

Immigration Advisory

USCIS Releases Guidance and Frequently Asked Questions for H-4 Employment Authorization Applications

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On May 20, 2015, United States Citizenship and Immigration Services (USCIS) released [guidance](#) and [frequently asked questions](#) (FAQs) relating to the filing of H-4 employment authorization applications for spouses of certain H-1B nonimmigrants. These H-4 spouses will be eligible for employment authorization if the H-1B employee is the beneficiary of an approved I-140 employment based petition or has been granted H-1B status beyond the six year H-1B maximum based on a PERM labor certification or I-140 filed at least 365 days before the six year maximum.

This guidance includes filing instructions with links to the current Form I-765, Application for Employment Authorization. Please note that applications cannot be received by USCIS until the new rule goes into effect on *May 26, 2015*. Any application filed before that date will be rejected and returned to the filer.

Applications for H-4 employment authorization documents (EADs) must be submitted in hard copy and are not eligible for electronic filing. On May 26, 2015, eligible H-4 applicants may file: (a) Form I-765, Application for Employment Authorization as a standalone application, (b) Form I-765 concurrently with Form I-539 if the applicant is seeking a change to or extension of H-4 status, or (c) Form I-129 (for the principal H spouse), Form I-539 if the applicant is seeking a change to or extension of H-4 status, and Form I-765.

The current processing time for employment authorization applications is 90 days. If the I-765 application is concurrently filed with any other application, USCIS will not adjudicate the I-765 until after the I-129 and/or I-539 applications are approved. Please note that the 90 day period for I-765 processing does not begin until USCIS has approved the I-129 and/or I-539.

Each application for H-4 employment authorization must include the standard I-765 employment authorization application documents, including appropriate filing fee plus evidence of eligibility in the form of marriage certificate evidencing marriage to the H-1B visa holder; evidence of H-4 status (i.e., H-4 visa stamp and I-94); and I-140 approval notice or receipt confirmation of an I-140 or PERM Labor Certification filing 365 days prior to the H-1B six year maximum date. If the PERM Labor Certification has been certified, evidence of the I-140 filing within 180 days of certification (i.e., I-140 receipt notice) must also be included.

The guidance also makes it clear that the approved I-140 petition does not have to be for the H-1B visa holder's current employer, but if the I-140 petition was filed by a former employer and is now revoked, the revoked I-140 petition will not support eligibility for H-4 employment authorization and if such employment authorization has already been granted, USCIS has the discretion to revoke the employment authorization. Eligibility may still be possible if the PERM Labor Certification was filed at least 365 days prior to the H-1B six year maximum.

Employment authorization granted to H-4 spouses pursuant to this program will receive EADs that are valid through the expiration date of the individual's then-current H-4 status, and may be extended thereafter on the same basis so long as all qualifying criteria continue to be met.



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