



MEMORANDUM

TO: Individuals in E1, E2, E3 or L1 Nonimmigrant Visa Status
FROM: Seyfarth Shaw Business Immigration Group
RE: Nonimmigrant Visa Spousal Work Authorization

INTRODUCTION

If you are in E or L visa status or are planning to apply for such status, please note that your spouse has the opportunity to apply for “dependent” status under your approved visa. Once your spouse is physically present in the U.S. in E or L dependent status, then he or she, may have apply for an Employment Authorization Document (“EAD”).

WHAT IS AN EAD CARD

An EAD is a laminated, driver’s license-sized card issued by the United States Citizenship and Immigration Services (“USCIS”). The EAD affords the bearer permission to work in the U.S. in any field or occupation. In this situation, the holder of the EAD is not limited to jobs relating to his or her usual occupation or course of study. The EAD also allows the bearer to be self-employed or undertake “freelance” work. For this reason it is referred to as “open market” or “carte blanche” employment permission.

Frequently Asked Questions

- Q: Who is eligible to apply for an EAD Card?
A: Lawful spouses of individuals in E-1, E-2, E-3, L-1A, or L-1B status are eligible to apply. In May 2014, The Department of Homeland Security (“DHS”) proposed to extend the availability of employment authorization to certain H-4 dependent spouses of principal H-1B nonimmigrants. The extension would be limited to H-4 dependent spouses of principal H-1B nonimmigrants who are in the process of seeking lawful permanent resident status through employment. Seyfarth Shaw is closely monitoring the status of this proposed rule. Contact your Seyfarth attorney with questions about potential eligibility.
- Q: Can my son or daughter receive an EAD?
A: No. Only your spouse is eligible.
- Q: Can my same-gender spouse obtain an EAD?
A: Based on the Supreme Court’s holding in *United States v. Windsor*, lawfully married same-gender spouses are now eligible to apply for an EAD. Applicants must present a marriage certificate issued by the U.S. or a foreign state.
- Q: When and how does my spouse apply?

A: In order to obtain an EAD, an application must be filed through the submission of **Form I-765** and supporting documents such as a filing fee, photographs, and proof of marital status (such as a marriage certificate that is in English or translated into English).

Again, please note that a dependent spouse may not apply for the card until he or she is physically present in the U.S. in either E or L status.

Q: Is an attorney required in order to file the Form I-765?

A: No. Many spouses file the Form I-765 by closely following the instructions. However, some organizations will arrange for their outside immigration counsel to assist in the preparation and filing of the Form I-765. If you have questions or are uncertain of your company's policy, you should check with your Human Resources representative.

Q: What other "best practices" should I follow?

A: If your spouse is filing a Form I-765 on his or her own (without the assistance of an attorney), he or she should be certain to make photocopies of all documents, including the filing fee check, and be certain to file the documents through some "trackable" mailing system such as FedEx, UPS, or U.S. Postal Service Express Mail.

Q: For how long is the EAD valid?

A: You are the individual who holds the work visa and who is considered to be the "primary visa holder." Since your spouse is considered a dependent, his or her EAD card is usually granted for the same period of validity as the date that is noted on your Form I-94 admission record.

Q: Is my spouse required to apply for an EAD Card?

A: A dependent spouse of an E or L visa holder is not required to apply for an EAD. However, if your spouse wishes to work or plans to seek employment, we recommend filing the application. Moreover, if your spouse wishes to apply for a Social Security Number, he or she will need to present an EAD.

Q: What is the processing time?

A: The normal processing time for a properly completed Form I-765 is 10 to 14 weeks.

Q: What if my spouse doesn't receive a response within 90 days?

A: Under a special U.S. government regulation, if a properly filed Form I-765 is not processed within 90 calendar days, the applicant may make an "**InfoPass**" appointment and appear at the USCIS office nearest to his or her residence to request a status report on the processing of the EAD card.

During the InfoPass appointment your spouse will explain the processing delay and the USCIS officer will contact the EAD processing center to expedite the processing of the card.

Q: What happens if there is information missing, or if the form was not properly filed? Will the form be rejected?

A: In most instances the form is not automatically rejected. Rather, the USCIS will issue a "Request for Further Evidence" ("RFE") and will detail what is missing. There will be a specific deadline before which your spouse must respond. If the response is not received prior to the deadline, or if the response is deemed unsatisfactory, the

application will be denied. However, a denied application does not prevent your spouse from filing another application in future.

Q: Are there any other implications of an RFE?

A: Yes. If the USCIS issues an RFE, it will “stop the clock” on the accrual of the 90 days. That processing “clock” will not start ticking again until the USCIS has received the response to the RFE. This is significant, since the issuance of an RFE and a delayed response to an RFE can create a delay in the accrual of the 90 days that are required before an InfoPass appointment may be granted.

Q: My spouse already has an EAD card and needs to apply for an extension. When should my spouse file the extension?

A: Your spouse should file the application for extension 120 days-- or 4 months-- prior to the expiration date on the EAD card. This is extremely important for two reasons:

1. Once the EAD card has expired, your spouse will no longer have permission to work. This means that his or her current employer will have to either terminate your spouse’s employment or, at the very least, take him or her “off payroll” and temporarily cease any payments until the new EAD card is issued. For both economic and career development reasons, this could prove disruptive for your spouse and your family; and
2. If your spouse files for an extension at the 120-day mark and the case is returned under an RFE, your spouse may still have the ability to respond quickly and still accrue 90 days of processing time in order to be eligible for an InfoPass appointment -- thus obtaining an approval of the new EAD card prior to the expiration of the current EAD card.

Q: Can my spouse apply for an extension earlier than the 4-month window?

A: No. Please note that any applications that are received prior to 120 days before the expiration date will be returned as prematurely filed.

Q: Is there any way to expedite the processing of the Form I-765, such as through the filing of an additional “Premium Processing” fee?

A: Unfortunately, as of this writing there is no way to pay an additional fee in order to ensure expedited processing. The best and most reliable approach is to file a full 4 months in advance of the expiration date. While it is possible to request an expedite, the USCIS only grants such requests on a discretionary basis and only in very rare circumstances.

Q: Is my spouse permitted to work in the U.S. with a receipt showing that the Form I-765 is pending and being processed?

A: No. Your spouse will need to present the actual, original EAD card in order to accept or continue employment. In fact, your spouse’s employer could incur liability if your spouse is permitted to continue to work after the EAD card has expired and before a new one is issued.

Q: My spouse already has an EAD card. Should I report that information to anybody?

A: Yes. You should disclose this information to your contact person at Seyfarth Shaw so that we may “track” the expiration date in our Database. While it is ultimately your

spouse's responsibility to track that date and to file a timely application for EAD renewal, our firm can assist you by furnishing reminders to you or your HR office.

If you should have any other questions about the EAD card, please reach out to your immigration contact person at Seyfarth Shaw LLP. We will be happy to address your questions.