



June 14, 2023

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Policy Alert

SUBJECT: Employment Authorization Documents Based on Compelling Circumstances

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to address eligibility criteria and standards for applications for employment authorization involving compelling circumstances.

Background

Noncitizens in the United States must have employment authorization before they may lawfully work in the country. Whether a noncitizen is authorized to work in the United States depends on their immigration status and, in many cases, their circumstances. While employment authorization for certain noncitizens is automatically provided by virtue of their immigration status or circumstances, other noncitizens must affirmatively apply for employment authorization and USCIS may grant employment authorization as a matter of discretion.¹

USCIS may provide employment authorization to beneficiaries of approved employment-based immigrant visa petitions who face delays due to backlogs in immigrant visa availability. Beneficiaries who face adverse circumstances resulting from termination from employment and loss of nonimmigrant status, may qualify for an Employment Authorization Document (EAD) if they face compelling circumstances beyond the usual hardship associated with job loss.

This compelling circumstances-based EAD is a temporary stopgap measure intended to address particularly difficult situations, including those that may have otherwise forced individuals on the path to lawful permanent residence to abruptly stop working and leave the United States. USCIS is now issuing guidance on EADs based on compelling circumstances to explain eligibility criteria and the adjudicatory process for reviewing and issuing such EADs.

This guidance, contained in Volume 10 of the Policy Manual, is effective immediately and applies prospectively to applications filed on or after June 14, 2023. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

Policy Highlights

¹ See [8 CFR 204.5\(p\)](#).

- Explains the eligibility criteria for initial and renewal applications for an EAD based on compelling circumstances for both the principal applicant and dependents.
- Provides a non-exhaustive list of situations that could lead to a finding that compelling circumstances exist, including serious illness and disability, employer dispute or retaliation, other substantial harm to the applicant, or significant disruption to the employer.
- Provides guidance on evidence an applicant could submit to demonstrate one of these compelling circumstances; for example, a principal applicant with an approved immigrant visa petition in an oversubscribed visa category or chargeability area, who has lived in the United States for a considerable period of time, could submit such evidence as school or higher education enrollment records, mortgage records, or long-term lease records, to support a potential finding of compelling circumstances if, due to job loss, the family may otherwise be forced to sell their home for a loss, pull the children out of school, and relocate to their home country.
- Provides guidance on what adjudication of compelling circumstances-based EADs entails, including the maximum validity periods USCIS may authorize.
- Explains that an individual with a valid compelling circumstances-based EAD is considered to be in a period of authorized stay, and therefore will not accrue unlawful presence. Although they may become ineligible for adjustment of status under INA 245(a), such an individual may subsequently leave the United States to apply for an immigrant or nonimmigrant visa at a consular post abroad, without triggering the unlawful presence grounds of inadmissibility (as long as they have not otherwise accrued periods of unlawful presence).

Summary of Changes

Affected Section: Volume 10 > Part B, Specific Categories

- Revises Chapter 2 title from “Employment-Based Nonimmigrants” to “Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses” and removes Section A title (“Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses”).
- Adds new Chapter 3 (Certain Employment-Based Immigrants in Compelling Circumstances), which was previously reserved.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 10: Employment Authorization, Part B, Specific Categories, Chapter 2, Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses [[10 USCIS-PM B.2](#)]; Chapter 3, Certain Employment-Based Immigrants in Compelling Circumstances [[10 USCIS-PM B.3](#)].