

Work Authorization

Many people come to the United States for the specific purpose of working. Most come to work for a short time and return home, while others feel this is a place where they can gain economic freedom through long term employment allowing them to legalize their status permanently or just as a means to send money back to their country and family. In order to legally work in the United States, eligibility is determined by citizenship status or authorization from a government agency such as the Department of Homeland Security. For non-citizens/non legal permanent residents you must have an employment based visa or an employment authorization document (i.e. work permit) in order to work in the United States. Anyone authorized to work will also be eligible to apply and receive a Social Security number/card that qualifies him or her and his or her dependents for certain public benefits in the case of disability or retirement.

Obtaining work authorization is complicated. Unfortunately, not everyone who applies for work authorization is eligible. Customarily visitors to the United States are prohibited from working unless upon entry they declare their intent is to conduct business while in the United States for a short period of time. An Immigration Inspector at the port of entry, usually an airport, will place a red or pink stamp on a small white card known as the I-94 entry permit. The stamp will indicate the date of entry and the class of admission. For visitors the class of entry is either B-1 or B-2. B-2 means visitor for pleasure, which will afford the traveler up to 6 months of authorized stay as a vacationer, while the B-1 stamp is a visitor for short term business, which affords the traveler up to 30 days to conduct business. Obviously, for the individual wishing to work for a short period of time thirty (30) days may not be enough to even find a job and get settled. This B-1 does not allow a social security card. It is good for accompanying nannies and domestics.

Thus, it is more feasible that those travelers coming to the United States hoping to work for longer periods can try to change their status and apply for an employment authorization document or work visa. A work visa differs from an employment authorization document in that the work visa limits the choice of employer and requires the employee to possess a degree of skill or level education. The most commonly approved type of visa is the professional work visa, which requires at least a university education or Bachelor's degree. The visa can last up to 6 years and is only valid provided that the employer continues to employ the employee. If the employee is terminated or if the employee quits, the employee loses his or her authorization to work.

Other types of professional work visa apply to inter-company transferees for bi-national or multinational corporations or individuals in the arts and athletics. There is also the TN visa for Canadian citizens who are professional workers. These individuals do not need an extensive application, but must apply at the border when crossing provided they are degreed professionals with a letter of prospective employment. They can work for up to one year and such work authorization is renewable indefinitely in one year increments.

While most of the professional work visas require sponsorship by a specific employer, there are a few that may permit self sponsorship depending on the field of endeavor. Those include individuals in the arts, some sciences, and athletics. These require detailed itineraries for venue appearances and performances in the case of professional athletes, fashion models, musicians and performing artists. Other self sponsored individuals can include those in the sciences, business or education who are not only extraordinary but outstanding in their field such as professors, researchers, and distinguished business people.

Of the class of unskilled workers, it should be noted that there are very few visas of this kind issued per year. Regardless of when the visas are exhausted applications may be rejected or denied based on numerical limitations. The unskilled workers are usually seasonal, part time or work in the United States for up to one year as needed by the employer. They are, like most employment based visas, employer specific, which means that the worker can only work for the sponsoring employer and no one else. Once the visa is expired, then the worker must return home or is considered illegal in the United States. For the skilled laborer as well as the professional worker, the sponsor for unskilled labor must demonstrate a specific need for the worker, that there is no US worker available, and must pay the worker a wage that is comparable to what an American worker would receive. The majority of these types of workers are used in the agriculture and hospitality industries. For all types of work visas, the application process is tedious and expensive, so much so that the parties may spend several thousand dollars in application fees alone in addition to hefty lawyer fees.

For those who want more flexibility, the employment authorization document provides the freedom to work with any employer, but like all things in Immigration, there are limitations to this benefit. An employment authorization document (EAD) is limited to a one year validity period and is renewal in one year increments. In order to qualify for an employment authorization document, it is necessary to have some other underlying petition pending or status with the United States Citizenship and Immigration Service (US CIS). For instance, a student may obtain an employment authorization document if s/he is at the end of their program and applies to complete an externship through the optional training program known as "OPT". Or, a student can obtain an EAD if during the course of their study they fall into financial hardship criteria and qualify for financial aid, in which on campus or study related work is authorized. A spouse of an investor/trader can also apply for employment authorization. And still others who may qualify for EAD's include individuals who are here in Temporary Protected Status, asylum applicants who have applications pending for at least 150 days, and applicants for legal permanent residency status through a family or employer sponsor.

Therefore, the employment authorization document is a secondary benefit. Each applicant must declare the qualifying criteria that make him or her eligible to work in the United States; otherwise the US CIS will request proof of eligibility resulting in the delay of issuance of the card. Refusal to respond appropriately to the request for proof may ultimately result in a denial of the application resulting in the loss of the fee paid and may result in the initiation of deportation proceedings against the applicant. Also, all

applicants for an employment authorization document must be fingerprinted and a biometric photo identifier taken. Even if an applicant is eligible for the card, but if s/he fails to attend the fingerprint or biometric appointment, s/he will not be approved or receive the card.

Usually the process to obtain an EAD can take up to 90 days while an employment based visa application can take from two (2) weeks, if the applicant pays additionally for the expedited process, up to one (1) year. While the application is pending, the applicant should not be working, although there is one minor exception, those who are immediate relatives of US citizens are excepted. Also, if anyone works in the United States without authorization and who is not the immediate relative of a United States citizen the penalty can be denial of a current, renewal or future visa, initiation of deportation proceedings, or denial of a Green Card.