

Mobility: Immigration alert

February 2023

United States

USCIS to resume bundling adjudication of I-539 and I-765 applications filed by H-4 and L-2 spouses

Executive summary

Effective 25 January 2023, U.S. Citizenship and Immigration Services (USCIS) has agreed to adjudicate Form I-539 (Application to Change or Extend Status) and Form I-765 (Application for Employment Authorization) applications submitted by H-4 and L-2 spouses, when these forms are “properly filed together” with an underlying I-129 petition.

Applications are considered “properly filed together” when they are submitted to USCIS at the same time and in the same location as the I-129 petition, consistent with USCIS form instructions. USCIS will adjudicate these applications together irrespective of if they were filed under premium processing or regular processing. If Forms I-539 or Forms I-765 are not properly filed concurrently with the I-129, or are filed in a different location than the primary I-129 petition, USCIS will *not* consider these applications “properly filed together” and will adjudicate them separately.

Background and analysis

On 20 January 2023, the Department of Homeland Security entered into a settlement agreement with 101 spouses of H-1B and L-1 workers. In *Edakunni v. Mayorkas*, the Plaintiff spouses sought adjudication of their Forms I-539, Application to Change or Extend Status, and/or Forms I-765, Application for Employment Authorization (EADs), that were pending with USCIS. They argued that the adjudication of their requests for these immigration

benefits were unlawfully delayed and alleged that significant harm had been caused by the lapse to their nonimmigrant status and work authorization in the United States.

Currently, when Forms I-539 and Forms I-765 are filed at the same time and in the same location as the primary I-129 petition, the primary I-129 petition is adjudicated first and the I-539 and I-765 applications are adjudicated at a later date, separate from the primary petition. Applicants wait anywhere from several months to more than a year for the adjudication of their applications. The de-coupling of the family’s cases has resulted in, amongst other things, spouses of H-1B and L-1 workers being unable to work while they await adjudication, months after the primary beneficiary’s case had been adjudicated.

The settlement will, therefore, mandate concurrent adjudication of Forms I-539 and I-765 properly filed together with the primary I-129 petition. This settlement marks a reversal from current USCIS practice and policy.

This settlement and the obligations set forth will become null and void two years after it becomes effective, ending 25 January 2025.

What this means

This landmark settlement provides relief to spouses who would otherwise spend months - sometimes years - awaiting the adjudication of their change/extensions of



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status and employment authorization. Premium processing of H-1B and L-1 petitions will now provide an avenue for dependent beneficiaries to secure approval of their H-4 and L-2 extensions of status and employment authorization applications in 15 days, if properly filed with the I-129.

We will continue to monitor developments in this area and provide updates as they are available. Please reach out to your EY Law professional with any questions in the meantime.

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ey.com/en_ca

George Reis, Managing Partner
+1 416 943 2535
george.reis@ca.ey.com

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Marwah Serag, Partner
+1 416 943 2944
marwah.serag@ca.ey.com

Author: Braeden Newman, Associate Attorney
+1 519 498 3819
braeden.newman@ca.ey.com

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Christopher Gordon, Partner
+1 416 943 2544
christopher.d.gordon@ca.ey.com

Nadia Allibhai, Partner
+1 613 598 4866
nadia.allibhai@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com