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News & Types: Immigration Monthly Updates

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Practices: Immigration

USCIS PUBLISHES RULE EXTENDING PERIOD OF AUTOMATIC EXTENSION FOR EAD RENEWALS

On December 13, 2024, USCIS published a final regulation in the Federal Register to permanently increase the amount of time for an automatic extension of certain expiring Employment Authorization Documents (EADs) with timely filed extensions.

This regulation finalizes a temporary rule to help prevent eligible EAD renewal applicants from experiencing a lapse in their employment authorization as a result of lengthy USCIS processing times. The extension provides continued employment authorization for up to 540 days or until a decision is made on the pending application. To qualify for this 540-day automatic extension, eligible applicants must file their Form I-765 Employment Authorization Document to request an extension of their existing EAD before it expires.

F-1 Students with a pending STEM optional practical training (OPT) extension application are only eligible for a 180-day extension of their EAD. However, STEM OPT applicants are eligible to submit a request for premium processing (with an additional filing fee) of the pending EAD application if desired.

Some of the noncitizens who benefit from this 540-day automatic extension of their EAD renewal include Refugees, Asylees and applicants for Asylum, noncitizens granted Temporary Protected Status (TPS), Violence Against Women Act (VAWA) self-petitioners, and applicants who applied for a Green Card based upon adjustment of status (AOS).

Please note that spouses of nonimmigrant workers holding an EAD in the H-4 (spouse of an H-1B Specialty Occupation Worker) – EAD classification C26, L-2/L-2S (spouse of an Intracompany Transferee) – EAD classification A18, or E-1/E-1S, E-2/E-2S, E-3/E-3S (spouse of a Treaty Trader, Treaty Investor or Australian Worker) – EAD classification A17 may have this 540-day extension shortened if their underlying status (Form I-94) expires sooner.

Spouses holding status/having a Form I-94 in the L-2S (spouse of an Intracompany Transferee), E-1S, E-2S, E-3S (spouse of a Treaty Trader, Treaty Investor or Australian Worker) who are working incident to their immigrant status and do not hold an EAD are not eligible for this 540-day extension. Please also note that the E-1S, E-2S, E-3S classification exists only under a USCIS policy created during the Biden Administration, and automatic employment authorization in the L-2S classification exists under USCIS policy as part of a settlement agreement in *Shergill, et al. v. Mayorkas*, 21-cv-1296-RSM (U.S. District Court for the Western

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District of Washington at Seattle). Such policy could be subject to rescission by Executive Order under the forthcoming Trump Administration. Spouses in the L-2S, E-1S, E-2S, E-3S classification who do not have an EAD may wish to consider speaking with a Masuda Funai attorney on the benefits of applying for one.

JAPANESE CITIZENS ELIGIBLE FOR GLOBAL ENTRY

As of December 2, 2024, Japanese citizens, regardless of visa status, are eligible to enroll in the U.S. Customs and Border Protection's (CBP) Global Entry Trusted Traveler Program, which will expedite entry into the United States, as Global Entry travelers do not have to wait in a passport inspection line, but instead complete the immigration and customs process at an electronic kiosk using previously submitted biometric data. Global Entry is now available to all Japanese citizens, notably persons with nonimmigrant visas or ESTA authorization.

Applying for Global Entry is done online at the CBP website. If preliminarily approved, applicants will complete the process by interviewing at a CBP office at a U.S. port of entry, and in many cases, the interview may be conducted when the applicant arrives in the United States from an overseas trip.

CBP charges a fee of $120 for Global Entry and if approved, Global Entry is valid for five years. Another advantage to Global Entry is that it includes TSA Pre-Check for travel in the United States.

For more information on Trusted Traveler Programs, please see the April 2024, issue of the Masuda Funai Business Immigration Monthly.

JANUARY 2025 VISA BULLETIN UPDATE

The Department of State (DOS) recently issued the January 2025 Visa Bulletin. During January 2025, the following foreign nationals approved in an *employment-based* immigrant classification become eligible to apply for permanent resident status through adjustment of status ("AOS").

First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) whose priority date is before **January 1, 2023**, no change since October 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or Workers recognized for their Extraordinary Ability) whose priority date is before **April 15, 2022**, no change since October 2024.

Second Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized

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for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before **August 1, 2023**, no change since October 2024.

- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before **October 1, 2020**, no change since October 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before **January 1, 2013**, no change since October 2024.

Third Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before **March 1, 2023**, no change since October 2024 .
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before **November 15, 2020**, no change since October 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before **June 8, 2013**, no change since October 2024.

Noncitizens approved for an *employment-based* immigrant classification who either have their AOS application pending or who will complete the Immigrant Visa processing at a U.S. Consular Post become eligible to have their AOS application approved or their interview scheduled in January 2025.

First Preference

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or workers recognized for their Extraordinary Ability) whose priority date is before **November 8, 2022**, no change since October 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researcher/Professors or Workers recognized for their Extraordinary Ability) whose priority date is before **February 1, 2022**, no change since October 2024.

Second Preference

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- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before **April 1, 2023**, an advancement of 17 days since October 2024.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before **April 22, 2020**, an advancement of 31 days since October 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before **October 1, 2012**, an advancement of 61 days.

Third Preference

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before **December 1, 2022**, an advancement of 16 days since October 2024.
- **China-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before **June 1, 2020**, an advancement of 61 days since October 2024.
- **India-born** persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before **December 1, 2012**, an advancement of 23 days.

DOS, which manages the Visa Bulletin, notes its intention to keep visa issuance within quarterly limits in accordance with the provisions of the Immigration and Nationality Act (INA).

CONSIDERATIONS FOR HOLIDAY TRAVEL

When travelling internationally, it is especially important to remember to bring your U.S. immigration documents with you. It is also recommended to verify the entry requirements and any prerequisites for the country you are traveling to.

U.S. Citizens must travel with their U.S. passport. Most countries require that the passport be valid for a period of time beyond the intended departure date to facilitate a return to the United States.

U.S. Permanent Residents must travel with their unexpired passport and original *Permanent Resident Card*/Green Card. A Permanent Resident who envisions being outside the United States for 180 consecutive days or longer should consider applying for a Reentry Permit prior to departure.

Applicants for Permanent Resident Status through Adjustment of Status (AOS) must travel with their unexpired passport and an unexpired Advance Parole document (or the original EAD annotated that is it valid for travel as an I-512); unless possessing an expired H-1B visa, H-4 visa or L-1 visa or L-2 visa and continuing their stay in the United States. (See information on entering the United Staes with an H or L visa *infra*).

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E-1 and E-2 visa holders must travel with their unexpired passport and unexpired U.S. visa (E-1 or E-2). If your employer has changed since the visa was issued, having the original paper version USCIS Notice of Action I-797 approving the employer change is essential to confirm the validity of your immigration status.

F-1 Students must travel with their unexpired passport, unexpired U.S. visa (F-1), and their Form I-20 *Certificate of Eligibility for Nonimmigrant (F-1) Student Status* endorsed by the Designated School Official (DSO) of the school they attend. An F-1 Student may also wish to bring a paper-version of their school transcript showing courses taken and a paper print out of courses enrolled in for the upcoming academic term should they be questioned by a CBP officer about their student status when entering the United States.

H-1B and H-4 visa holders must travel with their unexpired passport, unexpired U.S. visa (H-1B or H-4), and the original paper version USCIS Notice of Action I-797 approving their current status, as applicable. If H-1B/H-4 status has been extended or the H-1B employer has changed, having the original paper version USCIS Notice of Action I-797 approving the extended status or employer change is essential to confirm the validity of current immigration status.

H-1B1 and H-4 visa holders must travel with their unexpired passport, unexpired U.S. visa (H-1B1/HSC or H-4) and any original USCIS Notice of Action I-797 approving their current status, as applicable. The H-1B1 worker should also have a copy of the *Labor Condition Application* (LCA) covering their employment.

L-1A/L-1B and L-2 visa holders must travel with their unexpired passport, unexpired U.S. visa (L-1 or L-2), and the original paper version USCIS Notice of Action I-797 approving their current status, as applicable. If L-1/L-2 status has been extended or if the L-1 employer has changed, having the original paper version USCIS Notice of Action I-797 approving the extended status or employer change is essential to confirm the validity of current immigration status. If the L-1A or L-1B visa was issued pursuant to a Blanket Approval, the L-1 nonimmigrant must also have the unexpired and endorsed paper version of Form I-129S, *Nonimmigrant Petition Based on Blanket L Petition*.

After entering the United States, non-Permanent Residents and noncitizens should visit the CBP website to obtain a copy of their Form I-94 Admission Record. If the information in the Form I-94 is not accurate, particularly the visa classification or expiration date of status, CBP should be contacted to obtain a corrected document.

Please reach out to a Masuda Funai immigration attorney if you have questions on the documents needed for international travel.

MFEM NEWS

Bob White To Present to the NAFSA Chicago Roundtable on January 9th

Mr. Bob White, co-Chair of the Masuda Funai Immigration Group, will be giving a presentation to the NAFSA Chicago Roundtable which consists of officials from the International Offices of Colleges and Universities located throughout Illinois and Wisconsin. The presentation will be held in Masuda Funai's Chicago Conference Center on Thursday, January 9, 2025 at 2:30pm. The topic of the presentation will be a discussion of potential changes to the F-1 and J-1 programs by the new administration. Registration for the event is required and limited to NAFSA Chicago Roundtable participants. Participants may register here.

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Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.

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