



December 3, 2021

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529-2120

Ur Jaddou
Director
U.S. Citizenship and Immigration Service
5900 Capital Gateway Drive #2040
Camp Springs, Maryland 20746

RE: Request for Resolution on Long-Processing of Employment Authorization Applications at USCIS

Dear Secretary Mayorkas and Director Jaddou,

As you know, the U.S. currently has a labor shortage in many sectors, not the least of which is the health care industry. The COVID-19 pandemic has deeply challenged the entire health care continuum: we are dealing with a significant staff shortage coupled with staff burn-out. To provide the needed care to our nation's frail, elderly, individuals with disabilities and most vulnerable, it is vital that the industry retains as many current employees as it can.

We have been hearing from our members on various issues with staffing shortages. One issue is the significant delay in USCIS processing Employment Authorization Document (EAD) renewals. Some employees have had to stop working due to USCIS not timely processing the EAD renewals, while others are at risk of soon losing work authorization due to the delays. The problem seems to be this: USCIS does not allow an applicant to file for an EAD renewal any sooner than 6 months before the EAD expiration and yet USCIS is often taking more than a year to process the EAD renewals.

We know USCIS issued a November 12, 2021, Policy Alert regarding *Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses*. While that policy is an important step forward, unfortunately it doesn't overcome the problems some of our health care providers are seeing. Specifically, the new Policy is limited in scope: (1) applicable to E's, L's and H-4's as long as they have the underlying status as a pending application for status extension is not sufficient; and (2) provides only 180-day extension.

Some types of employment authorization don't have the "180-day" eligibility. Even some applicants who have the benefit of the 180-day extension still suffer a gap in employment since USCIS is, in many cases, taking more than a year to process EAD renewals. For example, the USCIS website shows the processing time for EAD's in California ranges from "7.5 to 14.5 months". Other service centers are as currently as long as 11 or 12 months.

As such, an applicant who files at the earliest date allowed (6 months before EAD expiration) and then begins the 180-day automatic extension 6 months thereafter, still has only 1 year of work authorization. Those who don't have the benefit of the 180-day extension don't have a reasonable chance of avoiding loss of employment since USCIS is, in almost all cases, taking more than 6 months to process EAD application.

Therefore, we are suggesting the following ideas to resolve this problem:

- **Prioritize EAD applications once they are within 60 days of the expiration of eligible work authorization.** If a person files an EAD renewal timely (6 months before the expiration) there should be no reason for the person and his/her employer to suffer a disruption in employment. The current criteria for an expedite is too difficult.¹ The reality is that everyone facing a job loss due to delay in EAD extensions should warrant an expedite, assuming the person filed timely. Thus, once an EAD expiration is within 60 days of expiring (if not eligible for the 180-day extension) or within 60 days of reaching the 180-day additional extension, USCIS should automatically accept a request to expedite with proof the person filed as soon as he/she was eligible to file.
- **Allow applicants to file for EAD renewals sooner, perhaps as early as one year before the EAD expiration.** It is simply unreasonable to give applicants a short timeframe in which to file an EAD renewal (6 months before expiration) and then have the person suffer the consequences of a job loss if/when USCIS takes a long time to process the EAD renewal. If USCIS is going to continue to take 6 to 14 months to process EAD renewals, then USCIS should at least allow applicants to file sooner.
- **Issue longer duration of EAD's.** Some EAD's are tied to status and limited to the duration so this is not a solution for all, however, is possible for some types of work authorization. Issuing a longer duration of EAD's reduces the number of times an applicant needs to renew an EAD and also decreases the workload for USCIS, thereby allowing USCIS to work on other cases rather than EAD renewals.

The health care industry has taken several measures to try to recruit and retain workers during this critical time. Some examples of the recruitment and retention efforts include sign-on bonuses, wage increases, bonuses when someone fills a shift, calling staff who have left to entice them to come back, referral bonuses paid to staff for each employee they recruit, gift cards, free meals to staff, tuition reimbursement, PTO, flexible scheduling, additional training, and education opportunities, etc.

¹ USCIS will expedite an EAD or EAD extension only if one of the following apply: (1) severe financial loss to the company or applicant will occur; (2) emergency and urgent humanitarian reasons; (3) clear **USCIS** error; (4) nonprofit organization whose request is in furtherance of cultural and social interests of the US; or (5) US government interests.

We are asking USCIS to partner with the health care industry, and the U.S. labor market overall, in trying to retain workers.

As such, we respectfully request you to resolve the issue of the long-processing time for applications for employment authorization.

Thank you for your attention to this matter.

Sincerely,



Mark Parkinson
President & CEO
American Health Care Association



LaShuan Bethea
Executive Director
National Center for Assisted Living



David Schless
President
American Seniors Housing Association



Katie Smith Sloan
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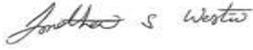
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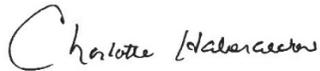
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U.S. Citizenship
and Immigration
Services

January 13, 2022

Mark Parkinson
President & CEO
American Health Care Association
1201 L Street, NW
Washington, DC 20005

Dear Mr. Parkinson:

Thank you for your December 3, 2021 letter to the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS). Secretary Mayorkas asked that I respond on his behalf.

In your letter, you expressed concern about the impact of Employment Authorization Document (EAD) renewal processing timelines on healthcare industry workers. USCIS is very much aware of the severe challenges that the COVID-19 pandemic has posed to our health care system and we have and will continue to take steps to do what we can to help. You noted in your letter that USCIS recently published a policy alert¹ pertaining to certain E, L, and H-4 beneficiaries, and expressed concern that the policy's auto-extension of up to 180 days is insufficient to account for longer processing timelines. You further offered three suggestions to remedy your concerns: (1) prioritize the adjudication of Forms I-765, Application for Employment Authorization (Form I-765), if fewer than 60 days remain before expiration of existing employment authorization; (2) allow applicants to file a Form I-765 EAD renewal application up to 1 year before their current EAD expires; and (3) issue EADs with longer durations where permissible.

Thank you for your suggestions. USCIS appreciates the concerns you have raised and is looking at all available options to reduce backlogs and processing times, including the recommendations you have made. As you note, USCIS has made changes to help prevent gaps in employment authorization and documentation, including the November 12, 2021 policy alert revising its interpretation of 8 CFR 274a.13(d) to allow for the automatic extension of EAD validity dates for certain individuals in E, L-2, and H-4 derivative spousal status.

¹ U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses*, PA-2021-25 (Nov. 12, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211112-EmploymentAuthorization.pdf>.

Additionally, on December 28, 2021, in response to concerns raised by your letter and others within the healthcare worker community, USCIS provided guidance for healthcare workers with expiring or expired EAD renewal applications on how to request expedited processing by calling the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833). Specifically, USCIS will expedite the processing of renewal requests for Form I-765 for healthcare workers whose EADs expire within 30 days or have already expired. The alert to healthcare workers and more information on how to request expedited processing is available on the USCIS website at <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>.

COVID-19 has dramatically impacted processing times for many benefit types, with USCIS experiencing the downstream effects of office closures; limited-capacity operations; the financial impacts of a severe, though temporary, drop in fee receipts; a hiring freeze, which led to staff attrition; and changes in filing patterns. Despite those challenges, USCIS began exceeding 2020 case completions during 2021, and September 2021 completions exceeded those in September 2019.

Processing times for various EAD categories vary based on volume, complexity, and competing priorities. USCIS is working diligently to reduce processing times across benefit types, including EAD categories. USCIS appreciates your letter and is actively continuing to consider further measures to improve the processing of these important benefit requests.

Thank you again for your letter and interest in this important issue. Please share this response with the other organizations that cosigned your letter.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director