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Converting from another work status (such as H-1) to H-4 EAD

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Submitted by Chief Editor on Nov 15th 2016

My spouse is currently working on F-1 OPT or H-1 status. How can he/she change to H-4 status and obtain H-4 EAD without a gap in the ability to work?

ANSWER:

We have received several requests about how to ensure there are no gaps in a spouse's ability to work when converting from another work status (such as H-1) to H-4 EAD.

The short answer, as of now (November 2016) is that there is no way to guarantee that there will not be any gap in a spouse's ability to work. The problems arise from the fact that there can be a gap between change of status to H-4 and receipt of EAD. The law requires that EAD must be approved and the EAD card must be in hand for the H4 holder to work.

To illustrate some of the scenarios we have been asked to comment upon:

Question: My spouse is currently working on F1 OPT or H1 status. How can he/she change to H4 status and

obtain H4 EAD without a gap in the ability to work?

Answer: There is no way to ensure there will be no gap between the current employment authorization and the H4 EAD approval. The H4 and H4 EAD petitions can be filed concurrently, but USCIS has not been adjudicating them at the same time. First, USCIS adjudicates the H4 petition, after which they start working on the H4 EAD petition. As the H4 EAD generally takes about 90 days to be adjudicated, it is best to anticipate H4 EAD approval about 90 days after the H4 approval.

It is possible to request a future start date for the H4 status. The hope would be that by the time the H4 status becomes effective, the H4 EAD is also approved. But again, there is no way to guarantee the time frame.

Question: My spouse entered the US on H4 status. How soon can the H4 EAD be filed and how long will it take

before he/she can work?

Answer: The H4 EAD can be filed as soon as the spouse has arrived in the US on H4 status. Because, the USCIS is taking about 90 days to adjudicate the H4 EAD petition, your spouse is likely to be able to start working in about 3 months after the EAD petition is filed.

Question: We need to renew my H1 and my spouse's H4 and H4 EAD. Would it help the EAD to be issued

faster if we file the H1 petition through Premium Processing?

Answer: Possibly. There is no Premium Processing option for H4 or H4 EAD, but as a courtesy, the USCIS often tries to adjudicate H4 and H4 EAD petitions at the same time as the Premium Processing H1 petition. There is no guarantee that the USCIS will adjudicate the H1, H4 and H4 EAD at the same time. It is possible

that only the H1 will be adjudicated under Premium Processing, and the H4 and H4 EAD will be adjudicated in the normal queue.

Question: My H1 does not need to be extended, but my spouse's H4 and/or H4 EAD do need to be renewed.

How can the petitions be filed so there is no gap in the H4 EAD authorization to work?

Answer: It is critical to file these petitions early. The H4 renewal can be filed 6 months before the current H4 expires, and the H4 EAD can be filed 120 days before the current H4 EAD expires. While it is not a guarantee that there will be no interruption in the work, early filing is the best option to provide the USCIS with enough time to process the petitions.

[Click here](#) ^[2] for Rajiv's blog entry on H-4 EAD Rule

Nonimmigrant Visas:

[H-4 EAD](#) ^[3]

[H Visa](#) ^[4]

[H-1 Visa](#) ^[5]

FAQ Transcript:

Note: This is a verbatim transcript of the referenced audio/video media delivered as oral communication, and, therefore, may not conform to written grammatical or syntactical form.

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) ^[6] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) ^[7]

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