



GMS Flash Alert

Immigration Edition

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United States - USCIS Settlement with Spouses of H-1B and L-1 Workers

On January 19, 2023, U.S. Citizenship and Immigration Services (USCIS) entered into a legal settlement with the spouses of H-1B and L-1 holders that will return to the practice of “bundling” the adjudication of Forms I-539 and I-765, for H-4 and L-2 derivatives, with the underlying Form I-129, when filed concurrently and properly according to USCIS instructions.¹ The present settlement in the Edakunni case follows the November 10, 2021 legal settlement in *Shergill v. Mayorkas*, facilitating the process of work authorization for certain spouses of H-1B, L-1 and E nonimmigrant status holders. (See, [GMS Flash Alert 2021-282](#), November 18, 2021).

WHY THIS MATTERS

This legal settlement restores an element of simplicity to the concurrent filing of an H-1B or L-1 petition and its corresponding applications for H-4 or L-2 status and work authorization for H-4 and L-2 derivative spouses. It is a long-awaited reversal in policy for the spouses of many of H-1B and L-1 holders who have faced extremely long wait times in having their H-4 and L-2, Form I-539 and Form I-765 Employment Authorization Document (EAD) work permit applications adjudicated, and were not able to begin or maintain employment as a result.

Processing times will now be as short as 15 days if bundled petitions are filed through USCIS’s premium processing program, a drastic change from the high of 18 months at one point in time.

Legal Background

Before March 2019, USCIS was adjudicating H-4 and L-2 dependent status and EAD applications alongside their concurrently-filed principal H-1B or L-1 petitions. This came to an end under the Trump Administration with the addition of a biometrics requirement for those seeking to extend H-4 and L-2 status through Form I-539, and a lawsuit ensued.

The plaintiffs filed this lawsuit on March 22, 2021, arguing that USCIS had unlawfully delayed adjudication of their H-4 status extensions, H-4 EAD applications, L-2 status extensions, and unlawfully withheld L-2 EADs.² The claim with respect to the unlawful withholding of L-2 EADs was resolved in *Shergill* in November 2021, resulting in employment authorization incident to L-2 status for spouses and automatic 180-day extensions of H-4 EADs if certain conditions are met.³ Now, in January 2023, we find the present settlement emerging from the original lawsuit filed in March 2021.

Outcome of Settlement

The United States District Court for the Western District of Washington has outlined the terms of the settlement agreement, which took effect on January 25, 2023. It involves the return to simultaneous adjudication (bundling) of change/extensions of H-4 or L-2 status (Form I-539) and H-4 or L-2 EAD applications (Form I-765) alongside petitions for principal H-1B or L-1 status (Form I-129).⁴ Filers must make sure that forms and associated supporting documents are filed concurrently (not individually) and correctly, per USCIS instructions or USCIS will not bundle the adjudications.⁵

KPMG INSIGHTS

This return to a more straightforward adjudication of accompanying applications to principal H-1B and L-1 petitions is an important change for U.S. non-immigrant status-holding individuals. Consequently, they will receive a determinative answer on their filed petitions and derivative applications at the same time, allowing for less convoluted planning and employment outcomes.

The legal settlement agreement has not addressed upgrading petitions filed under regular processing, concurrently with the derivative applications, prior to January 25, 2023. We await further policy guidance from USCIS on that.

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.

FOOTNOTES:

1 *Edakunni v. Mayorkas*, Case No. 21-cv-393-TL, (W.D. Wash. 2023) [Fully-Executed-Edakunni-SA_Redacted.pdf \(nfap.com\)](#).

2 *Id.*

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

4 *Id.*

5 *Id.*

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Contact us

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