



ALERTS

Rule Granting Automatic 540-Day Extension Of Certain Work Authorization Renewals Expires October 26

August 22, 2023

Highlights

The temporary final rule announced by the USCIS in May 2022 that increased the automatic extension of employment authorization to 540 days will expire on Oct. 26, 2023

After Oct. 26, certain employment authorization document (EAD) renewal applicants will be eligible for the standard automatic extension period of up to 180 days

The USCIS must receive the renewal application before the expiration date on the current EAD

Temporary automatic extensions for certain employment authorizations, instituted in spring 2022 by the U.S. Citizenship and Immigration Services (USCIS), expire on Oct. 26, 2023.

Moving Forward

After Oct. 26, Form I-765 will be eligible for the standard automatic

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extension period of up to 180 days. In the interim, employers and individuals should consider reviewing upcoming EAD expirations for their employees to ensure those eligible take advantage of the 540-day automatic extension while it lasts.

Background

An employment authorization document (EAD) provides proof of U.S. work authorization to individuals in various eligibility categories. Provided the individual continues to be eligible based upon their respective category, they may continue to renew the EAD. To account for processing delays, the USCIS permits [automatic EAD extensions](#) for certain eligibility categories per Form I-765, including the following:

- (a)(3), Refugee
- (a)(5), Asylee
- (a)(7), N-8 or N-9
- (a)(8), Citizen of Micronesia, Marshall Islands, or Palau
- (a)(10), Withholding of Deportation or Removal Granted
- (a)(12), Temporary Protected Status (TPS) Granted
- (a)(17), Spouse of principal E nonimmigrant with an unexpired I-94 showing E (including E-1S, E-2S and E-3S) nonimmigrant status
- (a)(18), Spouse of principal L-1 Nonimmigrant with an unexpired I-94 showing L-2 (including L-2S) nonimmigrant status
- (c)(8), Asylum Application Pending
- (c)(9), Pending Adjustment of Status under Section 245 of the Act
- (c)(10), Suspension of Deportation Applicants (filed before April 1, 1997), Cancellation of Removal Applicants, and Special Rule Cancellation of Removal Applicants Under NACARA
- (c)(16), Creation of Record (Adjustment Based on Continuous Residence Since January 1, 1972)
- (c)(19), Pending initial application for TPS where the USCIS determines applicant is prima facie eligible for TPS and can receive an EAD as a “temporary treatment benefit”
- (c)(20), Section 210 Legalization (pending I-700)
- (c)(22), Section 245A Legalization (pending I-687)
- (c)(24), LIFE Legalization
- (c)(26), Spouses of certain H-1B principal nonimmigrants with an unexpired I-94 showing H-4 nonimmigrant status
- (c)(31), VAWA Self-Petitioners

To be eligible for the automatic EAD extension, the EAD must be filed

under a qualifying category and the USCIS must receive the EAD renewal application before the expiration date on the current EAD.

Temporary Final Rule

Typically, Department of Homeland Security regulations allow for an automatic extension period of up to 180 days from the expiration date stated on the EAD. On May 4, 2022, however, the department implemented a temporary final rule, increasing the automatic extension period to 540 days in an effort to reduce backlogs and provide relief to certain work permit holders.

For more information, please contact the Barnes & Thornburg attorney with whom you work or Michael Durham at 574-237-1145 or mdurham@btlaw.com. This alert was co-authored by Tieranny Cutler, independent contract attorney.

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