Annual Review of Immigration Law in the Biden/Harris Era and Beyond

Bergen County Bar Association

May 4, 2022, 12 PM

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Automatic Extension of Employment Authorization and Employment Authorization Documents (EADs) for Certain Renewal Applicants: Temporary Final Rule

Effective May 4, 2022, U.S. Citizenship and Immigration Services (USCIS) announced that the Department of Homeland Security (DHS) is temporarily amending existing DHS regulations related to expiring employment authorization and Employment Authorization Documents (EADs) for certain renewal applicants. The prior extension period of up to 180 days will automatically increase to up to 540 days from the expiration date stated on their current EADs.

Background

By 2019, USCIS was in a precarious financial situation that impaired the efficient completion of caseloads. The COVID-19 pandemic exacerbated these challenges in 2020, with a hiring freeze and furlough threat leading to workforce attrition and severely reduced capacity. In 2021, before USCIS could recover from these fiscal and operational impacts, there was a sudden and dramatic increase in EAD initial and renewal filings.

As a result, processing times for Form I-765 have increased to such a level that the 180-day automatic extension period for certain Form I-765 renewal applicants' employment authorization and EADs is no longer sufficient to prevent or mitigate the risk of gaps in employment authorization and documentation, as it was originally intended.

For some applicants, the automatic extension period has already expired. As a result, these renewal applicants may be unable to obtain employment or continue employment with their current employers, and employers may suddenly be faced with finding replacement workers during a time when the U.S. economy is experiencing a high demand for labor as compared to the available supply of workers. To alleviate this hardship for both employees and employers, DHS has determined that it is imperative to immediately increase the automatic extension period of EADs for eligible Form I-765 renewal applicants during a temporary period of time. This temporary increase will also allow USCIS an opportunity to address staffing shortages, implement additional efficiencies, and ultimately reduce processing times for EAD applications.

Who does the extension apply to?

The up to 540-day automatic EAD extension only applies to those EAD categories currently eligible for the previous up to 180-day automatic extension of employment authorization and EAD validity. USCIS will provide up to 360 days (for a total of up to 540 days) of additional automatic extension time to eligible applicants with a pending EAD renewal application on the temporary rule's effective date and for 540 days thereafter (that is, from May 4, 2022 to Oct. 26, 2023).

Applicants with pending I-765 renewal applications as of May 4, 2022, will not receive a new receipt notice reflecting the increased EAD automatic extension period. However, Form I-797C notices that refer to a 180-day automatic extension will still meet the regulatory requirements for employment authorization. Therefore, individuals who show Form I-797C notices that refer to a 180-day extension, along with their qualifying EADs, still receive the up to 540-day extension under this rule. For guidance on completing Form I-9, Employment Eligibility Verification, visit I-9 Central.

EAD Renewals page: https://www.uscis.gov/eadautoextend

USCIS link: https://www.uscis.gov/newsroom/news-releases/uscis-increases-automatic-extension-period-of-work-permits-for-certain-applicants

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Uniting for Ukraine provides a pathway for displaced Ukrainian citizens and their immediate family members who are outside the United States to come to the United States and stay temporarily for up to two years. Ukrainians participating in Uniting for Ukraine must have a supporter in the United States who agrees to provide them with financial support for the duration of their stay in the United States.

The first step in the Uniting for Ukraine process is for the U.S.-based supporter to file a Form I-134, Declaration of Financial Support, with USCIS. The supporter will then be vetted by the U.S. government to protect against exploitation and abuse, and ensure that they are able to financially support the individual(s) whom they agree to support.
Ukrainians who present at U.S. land ports of entry without a valid visa or without pre-authorization to travel to the United States through Uniting for Ukraine may be denied entry and referred to apply through this program.

For more information on how to apply, eligibility requirements, and what to expect after the Form I-134 is filed, visit USCIS and the State Department.

Uniting for Ukraine provides a pathway for Ukrainian citizens and their immediate family members who are outside the United States to come to the United States and stay temporarily, with a period of parole up to two years. Ukrainians participating in Uniting for Ukraine must have a supporter in the United States who agrees to provide them with financial support for the duration of their stay in the United States. The process begins when the supporter files Form I-134, Declaration of Financial Support, with U.S. Citizenship and Immigration Services (USCIS) to include information both on the supporter and the Ukrainian beneficiary. Ukrainians who meet the requirements receive authorization to travel directly to the United States and seek parole at a port of entry.

Eligibility

Beneficiaries are eligible for the process if they:

• Resided in Ukraine immediately prior to the Russian invasion (until February 11, 2022) and were displaced as a result of the invasion;

• Are a Ukrainian citizen and possess a valid Ukrainian passport (or are a child included on a parent's passport), or are a non-Ukrainian immediate family member of a Ukrainian citizen who is applying through Uniting for Ukraine;

• Have a supporter who filed a Form I-134, Declaration of Financial Support, on their behalf that has been confirmed as sufficient by USCIS;

- Complete vaccinations and other public health requirements, and;

- Clear biometric and biographic screening and vetting security checks.

Note: To be eligible for this process, children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian.

Step 1: Financial Support

Individuals participating in Uniting for Ukraine must have financial support in the United States. A U.S.-based supporter will file a Form I-134, Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the Uniting for Ukraine process.

The supporter will then be vetted by the U.S. government to protect against exploitation and abuse, and ensure that they are able to financially support the individual whom they agree to support. Financial supporters must be verified and found eligible by the U.S. government before the Ukrainian beneficiary moves forward in the process.

Step 2: Submit Biographic Information in myUSCIS

Once a supporter has demonstrated sufficient financial support and is approved, the Ukrainian beneficiary will receive an email from USCIS on how to create an account with myUSCIS and instructions on next steps. The Ukrainian beneficiary will be required to confirm their biographic information in myUSCIS and attest to completing all eligibility requirements.

Step 3: Complete Vaccination Requirements

As part of confirming eligibility requirements in their myUSCIS account, individuals who seek authorization to travel to the United States via the Uniting for Ukraine process will need to confirm prior vaccination against measles, polio, and COVID-19. If not previously vaccinated, individuals will need to receive a first dose of required vaccines prior to obtaining travel authorization to come to the United States.

Step 4: Approval to Travel to the United States

After completing requirements, Ukrainians will receive a notice to their myUSCIS account confirming whether they are authorized to travel to the United States to seek parole. If approved, this authorization is valid for 90 days and Ukrainians are responsible to secure their own travel via air to the United States. Ukrainian citizens will need to meet other CDC travel requirements, including pre-departure testing for COVID-19.

Step 5: Seeking Parole at the Port of Entry

Upon their arrival at a port of entry, each individual will be inspected by U.S. Customs and Border Protection (CBP) and considered for parole for a period of up to two years, and may have conditions placed on their parole. All individuals two years of age or older will need to complete a medical screening for tuberculosis, including an IGRA test, within two weeks of arrival to the United States.

As part of the Uniting for Ukraine process, Ukrainians will undergo additional screening and vetting, to include biometric vetting. Anyone determined to pose a national security or public safety threat will be referred to U.S. Immigration and Customs Enforcement (ICE).

Ukrainians who present at U.S. land ports of entry without a valid visa or without pre-authorization to travel to the United States through Uniting for Ukraine may be denied entry and referred to apply through this program.

Step 6: Approved for Parole

If granted parole pursuant to this process, individuals will generally be paroled into the United States for a period of up to two years and are eligible to apply for employment authorization. Individuals may request authorization to work by filing a Form I-765, Application for Employment Authorization, with USCIS.

link here: https://www.dhs.gov/ukraine

USCIS ANNOUNCES NEW EB-5 REGIONAL CENTER PROGRAM.

On March 15th, President Biden signed a law that includes authority for an EB-5 Immigrant Investor Regional Center Program and various implementation effective dates for the program. The program will be in effect through September 30th, 2027. We are reviewing the new legislation and will provide additional guidance.

EB-5 UPDATE: USCIS RESUMES PROCESSING OF REGIONAL CENTER-BASED FORM I-526.

USCIS has resumed processing regional center-based Form I-526, Immigrant Petition by Alien Entrepreneur, filed on or before the sunset of the previous regional center program on June 30th, 2021.

USCIS will adjudicate all Form I-526 petitions filed before March 15th, 2022, according to the applicable eligibility requirements at the time such petitions were filed (that is, the eligibility requirements in place before the enactment of the EB-5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022 (Pub. L. No. 117-103) (Sec. 101 and 102). USCIS will continue to process Form I-526 petitions under the visa availability approach, prioritizing those Form I-526 petitions for investors with an available visa or a visa that will be available soon.

USCIS SERVICE CENTER EXPANDS CREDIT CARD PAYMENT PILOT PROGRAM TO MOST FORMS.

As part of USCIS credit card payment pilot program, the USCIS service centers are now accepting credit card payments using Form G-1450, Authorization for Credit Card Transactions, for most forms. The goal of this pilot is to bring USCIS one step closer to accepting digital payments using a credit card at all service centers.

USCIS started, and then expanded, this program at the Nebraska Service Center, and then further expanded the program to all service centers.

DHS Extends COVID-19 Vaccination Requirements for Non-U.S. Travelers Entering the United States via Land Ports of Entry and Ferry Terminals

Release Date: April 21, 2022

WASHINGTON – Today, the Department of Homeland Security (DHS) announced that it will extend temporary Title 19 requirements and continue to require non-U.S. travelers entering the United States via land ports of entry and ferry terminals at the U.S.-Mexico and U.S.-Canada borders to be fully vaccinated against COVID-19 and provide related proof of vaccination upon request. These requirements will continue to apply to non-U.S. travelers who are traveling both for essential and non-essential reasons, and do not apply to U.S. citizens, Lawful Permanent Residents, or U.S. nationals.

These requirements were extended in consultation with the Centers for Disease Control and Prevention (CDC) and several other federal agencies. According to CDC, vaccines remain the most effective public health measure to protect people from severe illness or death from COVID-19, slow the transmission of COVID-19, and reduce the likelihood of new COVID-19 variants emerging.

"The Biden-Harris Administration is committed to protecting public health while facilitating lawful trade and travel, which is essential to our economic security," **said Secretary of Homeland Security Alejandro N. Mayorkas.** "That is why, after consulting with CDC and other federal agencies, DHS will continue to require non-U.S. individuals entering the United States via land ports of entry and ferry terminals to be fully vaccinated against COVID-19 and provide related proof of vaccination upon request."

Non-U.S. travelers entering the United States via land ports of entry and ferry terminals, whether for essential or non-essential reasons, must continue to:

- verbally attest to their COVID-19 vaccination status;
- provide, upon request, proof of a CDC-approved COVID-19 vaccination, as outlined on the CDC website;
- present a valid Western Hemisphere Travel Initiative (WHTI)-compliant document, such as a valid passport, Trusted Traveler Program card, or Enhanced Tribal Card; and,
- be prepared to present any other relevant documents requested by a U.S. Customs and Border Protection (CBP) officer during a border inspection.

COVID-19 testing is not required to enter the United States via a land port of entry or ferry terminal.

The continuation of these requirements helps protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities, and ensures that public health measures governing land travel align with those that govern incoming international air travel. DHS will closely monitor all relevant circumstances, including the effect of these requirements, and may amend or rescind the requirements at any time. In determining whether and when to rescind this order, DHS anticipates that it will take account of whether the vaccination requirement for non-U.S. air travelers remains in place. This announcement does not affect requirementsfor entry into the United States by air.

To help reduce wait times and long lines, travelers arriving or departing from air, land, or sea ports of

entry are encouraged to use the *Simplified Arrival* or *Mobile Passport Control* mobile applications, which use facial comparison technology for more expedient processing. Documented non-citizens may also apply for and manage their I-94s through the *CBP One™* mobile application, a single portal for accessing CBP mobile applications and services.

PERM Labor Certification Process 2022 and Timing

The Program Electronic Review Management (PERM) is a system that allows people to get labor certification. Anyone seeking employee-based immigration in the United States must acquire this certification as the first step. There are specific steps in the PERM labor certification process and completing those steps at the appropriate timeframe is critical in securing a PERM Labor Certification.

Therefore, this article will discuss how to go about acquiring a PERM labor certification, allowing you to appropriately seek employee-based immigration/permanent residency in the United States.

The Background Process – Several Months for Filing

Applicants will have about 7 or 8 months from the moment they begin their case until the time when the PERM labor certification is filed with the US Department of Labor (DOL). All requirements must be met before the PERM Labor Certification can be filed with the US Department of Labor.

The Minimum Requirements for Qualifying for the Labor Certification

The requirements and duties of the applicant will have to be established first. Therefore, these requirements will be the basis for the PERM Labor Certification, and even minor irregularities can render the application useless. Thus, all job qualifications and requirements for the applicant must be accurate.

It is incumbent upon the employer sponsoring the employee-based immigration case to clearly define the job description and the experience and education the employee must have to qualify for the specific position. The sponsoring employer must ensure that the position's requirements meet the rule of the "actual minimum requirements" set forth by the DOL. Therefore, in setting forth the minimum requirements, any applicant will need to cover at least those requirements to perform the job competently—not in the best possible way.

If the employer has not performed this step already, it could take a few days to a week or possibly more to finalize these requirements with the DOL. The employer's availability and efficiency could ultimately determine how long this step takes.

More time may be spent in the process of confirming if the applicant meets the specific requirements set by the employer. Therefore, the applicant may have to acquire and provide educational documents, experience letters, and evaluate foreign educational credentials for the prospective employee. This part of the process may take up additional time, and it will again depend on the efficiency of the applicant and the sponsoring employer.

Why It Is Important to Obtain Prevailing Wage Before Recruiting

An employer can only file a PERM application after obtaining a prevailing wage determination (PWD) from the DOL. This essential part of the PERM labor certification process can take about 5 to 8 months. PWD aims to ascertain a minimum wage level that is needed for the position in question.

It is best to obtain a PWD before the recruitment process to minimize delays and finish the process within deadlines. The PERM labor certification will need to be filed during the timeframe that the PWD is valid. Therefore, the employer may have to start the PERM labor certification case again if it is unable to complete the recruitment process while the PWD is still valid. It is important, therefore, to understand that all recruitment processes have a limited time frame. That said, obtaining a PWD can occur during the recruitment process as well, but there is a risk of missing the deadlines and starting all over.

In addition to effectively avoiding delays by obtaining a PWD before the recruitment process, it is beneficial because it can reduce the potential hassle of the PERM labor certification process. Thus, errors in the PWD by the DOL do happen, and the fact that they can be provided weeks or months after application can become a problem. In that case, the employer may have to restart the recruitment process. The employer will then have to complete the recruitment process while the PWD is still valid. However, that can be not easy considering how long recruitment can take.

In some cases, the PWD is set higher than the employer had initially surmised. Therefore, the employer may have to restart the recruitment process to sponsor applicants at the new wage limit. Thus, the number of complications of obtaining a PWD during the recruitment process is significantly higher than obtaining it before initiating the recruitment process.

Requirements and Format for the Recruitment Process

The US Department of Labor has stringent regulations on the content and form of the sponsoring employers' recruiting efforts. The sponsoring employer must perform the following:

- use newspaper advertisements for the position; and
- make a posting in the job bank of the state labor department; and
- use 3 more types of recruitment allowed by the DOL (for professional positions).

In addition to the types of recruitment, the regulations by the DOL are also about the job advertisement's content. Employers must monitor every step of this process to identify and rectify any errors as soon as they may crop up. This way, it can prevent nullifying the PERM labor certification and restarting the case. It is important to understand that errors are likely to happen because the sponsoring employee must use the professional services of various types of agencies for the advertisements as well as for other parts of the recruitment process.

The DOL will only consider sponsoring the employer's recruitment as valid if the employer entertains and responds to all applications for the position. Appropriate methods must be in place for responding to applicants, which an attorney can provide. The whole PERM labor certification process can be denied if the employer does not follow the appropriate response methods for applicants. Thus, it is critical to acquire this information first.

The "Hold" or "Quiet" Period – 30 Days

The "hold" or "quiet" period is a necessary part of the recruitment process, and it lasts approximately 30 days. The period was created to allow the sponsoring employee to receive, review and consider more applications for the position after the initial recruitment process. Any PERM labor certifications that are filed before the 30-days "hold" period will be denied, and the entire case will have to be restarted.

The Employee and Employer Must Sign the ETA 9089 Form Under Penalty of Perjury

The employee and the employer must put their signature on specific parts of the ETA 9089 form under penalty of perjury. These parties can only perform this step after the ETA 9089 form is finalized, which can only happen after recruitment is completed.

It is critical that both parties (i.e., the employee and the employer), review the ETA 9089 form carefully for the PERM labor certification process before they sign it. Doing so will allow them to identify and address any discrepancies in

the form. No corrections can be made to an ETA 9089 form once it's pending, so all errors must be addressed before signing.

Qualified US Candidate's Application Will Terminate the PERM

In most cases, the receipt by the employer of a qualified US workers' application will terminate the PERM. The employer will have to start a new PERM process after that.

The Processing Time for Filing PERM Labor Certification

There is no exact timeframe for the PERM labor certification process, as learned from history. That said, it is safe to estimate that filing for the PERM labor certification online is received in approximately 6 to 10 months if the DOL does not audit the PERM filing. The DOL emails the sponsoring employer a questionnaire for sponsorship verification within 30 days after the online application. The employer must fill and submit the questionnaire within the provided timeframe to prevent the DOL from denying the PERM case. Concerned parties can file a PERM case via paper mail, but the process is considerably longer than the online case.

The processing time for filing PERM labor certification will take more time than 6 to 10 months if the US Department of Labor audits the case. PERM cases are audited randomly, so concerned parties cannot expect or predict if their case will be audited, but they can prepare for it. The sponsoring employer will have 30 days to respond to the audit. Based on the priority date, the DOL reviews the case on a first-in/first-out basis after the DOL receives the audit response.

The Process Time During the Supervised Recruitment Process

The process that is established by the US Department of Labor to require sponsoring employers to engage in extra recruitment efforts supervised by the US Department of Labor is known as supervised recruitment. Only some cases are designated for supervised recruitment. Sponsoring employers have 30 days to submit a copy of the recruitment advertisement to the DOL. After that, the DOL may take weeks to months to approve the advertisement. After approval, employers must place advertisements in various media within 15 days. The recruitment period stays open for a minimum of 60 days after the first advertisement.

Sponsoring employers have 30 days (which is extendable to 30 days more) to submit a report of the recruitment process after it's closed by the DOL. The US Department of Labor will take a minimum of 30 days to process the PERM case. Employers should follow up with the DOL to ensure the processing time is as low as possible. Supervised recruitment, therefore, can add months to the entire PERM labor certification process because of a lack of standardized timeframes for the various steps.

The Process Time for a Request for Reconsideration

Sponsoring employers can submit a Request for Reconsideration, a document sent to request the US Department of Labor to reconsider the PERM case after a denial. Employers can only submit this application within 30 days after the PERM case has been denied. The processing time of this application can take longer than 30 days as many factors can delay the DOL from reviewing the case again.

Employers can appeal to the Board of Alien Labor Certification Appeals or BALCA if the DOL denies a Request for Reconsideration. The processing time for BALCA to make a decision typically takes a year. It's best to consult a qualified immigration attorney for viable options and strategies if the DOL denies the case because this part of the PERM labor certification process can take a significant amount of time.

If you should have any questions or need more information about the ways in which the U.S. Immigration and Nationality Laws may impact you, your family, your friends or your colleagues, please contact the U.S. Immigration and Nationality Lawyers at the NPZ Law Group – VISASERVE – U.S. Immigration and Nationality Lawyers by e-mailing us at info@visaserve.com or by calling us at 201-670-0006 (x104). You can also visit our Law Firm's website at www.visaserve.com

USCIS Implements Risk-Based Approach for Conditional Permanent Resident Interviews

USCIS announced a policy update to adopt a risk-based approach when waiving interviews for conditional permanent residents (CPR) who have filed a petition to remove the conditions on their permanent resident status.

Effective immediately, new criteria will guide USCIS officers on when to waive interviews for CPRs who filed a Form I-751, Petition to Remove Conditions on Residence. This update replaces previous agency guidance that required all CPRs to undergo an interview if they obtained CPR status via consular processing.

"Implementing a risk-based strategic approach to the CPR-interview process will increase efficiencies that improve processing times, allow for a better use of agency staffing resources, and help reduce the pending caseload while still maintaining procedures to identify fraud and protect national security," said USCIS Director Ur M. Jaddou. "This update is consistent with agency priorities to break down barriers in the immigration system, eliminate undue burdens on those seeking benefits, and effectively respond to stakeholder feedback and public concerns."

Prior policy requiring mandatory CPR interviews did not prove to be an efficient use of USCIS staffing resources. Under this policy update, USCIS may waive the interview requirement if the agency officer determines there is sufficient evidence about the bona fides of the marriage, the joint-filing requirement is eligible for a waiver (if applicable), there is no indication of fraud or misrepresentation in supporting documents, there are no complex facts or issues to resolve, and there is no criminal history that would render the CPR removable.

A noncitizen who obtains permanent resident status based on a marriage that began less than two years before obtaining that status receives permanent resident status on a conditional basis for two years. To remove the conditions on permanent resident status, family-based CPRs generally must file a Form I-751 within the 90-day period before the two-year anniversary of when they obtained CPR status.

Policy Alert: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220407-Family-BasedCPRInterviewWaiver.pdf

USCIS link: https://www.uscis.gov/newsroom/news-releases/uscis-implements-risk-based-approach-for-conditional-permanent-resident-interviews

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Certain EADs for TPS Syria Automatically Extended through Sept. 24, 2022

USCIS is issuing individual notices to certain TPS Syria beneficiaries whose applications to renew Form I 766, Employment Authorization Document (EAD), remain pending. These individual notices further extend the validity of their EADs until Sept. 24, 2022. Their current EADs bear an A12 or C19 category and an expiration date of March 31, 2021; Sept. 30, 2019; or March 31, 2018.

Completing Form I-9

For Form I-9, Employment Eligibility Verification, TPS Syria beneficiaries may present an EAD with a Category Code of A12 or C19 and an expiration date of March 31, 2021; Sept. 30, 2019; or March 31, 2018, along with an individual notice, mailed by USCIS, that automatically extends their EAD through Sept. 24, 2022. In these cases, enter Sept. 24, 2022, as the new expiration date of the automatically extended EAD in Section 2 under List A. You must reverify these employees on Form I 9 before they start work on Sept. 25, 2022.

Creating an E Verify Case

Once a new employee has completed Form I 9, Employment Eligibility Verification, create a case in E Verify for this employee. Enter the EAD document number you entered on Form I 9, as well as the automatically extended date of Sept. 24, 2022. You must reverify these employees on Form I 9 before they start work on Sept. 25, 2022.

E-Verify link: https://www.e-verify.gov/about-e-verify/whats-new

I-9 Update: DHS To End COVID-19 Temporary Policy for Expired List B Identity Documents

DHS is ending the COVID-19 Temporary Policy for List B Identity Documents. Beginning May 1, Employers will no longer be able to accept expired List B documents.

DHS adopted the temporary policy in response to the difficulties many individuals experienced with renewing documents during the COVID-19 pandemic. Now that document issuing authorities have reopened and/or provided alternatives to in person renewals, DHS will end this flexibility. Starting May 1, 2022, employers must only accept unexpired List B documents.

If an employee presented an expired List B document between May 1, 2020, and April 30, 2022, employers are required to update their Forms I-9 by July 31, 2022. See table below for update requirements.

If the employee's Form I-9 was completed between May 1, 2020 and April 30, 2022 with an expired List B document and that document expired on or after March 1, 2020, and the employee:	**Then:**

Is still employed.	• Have the employee provide an unexpired document that establishes identity. Employees may present the renewed List B document, a different List B document or a document from List A.
	• In the "Additional Information" field of Section 2, the employer enters the document:
	  ◦ Title;
	  ◦ Issuing authority;
	  ◦ Number; and
	  ◦ Expiration date.
	• The employer initials and dates the change. See Form I-9 example.

Is no longer employed.	No action is required.

If the employee's Form I-9 was completed between May 1, 2020 and April 30, 2022 with an expired List B document and that document expired on or after March 1, 2020, and the employee:	**Then:**
The List B document was auto extended by the issuing authority, so it was unexpired when presented.	No action is required because the document was unexpired when presented.

USCIS link: **https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/dhs-to-end-covid-19-temporary-policy-for-expired-list-b-identity-documents**

If you have any questions about how the immigration and nationality laws in the United States may impact you or your family, or if you want to access additional information about United States or Canadian immigration and nationality laws, please feel free to get in touch with the immigration and nationality lawyers at Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. You can send us an email at info@visaserve.com or you can call us at 201-670-0006 extension 104. In addition, we invite you to find more information on our website at www.visaserve.com

CIS Ombudsman Issues Formal Recommendation to USCIS on Form I-129

Dear Stakeholder,

On March 31, 2022, the Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) submitted a formal recommendation to U.S. Citizenship and Immigration Services (USCIS) regarding issuing notices to beneficiaries of Form I-129, Petition for a Nonimmigrant Worker, who are amending, extending, or changing their status.

The Issue

Currently, USCIS does not provide Form I-129 beneficiaries with notice of USCIS actions taken, such as receipt notices, approval letters, or Form I-94, *Arrival/Departure Record*. USCIS provides these documents only to the beneficiaries' employers or the employers' legal representatives, despite the fact that the Immigration and Nationality Act requires the beneficiary be issued and carry Form I-94 at all times.

This means that beneficiaries must rely on employers for all information regarding the petition. For beneficiaries who are amending, extending, or changing status, the lack of direct notification may leave them without status documentation, rendering them noncompliant with the law, susceptible to abuse by employers, and unable to access benefits requiring proof of status.

Our Recommendation

For all Form I-129 beneficiaries who are amending, extending, or changing their status, we recommend that USCIS directly notify them of actions taken on the petition. The formal recommendation provides an overview of the Form I-129 petition process, outlines key issues of concern, and proposes measures to address those concerns.

As part of our mandate, we make recommendations with the goal of influencing change and improving the services administered by USCIS. After we make a formal recommendation, USCIS is required by statute to respond within three months.

More Information

DHS link: https://www.dhs.gov/recommendations

USCIS Announces Online Filing for DACA Renewal Forms

USCIS announced that individuals who previously received deferred action under Deferred Action for Childhood Arrivals (DACA) may now file Form I-821D, Consideration of Deferred Action for Childhood Arrivals, online.

"The expansion of online filing is a priority for USCIS as we make our operations more efficient and effective for the agency and our stakeholders, applicants, petitioners and requestors," said USCIS Director Ur M. Jaddou. "The option to file DACA renewal requests online is part of USCIS' ongoing move to minimize reliance on paper records and further transition to an electronic environment."

At this time, the option to file online is only available for individuals who have previously been granted DACA. Such individuals must also file Form I-765, Application for Employment Authorization, which is available for online filing, as well as the Form I-765 Worksheet, which is required as evidence in support of the filing for DACA.

During fiscal year (FY) 2021, USCIS received more than 8.8 million requests for immigration benefits and other requests, including 438,950 Form I-821D DACA requests. Since launching online filing in 2017, the overall number of forms filed online has increased significantly. In FY 2021, approximately 1,210,700 applications, petitions and requests were filed online, a 2.3% increase from the 1,184,000 filed in FY 2020.

To file Form I-821D and Form I-765 online, a DACA requestor must first create a USCIS online account, which provides a convenient and secure method to submit forms, pay fees and track the status of any pending USCIS immigration request throughout the adjudication process. There is no cost to set up an account, which offers a variety of features, including the ability to communicate with USCIS through a secure inbox and respond online to Requests for Evidence.

With the addition of online filing for Form I-821D, individuals can now file 13 USCIS forms online, which can all be found on the Forms Available to File Online page. USCIS continues to accept the latest paper versions of all forms by mail.

Consistent with a court order issued in State of Texas, et al., v. United States of America, et al., 1:18-CV-00068 (S.D. Tex. July 16, 2021), the Department of Homeland Security continues to accept the filing of both initial and renewal DACA requests, as well as accompanying requests for employment authorization. However, under the July 16, 2021, order issued by the U.S. District Court for the Southern District of Texas, DHS is prohibited from granting initial DACA requests.

USCIS link: **https://www.uscis.gov/newsroom/news-releases/uscis-announces-online-filing-for-daca-renewal-forms**

If you have any questions about how the immigration and nationality laws in the United States may impact you or your family, or if you want to access additional information about United States or Canadian immigration and nationality laws, please feel free to get in touch with the immigration and nationality lawyers at Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. You can send us an email at info@visaserve.com or you can call us at 201-670-0006 extension 104. In addition, we invite you to find more information on our website at www.visaserve.com

USCIS UPDATE: FY 2023 H-1B Cap Season Updates

USCIS has received enough electronic registrations during the initial registration period to reach the fiscal year (FY) 2023 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap). USCIS randomly selected from among the registrations properly submitted to reach the cap. USCIS has notified all prospective petitioners with selected registrations that they are eligible to file an H-1B cap-subject petition for the beneficiary named in the applicable selected registration.

Registrants' online accounts will now show one of the following statuses for each registration (that is, for each beneficiary registered):

- **Submitted:** The registration has been submitted and is eligible for selection. If the initial selection process has been completed, this registration remains eligible, unless subsequently invalidated, for selection in any subsequent selections for the fiscal year for which it was submitted.
- **Selected:** Selected to file an H-1B cap petition.
- **Denied:** Multiple registrations were submitted by or on behalf of the same registrant for the same beneficiary. If denied as a duplicate registration, all registrations submitted by or on behalf of the same registrant for this beneficiary for the fiscal year are invalid.
- **Invalidated-Failed Payment:** A registration was submitted but the payment method was declined, rejected, disputed, or cancelled after submission.

FY 2023 H-1B Cap Petitions May Be Filed Starting April 1

H-1B cap-subject petitions for FY 2023, including those petitions eligible for the advanced degree exemption, may be filed with USCIS beginning April 1, 2022, if based on a valid, selected registration.

Only petitioners with selected registrations may file H-1B cap-subject petitions for FY 2023, and only for the beneficiary named in the applicable selected registration notice.

An H-1B cap-subject petition must be properly filed with the correct service center and within the filing period indicated on the relevant registration selection notice. The period for filing the H-1B cap-subject petition will be at least 90 days. Online filing is not yet available for H-1B petitions, so petitioners filing H-1B petitions must do so by paper. Petitioners must include a printed copy of the applicable registration selection notice with the FY 2023 H-1B cap-subject petition.

Petitioners filing H-1B cap-subject petitions, including those petitions eligible for the advanced degree exemption, must still establish eligibility for petition approval at the time the petition is filed and through adjudication, based on existing statutory and regulatory requirements.

Selection in the registration process does not relieve the petitioner of submitting evidence or otherwise establishing eligibility, as registration only pertains to eligibility to file the H-1B cap-subject petition.

Pre-paid Mailer Suspension

USCIS will not use pre-paid mailers to send out any communication or final notices for fiscal year 2023 cap-subject H-1B petitions, including those requesting consideration under the advanced degree exemption.

The process of printing and mailing the cap-subject H-1B petition approval notices by first-class mail is fully automated. Using pre-paid mailers requires a separate, more time-consuming manual process. The existing automated process is more time efficient for both petitioners and USCIS. Because of this, USCIS will use first-class mail as USCIS work to process all cap-subject petitions in a timely manner.

Receipt Notice Delays

When USCIS receive a timely and properly filed H-1B cap subject petition, the petitioner (and, if applicable, the petitioner's legal representative) will be provided a Form I-797, Notice of Action, communicating receipt of the petition. Due to increased filing volumes typically seen during H-1B cap filing periods, there are instances where a petition is timely and properly filed, but issuance of the Form I-797 is delayed. If a petitioner has confirmation from the delivery service that the petition was delivered, but they have not yet received a Form I-797 confirming receipt of the petition, the petitioner should not submit a second petition. If a petitioner has confirmation from the delivery service that the petition was delivered and they then submit a second petition, the petitioner will be considered to have submitted duplicate petitions. This will result in denial or revocation of both petitions.

USCIS link: **https://www.uscis.gov/newsroom/alerts/fy-2023-h-1b-cap-season-updates**

If you have any questions about how the immigration and nationality laws in the United States may impact you or your family, or if you want to access additional information about United States or Canadian immigration and nationality laws, please feel free to get in touch with the immigration and nationality lawyers at Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. You can send us an email at info@visaserve.com or you can call us at 201-670-0006 extension 104. In addition, we invite you to find more information on our website at www.visaserve.com.

USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders

USCIS is announcing a trio of efforts to increase efficiency and reduce burdens to the overall legal immigration system. USCIS will set new agency-wide backlog reduction goals, expand premium processing to additional form types, and work to improve timely access to employment authorization documents. Due to the COVID-19 pandemic and resource constraints resulting from the prior administration, USCIS inherited a significant number of pending cases and increased processing times. Through today's actions by the Biden administration, USCIS is acting to reduce these caseloads and processing times, while also ensuring that fair and efficient services are available to applicants and petitioners.

"USCIS remains committed to delivering timely and fair decisions to all we serve," said USCIS Director Ur M. Jaddou. "Every application we adjudicate represents the hopes and dreams of immigrants and their families, as well as their critical immediate needs such as financial stability and humanitarian protection."

Reducing Processing Backlogs

To reduce the agency's pending caseload, USCIS is establishing new internal cycle time goals this month. These goals are internal metrics that guide the backlog reduction efforts of the USCIS workforce and affect how long it takes the agency to process cases. As cycle times improve, processing times will follow, and applicants and petitioners will receive decisions on their cases more quickly. USCIS will be increase capacity, improve technology, and expand staffing to achieve these new goals by the end of FY 2023.

The agency's publicly posted processing times show the average amount of time it took USCIS to process a particular form – from when the agency received the application until a decision was made on the case. Internally, USCIS monitors the number of pending cases in the agency's workload through a metric called "cycle times." A cycle time measures how many months' worth of pending cases for a particular form are awaiting a decision. As an internal management metric, cycle times are generally comparable to the agency's publicly posted median processing times. Cycle times are what the operational divisions of USCIS use to gauge how much progress the agency is, or is not, making on reducing our backlog and overall case processing times.

NEW CYCLE TIME GOALS

2 WEEKS	6 MONTHS	
I-129 Premium	N-400	I-526
I-140 Premium	N-600	I-600
2 MONTHS	N-600K	I-600A
I-129 Non-Premium	I-485	I-600K
3 MONTHS	I-140 Non-Premium	I-730
I-765	I-130 Immediate Relative	I-800
I-131 Advance Parole	I-129F Fiancé(e)	I-800A
I-539	I-290B	I-90
I-824	I-360	I-821D Renewals
	I-102	

Expanding Premium Processing

The Department of Homeland Security (DHS) announced a final rule that aligns premium processing regulations with the Emergency Stopgap USCIS Stabilization Act. The rule codifies premium processing fees and adjudication timeframes provided by Congress.

Premium processing is an expedited adjudication service now available only to petitioners filing a Form I-129, Petition for a Nonimmigrant Worker, and to certain employment-based immigrant visa petitioners filing a Form I-140, Immigrant Petition for Alien Workers. This final rule expands the categories of forms ultimately eligible for premium processing services, including Form I-539, Application to Extend/Change Nonimmigrant Status; Form I-765, Application for Employment Authorization; and additional classifications under Form I-140.

USCIS intends to begin implementing, through a phased approach, premium processing availability of Form I-539, Form I-765 and Form I-140 in fiscal year 2022. USCIS will also adhere to the congressional requirement that the expansion of premium processing must not cause an increase in processing times for regular immigration benefit requests.

USCIS plans to begin this phased implementation process by expanding premium processing eligibility to Form I-140 filers requesting EB-1 immigrant classification as a multinational executive or manager, or EB-2 immigrant classification as a member of professions with advanced degrees or exceptional ability seeking a national interest waiver.

Improving Access to Employment Authorization Documents

USCIS continues to make progress toward a temporary final rule currently named "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants."

In recent months, USCIS has begin streamlining many EAD processes, including extending validity periods for certain EADs and providing expedited work authorization renewals for healthcare and childcare workers. The temporary final rule aims to build on this progress and to ensure certain individuals will not lose their work authorization status while their applications are pending.

USCIS link: **https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work**

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USCIS link: **https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work**

USCIS Guidance on Expedited EADs for Healthcare and Childcare Workers

If you are a healthcare worker or a childcare worker who has a pending Form I-765, Application for Employment Authorization renewal application and your Employment Authorization Document (EAD) expires in 30 days or less or has already expired, you can request expedited processing of your EAD renewal application. USCIS had previously announced this flexibility for qualifying healthcare workers assisting public health efforts in response to the COVID-19 pandemic. USCIS is now extending this flexibility to qualifying childcare workers.

Do You Qualify?

To determine whether you are a qualifying healthcare worker, see this DHS advisory memorandum ("Healthcare/Public Health" section, pages 7-9) (PDF).

To determine whether you are a qualifying childcare worker, see the U.S. Department of Labor's Standard Occupational Classification (SOC) code 39-9011, which includes workers who "attend to children at schools, businesses, private households, and childcare institutions" and "perform a variety of tasks, such as dressing, feeding, bathing, and overseeing play." (Note that this definition does *not* include preschool teachers or teaching assistants.)

Next Steps

If you qualify, call the USCIS Contact Center to request expedited processing of your EAD based on your circumstance as a healthcare worker or a childcare worker with an EAD that will expire within 30 days or has already expired.

Additional Information

Be prepared to provide evidence of your profession or current employment as a healthcare worker or childcare worker. If the evidence you provide is not sufficient, we may not accommodate your request for expedited processing of your Form I-765. Expedited processing only means that USCIS will process the application and issue a decision faster.

Source: USCIS

Six Potential Major Impacts of Proposed New EB-5 Investor Visa Law

Table of Contents:

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1) Pooled Directs are Dead:

Congress wants everyone except individuals doing a single solo Direct EB5 just for their own business, to go through a RC. Even 2 friends both of whom manage a business will need to go through a RC. Even a solo investor relying on indirect jobs would need to go through a RC. Given that solo EB5s are less than 1% of the EB5 market, this effectively converts the EB5 program into a RC program. The golden era of pooled directs is over, and the era of pooled directs is also over.

2) Concurrent filing for Adjustments brings EB5 to USA:

Concurrent filing of adjustment of status along with a I-526 will have a significant impact on the EB5 market. Adjustment of status will be available ONLY for those already in the US and for all countries whose EB5 numbers are current (i.e. all countries EXCEPT China and Vietnam). This has three consequences:

- There will be a move towards adjustment of status as opposed to consular processing–making the EB5 market more USA-centric.
- By providing EADs and advance parole–the lion's share of benefits of having a Green Card-without a long wait to have I-526 processed– expands the countries whose nationals in the US will be using EB5 to secure green cards.
- Market of Indians on H1B in the USA will expand to become nearly one third of the total EB5 global market, in other words the single largest source of EB5 investors in the world will be right here in good 'ole USA.

3) Restrictive TEAs remove half the urban RCs

With strict TEA definitions identical to the November 2019 regulation–but now built into the statute itself, more than 50% of urban RC projects will no longer qualify for TEA–and will be effectively out of the EB5 market (smaller investment differential notwithstanding, see below). Priority processing for rural RCs gives rural projects an additional advantage. USCIS is notorious for slow processing–but now that the priority processing for rural applications is in the statute itself–rural RCs will likely use litigation to ensure that USCIS allots disproportionate resources and demonstrates resulting faster processing times for rural applications. Asking for relief using declarative judgements from courts in addition to mandamus actions may be among the strategies used by rural projects to prod USCIS along. With half the RCs exiting the EB5 market, the entire EB5 ecosystem will undergo a major upheaval - this includes all the interconnections between immigration attorneys, securities counsel, business plan writers, economists and rent-a-center RCs — welcome to a new EB5 world!

4) Far East Agents are subject to US jurisdiction:

Dramatic changes are in the integrity measures–many of which are in securities compliance:

- Both SEC and USCIS are now tasked with maintaining Securities laws compliance, the agencies have overlapping jurisdiction, a result, no doubt, of Congress's view that immigrant investors need special protections. We encourage USCIS and SEC to form an interagency task force to identify patterns of securities violations, and periodically publish their findings. This will go a long way to weed out bad actors.
- The new integrity measures include full disclosure of agent fees to investors. Many agents do provide valuable service and deserve significant compensation –which should be done transparently. We encourage USCIS and DOS to build such disclosures into the immigration forms themselves, and not rely on PPMs alone, which immigrant investors frequently find hard to understand.
- ILW has long argued that foreign agents cannot operate outside US jurisdiction, and now the US Congress has stepped up to verify that this assertion is correct. East Asian agents will have a difficult time meeting the new requirements in this statute. Agents from Korea, Vietnam, Taiwan and China will need to give up many of their common practices such as lack of disclosures to investors, kickbacks, side agreements, etc - 2022 will be an interesting period for Far East agents. We encourage US consulates in the Far East to educate agents about the requirements of this new EB5 law.

5) A changed EB5 landscape: 5 Year extension is historic, All projects need 10% direct jobs, $800k means a different kind of investor

- 5 Year extension is historic: From 1992 to 2007, RCs were extended many years at a time. But from 2007 to 2022, there was just one period of long term extension–October 2009 to September 2015. That was the golden era of EB5 in which the entire Chinese market was developed. A 5 year extension will enable serious players to make serious long term efforts to develop new markets. We congratulate Senators Grassley and Leahy for creating a stable new environment for EB5.
- All projects need 10% direct jobs: There is a cap of 90% for indirect jobs and a cap of 75% for construction jobs. This means that 10% of jobs must be Direct non-construction jobs. Many real estate projects will fail to meet this requirement - a whole new EB5 world is on the way.

- $800k means a different kind of investor: It remains to be seen how much raising from $500k to $800k will impact the EB5 market. Further,if the history of the $1million non-TEA market is any guide, then the market share of $1.05million non-TEA projects will be vanishingly small.

6) Other EB5 issues: Grandfathering, Age-outs, Source of funds tweaks, Ban on foreign ownership

- Grandfathering: Kudos to AIIA which was instrumental in championing the "Grandfathering" provision that protects past and future EB5 investors from future lapses in RC program.
- Age-outs: The new age out provisions are more liberal than the CSPA used for other kinds of immigration. We hope similar liberalization of aging children will be enacted in the future for all family and employment based categories.
- Source of funds tweaks: Source of Funds now includes admin fees and other investment related expenses.
- Ban on foreign ownership: There is a ban on foreign and foreign government ownership of RCs.

Credit to our friends at ILW.COM for these observations. please know that these opinions are not necessarily those of the immigration and nationality lawyers or immigration specialist at the NPZ Law Group.

EB-5 Regional Center Program to Receive Reauthorization (Source: CMB Regional Centers)

The **EB-5 Regional Center Program** (EB-5) will be officially reauthorized 60 days from the passage of the Federal appropriations package for FY 2022. The legislation, named the "EB-5 Reform and Integrity Act of 2022", is great news not just for new investors interested to immigrate to the United States, but for the thousands of investor families that have been waiting in limbo due to the sunset of the program in June of 2021.

CMB Regional Centers, a leader in the EB-5 industry, has been working closely with others in the industry and law makers to establish long-term reauthorization and integrity reforms since 2015. Pat Hogan, CMB's CEO and Founder, is one of the longest serving board members with IIUSA, the largest trade organization involved with the EB-5 regional center program. His work was essential to achieve this result.

CMB has always lived by this motto: **take care of the investor first, and we will both achieve success.** The new EB-5 legislation establishes important integrity and transparency measures for the industry, and protects the thousands of immigrant investor families with pending EB-5 petitions, allowing them to continue on their path to permanent residency in the United States.

This new legislation implements many changes to the program that every current and prospective investor should understand:

Changes to the EB-5 Regional Center Program:

- The Regional Center Program will be reauthorized through September 30, 2027 (5.5 years).
- The legislation includes 'grandfathering' for all investors who have an I-526 on file, or who file their I-526 petitions prior to September 30, 2026. Those investors will be able to complete the EB-5 process, even if the regional center program were to lapse again.
- The new minimum investment level will be $1.05 million, which will be reduced to $800,000 if the project is located in a qualified high-unemployment or rural area, or is an infrastructure project.
- The new investment amounts will take effect immediately, but the regional center program will not be officially reauthorized for 60 days. During this time, regional centers and regional center investors will not be able to file new petitions with the USCIS.
- The minimum investment amount will be automatically adjusted for inflation every fifth year beginning on January 1, 2027 for the higher dollar amount, and the lower amount will be calculated at 75% of the higher amount.
- New visa set-asides have been implemented: 20% of all visas will go to investors who invest in projects that qualify as rural, 10% will be reserved for high unemployment areas investments as defined under the new law, and 2% will be for infrastructure projects.
- Investors that are already in the United States on another visa can now file their I-526 and their adjustment of status petition (I-485) at the same time.
- New integrity measures are established that will protect investors by adding more reporting requirements for regional centers and their operators, and requiring disclosures of all fees paid.

Prospective investors that are interested to move forward with a new regional center investment have 60 days to begin their due diligence on potential investment opportunities. In the next 60 days, you will need to determine what immigration attorney will handle your case, and make the important decision of what regional center you want to invest with and what project you want to select.

CMB has an over 20 year history of assisting EB-5 investors and their families with their immigration pursuits. To date, nearly 6,000 investors from 103 countries have chosen CMB for their EB-5 investments. CMB's 78 separate investment partnerships maintain a 100% project approval rate when adjudicated by the United States Citizenship and Immigration Services (USCIS). CMB continues to work with the same strong developers that have the same commitment of maintaining a successful track record.

CMB has **EB-5 projects available** that meet all the requirements of the newly passed legislation that reauthorized the EB-5 regional center program. These EB-5 investment opportunities involve the construction of logistics facilities and have long term leases already in place with Fortune 500 companies in the e-commerce industry.

Available units in CMB EB-5 partnerships may subscribe fast. We encourage all prospective EB-5 investors to select an immigration attorney and begin the due diligence process now.

Sincerely,

CMB Regional Centers

****Credit to CMB Team at cmbeb5visa.com for these observations. Please know that these opinions are not necessarily those of the immigration and nationality lawyers at the NPZ Law Group.*

USCIS Updates Guidance on Employment Authorization for E and L Nonimmigrant Spouses

USCIS is updating guidance in the USCIS Policy Manual to address the documentation that certain E and L nonimmigrant spouses may use as evidence of employment authorization based on their nonimmigrant status.

On Nov. 12, 2021, USCIS issued a policy announcement to clarify that USCIS will consider E and L spouses to be employment authorized based on their valid E or L nonimmigrant status. Since the November 2021 announcement, the Department of Homeland Security added new Class of Admission (COA) codes to distinguish between E and L spouses and children.

As of Jan. 30, 2022, USCIS and CBP began issuing Forms I-94 with the following new COA codes for certain E and L spouses: E-1S, E-2S, E-3S, and L-2S. An unexpired Form I-94 reflecting one of these new codes is acceptable as evidence of employment authorization for spouses under List C of Form I-9.

If you are an E or L spouse age 21 or over who has an unexpired Form I-94 that USCIS issued before Jan. 30, 2022, USCIS will mail you a notice beginning on or about April 1, 2022. This notice, along with an unexpired Form I-94 reflecting E-1, E-2, E-3, E-3D, E-3R, or L-2 nonimmigrant status, will serve as evidence of employment authorization. If you are an E or L spouse and under 21, or if you have not received your notice by April 30, email E-L-married-U21@uscis.dhs.gov to request a notice.

USCIS will only send notices to individuals identified as qualifying spouses based on a Form I-539 approved by USCIS. Individuals who received their Form I-94 from U.S. Customs and Border Protection (CBP) should visit www.cbp.gov.

Policy Alert: **https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220318-EmploymentAuthorization.pdf**

If you have any questions about how the immigration and nationality laws in the United States may impact you or your family, or if you want to access additional information about United States or Canadian immigration and nationality laws, please feel free to get in touch with the immigration and nationality lawyers at Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. You can send us an email at info@visaserve.com or you can call us at 201-670-0006 extension 104. In addition, we invite you to find more information on our website at www.visaserve.com

Form I-9 Update: Documentation of Employment Authorization for Certain E and L Nonimmigrant Dependent Spouses

On March 18, 2022, USCIS issued a Policy Alert titled 'Documentation of Employment Authorization for Certain E and L Nonimmigrant Dependent Spouses'. As of January 30, 2022, USCIS and CBP began issuing Form I-94, Arrival-Departure records, with new classes of admission (COA) codes for certain E and L nonimmigrant dependent spouses who are employment authorized based on their status. The COA designations for E nonimmigrant spouses are E-1S, E-2S, E-3S, and L-2S for nonimmigrant L spouses. Forms I-94 containing these code designations are acceptable as a List C, #7 Employment Authorization Document issued by the Department of Homeland Security.

Employees providing this as a List C document must also provide a List B Identity document from the Lists of Acceptable Documents. For more information on acceptable Form I-9 documentation, please visit Form I-9 Acceptable Documents Webpage.

USCIS link: https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/documentation-of-employment-authorization-for-certain-e-and-l-nonimmigrant-dependent-spouses

USCIS Urges Eligible Individuals to Consider Applying for Adjustment of Status in the EB-2 Category Based on the April Visa Bulletin Date for Filing for India

In the recently published April Visa Bulletin, the Department of State advanced the Date for Filing (also known as the application date) applications for an immigrant visa or adjustment of status in the employment-based, second preference (EB-2) category for India from Sept. 1, 2013, to Sept. 1, 2014.

If you are a noncitizen who has an approved immigrant visa petition in the EB-2 category chargeable to India and a priority date earlier than Sept. 1, 2014, USCIS encourages you to consider applying for adjustment of status in April by filing Form I-485, Application to Register Permanent Residence or Adjust Status. You should include your Form I-693, Report of Medical Examination and Vaccination Record, with your Form I-485 to save time. You are not required to file Form I-693 at the same time you file Form I-485, but filing both forms at the same time may eliminate the need for USCIS to issue a Request for Evidence to obtain your Form I-693. This may also help avoid adjudication delays if USCIS decide that you do not need to be interviewed.

As previously announced, we continue to encourage eligible applicants to consider requesting to transfer the underlying basis of their pending adjustment of status applications in the EB-3 category to the EB-1 or EB-2 category if they meet the following criteria: a visa is unavailable to them in the EB-3 category; they have a pending or approved Form I-140, Immigrant Petition for Alien Workers; and a visa is available in the EB-1 or EB-2 category.

USCIS link: https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-employment-based-immigrants

DOS Update: Local Filing of Form I-130 Petitions Filed by U.S. Citizens on Behalf of Afghan, Ethiopian, and Ukrainian Immediate Relatives Fleeing Conflict

If you are a U.S. citizen who is physically present overseas with your Afghan, Ethiopian, or Ukrainian immediate family members and have not yet filed an immigrant visa petition with USCIS, you may request to locally file a Form I-130 petition at the nearest U.S. embassy or consulate that processes immigrant visas. This applies only to U.S. citizens affected by the large-scale disruptive events in Afghanistan, Ethiopia, and Ukraine. Such citizens must be physically present in the country where they wish to file petitions. They can request to locally file on behalf of their spouses, unmarried children under the age of 21, and parents who fled Afghanistan after August 2, 2021; Ethiopia after November 1, 2020; or Ukraine after February 1, 2022.

Please email your nearest U.S. embassy or consulate's Immigrant Visa Unit if you believe you may qualify to locally file a Form I-130 petition. You can find those email addresses at each individual embassy or consulate website. A list of U.S. embassies and consulates is available at https://www.usembassy.gov.

If you have already filed a Form I-130 petition with USCIS for your immediate relative and it has not yet been approved, you may inquire with USCIS regarding expedition: https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request.

DOS link: **https://travel.state.gov/content/travel/en/News/visas-news/local-fling-of-form-i-130-petitions-filed-by-u-s-citizens-on-behalf-of-afghan-ethiopian-and-ukrainian-immediate-relatives-fleeing-conflict.html**

TPS Update: Secretary Mayorkas Designates Afghanistan for Temporary Protected Status

The Department of Homeland Security (DHS) announced the designation of Afghanistan for Temporary Protected Status (TPS) for 18 months. Only individuals who are already residing in the United States as of March 15, 2022, will be eligible for TPS.

"This TPS designation will help to protect Afghan nationals who have already been living in the United States from returning to unsafe conditions," said Secretary Alejandro N. Mayorkas. "Under this designation, TPS will also provide additional protections and assurances to trusted partners and vulnerable Afghans who supported the U.S. military, diplomatic, and humanitarian missions in Afghanistan over the last 20 years."

Secretary Mayorkas is designating Afghanistan for TPS on the statutory basis of ongoing armed conflict and extraordinary and temporary conditions that prevent the country's nationals from returning in safety. Armed conflict that poses a serious threat to the safety of returning nationals is ongoing in Afghanistan as the Taliban seeks to impose control in all areas of the country and Islamic State-Khorasan (IS-K) conducts attacks against civilians. Extraordinary and temporary conditions that further prevent nationals from returning in safety include a collapsing public sector, a worsening economic crisis, drought, food and water insecurity, lack of access to healthcare, internal displacement, human rights abuses and repression by the Taliban, destruction of infrastructure, and increasing criminality.

Through Operation Allies Welcome, most Afghan nationals who arrived as part of the evacuation effort were paroled into the United States on a case-by-case basis, for humanitarian reasons, for a period of two years and received work authorization. These individuals may also be eligible for TPS. Additional information about registering for TPS can be found at Temporary Protected Status | USCIS.

TPS will apply only to those individuals who are already residing in the United States as of March 15, 2022, and meet all other requirements, including undergoing security and background checks. Those who attempt to travel to the United States after March 15, 2022, will not be eligible for TPS.

The 18-month designation of TPS for Afghanistan will go into effect on the publication date of the forthcoming Federal Register notice. The Federal Register notice will provide instructions for applying for TPS and an Employment Authorization Document.

link: https://www.dhs.gov/news/2022/03/16/secretary-mayorkas-designates-afghanistan-temporary-protected-status

Immigration Help Available to Those Affected by Special Situations, Including the Invasion of Ukraine

U.S. Citizenship and Immigration Services reminds the public that CIS offer immigration services that may help people affected by extreme situations, including the invasion of Ukraine.

The following measures may be available on a case-by-case basis upon request:

- Changing a nonimmigrant status or extending a nonimmigrant stay for an individual currently in the United States. If you fail to apply for the extension or change before expiration of your authorized period of admission, we may excuse that if the delay was due to extraordinary circumstances beyond your control;
- Reparole of individuals previously granted parole by USCIS;
- Expedited processing of advance parole requests;
- Expedited adjudication of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited adjudication of petitions or applications, including employment authorization applications, when appropriate;
- Consideration of fee waiver requests due to an inability to pay;
- Flexibility for those who received a Request for Evidence or a Notice of Intent to Deny but were unable to submit evidence or otherwise respond in a timely manner;
- Flexibility if you were unable to appear for a scheduled interview with USCIS;
- Expedited replacement of lost or damaged immigration or travel documents issued by USCIS, such as a Permanent Resident Card (Green Card), Employment Authorization Document, or Form I-94, Arrival/Departure Record; and
- Rescheduling a biometric services appointment.

Note: When you request help, please explain how the impact of the extreme situations or unforeseen circumstances, such as the invasion of Ukraine, created a need for the requested relief.

USCIS Link: https://www.uscis.gov/newsroom/alerts/immigration-help-available-to-those-affected-by-special-situations-including-the-invasion-of-ukraine

If you have any questions about how the immigration and nationality laws in the United States may impact you or your family, or if you want to access additional information about United States or Canadian immigration and nationality laws, please feel free to get in touch with the immigration and nationality lawyers at the Nachman Phulwani Zimovcak (NPZ) Law Group. You can send us an email to us at info@visaserve.com, or you can call us at 201-670-0006 extension 104. In addition, we invite you to find more information on our website at www.visaserve.com

USCIS Update: Secretary Mayorkas Designates Ukraine for Temporary Protected Status for 18 Months

The Department of Homeland Security (DHS) announced the designation of Ukraine for Temporary Protected Status (TPS) for 18 months.

"Russia's premeditated and unprovoked attack on Ukraine has resulted in an ongoing war, senseless violence, and Ukrainians forced to seek refuge in other countries," said Secretary Alejandro N. Mayorkas. "In these extraordinary times, DHS will continue to offer their support and protection to Ukrainian nationals in the United States."

A country may be designated for TPS when conditions in the country fall into one or more of the three statutory bases for designation: ongoing armed conflict, environmental disasters, or extraordinary and temporary conditions. This designation is based on both ongoing armed conflict and extraordinary and temporary conditions in Ukraine that prevent Ukrainian nationals, and those of no nationality who last habitually resided in Ukraine, from returning to Ukraine safely. These conditions result from the full-scale Russian military invasion into Ukraine, which marks the largest conventional military action in Europe since World War II. This invasion has caused a humanitarian crisis with significant numbers of individuals fleeing and damage to civilian infrastructure that has left nearly a million individuals without electricity or water or access to food, basic supplies, shelter, and emergency medical services.

Individuals eligible for TPS under this designation must have continuously resided in the United States since March 1, 2022. Individuals who attempt to travel to the United States after March 1, 2022, will not be eligible for TPS. Ukraine's 18-month designation will go into effect on the publication date of the forthcoming Federal Register notice. The Federal Register notice will provide instructions for applying for TPS and an Employment Authorization Document (EAD). TPS applicants must meet all eligibility requirements and undergo security and background checks.

If you have any questions about how the immigration and nationality laws in the United States may impact you or your family, or if you want to access additional information about United States or Canadian immigration and nationality laws, please feel free to get in touch with the immigration and nationality lawyers at the Nachman Phulwani Zimovcak (NPZ) Law Group. You can send us an email to us at info@visaserve.com, or you can call us at 201-670-0006 extension 104. In addition, we invite you to find more information on our website at www.visaserve.com

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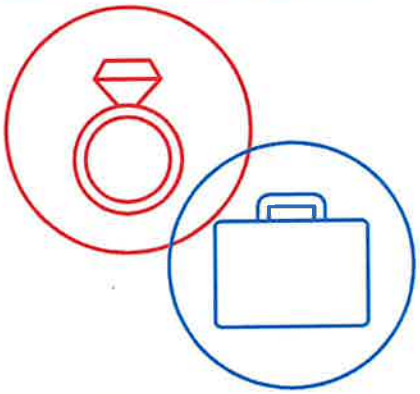
Changes Affecting Employment Authorization for L-2, E, and H-4 Dependent Spouses



Highlights

- L-2 and E dependent spouses are no longer required to apply for an employment authorization document (EAD) to work in the United States.
- Certain L-2 and E dependent spouses who choose to apply for an EAD as proof of work authorization are eligible for automatic extensions of EADs for up to 180 days.
- Certain H-4 dependent spouses are eligible for automatic extensions of EADs for up to 180 days.

Overview

On November 12, 2021, USCIS announced that L-2 and E dependent spouses are no longer required to apply for an EAD to work in the United States. Instead, L-2 and E dependent spouses are authorized to work in the United States just by virtue of holding L-2 or E status but may continue applying for EADs, if desired.

The USCIS policy announcement also allows certain H-4 spouses to obtain automatic extensions of their EAD for up to 180 days. The automatic extension also applies to L-2 and E dependent spouses that choose to apply for an EAD as proof of work authorization. Note that the automatic EAD extension is available in very limited circumstances, and L-2, E, and H-4 dependent spouses should speak to their immigration attorney to explore their eligibility.

These changes are a significant departure from USCIS's previous policy, which required L-2 and E dependent spouses to apply and wait for an EAD to be issued before they could begin working. In addition, L-2, E, and H-4 dependent spouses were not previously eligible for automatic EAD extensions. Given that government processing times for EADs can be a year or more, L-2, E, and H-4 dependent spouses regularly experienced long periods of unemployment while they waited for their EADs to be approved. USCIS's policy change should help alleviate some of the work authorization issues experienced by these spouses.

Challenges and Implementation of the New Policy for L-2 and E Dependent Spouses

This USCIS policy change has been a welcome improvement, but it did not automatically create a system that provided L-2 and E dependent spouses with documentation needed to prove they can lawfully work in the United States. Specifically, the government did not provide L-2 and E dependent spouses with documents needed to complete Form I-9 (a required form used by employers to verify an employee's ability to work in the United States).

USCIS and CBP have begun annotating L-2 and E entry and approval documents (Form I-94) with an "S" designation to indicate that the holder is a dependent spouse and thus eligible to work. The documents with an "S" designation can be used by L-2 and E dependent spouses to show employers they are authorized to work in the United States. If an L-2 or E dependent spouse receives an entry or approval document without an "S" designation, they should contact their immigration attorney to discuss potential paths for correcting their documents.

Moreover, USCIS announced on March 18, 2022 that it will begin mailing new notices beginning on April 1, 2022, with the new codes to E or L spouses age 21 or over who have an unexpired Form I-94 that was issued before January 20, 2022. An E or L spouse who is under the age of 21 should request a notice by emailing E-L-married-U21@uscis.dhs.gov.

For more information on USCIS's L-2, E, and H-4 employment authorization changes, please contact *Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. at 201- 670-0006 (x104) or email to info@visaserve.com*

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NO MORE COMBO CARDS?

Are You a Green Card Applicant with a Pending I-485 Adjustment of Status Application?

If so, you may be expecting to receive an employment authorization document (EAD) and advance parole (AP) combo card. However, USCIS recently began issuing the two documents separately.

What Is a Combo Card?

In 2011, USCIS announced that they would begin issuing employment and travel authorization on a single "combo" card for those green card applicants already living lawfully in the United States and filing an adjustment of status (AOS) application. By combining the documents, USCIS enabled applicants to carry a single document that was more durable and secure than the previous AP document.

What Did a Combo Card Look Like and What Should I Expect in the Mail Now?

Combo Card

Combo cards look very similar to EAD cards, but they include text at the bottom of the card that says, "Serves as I-512 Advance Parole."

Regular EAD Card

EAD-only cards include text that states that they are "not valid for reentry to U.S." To travel, you must have a separate AP document.

Why Did USCIS Stop Issuing Combo Cards and How Does this Affect Me?

USCIS has stopped issuing combo cards in an effort to reduce growing EAD backlogs that have created employment interruptions for applicants. Because the two documents will now be sent to you separately, you may receive your EAD card before your AP document.

It's important to understand that the EAD card alone will not permit you to travel and re-enter the United States. You must carry your separate AP document issued by USCIS to travel.

If you have questions, we encourage you to reach out to our office at *Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. at 201- 670-0006 (x104) or email to info@visaserve.com*.

The Advance Parole Is a Separate Document That Looks Like This

Admission to the United States

When you enter the United States, you are inspected by a Customs and Border Protection (CBP) agent. After approving your admission to the United States, the border inspector does two things:

1. Stamps your passport with an admission date, expiration date, and the class of admission (such as B-2 for tourist, WT for ESTA, or H-1B for H-1B worker).
2. Enters your admission record into CBP's database.

Always check your passport to ensure you know when the period of admission ends (the expiration date of your status) before leaving the port of entry. The best time to catch and fix a mistake is at that moment.

Passport Expiration

Expiration dates are different for different visa categories, but there is one rule that governs all admissions: The government will never give you a period of admission beyond the expiration of your passport. If your passport will expire soon, make sure you pay attention to when your admission period expires, because it may be shorter than you expect.

How to Confirm the Date Your Status Expires

CBP used to staple a paper I-94 into a traveler's passport. This no longer happens. Now, travelers can access their admission records online at https://i94.cbp.dhs.gov/. This will list your I-94 admission number, visa classification, and the date your status expires. You can also access your travel history on the CBP website.

Changing or Extending Your Status in the United States

People often can extend their stay in the United States or change the class of admission. This is done by USCIS. When USCIS extends a stay or changes a class of admission, USCIS issues a new I-94 that replaces the one issued by CBP. The new I-94 is usually a detachable portion in the lower right-hand side of the I-797A Approval Notice. The new I-94 now controls the period of admission.

USCIS will issue a new I-94 when approving a change of status or an extension of status. However, this information is not updated on CBP's I-94 website. It is essential, therefore, that you keep a copy of any USCIS approval notice.

Immigration attorneys and government agencies will need this information to help you.

CONTINUE TO PAGE 2 ▶

What If There Is a Mistake in the Admission Record?

The sooner a mistake is found, the easier it is to fix. To fix a mistake, you must go to the right agency, prove why it was a mistake, and ask for the admission record to be corrected. This is not as clear-cut or as easy as it should be. If you have any fears or concerns about trying to correct a mistake, you should contact your immigration attorney. An immigration attorney can help fix a governmental mistake.

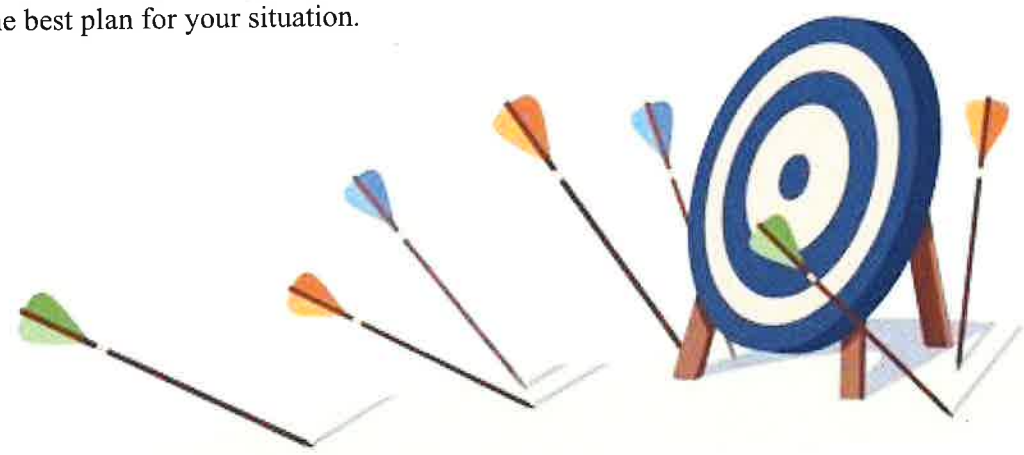
If the border inspector makes a mistake in your admission record, you will need to visit a local CBP Deferred Inspection Site to have the admission corrected. A list of Deferred Inspection Sites can be found on CBP's website, https://www.cbp.gov, under the "Ports" link at the bottom of the page.

If USCIS makes a mistake in your admission record when extending or changing your status, you need to contact USCIS. This usually requires filing an application or petition with USCIS.

What to Do If the Mistake Is Discovered after the Admission Period Ends

Fixing a mistake before the admission period ends is always best. Sometimes, the expiration date has already passed before the mistake is discovered. If you discover that the I-94 has already expired, do not panic.

Contact your immigration attorney first. The attorney can evaluate whether it is possible to fix the mistake in the United States or whether you will have to leave the United States and apply for a new visa. You will have to explain why the mistake was not discovered before the I-94 expired. The attorney will help you create a plan to manage and resolve the problem. Sometimes, it is possible to fix a mistake in the United States, depending on the situation. Sometimes, the only way to fix the problem is to leave the United States. The attorney can help you make the best plan for your situation.



If you would like more information on this issue or would like to retain our services, please contact *Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. at 201- 670-0006 (x104) or email to info@visaserve.com*.

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Expediting NIV Appointments

The COVID pandemic has made international travel unpredictable. The conditions in every country are different and change quickly, making getting a visa appointment more complicated.

Consulates must balance expanding routine visa services with limited resources, other responsibilities, and country conditions. As a result, timely visa appointments are not always available and the rules for requesting an expedited visa appointment are different from consulate to consulate.

How to Request an Expedited Visa Appointment

We encourage you to consider the following guidelines for requesting an expedited visa appointment:

1. **Have realistic expectations**
   - First, consult https://travel.state.gov/content/travel/en/us-visas.html to find the Visa Wait Times for the consulate where you intend to apply. Every consulate updates the wait times on a regular basis. Check the visa wait times as soon as you know that you need to travel. At best, you may not need to request an expedited appointment. At worst, you will know how long the backlog is and have maximized the time you have to prepare a request.
   - Before you request an expedited appointment, you must file a nonimmigrant visa application and pay all application fees.
   - A request may be denied—even an urgent and compelling request—if the consulate does not have the staff or resources.
   - Even if the expedite request is granted, this does not always mean that you will get an immediate appointment. For example, if routine appointments are being scheduled six months out, an expedited appointment may still be three or four months away.
2. **Be prepared to thoroughly explain and prove the urgency of your travel**
   - Unforeseen emergency travel for humanitarian reasons (such as urgent medical care or family crisis) is more likely to qualify for an expedited appointment. Plan in advance what you are going to say and have documentation available to support your request.
   - Keep in mind that each consulate makes its own guidelines for expediting appointments, and you should prepare your request with those guidelines in mind. Check the consulate's website to see what requirements it has. You can find consulate websites at https://www.travel.state.gov under "Find U.S. Embassies and Consulates."
3. **Work with your attorney to meet the consulate's requirements**
   - Your attorney is your ally. Your attorney will typically have experience with other clients' requests for expedited appointments and familiarity with the experiences of their colleagues. Working with an attorney gives you access to that experience and the best chance for success.
   - The attorney can help you prepare the request for an expedited appointment and can also discuss your legal options if the expedited request is denied or if the appointment is scheduled later than you would like.

If you would like more information on this issue or would like to retain our services, we encourage you to contact our office at *Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. at 201- 670-0006 (x104) or email to info@visaserve.com*