

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

CASA de MARYLAND, INC., ET AL.  
Plaintiffs,

– versus –

ALEJANDRO MAYORKAS, ET AL.  
Defendants.

Case No. 8:20-cv-02118-PX

**DECLARATION OF CONCHITA CRUZ**

I, Conchita Cruz, declare:

1. I am a Co-Executive Director of the Asylum Seeker Advocacy Project (“ASAP”).
2. As Co-Executive Director, I am familiar with the record-keeping practices of ASAP.
3. I make this sworn statement based upon my personal knowledge and based on my review of ASAP business records that (i) were made at or near the time by, or from information transmitted by, a person with knowledge; (ii) were kept in the course of a regularly conducted activity of ASAP; and (iii) were recorded as part of a regular practice of that business activity. The records upon which I relied are records that I customarily rely upon in conducting ASAP business.
4. Where expressly indicated below, I have also relied on information supplied to me by employees of ASAP whom I believe to be reliable (including ASAP’s management, attorneys, and administrative staff). I have also spoken directly to several ASAP members and attorneys

representing ASAP members about their recent experiences applying for work permits and indicated where my knowledge is also based on these conversations with members.

5. ASAP is a membership organization of asylum seekers living within the United States. ASAP provides community and legal support to its members and engages in advocacy to reform the immigration system in accordance with its members' priorities.

6. ASAP members live in all 50 states and all U.S. territories and come from over 175 countries.

7. ASAP members often contact ASAP when they have questions or concerns about a work permit application or asylum application. Members communicate with ASAP via email, text, and/or multiple social media platforms.

8. ASAP attorneys provide legal representation to a limited group of ASAP members, representing them in their asylum cases and/or filing Form I-765, Application for Employment Authorization, on their behalf. ASAP does not represent most of its members whose questions ASAP answers or who access ASAP's legal resources and information about how to apply for asylum and work permits. Many ASAP members do not have lawyers. Some ASAP members are represented by lawyers who are not affiliated with ASAP.

**Impact of *CASA de Maryland v. Mayorkas* on Member Processing**

9. ASAP, along with other organizations, filed the above-captioned case challenging the 2020 EAD Rules.<sup>1</sup>

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<sup>1</sup> *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, 85 Fed. Reg. 37,502 (June 22, 2020) (“Timeline Repeal Rule”) and *Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg. 38,532 (June 26, 2020) (“EAD Bar Rule”) (together, “the 2020 EAD Rules”).

10. In implementing the 2020 EAD Rules, the government changed Form I-765 (“EAD application”), Form I-589 (“Asylum application”), and the Code of Federal Regulations (CFR) (electronic and print versions) to reflect the 2020 rules.

11. The preliminary injunction (“PI”) issued in this case enjoined application of some of the 2020 EAD Rules as to ASAP and CASA members, and requires the government to restore 30-day processing for members’ initial EAD applications.<sup>2</sup>

12. To obtain the benefit of the Court’s injunction, ASAP members are required to identify themselves as such in their I-765(c)(8) applications and to provide proof of membership, such as an ASAP membership ID.

13. Beginning in October 2020, USCIS’s website described acceptable forms of ASAP membership evidence on its I-765 webpage. The webpage also contains an alert stating, “We are implementing the U.S. District Court for the District of Maryland’s Sept. 11 preliminary injunction in *Casa de Maryland Inc. et. al. v. Chad Wolf et. al.*,” that “provides limited injunctive relief to members” of ASAP and CASA.

14. My understanding, based on conversations with my lawyers, is that it took USCIS ten months—until June 2021—to consistently process the majority of ASAP members’ applications within 30 days.

15. I know from conversations with staff and review of ASAP’s business records that between June 2021 and February 2022, ASAP staff, on average, responded to five or fewer members’ inquiries per day about delayed initial work permit applications for ASAP members.

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<sup>2</sup> *Casa de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 973 (D. Md. 2020).

Staff spent fewer than three hours a week addressing members' questions about delayed initial work permit applications.

**Asylumworks v. Mayorkas and Continuing Effects of 2020 EAD Rules**

16. On February 7, 2022, the district court in *Asylumworks v. Mayorkas* ordered that the 2020 EAD Rules be vacated in their entirety for all asylum seekers (“*Asylumworks* order”).

17. However, despite the *Asylumworks* order, the USCIS I-765 web page continues to state that USCIS is implementing the PI in *Casa de Maryland Inc.* The website still instructs ASAP members: “you must include documentary evidence of your membership in CASA or ASAP” to receive the benefits of the PI.<sup>3</sup>

18. After the *Asylumworks* order and continuing to this day, the electronic and the printed versions of the government-issued Code of Federal Regulations continue to state that the 2020 EAD Rules remain in effect.<sup>4</sup>

**Members Seek ASAP Assistance Related to 2020 EAD Rules**

19. I know from conversations with staff, review of ASAP's business records, and direct conversations with members that beginning in February 2022 and continuing to this day, members and members' attorneys have contacted ASAP asking whether the 2020 EAD Rules continue to limit members' eligibility for work authorization.

20. Members and members' attorneys have informed ASAP staff that they are confused because the USCIS website and the CFR continue to state that the 2020 EAD Rules remain in effect.

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<sup>3</sup> See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, I-765, APPLICATION FOR EMPLOYMENT AUTHORIZATION, <https://www.uscis.gov/i-765> (last visited Sept. 9, 2022).

<sup>4</sup> See 8 C.F.R. § 208.7(a), <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208#208.7> (last visited Sept. 9, 2022).

21. For example, members have contacted ASAP asking whether they are able to apply for a work permit 150 days after submitting their asylum application, or if they must instead wait 365 days. Attorneys representing members have also contacted ASAP to ask whether their clients must wait 365 days to apply for an initial work permit.

22. Members impacted by rules that were not enjoined by the *CASA* Court, as well as their attorneys, have contacted ASAP to ask whether unenjoined rules remain in effect, such as the bar on EADs for asylum seekers who entered the United States without inspection, and the bar on EADs for asylum seekers who have certain criminal convictions.

23. After the *Asylumworks* order and continuing to this day, members and their attorneys have also contacted ASAP to ask whether members must continue to identify themselves as members and submit proof of ASAP membership in order for the government to process their initial EAD applications within 30 days and to otherwise receive the benefits of the PI.

**Government Delays in Processing Members' Initial EAD Applications**

24. I understand, based on my conversations with ASAP staff who respond to inquiries from members and member attorneys, review of ASAP's business records, and conversations with ASAP members, that after the *Asylumworks* order and continuing to this day, many ASAP members identified themselves as members in their EAD applications and included their ASAP membership evidence, as they are instructed to do by the USCIS website.

25. For several months after the *Asylumworks* order, I understand, based on the reports ASAP received from members and members' attorneys, that USCIS continued to process members' applications within 30 days. I also understood, from reports that ASAP was receiving from colleagues at other organizations serving asylum seekers, that processing of non-member applications was delayed for longer than 30 days.

26. Beginning in June of 2022, increasing numbers of ASAP members began to contact ASAP to report delays in the government's processing of their initial EAD applications and to seek ASAP's assistance.

27. In recent months, members have reported to ASAP staff that processing of their initial EAD applications takes more than two months even where they have complied with USCIS's stated requirements for including proof of ASAP membership.

28. Members have asked ASAP staff whether the government's delay in processing their applications is because they misunderstood which set of regulations applied or if USCIS has failed to recognize them as ASAP members (despite their inclusion of their membership IDs in their applications).

29. When an ASAP member reports to ASAP that their initial work permit application is taking longer than 25 days to process, ASAP responds to let members know how to use the *Rosario* process to report the delay to USCIS, regardless of their ASAP membership. USCIS website instructs members to identify themselves as such when they use the *Rosario* process.<sup>5</sup>

30. Prior to June 2022, the vast majority of ASAP members who contacted us were able to resolve the delay in the processing of their work permit application by following these instructions. However, since June 2022, ASAP has given these instructions to over 200 ASAP members. Of the 95 people who confirmed with ASAP that they tried to use both their ASAP membership and the *Rosario* process to address a delay, all of them reported that it did not result in the timely adjudication of their application.

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<sup>5</sup> See U.S. Citizenship & Immigr. Servs., *Rosario Class Action*, available at <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/rosario-class-action> (last visited on Sept. 9, 2022).

**Impact on ASAP of Government's Continued Application of 2020 EAD Rules**

31. The inquiries from members and members' attorneys relating to the 2020 EAD Rules have forced ASAP to expend significant organizational time and additional resources at the expense of other programming that ASAP does in the service of its mission.

32. Since May 2022, I understand from review of ASAP's business records and conversations with ASAP attorneys and staff who respond to member inquiries, that, in total, ASAP staff are spending an additional 1-2 hours each day responding to member inquiries specifically about the delays in processing their initial I-765 work permit applications. Overall, ASAP estimates that between 30 and 40 hours of total staff time per month are required just to respond to member inquiries about delays in processing initial work permit applications—staff time, which, prior to May of 2022 was available to be allocated to other projects in furtherance of ASAP's mission.

33. In an effort to provide correct, up-to-date information to ASAP members, ASAP staff have additionally updated existing member resources and created new member resources related to filing a work permit application. Revising and producing these resources—in an effort to dispel member confusion—has also diverted an estimated additional 20 hours of ASAP staffers' time (beyond that required to respond to individual member inquiries) from other programming in the services of ASAP's mission.

34. Since July 2022, ASAP staff have alerted members to initial EAD processing delays, so that they can plan accordingly. ASAP changed its website to let members know that initial applications are no longer being processed in 30 days. ASAP has updated this information in its web page of advocacy updates to members as well as revised its FAQs on how to apply for a work permit.

35. The staff time and resources ASAP has expended on the aforementioned work related to the 2020 EAD Rules has reduced the amount of time and resources ASAP has been able to spend on other work. Specifically, this additional burden prevents these staff from working on other projects related to ASAP's mission, including by limiting the development of new resources ASAP can create for members about how to navigate the asylum process. For example, ASAP intends to, but has not yet had staff capacity to create FAQs specific to the new asylum processing and credible fear interview regulations.

**Impact of EAD Processing Delays on Individual Members**

36. I understand from my conversations with ASAP staff, review of ASAP's business records, and conversations with ASAP members and their counsel that delays in processing initial work permit applications prevent ASAP members from working to support themselves and their families. Many ASAP members have expressed frustration that they budgeted and made plans based on the 30-day processing requirement. Some had applied for jobs, gone through interviews, and received job offers with the expectation that their work permits would be granted within 30 days. Because of the delays, and because of the misrepresentations by USCIS, they have had to forfeit work opportunities. Many of these opportunities are for employment in areas with labor shortages, including medicine, information technology, food service work, and truck driving. Moreover, many members, especially those with families, have reported to ASAP that they feel anxious and stressed because they had not expected to have to go so many additional weeks without any income.

37. ASAP members have reported to ASAP staff that:

- without a valid work permit they cannot secure necessities such as housing, food, and medical care;



- without work authorization, they have limited ability to care for their children, spouses, and other family members;
- they are unable to get driver's licenses or access health care coverage unless they have a social security number, which they cannot receive until their work permit application has been processed;
- work permit processing delays cause them significant mental health consequences, including extreme anxiety and depression.

**Incorrect Information About Which EAD Rules Are in Effect**

38. I understand from my conversations with ASAP staff, review of ASAP's business records, and conversations with ASAP members that in the seven months between the *Asylumworks* vacatur order and September 6, 2022, when USCIS updated the I-765 form and form instructions, ASAP members have also expressed confusion about filling out questions 30.a-30.g on pages 3-4 of the I-765 form, which are no longer relevant to the adjudication of a work permit. Others have contacted us with questions about the fees associated with applying for an initial (c)(8) work permit—whether they must pay the \$410 filing fee, the \$85 biometrics fee, or neither. In sum, the outdated information presented on official USCIS documents caused confusion, delays, and may have dissuaded ASAP members from applying for work permits altogether, even where they were eligible.

39. Moreover, the September 6 amendment to the Form I-765 instructions continues to reflect the 2020 EAD rules in at least one respect. The instructions continue to state that “USCIS may, in its discretion, deny your application if you have been arrested and/or convicted of any

crime.”<sup>6</sup> Attorneys representing our members have previously expressed uncertainty regarding the circumstances under which USCIS may rely on a criminal conviction to deny employment authorization to an asylum applicant. The retention of this language will cause ASAP members and their attorneys to gather and submit additional equitable evidence in an effort to avoid a discretionary denial of their applications for employment authorization instead of simply explaining why their conviction is not for an aggravated felony. ASAP will also need to divert staff time to update our member resources to reflect the uncertainty caused by the retention of this language in the Form I-765 instructions.

40. And even though the I-765 form and form instructions were amended on or about September 6, 2022, the Code of Federal Regulations (CFR) continues to reflect that the 2020 EAD Rules remain in effect. This incorrect information has confused attorneys representing ASAP members in the past. For example, I know from conversations with ASAP staff that this information has led attorneys representing ASAP members to delay applying for their clients’ work permit applications because they believed they must still wait 365 days after the filing of an asylum application before an individual is eligible to apply for an initial work permit. Additionally, on September 2, 2022, I spoke to an attorney representing an ASAP member who had reviewed the Code of Federal Regulations (CFR) online and erroneously believed that his client was ineligible for work authorization if they could not show good cause for entering the United States without inspection.

41. The instructions for both Forms I-765 and I-589 continue to refer applicants and their attorneys to 8 C.F.R. § 208.7, which will continue to cause confusion regarding which source

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<sup>6</sup> USCIS, OMB No. 1615-0040, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION (last accessed Sept. 9, 2022), <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.

contains accurate information. This confusion from the incorrect CFR will likely continue to confuse members and their counsel until it is corrected.

### **Impact on Individual Members**

42. Several members have described to ASAP staff and myself how the government's delay in processing their initial EAD applications have impacted them and their families, including the following five examples:

43. Nelson is an ASAP member who fled Jamaica because of persecution based on his sexual orientation. Nelson has HIV and he relies on medication that he receives regularly as part of his state health insurance. In order to receive this medication, Nelson must be able to provide a stable home address. When Nelson's initial work permit application was delayed for over two months, he became at risk of losing his housing and becoming homeless. Without a home address, Nelson would be unable to receive the HIV medication he needs. Nelson also told ASAP that after fleeing to the United States in a state of crisis, the long wait time and lack of reliable information regarding his work permit application was retraumatizing.

44. Yusuf Ali Sendil is a doctor and an ASAP member from Turkey who fled political persecution. He is a specialist in treating psychosis and schizophrenia but was unable to work as a medical doctor because of the months-long delay in processing his initial work permit. Mr. Sendil had an offer to work as a medical resident at Rutgers University, but he was unable to start the program on time and begin treating his prospective patients because of the delay. This delay also impacted his hospital, which was already short-staffed, as they struggled to find other qualified medical staff to cover for him. The delay in processing Mr. Sendil's work permit

application put his eligibility for the residency at Rutgers University's hospital at risk. The delay also caused him depression and anxiety.

45. T.C. is an ASAP member who fled political persecution in Hong Kong. He now lives in Kansas and hopes to work in the IT (information technology) field, in which he has significant professional experience. T.C. had interviewed for jobs believing his work permit application would be processed within 30 days. However, because his work permit was delayed, T.C. had to give up multiple job offers. Without a work permit, T.C. was forced to rely on his dwindling savings to survive. He was unable to get a driver's license, which is a necessity in Kansas to work, attend appointments, and shop for food. T.C. told ASAP's staff that he was praying every day that he would not get sick, because without the ability to work he does not have health insurance to cover a trip to the hospital.

46. B.S. is an ASAP member who fled persecution in Honduras. His initial work permit application was not processed for almost three months. B.S. lives alone in the United States, but he would like to financially support his parents and brother who are still living in Honduras and are facing dangers that could be helped in part through financial support. Because of this, the long delay in USCIS processing his work permit had a devastating impact on him financially and emotionally. He received a job offer to be a warehouse supervisor but was unable to accept the offer initially because his work permit had not been approved. This delay meant that he was not able to send his family money and that he was extremely anxious about covering his own living costs. Moreover, the company was not able to find someone else to immediately take the position.

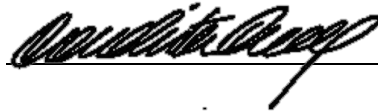
47. D.B. is an ASAP member from Colombia. D.B. lives in Boston and waited three months for his work permit to be approved. In order to afford food and shelter, he had to exhaust his entire savings and sell his car. D.B. is a commercial pilot and was qualified for many job

openings in the field of aviation during the months while he waited for his work permit to be processed. D.B. was unable to take on new employment as a result of the delay in processing his initial work permit application. D.B. shared that the extended wait caused him severe stress and depression.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2022:

Medford, Massachusetts

A handwritten signature in black ink, appearing to read "Conchita Cruz", is written over a horizontal line.

Conchita Cruz