

USCIS Final Rule increases automatic extension period for certain EAD renewal applicants

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12/13/24 | Legal Bulletin #1124

Long processing times for renewal of Employment Authorization Documents have resulted in the loss of work authorization for many individuals because their EAD cards expired before new cards could be issued. Individuals who filed for renewals were entitled to automatic extensions of 180 days, but the U.S. Citizenship and Immigration Services was taking more than 180 days to process the renewal applications.

The problem is now resolved. On December 10, the USCIS [announced](#) a final rule to increase the automatic extension period from 180 days to 540 days for certain renewal applicants who timely and properly filed Form I-765 (Application for Employment Authorization) on or after May 4, 2022. [The final rule was published today and will take effect January 13.](#)

The final rule, which was announced after two temporary rules that increased the automatic extension period, will help to prevent EAD extension applicants from losing their work authorizations due to lengthy USCIS processing times.

Again, the more generous automatic renewal period applies to eligible EAD renewal applicants who timely and properly filed I-765 applications on or after May 4, 2022.

EAD categories eligible for an automatic extension

The "Class requested" or "Eligibility Category" on your Form I-797C, Notice of Action, receipt notice for your Form I-765 renewal application	Description
A03	Refugee
A05	Asylee
A07	N-8 or N-9

A08	Citizen of Micronesia, Marshall Islands, or Palau
A10	Withholding of Deportation or Removal Granted
A12	Temporary Protected Status (TPS) Granted
A17	Spouse of principal E nonimmigrant with an unexpired I-94 showing E (including E-1S, E-2S and E-3S) nonimmigrant status
A18	Spouse of principal L-1 Nonimmigrant with an unexpired I-94 showing L-2 (including L-2S) nonimmigrant status
C08	Asylum Application Pending
C09	Pending Adjustment of Status under Section 245 of the Act
C10	Suspension of Deportation Applicants (filed before April 1, 1997), Cancellation of Removal Applicants, Special Rule Cancellation of Removal Applicants Under NACARA
C16	Creation of Record (Adjustment Based on Continuous Residence since Jan. 1, 1972)

Heads, Immigration

[Piyumi Samaratunga](#), [Justin Coffey](#)

C19	USCIS determined applicant is prima facie eligible for TPS and can receive an EAD as a “temporary treatment benefit”
C20	Section 210 Legalization (pending I-700)
C22	Section 245A Legalization (pending I-687)
C24	LIFE Legalization
C26	Spouses of certain H-1B principal nonimmigrants with an unexpired I-94 showing H-4 nonimmigrant status
C31	VAWA Self-Petitioners

How to qualify

Applicants in the eligible categories qualify for an automatic extension of an EAD renewal application if the applicant did the following:

- Properly and timely filed a Form I-765 renewal application before the current EAD expired (exceptions apply for certain applicants with Temporary Protected Status or a pending TPS application), and
- Filed the renewal application under a category that is eligible for an automatic extension, and the category on the applicant’s current EAD matches the “Class Requested” listed on the applicant’s Form I-797C Notice of Action, Receipt Notice. For applicants in TPS, this Notice must contain either the A12 or C19 category, but the categories do not need to match.

Compliance with I-9 requirements

Eligible EAD renewal applicants must present proof, for I-9 compliance, that they are entitled to automatic extensions under the new rule. [The USCIS has provided the following guidance:](#)

To present acceptable proof of the automatic extension of employment authorization and/or EAD validity, you can show your Form I-797C receipt notice that refers to the

180-day extension, along with your qualifying EAD (and also your unexpired Form I-94, if you are an H-4, E, or L-2 dependent spouse, including E-1S, E-2S, E-3S and L-2S class of admission codes). This document combination is sufficient proof of an up to 540-day automatic extension under the December 2024 final rule, counting from the expiration date on your current EAD.

If you filed a Form I-765 renewal application on or after May 4, 2022, and before Oct. 27, 2023, you should have received a Form I-797C, Notice of Action receipt notice that has information regarding the up to 540-day automatic extension.

If you filed a Form I-765 renewal application on or after Oct. 27, 2023, and before April 8, 2024, even a Form I-797C notice that refers to a 180-day automatic extension still meets the regulatory requirements of the April 2024 temporary final rule. Therefore, you may present Form I-797C with your facially expired EAD to an employer to demonstrate that you are eligible for the up to 540-day automatic extension. Instead of issuing updated Form I-797C notices, USCIS will update the webpage that is referenced in the Form I-797C notice to reflect the change in the automatic extension period.

If you file a Form I-765 renewal application on or after April 8, 2024, USCIS will issue a Form I-797C, Notice of Action receipt notice with an explanation of the up to 540-day automatic extension period.

Employees and employers should refer to <https://www.uscis.gov/eadautoextend> when determining whether a Form I-797C, Notice of Action, if presented with the facially expired EAD, is acceptable for Form I-9. Employers may attach a copy of the web page with the employee's Form I-9 to document the extension of employment authorization and/or EAD validity.

For additional information on completing the I-9 for employees with automatically extended EADs, please review the [I-9 handbook](#).

An individual's automatic extension period may terminate prior to the maximum period either automatically when USCIS issues a decision on the applicant's Form I-765 renewal application, or upon notice.

A note on the Congressional Review Act

The Congressional Review Act provides Congress with a mechanism for overturning certain recently issued rules. If both chambers of Congress approve a joint resolution that is signed by the President, the rules can be rescinded under the CRA. During the first Trump Administration, the CRA was used to rescind 16 rules that had been recently issued by the outgoing Obama Administration.

Because the Republicans hold majorities in both chambers of Congress, this rule could be subject to rescission through the use of the CRA.

Even if Congress doesn't act, the Trump Administration could attempt to rescind the rule. However, that would require going through the lengthy rulemaking process, which typically takes months or longer and could be the subject of litigation.

Conclusion

The USCIS increasing the EAD extension to 540 days is an important benefit to eligible applicants and their employers. The risk of a gap in an applicant's work authorization will be greatly reduced, thereby allowing the continued employment of these eligible applicants.

LINK INFO:

All embedded, except the second ("The final rule was published today . . .") – for that one, please use pdf which I'm sending with this bulletin.

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