



DHS to Restrict Illegal Aliens Awaiting Deportation From Getting Work Permits

The Department of Homeland Security (DHS) has announced a proposed rule that would limit work permits for illegal aliens who are pending deportation and who have been temporarily released from DHS custody on an order of supervision (OSUP).

The public was informed of the proposed rule ([“Employment Authorization for Certain Classes of Aliens With Final Orders of Removal”](#)) in a November 17 news release from the U.S. Citizenship and Immigration Services (USCIS). The proposed rule was published in the *Federal Register* two days later.



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The press release explains that “orders of supervision” allow DHS to place conditions on and monitor illegal aliens with “final orders of removal” who have been temporarily released from DHS custody until DHS has the travel documents necessary to deport the alien from the United States, including:

- Aliens must cooperate with efforts to obtain the travel documents for deportation.
- Aliens must check in with DHS on designated dates.
- Aliens must present themselves for removal (deportation) once it is arranged.

“Authorizing employment benefits to aliens who have already had due process and have been ordered removed by the U.S. government undermines the rule of law and weakens DHS enforcement and removal operations,” the release quoted USCIS Deputy Director for Policy Joseph Edlow. “This effort would also remove the economic incentive for these aliens to not cooperate in the effort to obtain travel documents to return to their home countries.”

The release noted that under current regulations, an illegal alien who has a final deportation order (called an “order of removal”) and is temporarily released from DHS custody on an OSUP is usually eligible for an employment authorization document (EAD, Form I-765). The EAD, known popularly as a “work permit,” is a document issued by USCIS that provides its holder with a legal right to work in the United States.

An illegal alien who receives a work permit has little incentive to depart or cooperate with his country of citizenship to obtain travel documents to leave the United States.

While the proposed rule is undoubtedly a step in the right direction, the release notes some curious exceptions. For example, under the new rule, “only a small subset of these aliens who can demonstrate that DHS has determined that their removal from the United States is impracticable would remain eligible for discretionary employment authorization.”

One wonders what circumstances would render the deportation of an illegal alien “impracticable” and



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why whatever impediment to their removal could not be removed, rather than providing them with “discretionary employment authorization.”

The proposed rule also would limit the validity period of employment authorization for illegal aliens released on an OSUP to one year, raising the question of why an illegal alien should be authorized to work for an entire year pending deportation.



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