

# Global Immigration alert

December 2024

## United States

### Department of Homeland Security to permanently increase automatic extension period for Employment Authorization Document renewals

#### Executive summary

The Department of Homeland Security (DHS) has released an advance copy of a final rule that is expected to be published in the Federal Register on 13 December 2024. The announced regulatory change, which will take effect 30 days after publication, will result in a permanent increase to the automatic extension period from 180 to 540 days for Employment Authorization Document (EAD) renewals for certain applicants.

#### Background

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. As a result of operational constraints and a significant increase in EAD filings, U.S. Citizenship and Immigration Services (USCIS) acknowledged that the 180-day automatic extension was insufficient to prevent and/or mitigate the risk of gaps in employment authorization and documentation for a majority of eligible applicants.

Consequently, DHS issued two temporary final rules increasing the automatic extension period from 180 to 540 days in 2022 and 2024, respectively. The final rule acknowledges that USCIS processing delays continue to present challenges to adjudicating EAD renewal applications within the original 180-day timeframe, necessitating this amendment to the regulations to permanently increase the automatic extension period to 540 days.

#### Analysis

Absent this final rule, the longer automatic extension period would cease to apply to renewal applications filed after 30 September 2025. DHS has determined that permanently increasing the automatic extension period is necessary for long-term protection of EAD renewal applicants who would otherwise be at risk of losing work authorization, as well as their U.S. employers who would otherwise be at risk of interruptions to their business and potential financial harm.

An EAD that is expired on its face is considered unexpired when presented with a Form I-797C receipt notice reflecting that USCIS received the application to renew the EAD prior to its expiration date, i.e., the renewal application was timely filed. Under the new regulations, a noncitizen may present the expired EAD and receipt notice to a U.S. employer as evidence of continued work authorization for up to 540 days beyond the EAD expiration date while the renewal application is pending. U.S. employers must complete the Form I-9 reverification process no later than the expiration of the automatic extension period. For Temporary Protected Status (TPS)-related EADs specifically, there is an additional requirement that the renewal application must have been filed during the TPS re-registration period described in the applicable Federal Register notice.

#### What this means

The permanent 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. It is recommended that EAD renewal applications be filed 180 days in advance of the current expiration to further reduce the likelihood of a gap in employment authorization.

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 or Mehlman Jacobs LLP professional.

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EYG no. 010790-24Gb1

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