

Delays at USCIS Affecting F-1 Students with Work Authorization

Article By:

Kristen W. Ng

[With delays at USCIS lockbox and service centers due to COVID-19](#) and an unprecedented number of applications, those seeking to apply or renew their Employment Authorization Documents (EAD) have experienced issues in commencing or continuing employment. One class of impacted nonimmigrants is F-1 students, who may apply for work authorization after graduation, called Optional Practical Training (OPT), and if the student has graduated with a STEM degree, may apply for an additional 24 months of STEM OPT. Below are outlined issues, USCIS responses, and other considerations for both OPT and STEM OPT EAD applications.

Initial OPT period (12 months)

Issue

For students applying for their initial 12 months of OPT, they must complete the 12 months within 14 months of the end of their program. Due to delays from USCIS because of backlogs, the EAD applications can take several months to receipt, let alone adjudicate. A student applying for an EAD may apply up to 90 days before, and 60 days after, their program end date, but it now takes more than 90 days to confirm receipt, and then even more time to receive an EAD, which is necessary to begin employment.

USCIS response

[USCIS issued an announcement](#) that allows for flexibilities within the 14 month OPT period. Because of delays, USCIS will now allow the 14 months' clock to start ticking when the EAD application (Form I-765) has been **approved**, and not start the clock from the program end date. If a student receives an EAD that "shorts" them this time, they may request USCIS to issue a new EAD. In addition, because USCIS allows 60 days **after** a program end date to apply for an EAD, the announcement also covers rejections of EAD applications, and the ability to refile the application if it was filed after October 1, 2020, and before May 1, 2021. In addition, the refiles need not contain a new Form I-20.

Other Considerations

What is not addressed are current backlogs at USCIS that is delaying not only the issuance of receipt

notices, but also the adjudication of EAD applications. Even though USCIS is giving the full 12 months of OPT from the time the EAD application is filed, the delays will still affect graduates and their start dates if they cannot start without an EAD in hand.

STEM OPT Extensions

Issue

Students who graduate with a STEM degree may apply for an additional 24 months of STEM OPT. The application can be filed up to 90 days prior to the expiration of the initial EAD period, and up to the expiration of the card. EAD applications filed on time (prior to the expiration of the card) will be granted an automatic 180 day work authorization period. Traditionally, if the card has expired and the 180 day automatic extension has commenced, the student and employer have confirmation the EAD application was filed timely due to the receipt notice issued by USCIS, even if the application is not yet adjudicated. Due to delays, a student may not receive the receipt notice even after 90 days of sending in the application.

USCIS response

USCIS reminds its stakeholders that a receipt notice is not indicative of an F-1 student's ability to remain employed. In fact, the I-9 rules do not use the receipt notice as proof of work authorization, but dictate that the endorsed I-20 issued by the school, as well as the expired EAD, are the necessary documents to confirm work authorization. In addition, as with the initial OPT EAD filings, USCIS will allow for refiles if the application is rejected with no penalty, if the STEM EAD extension was filed between October 1, 2020 and May 1, 2021, without requiring a new Form I-20.

Additional considerations

There is more flexibility when the application is a STEM OPT extension because of the 180 day automatic extension. However, due to the issues of receipt issuance and adjudication, the EAD may not be issued within the additional 180 days, and there is currently no solution to that situation.

USCIS continues to show that it will modify its policies to address the ongoing COVID-19 situation and delays with the lockbox.

©2025 Greenberg Traurig, LLP. All rights reserved.

National Law Review, Volume XI, Number 60

Source URL: <https://natlawreview.com/article/delays-uscis-affecting-f-1-students-work-authorization>