



A Ray of Hope for L-2 and H-4 Spouses: Settlement Will Lead to Automatic Extensions and Employment Authorization Incident to Status for Certain Nonimmigrants

11.12.2021

Because of persistent delays by U.S. Citizenship and Immigration Services (USCIS) in the processing of applications for Employment Authorization Documents (EADs), a group of aggrieved noncitizen plaintiffs filed a class action alleging that USCIS was unlawfully withholding employment authorization incident to their status as dependent spouses. That case, *Shergill, et al. v. Mayorkas*, was settled on November 10, 2021.

The Settlement Agreement sets the stage for important policy changes for certain nonimmigrant L-2 and H-4 spouses going forward because it calls upon USCIS to issue policy guidance regarding spousal EADs and employment authorization within 120 days of November 10, 2021. The individuals covered by the Settlement Agreement are L-2 nonimmigrants who are the spouses of L-1 nonimmigrants, and qualifying H-4 dependent spouses who meet certain requirements.

As part of the Settlement Agreement, USCIS will issue new policies and guidance that will grant relief to certain H-4 spouses who will qualify for **automatic extensions** of their employment authorization and EADs, and L-2 spouses will also enjoy **employment authorization incident to their status**. In the case of H-4 spouses, their auto-extensions will extend until the earlier of (1) the end of their H-4 status (as noted on their I-94), (2) the approval of their EAD application or (3) 180 days from the date their EAD card expires.

For L-2 spouses, USCIS is to issue guidance stating that L-2 spouses are employment authorized solely based on their L-2 status so long as such spouses possess an I-94 record indicating "L-2 Spouse." In conjunction with this guidance, U.S. Customs and Border Protection (CBP) is to incorporate system changes relating to the Form I-94 arrival notice to indicate that the bearer is an L-2 spouse so that such form can be used for I-9 purposes. The goal will be for those Forms I-94 to be used as proof of work authorization such that a separate EAD application will no longer be needed. Until such updated Forms

I-94 are issued, the L-2 spouses may take advantage of the same automatic extension as the H-4 spouses noted above.

The devil, of course, will be in the details as USCIS determines how to implement the new policy mandated by the Settlement Agreement for individuals with pending EAD applications and how best to roll out the new Form I-94 so that it can be used for I-9 purposes.

In the end, we eagerly await the new policy guidance that should be published before March 10, 2022. In the interim, given the complexity of implementing the new policy and procedures, L-2 and H-4 spouses should consult their immigration attorneys to discuss employment authorization strategies.

Ideally, these changes will mean that, thanks to the fifteen plaintiffs who chose to challenge the Department of Homeland Security, EAD processing will be eased for H-4 and L-2 nonimmigrant spouses.

Williams Mullen will continue to monitor the situation and will issue new alerts as further information becomes available.

Related People

- William J. Benos ? 804.420.6402 ? bbenos@williamsmullen.com
- Camila Conte ? 804.420.6258 ? cconte@williamsmullen.com

Related Services

- Labor, Employment & Immigration