

PRESENTED AT

2021 Conference on Immigration and Nationality Law

October 29, 2021

Austin, Texas

**Business NIV Solutions - Practical Timing
Considerations to Maintain/ Extend Status and
Consular Processing**

Philip Eichorn, Houston

James Prappas, Houston
Kane Russell Coleman Logan PC

Philip Eichorn
Foster LLP
Houston, Texas

peichorn@fosterglobal.com

713.335.3930

James Prappas
Kane Russell Coleman Logan PC
Houston, Texas

jprappas@krcl.com

713.425.7431

This presentation will discuss strategic timing of processing issues related to premium processing; dependent EAD extensions; the process to develop strategies for successful consular outcomes; and how to manage client expectations.

Previously as part of this presentation we also had intended to discuss National Interest Exceptions and related travel restrictions. On September 20, 2021, the White House announced that it plans to ease travel restrictions on all international travelers coming into the United States beginning in early November 2021. The White House will rescind the current geographic COVID-19 related travel bans implemented for individuals from China, Iran, the Schengen Area, U.K., Ireland, Brazil, South Africa, and India and will instead move forward with solutions to deter the spread of COVID-19 based on individuals, rather than restrictions placed on entire countries or regions. This marks a reversal from the travel bans previously imposed under the Trump and Biden Administrations. To date, the Biden administration has not released any guidance concerning this policy change.¹ It is very important to monitor the status of this issue as the situation continues to evolve, and the changes will impact client's ability to travel to the U.S.

The following provides an overview of four key considerations to develop business nonimmigrant visa solutions with a focus on practical timing considerations to maintain/ extend nonimmigrant status and consular processing as well as resources to guide and develop nonimmigrant visa solution.

I. TOPICS COVERED

1. Employment authorization document (EAD) extensions and Expedite Requests.
2. Premium Processing
3. Practical considerations to develop a strategy and process to achieve successful consular outcomes.
4. How do you manage client expectations?
5. Legal research
6. Useful websites for law firm newsletters

II. EAD AND EXPEDITE REQUESTS

The law provides for three categories of people who are eligible for employment authorization. Those include persons authorized for employment incident to status; persons authorized to work for a specific employer incident to lawful immigration status; and persons who must apply to USCIS for permission to work. Most people who are authorized for employment incident to status, with some exceptions, must file for an Employment Authorization Document (EAD). 8 CFR §274a.12 (a). The

¹ See AILA Practice Alert: Biden Administration Plans to Rescind COVID-19 Travel Bans and Instead Required Proof of Vaccination AILA Doc. No. 21092014 See also <https://www.rollcall.com/2021/09/20/biden-administration-eases-covid-19-ban-on-international-travel/> ; and https://www.wsj.com/articles/u-s-to-require-foreign-nationals-seeking-entry-to-show-proof-of-covid-19-vaccination-11632147264?mod=searchresults_pos11&page=1

same applies for persons who must apply to USCIS and are subject to 8 CFR §274a.12(c). Those persons who are authorized to work for a specific employer incident to lawful immigration status are not required to file for the EAD. 8 CFR §274a.12(b).

Where a person requires an EAD to work, they must first file the Form I-765 with USCIS and at the appropriate Service Center with the appropriate fees and supporting documentation. [Application for Employment Authorization | USCIS](#). The processing times for USCIS to adjudicate EADs vary greatly. As an example, the current processing times range from three (3) months to sixteen (16) months at the Texas Service Center (TSC). These elongated processing times are exceptionally frustrating. The American Immigration Lawyers Association (AILA) recently issued a handout (that can be customized) to best help clients understand the processing delay issues. [AILA - Why Is Your Case Taking So Long? USCIS Processing Delays Have Now Hit Crisis Levels](#).

Managing expectations and maintaining lines of communication with our clients is part of our daily routine. To best assist with any EAD applicants, and especially the dependent (E-3D, H-4, and L-2) spouses, it may be a best practice to check the monthly-updated USCIS Case Processing webpage [[Processing Times \(uscis.gov\)](#)] at the time of filing. The practitioner can notify the applicant in writing of the current processing times and, for transparency, provide the hyperlink to the Case Processing webpage to the applicant. Another best practice to employ if possible is to set periodic internal reminders to check the status online and preemptively send periodic “no update” -update emails to the client until USCIS approves the matter. These practices do not in any way resolve the issue, but they can assist with alleviating client concerns, as the client will have the knowledge that this is not happening to just them and that their legal team is staying current on their case.

EXPEDITE REQUESTS

With USCIS case processing times elongated and likely to remain so for the foreseeable future, there will be times where a client may want to try to accelerate the normal processing. USCIS does provide for [Expedited Processing](#) of I-765 (EAD) cases. The agency will consider each expedite request on the documentation submitted and the corresponding merits. USCIS has sole discretion in this determination, and the decision whether to expedite is not appealable.

On June 9, 2021, the USCIS updated the criteria of the expedite request to include the following:

1. Severe financial loss to a company or person, provided that the need for urgent action is not the result of the petitioner’s or applicant’s failure to:
 - A. Timely file the benefit request, or

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Business NIV Solutions - Practical Timing Considerations to Maintain/Extend Status and Consular Processing

Also available as part of the eCourse

[2021 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the
45th Annual Conference on Immigration and Nationality Law session
"Business NIV Solutions - Practical Timing Considerations to Maintain/Extend Status and
Consular Processing"