



## All About Employment Authorization Documents FAQs for Legal Practitioners

While obtaining and maintaining a valid Employment Authorization Document (EAD) is critical for many clients, it is not always easy to determine who qualifies for an EAD, how and when to apply, and when a fee is required. These Frequently Asked Questions address the requirements for several categories of noncitizens eligible to apply for EADs, including applicants for asylum and adjustment of status, U and T nonimmigrants, TPS holders, recipients of deferred action (including DACA), VAWA self-petitioners, refugees and asylees, parolees and others.<sup>1</sup> The FAQs also explain when work authorization is automatically extended, when and how to renew an EAD, and when a fee waiver is available.

### **ASYLUM APPLICANTS**

Applicants for asylum may apply for an EAD in the (c)(8) category if they meet all applicable requirements. In 2020, the Department of Homeland Security (DHS) issued two new rules relating to EAD applications for asylum seekers. A June 22, 2020, rule eliminated the 30-day processing timeframe for initial EAD applications by asylum seekers and went into effect on Aug. 21, 2020. A second regulation went into effect on Aug. 25, 2020, with a number of changes, including expanding the waiting period for an asylum-based EAD and adding bars based on the one-year filing deadline, entry without inspection and certain criminal offenses. The regulations also added a biometrics requirement. These regulations, found at 8 CFR § 208.7, were subsequently challenged through litigation. In a case titled *Casa de Maryland v. Mayorkas* (formerly *Casa de Maryland v. Wolf*), the U.S. district court issued a decision enjoining certain portions of the new rules for members of two organizational plaintiffs: Casa de Maryland and Asylum Seeker Advocacy Project (ASAP). The court permitted some of the new rules to go into effect.<sup>2</sup> Later, on Feb. 7, 2022, a federal court [decision](#), *AsylumWorks v. Mayorkas*, invalidated both regulations in their entirety.<sup>3</sup> **Under the Feb. 7, 2022 decision, all the new asylum EAD rules have been enjoined.**

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<sup>1</sup> A complete list of EAD eligibility categories is found in 8 CFR§ 274a.12, as well as in the Form I-765 Instructions. Also, keep in mind that some nonimmigrants are work-authorized incident to status, meaning they are not required to obtain an EAD in order to work lawfully in the United States.

<sup>2</sup> 8:20-cv-02118-PX (D. Md. Sept. 11, 2020).

<sup>3</sup> 20-cv-3815 (D.D.C. Feb. 7, 2022).

## **What changes to the 2020 EAD rules for asylum seekers (8 CFR § 208.7) were initially enjoined for Casa de Maryland and ASAP members?**

The Timeline Repeal Rule: The new rules eliminated the 30-day deadline previously imposed on the U.S. Citizenship and Immigration Services (USCIS) to process an EAD application and allowed the agency unlimited time to determine whether to grant the asylum applicant an EAD.

The 365-day waiting period: The new rules changed the waiting period before an asylum applicant may file for an EAD from 150 to 365 days.

Removal of the "deemed-complete" rule: The new rules eliminated the "deemed complete rule" that triggers the waiting period for an EAD. Previously, the agency's silence on whether an asylum application was complete automatically deemed it complete and started the EAD application clock. However, under the new rule, the applicant must wait an unspecified time to receive notice that the underlying asylum application is complete.

The discretionary review rule: The new rules eliminated automatic EAD authorization where the asylum applicant met preexisting criteria; now such EAD applications may be denied at the discretion of the agency.

The one-year filing bar: The new rules required the denial of an EAD to anyone who, on or after Aug. 25, 2020, had not filed for asylum within one year of entering the United States, unless an asylum officer or immigration judge (IJ) found an applicable exception to the one-year filing deadline.

Biometrics rule: The new rules required applicants to submit biometric information at a scheduled biometric services appointment and pay an \$85 fee.

The above rules **are not currently in effect for any applicant due to a court decision issued later in *AsylumWorks v. Mayorkas*.**

## **What changes to the EAD regulations were permitted to go into effect in 2020?**

- Aggravated felony conviction at any time;
- Conviction on or after Aug. 25, 2020 of a particularly serious crime;
- Reason to believe that on or after Aug. 25, 2020, applicant committed a serious non-political crime outside the United States;
- Subject to a mandatory denial of asylum under 8 CFR § 208.13(c) (criminal bars to asylum);
- Denial of asylum within the 365-day period or before initial EAD granted;
- Entry without inspection on or after Aug. 25, 2020 unless certain exceptions apply;
- Any unresolved applicant delay.

## **What changes to the EAD regulations remain in effect following the *AsylumWorks* decision?**

**All rules have now been enjoined.** USCIS issued an [alert](#) on its website indicating that it has ceased applying the 2020 rules to asylum seekers. Asylum applicants are now eligible for employment authorization under the less restrictive regulations (found at 8 CFR §§ 208 and 274a), which were in effect prior to August 2020.<sup>4</sup>

**Is there now any difference between those who are members of Casa de Maryland and those who are not?**

No, because the regulations have now been enjoined in their entirety nationwide.

**How long must a pending asylum applicant wait to apply for an initial EAD?**

The applicant must wait 150 days before applying for the EAD, excluding any periods of applicant-caused delay that cause an asylum “clock” to stop. The applicant may be granted employment authorization after 180 days have elapsed since filing the asylum application (again, excluding any periods of delay caused by the applicant).

**What is the filing fee for an EAD based on a pending asylum application?**

There is no filing or biometrics fee for an initial EAD based on pending asylum for any applicant.

Renewal EADs have a filing fee of \$410. There is no longer any biometrics fee for a renewal EAD for any applicant. Those unable to pay the fee for a renewal EAD may apply for a fee waiver on Form I-912.

Replacement EADs based on pending asylum require a \$410 filing fee. A fee waiver request may also be filed on Form I-912.

**What documentation must be submitted with the EAD application?**

- Proof of filing I-589 with USCIS or the Executive Office for Immigration Review (EOIR):
  - USCIS receipt notice or
  - EOIR-stamped copy of I-589;
- Copy of previously issued EAD if applicable; government issued photo ID; visa issued by foreign consulate; national ID document with photo and/or fingerprint; or birth certificate plus photo ID;
- Two passport-style photos;
- Filing fee, if applicable:
  - Initial EAD: no fee;
  - Renewal EAD: \$410;
  - Replacement EAD: \$410;

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<sup>4</sup> Practitioners can access older versions of the regulations at 8 C.F.R. §§ 208 and 274a at [ecfr.gov/](https://www.ecfr.gov/). While this website still lists the current, enjoined regulations, practitioners can look at a historical version of the regulations in effect prior to August 2020.

- Fee waivers are available if submitted on Form I-912 with supporting documentation.

Consult the I-765 instructions for special filing instructions and details about required evidence for asylum applicants seeking a (c)(8) EAD.

### **What actions taken by the applicant will cause the EAD clock to stop?**

At the asylum office, the following actions will stop the EAD clock:

- Requesting to reschedule the asylum interview, with the clock restarting on the date of the rescheduled interview;
- Missing a fingerprint appointment;
- Failing to appear for an asylum interview, unless good cause is established within 45 days of missing the interview or notice was improper. In those circumstances, the clock may restart on the date of the rescheduled interview;
- Failing to appear to pick up an asylum decision<sup>5</sup>;
- A denial by the asylum office of the asylum application without a referral to immigration court.

At the immigration court, the following actions will stop the EAD clock:

- A motion for a continuance by the applicant or attorney;
- Declining an expedited hearing;
- A motion to change venue;
- A motion for administrative closure.

At the next hearing after the delay, the clock may restart if there is no further delay by the applicant.

### **May someone who was denied asylum by the immigration judge prior to being granted the initial EAD apply for an EAD now while the case is on appeal to the Board of Immigration Appeals (BIA)?**

If more than 180 days have elapsed on the EAD clock, the applicant may apply for an EAD. However, if the requisite period has not run, the applicant may not apply, as the denial will cause the EAD clock to stop. If the case is remanded from the BIA for consideration of the asylum claim, the clock will begin to run again.

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<sup>5</sup> Note that many asylum offices now mail out all asylum decisions and have cancelled asylum decision pick-ups due to Covid-19.

**My client was referred by the asylum office to the immigration court before being granted an EAD. Does this prevent him or her from obtaining an EAD?**

A referral to immigration court does not prevent an applicant from obtaining an EAD because the application is still considered to be pending.

**Are asylum applications still considered “pending” for EAD purposes if they are on direct appeal to a federal circuit court?**

Yes. Thanks to the recent AsylumWorks decision, these applications are again considered pending, and the applicant may continue to renew his or her EAD while the case is on direct appeal with a U.S. Court of Appeals.

**Must an asylum applicant submit a copy of a photo ID with the EAD application?**

Typically, yes. However, many asylum seekers may not have government-issued IDs, such as passports. Attorneys have typically recommended that clients not obtain passports from their home countries, because this may weaken their asylum claim or cast doubt on their fear of persecution in their home country. That said, some clients have obtained passports and successfully gone on to obtain asylum in the United States.

If a client is unable to obtain a government-issued ID, the I-765 instructions indicate that clients may also present a birth certificate in addition to another type of photo ID. Some social services organizations will issue photo IDs to clients. Some clients may have school IDs. It may be worth applying for an EAD with a combination of a birth certificate plus non-government-issued photo ID (such as one issued by a school or a social services agency).

**Will USCIS accept the ORR Verification of Release as a form of ID?**

USCIS previously accepted Office of Refugee Resettlement (ORR) verifications of release along with a birth certificate for pending EAD applications, but practitioners have reported some inconsistency in adjudications. Practitioners may want to try a combination of documents, including a school ID for minors, the ORR Verification of Release form, and a birth certificate.

**U VISA PETITIONERS**

**May someone with a pending U visa petition apply for employment authorization?**

USCIS recently announced a major change with respect to processing EAD applications based on pending U visa petitions. On June 14, 2021, USCIS updated its Policy Manual to indicate that it will review pending Form I-918 and issue Bona Fide Determination (BFD) EADs and deferred action for four years to U petitioners and derivative family members present inside the United States.<sup>6</sup> Previously, U visa petitioners had to wait many years for the issuance of an EAD—until they were granted “deferred action” and placed on a waiting list for final issuance of a U visa.

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<sup>6</sup> USCIS Policy Manual, Volume 3, Part C, Chapter 5, [uscis.gov/policy-manual/volume-3-part-c-chapter-5](https://uscis.gov/policy-manual/volume-3-part-c-chapter-5).

## **How does a client qualify for a BFD EAD?**

To qualify for a BFD EAD, the U petitioner must have submitted a properly filed and completed Form I-918 and Form I-918 Supplement B, as well as a signed statement in support of their application. The individual is also required to have completed biometrics. For derivatives to qualify for a BFD EAD, there must be evidence of a properly filed Form I-918 Supplement A, credible evidence of the qualifying relationship with the principal, and completed biometrics. USCIS will only issue an EAD to a U visa petitioner or derivative who it determines does not pose a risk to public safety or national security and merits an EAD in the exercise of discretion. Therefore, a criminal history may disqualify a U petitioner or a derivative from a BFD EAD. If USCIS does not issue the BFD, then the case will be reviewed for the U visa waitlist.

## **Should the I-765 be submitted together with the U visa petition?**

For those filing new Form I-918 petitions, it makes sense to include Form I-765 under category (c)(14) for the principal and any derivatives present in the United States. USCIS has confirmed that it will accept (c)(14) applications under the BFD policy without a filing fee. It also makes sense to include a second EAD application in the (a)(20) category for any derivatives present in the United States. U visa principals present in the United States are automatically issued an EAD upon approval of the I-918 and do not need to file a separate EAD application apart from the EAD application based on deferred action.

For those with pending I-918 petitions who did not previously submit Form I-765, USCIS recommends waiting to receive a BFD grant before submitting the I-765. If an applicant already submitted an I-765 as part of the U visa petition, USCIS will use that I-765 to issue the BFD EAD.

## **T VISA APPLICANTS**

### **May a pending T visa applicant apply for employment authorization?**

Simply having a pending T visa application is not sufficient to be granted an EAD. If the application is approved, then an EAD will be issued.<sup>7</sup> There are some circumstances when a T visa applicant may receive what is known as “continued presence” based on cooperation with law enforcement. The agency investigating human trafficking needs to assist with the application for continued presence. A grant of continued presence can lead to a work permit. Some T visa applicants may also be eligible for deferred action, which can lead to a work permit under category (c)(14). As an example, A-3 and G-5 visa holders who file civil actions against their employers are eligible for deferred action. Many of these individuals may also be applying for T visas. There may be other instances when T visa applicants are granted deferred action by law enforcement. However, in the absence of a grant of continued presence or deferred action, a T visa applicant is not eligible for a work permit while the Form I-914 is in process.

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<sup>7</sup> T-1 principals are issued EADs in the (a)(16) eligibility category while derivative T nonimmigrants are issued (c)(25) EADs.

## **BENEFICIARIES OF TPS AND DED**

### **Can a TPS applicant apply for work authorization?**

Work authorization for beneficiaries of Temporary Protected Status (TPS) is mandated by INA § 244(a) and provided for at 8 CFR § 244.12(a). It typically extends through the relevant TPS designation, re-designation, or extension period for a particular country. TPS applicants may include an I-765 with their initial or re-registration application for TPS or file the I-765 sometime later the basis of having a pending or approved I-821. USCIS instructs initial TPS applicants to apply using EAD category (a)(12), although I-765s filed using category (c)(19) will also be accepted.<sup>8</sup> Fee waivers are available for those unable to pay the I-765 filing fee.

Note that when DHS announces an extension of a country's TPS designation, it may provide some TPS beneficiaries with a temporary extension of automatic work authorization. In those instances, eligible TPS holders can continue to work based on an expired EAD for that temporary extension period, along with a copy of the relevant Federal Register Notice authorizing the auto-extension.

### **Can someone protected under DED obtain an EAD?**

Most executive orders designating a country for Deferred Enforced Departure (DED) authorize work authorization for protected individuals through the duration of the designation. To be work authorized, eligible individuals should file an I-765 in the (a)(11) category according to the instructions on the USCIS website. Fee waivers are available. Like in the TPS context, DHS may sometimes provide automatic extension of expiring EADs, which would be announced in the relevant Federal Register Notice.

## **DACA RECIPIENTS**

Applicants for Deferred Action for Childhood Arrivals (DACA) may apply for work authorization, and EADs are issued for the duration of the DACA grant in two-year increments. Initial and renewal DACA applicants are currently required to file an I-765 in category (c)(33) and Form I-765WS, together with their Form I-821D application.<sup>9</sup> Neither the \$410 filing fee nor the \$85 biometrics fee can be waived, but some limited fee exemptions are available.<sup>10</sup>

## **DEFERRED ACTION (NON-DACA) GRANTEES**

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<sup>8</sup> According to the I-765 instructions, (a)(12) EADs are for those with an approved TPS application, while (c)(19) EADs are for those with a pending Form I-821 who are prima facie eligible for TPS. See [uscis.gov/sites/default/files/document/forms/i-765instr.pdf](https://uscis.gov/sites/default/files/document/forms/i-765instr.pdf).

<sup>9</sup> Note that on Sept. 28, 2021, DHS published [proposed regulations](#) on DACA that, if implemented, would make applying for an EAD optional. The I-821D would require an \$85 application fee and the I-765 fee would remain \$410. No separate biometrics fee would be charged.

<sup>10</sup> The criteria for a fee exemption and application process are described in the USCIS DACA FAQs, Question 8, available at: [uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions](https://uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions).

The regulation at 8 CFR § 274a.12(c)(14) provides USCIS the discretion to issue an EAD to someone who has been granted deferred action. The (c)(14) EAD is typically issued for the period of the person's deferred action grant. Applicants must establish an economic necessity for employment and should include Form I-765WS with their I-765, along with proof of the deferred action grant. EADs for someone with deferred action are typically provided at the discretion of USCIS, based on whether the positive factors in an individual case outweigh the negative ones.<sup>11</sup> However, certain deferred action recipients are exempt from the discretionary analysis, including VAWA self-petitioners and their derivatives, U nonimmigrant petitioners and their derivatives, and witnesses or informants for law enforcement with pending S status requests.

### **VAWA SELF-PETITIONERS**

#### **Are VAWA self-petitioners eligible for employment authorization?**

Yes, a self-petitioner under the Violence Against Women Act (VAWA) is eligible for an EAD under the category (c)(31) once an I-360 self-petition is approved. A self-petitioner can request an EAD on Form I-360 and is not required to file a separate Form I-765. If requesting an EAD under (c)(31), the self-petitioner should mark "yes" on page 14, part 10, item 12 that states: "I am currently residing in the United States and I request an employment authorization document." There is no category to request an EAD based on a pending I-360; the petition must be approved before the EAD will be issued.

#### **Are VAWA self-petitioners eligible for an EAD based on any other category?**

Yes, VAWA self-petitioners with an approved I-360 and a grant of deferred action are eligible for an EAD based on the category (c)(14). If applying for an EAD based on deferred action, the self-petitioner should mark "no" on page 14, part 10, item 12 of the I-360 and submit an I-765 application.

If a self-petitioner is filing an I-485 concurrently with the I-360, or already has an I-485 pending, the applicant is eligible to apply for employment authorization under the category (c)(9). Applying based on a pending adjustment of status application will generally be quicker than waiting for the I-360 petition to be approved. When applying under the (c)(9) category, self-petitioners can include the I-765 with the I-485 or submit it later with proof of the pending adjustment application.

### **REFUGEES AND ASYLEES**

#### **Are refugees eligible for an EAD?**

Yes, a refugee is eligible to apply for an EAD under 8 CFR § 274a.12(a)(3). Generally, an I-765 is prepared prior to the refugee's admission to the United States and is included in the packet

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<sup>11</sup> See USCIS Policy Manual, Volume 10, Part B, Chapter 3, available at: [uscis.gov/policy-manual/volume-10-part-b-chapter-3](https://uscis.gov/policy-manual/volume-10-part-b-chapter-3).



presented to U.S. Customs and Border Protection (CBP). CBP sends the application to USCIS for processing and the EAD is then sent either to the resettlement agency or directly to the refugee. The initial EAD should be valid for two years. If an I-765 was not automatically processed, or the refugee wishes to renew the EAD, the I-765 should be submitted to USCIS under category (a)(3) with evidence of refugee status, such as: a copy of an I-94 Arrival/Departure Record, the Final Notice of Eligibility for Resettlement, or the I-797 approval notice based on a Form I-730, Refugee/Asylee Relative petition, if the derivative is in the United States.

### **Are asylees eligible for an EAD?**

Yes, an asylee is eligible to apply for an EAD under 8 CFR § 274a.12(a)(5). When asylum is granted by the USCIS Asylum Office, the EAD application process is generated by the Asylum Office and the document will be mailed directly to the asylee. If asylum was granted by an immigration judge (IJ), the asylee will receive instructions on how to apply for an EAD through USCIS. The initial EAD should be valid for two years. When filing for an EAD as an asylee, the I-765 should be submitted under category (a)(5) with evidence of asylee status, such as: a copy of the stamped I-94 Arrival/Departure Record, an order granting asylum by an IJ, or the I-797 approval notice based on a Form I-730, Refugee/Asylee Relative petition, if the derivative is in the United States.

### **Do refugees and asylees need an EAD to work?**

No, since refugees and asylees are authorized to work incident to their status, they do not necessarily need an EAD. Refugees and asylees can present other documents to prove eligibility to work, such as an I-94 card, a social security card, and a government-issued identification document.

## **PAROLEES**

### **Are parolees eligible for work authorization?**

The regulations at 8 CFR § 274a.12(c)(11) provide for the issuance of an EAD for those individuals granted INA § 212(d)(5) parole. However, under the regulations, an individual paroled into the United States after having established a credible fear of persecution or torture pursuant to INA § 235(b)(1)(A) is not eligible for either an initial or renewal EAD under the (c)(11) eligibility category. Parolees must be in possession of an EAD to work lawfully in the United States.

### **What is the validity of employment authorization based on a grant of parole?**

An EAD is valid for the length of the validity of the parole period. If a parolee is successfully able to renew his or her parole, he or she may re-file an application for employment authorization.

Practitioners have reported long delays in processing parole-based EAD applications. Given that the EAD is matched only to the validity of the parole period, this can make it very difficult for individuals granted a one-year parole to maintain valid employment authorization.

### **Can an individual with an approved SIJ self-petition be granted employment authorization?**

USCIS recently announced an update to its Policy Manual regarding a grant of deferred action for many noncitizens with Special Immigrant Juvenile (SIJ) classification.<sup>12</sup> USCIS indicates that it will consider the approval of Form I-360 and the ability to adjust status to be a particularly strong positive factor that weighs heavily in favor of granting deferred action. The guidance indicates that deferred action will be granted for a period of four years. Once deferred action is granted, the individual may apply for employment authorization to be granted for the period of the deferred action. USCIS has indicated that it will apply a generous standard when granting fee waivers for SIJS-based EADs. Practitioners should plan to include a copy of the I-360 approval notice with the EAD filing but do not need to provide full income information or complete parts 4-6 of Form I-912.

## **ADJUSTMENT OF STATUS APPLICANTS**

### **Are adjustment of status applicants under INA § 245 eligible for an EAD?**

An applicant for adjustment of status under INA § 245 is eligible to apply for an EAD under 8 CFR § 274a.12(c)(9). The I-765 can be filed concurrently with Form I-485, Application to Register Permanent Residence or Adjust Status, or filed separately later. If filing separately, the applicant should submit a copy of the I-485 receipt notice or other evidence that the I-485 is pending.

### **Is there a filing fee for the I-765 when filing for adjustment of status?**

If the adjustment applicant paid the Form I-485 filing fee, there is no additional filing fee for the I-765. If the applicant did not pay the I-485 filing fee because of a fee exemption or waiver, the applicant must pay the I-765 filing fee or seek a fee waiver.

### **Are refugee and asylee adjustment applicants eligible for an EAD?**

Yes, refugees and asylees applying for adjustment of status under INA § 209 are eligible to file for an EAD. Refugees file under category (a)(3) and asylees file under category (a)(5). The I-765 should not be filed under category (c)(9) as an adjustment applicant.

### **Is there a filing fee for the I-765 when a refugee or asylee is filing for adjustment of status?**

It depends. If it is the applicant's initial EAD as an asylee or refugee, there is no filing fee. If it is not the applicant's first EAD as an asylee and refugee and the applicant did not pay the I-485

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<sup>12</sup> Policy Alert, Special Immigrant Juvenile Classification and Deferred Action, [uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf](https://uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf)

filing fee because of a fee exemption or waiver, the applicant must pay the I-765 filing fee or seek a fee waiver.

### **APPLICANTS FOR CANCELLATION OF REMOVAL**

#### **Are applicants for cancellation of removal under INA § 240A(b) eligible for employment authorization?**

Yes, applicants for non-Lawful Permanent Resident (LPR) cancellation of removal are eligible for employment authorization under category (c)(10). They may submit Form I-765 with proof that Form EOIR-42B has been filed with the immigration court. There is no requirement that the EOIR-42B has been pending any particular length of time before applying for the EAD, as long as it has been properly submitted and accepted by the immigration court.

### **ORDERS OF SUPERVISION**

#### **Can an individual with an order of supervision with ICE apply for employment authorization?**

Yes, individuals with an administratively final order of removal who are under an order of supervision may be able to apply for a work permit under category (c)(18). This category may include individuals granted protection pursuant to the Convention Against Torture. It may also include others who cannot be removed from the United States because the designated country of removal refuses to receive the person or because removal is otherwise impracticable or contrary to the public interest.

To apply for an EAD, the applicant would need to include proof of the order of removal as well as proof of compliance with the order of supervision, which is generally done through submission of a copy of the order of supervision documenting compliance. The agency will consider the following factors in determining whether to grant a discretionary EAD under category (c)(18):

- Existence of a dependent spouse and/or children in the United States who rely on the applicant for support;
- Existence of economic necessity to be employed; and
- Anticipated length of time before the applicant can be removed from the United States.

#### **Can someone who checks in regularly with ICE but does not have an order of removal apply for an EAD under category (c)(18)?**

No, the regulations at (c)(18) require an administratively final order of removal to obtain an EAD on this basis.

#### **My client's case was denied by the IJ and is on direct appeal to the BIA. The client checks in regularly with ICE. Can the client apply for an EAD under category (c)(18)?**

No, if the case is still on direct appeal to the BIA, the removal order is not administratively final, so the applicant would not qualify for an EAD under (c)(18).

## **RENEWALS, AUTOMATIC EXTENSIONS, AND EMPLOYER ISSUES**

### **When can an EAD renewal application be submitted?**

USCIS advises that renewal applications be submitted no earlier than 180 days before the current EAD will expire.

### **What categories of EAD holders are eligible for automatic extension of their employment authorization while a renewal application is pending?**

The following renewal applicants are eligible for an automatic extension:

- Asylees and refugees: (a)(3) and (a)(5)
- Asylum applicants: (c)(8)
- TPS holders: (a)(12)
- TPS initial applicants with prima facie case eligible for EAD as “temporary treatment benefit”: (c)(19)
- Adjustment of status applicants: (c)(9)
- Registry applicants: (c)(16)
- Legalization, LIFE Legalization and SAW applicants: (c)(20), (22), and (24)
- VAWA self-petitioners: (c)(31)
- Withholding of deportation or removal granted: (a)(10)
- Applicants for suspension of deportation and cancellation of removal, including NACARA cancellation: (c)(10)
- Citizen of Micronesia, Marshall Islands, or Palau: (a)(8)
- N-8 and N-9 nonimmigrants: (a)(7).

A timely renewal application submitted by an applicant in one of the categories listed above will automatically extend the existing EAD if the renewal is for an EAD in the same category. For TPS beneficiaries, the current EAD and the renewal request may be in either the (a)(12) or (c)(19) categories, but they do not have to match.

### **For how long will the EAD be extended?**

USCIS announced a [Temporary Final Rule](#) (TFR) on May 3, 2022 that increases the automatic extension period for EADs up to 540 days. The increase became effective beginning on May 4, 2022. The TFR applies to those EAD categories currently eligible for an automatic 180-day extension and to those individuals who timely file a renewal of employment authorization prior to the expiration of their current document. Beginning Oct. 27, 2023, automatic extensions of employment authorization and EAD validity will revert to the up to 180-day period for those eligible applicants who timely file Form I-765 renewal applications. USCIS has set a goal of a three-month processing time for EAD applications for the end of FY23.

New receipts for I-765 applications will mention the additional extension period of 540 days. Individuals who filed prior to the effective date of the rule will not get a new receipt but they can still benefit from the rule. These individuals can present the expired EAD and receipt notice to their employer as proof of employment authorization lasting up to 540 days after the expiration of the EAD.

### **How can my client prove to an employer that his or her EAD is automatically extended?**

The [USCIS Handbook for Employers](#) (M-274) advises employers about when an EAD qualifies for automatic extension. The handbook explains that an employee's expired EAD, in combination with Form I-797C showing that the EAD renewal was timely filed and in the same qualifying eligibility category as that of the expired EAD, is an acceptable proof for employment eligibility verification. This combination of documents is considered an unexpired EAD for I-9 purposes under List A.

### **My client's employer does not want to accept his or her receipt notice as proof of continued employment authorization. What can I do?**

The Department of Justice (DOJ) has a section called [Immigrant and Employee Rights](#) (IER). IER has a hotline for employers and another for workers and can help solve issues regarding the following: Form I-9, Employment Eligibility Verification; E-Verify/SAVE; auto-extending EADs; background checks; and social security number requirements. Employers or employees can call anonymously, and DOJ will reach out to employers over email or phone. The hotlines are open M-F 9 a.m. to 5 p.m. ET, are accessible in English and Spanish, and have a language line for interpretation to other languages.

Employer: 1-800-255-8155

Worker: 1-800-255-7688

### **My client's employer is asking for proof of permanent residency instead of an EAD. What can I do?**

When verifying a worker's employment authorization, employers are not allowed to demand more or different documents than necessary or to request specific documentation. Violations of this can be reported to IER.

## **FEES**

### **What is the current fee for Form I-765?**

The current fee for Form I-765 is \$410. Applicants should always check the [USCIS website](#) for the most up-to-date information on filing fees. Certain categories are fee exempt, and fee waivers are available for most categories based on inability to pay. As explained above, there is no fee waiver available for DACA applicants.

### **Which categories are fee exempt?**

A filing fee is not required when applying for an initial EAD in certain categories. These include the following:

- (a)(3) refugees;
- (a)(5) asylees;
- (a)(10) granted withholding of deportation or removal;
- (a)(12) or (c)(19) TPS if under the age of 14 or over the age of 65 and filing an initial TPS application;
- (a)(19) U nonimmigrant,
- (c)(8) asylum applicant; and
- (c)(9) adjustment of status if the Form I-485 fee was paid. If the I-485 fee was waived or the application was fee exempt, the I-765 fee must be paid, or a request made for a fee waiver.

A filing fee is not required when renewing an EAD in certain categories. These include the following:

- (a)(10) granted withholding of deportation or removal; and
- (c)(9) adjustment of status if the Form I-485 fee was paid. If the I-485 fee was waived or the application was fee exempt, the I-765 fee must be paid, or a request made for a fee waiver.

See the I-765 instructions for a full list of the EAD categories that are fee exempt.

### **Do I-765 applicants have to pay an \$85 biometrics fee?**

Applicants under certain categories must pay the biometrics fee. DACA applicants under category (c)(33) must pay a biometrics fee. However, due to a recent change, no asylum applicant under category (c)(8) must pay this fee.

## **MISCELLANEOUS**

### **If I have never been issued a Social Security number, may I request one in my I-765 request?**

Work authorized individuals no longer have to wait to receive their EAD card and then apply for a Social Security number (SSN) and Social Security card at the Social Security Administration (SSA) office. The I-765 now permits applicants to request that they be assigned an SSN and issued a card automatically by the SSA if their application is approved. The SSN will be mailed by the SSA to the address listed on the I-765 and should be received within seven business days of receiving the EAD from USCIS. See: [ssa.gov/ssnvisa/ebe.html](https://ssa.gov/ssnvisa/ebe.html).

### **Are minors eligible for an EAD even if they don't plan to be employed?**

Yes, there are no age restrictions on applying for an EAD if otherwise eligible based on the underlying category. Minors often obtain an EAD for identification purposes.

**If an applicant previously received an EAD in one category and is now applying based on a different category, is this considered to be an “initial” or “renewal” EAD application?**

The I-765 instructions define “initial EAD” as an EAD issued to an eligible applicant for the first time under a specific eligibility category. Therefore, the applicant would check “initial permission” to accept employment, even if previously issued an EAD in a different category.