

ACCEPTABLE DOCUMENTS
must be **UNEXPIRED**

at one selection from List A
in List B and one selection from List C.

Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

Representative Review and Verification

Complete and sign Section 2 within 3 business days of the employee's first day of work.
A combination of one document from List B and one document from List C.

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2020

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Department of Homeland Security
U.S. Citizenship and Immigration Services

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fully before completing this form. The instructions must be available, either in paper or electronically,
ible for errors in the completion of this form.

Employers **CANNOT** specify which
employment authorization and identity. The employer is prohibited from discriminating against work-authorized individuals on the basis of race, color, sex, religion, national origin, or ancestry.
Expiration date may also be used to determine if an individual is unauthorized to hire or continue to employ.
Employers **CANNOT** specify which document to use to determine if an individual is unauthorized to hire or continue to employ.

Other Last Names Used (if any)

State ZIP Code

Department of Homeland Security
Any Service Center
123 Anywhere Street
New York, NY 10019

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Any Service Center
123 Anywhere Street
New York, NY 10019

THE INVISIBLE WALL: Barriers to Lawful Employment for Immigrants

By ERIN O'NEIL-BAKER AND YAZMIN RODRIGUEZ

ACCORDING TO LIN MANUEL-MIRANDA: “IMMIGRANTS... get the job done.” However, it is not the lack of desire to work that prevents many immigrants from being part of the workforce. Rather, the biggest challenge is the complex patchwork in the current immigration system restricting many classes of immigrants in the US from being able to obtain lawful employment. The Immigration and Nationality Act is clear: employment in the US is prohibited for any foreign national who has not been expressly authorized to work in this country.

Foreign nationals may enter the United States through a number of visa programs—some are permanent and others are temporary. But most visa programs do not automatically provide work authorization. To work legally in the US, an individual must generally obtain a work permit. This leaves a huge gap for those who are in the United States out of status (they entered the US legally but their authorized period of stay expired) or who are undocumented. Regardless of the underlying reasons for entering the United States, a key goal of every immigration lawyer is always to navigate the very complex set of rules and regulations within the immigration system and piece together viable legal options, if any, that may be available for immigrants to obtain work authorization while residing in the United States. Thus begins the hunt for the Employment Authorization Document (EAD), a work authorization card.

The ability to work in the US is critical for immigrants, who usually need reliable income to get by and often have family members to support, either here or abroad. Employers across the nation are required to verify that all employees are allowed to work in the United States. If an individual is not a citizen or a lawful permanent resident, they must prove that they can work in the US by presenting an EAD, which comes in the form of an identification card. This card, issued by the United States Citizenship and Immigration Services (USCIS), proves one's ability to be legally employed in the United States.

Some immigrants are eligible for permanent residency, which allows them to work lawfully without an additional work authori-

zation card. For other immigrants, permanent residency is not an option due to the complex and narrow restrictions on eligibility for permanent residency. Despite the many work authorization options available on paper, it is very difficult—if not impossible—for an out-of-status or undocumented immigrant to secure authorization.

Apart from those who have a pending application for permanent residency, there are over 53 different categories that would make a person eligible for an employment authorization card. These include refugees and certain asylum-seekers and their qualifying family members; foreign students (with numerous restrictions on the scope of employment); individuals on a diplomatic mission on behalf of international organizations like NATO; or those who have been granted Temporary Protected Status (TPS) based on a natural disaster or other catastrophe. The specific basis for every EAD is noted on the face of the document through a particular code. Fifty-three options sounds generous and varied but the categories are narrow and it is difficult to meet the criteria. Just because an individual falls into one of these categories does not automatically make them eligible for an EAD card.

In this article, we will introduce several of our immigration clients who have managed to obtain, against all odds, work authorization. Through these real-life stories, we hope to illustrate what it's actually like to navigate this complex web of laws surrounding employment authorization in the US. The examples below are all true stories, but we have changed their names to protect their identities. You will meet Flor, Carmen, Rosario, Guadalupe, Marco, and Luis, who have surmounted this “invisible wall” to receive the elusive EAD.

★ Asylum

Flor fled her native country of El Salvador after suffering constant harassment and a violent attack at the hands of a powerful gang known as the Mara Salvatrucha, or MS-13. She was held hostage in her own home, tied to a bed pole, and was repeatedly beaten and violently raped for three consecutive days. Flor's husband had been murdered a year prior to her attack by the same gang



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members who were looking to settle a debt. Following this brutal attack, Flor had no other choice but to leave her two-year-old child in the care of her mother and flee to the United States seeking protection. Upon crossing the US border with Mexico, Flor was apprehended by US Customs and Border Protection (CBP) officers and essentially interrogated regarding her reasons for attempting to enter the United States without advance permission. She was released on a \$10,000 bond and subjected to periodic check-ins with an Immigration and Customs Enforcement (ICE) officer until she had an opportunity to plead her case before an immigration judge. Despite the insurmountable untreated trauma Flor was enduring, she came to my office asking for ways in which she could stay in the United States and work in order to be able to provide for her mother and two-year-old child in El Salvador.

Even though the circumstances surrounding Flor’s abrupt departure from her home country would allow her to apply for asylum in the United States, getting to that point in our discussion was incredibly challenging. Flor’s main focus was not to relive her trauma by talking to me about her horrible experience back home, but rather, Flor’s main objective was to be able to find meaningful employment without violating any of her terms of release.

Asylum is a form of immigration relief available to a subset of individuals who are facing persecution in their home countries because of a “protected ground.” The ability to obtain an EAD through asylum is not that simple. In order to request asylum in the United States, an immigrant must file an application known as an I-589 form. The application is a rather lengthy questionnaire that is (arguably) designed to elicit information regarding the person’s fear of returning to their home country. The filing of the application triggers what is known in the immigration world as an “asylum clock.” The clock is an internal tracking system used by both USCIS and the courts to calculate the number of days an application for asylum is pending before an immigrant can file an application for an EAD.

There are two general paths to submit an application for asylum—the first path is known as an affirmative application for relief, which means that the person is not in removal proceedings and may file their application with USCIS directly. The second path is known as a defensive application for asylum, which means that the person is in removal proceedings and has no other recourse but to file their application for relief with the immigration court within that person’s jurisdiction. But filing an application for asy-

lum does not in and of itself entitle an immigrant to work legally in the United States. In order to qualify for a work permit under the asylum category, an immigrant must take various steps prior to submitting an actual application for permission to work legally.

First and foremost, the form I-589 must be filed within one year of the immigrant entering the United States. Pursuant to recent changes within the federal regulations, unless a USCIS officer or an immigration judge makes a determination that special extenuating circumstances existed for not filing an application within the one-year deadline, the immigrant will be permanently excluded from obtaining an EAD card while the asylum application is pending. Once an application is filed with either USCIS or the court, the immigrant must wait at least 365 calendar days before submitting an application for an EAD.

Simple enough? Well, it is not. Remember that asylum clock we mentioned earlier? The number of days accrued based on that particular electronic tracking system really depends on technical, administrative details that have nothing to do with the substance of the asylum claim. Any “delays” presumably caused by the applicant—such as the need to find an interpreter in their native language, requesting time to find (and pay for) a lawyer to represent them, or government backlogs in pending applications for collateral relief—can “stop the clock,” effectively cutting off the applicant’s eligibility for work authorization. For example, unless an immigrant requests an expedited asylum hearing, the clock stops once an immigration judge sets a date of a final hearing on the merits of the asylum case, even if that final hearing is years in the future.

In Flor’s case, even though her immigration case was pending for more than two years before the court and she had filed her asylum application within the first year of entering the United States, the internal asylum clock made it impossible for her to obtain an EAD card. Luckily for Flor, we were able to win her asylum case. Upon a successful grant of asylum—which, even for clients fleeing severe persecution, is incredibly difficult to obtain—Flor was finally able to work lawfully in the United States, over three years after arriving in this country.

U-Visa

Carmen entered the United States ten years ago. She fled her home country of Guatemala after being subjected to years of domestic and sexual violence at the hands of the father of her three

children. Carmen was repeatedly beaten and forced to have sex with her partner against her will. Even though she reported the several instances of violence to local authorities in Guatemala, her partner was never held accountable or apprehended for his crimes. Carmen entered the United States undetected and was, therefore, unaware that she had the right to file an asylum application with USCIS based on the severe instances of violence she had suffered in her native country.

Two years after her arrival to the US, Carmen fell in love. Carlos, who was also from Guatemala, courted Carmen for several months before asking her to move in with him and share a home together. Several months into their relationship, Carlos became increasingly violent. He would come home highly intoxicated and beat Carmen for no reason at all. Carmen was scared to report the abuse to local authorities in the United States because of her unlawful status in the country and her fear of imminent deportation. In 2015, Carlos' abuse escalated to the point of attempting to strangle Carmen in her sleep. Carmen's older child called the police asking for help. Carmen put her fear aside and cooperated with local law enforcement with the investigation and prosecution of Carlos' crimes. Carmen's cooperation set the stage for her to be able to apply for a specific form of relief known as a U-visa.

The U-visa allows victims of certain violent crimes (including domestic violence, sexual assault, trafficking, and other crimes), who have suffered substantial mental or physical abuse, to be able to obtain lawful status in the United States so long as they are helpful in the investigation and prosecution of criminal activity. The overarching purpose of the U-visa provisions is to enable victims of crime to cooperate with law enforcement without fearing deportation from the country.

Once a U-visa is approved, victims of qualifying crimes can reside lawfully in the United States for a period of four years with the option to apply for lawful permanent residence status after holding that U-visa status for at least three years. The process of applying for a U-visa can be quite challenging. Every application for a U-visa requires a certification from a law enforcement agency or any other entity with enforcement powers, confirming not only that the person was in fact a victim of a crime recognized by federal regulations, but also that the victim was helpful in the investigation and prosecution of said crime. For victims of domestic violence, meeting the "helpfulness" criteria can be challenging as victims of domestic and sexual violence are often pressured by their own abusers to abandon their claims. Additionally, the time it takes for a certification to be issued depends on that particular certifying agency and their own internal processing timeliness.

Theoretically speaking, an applicant for a U-visa is eligible to obtain an EAD once USCIS makes a positive determination on the person's application and is placed on a waitlist. However, such determination, known as "deferred action," can take up to four years or longer. In Carmen's case, even though she met all of the

required criteria for a U-visa as a victim of domestic violence, she did not receive any determination on her U visa application until 2019, four years after her initial filing with USCIS. Then and only then was she able to obtain an EAD based on her application.

★ T-Visa

Rosario fled her home country of Ecuador after suffering severe emotional and sexual violence at the hands of her boyfriend, a known drug lord in Colombia. Unfortunately, Rosario's journey to the United States became the most traumatizing experience she'd ever endured in her life. While traveling from Ecuador to the US, Rosario became the victim of human trafficking. The man who offered to help her cross the border kidnapped Rosario and forced her to perform sexual acts against her will for more than two months until her apprehension by US immigration officials near Hidalgo, TX. During the course of those two months, Rosario was held captive in different hotels and brutally raped by several men. The trauma was so severe that it took Rosario two years after hiring our firm to be able to talk about her experiences while crossing the border. Rosario felt so incredibly ashamed of what she had endured, that she could not bring herself to tell her story to the border patrol officers at the time of her apprehension.

But not being able to share the details of her horrific journey to border patrol officers made it a lot more difficult for Rosario to be able to file an application with USCIS as a victim of severe human trafficking. Congress has defined "severe form of trafficking" as one of either two different acts: sex trafficking or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Sex trafficking is defined by 8 C.F.R. § 214.11(a) as a commercial sex act that is induced by force, fraud, or coercion... commercial sex act means any sex act on account of which anything of value is given to or received by any person.

The T-visa is a form of humanitarian relief that allows victims of trafficking like Rosario to live and work lawfully in the United States for a period of four years. Unfortunately, the process to obtain a T-visa is lengthy and nearly impossible for certain victims to obtain, no matter how horrific their stories are. Generally speaking, a victim of human trafficking is required to report the crime to a law enforcement agency and be willing to cooperate in the investigation and prosecution of the crime. But for certain victims, that is an impossible criterion to meet when the trauma itself is so severe. That leaves the victim with the added hurdle of having to demonstrate and convince a USCIS officer that the trauma is so severe that it would have been nearly impossible for that person to report and participate in the investigation of the crime. Many years after her arrival, we were finally able to report these horrific crimes, prepare all required evidence, and submit Rosario's T-visa application. One year later, and three years after her arrival, Rosario finally became eligible for an EAD based on her T-visa application.

The Invisible Wall

★ DACA

The Jorgenson auditorium was energized and anxious for the high school graduation ceremony to finish. The E. O. Smith High School class of 2019 had thrown their caps several times and cheered and whooped as their friends and classmates crossed the stage. It was time to leave, but there were still the final speeches to go, much to the audience's disappointment. It was hot for June and the ceremony had already lasted several hours, and when Guadalupe, the vice president of the class, approached the podium, there was a palpable withering from the audience. But then Guadalupe began speaking in Spanish to two of the thousand attendees, her parents, and the atmosphere changed. She spoke for several minutes and then, while the crowd of mostly English-speaking people remained hushed, she translated her speech to English and explained how as a DACA recipient she was grateful for her school, her teachers, and her parents and hoped to demonstrate how hard work and a strong family could achieve great success. She promised that she would not let her parents down.

Guadalupe attends a community college in New York City, and lives with a family friend while she works toward her goal of attending John Jay College of Criminal Justice. Guadalupe entered the US with her family as a toddler and is eligible for Deferred Action of Childhood Arrivals (DACA). Deferred Action is one of the enumerated categories that allows for the issuance of an EAD. This blanket eligibility for deferred action was extended to DACA recipients with its inception in 2012. To afford her tuition, Guadalupe works part-time with her DACA based EAD and it is a critical part of obtaining her dreams of education. Without DACA and this ability to work lawfully, Guadalupe's dreams and goals would be much harder if not impossible to accomplish.

★ Order of Supervision

Marco is a 48-year-old Ecuadorian husband and father of three children who has been in the US for almost 25 years. For four long months in 2017, Marco was forced to live confined in a church, seeking sanctuary as his only alternative to being deported. During his decades living undocumented in the US, several of his family members have been murdered in Ecuador, and although he has been undocumented, it is not an option for him to go back. He sought permanent residency during immigration court removal proceedings, but was ordered removed by the immigration judge despite his US Citizen child and numerous years in the US in 2009. As he appealed his case up to the Second Circuit Court of Appeals, he was able to stay in the US and Immigration and Customs Enforcement granted annual "stays of removal." This all changed in the summer of 2017, when he was given 45 days by ICE to buy a plane ticket and leave his family and return to Ecuador.

He knew his life would be in danger if he left and sought sanctuary for four months in a New Haven church so he could pursue his claim for asylum with the Second Circuit Court of Appeals. The day before Thanksgiving 2017, after four months relegated to

the walls of the church, ICE allowed him to go home to his family, where he has been ever since. He is also eligible for an EAD, because he is under the Order of Supervision by ICE, which is one of the enumerated categories. This allows Marco to support his wife and children legally with an EAD and pursue his claim of asylum through his pending appeal.

★ EAD Ineligibility

"I have until October, and then I lose my job." It was Luis, and he, in his most polite and courteous manner, tried to impress upon me the looming threat to him and his family. Luis has worked as a septic service truck driver for 15 years servicing the Fairfield and Litchfield counties. To do his job, he must have a CT Commercial Driver's License (CDL). Throughout the last decade he has filed for and been granted a work authorization card based upon being under an "Order of Supervision" by ICE. For the past three decades, Luis had been under a removal order, which required him to check-in with ICE regularly, every year, to make sure that he was in compliance with the terms of his release from immigration custody. He fastidiously complied with the requirements of his release and with proof of such compliance, and he was able to apply for a work authorization card.

When he reapplied for his EAD, it was denied. Soon thereafter, his CT CDL expired. Now Luis cannot renew his license, and his job is in jeopardy. He has been given notice by his employer that he cannot employ Luis because Luis can no longer operate the truck without a CDL. Luis's wife and four US Citizen children now face a future of no income.

Conclusion

Authorized employment is possible under the INA for people who immigrate to the US, but it is not accessible to many undocumented individuals. The path to an approved EAD requires meeting strict eligibility requirements. For many families, obtaining an EAD is a critical component for surviving in the US. Marco is required to submit his request every year and hope that DHS will use its discretion to approve it. Carmen waited years for her authorization, and Luis is losing that option. Flor had to meet the strict deadlines and waiting periods to earn her card and Guadalupe, as a 19 year old, has to cross her fingers each year in hopes that DACA will not be revoked so she can still renew her authorization. It is a delicate and anxiety-fraught dance just to be able to get up every morning and earn a living to support one's family. As immigration attorneys, it is a great challenge to help our immigrant clients overcome the odds and obtain work authorization in the United States; when it works, the reward is great. ■

Erin O'Neil-Baker and Yazmin Rodriguez are co-chairs of the CBA Immigration Law Committee. Attorney O-Neil Baker has been practicing law for more than 20 years and her practice is focused on immigration law. She is the current secretary of the CBA and owns her firm, which is located in Hartford. Attorney Yazmin Rodriguez is the owner of Esperanza Attorneys At Law, a small low-bono immigration firm that represents immigrants in removal proceedings and in a variety of complex immigration matters.