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## H-4 EAD Rule FAQ's

### H-4 EAD Rule FAQ's <sup>[1]</sup>

Submitted by Chief Editor on Apr 1st 2015

1. Is there any time frame within which H-4 should have job offer after getting H-4 EAD? 2. Why is an adjustment of status I-539 needed? What status is being adjusted (H-4 to H-4)? I get the other form for application of EAD. What if someone is on F-1? Could they file I-539 (To go from F-1 to H-1?) and I-765 concurrently? 3. I am currently on OPT ( from F-1- visa) and it ends in Dec. My husband on H-1B and I-140 to be approved 2009 PD in "ABC" company and he moved "XYZ" company .The XYZ company process my new I-140 Do we have any clarity on the F-1/OPT to H-4 EAD process? Should I move to H-4 and then apply for EAD ? 4. I know there is no clear picture that there will be a change in law for all candidates with I-140 approved can register for I-485, so that they can get EAD/AP. If that really happens, there is no use of this H-4 EAD regulation anymore it is just obsolete, any person with approved I-140 can apply for I-485. The H-4 EAD process took one calendar year from starting to beginning for approval which will become a waste of process, effort, wait time, expenses for the Government. If it really happens, it is a miracle or my guess is they might keep a condition that the person should be waiting at least 3-4-5 years with a approved I-140. My question is it that easy task for USCIS/GOVT/EO just amend the process for I-485 pre registering ? 5. Can H-4 EAD can do business ? 6. I am in USA on H1B and running my 5th year. but recently I have got H1 extension from USCIS to 7th year. (This is because my labor is pending with DOL now for more than 1 year). So based on these conditions, is my spouse eligible for EAD?. Can your firm help me in filing the EAD for my spouse? 7. a. After the H-4 EAD, if the candidate is not willing to work or doesn't have a job and visited India, does she have to go for visa stamping while coming back? b. Can she enter on approval EAD (without working) if she doesn't have H-4 visa stamped? 8. 1. I am planning to apply for H-4 EAD for my wife, what happens to her EAD if I change my current employer maintaining my H-1B status? 2. My wife has found a job which can apply for her H-1B, can we file for her H-4 EAD before actually knowing if her application is selected in lottery process? (In short have both H1B application and EAD application open at same time) 9. I am on H-1 B and my husband on H-4 working in India. Can I apply H-4 EAD while he is in India or he has to come here before applying? 10. a. If my H-1B petition is not selected in lottery, I will apply for H-4 COS and EAD simultaneously. Is it advisable to apply for H-4 COS/EAD on my own or through my wife's employer? b. While my H-4 COS/EAD petitions are under USCIS? review, can my ongoing STEM extended OPT EAD be further extended (under cap-gap extension policy or similar) to allow me continue working after 9-June-2015 (the day my OPT EAD expires) till I receive the decision on H-4 work authorization petition? c. If YES, how long is this ?grace period? for OPT cap-gap

extension? - If NOT, will I be considered out of status (and have to leave USA) during the time period between the day my OPT EAD expires and H-4 EAD is approved/effective (assuming a positive outcome)?

**ANSWER:**

**1. Is there any time frame within which H-4 should have job offer after getting H-4 EAD?**

Answer: The H-4 EAD, like the EAD under AOS/I-485 is an opportunity, not an obligation. You can choose to get an EAD and then not work at all. The EAD remains valid.

**2. Why is an adjustment of status I-539 needed? What status is being adjusted (H-4 to H-4)? I get the other form for application of EAD. What if someone is on F-1? Could they file I-539 (To go from F-1 to H-1?) and I-765 concurrently?**

Answer: I-539, change of status has to be filed only if the derivative spouse is in a status other than H-4. If your spouse is already in H-4 status, you will file the I-765 only. If they are in a status other than H-4, such as F-1, you will file for change of status to H-4 using I-539 and you can concurrently file the I-765.

**3. I am currently on OPT (from -F1- visa) and it ends in Dec. My husband on H-1B and I-140 to be approved 2009 PD in "ABC" company and he moved "XYZ" company .The XYZ company process my new I-140 Do we have any clarity on the F-1/OPT to H-4 EAD process? Should I move to H-4 and then apply for EAD?**

Answer: I think we have plenty of clarity at this time. You can apply concurrently for H-4 COS and EAD on or after 26 May. You can also apply for H-4 COS now and EAD later.

**4. I know there is no clear picture that there will be a change in law for all candidates with I-140 approved can register for I-485, so that they can get EAD/AP. If that really happens, there is no use of this H-4 EAD regulation anymore it is just obsolete, any person with approved I-140 can apply for I-485. The H-4 EAD process took one calendar year from starting to beginning for approval which will become a waste of process, effort, wait time, expenses for the Government. If it really happens, it is a miracle or my guess is they might keep a condition that the person should be waiting at least 3-4-5 years with a approved I-140. My question is it that easy task for USCIS/GOVT/EO just amend the process for I-485 pre registering ?**

Answer: Good points. But H-4 EAD will still be good for people with no I-140 who are in 7th plus year H-1 extension. As to whether or not this is an easy task, depends upon whether they do it by memo (real easy) or regulation (time consuming).

## **5. Can H-4 EAD can do business ?**

Answer: H-4 EAD holders CAN do business.

## **6. I am in USA on H1B and running my 5th year. But recently I have got H1 extension from USCIS to 7th year. (This is because my labor is pending with DOL now for more than 1 year). So based on these conditions, is my spouse eligible for EAD?. Can your firm help me in filing the EAD for my spouse?**

Answer: Since you have received extension beyond 6 years of your H-1, I see no problem in your spouse obtaining her EAD.

As to whether we can represent you, is more problematic. Since we do not know the depth to which USCIS will examine the supporting documentation that goes with the H-4 EAD petition, we have no good way to decide what to charge. For instance, if USCIS starts asking questions about the status of H-1 holder, it could involve hours of our time. But if they do not, it would be just a simple filing. There is no fair method to assess the issues that can be raised. One of the options you have is to file the Form I-765 with supporting documentation yourself, and then retain us only if an RFE is issued. That way, in reviewing the RFE, we can assess how much work is needed and charge accordingly.

## **7. a. After the H-4 EAD, if the candidate is not willing to work or doesn't have a job and visited India, does she have to go for visa stamping while coming back?**

### **b. Can she enter on approval EAD (without working) if she doesn't have H-4 visa stamped?**

Answer: a. In my view it is no, she does not need to go for visa stamping if she already has a visa. Not working after getting her EAD is her right. Therefore, it is not a violation of her H-4 status if she decides not to work, work part time, or own a business, etc.

b. No. She will need a visa. The H-4 EAD does not operate like an Advance Parole.

## **8. 1. I am planning to apply for H-4 EAD for my wife, what happens to her EAD if I change my current employer maintaining my H-1B status?**

### **2. My wife has found a job which can apply for her H-1B, can we file for her H-4 EAD before actually knowing if her application is selected in lottery process? (In short have both H1B application and EAD application open at same time)**

Answer: 1. I see no issue with changing employers as long as your eligibility is otherwise maintained (status/I-140 etc.)

2. Yes you can. I have discussed this in the video on [my blog](#).<sup>[2]</sup>

**9. I am on H-1 B and my husband on H-4 working in India. Can I apply H-4 EAD while he is in India or he has to come here before applying?**

Answer: USCIS's position is that casual trips that are brief are permitted. If your husband leaves for a long time, you are not permitted to stay in the USA.

**10. a. If my H-1B petition is not selected in lottery, I will apply for H-4 COS and EAD simultaneously. Is it advisable to apply for H-4 COS/EAD on my own or through my wife's employer?**

**b. While my H-4 COS/EAD petitions are under USCIS? review, can my ongoing STEM extended OPT EAD be further extended (under cap-gap extension policy or similar) to allow me continue working after 9-June-2015 (the day my OPT EAD expires) till I receive the decision on H-4 work authorization petition?**

**c. If YES, how long is this ?grace period? for OPT cap-gap extension? If NOT, will I be considered out of status (and have to leave USA) during the time period between the day my OPT EAD expires and H-4 EAD is approved/effective (assuming a positive outcome)?**

Answer: a. I see no reason why you must seek the help of your wife's employers.

b. You will not get any new rights other than an H-4 EAD.

c. A timely filed H-4 petition will give you the right to stay in the USA awaiting outcome.

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[H-1 Visa](#) [4]

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