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H-1 and EAD

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Submitted by Chief Editor on Apr 1st 2009

ANSWER:

Qo. I plan to be on EAD after my 6th year of H1-B expires on September 23, 2008. If I decide to be back on H1-B then is there any time limit within we have to file for H1B extension after its expiration on September 23, 2008 while I am working on EAD?

Ans. Generally speaking there is no time limit as long as you are entitled to the extension.

Qo. For example, will we have to file within 6 months or 1 year after September 23, 2008 while I-185 is still pending?

Ans. If it is an extension beyond six years, you will need to have 485 or 140 pending and meet other related requirements for the extension.

Qo. After USCIS approves H1-B extension in this case, are we required to go immediately to India to get visa stamped or can we keep working on EAD and get the H1-B visa stamped when we like. My I-140 is approved and I-485 pending.

Ans. You can go when you like.

Follow up Qos/Ans

Qo. Thanks a lot, Rajiv. Just one clarification related to H1-B visa stamping in the above case. Do you think the US embassy will ask me why I want to come back to H1-B after having worked on EAD for say 6 months or 1 year after 6 years of H1-B expiration at the time of applying for H1-B visa?

Ans. It should not be any of their concern.

Qo. what should be the response to their question?

Ans. The truth.

Qo. Also, God forbid, in a worse case scenario, if my I-485 is denied after my H1-B extension has been approved in the above case and then I go for H1-B visa stamping, w'd they still give me visa?

Ans. That is legally uncertain. So it is wise to get stamping while the 485 is still "alive."

Qo. On a different note, is there any basis other than a crime, misrepresentation, public

health, or revocation of approved I-140 on which the I-485 can be denied?

Ans. Sure. AOS is a discretionary process. It can be denied for many reasons (but usually is not).

Qo. If not, then will it still be more advantageous to work on H1-B instead of EAD? I am just trying to evaluate the benefit of coming back to H1-B as opposed to keep working on EAD. Your answers to the above questions will help me greatly in that direction.

Ans. As I have commented several times, I like to keep both options open. So, work on H-1 while keeping your EAD in hand.

Further Questions

Quote: Me and my spouse are working on H1B for two different companies. My spouse company is processing the green card and the process started in 2005 in EB2. We got married in 2006 and I-140 got approved before our marriage. We filed together for I-485 after marriage in August 2007. We got our EAD card in Nov 2007. We also got our second EAD card in Nov 2008 and it will be valid till Nov 2010.

Though we had EAD card, we are using our H1B. Now, I got laid off from my company last week. I am looking for opportunities. I hope I could find one in a week or two. My questions are 1. When I join my new company should I use EAD card or I do H1B transfer? Please advise.

Ans. H-1 is the best option usually. You can try for a transfer. Usually, CIS declines transfer within USA (requiring you to go outside USA for a visa stamping) if there is any gap in status. But, it is in their discretion to permit it. Joining on EAD is no end of the world. You can start work on EAD and file an H-1. Get stamping done whenever it is convenient. When you reenter on H-1 visa, you are back on H-1.

Quote: 2. Also, if the market goes further bad and my spouse also got laid off, what will happen to me if I am using my EAD?

Ans. If she uses AC21, you should be fine. Otherwise, if her 485 is void, so is yours.

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Green Card:

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Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [8] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [9]

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