

Frequently Asked Questions Regarding H-4 EAD Applications

1. Who is eligible to apply?

A person in valid H-4 status may apply for an EAD if:

- 1) Their H-1B spouse is the principal beneficiary of an **approved** I-140 Employment-based Immigrant Worker Petition; or
- 2) Their H-1B spouse has been granted H-1B status under the AC-21 legislation, which allows for extensions of H-1B status beyond the usual 6-year maximum if:
 - a. The H-1B holder has been in the permanent residency process for at least one year prior to reaching their 6-year H-1B maximum. Time toward the one year begins to count on the day a PERM labor certification is filed with the DOL, or if the category does not require a PERM filing, then the day the I-140 Immigrant Worker Petition is filed with USCIS; or
 - b. The H-1B holder is the beneficiary of an approved I-140 in a category which is subject to immigrant visa quota backlogs.

2. When can an eligible individual apply?

USCIS will begin accepting H-4 EAD Applications on **Tuesday, May 26, 2015**.

3. May I file before 5/26/15 to get ahead of the rush?

No. Applications received at USCIS prior to Tuesday, May 26, 2015 will be rejected.

4. How do I apply?

The H-4 individual must file Form I-765, Application for Employment Authorization, with supporting evidence and the required USCIS filing fee. The applicant may file the application him or herself, or may elect to have an attorney file on their behalf.

5. How many people does USCIS expect will apply for H-4 EADs?

USCIS estimates as many as 179,600 people will apply in the first year, and about 55,000 each year thereafter

6. How long will it take to get the EAD card after filing?

That is unknown at this time. By regulation, USCIS is required to issue an EAD within 90 days of filing, or issue an interim document if they are unable to do so. However, since the beginning of the year, many EADs have been delayed beyond 120 days, and that is without the additional volume of H-4 EAD applications.

USCIS may also receive a high volume of EAD applications as a result of filings related to the Deferred Action Programs (current DACA applicants, and possibly additional DACA and DAPA applicants if/when the injunction on those filings is lifted).

We anticipate the above will result in a lengthier than normal processing time. However, the Department of Homeland Security indicates that the reason for the effective date being 90 days in the future is to ensure USCIS will have adequate resources to adjudicate the applications in a timely manner.

7. May I start working before I receive the EAD card?

No. For purposes of the Form I-9 Employment Eligibility Verification Document, you will need to have the EAD card in hand. The USCIS receipt notice or even approval notice is not acceptable as proof of employment authorization.

8. Once I receive the EAD, who can I work for?

An EAD is valid for "open market" employment. That is, it is not tied to a specific employer like an H-1B is. Therefore, you can use the EAD to work as a direct employee for any employer in the U.S., as a contractor, be self-employed, or elect not to work.

2/25/15

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