

March 22, 2021

Tracy Renaud
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue N.W.
Washington, D.C. 20001

Amanda Baran
Chief, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue N.W.
Washington, D.C. 20001

Re: Delays in H-4 and L-2 Status Extensions and EADs, and EAD Delays Generally

Dear Director Renaud and Chief Baran,

The undersigned companies and associations share a common concern about the extraordinary processing delays for H-4, L-2 and F-1 nonimmigrants. We are writing to urge the U.S. Citizenship and Immigration Services (USCIS) to take steps to address these operational challenges and backlogs, and to suggest that the agency has tools at its disposal to address the underlying problems.

We provide this letter for three reasons:

1. To request your prompt attention to the systemic delays facing H-4 spouses in receiving extensions of their nonimmigrant dependent status and their employment authorization documents (EAD). The increasing number of impacted individuals and the fact that they are all Americans-in-waiting who have been sponsored for lawful permanent resident status make this an acute USCIS problem.
2. Dependent spouses in L-2 status face the same problem, but only because the number of such L-2 spouses is much fewer is this urgency less visible. Despite the fact that L-2 spouses have work authorization mandated by statute and EADs issued incident to status, USCIS, through its M-274 Employer Handbook, requires possession of a valid EAD for an employer to verify employment eligibility for L-2 visa holders.
3. Based on these concerns, coupled with significant delays associated with F-1 non-immigrant EADs, we request immediate action based on the suggested solutions put forth in this letter.

History regarding current nonimmigrant dependent status adjudication delays

In March 2019, the Trump administration implemented a new biometrics requirement for H-4, L-2 and other dependents to extend their stay in the U.S., allegedly [justified by EO 13780](#).

Because the vast majority of spousal dependents of nonimmigrant principals that are employed in the United States are in H-4 status and because the Trump administration had already announced its intent to rescind the regulation permitting employment for H-4 spouses, this restrictive approach served to further discourage the use of H-4 work authorization prior to the regulation being rescinded. Under this restrictive policy, no H-4 EAD could issue absent the H-4 status being valid and extended through the EAD validity date and no H-4 status could be extended without collection of biometrics. Of course, it was unforeseeable that a year later the collection of biometrics would become practically impossible because of the Covid-19 emergency.

Although the Biden Administration immediately [rescinded](#) EO 13780, the biometric requirement for H-4 dependents (and all dependents to nonimmigrants in work-authorized status) continues to remain in place.

While much of the delay with biometrics is tied to Covid, the Trump administration was unwilling to mitigate these unnecessary delays in H-4 EAD initial and renewal adjudications. Today, many companies report that it takes an H-4 visa holder about 11 months to secure an EAD. For those seeking H-4 EAD renewals, this means that the underlying EAD will expire while the renewal is pending because the earliest you can request an EAD renewal is six months prior to expiration.

Context of H-4 spousal work authorization

Importantly, when [economists conducted a cost-benefit analysis](#) in early 2019 about the Trump Administration's proposal to formally rescind the H-4 employment authorization regulation they found:

- About 90% of H-4 EAD holders were women born in India;¹
- All but about 1% had university degrees;
- About 60% had a Masters, professional, or some degree post Bachelors;
- About 7% were self-employed and of these slightly more than half (about 4% of the total) had started their own business employing Americans; and
- About 66% worked in a STEM field.

This group of underrepresented women have had to give up their careers for many years in order to be with their spouses, who are being sponsored for green card status. The Obama administration recognized this predicament by putting forward the H-4 work authorization regulation, which was consistent with Congress' concern about lengthy adjudication delays due to green card availability (as codified in the American Competitiveness in the 21st Century Act) to allow eligible spouses of H-1B status holders sponsored for green cards to work during this pendency.

Solutions for H-4, L-2, F-1 EAD delays

Without implementing the new Premium Processing authorities (that the agency now has under legislation enacted by Congress in September 2020), USCIS can take three agency actions within its authority and immediately available. None of these agency actions has been publicly announced as an expected fix but seem eminently doable. In combination, they will help H-4, L-2, and F-1 nonimmigrants seeking EADs, and we urge USCIS to actively consider both options.

First, USCIS should rescind the 2019 policy of requiring new biometrics collection from every EAD applicant and the decoupling of the adjudication of dependent applications (i.e., Forms I-539 and I-765) from the principal petition (Form I-129). The 2019 biometrics policy is redundant in most cases, as the vast majority of dependent EAD applicants have already provided biometrics as part of either the consular visa application process or incident to a prior U.S. benefit request. Rescinding this policy would help with extension of L-2 and H-4 status and both initial grants of EADs and renewals.

Second, USCIS should announce automatic work authorization to give USCIS more time to process EAD renewal requests, restoring the employment stability and continuity of EAD applicants. By regulation, certain categories of EADs—like those seeking a STEM OPT extension—are automatically extended as a

¹ This is because it is unnecessary for spouses of H-1Bs in non-backlogged countries to use H-4 work authorization as opposed to obtaining an EAD as an adjustment applicant. India is by far the most oversubscribed nation for employment-based 2 and 3 visas, where most of the principal beneficiaries who are H-1B holders working in the U.S., and most H-1B principals from India are men.

result of the timely filing of an EAD request. Yet, those 180 day extensions are not enough in today's environment. Moreover, other EAD categories - like H-4 and L-2 spouses - are not subject to an automatic extension by regulation. Given the unique circumstances of USCIS current processing delays, USCIS should announce a one-time automatic extension of work permission for all individuals seeking EAD renewals. If USCIS needs a year to process requests, it could simply grant such automatic extension of work permission, which would immediately solve the majority of the gaps in employment authorization resulting in significant business disruptions. USCIS recently announced such automatic extension of certain EADs for TPS recipients, and could do the same for other categories of EAD renewals.

Third, USCIS has the authority to announce on its website an early filing option for EAD renewals beyond the current limitation on filing 180 days prior to EAD expiration. As long as EAD card production continues to permit a start date commencing the day after current EAD expiration, enlarging the filing date for renewals may permit the agency more flexibility in managing its case load as it works out of the extraordinary backlogs.

Conclusion

Based on the foregoing while emphasizing the underlying intent of the revocation of EO 13780, USCIS should take prompt action to rescind the biometrics requirement for dependent status requests by nonimmigrants. This would make it more likely that these H-4 spouses would have the ability to work, as intended by the H-4 spousal work authorization regulation. Further, a one-time extension of employment authorization and expansion of the filing windows for OPT, L-2, and H-4 EADs, or other EAD categories deemed appropriate by the agency, would ensure that individuals currently employed do not lose their employment authorization and minimize business disruption in a rebounding economy.

Respectfully submitted,

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