

Mobility: immigration alert

May 2022

United States

U.S. Department of Homeland Security Issues Rule to Increase Automatic Extension of Work Authorization for Certain Applicants with Pending Renewals

Executive summary

Effective 4 May 2022, certain applicants with requests to renew their Employment Authorization Documents (EAD) currently pending with U.S. Citizenship and Immigration Services (USCIS) will receive an increased extension of work authorization from 180 days to 540 days beyond the expiration of their EAD. This temporary measure is intended to address current USCIS processing backlogs and delays of EAD applications. It is also intended to prevent gaps in employment while these applicants await adjudication of their EAD renewal requests.

Background and analysis

Prior to 4 May 2022, applicants within specific employment authorization categories who properly filed a Form I-765 renewal application prior to the expiry of their valid EAD were eligible for a 180-day extension of employment authorization beyond the EAD expiration date. USCIS has stated that as a result of operational constraints and a significant increase in EAD filings, EAD processing times are currently at a historical high of greater than 12 months for adjudication. This issue has also been compounded by the health and safety measures implemented in response to COVID-19 over the last two years.

USCIS has accordingly acknowledged that the 180-day automatic extension of EADs is “temporarily no longer sufficient to meet its original purpose and goal for which it was implemented: to prevent and/or mitigate the risk of gaps in employment authorization and documentation for a majority of eligible applicants.” As a result, USCIS has

determined that a 360-day increase in the automatic extension period (for a total of up to 540 days) is a more reflective extension period based on the current processing times for EAD renewal applications.

As of 4 May, the temporary increase in the automatic extension period will apply to certain categories of EAD renewal applicants who:

- ▶ Filed an I-765 renewal application prior to the expiration of their EAD, which application remains pending with USCIS on 4 May, and still possess valid work authorized (i.e., who have an unexpired EAD, or are within the 180-day automatic extension period). Applicants with an unexpired EAD will receive an automatic extension of up to 540 days from the date of their EAD expiry. Applicants currently within the 180-day automatic extension period are entitled to an increase of 360 days (for a total of up to 540 days).
- ▶ Filed an I-765 renewal application prior to the expiration of their EAD, which application remains pending with USCIS on 4 May, and no longer possess valid work authorization (i.e., whose 180-day automatic extension period has lapsed and whose EAD has expired). These applicants will receive an additional 360 days of work authorization beyond the expiry date noted on their EAD.
- ▶ File a Form I-765 renewal application on or after 4 May 2022 through to 26 October 2023.



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The extension of work authorization will end when a final decision has been rendered on the EAD application, or when the end of the 540-day automatic extension period is reached, whichever comes first.

This increase to the automatic extension period is effective for 18 months, until 26 October 2023.

As of 27 October 2023, barring amendment, the automatic extension period will be reinstated to 180 days for timely filed EAD renewal applications. The new rule continues to apply to those EAD categories that were [previously eligible](#) for an automatic 180-day extension, including adjustment of status (AOS)-based EADs and EAD renewals filed by H-4 spouses and L and E spouses.

What this means

The temporary increase in the automatic extension period of up to 540 days is a positive development for employees and their families who have been impacted by lengthy USCIS EAD processing delays, as well as employers seeking to retain existing talent. Employees who are currently experiencing a gap in employment due to adjudication delays based on a pending EAD renewal application and who are otherwise eligible may seek to resume employment if they are within 540 days of their EAD's expiry. As of 4 May, USCIS has yet to update guidance on how U.S. employers are to complete reverification on a foreign worker's Form I-9 based on the rule, but this new guidance is expected shortly.

Although the increased extension period is a welcome change for certain EAD renewal applicants, USCIS is still facing operational challenges based on noted insufficient staffing levels to meet the current demand. It is hoped that through this temporary measure, USCIS will be able to address staffing shortages over the duration of the rule to meaningfully reduce the volume of pending cases.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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