

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. If I am in H-1B or L-1 status, must I obtain EAD or AP documents to work and travel after I file my AOS?

No. AOS applicants in valid H or L status may continue to work and travel in that status.

2. 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.

3. Do I need any additional documents if I want to travel using my valid, unexpired H or L visa?

No, you need only carry your valid H/L visa (unless you are a visa exempt Canadian) and H/L approval notice. While it is no longer required, you may also want to carry your I-485 receipt notice. You should follow all instructions previously provided to you with your H/L approval package.

4. 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 effect 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.

5. Can my family members also work using an EAD?

Yes. Spouses and minor, unmarried children of the principle applicant may also obtain EADs and have the same unrestricted right to accept employment in the United States while the AOS application is pending.

6. 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.

7. 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.

8. 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 (see special rule for L-2 spouses, below).

9. 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.

10. What 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 EAD card and commences employment, s/he is no longer maintaining valid H-4 status and would need to obtain 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.

11. What if this is the first time my dependent family member will be taking employment, is there anything we need to do?

Yes. If this is the first time your spouse/child will be taking employment, 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/online/ss-5.html>. Once one is issued a SSN it will not change and there is no need to apply for a new number.

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.

12. What if I am a Canadian citizen, and exempt from normal visa requirements?

If a Canadian citizen is maintaining valid H/L status, these same rules would apply to them (i.e., the ability to reenter the country by presenting evidence of valid H/L status). However, they would not be required to obtain H/L visas in their passports. The Form I-94 card (and I-797 approval notice if any) documenting H/L status alone should suffice. Again, you may want to consider carrying the I-485 receipt notices as well, but they are not required. A Canadian citizen may also choose to travel on an AP.

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

If you or your family members have an Employment Authorization Document (EAD) for work authorization, or Advance Parole (AP) document for travel, it is important that you apply to renew these documents no earlier than (but also not much later than) 120 days prior to current document's expiration date. If you file the renewal application earlier than 120 days prior to expiration, the USCIS will likely deny the application. However, you also want to make sure to file as soon as possible after the 120-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

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will not have any travel document (unless you can travel on the H/L visa). 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.

14. My AOS was filed after the new USCIS filing fees took effect on July 30, 2007. Must I still pay USCIS filing fees for EAD or AP extensions?

It depends. If your AOS was filed during the special 31-day filing window that was reopened by USCIS from July 18 to August 17, 2007, your application was NOT filed with the new fees. Filers under the special window were required to file with the pre-July 30th fees and therefore are still subject to paying the USCIS filing fee (in addition to legal fees) for all EAD and AP extensions for the duration of the AOS case.

If your AOS was filed on or after September 1, 2007, then your application included the new USCIS filing fees. As a result, USCIS filing fees are not required for EAD and AP extensions, although legal fees do apply. Also, you should note that EAD and AP renewals that do not include filing fees cannot currently be submitted through the electronic filing system of the USCIS as that system does not have a mechanism for accepting applications without fee.

15. 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 suggest 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 travels 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. Furthermore, AP documents cannot be sent to applicants who have already left the country prior to the issue of the AP document.

16. Why can't USCIS issue an EAD or AP that lasts longer than one year?

Currently, USCIS only issues EAD and AP documents for Adjustment Applicants that are valid for one year. The USCIS is considering issuing documents that are valid for multiple years and may in fact begin issuing a combined EAD/AP document that is valid for more than one year. If/when this is phased in, you would be able to submit for renewals and receive such a document or documents.

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.*