Mobility: Immigration alert

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United States

USCIS Increases Automatic Extension of Certain Employment Authorization Documents to Improve Access to Work Permits

Executive summary

On 4 April 2024, USCIS announced that certain Employment Authorization Documents (EAD) will receive an automatic increased extension of work authorization from 180 days to 540 days. This temporary measure is intended to address USCIS processing backlogs and prevent gaps in employment while applicants await adjudication of their EAD renewal requests.

Background and analysis

Since the 27 October 2023 cessation of the previous temporary final rule increasing EAD validity for certain EAD renewals up to 540 days, applicants within specific employment authorization categories who properly filed a Form I-765 prior to the expiration of their EAD were eligible for a 180-day extension of employment authorization beyond their EAD expiration date. USCIS has reduced processing times for most EAD categories over the past year, but also received a record number of I-765 applications, impacting renewal processing times.

To that end, in Fiscal Year 2023, USCIS experienced a 50% increase in these applications (3.49 million applications as opposed to 2.33 million applications in Fiscal Year 2022), impacting its ability to approve and issue EAD renewals. Based on current USCIS processing timelines, nearly 800,000 EAD renewal applicants would be in danger of lapsed employment authorization, resulting in approximately 60,000-80,000 impacted employers.

As part of its ongoing initiative to support employment authorized individuals' access to work, USCIS has determined that an increase of the automatic extension to up to 540 days will avoid lapses in employment authorizations and also provide the agency with "an additional window to consider long-term solutions by soliciting public comments, and identifying new strategies to ensure those noncitizens eligible for employment authorization can maintain that benefit."

Accordingly, as of 8 April 2024, the temporary increase in automatic extension period will apply to applicants who filed their EAD renewal application prior to the expiration of their valid EAD:

- On or after 27 October 2023, if the application is still pending
- On or after 8 April 2024 and on or before 30 September 2025

The extension of work authorization will end when a final decision is issued on the EAD application, or at the end of the 540-day automatic extension period, whichever comes first. As of 30 September 2025, barring amendment, the automatic extension period will return to 180 days for timely-filed EAD renewal applications.

What this means

The temporary increase in the automatic extension period of up to 540 days is a positive development for employers

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seeking to retain talent as well as employees and their families who are at risk of being negatively impacted by EAD processing delays outside their control. Employees at risk of experiencing a gap in their employment due to delayed adjudication of their pending EAD renewal application may continue employment if they are within 540 days of their EAD's expiration. USCIS will provide specific guidance on reverification and Form I-9 completion by updating the "I-9 Central" on its website.

Nonetheless, USCIS continues to face challenges as a result of the increase in EAD applications. This temporary measure will also provide an opportunity for USCIS to address the factors resulting in EAD approval delays and develop long-term strategies.

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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