

New Policy Benefiting L, E, and H-4 Spouses Awaiting Delayed Employment Authorization

Alert

11.17.2021

The U.S. Citizenship and Immigration Services (USCIS) [published a policy alert](#) outlining significant changes that include allowing for the automatic extension of Employment Authorization Document (EAD) validity for E, H-4 and L-2 spouses who have timely filed an application to extend their EAD. In addition, USCIS will recognize that E and L dependent spouses are automatically authorized to work without the need for a separate EAD, as long as they possess a valid, unexpired Form I-94 specifically annotating their spousal status.

This is welcome news to foreign nationals in the U.S. under several common work visas: their spouses will now enjoy easier access to the U.S. labor market and less disruption when extending their work authorization. Many spouses have been waiting for up to a year to receive permission to work in the U.S. The policy change is tied to a recent settlement of a lawsuit (*Shergill, et al. v. Mayorkas*) brought by the American Immigration Lawyers Association and its partners to address USCIS' unreasonable delays adjudicating applications for an EAD filed by L-2 and H-4 spouses.

What are the changes?

E and L Spouses

E and L spouses are now employment authorized *incident to status* without the need to apply for and wait for issuance of an EAD.

- The Department of Homeland Security is taking steps to modify the Form I-94, which evidences nonimmigrant status and is issued to E and L dependents, so that E and L dependent spouses may be distinguished from E and L dependent children as they currently have the same designation. When these

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changes are complete, the revised Form I-94 will have a notation indicating that the bearer is either an E or L dependent spouse and this Form I-94 will be acceptable as evidence of employment authorization under List C of the Form I-9, Employment Eligibility Verification. At that point, requesting an EAD will become unnecessary.

- E and L spouses who timely file their EAD renewal applications and continue to have underlying dependent status beyond the expiration date of their EAD qualify for an automatic extension of their EAD for up to 180 days while their EAD renewal applications are pending. To document the work authorization for Form I-9 purposes, they may use an unexpired Form I-94, Form I-797C (Notice of Action) showing a timely-filed EAD renewal application in the (a)(17) or (a)(18) categories and a facially expired EAD under the same category.
- For E or L spouses with currently pending initial applications for an EAD, they will receive their work authorization as soon as their EAD is issued or the Form I-94 notations are changed.
- E and L spouses may still choose to file Form I-765, Application for Employment Authorization, to request an EAD, if they prefer this method to be able to prove their work-authorized status. Until they have a Form I-94 annotated to prove their spousal status, the EAD is the only document verifying employment authorization.

H-4 Spouses

Certain H-4 spouses maintaining their status and who are eligible for employment authorization will still need to timely file Form I-765, Application for Employment Authorization for an EAD, but there is an automatic extension of the EAD after filing.

- H-4 spouses who timely file their EAD renewal applications and continue to have underlying dependent status beyond the expiration date of their EAD qualify for an automatic extension of their EAD for up to 180 days while their EAD renewal applications are pending.
- To document the work authorization for Form I-9 Employment Eligibility Verification purposes, they may use an unexpired Form I-94, Form I-797C (Notice of Action) showing a timely-filed EAD renewal application in the (c)(26) category, and a facially expired EAD under the same category.
- Notably, this change will only benefit nonimmigrants in valid H-4 status and there will be no automatic extension of H-4 EADs for applicants with expired Forms I-94 and pending H-4 extensions.
- H-4 spouses with currently pending initial applications for an EAD in the (c)(26) category will need to wait until their EAD is issued to be able to work. However, this new policy change will benefit them upon the extension of their EAD.

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If you have any questions relating to this settlement or new policy, and how it may affect you or your foreign national employees or their spouses, please reach out to our [immigration team](#).

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