



All About Employment Authorization Documents FAQs for Legal Practitioners

While obtaining and maintaining a valid Employment Authorization Document (EAD) is critical to 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.

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.

The FAQs also explain when work authorization is automatically extended, when and how to renew an EAD, and when a fee waiver or exemption is available.

ASYLUM APPLICANTS

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

The applicant must wait until the application has been pending for 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 fee for an initial EAD based on pending asylum for any applicant.

Renewal EADs have a filing fee. The current filing fee can be found online at <https://www.uscis.gov/feecalculator>. U.S. Citizenship and Immigration Services (USCIS) fees will increase on April 1, 2024. 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 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: includes a filing fee which can be confirmed by consulting the USCIS fee calculator at <https://www.uscis.gov/feecalculator>;
 - Replacement EAD: includes a filing fee which can be confirmed by consulting the USCIS fee calculator at <https://www.uscis.gov/feecalculator>;
 - 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;
- 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.

What happens to the EAD clock if the court issues a scheduling order¹ and cancels the master calendar hearing?

If the clock has not already stopped, this action will not cause it to stop because it is not considered applicant-caused delay. If the clock was supposed to restart at the next master calendar but the court instead cancelled the hearing and issued a scheduling order, the legal representative should make a request in writing to the court administrator after responding to the scheduling order. The written request should ask that the court restart the clock because the delay was not caused by the applicant and the applicant has complied with the scheduling order. Contact information for court administrators is typically listed on each court's website. EOIR has a website with all court contact information: <https://www.justice.gov/eoir/find-immigration-court-and-access-internet-based-hearings>.

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.

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. The applicant may continue to renew his or her EAD while the case is on direct appeal with a U.S. Court of Appeals.

May a derivative asylum applicant apply for an EAD?

¹ EOIR has moved towards a system where it cancels master calendar hearings for represented respondents in order to increase efficiency. Instead of a master calendar hearing, the scheduling order will set deadlines for the filing of written pleadings and any evidence related to the charges of removability. If removability is established, the respondent will then provide an application for relief by a certain deadline. See PM 21-18 Revised Case Flow Processing Before The Immigration Courts, EOIR, https://www.justice.gov/d9/books/attachments/2021/04/02/pm_21-18_-_revised_case_flow_processing_before_the_immigration_courts_002.pdf.

Yes, derivative asylum applicants are also eligible for EADs. However, the derivative must be both listed and included on the I-589 in order to be considered a derivative. For applicants in removal proceedings, USCIS takes the position that the derivative asylum applicant must be in consolidated proceedings before the same immigration judge in order for the derivative to be “included” on the I-589.

How does dismissal of removal proceedings and refiling with the asylum office affect employment authorization?

Many defensive asylum applications are now being dismissed by the immigration courts in connection with the Biden administration’s stated priorities for immigration enforcement. If an applicant wishes to continue to pursue asylum, they may refile affirmatively with USCIS with proof of the date that they had originally filed for asylum with the immigration court. With that proof, the applicant may retain the earlier filing date for purposes of employment authorization and USCIS should issue a new receipt date listing the earlier filing date. More information is available on the USCIS website.²

If an asylum applicant’s removal proceedings were dismissed by the immigration judge, does this render their existing EAD invalid?

No. Under the regulations, an existing EAD is invalidated only by a formal decision revoking the employment authorization. The IJ order dismissing proceedings is not sufficient on its own to revoke an existing EAD.

If removal proceedings are dismissed but the asylum applicant does not refile affirmatively, may they renew their employment authorization?

No, because the underlying application is no longer pending.

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

² USCIS Issues New Instructions for Filing Asylum Applications with USCIS After EOIR Dismissal or Termination of Removal Proceedings, <https://www.uscis.gov/newsroom/alerts/uscis-issues-new-instructions-for-filing-asylum-applications-with-uscis-after-eoir-dismissal-or>; see also NIPNLG, *USCIS Issues Guidance on Refiled I-589s Following EOIR Dismissal or Termination—FAQs* https://nipnlg.org/sites/default/files/2023-10/2023_USCIS-guidance-I-589s-alert.pdf

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?

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.³ 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.

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. 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.

³ USCIS Policy Manual, Volume 3, Part C, Chapter 5, uscis.gov/policy-manual/volume-3-part-c-chapter-5; see also USCIS, National Engagement - U Visa and Bona Fide Determination Process - Frequently Asked Questions, <https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions>.

There is no fee for a BFD EAD. In addition, as of April 1, 2024, all I-765s associated with U visas may be filed without any filing fee.⁴

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.⁵ 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. Some individuals may be eligible for deferred action based on investigations into labor violations at their workplace.⁶ 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.

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, redesignation, 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 on 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. 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 during the temporary extension period

⁴ USCIS, Frequently Asked Questions on the USCIS Fee Rule, <https://www.uscis.gov/forms/filing-fees/frequently-asked-questions-on-the-uscis-fee-rule>

⁵ T-1 principals are issued EADs in the (a)(16) eligibility category while derivative T nonimmigrants are issued (c)(25) EADs.

⁶ More information on the new deferred action protections for law enforcement is available through the National Employment Law Program, Deferred Action Protections for Labor Enforcement: A Guide for Worker Advocates, <https://www.nelp.org/publication/deferred-action-protections-for-labor-enforcement-a-guide-for-worker-advocates/>

based on an expired EAD, 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 published in the Federal Register, which are later posted 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. The DACA filing fees cannot be waived, but some limited fee exemptions are available.⁷ Note that USCIS is not currently adjudicating Initial DACA applications or associated I-765s.

DEFERRED ACTION (NON-DACA) GRANTEES

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 entire deferred action grant period. 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. 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.

SPECIAL IMMIGRANT JUVENILE CLASSIFICATION

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

⁷ The current filing fees for DACA can be calculated using the USCIS fee calculator at <https://www.uscis.gov/feecalculator>. 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.

In 2022, USCIS announced an update to its Policy Manual regarding a grant of deferred action for many noncitizens with Special Immigrant Juvenile (SIJ) classification.⁸ 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. As of April 1, 2024, all SIJS EADs are fee exempt.

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 also 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.

What is the filing fee for a VAWA-based I-765?

As of April 1, 2024, all I-765s associated with VAWA are issued without fee, including renewal and replacement I-765s.

REFUGEES AND ASYLEES

Are refugees eligible for an EAD?

⁸ Policy Alert, Special Immigrant Juvenile Classification and Deferred Action, uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf

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 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. 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 need to apply for an EAD through USCIS by filing Form I-765. Note that if an asylee wins their case before the IJ with a (c)(8) EAD already pending, USCIS typically automatically converts the EAD into the proper (a)(5) category.

What documentation is needed to apply for an EAD as an asylee?

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 provide for the issuance of an EAD for individuals granted section 212(d)(5) parole. However, an individual in expedited removal under INA 235(b)(1)(A) or in expedited removal who has a pending credible fear determination under 8 CFR 208.30 is not eligible for an initial EAD under the (c)(11) eligibility category.⁹

Most noncitizens must be in possession of a valid EAD in order to work lawfully in the United States. There are two important exceptions to this general rule. As of Nov. 21, 2022, certain

⁹ 8 CFR § 235.3(b)(4)(ii).

Ukrainian and Afghan parolees can work for up to 90 days in the United States without having an EAD.¹⁰ For these parolees, their unexpired Form I-94 is an acceptable receipt they may present to their employer to show their identity and employment authorization for I-9 employment verification purposes.¹¹ This policy allows Ukrainian and Afghan parolees to begin working while waiting for USCIS to approve their Form I-765, Application for Employment Authorization. After 90 days, these parolees must present additional documentation to show their valid employment authorization, including an EAD or an unrestricted social security card and List B document.

Can an individual with a pending application for parole (such as parole in place) apply for work authorization?

No, the regulations do not provide for the issuance of employment authorization while a parole application is pending. The parole must have been granted in order to apply for an EAD.

What documents are needed to submit an application for work authorization for a parolee?

In order to file an application for employment authorization based on a grant of parole, the applicant must submit the following documentation:

- G-28 and Form I-765, Application for Employment Authorization. The relevant employment authorization category is (c)(11);
- Copy of Form I-94, passport, or other travel document showing a grant of section 212(d)(5) parole;
- Copy of government-issued ID (such as a passport), copy of visa, copy of national ID, or birth certificate plus photo ID;
- Two passport-style color photographs; and
- Filing Fee or Form I-912, Request for Fee Waiver. Note that Afghan and Ukrainian parolees only are fee exempt.

How long is employment authorization based on a grant of parole valid?

An EAD is valid for the length of the validity of the parole period. 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. Individuals granted multi-year parole pursuant to certain nationality-specific parole programs may find the parole EAD provision more practically useful for their clients. Processes to apply for EADs and wait times for those EADs may vary depending on the special program the parole was granted under. See resources regarding the various special programs in effect on our “Resources on Parole” page.¹²

¹⁰ See USCIS News Alert, *Certain Afghan and Ukrainian parolees Are Employment Authorized Incident to Parole*, uscis.gov/newsroom/alerts/certain-afghan-and-ukrainian-parolees-are-employment-authorized-incident-to-parole

¹¹ *Id.*

¹² Resources on Parole, CLINIC, cliniclegal.org/resources/parole.

What complications can arise for those paroled along the southern border?

Obtaining a parole-based EAD for those who enter along the southern border can be particularly complicated. Individuals are sometimes granted short durations of parole, perhaps lasting only a few months, which makes it practically impossible to obtain a work permit in a timely fashion. They cannot renew their EAD unless their parole is extended and unfortunately in most cases CBP does not extend port parole. In addition, USCIS has in the past denied parole-based EADs to applicants who were also served with a Notice to Appear (NTA). The regulations state that service of the NTA terminates the period of parole.¹³ In the past, USCIS has relied on this regulation to deny EADs even to those with facially valid parole-documents. As of the writing of this FAQ, USCIS is issuing EADs to those with parole even when NTAs have been served; however, this is subject to change in the future.

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?

The rule for many years was that 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 had to pay the I-765 filing fee or seek a fee waiver.

As of April 1, 2024, individuals seeking adjustment of status will pay \$260 for an EAD, which is half the standard fee for a concurrently filed or pending adjustment application.

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.

APPLICANTS FOR CANCELLATION OF REMOVAL

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

¹³ 8 CFR § 212.5(e)(2)(i); *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021).

Yes, applicants for non-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.

A noncitizen's case was denied by the IJ and is on direct appeal to the BIA. The noncitizen checks in regularly with ICE. Can the noncitizen apply for an EAD under category (c)(18) based on being under an order of supervision?

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)
- Spouse of principal E nonimmigrant: (a)(17)
- Spouse of principal L nonimmigrant: (a)(18)
- Spouse of certain H-1B nonimmigrant: (c)(31)

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 increased the automatic extension period for EADs up to 540 days. The increase became effective beginning on May 4, 2022. That TFR has expired as of Oct. 27, 2023 but those who filed prior to the expiration of the TFR continue to receive the benefit of the 540 day extension.

As of Oct. 27, 2023, automatic extensions of employment authorization and EAD validity have reverted to the 180-day period for those eligible applicants who timely file Form I-765 renewal applications.

How can a noncitizen 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.

What recourse does a noncitizen have if an employer does not want to accept his or her receipt notice as proof of continued employment authorization?

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 Monday through Friday from 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

What can be done if an employer is asking for proof of permanent residency instead of an EAD?

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?

Applicants should always check the [USCIS website](#) for the most up-to-date information on filing fees. USCIS has a new proposed fee schedule due to go into effect on April 1, 2024, that makes several changes to filing fees. The [USCIS fee calculator](#) is a useful tool for accurately determining the correct filing fee depending on the category. Certain humanitarian categories are fee exempt, and fee waivers are available for many other categories based on inability to pay.

ONLINE FILING

May I file an EAD online?

Online filing is available for the following categories:

- (a)(12) – Temporary Protected Status granted;

- (c)(3)(A) – F-1 student, pre-completion Optional Practical Training (OPT);
- (c)(3)(B) – F-1 student, post-completion OPT;
- (c)(3)(C) – F-1 student, 24-month extension of OPT for science, technology, engineering and mathematics (STEM) students;
- (c)(8) – Asylum application pending for a minimum of 150 days;
- (c)(11) – Paroled for urgent humanitarian or significant public benefit purposes;
- (c)(19) – Certain pending TPS applicants whom USCIS has determined are prima facie eligible for TPS.
- (c)(33) – Consideration of Deferred Action for Childhood Arrivals (DACA).

There is a \$50 discount for filing online. Note that fee waivers cannot be processed online, so any application for an I-765 that is accompanied by a formal fee waiver request on Form I-912 must be filed through the mail. I-765 applications that are fee exempt can be filed online.

MISCELLANEOUS

Can an applicant request a Social Security number with the I-765 application?

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 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.

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.

What is the validity period of an EAD?

This can vary. Some EADs are tied to an underlying status, such as parole or nonimmigrant U or T status. A listing of the validity periods of all EADs can be found in the [USCIS Policy Manual](#).

An encouraging recent [change](#) announced by USCIS is that EADs in many categories are now valid for five years (an increase from either one or two years, depending on the category). These categories include the following:

- Refugees (A03);
- Noncitizens paroled as refugees (A04) (up to 5 years not to exceed length of parole);
- Asylees (A05);
- Recipients of withholding of removal (A10);
- Applicants for asylum or withholding of removal (C08);
- Applicants for adjustment of status (C09); and
- Applicants for suspension of deportation or cancellation of removal (C10).