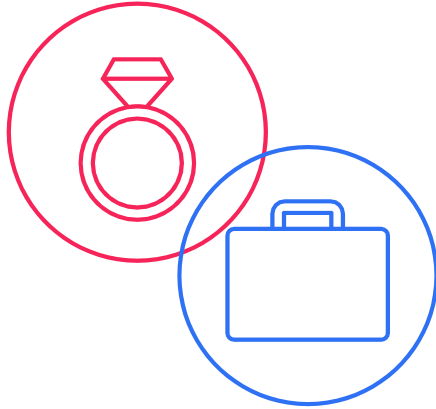




Changes Affecting Employment Authorization for L-2, E, and H-4 Dependent Spouses



Highlights

- L-2 and E dependent spouses are no longer required to apply for an employment authorization document (EAD) to work in the United States.
- Certain L-2 and E dependent spouses who choose to apply for an EAD as proof of work authorization are eligible for automatic extensions of EADs for up to 180 days.
- Certain H-4 dependent spouses are eligible for automatic extensions of EADs for up to 180 days.

Overview

On November 12, 2021, USCIS announced that L-2 and E dependent spouses are no longer required to apply for an EAD to work in the United States. Instead, L-2 and E dependent spouses are authorized to work in the United States just by virtue of holding L-2 or E status but may continue applying for EADs, if desired.

The USCIS policy announcement also allows certain H-4 spouses to obtain automatic extensions of their EAD for up to 180 days. The automatic extension also applies to L-2 and E dependent spouses that choose to apply for an EAD as proof of work authorization. Note that the automatic EAD extension is available in very limited circumstances, and L-2, E, and H-4 dependent spouses should speak to their immigration attorney to explore their eligibility.

These changes are a significant departure from USCIS's previous policy, which required L-2 and E dependent spouses to apply and wait for an EAD to be issued before they could begin working. In addition, L-2, E, and H-4 dependent spouses were not previously eligible for automatic EAD extensions. Given that government processing times for EADs can be a year or more, L-2, E, and H-4 dependent spouses regularly experienced long periods of unemployment while they waited for their EADs to be approved. USCIS's policy change should help alleviate some of the work authorization issues experienced by these spouses.

Challenges and Implementation of the New Policy for L-2 and E Dependent Spouses

This USCIS policy change has been a welcome improvement, but it did not automatically create a system that provided L-2 and E dependent spouses with documentation needed to prove they can lawfully work in the United States. Specifically, the government did not provide L-2 and E dependent spouses with documents needed to complete Form I-9 (a required form used by employers to verify an employee's ability to work in the United States).

USCIS and CBP have begun annotating L-2 and E entry and approval documents (Form I-94) with an "S" designation to indicate that the holder is a dependent spouse and thus eligible to work. The documents with an "S" designation can be used by L-2 and E dependent spouses to show employers they are authorized to work in the United States. If an L-2 or E dependent spouse receives an entry or approval document without an "S" designation, they should contact their immigration attorney to discuss potential paths for correcting their documents.

Moreover, USCIS announced on March 18, 2022 that it will begin mailing new notices beginning on April 1, 2022, with the new codes to E or L spouses age 21 or over who have an unexpired Form I-94 that was issued before January 20, 2022. An E or L spouse who is under the age of 21 should request a notice by emailing E-L-married-U21@uscis.dhs.gov.

For more information on USCIS's L-2, E, and H-4 employment authorization changes, please contact Lisa Ventresca at VENTRESCA & VENTRESCA, LLP (724.940.5901 or lisa.ventresca@immlawventresca.com).