

BCIS MEMORANDUM RE: ASYLEES



U.S. Department of Justice
Immigration and Naturalization Service

HQADJ 70/21.1.13

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

March 10, 2003

MEMORANDUM FOR ALL REGIONAL DIRECTORS

FROM: William Yates /s/
Acting Associate Director, Operations
Bureau of Citizenship and Immigration Services

SUBJECT: The Meaning of 8 CFR 274a.12(a) as it Relates to Refugee and Asylee
Authorization for Employment.

I. Introduction

On June 17, 2002, the Immigration and Naturalization Service (INS) Office of General Counsel forwarded to the Office of Policy and Planning a legal opinion entitled "Employment

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Further, the last sentence of the introductory paragraph to 274a.12(a) states that an alien asylee, among others, "who seeks to be employed in the United States must apply to the Service for a document evidencing such employment."

These last two points read alone appear to suggest that the Service has the discretion to withhold employment authorization from asylees, and that asylees must first apply to the Service and be granted employment authorization in order to work. This is a misconception. The Service does not have the discretion to withhold employment authorization from any asylee, pursuant to INA 208(c)(1)(B). In fact, by regulation at 8 CFR 274a.12(a), such authorization is granted automatically upon the individual attaining asylee status.

The confusion, therefore, seems to arise from a blurring of the distinction between an alien having employment authorization versus an alien having *evidence* of employment authorization. However, this distinction must be maintained. In the case of asylees, the distinction is made both by statute in INA 208(c)(1)(B), which directs the Attorney General to

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which they attained their asylee or refugee status irrespective of the issuance of an EAD, and continues for so long as they are in that status. Upon adjustment to lawful permanent resident status, their work authorization further continues.

The Office of Operations requests your assistance in disseminating these instructions and attached guidance from the former INS' Office of the General Counsel to your respective offices. Questions regarding the above policy can be directed to Michael Hardin, Office of Adjudications, (202) 514-4754.

Attachment