



GMS Flash Alert

Immigration Edition

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United States – Annotating Form I-94 for L-2, E Spouse Work Authorization Begins

On January 31, 2022, U.S. Customs and Border Protection (CBP) began annotating Form I-94, *Arrival/Departure Record*, for L-2 and E spouses to indicate that they have work authorization incident to status. This is in response to U.S. Citizenship and Immigration Services' (USCIS) November 10, 2021 legal settlement, whereby the agency agreed to ease the process of obtaining work authorization for certain nonimmigrants in dependent spouse status.¹ Certain CBP Deferred Inspection Sites have also been amenable to using their discretion in revising previously-issued Forms I-94 for L-2 and E spouses, depending on the individual's last U.S. entry date, port of entry used, and state of residence.

WHY THIS MATTERS

USCIS has been experiencing lengthy delays in processing Employment Authorization Document (EAD) applications in the last few years. As USCIS policy does not allow L-2 and E spouses to benefit from an automatic extension to their work authorization based on timely-filed extensions unless they hold an unexpired Form I-94, many L-2 and E spouses have been forced to stop working as a result of USCIS processing delays.

With CBP beginning to annotate Forms I-94 to allow L-2 and E spouses to be work authorized incident to status, these individuals can now see relief from disruptions to their work authorization, as they will no longer be required to apply for a separate EAD to work in the United States.

New Form I-94 Annotation

From January 31, 2022 onwards, when L-2 and E spouses are admitted into the United States, the Form I-94, *Arrival/Departure Record*, issued to them should have an "S" after their status, specifying that an individual is the spouse (as opposed to the child) of an L-1 or E nonimmigrant. The spouse of an L-1 visa holder should now receive a Form I-94 that indicates "L-2S" as their status, and the spouse of an E visa holder a Form I-94 that indicates either "E-1S", "E-2S", and "E-3S," depending on the specific E category being applied for. This "S" annotation will indicate that the individual is work-authorized incident to status as an L-2 or E spouse.

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Forms I-94 can be found on the [CBP I-94 webpage](#). After entering the United States, it is important for L-2 and E spouses to review their Form I-94 carefully to make sure that it contains the “S” designation. For I-9 verification purposes, L-2 and E spouses may use the properly-annotated Form I-94 as proof of valid work authorization through their period of U.S. admission indicated on the Form I-94.

In the coming months, it is also anticipated that USCIS will begin issuing Forms I-94 with the “S” designation when approving L-2 and E spouses’ applications filed with the agency.

For L-2 and E spouses currently in the United States who do not hold an I-94 annotated with the “S” designation, certain CBP Deferred Inspection Sites have been amenable to using their discretion in revising previously-issued Forms I-94 for L-2 and E spouses, depending on the individual’s last U.S. entry date, port of entry used, and state of residence. Information on CBP Deferred Inspection Sites across the U.S. can be found [here](#).

KPMG NOTE

L-2 and E spouses who do not currently have the “S” designation on their Forms I-94 and who would like to be work-authorized are encouraged to speak with their immigration counsel to discuss case-specific strategy in obtaining work authorization.

Impact on Employers

With CBP beginning to annotate Forms I-94 to allow L-2 and E spouses to work incident to status, employers are required to familiarize themselves with new I-9 guidance for L-2 and E spouse employees. As a reminder, L-2 and E spouse employees may maintain work authorization by virtue of their L-2 or E status, pursuant to a valid EAD, or pursuant to a timely-filed EAD extension application only if they hold an unexpired Form I-94.

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 L-2 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.

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.

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). For our prior coverage of the USCIS legal settlement, see *GMS Flash Alert* [2021-282](#) (November 18, 2021).

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