

INSIGHTS

USCIS Publishes Final Rule For Certain Employment-Based Immigrant and Nonimmigrant Visa Programs

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USCIS has published a final rule to modernize and improve several aspects of certain employment-based nonimmigrant and immigrant visa programs and to better enable U.S. employers to hire and retain certain foreign workers who are beneficiaries of approved employment-based immigrant visa petitions and are waiting to become lawful permanent residents. One of the provisions in this rule will automatically extend the employment authorization and validity of Employment Authorization Documents (EADs or Form I-766) for certain individuals who apply on time to renew their EADs in the same employment eligibility category. In these situations, an employee who has an expired EAD will be able to provide that expired EAD in combination with Form I-797C, Notice of Action, for the renewal application as a List A document for Form I-9. This rule goes into effect on Jan. 17, 2017.

Among other points, DHS is amending its regulations to:

- Clarify and improve longstanding DHS policies and practices implementing sections of the American Competitiveness in the Twenty-First Century Act and the American Competitiveness and Workforce Improvement Act related to certain foreign workers, which will enhance USCIS' consistency in adjudication.
- Better enable U.S. employers to employ and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions (Form I-140 petitions) while also providing stability and job flexibility to these workers. The rule increases the ability of these workers to further their careers by accepting promotions, changing positions with current employers, changing employers and pursuing other employment opportunities.
- Improve job portability for certain beneficiaries of approved Form I-140 petitions by maintaining a petition's validity under certain circumstances despite an employer's withdrawal of the approved petition or the termination of the employer's business.
- Clarify and expand when individuals may keep their priority date when applying for adjustment of status to lawful permanent residence.
- Allow certain high-skilled individuals in the United States with E-3, H-1B, H-1B1, L-1 or O-1 nonimmigrant status, including any applicable grace period, to apply for employment authorization for a limited period if:

1. They are the principal beneficiaries of an approved Form I-140 petition,
2. An immigrant visa is not authorized for issuance for their priority date, and
3. They can demonstrate compelling circumstances exist that justify DHS issuing an employment authorization document in its discretion.

Such employment authorization may only be renewed in limited circumstances and only in one year increments.

- Clarify various policies and procedures related to the adjudication of H-1B petitions, including, among other things, providing H-1B status beyond the six year authorized period of admission, determining cap exemptions and counting workers under the H-1B cap, H-1B portability, licensure requirements and protections for whistleblowers.
- Establish two grace periods of up to 10 days for individuals in the E-1, E-2, E-3, L-1, and TN nonimmigrant classifications to provide a reasonable amount of time for these individuals to prepare to begin employment in the country and to depart the United States or take other actions to extend, change, or otherwise maintain lawful status.
- Establish a grace period of up to 60 consecutive days during each authorized validity period for certain high-skilled nonimmigrant workers when their employment ends before the end of their authorized validity period, so they may more readily pursue new employment and an extension of their nonimmigrant status.
- Eliminate the regulatory provision that requires USCIS to adjudicate the Form I-765, Application for Employment Authorization, within 90 days of filing and that authorizes interim EADs in cases where such adjudications are not conducted within the 90-day timeframe.

We will provide information and guidance regarding the automatic extension and other Form I-9 aspects of the rule prior to the effective date.

For further questions, please contact [Nelli Nikova](#).