

# Rules and Regulations

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

8 CFR Parts 103, 208, 210, 214, 240, 242, 245a, and 274a

[INS No. 1719-95]

RIN 1115 AE16

#### Rules and Procedures for Filing an Application for Employment Authorization

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Immigration and Naturalization Service (INS) publishes this rule to inform the public of a change in procedures for filing certain employment authorization applications. At present, persons seeking work authorization apply either by mailing an application to an INS service center or by delivering it to an INS district office. The INS intends to expand its direct mailing program, so that more categories of applicants can file their work authorization applications by mail directly with the service centers. The expansion will enhance the agency's ability to adjudicate work authorization applications efficiently. This final rule revises the regulations to reflect the changed filing procedures. It also makes a technical amendment to the regulatory provisions governing work authorization for persons applying for suspension of deportation and two technical amendments to the regulatory provision governing interim work authorization for asylum reform applicants. The instructions that accompany an application for work authorization are being revised simultaneously to provide comprehensive general information on filing procedures.

**EFFECTIVE DATE:** This rule is effective June 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jack Tabaka, Senior Examiner Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 616-7432.

**SUPPLEMENTARY INFORMATION:** The INS announced the expansion of its direct mail program in an interim rule published in the *Federal Register* on July 1, 1994 at 59 FR 33903. In that interim rule, the INS announced its intent to reduce processing time and the need for personal visits to the INS by permitting applicants to file certain applications by mail to the service centers. Under INS regulations, an applicant generally should file an application in accordance with the instructions that accompany the application form. 8 CFR 103.2(a). The regulations required employment authorization applicants to file their applications with the district director. Many of the references to filing with the district director were removed with the publication of the July 1, 1994 interim rule to permit applicants to mail applications to the service centers. Certain employment authorization regulations continue to require that an applicant file an application with the district director having jurisdiction over the applicant's place of residence. While the interim rule removed many of the references to district director and replaced those references with the term "director" so that service center directors could accept such applications, further changes to the regulations are necessary to accomplish the expansion of the direct mail program. This rule eliminates the remaining references to "district director" filing, consistent with the change in filing procedures announced in the interim rule.

On July 1, 1994 the INS also announced the implementation of a pilot direct mail program for persons applying at the Baltimore District Office in a *Federal Register* notice published at 59 FR 33985. The INS is reviewing the comments it has received from the public on both the interim rule and the direct mail pilot program notice and will publish a response in the future.

Based in part on the addition of new personnel, INS service centers are able to accept a greater volume of

applications from a greater number of categories of employment authorization applicants. This change to the employment authorization filing procedures will reduce the number of visits to district offices now required to obtain work authorization and will permit the INS to further streamline its procedures and to improve overall efficiency to its customers. To explain more fully the changed filing procedures, the INS has revised the instructions that accompany Form I-765, Application for Employment Authorization. The INS has received Office of Management and Budget approval under the Paperwork Reduction Act for the revised set of instructions and is in the process of having the new I-765 package published and distributed to its district offices and its form distribution centers. The corresponding regulations are revised below to direct employment authorization applicants to follow the instructions that accompany the employment authorization application when determining where to file.

El Salvadoran and Guatemalan nationals who are eligible for benefits under the *American Baptist Church v. Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991) ("ABC") should refer to special filing instructions which will supplement the I-765 instructions. Those instructions can be obtained visiting local INS offices or by calling 1-800-755-0777. Under this change in filing procedures, asylum applicants generally will file future employment authorization applications at the service centers and will no longer be required to file at district offices.

The change in filing procedures is, in the view of the INS, a rule of agency procedure or practice. Therefore, it is not subject to the notice and comment requirements of 5 U.S.C. 553. The INS publishes this rule of procedure or practice in the *Federal Register* for the guidance of the public under 5 U.S.C. 552. The INS intends to provide information to the public regarding the new filing procedures through its public outreach programs in addition to publication of this rule.

This rule also makes three technical corrections. On August 23, 1991, the INS eliminated the requirement under 8 CFR 274a.12(c)(10) that applicants for suspension of deportation establish economic necessity as a condition of