



# COPING WITH DELAYS FACING H-4 AND L-2 SPOUSES

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In March 2019, the Trump administration implemented a new [biometrics requirement](#) for some employment-based and nonimmigrant dependents. H-4 and L-2 dependents must complete biometrics each time an extension of status is filed on Form I-539. This superfluous mandate, paired with the already backlogged queue due to Covid-19 processing delays, has resulted in dependent extensions being processed months behind their principal applicants. Since most of the people impacted by the delays are H-4 spouses, we refer more to them than L-2s although both face similar issues.

Spousal processing times are left estranged with some H-4 extensions taking over a year while the H-1B option of 15-calendar-day premium processing remains in full effect. To shed light on how absurd these delays truly are, it is crucial to note that most dependents have at one time or another provided biometrics in the past to the U.S. Citizenship and Immigration Services (USCIS) for an unrelated immigration benefit, or during visa consular processing. Nonetheless, spouses are losing their work authorization and are also inhibited from travelling abroad while their H-4 extension requests are pending because of these illogical delays.

There is no need for this Trump era senseless H-4 and L-2 biometrics requirement to remain as it was part of the prior administration's effort to thwart legal immigration. The Biden administration should not only remove this impediment, but it should also implement premium processing of H-4 extensions and work authorization (EAD) requests. We refer you to a prior blog, "[Work Authorization for H-4 Spouses: The Experience Thus Far](#)" that discusses the eligible requirement for EADs. Since [Congress authorized](#) additional premium processing last year, which the USCIS has not implemented yet, we

urge the agency to act now.

This processing limbo has caused much confusion among the nonimmigrant population. As [litigation ensues over the delays](#) around the country, we have outlined some of our most asked H-4 dependent related questions below.

### **Traveling Abroad While H-4/L-2 Is Pending and H-1B/L-1 principal has a valid I-94**

While consular posts continue to operate at a limited capacity, it is not always ideal to travel outside of the United States in order to receive an H-4 visa stamp. Still, we provide some guidance below when travel opportunities arise.

The H-4 extension request can remain pending even if the spouse leaves the United States. The same is also true with respect to the request for an employment authorization document (EAD) through the filing of the I-765. However, if an H-4 spouse leaves the United States before doing his/her biometrics, and the USCIS issues a biometrics appointment, the spouse can seek postponement and complete the biometrics when he/she returns to the United States.

Travel during an extension request should be distinguished from travel during a request for change of status. If one departs the United States while the change of status to H-4 is pending, the underlying I-539 application will get denied.

Whether the H-4 is processed abroad or by the USCIS, it is always important to review the expiration of the I-94. The I-94 is attached to H-4 approval notices (I-797) when H-4s are approved by the USCIS. If the H-4 spouse either obtains their H-4 visa stamp abroad or travels outside of the United States, the new I-94 will appear on the Customs and Border Protection (CBP) [I-94 portal](#), which should always be reviewed upon entering the United States.

Please remember that while visas allow a person to travel to a port of entry, the I-94 grants the actual status and permits the person to stay in the United States. The CBP has made mistakes on I-94s in the past, which is why reviewing each I-94 is even more critical. If the CBP made a mistake, correcting the I-94 may be as simple as contacting the CBP and requesting the correction. The CBP may also issue an I-94 date that matches the validity period of the underlying passport. Therefore, it is important to ensure that the passport is renewed prior to travel abroad in order to avoid a mismatch in the I-94 validity date and

the H-4 visa, or the H-1B approval notice.

Lastly, if the H-4 spouse's I-94 does not match the visa expiry date, it is important to plan to file an I-539 extension request in advance of the I-94 expiration. Alternatively, the spouse can travel abroad and be admitted.

### **No Status while H-4 Is Pending vs. Accrual of Unlawful Status**

Most importantly, H-4 spouses must not accrue unlawful status in the United States. H-4 spouses have been falling out of status because of the long processing delays, however, H-4 spouses do not begin to accrue unlawful status as long as the H-4 extension (form I-539) was filed before the H-4 status (the I-94) expiration date. During the pendency of the I-539 request, the applicant is authorized to remain in the United States even if they do not have the underlying H-4 status. Once the extension request is approved, the spouse's H-4 status is restored. If, for whatever reason, the H-4 extension is denied, the H-4 spouse will start accruing unlawful presence for the purpose of triggering the 3 or 10 year bars under INA 212(a)(9)(B)(i)(I) and (II). If the spouse has been unlawfully present for more than 180 days, they will face the three-year bar once they depart the United States. Therefore, it is incredibly important to not accrue unlawful status.

If the spouse wants to file a motion to reopen or reconsider upon a denial, the spouse must consider leaving within 180 days of the denial if the case has not been reopened. He/she would risk facing a 3 or 10 year bar if they leave after 180 days, assuming the motion is not granted.

### **Conclusion**

Although it is understandable that the Biden administration has been left with a big backlog of H-4 and L-2 cases from the Trump administration, the Biden administration can alleviate the backlog by immediately lifting the biometrics requirement whenever an I-539 is filed. This would be a good first step as the H-4 extension will get processed along with the H-1B extension under premium processing. Then, premium processing should be introduced for EAD processing. The additional premium fees that applicants will gladly pay can be used to add more resources to expedite the processing of cases. Of course, all this is still a band-aid since the ultimate solution is to alleviate the backlogs in the employment-based preferences by adding more visa numbers as well as exempting the counting of certain immigrants such as dependents, which is

part of Biden's [US Citizenship Act of 2021](#). Even if the prospects of the passage of the entire bill are unlikely, the provisions that will alleviate the backlogs in the family and employment visa system must be pushed along with helping Dreamers and TPS applicants in the [American Dream and Promise Act of 2021](#).

(This blog is for informational purposes and should not be viewed as a substitute for legal advice.)

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