

Alert

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Employment Authorization Policy for Nonimmigrant Dependent Spouses

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On November 10, 2021, the U.S. Department of Homeland Security (DHS) reached a settlement in a landmark case, which provided structural changes for nonimmigrant H-4 and L-2 spouses seeking employment authorization. On November 12, 2021, U.S. Citizenship and Immigration Services (USCIS) issued policy guidance to address the outcome of this historic settlement agreement.

USCIS has highlighted the following major policy changes:

Automatic Extension of Existing Employment Authorization Documents (EAD)

The new policy provides that certain H-4, E, or L-2 dependent spouses qualify for automatic extension of their existing employment authorization and accompanying EAD. This automatic extension applies only if the applicant:

1. Properly filed an application to renew their H-4, E, or L-based EAD before it expires, and
2. Possesses an unexpired Form I-94 showing their status as an H-4, E, or L nonimmigrant, as applicable.

Period of Validity for Automatic Extension of EAD

USCIS specified that the automatic extension of the EAD will continue until the earlier of:

1. The end date on Form I-94 showing valid status, the approval or denial of the EAD renewal application, or
2. 180 days from the date of expiration of the previous EAD.

Evidence of Automatic Extension of EAD

Per the terms of the new policy, the following combination of documents evidence the automatic extension of the previous EAD, and are acceptable to present to employers for Form I-9 purposes:

1. Form I-94 indicating the unexpired nonimmigrant status (H-4, E, or L),
2. Form I-797C for a timely filed EAD renewal application (Form I-765) stating "Class requested" as "(a)(17)," "(a)(18)," or "(c)(26)," and
3. The applicant's expired EAD issued under the same category (i.e., stating the same category "(a)(17)," "(a)(18)," or "(c)(26),")

Automatic Employment Authorization with E and L Status:

The new policy indicates that E and L-2 dependent spouses are automatically employment authorized incident to their status. Therefore, E and L-2 dependent spouses are no longer required to request employment authorization by filing Form I-765. However, E and L dependent spouses may continue to file Form I-765 if they choose to receive a physical EAD card.

We will continue to monitor the impact these policy changes have on current immigration practices.



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