

Employment Authorization

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Overview of Employment Authorization in the United States

OVERVIEW

Before any person can be employed in the U.S., he/she must prove to an employer that he/she can legally work here. U.S. citizens, permanent residents and others granted long-term status prove this by showing an unrestricted Social Security card and an identity document, such as a driver's license.

Otherwise, in most cases, a person must receive employment authorization from us. We don't just give people permission to work. It is a derivative benefit. That means a person must have a particular kind of immigration status or have a specific kind of application pending with us to be eligible for employment authorization. Most applications for employment authorization are actually filed with or based on a separate application for a particular immigration status or benefit.

A person who is not eligible to work can apply for a special Social Security card that is not valid for work in the U.S. but may be used to open a bank account. For information about how to apply for a Social Security card, call the Social Security Administration at 1-800-772-1213.

In order to be legally employed in the United States, employees are required to present documentation to an employer to show evidence of their authorization to work.

- **U.S. citizens** can meet this requirement by showing proof of their United States citizenship and a valid identity document.
- **Permanent Residents** can meet this requirement by showing their permanent resident card.
- Refugees can meet this requirement by showing their Form I-94 and an identity document for initial employment but will need to follow up with other documentation.
- Asylees (persons granted asylum in the U.S.) can meet this requirement by presenting an unrestricted social security card and an identity document.
- Certain nonimmigrant visa holders who are eligible to work based upon employment with a specific employer can show their Form I-94 Arrival and Departure record with their nonimmigrant visa, which will indicate the name of the employer with whom they are authorized to be employed.

Most other customers will need to obtain an employment authorization document (EAD).

Customers who are required to obtain an EAD must file a Form I-765, Application for Employment Authorization, with USCIS. Please follow the instructions to the form carefully. After the Form I-765 is approved, an EAD is created. An EAD is Form I-766.

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Verification of Employment Eligibility by an Employer on Form I-9

OVERVIEW

Immigration law requires employers to verify that employees are eligible to be lawfully employed in the U.S. Each employer and employee must complete certain portions of Form I-9, Employment Verification, upon hiring or, in certain instances, when employment eligibility is being re-verified.

Immigration law and regulations are very specific about documentation an employer may accept as evidence of employment authorization. If an employer hires an employee without verifying the employee's eligibility or accepts some form of documentation that is not specifically listed as acceptable, the employer may face stiff penalties and fines.

In certain instances, USCIS may issue notices which state "Employment Authorized" or "Employment Authorized Pursuant to Status." In these instances, even if you are authorized to be employed, you must still obtain some form of acceptable documentation specifically outlined in regulation and law before the employer can legally hire you.

The easiest way to remember the differences is:

1. **Employees** obtain and must show evidence of employment authorization and identity.
2. **Employers** must verify that the employee is who he/she claims to be and that he/she is authorized to be employed, but can only use certain specific documents to accomplish this verification.

Unless/until the employee can provide the employer with a document or documents specified in USCIS regulations that establish both identity and employment authorization, the employee cannot be lawfully hired.

See "[Employee Responsibilities When Completing the Form I-9](#)" for a list of acceptable documents.

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Your Responsibilities as an Employee When Completing the Form I-9

OVERVIEW

The purpose of having U.S. employers complete I-9 forms on each and every individual in their employ is to verify that an employee is able to legally work in the U.S. In addition, the maintenance of I-9 records demonstrates that an employer is making a good faith effort to comply with the immigration laws of the U.S.

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Filling Out and Completing the I-9

Who needs to complete an I-9?

Every newly hired employee at a company must complete the Form I-9, including citizens and nationals of the United States. Both the employer and the employee are responsible for completing the Form I-9.

All employers in the United States are required to examine all of their employees' work authorization status, regardless of whether the employee is a United States citizen, permanent resident, or temporary foreign worker.

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Who is responsible for completing the different sections of the I-9?

The employee is obligated to complete Section One.
The employer is obligated to complete Section Two and Section Three.

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When should Section 1 be completed?

Section One of the I-9 must be completed and signed by every newly hired employee on or before the date of hire, regardless of his/her immigration status. The employee must attest that he/she is a United States citizen, lawful permanent resident or is otherwise authorized to work for the employer.

The employer must ask each employee to provide documents that prove both his/her identity and his/her eligibility to work. There are 3 lists on the back of the Form I-9 which describe what is acceptable documentation:

List A

Describes documentation that proves BOTH identity and eligibility to be employed.

List B

Describes acceptable documentation to establish ONLY identity.

List C

Describes acceptable documentation to establish ONLY eligibility to be employed.

Note: Certain documents have been created and placed in the regulations or have been designated by policy as acceptable even though not indicated on the Form I-9. These forms are:

- **Form I-94 for refugees to establish initial employment eligibility; and**
- **Form I-94 issued to asylees with “employment authorized” indicated on the reverse side for employment eligibility only.**

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LIST A: Acceptable Documentation

(The employee can provide one document from this list to establish both identity and employment authorization. Otherwise, the employee would need to provide one document from list B **AND** one from list C)

The following documents, if they appear to relate to the individual presenting the document, are acceptable as evidence for both identity and employment eligibility:

- A U.S. passport or U.S. Passport Card;
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551);
- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa;
- Employment Authorization Document that contains a photograph (Form I-766);
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.
- Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the U.S. and the FMI or RMI.

Note: Citizens of the Republic of Palau must possess a valid employment authorization document before working in the United States. (The legislation approving the changes to the CFA with the FSM and RMI authorized changes for those nations only, not Palau).

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LIST B: Acceptable Documentation

(If the employee cannot provide one document from list A, he/she must provide one document from this list to establish identity *AND* one from list C to establish employment authorization.)

The following documents are acceptable to establish identity only:

(1) For individuals 18 years of age or older:

- Driver's license or ID card issued by a State or outlying possession of the U.S. provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address;
- ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address;
- School ID card with a photograph;
- Voter's registration card;
- U.S. military card or draft record;
- Military dependent's ID card;
- U.S. Coast Guard Merchant Mariner Card;
- Native American tribal document; or
- Driver's license issued by a Canadian government authority.

(2) For individuals under age 18 who are unable to produce a document listed in paragraph (1) above, the following documents are acceptable to establish identity only:

- School record or report card;
- Clinic doctor or hospital record;
- Daycare or nursery school record.

(3) Minors under the age of 18 who are unable to produce one of the identity documents listed in paragraph (1) or (2) above are exempt from producing one of the enumerated identity documents if:

- The minor's parent or legal guardian completes on the Form I-9 Section 1--"Employee Information and Verification."
- In the space for the minor's signature, the parent or legal guardian writes the words "minor under age 18."
- The minor's parent or legal guardian completes on the Form I-9 the "Preparer/Translator certification."
- The employer or the recruiter or referrer for a fee writes in Section 2--"Employer Review and Verification" under List B in the space after the words "Document Identification #" the words "minor under age 18."

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List B: Acceptable Documentation (cont.)

(4) Individuals with handicaps, who are unable to produce one of the identity documents listed in paragraph (1) or (2) above, and who are being placed into employment by a nonprofit organization, association or as part of a rehabilitation program, may follow the procedures for establishing identity provided in this section for minors under the age of 18. Where appropriate, they may substitute the term "special placement" for "minor under age 18" and, in addition to a parent or legal guardian, may permit a representative from the nonprofit organization, association or rehabilitation program placing the individual into a position of employment to fill out and sign the appropriate section of the Form I-9. For purposes of this section, the term individual with handicaps means any person who:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
- Has a record of such impairment, or;
- Is regarded as having such impairment.

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LIST C: Acceptable Documentation

(If the employee cannot provide one document from list A, he/she must provide one document from this list to establish employment authorization *AND* one from list B to establish identity.)

The following are acceptable documents to establish employment authorization only:

- Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the U.S.;
- Certification of Birth Abroad issued by the Department of State (Form FS-545);
- Certification of Report of Birth issued by the Department of State (Form DS-1350);
- Original or certified copy of a birth certificate issued by a State, county, municipal authority, or territory of the U.S. bearing an official seal;
- Native American tribal document;
- U.S. Citizen ID Card (Form I-197);
- Identification Card for Use of Resident Citizen in the U.S. (Form I-179); or
- Employment authorization document issued by the Department of Homeland Security.

Note: To establish initial employment authorization, a refugee may use Form I-94. Then, within 90 days of being hired, the refugee must present either: an unexpired Form I-766, or a Social Security card that does not display any employment restrictions. The refugee must also present a document which establishes the individual's identity. If an individual has been granted asylum, the individual must present a Form I-94, which indicates that the bearer has been granted asylum or "asylee" status. Even though it is not required by immigration law, an asylee should also present a Social Security card, which does not display any employment restrictions, within 90 days of being hired.

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Can the I-9 be filled out before a job is offered?

An individual cannot complete a Form I-9 for an employer until after they have accepted the position.

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Can my employer tell me what documents I must bring for verification?

An employer cannot tell someone what documents to bring, but they can point out the list of acceptable documents shown on the back of the Form I-9.

It is only when an employee presents documents not appearing on the list that the employer may ask for additional proof of identity and/or employment authorization.

Note: The important thing to remember is that a citizen and a non-citizen must be treated identically in completing the I-9.

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Can photocopies of documents be accepted?

No, photocopies of documents cannot be accepted for I-9 purposes. Employees must present original documents.

Note: The only exception is that a newly hired employee may present a certified copy of a birth certificate.

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Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?

The employer cannot accept a receipt showing that the employee has filed for an extension or an initial document.

Receipts for applications for employment authorization can only be accepted as evidence of continuing eligibility to be employed in cases where the original document has been lost, stolen, or mutilated. In these cases, the previous document must still have been otherwise valid (still would have been within the validity period previously granted if not lost, stolen, etc.) and the employee must provide the valid replacement document within 90 days.

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Are there any special exceptions for people in a certain status?

The only exception of the requirement to provide one of the documents listed in list A, or one from both Lists B and C, is for the initial hiring of someone in refugee status.

(THE FOLLOWING DOES NOT RELATE TO ASYLEES; THIS EXCEPTION IS FOR REFUGEES ONLY)

Someone granted refugee status will be issued a Form I-94 indicating refugee status. The employer can use this to verify employment and identity as long as the employee presents:

- The departure portion of Form I-94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, or
- A Social Security card that contains no employment restrictions,

And within 90 days of the hire or, in the case of verification, the date employment authorization expires, presents either

- An unexpired Form I-766, or
- A Social Security card that contains no employment restrictions and a document described under list (B).

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Filing an Application for Employment Authorization

OVERVIEW

To apply for an employment authorization document, the customer begins the process by filing a Form I-765, Application for Employment Authorization. Form I-765 can only be filed by certain customers. Employment authorization is usually based upon a person's status in the U.S. or, many times, whether they have filed for or received another benefit.

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What is an EAD?

Certain aliens who are temporarily in the United States may file a Form I-765, *Application for Employment Authorization*, to request an Employment Authorization Document (EAD), which authorizes them to work legally in the U.S. during the time the EAD is valid.

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How do I know if I can get an Employment Authorization Document (EAD)?

Whether you can obtain, or even if you need, an EAD depends upon what status you have in the United States or, many times, if you have filed or are filing for certain other benefits.

- If you are in, or want to be in, a valid nonimmigrant category, including a NATO category, please go back to the beginning and choose the Guide entitled, "Nonimmigrant Services."
- If you are an asylee or refugee, please go back to the beginning and choose the Guide entitled, "Services Available for Asylees and Refugees."
- If you have, or are filing for, Temporary Protected Status (TPS), please go back to the beginning and choose the Guide entitled, "Temporary Protected Status."
- If you are filing a Form I-485, Application for Permanent Resident Status, you can apply for employment authorization at the same time you file your I-485 or at any time while your I-485 is pending.
- If you are filing, or have filed for political asylum on Form I-589, please go back to the beginning and choose the Guide entitled, "Special Programs and Services."
- You may also be able to apply for employment authorization if:
 - You have been granted deferred action by USCIS or ICE,
 - You have been granted voluntary return under the Family Unity program, or
 - You are under an order of supervision by an immigration court.

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How do I apply for an Employment Authorization Document?

To apply for an Employment Authorization Document, use USCIS [Form I-765](#).

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When should I file for an extension of my employment authorization?

You should not file more than 120 days before the expiration date shown on your current employment authorization document; however, you should file at least 90 days before the expiration date.

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How do I get the Form I-765 "Application for Employment Authorization" (EAD)?

The Form I-765 can be obtained by downloading it from the USCIS website at www.uscis.gov
Please follow the instructions to the form carefully.

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Under the "I am applying for" area of the form, there are three different blocks. Which one should I check?

- Initial EAD (this is your first application under a specific category),
- A Renewal EAD (an extension of previously granted employment authorization), or
- A Replacement EAD (to replace a lost, mutilated, or destroyed EAD, or to update information, such as a name change on the EAD).

Initial EAD

An application for an initial EAD is one in which the applicant is filing for an EAD under a specific category for the first time. For example, if the applicant previously had an EAD filed under the Form I-765(c)(8) category and is now filing under the (a)(5) category, the application is considered an initial application because it is the first one filed under the new category (a)(5), even though they had been issued a previous card under a different category. Each person required to have an EAD must have it in their possession before they can begin working.

Renewal EAD

An application for a renewal EAD is one in which the applicant is filing for an extension of his/her EAD under the same category as he or she previously had. Except for persons in refugee or asylee status, each person must have a valid card in their possession to be eligible to continue working. Therefore, it is important to stress that renewal EADs should be filed at least 90 days before the expiration of the old EAD in order to avoid lapses in employment.

Replacement EAD

An application for a replacement EAD is filed if a card has been lost, stolen, or mutilated, or when the previously issued card contains erroneous information, such as a misspelled name or name change. If an application for a replacement EAD is approved, the replacement EAD will have the same dates and category as the EAD that was lost, stolen, etc.

Persons applying for replacement documents can present the receipt for the I-765 as evidence of employment eligibility but must produce a valid card within 90 days of showing the receipt.

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For question 16, how do I know for which category I should apply?

- If you are in, or want to be in, a valid nonimmigrant category, including a NATO category, please see the specific nonimmigrant category you are interested in under Nonimmigrant Services
- If you are an asylee, file under category (a)(5)
- If you are a refugee, file under category (a)(3)
- If you were paroled as a refugee, file under category (a)(4)
- If you were paroled in the public interest, file under category (c)(11).
- If you are filing for Temporary Protected Status (TPS), file under category (c)(19)
- If you have been granted TPS, file under category (a)(12).
- If you are filing a Form I-485, Application for Permanent Resident Status, file your I-765 under category (c)(9).
- If you are filing, or have filed for political asylum on Form I-589, please refer to Special Programs and Services before filing. If it appears you can file for employment authorization, file under category (c)(8).
- You may also be able to apply for employment authorization if:
 - You have been granted deferred action by USCIS or ICE, file under category (c)(14)
 - You have been granted voluntary return under the LIFE Act Family Unity program, file under category (a)(14)
 - You are under an order of supervision by an immigration court, file under category (c)(18)
 - You have been granted withholding of deportation by an Immigration Court, file under category (a)(10)

For other categories, please see the instructions to Form I-765.

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Do I have to submit photos with the Form I-765?

Yes, you must submit two standard passport-style photos. The photos must have been taken no earlier than 30 days prior to the date you file the I-765. Please see the Form I-765 for the required specifications for the photos.

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Do I need to submit a “signature card” I-765A, with my I-765 application?

No, the signature card is no longer required as part of the filing process.

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How long does USCIS have to make a decision on my Application for Employment Authorization?

The required times in which USCIS must make a decision on an I-765 are:

- Ninety (90) days of receipt of applications filed under categories other than asylum-based, or
- Thirty (30) days if filing based upon a pending asylum case and filing for an initial EAD,

One exception to this rule is if USCIS requests additional evidence. The processing time limit is extended by the amount of time it takes for you to receive the request for evidence and respond to it. Also, the processing time is extended when a request for evidence is issued for any Form filed concurrently with the I-765.

If USCIS has to send out a Request for Evidence, the processing “clock” stops. You will have up to 84 days from the date the request was mailed by USCIS (not the date you received it) to respond back to USCIS. Once USCIS receives your response, the processing “clock” starts up again.

Here is an example: An I-765 is filed today. Let’s say that USCIS has 90 days (see below) to make a decision on the application. USCIS mails a request for evidence some time after receiving the application but before the 90-day limit.

- It takes 3 days for you to receive the request.
- You wait 15 days to mail it back.
- USCIS receives it 3 days later.

The 15 days it took to gather the proper information plus the 6 total days of mailing time is 21 days. In this example, those 21 days would be added on to the 90-day time limit. USCIS would then have a total of 111 days (the 90 day limit plus the 21 days) **from the date that the application was originally received** to make a decision.

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How can I get an Interim EAD?

If USCIS does not make a decision on your I-765 within 90 days (30 days for Asylum applicants), you may request an Interim EAD. The interim EAD can be granted for a period **up to** 240 days. Please feel free to contact us if your I-765 is pending for more than 90 days (30 days if Asylum applicants).

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My I-765 was approved, but I have not received my EAD. Can I get temporary evidence of employment authorization?

Customers who have an approved (or denied) I-765 are not eligible for an interim EAD.

Customers whose I-765 was approved at a Service Center, but who have not received the EAD 30 days or more from the date of approval, may be eligible for a Non-Delivery of Employment Authorization Document service request referral to the Service Center. Please see [here](#).

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Can I get a Social Security card after I get my EAD?

In most cases, you can apply for a Social Security card after you receive an employment authorization document. You will need another type of officially issued photo identification, such as a passport or driver's license.

For more information about how to apply for a Social Security card, please call the Social Security Administration at 1-800-772-1213.

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What if my EAD has incorrect information on it when I receive it?

Please see [here for approved cases](#).

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Who is eligible for an EAD that is valid for two years?

The two-year EAD is available to all pending adjustment applicants (i.e., those who have filed a Form I-485 filed under any category, whether family-based or employment-based) who are currently unable to adjust status because an immigrant visa number is not currently available. USCIS will continue to grant EADs that are valid for one-year for adjustment applicants who have an available immigrant visa number and are filing for employment authorization.

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When will applicants expect to receive the new two-year EAD?

USCIS expects to implement this initiative for cases pending on June 30, 2008. Applicants filing Form I-765 should begin to receive their two-year EAD a couple of weeks after the anticipated June 30, 2008 implementation date.

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Where can someone get more information on the new EADs?

For further information, please review the USCIS Update on the new two-year EAD posted online at: <http://www.uscis.gov>.

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Will applicants get a two-year EAD when they file an I-765 with their I-485 adjustment of status application?

Generally, no. Initial EAD filings will generally receive an EAD that is valid for one year because they are usually submitted with the Form I-485 that can only be filed when there is an immigrant visa number immediately available to the individual. Applicants are only eligible for a two-year EAD if their immigrant visa availability date retrogresses (i.e., when actual demand for visa numbers exceeds forecasted supply) after the Form I-485 is filed. If an immigrant visa number is available, USCIS will grant the one-year EAD.

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How will USCIS decide whether to issue an EAD valid for one or two years?

USCIS will decide whether to renew an EAD for either a one or two-year validity period based on the most recent Department of State Visa Bulletin. If an applicant's visa number has retrogressed and is unavailable, USCIS may issue a renewal EAD valid for two years. USCIS will continue to issue the EAD in one-year increments when the Department of State Visa Bulletin shows an employment-based preference category is current as a whole or the applicant's priority date is current.

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If I am filing for a replacement EAD, how long is the EAD valid?

If an individual requests to replace an EAD that has not expired, USCIS will issue a replacement EAD that is valid through the same date as the previously issued EAD. However, if the previous EAD has expired, USCIS will process the request for a renewal EAD and determine the appropriate validity period based on the Department of State Visa Bulletin and the applicant's priority date.

If USCIS determines that an applicant has filed multiple Forms I-765, the agency may deny the applications for the replacement or renewal EAD.

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Why is USCIS changing the validity period for some EADs?

USCIS views this change as a way to better serve its customer base, and in particular, persons who are waiting to become lawful permanent residents and are impacted by the lack of immigrant visa numbers.

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When I file Form I-765, how long will it take to receive a decision?

You should receive a decision within 90 days (30 days for Asylum applicants) from the receipt date on your Form I-765.

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The information contained here is a basic guide to help you become generally familiar with many of our rules and procedures. Immigration law can be complex, and it is impossible to describe every aspect of every process. After using this guide, the conclusion reached, based on information you provide and/or choose, may not take certain factors such as arrests, convictions, deportations, removals or inadmissibility into consideration.

If you have any such issue, the answer we provide may not fully address your need and may cause the full and correct answer to be significantly different.

We cannot provide legal advice. If you believe you may have an issue such as any described above, it may be beneficial to consider seeking legal advice from a reputable immigration practitioner such as a licensed attorney or nonprofit agency accredited by the Board of Immigration Appeals before seeking this or any immigration benefit.

For more information about immigration law and regulations, please see our website at www.uscis.gov.

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