



News & Types: Client Advisories

USCIS Issues Policy Alert on EAD Extensions for Certain H-4, E, and L Dependent Spouses

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Practices: Immigration

[UPDATE TO THE NOVEMBER 10, 2021 CLIENT ALERT]

On November 12, 2021, U.S. Citizenship and Immigration Services (USCIS) issued a Policy Alert regarding the automatic extension of employment authorization for certain H-4, E, and L dependent spouses. Spouses of H-1B, E and L nonimmigrants have long faced significant hardships due to extreme delays in processing times by USCIS of their employment authorization documents (EADs). The policy announcement follows a settlement agreement entered into on November 10, 2021 in response to litigation in which the Department of Homeland Security (DHS) agreed to provide some relief to certain H-4, E and L-2 spouses and their applications for employment authorization. Prior announcements regarding the agreement only mentioned H-4 and L-2 spouses.

Under the new policy, effective immediately, USCIS will amend the receipt notices issued for EAD extensions to indicate that timely filed EAD extensions by certain H-4, E, or L spouses are deemed to automatically extend the EAD for 180 days from the “card expires” date on the face of the EAD. One limitation on this is that the automatic extension cannot go beyond the expiration date of the individual’s H-4, E, or L-2 status. This is a reversal of previous USCIS policy that prohibited H-4, L-2 and E spouses from benefitting from automatic extension provisions which apply to certain other types of EAD applicants.

To prove employment authorization under this change, an H-4, E, or L-2 spouse would need to provide an unexpired Form I-94, Form I-797C showing a timely filed EAD renewal (in the (a)(17), (a)(18) or (c)(26) categories), and a facially expired EAD in the same category.

In addition, the Policy Alert indicates that L-2 and certain E spouses are authorized to work simply by virtue of their L-2 or E status (“incident to status”), meaning that these individuals will no longer be required to apply for EADs prior to working in the United States. However, USCIS notes in the Policy Alert that E or L spouses will need to continue to rely upon an EAD as evidence of employment authorization to present to employers for completion of Form I-9 until such time as USCIS (and presumably Customs and Border Protection (CBP)) can implement changes to the Form I-94 to distinguish E and L spouses from E and L children who are not eligible

for EADs. E and L spouses who apply for EADs can take advantage of the automatic EAD extension provisions discussed above, if eligible.

Although these changes in policy do not directly reduce USCIS EAD processing times, they do significantly decrease the burden of the USCIS processing delays for some H-4, E and L-2 spouses.

Additional information about the implementation of these provisions by USCIS and CBP will be posted on the firm's website when they become available.