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Immigration

USCIS Increases Automatic Work Permit Extension Period for Certain Applicants

Legal Update

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By Immigration Group

This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

U.S. Citizenship and Immigration Services (USCIS) announced a temporary final rule, effective May 4, 2022, that increases to up to 540 days the automatic extension period for work authorization and Employment Authorization Documents (EADs) available to certain EAD renewal applicants.

USCIS said the increased extension period "will help avoid gaps in employment for noncitizens with pending EAD renewal applications and stabilize the continuity of operations for U.S. employers." The rule is expected to affect approximately 87,000 workers who have filed for renewal of their work authorization and whose 180-day automatic extension periods have expired or are about to expire.

USCIS released the following details:

- The TFR, which only applies to those EAD categories currently eligible for an automatic 180-day extension, will temporarily provide up to 360 days of additional automatic extension time (for a total of 540 days) to eligible applicants with a timely filed Form I-765 renewal application pending during the 18-month period after publication of the temporary final rule "while USCIS continues to work through pending caseloads that were exacerbated by the COVID-19 pandemic," USCIS said. Beginning October 27, 2023, automatic extensions of employment authorization and EAD validity will revert to the up-to-180-day period for eligible applicants who timely file Form I-765 renewal applications.
- Noncitizens with a pending EAD renewal application whose 180-day automatic extension has lapsed and whose EAD has expired will be granted an additional period of employment authorization and EAD validity, beginning on May 4, 2022 and lasting up to 540 days from the expiration date of their EAD, such that they may resume employment if they are still within the up to 540-day automatic extension period and are otherwise eligible. Noncitizens with a pending renewal application still covered under the 180-day automatic extension will be granted

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an additional up to 360-day extension, for a total of up to 540 days past the expiration of the current EAD. Noncitizens with a pending renewal application and valid EAD on May 4, 2022, or who timely file an EAD renewal application before October 27, 2023, will be granted an automatic extension of up to 540 days if their EAD expires before the renewal application is processed.

- The automatic extension generally will end upon notification of a final decision on the renewal application or the end of the up-to-540-day period (i.e., up to 540 days after the expiration date on the applicant's facially expired EAD), whichever comes earlier.
- Certain noncitizens who are in the United States may file a Form I-765, Application for Employment Authorization, with USCIS to request employment authorization and an EAD. Other noncitizens whose immigration status authorizes them to work in the United States without restrictions may also use Form I-765 to apply for an EAD that shows such authorization.

Systematic Alien Verification for Entitlements (SAVE) will generally verify employment authorization or this EAD auto-extension as part of initial verification. Additional verification may be required in limited instances such as when the applicant's data provided by the user agency does not match federal immigration records.