



Decision Memorandum

TO: Dominic Mancini
Deputy Administrator,
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: Eric Hysen
Chief Information Officer
Department of Homeland Security

FROM: Samantha Deshommes
Chief, Regulatory Coordination Division
USCIS Office of Policy and Strategy

SUBJECT: Request for Office of Management and Budget Emergency Clearance of Information Collection Requests Related to the Vacatur of the Final Rule Titled *Asylum Application, Interview, and Employment Authorization for Applicants* (RIN 1615-AC27)

Purpose: USCIS is requesting emergency approval of the revision of two information collections under 5 CFR 1320.13: Form I-589, Application for Asylum and for Withholding of Removal (1615-0067) and Form I-765, Application for Employment Authorization (1615-0040).

Background: On June 26, 2020, after going through notice and comment rulemaking, the Department of Homeland Security (DHS) issued a final rule titled *Asylum Application, Interview, and Employment Authorization for Applicants*.¹ On February 7, 2022, in *Asylumworks et al. v. Mayorkas et al.*, the U.S. District Court for the District of Columbia vacated the *Asylum Application, Interview, and Employment Authorization for Applicants* rule. DHS did not appeal the decision and allowed the 60-day period in which to note an appeal expire.

¹ *Asylum Application, Interview, and Employment Authorization for Applicants*, 85 FR 28532 (June 26, 2020).

Subject: Request for Emergency Office of Management and Budget Paperwork Reduction Act Clearance – Form I-589, Application for Asylum and for Withholding of Removal – 1615-0067 and Form I-765, Application for Employment Authorization (1615-0040) – 1615-0040

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DHS is moving to fully comply with the court's decision vacating the Asylum Application, Interview, and Employment Authorization for Applicants rule.² Therefore, Form I-589 and Form I-765 need to be amended to remove any changes promulgated by the Asylum Application, Interview, and Employment Authorization for Applicants rule. DHS is seeking emergency processing to reverse the changes made by that rule in order to fully comply with the court's vacatur of the Asylum Application, Interview, and Employment Authorization for Applicants rule.

Discussion: Pursuant to 44 U.S.C. 3507(j)(1)(B) and 5 CFR 1320.13, DHS is requesting that the Administrator approve modifications to the instruments under the impacted information collections. USCIS certifies that the requirements of 5 CFR 1320.13(a)(1) are met and that:

- The subject collections of information are needed immediately and are essential to the mission of the agency; and
- The agency cannot reasonably comply with the normal collection procedures because the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a court ordered deadline to be missed.

If DHS were to follow the normal information collection clearance procedures, DHS would be unable to fully comply with the court's vacatur order. The continued use of the form with the invalid requirements would confuse the regulated public regarding the information collection requirements for applications for employment authorization from asylum applicants.

USCIS greatly appreciates the timely consideration of this request.

² DHS plans to rescind the Asylum Application, Interview, and Employment Authorization for Applicants rule and amend the Code of Federal Register through the appropriate Federal Register notice.