

# Mobility: immigration alert

March 2022

## United States

USCIS decouples adjudication of applications for Employment Authorization and Advance Parole travel documents to address backlog

### Executive summary

In February 2022, USCIS made various updates to its policy guidance on Employment Authorization Document and Advance Parole applications.

### Background

Beginning in 2011, U.S. Citizenship and Immigration Services (USCIS) began issuing combination Employment Authorization Document (EAD) and Advance Parole (AP) travel documents to certain green card applicants. With this “combo card,” these applicants had a single document that could be used for international travel as well as demonstrating authorization to work in the United States during the pendency of their green card applications.

In recent weeks, members of the immigration bar have reported receiving cards for their clients that are valid for employment only and carry an annotation of “Not Valid for Entry to U.S.” USCIS has since confirmed that the processing change is intentional as the agency is working through a significant backlog of these applications and is prioritizing EAD adjudication to avoid or reduce the impact of a lapse in U.S. work authorization.

### Analysis

Pre-COVID pandemic, USCIS was taking approximately six (6) months to issue the combined EAD and AP cards whereas in previous years, the general processing time was consistently about 3-4 months. Currently, USCIS can take nine (9) months or longer to issue these documents. These delays cause hardships to foreign nationals and organizations seeking to employ these individuals, as well as applicants who have urgent needs to travel outside the United States.

USCIS has taken several steps to address the lengthy EAD processing time. In December 2021, it updated the EAD expedite processing criteria. However, decisions to grant an expedite request remains discretionary and are made on a case-by-case basis. In practice, EY Law has not found that the new criteria have increased positive outcomes on expedite requests.

More recently this February, USCIS updated its policy guidance to change the maximum validity period to two (2) years to new and renewed EADs for refugee (a)(3), asylum (a)(5), and VAWA applicants (c)(31), and those granted withholding of deportation or removal (a)(10).



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Additionally, USCIS will grant new and renewed EADs up to the end of the parole or deferred action period to applicants who are paroled for urgent humanitarian reasons or significant public benefit (c)(11), and those granted deferred action (non-DACA) (c)(14). The goal in increasing the maximum validity of EADs for these categories is to help reduce the frequency to renew the EAD and prevent gaps in employment.

The most recent procedural change of issuing the EAD separate from the AP is the latest action from USCIS to further address the EAD backlog. It is not yet clear what the scope or duration on this procedural change will be, but the American Immigration Lawyers Association is seeking to obtain additional information from USCIS as quickly as possible.

#### What this means

The prioritization of EAD applications is a welcome development for foreign nationals relying on an EAD to work in the U.S. However, this does not address the backlog of applications for AP travel documents.

Upon receipt of an EAD, green card applicants will need to examine the document carefully to verify whether it may also be used for international travel. In some cases, departing the U.S. without an AP travel document can result in automatic denial of the green card application.

We will continue to monitor developments in this area and provide updates as they are available.

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