

# GMS Flash Alert

## Immigration Edition

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# United States - USCIS Policy Changes for Spouse Work Authorization

On November 10, 2021, U.S. Citizenship and Immigration Services (USCIS) entered into a legal settlement that will ease the process of obtaining work authorization for certain L-2, H-4, and E nonimmigrants.<sup>1</sup>

Under the terms of the settlement, L-2 and E nonimmigrant dependent spouses will be able to work incident to their status without an Employment Authorization Document (EAD), and those with timely filed EAD renewal applications pending with USCIS will qualify for an automatic work authorization extension as long as they continue to hold L-2 or E status beyond their EAD expiry. H-4 spouses will also benefit from an automatic work authorization extension if they timely file an EAD renewal application and continue to have H-4 status beyond the expiration date of their EAD.

## WHY THIS MATTERS

USCIS has been experiencing lengthy delays in processing EAD applications in the last few years. As current USCIS policy does not allow L-2, H-4, and E renewal applicants to benefit from an automatic extension to their work authorization based on timely filed extensions, many L-2, H-4, and E spouses have been forced to stop working as a result of the USCIS processing delays. The policy changes resulting from the recent USCIS legal settlement are welcome news for L-2, H-4, and E nonimmigrants, who could see relief from disruptions to their work authorization in the coming months.

## Impact on L-2 and E Spouses

Prior to the policy change, L-2 and E spouses must apply and be approved for an EAD before they are authorized to work in the United States. Under the terms of the recent USCIS settlement, L-2 and E spouses will be considered authorized to work incident to their status, and can begin employment as soon as they receive L-2 or E status and a valid spousal Form I-94, *Arrival/Departure Record*. They will no longer be required to apply for a separate EAD.

To commence lawful employment, L-2 and E spouses must establish their status by providing a valid Form I-94 specifying that the individual is the spouse of an L-1 or E nonimmigrant. Currently, U.S. Customs and Border Protection (CBP) does not issue Form I-94s that specify that an individual is the spouse (as opposed to the child) of an L-1 or E nonimmigrant. As part of the settlement, USCIS, in cooperation with CBP, will change the Form I-94 to include such specification within 120 days of November 10, 2021.

Additionally, L-2 and E spouses with timely filed EAD renewal applications pending with USCIS, who continue to hold L-2 status beyond their EAD expiry, will qualify for an automatic extension on their work authorization for up to 180 days. This automatic extension will expire at the earlier of (1) the termination of L-2 or E status; (2) the approval or denial of the EAD application; or (3) 180 days from the expiry date on the face of the EAD card.

## Impact on H-4 Spouses

As part of the USCIS settlement, H-4 spouses will also now be eligible to benefit from an automatic extension to their work authorization for up to 180 days, if they timely filed an EAD renewal application and continue to hold H-4 status beyond their current EAD expiry. Similar to L-2 spouses, the automatic work authorization extension afforded to H-4 spouses now expires at the earlier of (1) the termination of H-4 status; (2) the approval or denial of the EAD application; or (3) 180 days from the expiry date on the face of the EAD card.

Within 120 days of November 10, 2021, USCIS will amend the EAD receipt notice currently issued to H-4 spouses to detail the automatic work authorization extension provision. H-4 spouses will then be able to utilize their "facially expired" EAD card, the modified EAD receipt notice, and a valid Form I-94 to prove their valid work authorization.

## Impact on Employers

With the policy changes coming into effect, employers will be required to familiarize themselves with new I-9 guidance for L-2, H-4, and E spouse employees maintaining work authorization by virtue of their L-2 or E status, or pursuant to the EAD automatic-extension provisions.

For L-2 spouse employees, employers may accept the following as evidence of work authorization:

- A Form I-94 specifically stating that the individual is an L-2 spouse;
- A valid EAD indicating Category A18; or
- The following combination of documents:
  - A facially expired EAD indicating Category A18;
  - Form I-797 with Class Requested indicating (a)(18) and showing that an EAD renewal application was filed before the EAD expired; and
  - An unexpired Form I-94 which shows valid L-2 nonimmigrant status.

For E spouse employees, employers may accept the following as evidence of work authorization:

- A Form I-94 specifically stating that the individual is an E spouse;
- A valid EAD indicating Category A17; or

- The following combination of documents:

- A facially expired EAD indicating Category A17;
  - Form I-797 with Class Requested indicating (a)(17) and showing that an EAD renewal application was filed before the EAD expired; and
  - An unexpired Form I-94 which shows valid E nonimmigrant status.

For H-4 spouse employees, employers may accept the following as evidence of work authorization:

- A valid EAD indicating Category C26; or

- The following combination of documents:

- A facially expired EAD indicating Category C26;
  - Form I-797 with Class Requested indicating (c)(26) and showing that an EAD renewal application was filed before the EAD expired; and
  - An unexpired Form I-94 which shows valid H-4 nonimmigrant status.

For L-2, H-4, and E spouse employees relying on the automatic work-authorization-extension provisions, employers must reverify work authorization at the earlier of the end date on Form I-94, the date the I-765 is approved or denied, or the 180th day of the EAD automatic-extension period.

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will aim to keep readers of *GMS Flash Alert* updated on all relevant developments.

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## FOOTNOTE:

1 *Shergill et al. v. Mayorkas*, Case No. 21-cv-1296-RSM; USCIS, [Policy Alert – Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses](#), November 12, 2021.

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## Contact us

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



**Sylvia Yong**  
**Associate Attorney**  
**U.S. Immigration**  
KPMG Law LLP – Tax + Immigration, Canada  
Tel. +1-416-943-7894  
[sylviayong@kpmg.ca](mailto:sylviayong@kpmg.ca)

**Jashan Girn**  
**Associate Attorney**  
**U.S. Immigration**  
KPMG Law LLP – Tax + Immigration, Canada  
Tel. +1-416-468-7557  
[jgirn@kpmg.ca](mailto:jgirn@kpmg.ca)

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