

SOCIAL SECURITY NUMBERS FOR E-2 SPOUSES



by

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The Social Security Administration recently announced that E-2 spouses are eligible for a Social Security Number without having an Employment Authorization Document (commonly referred to as an “EAD” or “work permit”). This guidance means that a spouse of the principal E-2 visa holder can file for a Social Security Number with the Social Security Administration (“SSA”) as soon as he or she enters the United States on an E-2 visa or, if already in the United States, at such time as the change of status to E-2 is approved by USCIS. An Employment Authorization Document is required in order to work legally in the United States as an E-2 spouse but it not required in order to apply for a Social Security Number with the SSA.

What documentation does an E-2 spouse need to apply for a Social Security Number?

The documentation required to apply for a Social Security Number depends on whether or not the E-2 spouse has an EAD. All individuals must complete the Form SS-5 (Application for a Social Security Card). In addition, if the E-2 spouse has an EAD, he or she needs to produce it when applying for the Social Security Number. If the E-2 spouse does not have an EAD, then he or she needs proof of the principal E-2’s status (Form I-94) and a marriage certificate (with certified English translation) to prove that he or she is indeed an E-2 spouse.

How does the new SSA policy differ from the previous policy?

This new policy allows an E-2 spouse to obtain a Social Security Number much faster than in the past. Previously, the E-2 spouse had to file for an Employment Authorization Document on Form I-765 and have the EAD issued. The process of filing the Form I-765 and receiving the EAD typically took up to 3 months. With the EAD, the E-2 spouse then had to go to the local Social Security Administration office and apply for a Social Security Number.

What is the advantage of the new SSA policy for E-2 spouses?

Obtaining a Social Security Number is often needed when applying for a driver’s license or to open up a U.S. bank account. Thus, being able to file for the Social Security Number without an EAD allows E-2 spouses to obtain these critical benefits much faster than before.

Does an E-2 spouse still need an Employment Authorization Document in order to work legally in the United States?

While it is now clear that an EAD is not required in order to obtain a Social Security Number, there is likely to be some confusion in the immigrant community about whether an Employment

Authorization Document is still required in order for an E-2 spouse to be able to work legally in the United States. The SSA announcement states that the E-2 spouse is “authorized to work without specific DHS authorization.” That simply is not correct. Despite the SSA’s recent announcement, the Department of Homeland Security has not changed its policy of requiring a valid Employment Authorization Document for the E-2 spouse before the E-2 spouse can lawfully work.

Section 214(e)(6) of the Immigration and Nationality Act (“INA”) states:

“In the case of an alien spouse admitted under section 101(a)(15)(E), who is accompanying or following to join a principal alien admitted under such section, the attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit.”

In addition to the statutory requirement of obtaining a work permit before being authorized to work, the USCIS previously issued a Memorandum entitled “*Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determination on the Requisite Employment Abroad for L Blanket Petitions*” which provides that, “[t]o obtain employment authorization and a document evidencing this authorization, the E or L nonimmigrant spouse must file Form I-765, Application for Employment Authorization, and submit the required fee.” As a result, E-2 spouses who enter on an E-2 visa or who obtain a change of status to E-2 status still must apply for the Employment Authorization Document before working. The only change resulting from the SSA announcement is that the E-2 spouse can apply for the Social Security Number before (rather than after) obtaining the EAD.

What happens if the E-2 spouse works without first obtaining an Employment Authorization Document or worker permit?

It is important for E-2 spouses to abide by this requirement of obtaining an Employment Authorization prior to working. Failure to do so is considered a failure to maintain status and will jeopardize the E-2 spouse’s subsequent ability to extend or change status or apply for permanent residence.

Is the E-2 spouse limited to working only for the E-2 business?

No. Once the E-2 spouse obtains the Employment Authorization Document, he or she can work at any job (i.e., the E-2 spouse is not limited in working only for the E-2 enterprise.”). The key is that the E-2 spouse must obtain an EAD before working in any job, and the E-2 spouse must keep the EAD current. Since EADs are issued in one-year installments and E-2 status is usually valid for multiple years, the E-2 spouse must apply to renew the EAD if he or she wants to work throughout the duration of E-2 status.

Are E-2 children eligible for an Employment Authorization Document or a Social security Number?

Unfortunately, the E-2 children still are not authorized to work (they cannot obtain an Employment Authorization Document) or obtain a Social Security Number based on derivative E-2 status.