



June 5, 2024

Ms. Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Submitted at <https://www.regulations.gov>

Re: **Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, CIS No. 2767–24; DHS Docket No. USCIS–2024–0002, RIN 1615–AC78, 89 Fed. Reg. 24628 (Apr. 8, 2024)**

Dear Ms. Deshommes:

Kids in Need of Defense (KIND) respectfully submits the following comments in response to the request for public comment titled “Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants,” published by the Department of Homeland Security’s (DHS) U.S. Citizenship and Immigration Services (USCIS) on April 8, 2024.

KIND is the leading national organization working to ensure that no child faces immigration court alone. Since 2009, KIND has provided pro bono legal representation to more than 14,000 unaccompanied children in collaboration with more than 800 global partners. KIND’s social services program facilitates support, including counseling, educational support, medical care, and other services. KIND also works to address the root causes of forced migration and to promote the safety and well-being of children at every phase of migration.

Many of KIND’s clients have fled persecution, abuse, or other harms in their countries of origin and qualify for forms of humanitarian protection. These children may also become eligible for work authorization and Employment Authorization Documents (EADs)—a benefit that not only helps to support the financial wellbeing and career trajectories of older youth, but also provides government-issued identification that is often critical for children and youth to meaningfully access social services, medical care, and other daily needs, even if not used for purposes of employment.¹ Through work with

¹ 89 Fed. 24628, 24645 (“In addition, having unexpired employment authorization and EADs is necessary for certain noncitizens such as asylum applicants and TPS beneficiaries when they apply for benefits that require proof

thousands of unaccompanied children each year, KIND has learned of the myriad consequences that government delays in adjudicating immigration relief and benefits pose for children, not only increasing their vulnerability to exploitation but impacting their ability to participate in legal proceedings with grave importance for their lives and safety.

We strongly support the Temporary Final Rule as a necessary measure to prevent nearly 800,000 people, including children and youth, from experiencing expiration of their work authorization or EADs, despite having timely applied for renewal.² We urge USCIS to make this automatic extension permanent and to increase the relevant period to 730 days to promote predictability and to reduce the likelihood that further stopgap measures will be needed. These measures should be coupled with ongoing actions to reduce backlogs, including the embrace of technological innovations that can prioritize renewals at risk of expiring while also facilitating timely adjudication of humanitarian protection applications.

EADs Play a Critical Role in Supporting the Wellbeing of Unaccompanied Children

Many unaccompanied children and youth currently have work authorization and EADs on the basis of pending asylum or adjustment of status applications,³ or having been granted T or U visa status. Expirations and renewal delays not only impede children's ability to retain lawful work when eligible, but also create barriers to children's participation in their legal cases by curtailing access to social services and other care.

The process of applying for humanitarian protection involves numerous steps and hurdles for unaccompanied children, challenging even for those who have an attorney to assist them in this process. In addition to preparing an application for protection, children may be required to testify or be interviewed about traumatic events giving rise to their legal claims. Access to medical and mental health care and other social services often proves beneficial to children during this challenging period, in which they often must balance competing demands such as attending school, learning a new language, and adjusting to new living situations. Yet government-issued identification is frequently necessary to access these services. EADs help to bridge this gap, including for children not yet eligible to work, and often serve as the only form of government-issued ID for unaccompanied children.

Recognizing similar barriers and the importance of identification documents, the Office of Refugee Resettlement recently piloted the creation of a card version of its Verification of Release form for unaccompanied children released from care. Although we are hopeful this innovation will improve access to identification and necessary services in the future, cards have not yet been issued to all

of identity or immigration status. The only acceptable document available to some noncitizens such as asylum applicants and TPS beneficiaries to establish identity for other purposes, such as obtaining a REAL ID-compliant driver's license or identification card, may be an unexpired EAD. REAL ID-compliant driver's licenses as well as identification cards are used for other official purposes including access to Federal facilities and boarding federally regulated commercial aircraft.”).

² *Id.* at 24628-9.

³ *See id.* at 24634 (“If USCIS does not take immediate action, approximately 800,000 EAD renewal applicants will be in danger of experiencing a gap in employment authorization and/or EAD validity in the approximately 2-year period beginning May 2024. . . . Approximately 80 percent of those renewal applications will be pending asylum applicant (C08) EADs. The remaining 20 percent will primarily be adjustment applicant (C09) and cancellation of removal (C10) EADs.”).

children and it is not yet known how widely the cards will be accepted. As such, EADs remain a critical and recognized form of government-issued identification, even when not used for work purposes.

EADs are similarly critical to facilitate access to jobs and training opportunities for older youth that can assist their financial wellbeing and professional and personal growth. By enabling youth to build resources and community, safe and lawful work can help to reduce vulnerability to exploitative jobs, human trafficking, and homelessness. Recent reports of widespread child labor violations in industries across the United States only underscore the importance of ensuring predictable processes by which eligible youth can obtain work permits to access lawful jobs and avoid dangerous, unlawful, and exploitative situations. Equally important, timely renewals and sufficient validity periods provide assurances for employers seeking to verify the eligibility of youth seeking employment.

Delays in Approving and Renewing EADs Increase the Vulnerability of Children

Despite the importance of EADs for children and youth, government delays continue to impede access to this necessary benefit. Among those affected are thousands of unaccompanied children who fled parental abuse, abandonment, neglect, or similar harm and who are eligible for Special Immigrant Juvenile (SIJ) status. Many children experience prolonged waits for adjudication of their SIJ (I-360) petitions by USCIS. During this time, they are not eligible for EADs that could improve their access to work or training opportunities and social services and assist them in navigating significant trauma and life transitions. Historically, a youth with an approved SIJ petition also was not eligible for an EAD until they filed an application to adjust their status to that of lawful permanent resident – which entailed years-long wait times due to longstanding backlogs in visa number availability.⁴

In recognition of these risks, in March 2022, USCIS issued a deferred action policy that also provides a pathway to work authorization for youth with an approved SIJ petition. USCIS has expeditiously adjudicated deferred action and EADs under this policy, which allows many children and youth to access necessary services, safe and lawful employment, and legal relief for which they are eligible. However, unlike SIJ-classified youth who receive EADs based on a pending adjustment application, youth who receive EADs through deferred action are not eligible for automatic EAD extensions. Moreover, for both cohorts of SIJs, EAD renewal backlogs could undermine the goals of this policy and lead to job loss and other negative impacts for recipients if their work permits unexpectedly lapse. Indeed, as deferred action confers limited protection for periods up to four years, many recipients could face the need to apply for DA and EAD renewal starting within the next two years, while they continue to wait for visas. Other SIJs may still be awaiting grants of deferred action, and those who face persistent adjudication delays for their underlying SIJ petitions are not yet eligible for SIJ deferred action and EADs. The confluence of these backlogs creates barriers for children at every stage: in obtaining timely consideration of their humanitarian protection claims, securing identification and work authorization, and renewing EADs in future years.

⁴ Notably, the adjustment backlog recently numbered more than 107,690 children and youth with approved SIJS petitions. See Rachel Leya Davidson, Laila L. Hlass, Katia Leiva, Gabriela Cruz, *False Hopes: Over 100,000 Immigrant Youth Trapped in the SIJS Backlog*, at 24, [2023-false-hopes-report.pdf \(squarespace.com\)](#).

Recommendations

It is imperative that USCIS employ multiple strategies to prevent harm from government delays and to ensure timely consideration of all applications for EADs and humanitarian protection. KIND offers the following recommendations in response to the questions posed by USCIS in the notice accompanying the temporary final rule.

1. The Automatic Extension Should Be Made Permanent to Prevent Ongoing Uncertainty and Hardships and To Facilitate Predictability and Compliance for Employers

KIND strongly urges USCIS to make permanent the extension provided for by the temporary final rule. This rule, like the one issued before it in 2022, forestalls the immediate loss of employment authorization, jobs, and vital services for hundreds of thousands of people, including children, and avoids related negative impacts for employers and the economy. Absent the extension, nearly 800,000 people could face potential job loss as their status expires, notwithstanding their timely filing of renewal applications and their continued eligibility for work authorization. This includes unaccompanied children with pending asylum applications and children awaiting the opportunity to adjust status following approval of their petitions for SIJ status.

KIND appreciates DHS' efforts to address existing backlogs that impact timely adjudication of initial EAD applications and renewals. The agency's hiring, training, and dedication of additional staff, and the extension of the EAD validity periods to up to five years⁵ for certain categories are laudable measures that will work to reduce delays, facilitate USCIS' compliance with legal obligations, and lend predictability to the system. These measures, however, will take time to meaningfully reduce backlogs and remain insufficient, given unprecedented global displacement and increased migration in the face of numerous conflicts and humanitarian crises driving migration.⁶ For example, although historically unaccompanied children have predominantly come from the countries of El Salvador, Guatemala, and Honduras, recent years have seen increasing proportions of children arriving from other countries. Specifically, ORR has seen an increase in child arrivals from Mexico and other countries, with children from "all other countries" reaching 13% in FY2023, as compared to less than 5% in FY18.⁷ As the number of children and other individuals seeking protection in the U.S. increases, it will become increasingly important for USCIS to implement additional and coordinated efforts to timely and efficiently manage adjudication processes.⁸

The recurrent use of temporary rulemaking signals the need for more lasting measures to prevent disruptions in work authorization for vulnerable populations and to realistically meet current and future needs. For this reason, we urge that the automatic extension be made permanent.

⁵ See, e.g., USCIS, [USCIS Increases Employment Authorization Document Validity Period for Certain Categories | USCIS](#) (Sept. 27, 2023).

⁶ 89 Fed. Reg. at 24637 ("As DHS noted in 2023, economic and political instability around the world has been fueling high levels of global migration, including in the Western Hemisphere.")

⁷ Office of Refugee Resettlement, [Fact Sheets and Data | The Administration for Children and Families \(hhs.gov\)](#) (last visited June 3, 2024).

⁸ See 89 Fed. Reg. at 24635 ("The most recent and significant contributing factor to the severe backlog and increased processing times for renewal EAD applications is the substantial increase in the number of initial EAD applications based on pending asylum applications (C08) that began in March 2023.").

2. The Automatic Extension Period Should Be Increased to 730 Days

Currently, processing times for applications can vary widely across different EAD categories and different USCIS service centers. Additionally, times to process applications can shift if and as USCIS priorities change and in response to fluctuating agency resources. Consequently, it can be challenging to discern precisely the period that will be sufficient to avert gaps in work authorization for applicants as a result of government delays in any given year. At present, processing times can exceed 15 months in some cases, while others may be experiencing even longer waits. Indeed, under the current rule it is estimated that 260,000 applicants will still face negative impacts from government delays notwithstanding the extension.⁹ Although USCIS has made concerted efforts to address these backlogs, the agency has indicated that its best efforts have been insufficient to date in preventing the need for this temporary rule.¹⁰ We strongly support USCIS' taking continued steps to eliminate backlogs as expeditiously as possible, but simultaneously urge the agency to be realistic in its assessment of current needs so that renewal applicants will not bear the burden of uncertainty and job loss if USCIS' ability to timely process applications fails to keep pace with demand. A workable solution must aim to prevent harm for all similarly situated applicants, without arbitrarily denying protection to significant numbers of individuals who will foreseeably be impacted by the government's actions.¹¹ For this reason, we urge that the current extension be expanded to 730 days to ensure a period of adequate length to cover renewal applicants in all categories.

3. USCIS Should Consider Additional Measures to Mitigate the Risk of Expiring Employment Authorization Due to Government Delays

A. Increase the length of EAD validity periods for additional categories

Recent updates to the USCIS Policy Guide increase the potential validity period for c(8) and (c)(9) EADs for up to five years. These changes are welcome and provide greater security to applicants while reducing the number of renewal applications that USCIS will need to consider, and in turn, related backlogs.¹² KIND urges that USCIS consider increasing validity periods for additional EAD categories and populations to maximize these efficiencies and to further mitigate the risks associated with expiring work authorization due to government delays.

⁹ *Id.* at 24655.

¹⁰ *Id.* at 24636 (“As is explained in this preamble, EAD application processing times and the number of pending EAD applications have not sufficiently improved, and despite USCIS’ multiple operational and sub-regulatory efforts to reduce the backlog, ongoing and dynamic circumstances, which are outside of USCIS’ control, have prevented USCIS from keeping up with the adjudicatory workload.”).

¹¹ *See id.* at 24654 (“At this time, DHS has limited the automatic extension to the minimum period necessary to avert the immediate emergency while USCIS (1) works to improve processing times and (2) seeks comment on this TFR and potential additional measures to take at a future time. DHS appreciates that this TFR does not resolve all potential uncertainty with respect to renewal EAD applications, but notes that it has sought comment on potential solutions and that USCIS’ ongoing streamlining efforts, sub-regulatory measures, and technology innovations may produce significant results within this filing period.”).

¹² 89 Fed. Reg. at 24640 (“Although USCIS predicts that the main effects of this policy change will not occur until after October 2025, USCIS projects that the increased validity periods will lead to a greater than 95 percent reduction in renewal EAD filing volumes from FY 2026 to late FY 2028 for categories covered by this policy.”).

B. Permit electronic filing for applications addressed through the automatic extension

Currently, many applications covered by the automatic extension cannot be filed electronically. While e-filing systems frequently present barriers for applicants, particularly children and youth, systemic improvements can maximize the potential of technology to increase accessibility and reduce processing times. Such improvements can include the prioritization of renewal applications nearing expiration to better manage USCIS' workload and to alleviate negative impacts for applicants. We urge USCIS to continue expanding technological capabilities to expand electronic filing options.

C. Provide clearer documentation to demonstrate continued work authorization for applicants covered by the automatic extension

Youth impacted by renewal delays frequently experience challenges proving to their employers that they remain authorized to work, as language addressing automatic renewal is hard for employers to recognize or locate on receipt notices. KIND recommends that USCIS consider creating and providing to impacted populations a stand-alone document or paper card, similar in appearance to the I-94 card, that can be presented in such cases to provide greater clarity and reduce the risks for impacted individuals. In the alternative, we urge USCIS to include language on EAD receipt forms that more clearly and prominently indicates that the receipt notice itself confirms the automatic extension of validity of the EAD, and stating the date through which the renewal applicant remains authorized to work.

Absent such efforts, youth may lose employment or face difficulties during hiring processes due to misunderstanding by employers about EAD validity. This risk may be particularly acute as employers implement increasingly rigorous processes to ensure compliance with child labor laws and regulations following increased enforcement and media reports of a rise in child labor across industries. Greater clarity will be important to help eligible youth access safe and lawful work and to help employers advance efforts to combat and prevent child labor exploitation.

4. USCIS Must Continue to Prioritize the Timely Adjudication of Humanitarian Protection Applications

While working to address the immediate impacts of EAD renewal delays it is imperative that USCIS simultaneously undertake actions to ensure that new applications for work authorization and pending applications for asylum, SIJ status, adjustment of status on those bases, and other forms of humanitarian protection are timely adjudicated. KIND is encouraged by USCIS' responsiveness to the hardships faced by SIJ youth who are unable to adjust their status due to visa backlogs through the creation of the deferred action policy. However, we remain concerned about the challenges many KIND clients continue to confront in obtaining timely adjudication of their I-360 petitions for SIJ classification, during which there is no eligibility for work authorization, and about similar delays experienced by children and youth applying for asylum and associated (c)(9) EAD applications. We strongly encourage USCIS to implement additional actions to eliminate backlogs for these application types to support the stability, independence, and wellbeing of unaccompanied children and others who are seeking protection.

Conclusion

KIND appreciates the opportunity to comment on the temporary final rule increasing the automatic extension period for certain EAD renewal applicants. We recommend that USCIS make this important

measure permanent and extend the relevant period to 730 days to realistically address persistent backlogs and growing demands on the agency, and to prevent ongoing hardship for especially vulnerable populations. We strongly urge additional actions to improve the efficiency and predictability of USCIS adjudication processes to best ensure the adjudication without delay of applications for humanitarian protection and for EADs. Please feel free to reach out to us at cshindel@supportkind.org if we may be of assistance in these efforts.

Sincerely,

/s/

Jennifer Podkul
Chief, Global Advocacy
Kids in Need of Defense