

Alert

November 22, 2021



Completing Form I-9 for EAD Automatic Extensions for Nonimmigrant Dependent Spouses

On November 12, 2021, USCIS issued a new policy that automatically extends employment authorization for dependent spouses in L-2 and E-1/E-2/E-3 status. The new policy also automatically extended employment authorization for certain H-4 spouses. To address the long processing times of EAD extensions for these work-eligible spouses, USCIS has extended the Automatic Extension of 180 days to include these beneficiaries. These individuals may receive an automatic extension of their Employment Authorization Document (EAD), which begins on the date the EAD expires and generally continues for up to 180 days, unless USCIS denies the renewal application. An automatic EAD extension depends on these requirements:

- Employees must have timely filed an application to renew their employment authorization and/or EAD on Form I-765, Application for Employment Authorization, before the current EAD expires (except certain employees with Temporary Protected Status (TPS)), and the Form I-765 renewal application remains pending;
- The eligibility category on the front of the EAD is the same eligibility category as on the employee's Form I-797C Notice of Action (except employees with TPS who may have a C19/A12 combination; and for H-4, E, and L-2 dependent spouses with an unexpired Form I-94 indicating H-4, E, or L-2 nonimmigrant status must accompany Form I-797C); and
- The qualifying eligibility categories for a 180-day automatic extension are A03, A05, A07, A08, A10, A17*, A18*, C08, C09, C10, C16, C20, C22, C24, C26*, C31, and A12 or C19. Some category codes on the EAD may include the letter 'P' such as C09P. Employers should disregard the letter 'P' when comparing the category code on the EAD with the category code on the receipt notice. (*Only certain employees who file a Form I-765 renewal application within categories A17, A18, and C26 are eligible for an automatic extension).

An EAD that appears on the face of the card to be expired is automatically extended when the employee also presents a Form I-797C receipt notice that shows a timely filed EAD renewal application in the same employment eligibility category as the EAD.

Form I-9 for EADs Automatically Extended Based on a Pending Form I-765 Renewal Application

For Category Codes A17 (E Dependent Spouse), A18 (L-2 Dependent Spouse), and C26 (H-4 Dependent Spouse)

Category Codes A17, A18, and C26 require additional documentation supplementing Form I-797C to show that the EAD has been automatically extended. These employees must present a Form I-94 Arrival-Departure record indicating the unexpired nonimmigrant status (E-1, E-2, E-2C, E-3, L-2, or H-4) of the dependent spouse, along with Form I-797C receipt notice that shows a timely filed EAD renewal application stating "Class requested" as "(a)(17)," "(a)(18)," or "(c)(26)," and the EAD that appears on the face of the card to be expired issued under the same category (that is, indicating Category A17, A18, or C26).

For a new employee in one of these categories, in **Section 2**, the employer must:



Frances Rayer

Member

frayer@cozen.com
Phone: (215) 665-3704
Fax: (215) 665-2013



Elizabeth A. Olivera

Associate

eolivera@cozen.com
Phone: (312) 382-3139
Fax: (612) 260-9080

Related Practice Areas

- Immigration Policy & Strategy

- Enter EAD in the Document Title field.
- Enter the receipt number from Form I-797C in the Document Number field.
- In the Expiration Date field, enter the date 180 days from either the “Card Expires” on the EAD or the end date of the Form I-94, whichever is earlier. This expiration date may be cut short if USCIS denies the employee’s renewal application before the 180-day period expires.
- Enter the Form I-94 document information in the second Document field.

Enter EAD EXT in the Additional Information Field

For a current employee whose EAD has been automatically extended, employers must also enter the receipt number from Form I-797C, enter Form I-94 document information, and update the expiration date on Form I-9. They may provide this information in the Additional Information field. To update the expiration date, employers should enter “EAD EXT” and the 180-day auto-extended date from the “Card Expires” on the EAD, or the end date of the Form I-94, whichever is earlier. Employers may write EAD EXT mm/dd/yyyy. Employers must re-verify employment authorization at the end of the automatic extension period.

Reverification

You must re-verify employees when their automatic extension ends, no later than the date their work authorization expires. You can re-verify them before the automatic extension ends if they present any document that shows continued employment authorization.
