

Congress of the United States
Washington, DC 20515

December 21, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20016

Dear Secretary Mayorkas:

Thank you for acting to suspend the Trump administration's rule requiring the collection of new biometrics for H-4 and L-2 work authorization extensions. This change is an important first step in undoing the Trump administration's 'invisible wall' of policies restricting legal immigration. We write to urge several additional actions to reduce the backlog at USCIS that has hindered immigrant spouses in their efforts to obtain work visas.

Due to the Trump administration's changes to visa processing, H-4 and L-2 visa applicants have recently had to wait 11 months to two years to have their documents renewed—even though it only takes USCIS 12 minutes to process Form I-765 and 24 minutes to process Form I-539.¹ Moreover, renewal applications cannot be submitted more than six months before visas are set to expire, which leaves even the most proactive applicants without work authorization for several months. Before the Trump administration's misguided changes to processing policies and the closure of USCIS offices due to COVID-19, visa renewals could be completed in a matter of weeks.

The vast majority of H-4 and L-2 workers are highly educated women, many of whom are employed in STEM fields in the United States. Processing delays have left their families without a second income, forcing them to dip into their savings, sell their homes, and take other drastic measures to stay on their feet. These delays also threaten the over \$7.5 billion that these workers contribute to the U.S. economy.

We are grateful that USCIS agreed in a recent settlement² to provide L-2 spouse visa holders with work authorization incident to status and to grant a 180-day automatic extension of authorization for timely filing of an EAD request for L-2, E-2 and H-4 holders. We urge USCIS to work with U.S. Customs and Border Protection to implement these regulatory changes expeditiously in order to maximize relief for immigrant women.

A careful reading of the settlement reveals that for most spouses stuck waiting for their work authorization extension, this settlement offers little relief. As the 180-day automatic extension is tied to valid status, the backlog in I-539 adjudications means that most individuals are not eligible for this benefit.

¹ 81 Fed. Reg. 26925 (May 4, 2016).

² *Shergill v. Mayorkas*, No. 21-1296 (W.D. Wash.), November 10, 2021.

In order to address this issue more holistically, we request that joint adjudication of primary and dependent visas and work authorizations be reinstated. In March of 2019, the Trump administration separated the adjudication of H-4 and L-2 visas and employment authorization applications (EADs) from the adjudication of the H-1B and L-1 petitions from the same family. Previously, dependent petitions were reviewed alongside primary applications, which are eligible for premium processing—guaranteeing adjudication within 15 days. With the suspension of the biometrics collections for L-2 and H-4 applications, resumption of this courtesy process should begin without delay.

We also urge USCIS to quickly expand premium processing to additional visa categories, including H-4 and L-2 visas and EADs. While Congress recently authorized this expansion,³ USCIS has not yet made this option available to dependents. Premium processing fees can be as high as \$1,400, and USCIS can use this revenue to pay for operational expenses. Many H-4 and L-2 workers would be willing to pay for premium processing if it ensured their authorizations would be complete in 15 days. Expanding premium processing will help immigrant spouses and raise funds for USCIS.

Thank you for your consideration, and we look forward to your response.

Sincerely,



Deborah K. Ross
Member of Congress

/s/

Sheila Jackson Lee
Member of Congress

/s/

Henry C. “Hank” Johnson, Jr.
Member of Congress

/s/

Chellie Pingree
Member of Congress

/s/

Gwen Moore
Member of Congress

/s/

Ro Khanna
Member of Congress

/s/

Scott H. Peters
Member of Congress

/s/

Joe Neguse
Member of Congress

/s/

Jason Crow
Member of Congress

/s/

Darren Soto
Member of Congress

³ Continuing Appropriations Act, 2021 and Other Extensions Act, H.R. 8337, 116th Cong. § 2 (2020).

/s/
Mondaire Jones
Member of Congress

/s/
Mark Pocan
Member of Congress

/s/
Barbara Lee
Member of Congress

/s/
Raja Krishnamoorthi
Member of Congress

/s/
Al Lawson
Member of Congress

/s/
Katie Porter
Member of Congress

/s/
Ilhan Omar
Member of Congress

/s/
Diana DeGette
Member of Congress

/s/
Jahana Hayes
Member of Congress

/s/
Donald S. Beyer Jr.
Member of Congress

/s/
Kathy Manning
Member of Congress

/s/
Alexandria Ocasio-Cortez
Member of Congress

/s/
André Carson
Member of Congress

CC: Ur Mendoza Jaddou, Director, U.S. Citizenship and Immigration Services



U.S. Citizenship
and Immigration
Services

January 19, 2022

The Honorable Deborah Ross
U.S. House of Representatives
Washington, DC 20515

Dear Representative Ross:

Thank you for your December 21, 2021 letter to the Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

In your letter, you express concern about the impact of Employment Authorization Document (EAD) renewal processing timelines on H-4 and L-2 spouses. U.S. Citizenship and Immigration Services (USCIS) is very much aware of the severe challenges that the COVID-19 pandemic has posed for workers and we have and will continue to take steps to do what we can to help. You noted in your letter that USCIS has taken recent actions, including suspending the biometrics submission requirement for certain applicants requesting an extension of stay or change of status,¹ and publishing guidance providing automatic extension of employment authorization for certain H-4, E, and L nonimmigrant dependent spouses.² You further offer two suggestions to reduce processing timelines: (1) reinstate joint adjudication of primary and dependent nonimmigrant petitions and applications, including applications for work authorization, and (2) expand premium processing to additional categories, including applications for H-4 and L-2 status and EADs.

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 and militate against the potential that applicants may experience gaps in employment authorization while an EAD renewal application is pending, 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 if the EAD renewal was properly filed before expiration and the

¹ U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *USCIS Temporarily Suspends Biometrics Requirement for Certain Form I-539 Applicants* (May 13, 2021), <https://www.uscis.gov/news/alerts/uscis-temporarily-suspends-biometrics-requirement-for-certain-form-i-539-applicants>

² 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>.

individual has an unexpired Form I-94. The November 12, 2021 Policy Alert also clarifies that E and L dependent spouses are employment authorized incident to their status and therefore they are no longer required to request employment authorization by filing Form I-765, Application for Employment Authorization, but may continue to file Form I-765 if they choose to receive an EAD.³

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.

Furthermore, although posted processing times have a lag in showing progress, USCIS has significantly reduced processing times for applicants for change of status to or extension of stay in H-4 status, and USCIS has reduced the total number of pending cases from a pandemic high of over 104,000 to approximately 52,000. Likewise, USCIS has reduced pending volumes for the (c)(26) category of Form I-765 (H-4 EADs) from a July 2021 high of approximately 50,000 to a December 2021 high of approximately 31,000. This progress has been achieved through policy changes, such as suspending the collection of biometrics for certain Form I-539, Application to Extend/Change Nonimmigrant Status applicants, including those seeking an extension of stay in or change of status to H-4, as well as dedicating significant agency resources to the processing of EAD applications. In addition, USCIS recently announced new expedite criteria for healthcare workers who have pending EADs that may expire within 30 days, and this would be applicable to any H-4s in the healthcare field.⁴

While our recent 180-day automatic extension and expedite criteria announcements, along with processing efficiencies, have helped to reduce processing times for H-4 EAD renewal applications and prevent potential gaps in employment authorization, I share your concern over the length of time it is taking to adjudicate employment authorization requests and have made it a priority to implement additional solutions that promote efficiency in our adjudications of these requests while maintaining the integrity and quality of the immigration system.⁵ We anticipate

³ Note, however, that until such time as USCIS can implement changes to the I-94 to distinguish E and L spouses from E and L children, E and L spouses would still need to rely upon an EAD as evidence of employment authorization to present to employers for completion of Form I-9. Until the notation on Form I-94 issued to E and L dependent nonimmigrants is revised, Form I-94 solely indicating E or L nonimmigrant status is insufficient evidence of employment authorization under List C of Form I-9.

⁴ U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *How to Make an Expedite Request*, (Dec. 28, 2021), <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>

⁵ For additional information see, U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *USCIS Extends Flexibilities to Certain Applicants Filing Form I-765 for OPT* (February 26, 2021), <https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibilities-to-certain-applicants-filing-form-i-765-for-opt>; U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *F-1 Students Seeking Optional Practical Training Can Now File Form I-765 Online* (April 12, 2021), <https://www.uscis.gov/news/news-releases/f-1-students-seeking-optional-practical-training-can-now-file-form-i-765-online>; U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *Employment Authorization for Certain Adjustment Applicants* (June 9, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210609-EmploymentAuthorization.pdf>; U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services,

that these efforts will allow us to further reduce the number of pending employment authorization requests and more efficiently issue EADs to eligible applicants. As a result, over the coming months, our processing times should continue to show measurable progress.

Combined with these policy changes, USCIS is continually reviewing its operational procedures to ensure efficiency. While USCIS is moving toward an increasingly electronic environment, paper-based processing sometimes requires the physical separation of an application from the requests for ancillary benefits. We will review this process to ensure that it is in fact providing a more efficient process than keeping the physical cases together throughout the process.

USCIS is working diligently to reduce processing times across benefit types, including many EAD categories through changes to operations, the increased use of technology, and revising policies. USCIS appreciates your suggestions and is actively continuing to consider them as we explore all available options to further improve the processing of these important benefit requests.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

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

Ur M. Jaddou
Director

Rescinding Guidance on Discretionary Employment Authorization for Parolees (Aug. 12, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210812-EmploymentAuthorizationForParolees.pdf>; U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *All Temporary Protected Status (TPS) Applicants May Now File Forms I-821 and I-765 Online* (Nov. 29, 2021), <https://www.uscis.gov/newsroom/alerts/all-temporary-protected-status-tps-applicants-may-now-file-forms-i-821-and-i-765-online>; U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *All Temporary Protected Status (TPS) Applicants May Now File Forms I-821 and I-765 Online* (Nov. 29, 2021), <https://www.uscis.gov/newsroom/alerts/all-temporary-protected-status-tps-applicants-may-now-file-forms-i-821-and-i-765-online>; U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, *How to Make an Expedited Request* (Dec. 28, 2021), <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>