

Litigation Victory Changes USCIS Adjudication of Work Permits for Nonimmigrant Spouses

SUMMARY | On November 10, 2021, the U.S. Department of Homeland Security entered into a settlement with plaintiffs significantly changing USCIS policy regarding work authorization for qualified H-4 and L-2 status holders. These changes are set to take effect in 120 days.

What are the Changes for H-4 EAD Holders? Automatic Extension of Employment Authorization for H-4 EAD holders who continue to have valid H-4 status and who have timely filed Form I-765 to renew their employment authorization.

When does the automatic extension expire? This automatic extension terminates either at the expiration of the H-4 status, adjudication of the EAD renewal application, or 180 days from the previous card's expiration date, whichever is earliest.

Within 120 days USCIS will issue appropriate guidance noting the following:

- I-9 reverification will be necessary by Employers upon: 1) I-94 expiration of the employee's H-4 status, 2) 180 days from previous card expiration, or 3) upon the adjudication of the I-765 extension, whichever comes earliest.
- The employee may present documentation to their employers for I-9 reverification, including their expired (c)(26) EAD, I-765 extension receipt notice, and unexpired H-4 I-94 showing valid H-4 status.
- **EAD automatic extensions apply only to H-4 nonimmigrants who continue to maintain valid H-4 status after their H-4 EAD expires, i.e. Hold a valid I-94 which is either issued by CBP or from USCIS through their H-4 extension.**
- USCIS will notate such I-765 receipt notices regarding the automatic extensions.

What are the Changes for L-2 EAD Holders? L-1 spouses in L-2 status will have employment authorization incident to status. USCIS will coordinate with Customs and Border Patrol to change the Form I-94 to indicate that the I-94 bearer is a L-2 spouse so that the I-94 can be used for I-9 purposes as a List C document.

While the agencies work on revising procedures on the I-94 update for L-2 spouses, USCIS will allow for automatic extension for L-2 nonimmigrants who timely file their I-765 EAD renewal applications and continue to have L-2 status beyond the expiration of their L-2 EAD.

When does the automatic extension expire? This automatic extension terminates either at the conclusion of the L-2 status, adjudication of the EAD renewal application, or 180 days, whichever is earliest.

USCIS will issue appropriate guidance noting the following:

- L-2 EAD automatic extensions apply only to L-2 nonimmigrants who continue to have valid L-2 status after their L-2 EAD expires.
- For I-9 purposes, these individuals may present documentation to their employers such as their expired (a)(18) EAD, I-765 extension receipt notice, and unexpired L-2 I-94.
- Employers will need to reverify work authorization upon expiration of the I-94, 180 days after the expiration of the previous EAD, or upon the adjudication of the I-765 extension, whichever comes earliest.

What is the Timeline for Implementation? USCIS will take up to 120 days to make all of the procedural adjustments necessary to make these changes. An implementation announcement from USCIS is expected shortly.

Erickson Immigration Group will continue to share updates as more news is available. If you have questions about anything we're reporting above or case-specific questions, please contact your EIG attorney.