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Foundation for India and Indian Diaspora Studies USA

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To
The Honorable Alejandro Mayorkas
Secretary of Homeland Security
2703 Martin Luther King Jr. Ave.,
SE, Washington, DC 20593

To Director Ms. Ur. M. Jaddou,
The Director U.S. Citizenship and Immigration Services,
20 Massachusetts Avenue NW Washington,
DC 20529-2140

Subject: Request to Changes in Employment Authorization Document (EAD) for Non-Immigrant Visa holders and their families

Dear Hon. Secretary Mayorkas and Director Ms. Jaddou,

On behalf of the Indian American community, as the Chief of Policy and Strategy of Foundation for India and Indian Diaspora Studies, I am writing to you today to appeal for the extension of benefits similar to the EAD changes announced on September 27, 2023, to non-immigrant visa holders and their families.

As per reports, there are 1.1 million Indian-origin non-immigrant visa holders waiting for their priority date to become current so that they can apply for an I-485 for a green card. Due to the country-wise limit of 7%, this restricts their annual approval, causing almost ~135 years of delays, and estimated that about 435,000 would not see permanent residency in their lifetime.

Recognizing the imperative of retaining the competitive advantage of the United States, it is crucial to acknowledge the immense contributions these individuals and their families make to the nation's economy, innovation, and diversity. Furthermore, on humanitarian grounds, it is pertinent to avoid a situation where these individuals find themselves in a status akin to indentured laborers.

This delay has a number of side effects, including:

- **Impact on the industry:** These highly skilled workers are unable to contribute to the industry outside of their current employer, which is a significant loss to the US economy.
- **Impact on H4-EAD spouses:** H4-EAD spouses are tied to the H1B status of their spouse, which makes family's stability uncertain especially during high layoff and makes them financially insecure.
- **Impact on documented dreamers:** More than 200,000 children (called documented dreamers) are getting aged out of 21, becoming illegal status. Their contribution is important for retaining the US competitive advantage.

We urge you to consider the following recommendations:

- **For Employment-Based Applicants:** Grant EAD to I-140 approved applicants for a duration of 5 years without necessitating waiting for I-485 processing.
- **For Spouses of Applicants:** De-link the EAD status of spouses from the underlying H1B status, allowing them the freedom to work and contribute independently.
- **For Documented Dreamers:** Allow H4-EAD and extend their visa coverage from 21 years to 25 years, providing them with a stable status until they can pursue their own immigration path.

Implementing these changes would not only alleviate the immense pressure faced by these families but also fortify the United States as a nation that values and nurtures talent and diversity. We kindly request you to consider this appeal with utmost urgency, taking into account the human aspects of these prolonged immigration delays and the immense potential these individuals bring to American society.

Thank you for your time and consideration.

Sincerely,



Khanderao Kand,
Chief of Policy and Strategies,
Foundation for India and Indian Diaspora Studies (FIIDS)
Ph 408-480-7930
Email: khanderao@fiids-usa.org



U.S. Citizenship
and Immigration
Services

November 17, 2023

Khanderao Kand
Chief of Policy and Strategy
Foundation for India and Indian Diaspora Studies (FIIDS)
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Dear Mr. Kand:

Thank you for your October 23, 2023 letter and November 8, 2023 letter to the Department of Homeland Security (DHS) regarding the recent changes to the validity periods for Employment Authorization Documents (EADs) issued to certain groups of noncitizens and your recommendations for EAD policy for certain nonimmigrants. I am responding on behalf of the Department.

U.S. Citizenship and Immigration Services (USCIS) is committed to working with Congress to find durable solutions to address the imbalance between the high demand for immigrant visas and the decades-old annual statutory limits. This imbalance needs to be addressed and only Congress can alleviate the statutory constraint on immigrant visa numbers. At the same time, we continue to pursue policy and regulatory changes, to the extent permissible under existing statutes, to bring greater certainty, stability, and protection for employer-sponsored noncitizens and their family members (as well as special immigrants and immigrant investors) in the United States.

The recent change to the validity period of EADs for certain groups of noncitizens, increasing it to 5 years, applies to applicants for adjustment of status who obtain EADs under 8 CFR 274a.12(c)(9). Other recent measures taken by USCIS that support the population(s) you mention in your letter include:

- Clarifying how USCIS evaluates evidence to determine eligibility for O-1A and O-1B individuals of extraordinary ability;¹
- Updating USCIS Policy Manual guidance regarding eligibility for the EB-1 Extraordinary Ability and Outstanding Professor or Researcher visa categories;²

¹ <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220722-ExtraordinaryAbility.pdf>

² <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230912-ExtraordinaryAbilityOutstandingProfessor.pdf>

- Clarifying eligibility for EB-2 National Interest Waivers for individuals with exceptional ability and advanced degree holders;³
- Updating the USCIS interpretation of the Child Status Protection Act to prevent some child beneficiaries from aging out of child status and allowing them to adjust to lawful permanent resident status with their parents;⁴
- Clarifying the evidence required for physicians seeking a National Interest Waiver of the job offer requirement;⁵
- Clarifying eligibility criteria and standards for applications for Compelling Circumstances employment authorization documents (EADs), including guidance that an individual with a valid compelling circumstances-based EAD is in a period of authorized stay, and therefore will not accrue unlawful presence;⁶
- Clarifying the nonimmigrant exchange visitor (J) visa classification, including USCIS' role in the adjudication of waivers of the 2-year foreign residence requirement and change of status requests under the Immigration and Nationality Act;⁷
- Clarifying options for workers whose employment has terminated, either voluntarily or involuntarily, to temporarily remain in the United States while securing new employment;⁸
- Updating and expanding the list of degree fields qualifying noncitizen graduates of U.S. universities for STEM Optional Practical Training (OPT);⁹
- Clarifying that USCIS considers certain E-1, E-2, E-3 and L-2 nonimmigrant dependent spouses employment authorized incident to status, such that they are not required to apply and wait for an EAD, and applying the automatic extension of employment authorization for renewal EAD applications filed by these E and L spouses as well as certain H-4 spouses;¹⁰
- Establishing a process for healthcare and childcare workers to request expedited processing of initial EAD applications that have been pending for more than 90 days, or renewal applications that would expire within 30 days or have already expired;¹¹
- Expanding premium processing to all filers of Form I-140, Immigrant Petition for Alien Workers, and certain filers of Form I-765, Application for Employment Authorization, and certain filers of Form I-539, Application to Extend/Change Nonimmigrant Status, while adhering to the congressional requirement that such

³ <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220121-NationalInterestWaivers.pdf>

⁴ <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230214-CSPA.pdf>

⁵ <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230816-PhysicianNationalInterestWaiver.pdf>

⁶ <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230614-CompellingCircumstancesEAD.pdf>

⁷ <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230608-ExchangeVisitors.pdf>

⁸ <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/options-for-nonimmigrant-workers-following-termination-of-employment>

⁹ <https://www.federalregister.gov/documents/2023/07/12/2023-14807/update-to-the-department-of-homeland-security-stem-designated-degree-program-list>

¹⁰ <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211112-EmploymentAuthorization.pdf>

¹¹ <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>

- services must not cause an increase in processing times for regular immigration benefit requests;¹² and
- Launching a new online form for individuals, attorneys, and accredited representatives to request an in-person appointment at their local field office without having to call the USCIS Contact Center.¹³

Addressing your recommendations in order, you first urge USCIS to consider issuing EADs (with 5-year validity periods) to all noncitizens with an approved Form I-140, Immigrant Petition for Alien Workers. USCIS appreciates the suggestion as it considers potential policy and regulatory options to provide greater stability and protection for such noncitizens.

Your second recommendation encourages USCIS to “give 5 years auto renewal EAD to H4 EAD spouses” “like the announcement on 27th Sept.” However, USCIS did not announce any automatic renewal of EADs in any categories in the September 27, 2023, announcement. That announcement was limited to increasing the maximum validity period for EADs granted to certain groups of noncitizens but did not relieve those noncitizens of the requirement to apply for renewals or state that such applications would be automatically approved. Further, this suggestion would not be legally feasible for H-4 spouses. Their eligibility for employment authorization is dependent on the principal H nonimmigrant’s status, which can only last for periods of up to 3 years. Consistent with existing DHS regulations, USCIS issues EADs to H-4 nonimmigrants with a validity period tied to the duration of their H-4 nonimmigrant status.

The suggestion that H-4 derivative children of principal H nonimmigrants be allowed to remain in valid H-4 nonimmigrant status after they reach 21 years of age is not permitted under the statute. INA section 101(a)(15)(H) states that the “spouse and minor children” of a principal H nonimmigrant may be provided H-4 nonimmigrant status. Under INA section 101(b)(1), a “child” is an “unmarried person under twenty-one years of age.” Once a noncitizen is married or reaches 21 years of age, they no longer meet the definition of a child and are ineligible for H-4 nonimmigrant status as the child of an H-1B nonimmigrant worker.

Within the law as it stands, however, USCIS has updated its interpretation of the Child Status Protection Act,¹⁴ and our regulatory agenda includes an anticipated notice of proposed rulemaking on improving the regulations governing adjustment of status to lawful permanent residence and related immigration benefits.

¹² <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing>

¹³ <https://www.uscis.gov/newsroom/alerts/uscis-launches-online-appointment-request-form>

¹⁴ <https://www.uscis.gov/newsroom/alerts/uscis-updates-child-status-protection-act-cspa-age-calculation-for-certain-adjustment-of-status>

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director