

TABLE OF CHANGES – INSTRUCTIONS
Form I-765, Application for Employment Authorization
OMB No 1615-0040
02/13/2015

Reason for Revision: Accommodate changes related to H4 rule.

LOCATION	CURRENT VERSION	PROPOSED CHANGES
Page 1, What is the Purpose of This Form?	...Adjustment-of-Status Categories, 4 Other Categories, 4...	...Adjustment-of-Status Categories, 5 Other Categories, 5...
Page 4 5. Employment-Based Nonimmigrant Categories...	F. Spouse of an E-2 CNMI Investor--(c)(12)...	<p>F. Spouse of an E-2 CNMI Investor--(c)(12)...</p> <p>G. Spouse of an H-1B Nonimmigrant--(c)(26). File Form I-765 along with documentation of your current H-4 admission or extension of stay. You must also submit documentation establishing either that the H-1B principal has an approved Immigrant Petition for Alien Worker (Form I-140), or that your current H-4 admission or extension of stay was approved pursuant to the principal H-1B nonimmigrant's admission or extension of stay based on sections 106(a) and (b) of the American Competitiveness in the Twenty-First Century Act (AC21). For your convenience, you may file Form I-765 with Form I-539, Application to Extend/Change Nonimmigrant Status. However, USCIS will not process Form I-765 (except filing fees), until after USCIS has adjudicated Form I-539. You may also file Form I-765 at the same time as Form I-539 and Form I-129, Petition for a Nonimmigrant Worker. The 90-day period for adjudicating Applications for Employment Authorization (Form I-765) filed together with Form I-539 does not begin until USCIS has determined whether you are eligible for the underlying H-4 nonimmigrant status, and that the principal is eligible for H-1B status. Please see the USCIS Web site at www.uscis.gov/I-765 for the most current information on where to file this benefit request.</p> <p>1. Proof of Your Status. Submit a copy of your current Form I-797 approval notice for Form I-539 or Form I-94 showing your admission as an H-4 nonimmigrant or your most recent approved extension of stay; and</p> <p>2. Proof of Relationship to the Principal H-1B. Submit a copy of the marriage certificate for you and the principal H-1B nonimmigrant. If you cannot submit a copy of your current Form I-797, Form I-94, or marriage certificate, USCIS will consider secondary evidence.</p> <p>3. Basis for Work Authorization. Acceptable</p>

		<p>documentation includes:</p> <p>a. Approved Form I-140. Submit evidence that the H-1B principal is the beneficiary of an <i>approved</i> Immigrant Petition for Alien Worker (Form I-140). You may show this by submitting a copy of the H-1B principal’s Form I-797 approval notice for Form I-140; or</p> <p>b. H-1B Principal Received AC21 106(a) and (b) Extension. Submit evidence that the principal H-1B nonimmigrant has received an extension of stay under AC21 106(a) and (b). You may show this by submitting copies of the H-1B principal’s passports, prior Forms I-94, and current and prior Forms I-797 for Form I-129. In addition, please submit evidence to establish one of the following bases for the H-1B extension of stay:</p> <p><u>Based on Filing of a Permanent Labor Certification Application.</u> Submit evidence that the H-1B principal is the beneficiary of a Permanent Labor Certification Application that was filed at least 365 days prior to the expiration of the six-year limitation of stay. You may show this by submitting a copy of a print out from the Department of Labor’s (DOL’s) Web site or other correspondence from DOL showing the status of the H-1B principal’s Permanent Labor Certification Application. If DOL certified the Permanent Labor Certification, you must also submit a copy of Form I-797 Notice of Receipt for Form I-140 establishing that the Form I-140 was filed within 180 days of DOL certifying the Permanent Labor Certification; or</p> <p><u>Based on a Pending Form I-140.</u> If the preference category sought for the principal H-1B spouse does not require a Permanent Labor Certification Application with DOL, submit evidence that the H-1B principal’s Form I-140 was filed at least 365 days prior to the expiration of the 6-year limitation of stay and remains pending. You may show this by submitting a copy of the Form I-797 Notice of Receipt for Form I-140.</p> <p>4. Secondary Evidence. If you do not have the evidence listed in 1, 2, or 3 above, you may ask USCIS to consider other evidence (“secondary evidence”) in support of your application for employment authorization as an H-4 spouse. For example, in establishing the Basis for Employment Authorization as described in 3a and 3b, you may submit the receipt number of the H-1B principal’s most current Form I-129 extension of stay or the receipt number of the H-1B principal’s approved Form I-140 petition.</p> <p>Failure to provide the evidence listed above or secondary evidence may result in the delay or</p>
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		denial of your application for employment authorization. For additional information on secondary evidence, see Required Documentation on Page 7. .
Page 6 General Instructions	Evidence. You must submit all required initial evidence along with all supporting documentation with your application at time of filing. If you are electronically filing this application, you must follow the instructions on the USCIS Web site, www.uscis.gov .	Evidence. You must submit all required initial evidence along with all supporting documentation with your application at time of filing . If a required document does not exist or cannot be obtained, you must demonstrate this and submit secondary evidence pertinent to the facts at issue. If secondary evidence does not exist or is unavailable you must demonstrate this and submit two or more sworn affidavits by non-parties who have direct knowledge of the event and circumstances. If you are electronically filing this application, you must follow the instructions on the USCIS Web site, www.uscis.gov .
Page 6, Required Documentation	All applications must be filed with the documents required below in addition to the particular evidence required for the category listed in "Who May File Form I-765?" with fee, if required. If you are required to show economic necessity for your category, submit a list of your assets, income, and expenses.	All applications must be filed with the documents required below in addition to the particular evidence required for the category listed in "Who May File Form I-765?" with fee, if required. If you are required to show economic necessity for your category, submit a list of your assets, income, and expenses. Provide this financial information on Form I-765WS, Form I-765 Worksheet. If you would like to provide an explanation, complete Part 3, Explanation, of the worksheet.