

FEDERAL IMMIGRATION OFFICIALS END AUTO-RENEWALS FOR WORK PERMITS: IMMEDIATE ACTION STEPS FOR EMPLOYERS

Insights
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Federal immigration officials just terminated the long-standing government practice of offering automatic extensions of Employment Authorization Documents (EADs) for most applicants. The Department of Homeland Security (DHS) published an interim final rule on October 30 to make this change that took effect immediately and applies to all EAD extensions filed on or after October 30. What do you need to know about this change and what should you do about it?

Quick History Review

Prior to November 2016, USCIS had a target adjudication timeline of 90 days for EAD applications. If applications were pending past that time, a beneficiary was able to request an interim EAD that was valid for up to 240 days.

Due to extended processing times and extensive requests for interim EADs in 2016, DHS published a final rule as part of the American Competitiveness in the Twenty-first Century Act that eliminated the issuance of interim EADs. Instead, USCIS adopted a policy of granting an automatic extension of certain EAD categories as long as the extension was timely filed prior to the expiration of their current employment authorization.

Even with this provision, many EADs remained in process outside of standard processing times. As a result of these backlogs, DHS increased the automatic extension period from 180 days to 540 days in 2024.

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What Changed?

Under the prior rule, individuals previously vetted and authorized to be in the United States with a timely filed EAD extension were allowed to continue to work while USCIS completed their review of the application. This provided continuity and security for employees and employers facing extended processing times at USCIS.

This new rule eliminates the temporary extension of work authorization, so individuals working based on an EAD – such as H-4 Dependents and pending green card applicants – may find themselves without valid employment authorization even though their status in the US remains valid and unchanged. In such cases, employees will no longer be able to work until they have the new EAD card. This may cause employers to face considerable disruptions to their workforce.

What Should You Do?

Employers will want to take quick action to identify employees working pursuant to an EAD and be prepared to file extensions as soon as possible. You will also want to monitor EAD deadlines closely and notify employees of upcoming expirations many months in advance.

USCIS only allows for EAD extensions to be filed 180 days prior to the current expiration. Currently, processing times for EADs have a significant range with some categories taking well over 180 days for USCIS to adjudicate. Even with the most proactive filings, you may find your organization in a position where current employees simply cannot continue their work while USCIS processes their EAD extension.

What's Next?

While this interim rule took effect immediately on October 30, the public comment period will remain open through December 1. Based on the comments received, it is possible the government could modify the final rule. However, until any changes are announced, employers should be prepared to ensure early filings of EAD extension requests and to have plans in place if new EAD cards are not produced in a timely manner.

Conclusion

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