



# Employing Immigrations with Active Petitions and Deportation Cases

The I-765 and Employment  
Authorization Document

# Non-immigrant v Immigrant Visas

- Non-immigrant visas are non-permanent intent visas. Very few are “dual intent,” such as a traditional student visa (government allows students to change their minds). Most require a specific statement of intent.
- Immigrant visas are generally not employment based, and when they are, they are in the I-140 family rather than an “alphabet soup” category (F, H, O, R, etc)
- While work visas necessarily come with permission to work, visas petitioned for irrespective of employment do not. Therefore, recipients have additional requirements to fulfill if they want to be employed.

# Affirmative v. Defensive

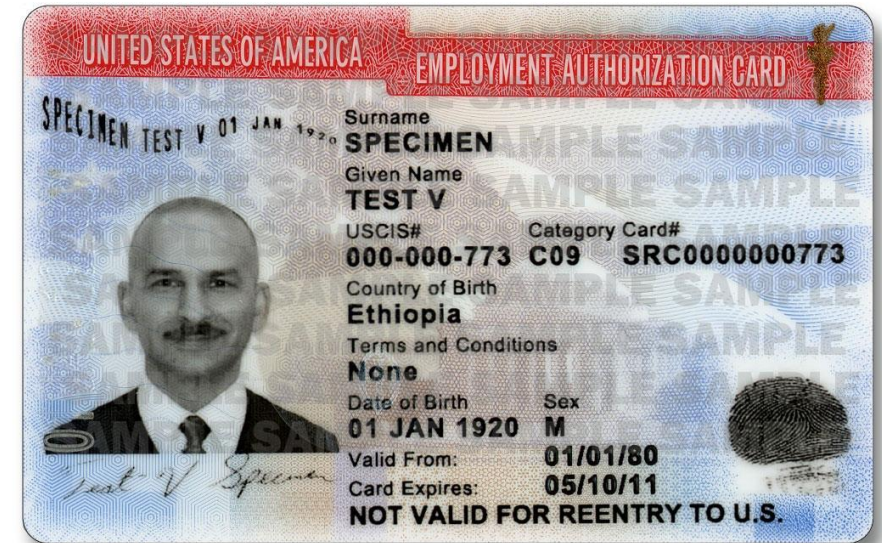
- Affirmative cases are those that involve petitions (U visas, or “crime victim visas,” VAWA petitions, some asylum cases).
- Defensive cases are those where an individual must petition for themselves while in a deportation proceeding, which could be from within a facility or while out on bond. (Cancellation of removal, some asylum cases that involve being “caught” at the border, some family-based cases that involve filing upon arrest or following arrest).
- Both of these are eligible at a certain point for work authorization through an instrument called an I-765. The amount of time one must wait to file, and to receive the authorization are variable, however it is required for an individual in these situations to work.

# What About Social Security Cards?

- Social security cards can be requested at the time of filing for an I-765, however, the mere presence of a social security card or number is NOT enough to prove permission to work.
- Some employers are under the impression that a functional social security number is all they need to complete their due diligence. They are wrong. Social security numbers are given to many non-immigrants who do not have work authorization. If you want to be sure you are hiring someone with the correct authorizations, check for two things:
  - Social security card indicating that the individual may work if they have “express permission”
  - An employment authorization card (the card received after filing the I-765), which acts as “express permission.”

# What to look for in an EAD

- When looking at an employment authorization document, note the following features:
  - Name
  - Date of birth
  - A Number, or USCIS number
  - Country of birth
  - Dates of validity and expiration
  - Category



# Who is eligible for an EAD?

- Many people are eligible for employment authorization documents as they are intended to provide a source of income while an individual is “in process” – they do not necessarily have any bearing on the outcome, or probable outcome of the case in chief.
- DACA recipients, VAWA petitioners, U visa petitioners, Cancellation of Removal petitioners, OPT recipients, both affirmative and defensive asylum seekers are all eligible for work authorization. The category on the front of the card indicates which of these types the applicant is.

# How do I, or one of my clients, hire an EAD recipient?

- If you have a client who is trying to hire a DACA recipient, for example, the first step would be to simply ask the individual for their employment authorization document, then their social security card, so that you can input their information into your system as you would anyone else.
- If you try to hire someone in this position and they do not yet have an employment authorization document, you may have to hire an immigration attorney, or, if the individual is particularly sophisticated, you can try to walk them through the process of applying pro se for an employment authorization document.

# What does the I-765 process look like?

- If you are interested in assisting a potential employee with their I-765 application in order to avoid the cost of an immigration attorney, the most important factors are to:
  - Read the directions and memorize them by heart. Immigration looks for any way they can reject a filing, and you often do not get your money back.
  - Save up or give the employee the money for the government fee, which at the moment is, for the I-765 alone, \$410. Some do not have a fee (asylum seekers get their first EAD for free).
  - Check to see if your employee falls into the group that has to pay for extra biometrics. This would mean an extra \$85 (\$495 total) and sending in colorized, glossy passport style photos. I generally use the post office or Rite Aid.



# What happens after filing?

- Simply put, you wait. You should receive a receipt in approximately two weeks, although that time is becoming ever more expansive these days after the blockages caused by the prior administration. The receipt is very important because it will show immigration authorities that your employee/client/etc is in the process of lawfully acquiring the right to work.
- If you wait a month with no reply, contact USCIS as it may be an issue of the paperwork being lost.
- You may also receive a rejection. I recommend seeking an immigration lawyer if this happens, as rejections are usually far too vague to address without advance knowledge of immigration laws.

# Conclusion

- You can absolutely hire someone in an active deportation or affirmative asylum case, as well as DACA students, VAWA self-petitioners, and others. It just takes a bit of focus on their documents, as well as some knowledge about where they are in the process.
- Once you've hired someone with an EAD who is in this position, you have probably made a friend for life, as the "overly complicated" process of hiring them often deters employers and causes job loss and unemployment in this unique community.