

GMS Flash Alert

Immigration

2024-088 | April 15, 2024

United States – Return of Automatic 540-Day Extension for Specific EAD Renewals

On April 8, 2024, U.S. Citizenship and Immigration Services (USCIS) announced in a Temporary Final Rule (TFR) the return of an automatic 540-day extension period for certain employment authorization renewal applicants.¹ The automatic extension begins on the expiration date found on the applicant’s Employment Authorization Document (EAD) while his or her timely filed EAD renewal application is pending, and only applies to EAD renewal applicants who previously qualified for an automatic 180-day extension of their EAD.² The prior TFR on the matter expired on October 26, 2023, and USCIS chose to reintroduce the measure in order to mitigate the ongoing issue of employment authorization gaps facing employees and their employers. (For prior coverage, see [GMS Flash Alert 2022-096](#), May 5, 2022.)

WHY THIS MATTERS

Employers and employees will benefit from the longer automatic extension of the EAD because of the continued backlogs USCIS has been addressing. Even though processing times have been somewhat reduced over the past year, USCIS recognized that the previous 180-day automatic-extension period was not enough for the applicant to receive the renewed EAD. With the return of the 540-day extension, qualifying employees will be less likely to face gaps in employment and work authorization status.

USCIS’ aim is that the longer automatic EAD extension will not only help avoid gaps in employment for noncitizens with qualifying pending EAD renewal applications, but will also help stabilize U.S. employers by avoiding disruptions to their operations caused by delays in work authorization renewals.³

The 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. Applicants who timely filed renewal applications on or after October 27, 2023, will receive the additional 360 days so long as their application remains pending on April 8, 2024. Applicants who file their EAD renewal applications between April 8, 2024 and September 30, 2025, will be granted the automatic 540-day extension from the expiration of

their EAD, and their I-797C receipt notices will specifically reference the 540-day extension. At this point in time, applicable EAD renewals filed after September 30, 2025, will revert back to the 180-day automatic-extension timeframe.

Eligibility

Individuals may qualify for an automatic extension of their employment authorization or EADs if:⁴

- they have a timely filed Form I-765 for a renewal of employment authorization or EAD before their current employment authorization expires, or, during the filing period offered to the country under which they are applying for a Temporary Protected Status (TPS) EAD; and
- they are otherwise eligible for renewal, meaning:
 - a renewal application is under a category that allows for an automatic extension; and
 - the current category of employment authorization they hold matches the “class requested” on the renewal.

According to USCIS, the following categories are eligible for the automatic extension period:

- Refugees, asylees, and those with asylum applications 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-1S, E-2S, or E-3S status (A17);
- L-2 spouses with an unexpired I-94 showing L-2S 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).

The TFR does not apply to F-1 students with a pending STEM optional practical training (OPT) extension. However, the applicant will receive an automatic 180-day extension of his or her employment authorization if the STEM OPT application was filed on time and the prior OPT work authorization expires while the extension is pending.

Furthermore, the automatic 540-day extension period will immediately end if the I-765 renewal application is denied.

KPMG INSIGHTS

For I-9 verification and compliance purposes, applicants may present to their employer the existing EAD card and Form I-797C receipt notice indicating that the EAD extension was timely filed and in the same category as the prior EAD. TPS-related EAD renewal applicants may present the existing EAD and a receipt notice with either category A12 (TPS granted) or C19 (TPS applicant) for employment authorization. Applicants with pending renewal applications as of April 8, 2024, whose receipt notices refer to the 180-day extension period may still use such receipt notices to demonstrate eligibility for the 540-day extension for I-9 verification purposes.

KPMG will make efforts to inform its clients who are eligible for the 540-day automatic extension and remind employers of such eligibility, so that the employees will remain employment-authorized and not face any gaps in such employment.

FOOTNOTES:

- 1 See *The Federal Register*, "[Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants](#)" (April 8, 2024).
- 2 See U.S. Citizenship and Immigration Services, "[USCIS Increases Automatic Extension of Certain Employment Authorization Documents to Improve Access to Work Permits](#)" (April 4, 2024).
- 3 Ibid.
- 4 See U.S. Citizenship and Immigration Services, "[Automatic Employment Authorization Document \(EAD\) Extension](#)" (April 4, 2024).

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