

Applying for an EAD while in H-4 Status

Overview

On February 24, 2015, USCIS [announced](#) [1] that it will expand the group of individuals in H-4 status eligible for an employment authorization document (EAD).

Previously, individuals in H-4 status were not eligible for an EAD unless they were the beneficiaries of a pending Form I-485 (Adjustment of Status application), i.e. the last step of the green card application process. This benefits a relatively small group of individuals and, usually, only provides a few months of employment authorization before the green card is issued.

Effective May 26, 2015, spouses in H-4 status (not dependent children) are also eligible for an EAD as soon as the primary status holder in H-1B status:

1. Is the beneficiary of an [approved](#) Form I-140 (Immigrant Petition), or
2. Has been [granted](#) an extension of his or her H-1B status beyond the standard six-year limit of H-1B eligibility based on a pending employment-based green card application.

As a result of this expansion of eligibility, many more individuals in H-4 status will become eligible for an EAD and will also be able to benefit much earlier in the green card application process.

How to Apply

To apply for an EAD, eligible spouses in H-4 status must file a [Form I-765](#) [2] and pay a filing fee of \$380. Please review the [USCIS information on how to apply for an EAD](#) [3] for a process overview as well as a list of [FAQs](#) [4] and an overview of required support documents. In general, the following support documents should be included:

- Copy of passport
- Marriage license (with English translation, if applicable)
- Proof that the H-1B status holder is currently in status, such as
 - H-1B Approval Notice
 - I-94 record
 - Three most recent paystubs
- Proof that the H-4 status holder is currently in status, such as
 - H-4 Approval Notice
 - I-94 record

- Proof of eligibility for the EAD
 - Copy of I-140 Approval, [QR](#)
 - Proof of H-1B status approval beyond the sixth year.

Individuals in H-4 status may not begin employment until USCIS has approved the application and the EAD has been received by the applicant.

When to Apply

Spouses in H-4 status who currently meet the eligibility criteria described above may file the Form I-765 with required supporting documents (as outlined by USCIS) as early as May 26, 2015. Spouses in H-4 status who will not be eligible to apply for the EAD under the expanded eligibility criteria should not file the I-765 until they can establish their eligibility. Spouses who will become eligible for an EAD based on an extension of the primary status holders H-1B status beyond the sixth year of eligibility may file the Form I-765 together with their request for an extension ([Form I-539](#) [5]) of their H-4 status. However, USCIS has indicated that it will only approve the I-765 once the I-539 has been approved.

EAD Extensions

The expiration date of the EAD will coincide with the validity of one's approved H-4 status. When filing Form I-539 to request an extension of one's H-4 status, a new I-765 may be filed at the same time. To avoid future gaps in employment eligibility – one's EAD has to be valid in order for H-4 spouses to work – it is important that future status extension requests are filed as early as possible.

Because H-4 status extension requests are dependent on status extensions for the H-1B status holder, H-1B status extension requests should be filed as early as possible. USCIS will accept H-1B extension requests up to six months prior to the requested start date. Note that individuals in H-1B status who are the beneficiaries of a pending H-1B extension petition may continue to work for a period of 240 days while their extension petition is pending with USCIS. This rule is not affected by this change. However, H-4 spouses who are employed on the basis of an EAD do not have this benefit and must stop working when their EAD expires. Therefore, it is strongly recommended that H-1B extensions be filed five to six months prior to the requested extension start date so that EAD requests for H-4 spouses can be adjudicated in time.

No Premium Processing for EADs

It is possible to request Premium Processing of the H-1B extension petition, but not the Form I-539 and I-765. Requesting Premium Processing for H-1B extensions will have the benefit of shortening the timeline on which the I-539 and I-765 may be approved. The cost of Premium Processing is \$1,225 and must be paid by the employer unless the request comes from the H-1B status holder and is unrelated to their employment.

Any and all H-1B petitions filed on behalf of the University of Michigan must be filed by the International Center (IC) on the Ann Arbor campus. At the request of the H-4 spouse, the IC can include the Form I-539 and I-765 with the H-1B petition.

Links

[1] <https://www.uscis.gov/archive/dhs-extends-eligibility-employment-authorization-certain-h-4-dependent-spouses-h-1b-nonimmigrants-seeking-employment-based-lawful-permanent-residence>

[2] <https://www.uscis.gov/i-765>

[3] <https://www.uscis.gov/working-united-states/temporary-workers/employment-authorization-certain-h-4-dependent-spouses>

[4] <https://www.uscis.gov/working-united-states/temporary-workers/faqs-employment-authorization-certain-h-4-dependent-spouses>

[5] <https://www.uscis.gov/i-539>