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June 6, 2024

Charles Nimick,
Chief, Business and Foreign Workers Division,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security,
5900 Capital Gateway Drive, Camp Springs, MD 20746

Submitted via regulations.gov

Re: DHS Docket No. USCIS–2024–0002, Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants

Dear Chief Nimick,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the Department of Homeland Security’s (DHS) Agency Information Collection: Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document (“EAD”) Renewal Applicants, 89 Fed. Reg. 24628 (Apr. 8, 2024) (to be codified at 8 C.F.R. pt. 274a) (DHS Docket No. USCIS–2024–0002).

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates, and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

Through our extensive networks with service providers, immigration practitioners and immigration benefits applicants, we have developed a profound understanding of the barriers faced by low-income immigrants of color seeking to obtain immigration benefits, particularly work authorization. As such, we welcome the opportunity to provide comments on the agency’s recent announcement extending the validity of employment authorization documents (EAD). The recommendations that follow are gleaned from the experiences of many low-income immigrants who we and our partners serve.

We provide this comment in response to the specific questions DHS and U.S. Citizenship and Immigration Services (USCIS) have posed on the temporary EAD extensions. The ILRC applauds the decision by DHS to provide an automatic extension of work authorization and we offer the

following suggestions in response to the agency's request for comment. Overall, we urge DHS to expand EAD extensions to ensure that no EAD holder is unfairly impacted by administrative delays. Work authorization is among the most vital immigration benefits in terms of immediate impact for individuals, their families and communities, as well as employers. We provide the following comment to encourage the agency to provide for permanent extension of EAD validity across all categories to ensure that processing delays and backlogs do not result in the loss of employment.

I. DHS should permanently lengthen the period of automatic extension to 730 days to ensure that all administrative delays are offset by the extended validity period.

DHS has attempted to address the effects of administrative delays in EAD processing, including issuing temporary final rules such as this one, extending EAD validity to ensure that workers do not lose their employment. This is the second temporary rule that DHS has issued in the last two years, which indicates that the delays experienced by applicants are not subsiding. There is no indication that the EAD backlog will be fully addressed at the end of the current extension period. As such, DHS should permanently extend the validity period of EADs.

Further, the automatic extension period should be increased to 730 days to ensure that all vulnerable workers are able to benefit from the extension. DHS estimates that the automatic extension will protect approximately 800,000 people from losing their work authorization due to USCIS processing delays.¹ Additionally, the rule also protects up to 82,000 employers² and DHS estimates that these businesses and organizations employing affected immigrant workers would have incurred approximately \$17.4 billion in labor turnover costs if people were to lose their work authorization.³ However, it is DHS's position that even with a 540 day automatic extension, some 260,000 individuals may lose employment as the extension as it will not ensure that their renewal will be completed before the EAD expires.⁴ Increasing the automatic extension period would provide protection for more workers and employers and will ensure that DHS has the time to address backlogs in the long-run, including developing efficiency measures.

II. DHS should expand the eligibility for automatic extensions.

We urge DHS to expand the categories of workers eligible for automatic extensions to include DACA recipients ((c)(33))) and applicants for U visas ((c)(14)) and T visas ((c)(40)) who have work authorization pursuant to a bona fide determination (BFD) on their applications. With years-long waits for U visas and uncertainty surrounding the future of DACA, providing extensions to these categories of applicants will lessen the burden on applicant and agency alike. Further, given recent changes to T visa BFD processing contemplated in the final T visa rule,⁵ it's possible that T visa applicants will soon be in a similar posture to U visa applicants, with extended wait times for an available visa.

Expanding the categories eligible for automatic EAD extensions will provide stability to vulnerable applicants who face repeated uncertainty with respect to the processing time for their benefits. As stated repeatedly in the TFR, automatic extensions benefit the EAD-holder as well as the agency as it attempts to address backlogs and

¹ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 Fed. Reg. 24628, 24628 (Apr. 8, 2024).

² Id. at 24652.

³ Id.

⁴ 89 Fed. Reg. at 24647 n.193.

⁵ Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 89 Fed. Reg. 34864 (April 30, 2024).

processing times. DHS should, therefore, err on the side of inclusion and issue new regulations to include more EAD categories for eligible extensions.

III. DHS should engage in outreach to employers and provide workers with updated personal documentation to ensure that automatic extensions are honored.

We have heard reports from multiple partners and practitioners that one significant challenge for those with expiring EADs is the lack of clarity for employers when employment authorization is extended but physical EADs have expiration dates that have passed. Confusion as to an individual's permission to work have resulted in job losses, which harm workers and employers alike.⁶ DHS should work to provide robust guidance for employers to ensure that automatic extension periods are honored. This guidance could include physical copies of guidance as well as a regularly updated web site where employers can seek answers.

DHS should additionally provide workers with updated proof of employment eligibility while their renewal is pending. One option would be to issue receipt notices (I-797C) containing information about the automatic extension period and an expiration date of the extension period. This has been an issue that has been repeatedly raised in other contexts: the lack of documentation that is bespoke to the individual has caused confusion for employers and other agency officials (such as departments of motor vehicles) and leads to loss of employment or other documentation or benefits. For example, TPS holders who have received automatic extension of their TPS status in recent years have reported that employers will not accept proof of their TPS status and employment authorization with just a printout of the information from the Federal Register or other government web sites. What is needed is one document from USCIS with the individual's name, notice of the extension, and the relevant expiration date of the auto-extension.

IV. DHS should take steps to increase the efficiency of employment authorization adjudication to reduce backlogs and processing times and to ensure that they remain reasonable.

Automatic extensions will do much in the short-term to ensure that workers and employers are not unfairly disadvantaged by administrative delays. However, long-term fixes are needed at the agency. USCIS should begin to build much-needed technology described in the temporary rule to identify and prioritize those applicants whose work authorization will lapse if not processed and should apply these tools to application adjudication generally. Since the rule estimates it will take a year to create this much-needed technology, the agency should, in the meantime, create a clear and easy mechanism for immigrant workers, including DACA recipients and others not covered under this rule, to alert USCIS if they are in danger of losing their job and require expedited processing. Further, USCIS should reissue 540-day (or longer) receipt notices to all eligible applicants who received 180-day receipt notices between October 27, 2023 - April 8, 2024, but who are currently eligible for the 540-day extension. Alternatively, USCIS should provide a mechanism for individuals to request new receipts as evidence of the longer automatic extension period.

V. Conclusion

The ILRC urges DHS to implement these suggestions to ensure that as many workers as possible are able to benefit from an automatic extension of their work authorization. Further, DHS should uniformly make permanent the automatic extension period at 730 days to ensure that no renewal applicants lose their work authorization and

⁶ Rafael Bernal, Biden Extends Some Immigrant Work Permits, Potentially Saving Thousands of Jobs, The Hill (Apr. 4, 2024, 9:00 AM), <https://thehill.com/latino/4573404-biden-immigrant-work-permits/>.

invest in employer resources to ensure that confusion as to the validity period does not result in job loss. Finally, DHS should invest in application processing efficiencies to ensure that backlogs do not worsen and that those in danger of losing employment eligibility are processed first.

Please contact us with any questions by emailing Liz Taufa at etaufa@ilrc.org.

Sincerely

/s/Elizabeth Taufa

Policy Attorney and Strategist

Immigrant Legal Resource Center