

INTERIM MEMO FOR COMMENT

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This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



**U.S. Citizenship
and Immigration
Services**

December 21, 2010

PM-602-0023

Policy Memorandum

SUBJECT: Issuance of Advance Parole Employment Authorization Document; Revisions to *Adjudicator's Field Manual (AFM)* Chapters 54.2(b), 54.3(d)(3), 54.3(e)-(h), and 55.3, and addition of Appendices 55-4, 55-5, 55-6, and 55-7 (*AFM Update AD07-27*)

Purpose

To permit issuance of an Employment Authorization Document (EAD), Form I-766, with an advance parole endorsement.

Scope

This Policy Memorandum (PM) applies to every USCIS officer who, on or after December 21, 2010, adjudicates an Application for Employment Authorization (Form I-765) and an application for advance parole (filed on an Application for Travel Document, Form I-131, option 2d) submitted concurrently with or after the filing of an Application to Register Permanent Residence or Adjust Status (Form I-485).

This PM rescinds and supersedes any previously published policy guidance issued by USCIS and the legacy Immigration and Naturalization Service (INS) concerning the issuance of employment authorization and advance parole documents, to the extent that such previously published guidance conflicts with the guidance in this PM.

Authority

Sections 103, 212(d)5, 245, 249 and 274A of the Immigration and Nationality Act of 1952, as amended (INA); the Cuban Adjustment Act; Section 13 of the Act of September 11, 1957; 8 CFR 100.2(a), 103, 212.5, 245, 249, 274a.12(c)(9), 274a.12(c)(16) and 299.

Background

An alien who has applied for adjustment of status on Form I-485 under 8 CFR 245 or for registry under 8 CFR 249 may request, during the pendency of such application, the ancillary benefits of:

- Employment authorization; and
- Advance authorization to be paroled into the United States upon return from travel outside the United States. Advance Parole does not cure inadmissibility due to unlawful presence accumulated under INA 212(a)(9)(B) or (C), but without such advance parole authorization issued prior to the alien's departure from the United States, and the alien's inspection and parole upon return, the application of an alien for adjustment of status under 8 CFR 245 would be deemed abandoned (see 8 CFR 245.4). Although the effect of departure by an applicant for registry under section 249 of the INA is not clearly delineated in 8 CFR 249¹, an applicant for registry may apply for, and be issued, advance authorization for parole to facilitate his or her return to the United States.

Traditionally, USCIS has issued two separate documents, an Employment Authorization Document, Form I-766, and an Authorization for Parole of an Alien into the United States, Form I-512, to indicate that an alien has been granted those authorizations. Although adjudication of Form I-131 and I-765 for those ancillary benefits requires two separate determinations by USCIS adjudicators, the information required from the applicant and the processes followed by the adjudicator are similar.

On July 30, 2007, the Department of Homeland Security (DHS) published a final rule under which USCIS would no longer collect a fee for either Form I-765 or Form I-131 filed in conjunction with a pending Form I-485. Approximately 15% of applicants filing a Form I-765 based on a pending Form I-485 also file a Form I-131 concurrently with, or shortly after filing, the Form I-485. USCIS approves approximately 93% of those applications for ancillary benefits.

USCIS has determined that it is cost-effective for the government and more convenient for the applicants to adjudicate Forms I-765 and I-131 simultaneously and, if both forms are approved, to issue a single document indicating that both ancillary benefits have been granted.

Policy

Whenever possible, USCIS adjudicators will simultaneously adjudicate concurrently filed applications for employment authorization and applications for advance parole authorization filed by applicants for adjustment of status under 8 CFR 245 or to register status under 8 CFR 249. If USCIS approves both applications, it will issue a single document, Form I-766, Advance Parole EAD, as provided in this Policy Memorandum. USCIS is also reviewing whether it is feasible to expand eligibility for an EAD with advance parole endorsement to other EAD recipients who are eligible for advance parole.

¹ Section 249 requires continuous residence since the individual's entry into the United States and not continuous physical presence. As a result, an alien who departs from and returns to the United States without breaking residency could retain eligibility for registry. Although both the regulations and case law are silent as to the effect of departure on a pending application for registry filed before the departure, a general principle holds that an application for status is deemed abandoned by an applicant who departs before a decision on the application. Also, without an advance parole document, a registry applicant may be unable to return to the United States lawfully through a port of entry.

Implementation

The *Adjudicator's Field Manual (AFM)* is revised as follows:

- ☞ 1. Chapter 54.2(b) is revised to add the following additional filing locations:

Chapter 54.2 Filing and Receipting Procedures

* * *

(b) Filing Location and Jurisdiction. The filing location for the application depends on the circumstances in which the alien is seeking parole or an advance parole document, as explained in the following chart:

<u>Circumstances</u>	<u>Filing Location and Form</u>	<u>Jurisdiction</u>
Alien is an applicant for adjustment of status	USCIS Lock Box Facility	USCIS Service Center or Benefits Center where the Form I-485 is pending
Alien requests expedited processing of Form I-131, but the Service Center or National Benefits Center is unable to expedite the process.	USCIS Field Office	USCIS Field Office

- ☞ 2. Chapter 54.3(d)(3) is revised to read as follows:

Chapter 54.3 Adjudication

* * *

(d) Adjudicative Issues [revised 12-23-2010]

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(3) Application Review. The adjudicating officer should review the following areas to determine if the applicant is eligible for a travel document.

(A) Adjustment of Status Eligibility. When an applicant seeks advance parole while a Form I-485 is pending, prima facie eligibility for adjustment is a significant favorable factor in determining whether granting advance parole is appropriate,

as a matter of discretion. Inadmissibility under section 212(a)(9)(B) or (C) does not necessarily preclude a grant of advance parole, and aliens may also qualify for relief from inadmissibility. The instructions for Form I-485 and Form I-131 advise applicants about the risks of traveling, if one has accrued unlawful presence. The standard Form I-512 and the notice that accompanies the issuance of the AP EAD also provide this information. And aliens may qualify for relief from inadmissibility.

(B) Identity Verification. The applicant's identity must be verified by comparing the information submitted on the application or the biometrics taken at the Application Support Center (ASC) with the information contained in the USCIS record and evidence submitted with Form I-765, such as photographic identification.

(C) Applicants in Removal Proceedings. The adjudicator must review the application and the applicant's A-file and conduct appropriate system checks to ensure the applicant is not in removal proceedings, as this may affect eligibility and jurisdiction. If an adjustment applicant in removal proceedings departs from the United States, he or she abandons the application, even if he or she first obtains advance parole.

USCIS will not issue an advance parole document if the applicant is in exclusion, deportation, removal, or rescission proceedings. If there are compelling circumstances in those cases, the request for advance parole must be addressed to Immigration and Customs Enforcement.

(D) Expedited Processing Requests.

(i) Applicant Makes Request. If an applicant who has filed Forms I-765 and I-131 concurrently with Form I-485 determines that he or she must travel before his or her Form I-131 can be adjudicated within normal processing times, he or she should contact the National Customer Service Center (NCSC) or visit his or her local field office by scheduling an InfoPass appointment to request expedited processing as follows:

- If the applicant makes an appointment at a field office, that office will determine whether the applicant has been to an Application Support Center (ASC) and, if not, schedule a walk-in appointment. In addition, the field office will notify the service center or National Benefits Center ("center") where the Form I-131 is pending that the applicant requested expedited handling. If the Field Office Director grants the request, he or she will inform the center that he or she has authorized expedited handling of the application and that the requisite biometrics have been captured.

(Note: See the November 30, 2001 memorandum from Fujie O. Ohata entitled "Service Center Guidance for Expedite Requests on Petitions and Applications" for the criteria to apply when considering expedite requests.)

- If the applicant contacts the NCSC, that office will take a "service request" and forward the expedite request to the center having jurisdiction over the application. If the center determines that adjudication of the application should be expedited, it will determine whether the applicant has already been to the ASC for biometric collection and, if not, schedule a walk-in appointment.
- If the applicant both contacts the NCSC and makes an appointment at a field office, each customer inquiry will be processed as described above.

Once the biometric-collection requirements have been met, the center will determine whether both applications are ripe for adjudication, or if only the Form I-131 is ripe for adjudication.

(ii) If Both Forms I-765 and I-131 are Ripe for Adjudication. If both forms can be adjudicated without delaying the adjudication of the advance parole request and, if approved, issuance of the advance parole document, the center should adjudicate both simultaneously. If both applications are approved, the center will determine whether sufficient time remains before the applicant's departure to prepare the advance parole EAD and mail it to the applicant. If so, the center should do so as expeditiously as possible.

If applicant's date of departure is within 48 hours, the center should:

- Contact the local office most convenient to the applicant and have that local office:
 - Issue a single-entry Form I-512 valid only for the length of time needed for the applicant to complete the purpose of his or her trip abroad; and
 - Arrange for the applicant to pick up that Form I-512 at the local office.
- Then proceed to adjudicate the Form I-765 in the normal course of business (e.g., without expeditious handling) and if the Form I-765 is approved, generate an advance parole EAD and mail it to the applicant. The advance parole EAD should be issued even if the applicant's single-entry Form I-512 has not yet expired.

(iii) If Only Form I-131 is Ripe for Adjudication. If only the Form I-131 is ripe for adjudication, the center should adjudicate it. If the advance parole request is granted and time allows, the center should issue it on Form I-512 and mail

it to the applicant. If time does not permit this, the center should arrange with the appropriate local office for issuance of a single-entry Form I-512 valid only for the length of time needed for the applicant to complete the purpose of his or her trip abroad and in-person pickup of the form at the local office. As in the earlier scenario, the center should then proceed to adjudicate the Form I-765 in the normal course of business (e.g., without expedited handling) and if the center grants the Form I-765, generate an advance parole EAD and mail it to the applicant. The advance parole EAD should be issued even if the applicant's single-entry Form I-512 has not yet expired.

* * *

3. The existing paragraphs (e) through (g) of Chapter 54.3 are redesignated as paragraphs (f) through (h), respectively, and a new paragraph (e) is added to read as follows:

(e) Cases Where a Form I-765 Based on (c)(9) or (c)(16) Eligibility Category Has Been Filed Concurrently with Form I-131. If an adjudicator approves an application for employment authorization based upon a pending application for a Form I-485, then the adjudicator may also find that there is sufficient justification for approving the application for advance parole. In this instance, an advance parole Employment Authorization Document (EAD) will be issued on a single Form I-766 card.

Cases may arise where one application is approved and the other one is denied.

* * *

4. The existing paragraphs (a) through (e) of Chapter 55.3 are redesignated as paragraphs (c) through (g), respectively, and new paragraphs (a) and (b) are added to read as follows:

Chapter 55.3 Adjudication Issues Pertaining to Specific Categories of Aliens
[Revised 12-23-2010]

(a) Adjudication of Form I-765 Based on (c)(9) or (c)(16) Eligibility Category, When Filed Concurrently with Form I-131.

(1) Procedure. When a Form I-765 based on (c)(9) and (c)(16) eligibility is filed concurrently with Form I-131, for either initial issuance or renewal, USCIS will first review Form I-765.

To determine whether Form I-131 is within the jurisdiction of USCIS, a review of the Executive Office for Immigration Review (EOIR) records must be completed to determine if the applicant is currently in proceedings or has been deported.

Therefore, an additional check should be added to the Form I-765 adjudication

process to review the EOIR screen. USCIS will *not* issue an advance parole document if the applicant is in exclusion, deportation, removal, or rescission proceedings. If there are compelling circumstances in those cases, the request for advance parole must be addressed to Immigration and Customs Enforcement. See AFM Chapter 55.3(a)(3)(C) for additional guidance.

Except as provided in (a)(3) below, if an adjudicator approves an application for employment authorization based upon a pending I-485 application, then the adjudicator should also find that there are sufficient grounds to warrant approving the application for advance parole. In this instance, an advance parole Employment Authorization Document (EAD or Form I-766) will be issued.

While this is a general rule, cases may arise where one application is approved and the other one is denied.

There may also be instances where an applicant files Forms I-765 and I-131 concurrently to renew authorization of employment and advance parole but the expiration dates for the I-766 and I-512 are different. In this instance, and in order to produce an Advance Parole EAD, the validity period will commence as of the date of adjudication. Based on USCIS Headquarters guidance and instructions, a card may be issued for a shorter period of time due to security or background check issues.

(2) Validity Dates. If the immigrant visa is currently available, the I-766 Advance Parole EAD will have a validity period of one year. If the immigrant visa is not currently available, then the I-766 Advance Parole EAD will have a validity period of two years.

(A) Visa Bulletin. The decision to grant a one or two-year validity period will be based on the most recent visa bulletin issued by the Department of State, accessible at http://www.travel.state.gov/visa/bulletin/bulletin_5092.html. As an example, as of November 1, 2010, EADs with a two-year validity period could be issued to Chinese or Indian nationals under the second preference employment-based visa classification and to all foreign nationals under the third preference employment-based visa classification whose priority date is after the dates listed or unavailable for those classifications. All other employment-based preference categories had an immigrant visa available on November 1, 2010. Therefore, USCIS officers would issue Advance Parole EADs to these applicants for a validity period of one year.

(B) Replacement Advance Parole EAD. If a previously issued Advance Parole EAD has not expired at the time of a request for a replacement Advance Parole EAD, USCIS officers should issue a replacement Advance Parole EAD with the validity date of the previously issued Advance Parole EAD. But if the previously

issued Advance Parole EAD has expired, USCIS officers should not issue a replacement Advance Parole EAD card. Instead, they should process the request as a request for a renewal Advance Parole EAD. USCIS officers should then determine the appropriate validity period as discussed above.

USCIS officers should also determine whether the applicant has filed a Form I-765 seeking a renewal Advance Parole EAD based on section (c)(9) independently from the application for the replacement Advance Parole EAD. If an officer has determined that multiple Forms I-765 have been filed, the application for the replacement Advance Parole EAD may be denied.

USCIS officers should not backdate any Advance Parole EADs other than replacements. EADs should not be issued with an expiration date that predates the date of adjudication.

(C) Special Situations. In certain circumstances, it may be appropriate for USCIS officers to issue Advance Parole EADs with a one-year validity period even though a visa number is unavailable. However, this decision would be made on a case-by-case basis and requires approval from the USCIS Director in the Field.

For Advance Parole EADs issued with a one-year validity period, the "valid from" date is the date of approval noted on the application. The "valid to" date is the date of approval plus 12 months and less a day (e.g., August 1, 2010 to July 31, 2011). For Advance Parole EADs issued with a two-year validity period, the "valid from" date is the date of approval noted on the application. The "valid to" date is the date of approval plus 24 months and less a day (e.g., August 1, 2010 to July 31, 2012).

(3) Exceptions/Special Processing.

(A) Request for Advance Parole Prior to Expiration of Advance Parole EAD. An individual alien may need to request advance parole before becoming eligible to apply for a renewal advance parole EAD. For example, an applicant might request an early advance parole renewal because the applicant will be outside the United States when the advance parole endorsement on the EAD expires. In this situation, the adjudicator should issue a single entry I-512 for parole into the United States. After the applicant returns to the United States and becomes eligible to file for a renewed Advance Parole EAD, the adjudicator may approve the alien's application for an Advance Parole EAD.

(B) Aliens In Removal Proceedings or Ordered Removed. In all cases, the adjudicator should check to determine if the applicant is in removal proceedings

or has been ordered removed. USCIS will not issue an advance parole document to an applicant if the applicant is in exclusion, deportation, removal or rescission proceedings. If there are compelling circumstances in those cases, the request must be addressed to Immigration and Customs Enforcement.

(C) Aliens Who Pose National Security and Egregious Public Safety Concerns. All National Security and Egregious Public Safety Concerns shall be adjudicated according to current guidelines for National Security cases.

(b) Alien Filing for Replacement Advance Parole A replacement advance parole EAD may be issued to an eligible applicant when the previously issued EAD has been lost, stolen, mutilated, or contains erroneous information, such as a misspelled name. The applicant is required to pay the appropriate fee for Forms I-765 and I-131, unless the card is being replaced because of a USCIS clerical/administrative error.

When an adjudicator approves an application for a replacement Advance Parole EAD, he or she should use the validity dates on the original EAD. No biometrics fee is required.

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☞ 5. A new Appendix 55-4 is added to read as follows:

Appendix 55-4: Sample Advance Parole EAD

[SEE ATTACHMENT]

[Appendix Added 12-23-2010]

☞ 6. A new Appendix 55-5 is added to read as follows:

Appendix 55-5: Advance Parole EAD Insert "Special Advisory Regarding Combination Employment Authorization/ Advance Parole Card."

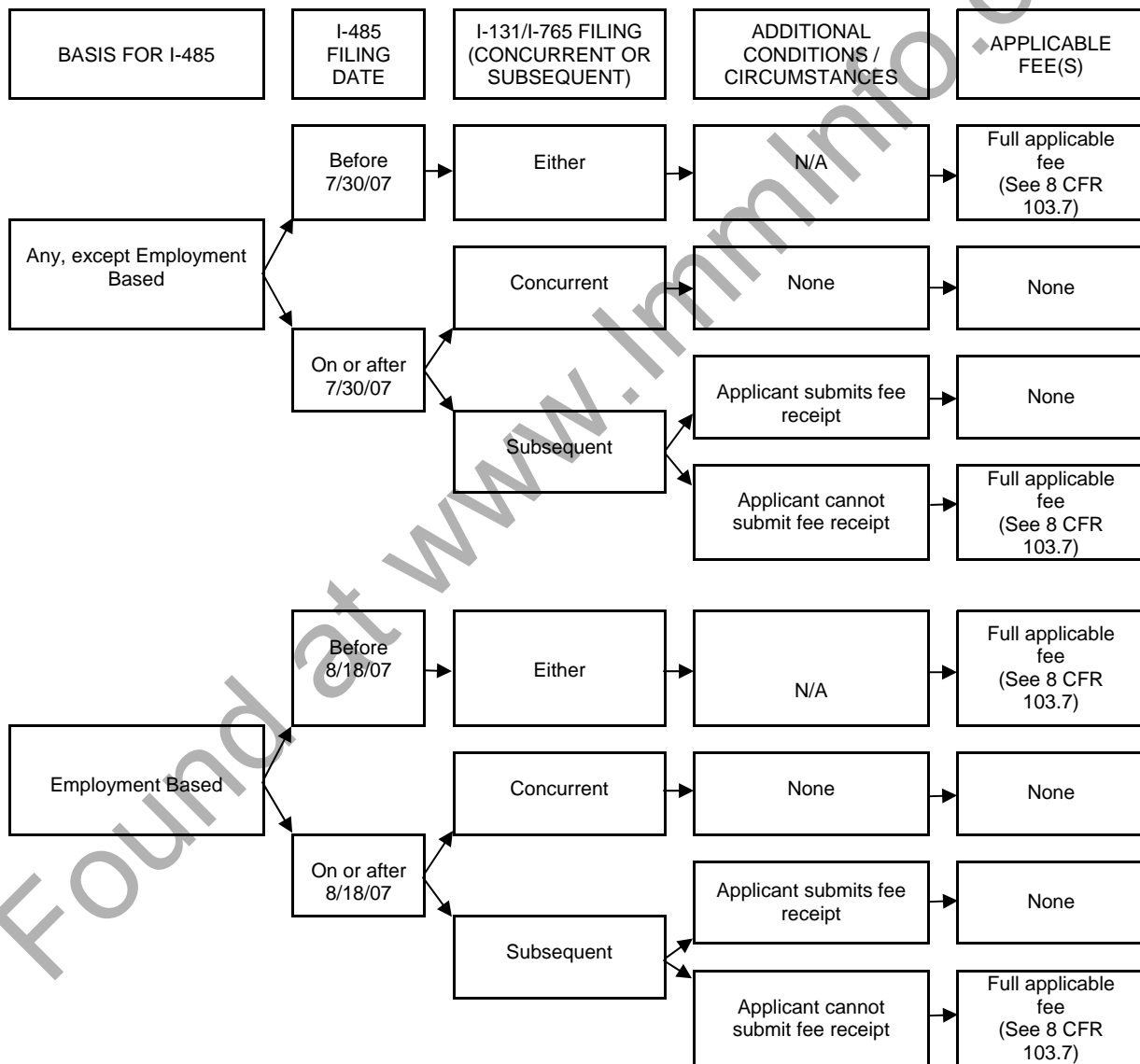
[SEE ATTACHMENT]

[Appendix Added 12-23-2010]

7. A new Appendix 55-6 is added to read as follows:

Appendix 55-6: Filing Fees for Forms I-765 and I-131

FLOWCHART FOR DETERMINING APPLICABLE FEES FOR EAD, ADVANCE PAROLE OR COMBO CARD



[Appendix Added 12-23-2010]

8. A new Appendix 55-7 is added to read as follows:

Appendix 55-7: Flowchart of an Expedited Processing of Form I-765 and I-131

[SEE ATTACHMENT]

[Appendix Added 12-23-2010]

9. The *AFM Transmittal Memoranda* button is revised by adding a new entry, in numerical order, to read:

AD07-27 12-23-2010	Chapters: <ul style="list-style-type: none">• 54.2(b)• 54.3(d)(3)• 54.3(e)-(h)• 55.3 Appendices: <ul style="list-style-type: none">• 55-4• 55-5• 55-6	Provides guidance on the adjudication of an application for an advance parole employment authorization document (EAD).
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions relating to this memorandum should be directed via e-mail, through appropriate channels to the USCIS Service Centers Operations Directorate and USCIS Field Operations Directorate.