



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.¹ 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.²

¹ 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.

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

What changes to the 2020 EAD rules for asylum seekers (8 CFR § 208.7) were 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, agency 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 members of Casa de Maryland and ASAP. However, they **remain in effect** for applicants who are not members of Casa de Maryland or ASAP.

What changes to the EAD regulations remain in effect for all asylum seekers?

- 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.

Does the applicant need to have been a Casa de Maryland or ASAP member at the time the injunction was issued?

No, there is no requirement that individuals were members of Casa de Maryland or ASAP at the time the case was decided. They can join either organization now by consulting membership information on the organizations' respective websites.³

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

If the applicant is not a member of Casa de Maryland or ASAP, they must wait 365 calendar days before applying for the EAD. If the client is a member of Casa de Maryland or ASAP, they must wait 150 days before applying for the EAD. For most clients, it makes sense to join Casa de Maryland or ASAP to reduce this waiting period.

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. There was a proposed fee, but this was enjoined nationwide. There is a biometrics fee for non-Casa de Maryland and non-ASAP members of \$85. For a Casa de Maryland or ASAP member applying for an initial EAD, the fee is \$0. For most asylum applicants, it makes sense to join Casa de Maryland or ASAP in order to avoid paying the biometrics fee, among other benefits.

Renewal EADs have a filing fee of \$410 plus \$85 biometrics fee. Again, the biometrics fee is enjoined for Casa and ASAP members, so with proof of membership, the renewal fee is \$410. 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 do not require a biometrics fee but 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;
- Certified police and court records for criminal charges;
- Proof of membership in ASAP or Casa de Maryland, if applicable. This should be placed right behind Form I-765;
- 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 and biometrics fee, if applicable:

³ Information about membership in ASAP is available at asylumadvocacy.org/members/. Information about membership in Casa de Maryland is available at wearecasa.org/membership/.

- Initial EAD with proof of Casa de Maryland or ASAP membership: no fee;
- Initial EAD without proof of Casa de Maryland or ASAP membership: \$85 biometrics fee;
- Renewal EAD with proof of Casa de Maryland or ASAP membership: \$410;
- Renewal EAD without proof of Casa de Maryland or ASAP membership: \$495;
- Replacement EAD: \$410 (no biometrics fee required for any applicant);
- Fee waivers are available if submitted on Form I-912 with supporting documentation;
- For entries on or after Aug. 25, 2020, proof of lawful entry to the United States.

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

What are the exceptions to the bar on EAD for an asylum applicant who entered without inspection on or after Aug. 25, 2020?

First, the bar does not apply to unaccompanied minors (“UACs”) who entered without inspection. Furthermore, the bar may not apply if the following occurred: the applicant presented himself or herself no later than 48 hours after the entry or attempted entry to DHS; the applicant indicated to DHS an intention to apply for asylum or expressed a fear of persecution or torture; and the applicant has good cause for the entry without inspection, provided such good cause does not include the evasion of U.S. immigration officers, convenience, or for the purpose of circumvention of the orderly processing of asylum seekers at a U.S. port of entry.

My client has compelling reasons for entering the United States without inspection but did not present to DHS within 48 hours of entry. Is this person eligible for an EAD?

The regulations do not allow individuals to assert good cause for entry without inspection unless they present to DHS within 48 hours of entry to the United States. This makes this exception in the regulations very narrow and close to impossible to establish for many individuals.

How do I answer the questions on the I-765 relating to good cause for entry without inspection if my client entered the United States without inspection before Aug. 25, 2020?

These questions are not legally relevant to those who entered without inspection prior to Aug. 25, 2020, as the regulatory bar does not apply to them. However, the Form I-765 does not draw the distinction between those who entered prior to the effective date of the regulations. Many practitioners have reported success with simply answering “question not applicable due to pre-Aug. 25, 2020 entry without inspection” to question #30.g on the I-765.

What is considered unresolved applicant delay?

The factors specifically listed in the regulations include the following:

- A request to amend or supplement the asylum application that causes a delay in its adjudication or in proceedings;
- Failure to appear to receive and acknowledge receipt of the decision;
- A request for extension to submit additional evidence fewer than 14 days prior to the interview date;
- Failure to appear for an asylum interview, unless excused by USCIS for the failure to appear;
- Failure to appear for scheduled biometrics collection in connection with the asylum application;
- A request to reschedule an interview for a later date;
- A request to transfer a case to a new asylum office or interview location, including when the transfer is based on a new address;
- A request to provide additional evidence for an interview;
- Failure to provide a competent interpreter at an interview; and
- Failure to comply with any other request needed to determine asylum eligibility.

The specific examples provided in the regulations apply mostly to asylum interviews before USCIS. It is also likely that certain actions taken before the immigration court, such as filing a motion to continue, a motion to change venue, or a motion for administrative closure, will be considered “unresolved applicant delay.”

Does the applicant-caused delay bar apply to renewal EAD applications?

The language in the regulations appears to require a denial of an EAD based on the applicant-caused delay bar only when there is an applicant-caused delay at the time of filing an *initial* EAD application. See 8 CFR § 208.7(a)(1)(iv) (“any delay requested or caused by the applicant in adjudication of the asylum application that is still outstanding or has not been remedied when the initial application for employment authorization....is filed will result in a denial of such application.”)

Who makes a determination that the criminal bars to the EAD apply?

The criminal bars in the regulations mirror the language in the asylum statute about who is ineligible for asylum. For example, those convicted of aggravated felonies or of particularly serious crimes, or who committed serious nonpolitical crimes outside the United States are ineligible for asylum and, under the new regulations, are also ineligible for EADs. The new regulations also reference the regulatory criminal bars to asylum as another basis for a denial of the asylum-based EAD. If an asylum applicant *may* be subject to one of the criminal bars to asylum but is arguing for asylum eligibility before the IJ, practitioners may have to make these same arguments for eligibility with the EAD application.

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?

The regulations bar the applicant from being granted initial employment authorization in this situation, and this portion of the regulation has not been enjoined. Practitioners who have attempted to file on this basis have reported denials.

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?

No, employment authorization is not permitted under the regulations during any period of judicial review of the asylum application but may be requested if a federal court remands the case to the Board of Immigration 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 not recommended that clients 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 political 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 trying 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 form 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 Forms 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.⁴ 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?

In order 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 Forms 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.

⁴ USCIS Policy Manual, Volume 3, Part C, Chapter 5, uscis.gov/policy-manual/volume-3-part-c-chapter-5.

T VISA APPLICANTS

May a pending T visa applicant apply for employment authorization?

Simply having a T visa application pending 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. 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, 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 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.⁶ 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 period of automatic work authorization extension. In those instances, eligible TPS holders can continue to work on the basis of 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

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

⁶ 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.

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. Similar to 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.⁷ Neither the \$410 filing fee nor the \$85 biometrics fee can be waived, but some limited fee exemptions are available.⁸

DEFERRED ACTION (NON-DACA) GRANTEES

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.⁹ 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

⁷ 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.

⁸ 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.

⁹ See USCIS Policy Manual, Volume 10, Part B, Chapter 3, available at: uscis.gov/policy-manual/volume-10-part-b-chapter-3.

the 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 should 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 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 in order to work lawfully in the United States.

For 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. 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 severe 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 SIJS self-petition be granted employment authorization?

The U.S. District Court for the Western District of Missouri previously held that children who have been granted Special Immigrant Juvenile Status (SIJS) have been paroled for humanitarian purposes and therefore are eligible for work authorization as parolees. *Godinez v. DHS*, No. 20-008280-cv-w-GAF (W.D. Mo.) This is based on the language of the statute at INA § 245(h)(1), which expressly states that children with SIJS are deemed paroled for purposes of adjustment. This court found that, in addition to being paroled for purposes of adjustment of status, children with SIJS are also paroled for humanitarian purposes and thus are eligible for work authorization pursuant to 8 CFR § 274a.12(c)(11).

Based on the *Godinez* decision, some practitioners have filed for employment authorization for individuals granted SIJS.

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 at a later time. 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 asylee 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 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-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 physically 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.

In order 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 in order to obtain an EAD on this basis.

My client's case was denied by the IJ and is on direct appeal to the BIA. They check 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 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 as long as 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?

The EAD will be extended automatically for 180 days from the date of expiration.

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 I-9, E-Verify/SAVE, auto-extending EADs, backgrounds 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. -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 of any size are not allowed to demand more or different documents than necessary or 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, including: (a)(3) refugees; (a)(5) asylees; (a)(10) granted withholding of deportation or removal on; (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; 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, including 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) and asylum applicants under category (c)(8) (with the exception of Casa de Maryland and ASAP members) 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.

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.