



MEMORANDUM

TO: Individuals in E1, E2, E3 or L1 Nonimmigrant Visa Status
FROM: Seyfarth Shaw Business Immigration Group
RE: Nonimmigrant Visa Spousal Work Authorization

INTRODUCTION

If you are in E or L visa status, please note that your spouse may apply for E or L “dependent” status under your approved visa. Spouses in E or L dependent status may work in the United States without an Employment Authorization Document (EAD) provided they hold the appropriate Form I-94 and List B identity document, as detailed below. Please see our Frequently Asked Questions below for additional guidance.

Frequently Asked Questions

Q: I thought my E or L spouse needs an EAD to work in the United States. When did this change?

A: In November 2021, the United States Citizenship and Immigration Services (USCIS) updated its Policy Manual to reflect that E and L spouses may work “incident to status” (without an EAD). This policy change was a result of the settlement agreement in *Shergill, et al v. Mayorkas*. Spouses in E or L status started to benefit from the policy change starting in Spring 2022 when the updated Forms I-94 became available through USCIS and Customs and Border Protection (CBP).

Q: If my spouse does not need an EAD, how does he or she show their work permission in the United States?

A: To work in the U.S. without an EAD, spouses of E and L nonimmigrants must have a valid Form I-94 showing the class of admission as E-1S, E-2S, E-3S, or L-2S. This Form I-94 is considered a List C document for I-9 employment verification purposes.

This means that your spouse will also need a List B document to complete their I-9 with a U.S. employer. A common List B document is a driver’s license or ID card issued by a U.S. state or territory. Each U.S. state or territory has instructions for applying for ID cards/driver’s licenses through the respective Department of Motor Vehicles website. It may take several weeks or longer before you can apply for ID card/driver’s license, as many states require proof of residence in the form of mail and utility bills sent to your U.S. residence.

Aside from a driver’s license or ID card issued by a U.S. state or territory, there are other acceptable List B documents that can be presented. See <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents> for more details on possible List B documents.

List B documents have no bearing on your spouse's work authorization and only serve as identity verification documents.

Q: Does my spouse need to apply for a Social Security Number?

A: Depending on whether your spouse's employer participates in the government's E-Verify program, your spouse may or may not need to apply for a Social Security Number (SSN) to complete Section 1 of the Form I-9. However, it is important to note that your spouse may still begin work prior to receiving their SSN. Your spouse will need update the Form I-9 upon receipt of the SSN. Generally, to obtain the List B identity document that is required to complete the I-9 process, your spouse may need to obtain a U.S. Social Security Number. In summary, for employment purposes, it may benefit your spouse to apply for a SSN.

Q: For how long is my E or L spouse allowed to work?

A: In short, the work authorization expires when the Form I-94 expires. Spouses of E or L nonimmigrants are allowed to work provided that they hold a valid and unexpired Form I-94 with the correct class of admission, as outlined above. The Form I-94 for your spouse will either expire on the same date as your underlying L-1 or E status or when your spouse's passport expires, whichever occurs earlier. When the Form I-94 expires for your spouse, your spouse will be asked to reverify the I-9 with his or her employer.

Thus, your spouse will need to obtain an updated Form I-94 with a new expiration date to keep working in the United States. To obtain a new I-94, your spouse will either need to file an I-539 application to extend E/L dependent status or will need to travel internationally to obtain an updated I-94 from a CBP port of entry. (The I-539 application only extends the I-94 for your spouse once approved. Your spouse does not benefit while it is filed and pending.) Please contact your Seyfarth team to determine the best strategy for extending the Form I-94 for your spouse.

Q: How do I find or correct the Form I-94 record for my E or L spouse?

A: If your spouse recently entered the U.S. at a local port of entry through CBP, you may download a copy of the Form I-94 from the CBP website (<https://i94.cbp.dhs.gov/i94>). Please review and ensure that the Form I-94 class of admission contains the "S" such as E-1S, E-2S, E-3S, or L-2S. If you cannot locate the Form I-94 or if it does not contain the "S" in the class of admission field, please contact CBP through the CBP Traveler Communications Center (https://help.cbp.gov/s/questions?language=en_US) and choose "I-94" as the topic and "E and L Dependent class of admission change" as the applicable issue that requires their attention.

A screenshot appears below regarding the fields that you should select when submitting the request:

Please provide your question in the Description entry

* Required Fields

* Topic

* Applicable Issue

TTP Programs

* Email

* Confirm Email Address

* Description

[Upload Files](#) Or drop files

If your spouse filed an I-539 application to extend his or her dependent status since the last arrival date, the most recent I-94 will likely be on the bottom of the Form I-797 Approval notice issued by USCIS. Please ensure that the class of admission is recorded appropriately as E-1S, E-2S, E-3S, or L-2S. If not, you will need to contact USCIS to request an updated I-797 approval notice for the I-539 application containing the proper class of admission. USCIS has established an email address for these requests: E-L-married-U21@uscis.dhs.gov.

Q: Can E or L spouses work for any employer?

E or L spouses have “open market” or “carte blanche” employment permission. This means your spouse is not limited to jobs relating to his or her usual occupation or education background and may engage in self-employment or freelance work. If you or your spouse wishes to become a lawful permanent resident in the future, you should ensure that the employment would not conflict with federal laws (e.g., employment with marijuana dispensaries could present an issue).

Q: Are same-sex E or L dependent spouses allowed to work in the United States?

A: Yes. Based on the Supreme Court’s holding in *United States v. Windsor*, lawfully married same-sex spouses are eligible for work permission in the United States. Applicants must present a marriage certificate issued by the U.S. or a foreign state to obtain the E or L dependent visa.

Q: Does my son or daughter benefit from work permission as an E or L dependent?

A: No. Only your spouse is eligible.

Q: Is there a benefit to applying for an EAD even though it is not necessary?

A: The main benefit of obtaining an EAD is to hedge against possible changes in policy. The permission for E or L spouses to work incident to status is not a regulatory change to 8 CFR § 274a.12(a) but instead a change of policy. This makes it more vulnerable to change in the future. USCIS is an executive agency, so a change in presidential administrations could potentially lead to a change in policy. Having the EAD might be beneficial if a future administration rescinds the current policy of allowing E or L dependent spouses to work incident to status.

The automatic extension for renewal EADs under an E or L “dependent” status does not necessarily warrant filing for an EAD. The automatic extension for renewal EADs under an E or L “dependent” status still limits work authorization to the Form I-94 expiration date. Thus, the Form I-94 expiration date will still determine the expiration for E or L spousal work authorization. For this reason, the automatic extension policy would not be of benefit to your spouse if they lack a valid Form I-94.

Q: What if I want to file an EAD for my E or L dependent spouse?

A: While optional, it is still possible to file EAD applications (Form I-765) for E and L dependent spouses. Some will complete the Form I-765 by themselves, following the instructions from the USCIS website. If you would like our firm's assistance, please contact your Seyfarth team for more details.

If you have any questions about employment authorization for E and L spouses, please reach out to your immigration contact person at Seyfarth Shaw LLP. We will be happy to address your questions.