

## EAD AND ADVANCE PAROLE | FREQUENTLY ASKED QUESTIONS

*Frequently Asked Questions about the use of the Employment Authorization Document (EAD) and Advance Parole (AP) after the Adjustment of Status (AOS) Application (USCIS Form I-485) has been filed.*

### 1. Why does my EAD card say it “Serves as I-512 Advance Parole”?

You have received a combined EAD and AP card. You may use this card both for employment authorization purposes and for travel purposes.

### 2. What are the benefits of having an EAD?

The EAD provides the cardholder with an unrestricted right to accept employment in the United States while the AOS application is pending. This can be useful for an employee who wishes to work with an employer other than the H-1B sponsor, or who wishes to be self-employed. Please note that the EAD does not absolve you of any contractual relationship with your sponsoring employer regarding non-competitive employment or nondisclosure of confidential information/technologies. You should refer to your employment agreement before taking on any new position. Please also note that any change in employment may affect your pending AOS application and should be discussed with legal counsel prior to a change being made. Should you be considering a position outside of your current employment relationship, then you may need to seek advice from an independent attorney if our firm was retained by your employer to represent you while your and your employer’s interests are aligned. Employment with a new employer would potentially place you and your employer’s interests in conflict and we would not be able to advise you without authorization from your employer.

### 3. What are the drawbacks of using an EAD?

There are consequences for using EADs outside of the scope of previously authorized H/L status. For example, if the principle applicant uses his/her EAD to work for an employer other than the H/L sponsor, then the applicant is no longer maintaining H/L status and may not travel using an H or L visa. S/he must use AP. While there are currently discussions with USCIS to have them revise this policy, this is the current policy. If you use the EAD to work for another employer, you are no longer maintaining H/L status.

**Important note about family members:** If the principal applicant is no longer maintaining H/L status, then all dependent family members must also apply for and be granted advance parole before departing the United States because they are also no longer considered to be maintaining their H/L status. The family members derive status from the principal beneficiary. So, if the principal beneficiary is not maintaining nonimmigrant status, the family members are not maintaining nonimmigrant status and are simply applicants for adjustment of status.

### 4. Will I need to reverify my I-9 form to continue working in H or L visa status after getting an EAD?

No. Your employment authorization will still be based on your H/L status, and the documents your employer previously used to confirm your employment authorization will continue to be valid. You will need to update the I-9 when the documents that were used to verify the I-9 are expiring. At that point, you can either use the H-1B/L-1 documents or an EAD to verify employment authorization.

### 5. If I use the EAD for employment other than with my H/L sponsor, does this impact my family members’ H/L status?

Yes. If the principal H/L obtains an EAD card and uses it for employment apart from his/her sponsoring employer, s/he is no longer maintaining H/L status, and his/her failure to maintain H/L status means that any H-4/L-2 dependents must also obtain AP, because they too are no longer considered to be in H-4/L-2 status.

### 6. Why should I extend my H/L status now that I have my EAD?

You may let your nonimmigrant status expire although in general we recommend that you continue to extend your nonimmigrant H/L status as long as you are eligible to do so. Maintaining your underlying H/L status can prevent gaps in employment authorization and ease travel outside the U.S. As stated above, there is no grace period for work authorization after an EAD expires nor does employment authorization continue simply by filing an I-765 renewal application. Therefore, if your EAD or AP expires prior to the extension being received, you will need to cease working or traveling internationally until the new document is issued. Interim EAD issuance has been restricted and temporary EAD cards are no longer issued.

### 7. Can my family members also work using an EAD?

Yes. Spouses and minors (unmarried children of the principal applicant) may also obtain EADs and have the same unrestricted right to accept employment in the United States while the AOS applications are pending.

### 8. What is the impact if my dependent family members use the EAD?

It depends. Use of an EAD has a similar impact on H-4 dependents as it does on the H-1B principle applicant. For example, if an H-4 dependent spouse receives an AOS-based EAD card and commences employment, and was not eligible to apply for an H-4-base EAD, s/he is no longer maintaining valid H-4 status and would need a valid AP before traveling abroad. The same situation would apply to dependent children in either H-4 or L-2 status.

**Special Rule for L-2 spouses:** Spouses who hold L-2 dependent status are permitted to obtain an EAD as an L-2 spouse even before an application for adjustment of status is filed, and would therefore be able to depart and reenter by presenting valid L-2 visas, assuming the principal EAD applicant continued to maintain valid L-1 status.

### 9. Can I maintain H/L status if my family members use EADs?

Yes. There may be situations where the principal applicant who is in H/L status chooses not to apply for an EAD but his/her dependent family members do so and commence employment. The H/L principal applicant can then reenter the United States by presenting a valid visa (or establishing exemption from the requirement) and the I-485 fee receipt, but the H-4 dependents and L-2 children who use their EADs for employment must travel using AP. Note, the H/L dependent must actually use the EAD for employment in order to lose H/L status.

### 10. What do I need to do if this is the first time my dependent family member will be working on an EAD?

If this is the first time your spouse/child will be working, s/he needs to apply for a work authorized social security number (SSN) from the Social Security Administration. Your spouse/child may have an ITIN (Individual Taxpayer Identification Number), however an ITIN is not valid for work purposes. Upon obtaining an EAD card, your spouse/child may apply for a SSN that will be valid with proof of work authorization (i.e. with the EAD card). An application for a SSN should be submitted to your local Social Security Administration office and the application form is available online: <http://www.ssa.gov>. Once one is issued a SSN the number will not change.

**Important note:** If/when your and your family members' application(s) for adjustment of status are approved, you will need to request a new card from the SSA that removes the annotation stating that it is not valid for work authorization without a USCIS document.

### 11. What are the benefits of having AP?

The AP document allows the holder to enter the United States without a visa. And, if you are in H/L status but your visa has expired, current regulations permit you to re-enter the United States using your AP and still maintain your H/L status.

### 12. How do I use my AP document or combo card?

When you go through immigration inspection, you will present your valid passport and your valid Advance Parole whether it is a paper approval or combined with your EAD card.

### 13. I did not receive a combo card, but I received 2 original AP approvals that both have my photo on it. Do I have to carry both copies of my paper AP?

In this case you should carry both original copies of your Advance Parole. USCIS may keep one original and will give you back one with your entry stamp on it. You should always have one original Advance Parole document. If you are traveling with only one original AP, you should advise USCIS that you will need to travel again so they will return your original AP to you.

### 14. How long can I stay outside of the U.S. if I travel on my AP?

You must return to the U.S. before the Advance Parole expires. There are no time restrictions on how long you can stay outside the U.S.

### 15. Can I travel on my H-1B visa after I used my AP to enter the U.S. on my last trip?

Yes.

### 16. I entered the U.S. on AP during my last trip. My I-94 card or screenshot indicates an expiration date that is one year from my date of entry. Will I be out of status when I reach that date?

No. You are an applicant for Adjustment of Status so the I-94 expiration date does not control your legal stay/status in the U.S.

### 17. I received my AP renewal but my current AP is still valid. Is it okay to keep using the current document to travel until it expires or does the new document cancel out the old one?

Receiving a new Advance Parole does not cancel the old Advance Parole. If you are outside the United States, you must return to the U.S. using the earlier Advance Parole approval and must return while that parole is still valid. The new parole document cannot be sent to you abroad. For subsequent trips, you should use the latest Advance Parole during its validity period. Again, you must return to the U.S. before the document expires. Each time you file for a new Advance Parole authorization, you must be physically present in the U.S. when the application is filed and received by the USCIS. You can travel while the application is pending so long as you have a valid AP or H/L status to use to enter the U.S. If it is determined that your current AP has expired while you are travelling outside the US, whether you are travelling on an AP or an H/L, the current policy is to deny the pending AP.

### 18. When I go through immigration inspection, which line do I get in?

There is one line for U.S. citizens and Lawful Permanent Residents and another line for Visitors. There is not a separate line for individuals using Advance Parole to enter the U.S. You must get in the line for Visitors. You will then be directed to "Secondary Inspection" where your travel documents will be reviewed.

### 19. Can I receive a 2 year EAD and AP combo card?

USCIS will determine whether to issue you a 1 year or 2 year combined EAD and AP document. Determination is made based on expected processing time of your pending I-485 Adjustment of Status. Please note that if you previously held separate EAD and AP travel documents and are requesting a combo card on your current extension, the card will only be issued for a 1 year period. You may be eligible for a 2 year card upon the next combo EAD and AP extension filing.

### 20. How early do I have to file for an EAD or AP extension?

Renewal of these documents may be filed no earlier than (but also not much later than) 180 days prior to the current document's expiration date. If you file the renewal application earlier than 180 days prior to expiration, the USCIS will deny the application. However, you also want to make sure to file as soon as possible after the 180-day eligibility window opens. There is no grace period for work authorization after an EAD expires nor does employment authorization continue simply by filing an I-765 renewal application. Therefore, if your EAD expires prior to the extension being received, you will need to cease working. Interim EAD issuance has been restricted and temporary EAD cards are no longer issued. If your current AP document expires before the renewal document is issued, you will not have any travel document (unless you can travel on H/L). This means that you will not be able to travel internationally until the new document is issued.

**Important note about Advance Parole:** AP documents cannot be sent to applicants who have already left the country prior to the issuance of the AP document. This means that you cannot depart the U.S. and have the AP sent to you abroad. You must have a valid AP in your possession at the time of departure and that same AP must be valid when you return to the U.S.

**Caution:** *Given the complexity that can often arise with EAD and AP issues, it is always advisable to check with your attorney before planning international travel after filing an application for adjustment of status.*