

GIBSON DUNN



Pro Bono and Administrative Law & Regulatory
Update

October 31, 2025

Immigration Task Force: Agency Action Update

Gibson Dunn's Immigration Task Force is available to help clients understand what these and other expected policy changes will mean for them and how to comply with new requirements.

On October 29, 2025, the United States Department of Homeland Security (DHS) announced an interim final rule ending the decade-long practice of automatically extending Employment Authorization Documents (EADs) for certain non-citizens upon timely renewal filing.^[1] The rule affects certain non-citizens who file to renew their EAD on or after October 30, 2025, as well as their U.S. employers.^[2]

Background & History

Non-citizens may obtain authorization to work in the U.S. depending on their immigration status. For example, a person seeking asylum may apply for employment authorization while in the U.S. after their claim has been pending for 180 days.^[3] The spouse of an H-1B visa holder may be eligible to do the same.^[4] Although some immigration statuses may confer employment authorization past the date of expiration of an EAD, most statuses do not allow a person to work in the U.S. if their EAD expires.

Most non-citizens with EADs are able to apply to renew their EAD 180 days before it expires. Historically, USCIS has been unable to process a timely filed renewal within that timeframe.^[5] This often resulted in a lapse of work authorization for non-citizens despite timely filing for renewal.^[6] To deal with that, certain non-citizens have been afforded a 540-day “automatic extension” of their EAD if they timely filed their renewal application.^[7] DHS first

implemented a version of the automatic extension rule in 2016, and subsequently increased the automatic extension period in 2022 and 2024.^[8] Thus, automatically extending EADs was intended to help avoid gaps in employment for applicants and to stabilize operations for U.S. employers where USCIS could not timely review renewal requests.^[9]

The new rule ends this practice. DHS will no longer automatically extend EADs for renewal applications timely filed on or after October 30, 2025. The rule does not prevent EAD holders from seeking to renew their EADs, and it does not apply to renewal applications filed prior to October 30, 2025—those EADs continue to benefit from the 540-day automatic extension. Some of the people affected by this change include: refugees, asylees and asylum-seekers, spouses of E- or L-nonimmigrants, spouses of H-1B nonimmigrants, certain petitioners under the Violence Against Women Act, family members of legal permanent residents, and certain applicants for legal permanent residency.

DHS's stated rationale for the new rule is to "prioritize the proper vetting and screening of aliens before granting a new period of employment authorization."^[10] DHS acknowledged that the new rule may cause a "disruption" and be "detrimental" to certain non-citizens, their families, and their employers when EADs temporarily lapse.^[11] However, DHS stated that it believes "the weight of these interests is significantly diminished by various factors," including that the automatic extension "poses a security vulnerability that could allow bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public."^[12] DHS stated that it could not predict the impact of the rule on future EAD renewal processing times.^[13] Although, it stated that it "does not anticipate a further influx of initial and renewal EAD applications that will overwhelm USCIS adjudicative resources" because of other actions DHS and the Trump Administration have taken to limit eligibility for work authorization and other immigration relief.^[14] DHS also noted that it would "continue to work to reduce frivolous, fraudulent or otherwise non-meritorious EAD filings," although it is unclear at this time what additional vetting or screening, if any, USCIS will undertake in considering applications to obtain or renew an EAD.^[15]

Effect of the New Rule

This new rule may impact both non-citizens with an EAD and their U.S. employers. Non-citizens may face a temporary lapse or loss of their authorization to work in the United States, even if they timely file a renewal application. In some cases, this lapse might be quite lengthy given the current processing times for renewal applications. U.S. employers of EAD holders may also face lapses of employment as a result. As a result, impacted non-citizens may be unable to earn an income or might have to grapple with disrupted employment. Similarly, employers of non-citizens may lose coverage for work responsibilities or incur costs related to replacing workers with unexpectedly lapsed EADs.

USCIS cautioned that the longer a non-citizen "waits to file an EAD renewal application, the more likely it is that they may experience a temporary lapse in their employment authorization or documentation."^[16] Accordingly, USCIS recommends that EAD holders properly file a renewal application up to 180 days before their EAD expires.^[17]

[1] DHS Ends Automatic Extension of Employment Authorization, U.S. Citizenship and Immigration Services, *available at* <https://www.uscis.gov/newsroom/news-releases/dhs-ends-automatic-extension-of-employment-authorization>.

[2] See Removal of the Automatic Extension of Employment Authorization Documents, 90 Fed. Reg. 48799 (Oct. 30, 2025).

[3] See 8 C.F.R. § 208.7(a)(1).

[4] See 8 C.F.R. § 274a.12(c)(26).

[5] In FY 2023, for example, the 80th percentile processing time for all renewal EAD applications was 14.2 months. 89 Fed. Reg. 24682, 24644 (Apr. 8, 2024).

[6] USCIS Increases Automatic Extension Period of Work Permits for Certain Applicants, U.S. Citizenship and Immigration Services, *available at* <https://www.uscis.gov/archive/uscis-increases-automatic-extension-period-of-work-permits-for-certain-applicants>.

[7] See Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 90 Fed. Reg. 101208 (Dec. 13, 2024) (final rule); Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26614 (May 4, 2022) (temporary final rule).

[8] See 8 C.F.R. 274a.13(d) (2016); Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26614 (May 4, 2022) (temporary final rule); Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 90 Fed. Reg. 101208 (Dec. 13, 2024) (final rule).

[9] USCIS Increases Automatic Extension Period of Work Permits for Certain Applicants, U.S. Citizenship and Immigration Services, *available at* <https://www.uscis.gov/archive/uscis-increases-automatic-extension-period-of-work-permits-for-certain-applicants>.

[10] Removal of the Automatic Extension of Employment Authorization Documents, 90 Fed. Reg. 48799, 48800 (Oct. 30, 2025).

[11] *Id.* at 48809.

[12] *Id.* at 48808–09.

[13] *Id.* at 48816.

[14] *Id.* at 48809.

[15] *Id.* at 48817.

[16] DHS Ends Automatic Extension of Employment Authorization, U.S. Citizenship and Immigration Services, *available at* <https://www.uscis.gov/newsroom/news-releases/dhs-ends-automatic-extension-of-employment-authorization>.

[17] *Id.*

The following Gibson Dunn lawyers prepared this update: Katie Marquart, Matt Rozen, Laura Raposo, Ariana Sañudo, and George Khoury.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, any leader or member of the firm's Pro Bono, Public Policy, Administrative Law & Regulatory, Appellate & Constitutional Law, or Labor & Employment practice groups, or the following members of the firm's Immigration Task Force:

Stuart F. Delery – Co-Chair, Administrative Law & Regulatory Practice Group, Washington, D.C. (+1 202.955.8515, sdelery@gibsondunn.com)

Naima L. Farrell – Partner, Labor & Employment Practice Group, Washington, D.C. (+1 202.887.3559, nfarrell@gibsondunn.com)

Nancy Hart – Partner, Litigation Practice Group, New York (+1 212.351.3897, nhart@gibsondunn.com)

Katie Marquart – Partner & Chair, Pro Bono Practice Group, Los Angeles (+1 213.229.7475, kmarquart@gibsondunn.com)

Laura Raposo – Associate General Counsel, New York (+1 212.351.5341, lraposo@gibsondunn.com)

Matthew S. Rozen – Partner, Appellate & Constitutional Law Practice Group, Washington, D.C. (+1 202.887.3596, mrozen@gibsondunn.com)

Ariana Sañudo – Associate, Pro Bono Practice Group, Los Angeles (+1 213.229.7137, asanudo@gibsondunn.com)

Betty X. Yang – Partner & Co-Chair, Trials Practice Group, Dallas (+1 214.698.3226, byang@gibsondunn.com)

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm,
please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists,
please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2025 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).