

Automatic Extensions of Employment Authorization Documents The 180-Day Rule

On Jan. 17, 2017, a new Department of Homeland Security (“DHS”) regulation went into effect, which provides for automatic extensions of the validity periods of certain Employment Authorization Documents (Form I-766) (“EAD”) for up to 180 days for individuals who:

- Timely filed to renew an Employment Authorization Document;
- Are applying to renew an EAD in the same category as the previous EAD; and
- Are in a category that is eligible for the extension.

The extension begins on the date the EAD expires and continues for 180 days, unless the application is denied. To qualify for the automatic extension, the following three prongs must be met:

1. The employee must have timely filed an application to renew his or her EAD, meaning that the application was received by USCIS before the EAD expired (except certain employees granted Temporary Protected Status (TPS) who must follow the applicable TPS Federal Register notice), and the application remains pending;
2. The eligibility category on the face of the EAD is the same eligibility category code on the Form I-797C, Notice of Action, that the employee received from USCIS indicating USCIS’s receipt of the EAD renewal application (except employees with TPS who may have either A12 or C19 as the category code); and
3. The renewal application was filed on the basis of a qualifying eligibility category code. The following eligibility category codes qualify for a 180-day automatic extension: A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31, and A12 or C19 (A12 and C19 are the same categories).

Note: Some category codes on the EAD may include the letter 'P' such as C09P. Employers should disregard the letter 'P' when comparing the category code on the EAD with the category code on the receipt notice.

The employee's expired EAD in combination with Form I-797C showing that the EAD was timely filed and showing the same qualifying eligibility category as that on the expired EAD, is an acceptable document for Form I-9, Employment Eligibility Verification. Such document combination is considered an unexpired EAD under List A.

To learn more about this DHS Policy Update, please contact Attorney Raymond G. Lahoud, Chair of the Norris McLaughlin & Marcus Immigration Law Practice Group at rglahoud@nmmlaw.com.

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