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Q&A on Issues Presented with Travel and Work Authorization
After Filing for Adjustment of Status

Question: I heard that I will lose my H-1B status if I re-enter the U.S. using my Advance Parole (AP) document. Is this true?

Answer: Yes. By traveling on AP, you will terminate your H-1B status based on your original H-1B approval and you will be considered a “parolee.” While you can continue to work pursuant to the terms of the H-1B approval notice you will not be in H-1B status again until an H-1B extension is approved on your behalf.

Question: I have filed my I-485 Application and I have an H-1B approval notice valid for two more years. Recently I traveled and re-entered the country on AP. Can I go to the Consulate, get an H-1B visa stamp, and re-enter the country to get back in H-1B status?

Answer: No. By traveling on AP, you terminated your H-1B status based on your original H-1B approval. While you can continue to work pursuant to the terms of the H-1B approval notice, in order to get back into H-1B status it is necessary for your employer to file an H-1B extension to grant you H-1B status again. Once you have returned to H-1B status, you will be able to travel to the Consulate for an H-1B visa stamp on which to re-enter the U.S.

Question: Can I work on my H-1B and simultaneously on an EAD card for a second employer and maintain my H-1B status?

Answer: No. Once an EAD card is used for any employment, you may be deemed to have terminated your nonimmigrant status, and, therefore, you would no longer have H-1B status. If you use your EAD card for employment, you will need AP to travel.

Question: I recently entered the country on AP. Can I file for an extension on my H-1B?

Answer: Yes. Under USCIS regulations, you may continue to extend your H-1B status while your I-485 Application is pending. By filing an H-1B extension, you will return to H-1B status.

Question: My spouse is here in H-4 status. If she works on her EAD card, should she get AP to travel?

Answer: Yes. If she works on her EAD card, she will need AP to travel because her H-4 status may be deemed to have terminated upon use of the EAD card for employment. Once H-4 status has been terminated, you should not travel on a nonimmigrant visa.

Question: I have filed my I-485 Application and I am currently in H-1B status. Do I need AP?

Answer: No. AP is only necessary if you plan not to have your H-1B visa stamp updated at the Consulate. AP would also be required in the event that you have used your EAD for employment either for your primary employer or a secondary employer. In any case, it is always wise to have an approved AP document as a backup plan in the event you are required to travel for emergent reasons and a visit to the Consulate for an updated visa stamp would not be possible. For a list of advantages of the H-1B visa vs. EAD/AP [see below](#).

Question: My spouse is currently in H-4 status and does not intend to work pursuant to an EAD card. If I maintain my H-1B status does she need AP?

Answer: While AP is not necessary in this scenario, it is important to keep in mind that dependents should consider maintaining a valid AP document in the event that the H-1B principal's I-485 is approved and the H-4 dependent's application remains pending. If the H-4 is outside of the US during this time, the H-4 could not return on a nonimmigrant visa and would only be able to return if in possession of a valid AP document.

Question: I have filed my I-485 Application and I am currently in H-1B status. Do I need an EAD card?

Answer: No, unless you want the flexibility to work for your primary employer and/or a secondary employer. Please keep in mind, however, that once you use your EAD card for employment you will no longer be maintaining H-1B status and will need your AP to travel. For a list of advantages of the H-1B visa vs. EAD/AP [see below](#).

Question: I recently entered the country on my AP and it will expire next month. If I need to travel again, do I have to wait for the AP to be approved before traveling?

Answer: Yes. In order to be deemed not to have abandoned your I-485 Application, you must have an approved AP document before leaving the U.S.

Question: If I travel on my AP document, must I continue to use AP on subsequent travel or may I obtain an H-1B nonimmigrant visa at the Consulate?

Answer: Once you travel on AP, you will no longer be maintaining your H-1B status and will be considered a parolee. You should continue using your AP on subsequent travel until the time an H-1B extension is approved on your behalf to avoid potentially being deemed to have abandoned your I-485 application.

Question: I have an H-1B and I want to change employers. Can I work for the new employer on my EAD card while my H-1B transfer is processed?

Answer: It is unclear whether use of your EAD card will make you ineligible to port to a new employer under the H-1B porting provisions. According to the USCIS statute, one must be a “nonimmigrant alien” and “lawfully admitted” in order to be eligible to change employers upon the filing of a new H-1B petition. Since use of the EAD card may cause you to no longer be deemed a “nonimmigrant alien” it would be wise in this scenario to wait until the new H-1B petition is approved to begin working with a new employer. Keep in mind that if you do not use your EAD to begin working immediately for the second employer you can make use of the H-1B portability provisions and begin working immediately upon the filing of a new H-1B petition.

Question: I am currently in H-1B status and I have received my EAD and AP, however, I have not used my EAD or AP. Have I terminated by H-1B status?

Answer: No. The fact that an H-1B nonimmigrant is granted an EAD card or AP document does not cause the H-1B to terminate his or her nonimmigrant status. The H-1B will terminate nonimmigrant status by using the EAD card to leave the employer listed on the approved H-1B petition and engage in employment for a separate employer or by re-entering the U.S. on AP.

Question: I am currently in H-1B status, but if I travel on AP and/or work using my EAD card, does this impact my family’s H-4 status?

Answer: Yes. If you either re-enter the US using your AP and/or work using your EAD card, you will have terminated your H-1B status thereby terminating the basis for your family’s H-4 status. Therefore, if you intend to travel on AP or work using an EAD card, it is advised that you obtain AP documents for your family members if they intend to travel during the pendency of their I-485 Application.

Question: I am currently in H-1B status with a valid H-1B visa and an approved AP. When I travel, do I have a choice regarding which document to use when I re-enter the US?

Answer: Yes. If a foreign national has both a valid H nonimmigrant visa and is eligible for H status and a valid AP document, the H nonimmigrant may be readmitted into H status or be paroled into the US using the AP. If you wish to be granted H status you must present your valid H visa stamp and be admitted in H status. If you wish to enter using your AP, you will be paroled into the US. Generally it is advisable to enter the US as a nonimmigrant visa, if eligible, to maintain the legal rights associated with such nonimmigrant status.

Question: If I leave the US while I have a currently valid AP document and my renewal AP remains pending, as long as I return before my current document expires can I use the renewed AP for future travel?

Answer: Probably not. If you travel at any time during the pendency of an AP application, it may not be valid for re-entry purposes.

Question: If I file to extend my H-1B status during the pendency of my I-485 Application and I do not have AP, can I travel while the extension is pending?

Answer: If your prior H-1B status expires while your H-1B extension is pending, it is best not to travel until the time the extension is approved so that you will not be deemed to have abandoned your I-485 Application.

Advantages of H-1B vs. EAD/AP

Advantages of maintaining H-1B status

Maintain lawful status
No secondary inspection upon re-entry
No annual renewal (in some cases)
Work during pendency of extension
Premium processing available if necessary
Could reduce driver's license renewal issues
Derivatives maintain status
Maintain valid I-94 cards

Advantages of EAD/AP

Back up if you lose your job
Work not employer specific
Potentially lower fees on renewal
Don't need to maintain nonimmigrant status
Family can work and get SSN
Stops 6 year H-1B clock from running
Less worry during Reductions in Force
No need to visit the Consulate for a visa stamp
Protection during changes in job

Please note: this advisory offers only general guidance regarding appropriate strategies and procedures for dealing with travel outside of the U.S. after filing an Adjustment of Status Application and does not take into account the specific factual circumstances of your status; it should not be constituted as legal advice.