



# GMS Flash Alert

## Immigration Edition

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# United States - Automatic Employment Authorization Extensions up to 540 Days

On May 3, 2022, U.S. Citizenship and Immigration Services (USCIS) announced a Temporary Final Rule (TFR) qualifying certain employment authorization renewal applicants who previously qualified for an automatic 180-day extension of their Employment Authorization Document (EAD) for a longer automatic extension while their EAD renewal application is pending.<sup>1</sup>

Effective May 4, 2022, certain EAD renewal applicants will temporarily qualify for a maximum of 540 days of automatic extension time from the expiration date stated on the EAD.

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## WHY THIS MATTERS

Employers and employees who qualify for the automatic EAD extension will benefit from the longer automatic extension because of the severe backlogs the USCIS has been experiencing. USCIS recognized that the previous 180-day automatic extension period was not enough for the renewal applicant to receive the new EAD. With the new TFR extension of 540 days, qualifying employees will be less likely to face gaps in employment and work authorization status.

USCIS hopes that the longer automatic EAD extension will not only help avoid gaps in employment for noncitizens with qualifying pending EAD renewal applications but also help stabilize U.S. employers by avoiding disruptions to their operations caused by employee work disruptions due to the delays with work authorization renewals.

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## Background

Even before the TFR took effect, certain individuals who submitted Form I-765 EAD renewal were eligible for a 180-day automatic EAD extension.<sup>2</sup> According to USCIS, the purpose of the automatic EAD extension is to avoid gaps in employment for eligible noncitizens. Due to the COVID-19 pandemic, many federal and state agencies faced labor

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shortages and immense backlogs as the country tried to manage the ongoing health crisis, making the 180-day automatic EAD extension insufficient.

## Temporary Final Rule

The TFR adds 360 days of additional automatic extension time to the initial 180-day extension that USCIS already offered to certain categories of EAD applicants, for a total of 540 days.<sup>3</sup> Form I-765 renewals filed after October 26, 2023, will revert back to the 180-day automatic extension timeframe. USCIS's goal is to achieve a three-month adjudication timeline for EAD applications by the end of Fiscal Year 2023.<sup>4</sup>

Noncitizens with a pending EAD renewal application whose EAD expired will be granted a 540-day extension from the expiration of their EAD starting on May 4, 2022. Individuals with a pending EAD renewal still covered under the 180-day extension will be granted an additional 360-day automatic extension.<sup>5</sup> Individuals who still have a valid EAD and a pending EAD renewal application will be granted a 540-day automatic extension if their EAD expires during the application process.

## Eligibility

Individuals may qualify for an automatic extension of their employment authorization or EADs if:

- They have a properly filed Form I-765 for a renewal of employment authorization or EAD **before** their current employment authorization expires; and
- Are otherwise eligible for renewal:
  - A renewal application is under a category that allows for an automatic extension; and
  - The current category in the employment authorization matches the "class requested" in the I-797C form.

According to USCIS, the following categories are eligible for the new automatic extension period:<sup>6</sup>

- Refugees, asylees, and those with asylum application pending (A3, A5, C8);
- N-8 or N-9 (A7);
- Citizens of Micronesia, Marshall Islands, or Palau (A8);
- Holders of Temporary Protected Status (TPS) granted; Withholding of Deportation or Removal granted; Pending initial application for TPS if USCIS determines applicant is prima facie eligible for TPS and can receive an EAD as a "temporary treatment benefit" (A12; A10; C19);
- E-1, E-2, and E-3 spouses with an unexpired I-94 showing E-1, E-2, or E-3 status (A17);
- L-2 spouses with an unexpired I-94 showing L-2 status (A18);
- Pending Adjustment of Status (AOS) Under Section 245 of the Act (C9);
- Suspension of Deportation Applicants (filed before April 1, 1997); Cancellation of Removal Applicants; Special Rule Cancellation of Removal Applicants Under NACARA (C10);
- Creation of Record (Adjustment Based on Continuous Residence Since January 1, 1972) (C16);

- Section 210 Legalization (pending I-700) and Section 245A Legalization (pending I-687) (C20;C22);
- LIFE Legalization (C24);
- H-4 spouses with an unexpired I-94 showing H-4 status (C26); and
- VAWA Self-Petitioners (C31).

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

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## FOOTNOTES:

- 1 See U.S. Citizenship and Immigration Services, [USCIS Increases Automatic Extension Period of Work Permits for Certain Applicants](#) (May 3, 2022).
- 2 See U.S. Citizenship and Immigration Services, [Automatic Employment Authorization Document \(EAD\) Extension](#) (Last updated May 4, 2022).
- 3 *The Federal Register*, [Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants](#) (May 4, 2022).
- 4 See U.S. Citizenship and Immigration Services, [USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders](#) (March 29, 2022).
- 5 *Supra* note 3.
- 6 *Supra* note 2.

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## Contact us

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