

GMS Flash Alert

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United States - Changes Introduced for Employment Authorization Documents

Under recently issued rules¹, United States Citizenship and Immigration Services (USCIS) is updating its processing of Employment Authorization Document (EAD) card applications and is changing how early it will accept some EAD card renewal applications.

WHY THIS MATTERS

With the elimination of USCIS' 90-day timeframe for adjudicating EAD applications, it is important to file EAD applications early. In most cases, applications can now be filed as early as 180 days prior to expiry of a current EAD card. Filing early will reduce the possibility of gaps in employment authorization, and the associated stress of waiting for an update on an application.

With some categories of foreign nationals also benefiting from automatic 180-day extensions of work authorization, it is even more important to file before expiry of a current EAD.

Background

Certain foreign nationals, who are eligible to work in the United States, use Form I-765 to request an employment authorization document, or "EAD card," issued by USCIS. An EAD card is a document issued by USCIS as evidence that the holder is authorized to work in the United States.

What's New

The USCIS is updating its processing of EAD card applications and is changing how early it will accept some EAD card renewal applications.

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First, USCIS will now have the authority to announce employment categories where the foreign national may file the I-765 concurrently with an underlying application for benefits. USCIS can make these announcements through its Web site, or by updating the instructions that accompany its application forms.

Second, USCIS will no longer be required to adjudicate EAD card applications within 90 days of the application being filed and will also no longer be required to issue interim EAD cards if it does not adjudicate an application within 90 days.

Third, to prevent gaps in employment authorization, certain categories of foreign nationals will benefit from an automatic extension of expiring EADs for up to 180 days.

Work authorization will be automatically extended if the below three criteria are met. It should be noted that if the applicant's underlying status (H4, L2) must be adjudicated along with the EAD, then those individuals would not be eligible for the automatic extension. In other words, those holding H4, L2 or E1, E2 dependent status with EAD are not eligible for the automatic extension of their EAD as their underlying dependent status must be adjudicated.

The three criteria for automatic extension are as follows:

1. The foreign national is renewing his/her EAD work authorization based on the same employment authorization category under which he/she was granted; and
2. The renewal application must be timely filed – meaning the renewal application must be filed with USCIS **before** the expiration of the current EAD; and
3. The foreign national falls in one of the 15 employment categories².

(There are also some special requirements for renewal applicants who have been granted Temporary Protected Status (TPS).)

Fourth, USCIS will now generally accept EAD renewal applications 180 days before the current EAD expires. Previously, foreign nationals could only file up to 120 days before expiry.

KPMG NOTE

It should be noted however that the automatic extensions are limited to specific categories and not all EAD holders filing for an extension are covered. The Final Rule suggests that more categories may be announced later.

FOOTNOTES:

1 For the Final Rule, as published in the *Federal Register*, see: <http://www.cilawgroup.com/wp-content/uploads/2016/11/I-140-Final-Rule-Federal-Register.pdf>.

For prior coverage, see GMS *Flash Alert 2017-002* (January 6, 2017). Also see GMS *Flash Alert 2017-003* (January 24, 2017).

2 Categories noted as follows:

- 1 Aliens admitted as refugees (see 8 CFR 274a.12(a)(3));
- 2 Aliens granted asylum (see 8 CFR 274a.12(a)(5));
- 3 Aliens admitted as parents or dependent children of aliens granted permanent residence under section 101(a)(27)(I) of the INA, 8 U.S.C. 1101(a)(27)(I) (see 8 CFR 274a.12(a)(7));
- 4 Aliens admitted to the United States as citizens of the Federated States of Micronesia, the Marshall Islands, or Palau under agreements between the United States and those nations (see 8 CFR 274a.12(a)(8));
- 5 Aliens granted withholding of deportation or removal (see 8 CFR 274a.12(a)(10));
- 6 Aliens granted Temporary Protected Status (TPS) (regardless of the employment authorization category on their current EADs) (see 8 CFR 274a.12(a)(12) and (c)(19));
- 7 Aliens who have properly filed applications for TPS and who have been deemed *prima facie* eligible for TPS under 8 CFR 244.10(a) and have received an EAD as a "temporary treatment benefit" under 8 CFR 244.10(e) and 274a.12(c)(19);
- 8 Aliens who have properly filed applications for asylum or withholding of deportation or removal (see 8 CFR 274a.12(c)(8));
- 9 Aliens who have filed applications for adjustment of status under section 245 of the INA, 8 U.S.C. 1255 (see 8 CFR 274a.12(c)(9));
- 10 Aliens who have filed applications for suspension of deportation under section 244 of the INA (as it existed prior to April 1, 1997), cancellation of removal under section 240A of the INA, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (see 8 CFR 274a.12(c)(10));
- 11 Aliens who have filed applications for creation of record of lawful admission for permanent residence (see 8 CFR 274a.12(c)(16));
- 12 Aliens who have properly filed legalization applications pursuant to section 210 of the INA, 8 U.S.C. 1160 (see 8 CFR 274a.12(c)(20));
- 13 Aliens who have properly filed legalization applications pursuant to section 245A of the INA, 8 U.S.C. 1255a (see 8 CFR 274a.12(c)(22));
- 14 Aliens who have filed applications for adjustment of status pursuant to section 1104 of the LIFE Act (see 8 CFR 274a.12(c)(24));
- 15 Aliens who are the principal beneficiaries or qualified children of approved VAWA self-petitioners, under the employment authorization category "(c)(31)" in the form instructions to the Application for Employment Authorization (Form I-765).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in Canada:

Charlene Quincey

U.S. Immigration Practice Leader
KPMG Law LLP – Tax + Immigration,
Canada
Tel. +1-416-943-0288 x266
cquincey@kpmg.ca

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