

TABLE OF CHANGES – INSTRUCTIONS
Form I-765, Application for Employment Authorization
OMB Number: 1615-0040
12/24/2015

Reason for Revision: AC21 NPRM.

Current Page Number and Section	Current Text	Proposed Text
<p>Pages 1-7, Who May File Form I-765?</p>	<p>[Page 1]</p> <p>Who May File Form I-765?</p> <p>...</p> <p>Asylee/Refugee and Their Spouses and Children... Page 1 Nationality Categories... Page 1 Foreign Students... Page 2 Eligible Dependents of Employees of Diplomatic Missions, International Organization, or NATO... Page 3 Employment-Based Nonimmigrants... Page 3 Family-Based Nonimmigrants... Page 4 Adjustment-of-Status Categories... Page 5 Other Categories... Page 5</p> <p>...</p> <p>[Page 4]</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</p>	<p>[Page 1]</p> <p>Who May File Form I-765?</p> <p>...</p> <p>Asylee/Refugee and Their Spouses and Children... Page 1 Nationality Categories... Page 1 Foreign Students... Page 2 Eligible Dependents of Employees of Diplomatic Missions, International Organization, or NATO... Page 3 Employment-Based Nonimmigrants... Page 3 Family-Based Nonimmigrants... Page 7 Adjustment-of-Status Categories... Page 7 Other Categories... Page 7</p> <p>...</p> <p>[Page 4]</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. Please see the USCIS Web site at</p>

	<p>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 the file this benefit request.</p> <p>...</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 denial of your application for employment authorization. For additional information on secondary evidence, see Evidence in the General Instructions section.</p>	<p>www.uscis.gov/I-765 for the most current information on where the file this benefit request.</p> <p>...</p> <p>[no change]</p> <p>[no change]</p> <p>[Page 5]</p> <p>H. Beneficiary of an Approved Employment-Based Immigrant Petition Facing Compelling Circumstances--(c) (35). File Form I-765 along with documentation that you are in the United States in E-3, H-1B, H-1B1, O-1, or L-1 nonimmigrant status, that an Immigrant Petition for Alien Worker (Form I-140) was approved on your behalf, and you face compelling circumstances while you wait for your immigrant visa to become available. Please see the USCIS Web site at www.uscis.gov/I-765 for the most current information on where to file this benefit request. If you are requesting renewal of employment authorization under (c)(35), to qualify, you must continue to be the principal beneficiary of an approved EB-1, EB-2 or EB-3 immigrant visa petition and either: (1) you continue to face</p>
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		<p>compelling circumstances; or (2) you have a priority date that is less than one year from the current cut-off date for the relevant employment-based category and country of nationality in the most recent visa bulletin published by the Department of State. However, you will not need to establish nonimmigrant status for the renewal.</p> <p>1. Proof You Are in the United States in E-3, H-1B, H-1B1, O-1, or L-1 Nonimmigrant Status. For initial applications, submit a copy of your Arrival-Departure Record (Form I-94) showing your admission as an E-3, H-1B, H-1B1, O-1, or L-1 nonimmigrant, or a copy of your current Form I-797 approval notice for Form I-129.</p> <p>2. Proof of Your Approved Form I-140. Submit a copy of a Form I-797 approval notice for Form I-140 showing the Immigrant Petition has been approved for you.</p> <p>3. Evidence You Are Facing Compelling Circumstances While You Wait For Your Immigrant Visa to Become Available.</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.</p> <p>Failure to provide evidence listed above may result in the delay or denial of your application for employment authorization. For additional information on secondary evidence, see Evidence in the General Instructions section.</p> <p>5. Felony or Misdemeanor. If you were ever convicted of a felony or two or more misdemeanors committed in the United States, you cannot be granted employment authorization under this eligibility category. USCIS will make the determination as to whether your crimes fall into either of these categories. You must, however, provide information and any supporting</p>
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		<p>documentation on all crimes which you have committed or were convicted of in the United States so USCIS can make an appropriate decision.</p> <p>6. Court Disposition Records. If you were ever arrested, charged, and/or convicted for a criminal offense, you must provide court disposition records.</p> <p>Provide a certified copy of all arrest reports, court dispositions, sentencing documents, and any other relevant documents. You may also include any mitigating evidence concerning the circumstances of your arrests or convictions that you would like USCIS to consider if you have been arrested or convicted of a crime. If you were placed on probation, you must provide evidence to show that you completed your probationary period.</p> <p>You do not need to submit documentation concerning minor traffic violations unless they were alcohol- or drug-related. However, if you were arrested for any traffic offense, provide disposition documentation so USCIS can properly assess whether your arrest and/or conviction may relate to your employment authorization eligibility.</p> <p>NOTE: Provide the conviction and disposition documentation even if your records were sealed, expunged, or otherwise cleared. You must provide the documentation even if anyone, including a judge, law enforcement officer, or attorney told you that you no longer have a record or that you do not have to disclose the information.</p> <p>I. Spouse or Unmarried Dependent Child of a Principal Beneficiary of an Approved Employment-Based Immigrant Petition--(c)(36). File Form I-765 along with documentation that your spouse or parent, who is the principal beneficiary of an approved immigrant petition as described in paragraph H, has been granted employment authorization under eligibility category (c)(35) and, for initial applications, documentation that you are or were in the United States in a</p>
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nonimmigrant status at the time the principal beneficiary of the employment-based immigrant petition applied for employment authorization under section H, above. For your convenience, you may file your Form I-765 at the same time as the principal (your spouse or parent) files Form I-765. However, USCIS will not adjudicate your Form I-765, until after USCIS has adjudicated your spouse's or parent's Form I-765. See the USCIS Web site at www.uscis.gov/I-765 for the most current information on where to file this benefit request.

1. Proof of Your Nonimmigrant Status.

For initial applications, submit a copy of your Arrival-Departure Record (Form I-94) showing your admission as a nonimmigrant, a copy of your current Form I-797 approval notice for Form I-129, or a copy of your current Form I-797 approval notice for Form I-539.

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2. Proof of Relationship to the Beneficiary of the Approved Form I-140.

If you are applying as the spouse of a principal beneficiary of an approved Form I-140, submit a copy of the marriage certificate and if applicable, copies of documents showing the legal termination of all other marriages by you or your spouse. If you are applying as the child of a principal beneficiary of an approved Form I-140, submit a copy of your birth certificate or other documents to demonstrate you qualify as the principal beneficiary's child. If you cannot submit a copy of your marriage certificate or birth certificate, USCIS will consider secondary evidence.

3. Proof the Spouse or Parent Principal was Granted Employment Authorization Under Eligibility Category (c)(35).

If you submit your Form I-765 after your spouse or parent receives employment authorization under eligibility category (c) (35), submit a copy of your spouse's or parent's employment authorization document or submit a copy of your spouse's or parent's Form I-797 approval notice for Form I-765.

	<p>[Page 5]</p> <p>6. Family-Based Nonimmigrant Categories...</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.</p> <p>Failure to provide the evidence listed above or secondary evidence may result in the delay or denial of your application for employment authorization. For additional information on secondary evidence, see Evidence in the General Instructions section.</p> <p>5. Felony or Misdemeanor. If you were ever convicted of a felony or two or more misdemeanors committed in the United States, you cannot be granted employment authorization under this eligibility category. USCIS will make the determination as to whether your crimes fall into either of these categories. You must, however, provide information and any supporting documentation on all crimes which you have committed or were convicted of in the United States so USCIS can make an appropriate decision.</p> <p>6. Court Disposition Records. If you were ever arrested, charged, and/or convicted for a criminal offense, you must provide court disposition records.</p> <p>Provide a certified copy of all arrest reports, court dispositions, sentencing documents, and any other relevant documents. You may also include any mitigating evidence concerning the circumstances of your arrests or convictions that you would like USCIS to consider if you have been arrested or convicted of a crime. If you were placed on probation, you must provide evidence to show that you completed your probationary period.</p> <p>You do not need to submit documentation concerning minor traffic violations, unless they were alcohol- or drug-related. However, if you were arrested for any traffic offense, provide disposition documentation so USCIS can properly assess whether your arrest and/or</p>
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	<p>8. Other Categories...</p> <p>[Page 6]</p> <p>F. Consideration of Deferred Action for Childhood Arrivals--(c)(33).</p> <p>1. You must file Form I-765 with Form I-821D if you meet the guidelines described in the Form I-821D Filing Instructions. Enter (c)(33) in Question 16 as the letter and number of the category for which you are applying.</p> <p>a. To determine your eligibility for work authorization, you must establish economic necessity. USCIS will consider whether you have an economic need to work by reviewing your current annual income, your current annual expenses, and the total current value of your assets. 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. It is not necessary to submit supporting documentation, though it will be accepted and reviewed if you choose to submit it. You do not need to include other household member's financial information to establish your own economic necessity.</p> <p>b. The 90-day period for adjudicating Form I-765 filed together with Form I-821D does not begin until DHS has decided whether to defer action in your case.</p> <p>c. The fee for Form I-765 filed based on the Consideration of Deferred Action for Childhood Arrivals category cannot be waived. Biometric collection and the biometric services fee for Form I-765 based on the Consideration of Deferred Action for Childhood Arrivals category is also required and cannot be waived.</p> <p>...</p>	<p>conviction may relate to your employment authorization eligibility.</p> <p>NOTE: Provide the conviction and disposition documentation even if your records were sealed, expunged, or otherwise cleared. You must provide the documentation even if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record or that you do not have to disclose the information.</p> <p>6. Family-Based Nonimmigrant Categories...</p> <p>8. Other Categories...</p> <p>[Page 7]</p> <p>F. Consideration of Deferred Action for Childhood Arrivals--(c)(33).</p> <p>[no change]</p> <p>[no change]</p>
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		<p>[Page 8]</p> <p>b. USCIS will not begin adjudicating Form I-765 if filed together with Form I-821D until USCIS has decided whether to defer action in your case.</p> <p>c. The fee for Form I-765 filed based on the Consideration of Deferred Action for Childhood Arrivals category cannot be waived. Biometric collection and the biometric services fee for Form I-765 based on the Consideration of Deferred Action for Childhood Arrivals category is also required and cannot be waived.</p> <p>...</p>
<p>Page 7, General Instruction</p>	<p>[Page 7] General Instructions</p> <p>...</p> <p>Evidence. You must submit all required initial evidence along with all the supporting documentation with your application at the time of filing.</p> <p>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.</p> <p>If you are electronically filing this application, you must follow the instructions provided on the USCIS Web site, www.uscis.gov.</p> <p>Biometrics Services Appointment. After receiving your application and ensuring completeness, USCIS will inform you in writing when to go to your local USCIS</p>	<p>[Page 7] General Instructions</p> <p>...</p> <p>[no change]</p> <p>[no change]</p> <p>[Page 9]</p> <p>[delete]</p> <p>[no change]</p>

	<p>Application Support Center (ASC) for your biometrics services appointment. Failure to attend the biometrics services appointment may result in denial of your application.</p> <p>...</p>	...
<p>Pages 9-10, What Is the Filing Fee?</p>	<p>[Page 9]</p> <p>What Is the Filing Fee?</p> <p>The filing fee for Form I-765 is \$380.</p> <p>...</p> <p>Special Instructions for Childhood Arrivals ((c)(33)). All requestors under this category must submit biometrics. The biometrics services fee of \$85 is required for all requestors. <i>The biometrics services fee and the filing fee for this form cannot be waived.</i></p> <p>Renewal EAD. If this is a renewal application and you are applying under one of the following categories, a filing fee is not required:</p> <p>...</p>	<p>[Page 11]</p> <p>What Is the Filing Fee?</p> <p>The filing fee for Form I-765 is \$380.</p> <p>...</p> <p>[no change]</p> <p>Biometrics Services Fee for Beneficiaries of an Approved Employment-Based Immigrant Petition--(c)(35) and Spouses or Children of a Beneficiary of an Approved Immigrant Petition--(c)(36). All applicants under these categories must submit biometrics. The biometric services fee of \$85 is required for all applicants unless waived.</p> <p>[no change]</p> <p>...</p>
<p>Page 12, Processing Information</p>	<p>[Page 12]</p> <p>Processing Information</p> <p>...</p> <p>Interim EAD. If you have not received a decision within 90 days of receipt by USCIS of a properly filed EAD application or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995, you may request interim work authorization by calling the USCIS National Customer Service Center at 1-800-375-5283 or by appearing in person at</p>	<p>[Page 12]</p> <p>Processing Information</p> <p>...</p> <p>[delete]</p>

	<p>your local USCIS Field Office by making an InfoPass appointment. For TDD (hearing impaired) call: 1-800-767-1833. For further processing at a USCIS Field Office, you must bring proof of identity and any notices that you have received from USCIS in connection with your application for employment authorization. <i>The Interim EAD provisions apply to individuals filing Form I-765 based on Consideration of Deferred Action for Childhood Arrivals only after a determination on deferred action is reached.</i></p>	
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