

Honorable Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMANDEEP SHERGILL, MATHAVI
VENKATESAN, SWATHI PEDDI,
VENKATA YASESWINI MADHURI
SURIVARAPU, PUJA PARIKH, NAGA
BOBBILI, PAVANI KALLURU, DIVYA
POTTI BALAJI, PRIYANKA BHATT,
AYUSHI ARORA, RISHITHA
KUNAPARAJU, SHASHANK
KHANDELWAL, HARINI SEKAR, ZEB
KHATIB, MARTYNA SZABADI,

Case No. 21-cv-1296-RSM

SETTLEMENT AGREEMENT

Plaintiffs,

v.

ALEJANDRO MAYORKAS, Secretary of
the Department of Homeland Security,

Defendant.

This Settlement Agreement is entered into by and between Plaintiffs Amandeep Shergill, Mathavi Venkatesan, Swathi Peddi, Venkata Yaseswini Madhuri Surivarapu, Puja Parikh, Naga Bobbili, Pavani Kalluru, Divya Potti Balaji, Priyanka Bhatt, Ayushi Arora, Rishitha Kunaparaju, Shashank Khandelwal, Harini Sekar, Zeba Khatib, and Martyna Szabadi (“Plaintiffs”) and Defendant Secretary of the Department of Homeland Security

1 (“DHS”) Alejandro Mayorkas. Plaintiffs and Defendant are referred to collectively herein
2 as the “Parties.” Out of a mutual desire to resolve the claims in the above-captioned case
3 without need for further litigation and without admission of any liability, the Parties hereby
4 stipulate and agree as follows:

5 **I. RECITALS**

6 1. Plaintiffs are fifteen noncitizens who each had a Form I-765 application for
7 employment authorization pending before United States Citizenship and Immigration
8 Services (“USCIS”), a component of DHS. Plaintiffs Khatib and Szabadi have sought
9 employment authorization based on their valid L-2 status (“L-2 Plaintiffs”). The remaining
10 Plaintiffs have standalone Forms I-765 seeking employment authorization and have valid H-
11 4 status. (“H-4 Plaintiffs”).

12 2. On September 23, 2021, Plaintiffs filed this putative class action alleging,
13 pursuant to the Administrative Procedure Act (“APA”), that USCIS unlawfully withholds
14 employment authorization incident to status to L-2 Plaintiffs, or in the alternative,
15 unlawfully withholds automatic extensions of L-2 employment authorization. They further
16 allege that Defendant unlawfully withholds automatic extensions of employment
17 authorization for H-4 Plaintiffs. Plaintiffs brought this action on behalf of themselves and
18 all others who are similarly situated.

19 3. Although Plaintiffs’ Complaint was filed as a putative class action, no class
20 has been certified.

21 4. Plaintiffs’ motion for a preliminary injunction is currently pending before the
22 Court. Dkt. Nos. 4, 13-15.

23 5. USCIS has adjudicated all of Plaintiffs’ Forms I-765 except for those filed by
24

1 Plaintiffs Venkatesan, Peddi, Kunaparaju, and Khandelwal, which are still pending.

2 5. The Parties wish to resolve the disputes that are the subject of this Action
3 without the expense and drain on resources that may be associated with protracted litigation.

4 **II. TERMS OF THE SETTLEMENT AGREEMENT**

5 NOW THEREFORE, in consideration of the mutual promises set forth herein, the
6 Parties agree as follows:

7 **A. Definitions**

8 For purposes of this Settlement Agreement, the following terms shall be defined as:

9 1. **Action:** The term “Action” means the lawsuit *Shergill, et al. v. Mayorkas*, No.
10 21-cv-1295-RSM.

11 2. **CBP:** The term “CBP” means United States Customs and Border Protection.

12 3. **EAD:** The term “EAD” means an Employment Authorization Document on
13 Form I-765.

14 4. **Effective Date:** The term “Effective Date” means the date this Settlement
15 Agreement is executed by the Parties.

16 5. **List C Document:** The term “List C Document” means evidence of
17 employment authorization listed as reflected on page 3 of Form I-9, Employment Eligibility
18 Verification, pursuant to 8 CFR § 274a.2(b)(1)(v)(C).

19 6. **I-765 EAD renewal application:** The term “I-765 EAD renewal application”
20 means Form I-765, Application for Employment Authorization, filed to request a renewal of
21
22
23
24

1 employment authorization and/or an EAD.

2 **B. The individuals covered by the Settlement Agreement are:**

- 3 1. L-2 nonimmigrants who are the spouse of an L-1 nonimmigrant; and
4 2. Qualifying H-4 dependent spouses who a) properly file an application to
5 renew their H-4 based EAD before it expires; b) have an unexpired Form I-94 showing their
6 status as an H-4 nonimmigrant; and c) will continue to have H-4 status beyond the
7 expiration date of their EAD.

8 **C. Automatic Renewals of Employment Authorization for applicants with
9 valid H-4 status:**

10 1. USCIS will interpret 8 CFR § 274a.13(d) such that certain H-4 nonimmigrants
11 who timely file their I-765 EAD renewal applications and continue to have H-4 status beyond the
12 expiration date of their EAD qualify for the automatic extension of their (c)(26)-based
13 employment authorization and EADs. Such auto-extensions terminate the earlier of: the end
14 date of the individual's H-4 status as noted on Form I-94, the approval or denial of the Form I-
15 765 EAD renewal application, or 180 days from the "Card Expires" date on the face of the
16 EAD.

17 2. USCIS will issue appropriate guidance to employers and benefit granting
18 agencies.

19 a. Such guidance will state that EAD auto-extensions apply to qualifying H-4
20 nonimmigrants who continue to have H-4 status after their (c)(26) EAD expires.

21 b. To complete Form I-9, these individuals may present this combination of
22 documents to their employers as an unexpired EAD as defined in 8 CFR §
23 274a.13(d)(4): a facially expired EAD indicating Category C26; Form I-797C,
24 Notice of Action for Form I-765 with Class requested indicating (c)(26) and

1 showing that the I-765 EAD renewal application was filed before the EAD
2 expired; and unexpired Form I-94, Arrival-Departure Record showing valid H-4
3 nonimmigrant status.

4 c. The employer would need to reverify work authorization at the earlier of
5 the end date on Form I-94, date the I-765 is approved or denied, or the 180th day
6 of the EAD auto-extension period.

7 3. Within 120 days of the Effective Date, USCIS will amend the receipt notice
8 currently issued to applicants to detail the EAD auto-extension eligibility for those holding H-4
9 status based on the validity period provided on a Form I-94 in combination with a facially
10 expired EAD and the Form I-797C receipt notice for a timely-filed I-765 EAD renewal
11 application.

12 **D. Employment Authorization Incident to Valid L-2 status and Automatic**
13 **Extensions of EADs:**

14 1. USCIS will issue policy guidance that states that L-2 spouses are employment
15 authorized incident to status and, in cooperation with CBP, change the Form I-94, within 120
16 days of the Effective Date, to indicate that the bearer is an L-2 spouse so that it can be used as a
17 List C document for Form I-9 purposes.

18 2. USCIS will interpret 8 CFR § 274a.13(d) such that certain L-2 nonimmigrant
19 spouses who timely file their I-765 EAD renewal applications and continue to have L-2 status
20 beyond the expiration date of their EAD qualify for the automatic extension of their (c)(18)-
21 based EADs. The auto-extension would terminate the earlier of: the end date of the individual's
22 L-2 status, the approval or denial of the I-765 EAD renewal application, or 180 days from the
23 "Card Expires" date on the face of the EAD.

1 3. USCIS will issue appropriate guidance to employers and benefit granting agencies
2 regarding its interpretation of 8 CFR § 274a.13(d) outlined above as it relates to L-2 dependent
3 spouses.

4 a. Such guidance will state that EAD auto-extensions apply to L-2
5 nonimmigrants who continue to have L-2 status after their (a)(18) EAD expires.

6 b. To complete Form I-9, these individuals may present this combination of
7 documents to their employers as an unexpired EAD as defined in 8 CFR §
8 274a.13(d)(4): a facially expired EAD indicating Category A18; Form I-797C,
9 Notice of Action for Form I-765 with “Class requested” indicating “(a)(18)” and
10 showing that the I-765 EAD renewal application was filed before the EAD
11 expired; and unexpired Form I-94, Arrival-Departure Record, showing valid L-2
12 nonimmigrant status.

13 c. The employer would need to reverify work authorization at the earlier of
14 the end date on Form I-94, date the I-765 is approved or denied, or the 180th day
15 of the EAD auto-extension period.

16 4. Until the Form I-94 is changed to identify that the bearer is an L-2 spouse, for I-9
17 purposes, it will not be sufficient evidence of employment authorization acceptable under List C
18 of Form I-9. L-2 spouses with pending renewal EAD applications may, however, receive
19 automatic extensions of their EADs and present the combination of documents described above
20 to their employers to satisfy Form I-9 requirements.

21 **E. Release: Scope and Effect of Release**

22 As of the Effective Date, Plaintiffs, on behalf of themselves, their heirs, executors,
23 administrators, representatives, attorneys, successors, assigns, agents, affiliates, and
24

1 partners, and any person they represent, fully, finally, and forever release, relinquish, and
2 discharge Defendant of and from any and all claims brought in this Action. The foregoing
3 release includes all claims for injunctive or declaratory relief, whether known or unknown,
4 that could have been brought on behalf of a putative class at any time prior to the Effective
5 Date.

6 **F. Additional Provisions:**

7 1. This Settlement Agreement is not, is in no way intended to be, and should not
8 be construed as, an admission of liability or fault on the part of DHS and its components,
9 agents, representatives, or employees, and it is specifically denied that USCIS has
10 unlawfully withheld employment authorizations or EADs to qualifying H-4 or L-2 spouses.
11 This Settlement Agreement is entered into by the Parties for the purpose of compromising
12 disputed claims and avoiding the expenses and risks of further litigation.

13 2. This Settlement Agreement does not limit DHS or any of its component
14 agencies from interpreting any of their regulations in accordance with the Immigration and
15 Nationality Act.

16 3. This Settlement Agreement does not limit USCIS's authority to implement
17 new regulations, policies or practices concerning employment authorizations for qualifying
18 noncitizens with valid H-4 status or valid L-2 status. Furthermore, this Settlement
19 Agreement may be superseded by future regulatory action or Act of Congress.

20 4. The Parties agree to bear their own costs and attorneys' fees.

21 5. This Settlement Agreement and obligations incurred herein, shall be in full
22 and final disposition of the Action with prejudice.

23 6. Within a reasonable time following execution of this Settlement Agreement,
24

1 the Parties shall file a joint motion asking the Court to dismiss the case against Defendant
2 with prejudice.

3 7. The provisions of this Settlement Agreement embody and reflect the entire
4 understanding of the Parties and there are no representations, warranties, or undertakings
5 other than those expressed and set forth herein. The provisions of this Settlement
6 Agreement shall not be modified or amended in any way except by writing signed by all
7 parties.

8 8. It is contemplated that this Settlement Agreement may be executed in several
9 counterparts, with a separate signature page for each party. All such counterparts and
10 signature pages, together, shall be deemed to be one document.

11 9. The persons signing this Settlement Agreement warrant and represent that
12 they possess full authority to bind the persons and entities on whose behalf they are signing
13 to the terms of the settlement.

14 DATED: November 10, 2021

15 /s/Kripa Upadhyay
16 KRIPA UPADHYAY
17 ORBIT LAW, PLLC
2459 152nd Avenue NE, Suite 17-2459
18 Redmond, WA 98052
206-623-3352
kripa@orbitlawpllc.com

19 /s/Jonathan D. Wasden
20 JONATHAN D. WASDEN
21 WASDEN BANIAS, LLC
38 Romney Street, Suite 201
22 Charleston, SC 29403
(P) 843.410.9340
(F) 703.842.8273
jdwasden@wasdenbanias.com

23 *Admitted Pro Hac Vice*
24

Jesse Bless

JESSE M. BLESS
Director of Litigation
American Immigration Lawyers Association
1331 G Street NW, Suite 300
Washington, DC 2005
Phone: 202-507-7600
Fax: 202-783-7853
jbless@aila.org

Admitted Pro Hac Vice

STEVEN A. BROWN
REDDY & NEUMANN, P.C.
11000 Richmond Avenue, Suite 600
Houston, Texas 77042
(713) 429-4793 Voice
(713) 953-7797 Fax
steven@rnlawgroup.com

Admitted Pro Hac Vice

Attorneys for Plaintiffs

NICHOLAS W. BROWN
United States Attorney

Michelle R Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
1201 Pacific Avenue, Suite 700
Tacoma, WA 98402
Phone: 253-428-3824
Fax: 253-428-3826
E-mail: michelle.lambert@usdoj.gov

11/10/2021

Date

Attorneys for Defendant