



March 18, 2022

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## Policy Alert

**SUBJECT:** Documentation of Employment Authorization for Certain E and L Nonimmigrant Dependent Spouses

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the [USCIS Policy Manual](#) to address the documentation that certain E and L spouses may use as evidence of employment authorization incident to their status.

### Background

On November 12, 2021, USCIS clarified that it will consider E and L spouses to be employment authorized incident to their valid E or L nonimmigrant status.<sup>1</sup> At that time, USCIS explained that DHS would take immediate steps to modify the Arrival-Departure Record (Form I-94) evidencing nonimmigrant status issued to E and L dependents so that E and L spouses could be distinguished from E and L children on the face of the document. USCIS stated that, once these changes were made, the revised Form I-94 containing a notation indicating that the bearer is an E or L spouse would be acceptable as evidence of employment authorization under [List C of Form I-94, Employment Eligibility Verification](#).

USCIS is now updating its guidance to explain the system modifications made following the November 2021 announcement, specifically, the addition of new Class of Admission (COA) codes to distinguish between E and L spouses and children.<sup>2</sup> This guidance, contained in Volume 10 of the Policy Manual, is effective immediately. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

### Policy Highlights

- Provides that, as of January 30, 2022, USCIS and U.S. Customs and Border Protection (CBP) began issuing Forms I-94 with the following new Class of Admission (COA) codes for certain

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<sup>1</sup> See USCIS Policy Alert, [Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses](#), issued November 12, 2021. As explained in the guidance published at that time, this policy does not apply to dependents (including spouses) of Employees of the Taipei Economic and Cultural Representative Office (TECRO) and Taipei Economic and Cultural Offices (TECO), who continue to be required to apply for employment authorization per 8 CFR 274a.12(c)(2). Further, this policy does not apply to spouses of Long-Term Investors in the Commonwealth of the Northern Mariana Islands (E-2 CNMI Investors) who are also required to apply for employment authorization per 8 CFR 274a.12(c)(12). Additionally, as noted in 8 CFR 214.2(e)(23)(x)(B), spouses of E-2 CNMI investors who obtained such status based upon a Foreign Retiree Investment Certificate are not eligible for work authorization.

<sup>2</sup> Unlike certain E and L spouses, E and L children are not employment authorized incident to status.

E and L spouses: E-1S, E-2S, E-3S, and L-2S. An unexpired Form I-94 reflecting one of these new codes is acceptable as evidence of employment authorization for spouses under List C of Form I-9.

- Explains that affected E and L spouses with a Form I-94 issued by USCIS before January 30, 2022 that was notated with E-1, E-2, E-3, E-3D, E-3R, or L-2 nonimmigrant status will generally receive a notice from USCIS regarding the new COA codes that, together with an unexpired Form I-94 reflecting E-1, E-2, E-3 E-3D, E-3R, or L-2 nonimmigrant status, may serve as evidence of employment authorization for such spouses under List C of Form I-9.<sup>3</sup>
- Adds certain E and L spouses, which were previously omitted, to the list of those employment authorized incident to status.

### **Citation**

Volume 10: Employment Authorization, Part A, Employment Authorization Policies and Procedures, Chapter 2, Eligibility Requirements [[10 USCIS-PM A.2](#)]; and Part B, Specific Categories, Chapter 2, Employment-Based Nonimmigrants [[10 USCIS-PM B.2](#)].

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<sup>3</sup> This process of USCIS sending a supplemental notice is not available for Forms I-94 issued by CBP because USCIS cannot issue documents on behalf of CBP.