and do not need an EAD (although the EAD may still be helpful in securing other forms of government identification).

An asylum applicant can file for work authorization 150 days after filing an application for asylum, but U.S. Citizenship and Immigration Services (USCIS) cannot issue an EAD until 180 days of the asylum “clock” have passed and the case is still pending. If the child requests a continuance or closure, the clock will stop until the next court date.

Generally, an SIJS applicant can only file for work authorization along with the I-485 application. Thus, if the child is in removal proceedings, he or she must file the I-360 first; the I-485 and the I-765 work authorization application cannot be filed until the I-360 is

approved. Once the I-360 is approved, the child can then submit the I-485 and the I-765. However, there may also be local practice variations.

**2. *How long does a work permit application take to be approved?***

Generally 90 days.

**3. *What does it cost to apply for work authorization?***

For asylum applicants, there is no charge for an initial application, but a renewal presently costs \$340.

For SIJS applicants, there is no additional charge for the I-765 work authorization request. You may file the I-765 concurrently with your I-485, or you may submit the I-765 at a later date. If you file Form I-765 separately, you must also submit a copy of your Form I-797C “Notice of Action” receipt as evidence of the filing of an I-485.

**4. *When is the work authorization “clock stopped?”***

As noted above, an asylum applicant can file for work authorization 150 days after filing an application for asylum, but USCIS cannot issue an EAD until 180 days have passed and the case is still pending. The “clock” refers to the tracking of these days, and it will be stopped when a continuance is sought by the individual in removal proceedings and granted by the immigration judge (it is also possible that the clock may not be restarted again).

In general, the clock is stopped when there is a delay in court proceedings that is caused by the individual (rather than by the government). In order to find out whether the clock is stopped or started, individuals may call the local immigration court and give them their alien number (A#) and request information on their clock or you may call the EOIR automated case status information system at: (800) 898-7180.

However, children filing an I-485 are eligible to apply for work authorization, regardless of whether the clock has stopped. More information on this topic is available in the American Immigration Law Foundation’s Practice Advisory on “Strategies to Avoid Stopping the Asylum Clock.” [http://www.aifl.org/lac/lac\\_pa\\_022806.pdf](http://www.aifl.org/lac/lac_pa_022806.pdf)

**5. *For children in ORR-funded foster care, it seems like the clock is often stopped when they are transferred from a shelter to a foster care program. Is there a way to get the clock restarted?***

The local judge has discretion over this. If a practitioner disagrees with the clock setting, the first step is to try to resolve the issue locally with either the immigration judge or the Court Administrator and thereafter with the Assistant Chief immigration judge having jurisdiction over the particular court.

It is important to follow this process so that problems can be quickly identified and corrected locally as soon as possible. However, if at any point the result is unsatisfactory and the case

is on appeal to the Board of Immigration Appeals, the request should instead be directed to the Office of the General Counsel.

**6. *How does EOIR case termination or administrative closure affect the clock?***

Case termination ends the clock period for an asylum-based work application. Administrative closure would stop the clock.

**7. *Is there a way to make immigration judges more sympathetic to the psychological impact of a work permit for a teenager?***

The immigration judges do not have discretion to decide when to stop the clock or not. It is part of the asylum regulations. But see above paragraph on correcting errors. It should be noted that choosing to take a slower regular case date (the first date given to a child by the judge), rather than an expedited hearing date should *not* stop the clock. Some judges incorrectly do this.

It should also be noted that practice can vary by region or case circumstance. Some practitioners have been able to obtain work permits, even though the asylum clock was stopped.