



MAINTENANCE OF H-1B/L-1 STATUS AFTER TRAVELLING BACK ON ADVANCE PAROLE: EXECUTIVE LEGERDEMAIN UNDER THE CRONIN MEMO

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Since H-1B and L visa nonimmigrant status allows for dual intent, the filing of an I-485 adjustment of status application does not conflict with the maintenance of those nonimmigrant statuses. One maintaining H-1B or L status can also apply for an employment authorization document (EAD) and advance parole (AP) while an I-485 application is pending.

When the EB-3 India Dates for Filing (DFF) advanced rapidly in the October 2020 Visa Bulletin, thousands of individuals filed adjustment applications, many applying for EAD and AP at the same time. Despite serious processing backlogs at USCIS as a result of the pandemic and its inability to approve I-485 applications even when the Final Action Dates (FAD) became current in subsequent visa bulletins, many applicants have now received their EAD/AP cards. Though a grant of EAD/AP provides individuals enhanced freedom to work and travel, it can also give rise to many questions, particularly for individuals who are maintaining H or L status.

Helpful guidance on these issues can be found in the so-called "[Cronin Memo](#)", a legacy INS Memo from Michael D. Cronin, dated May 25, 2000 that allows those in H-1B and L-1 status to travel under AP and not lose their ability to return and resume working in H-1B or L-1 status. We address below a few of the most frequent EAD/AP questions, interpreting the guidance contained in the Cronin Memo.

Q: If I travel on advance parole, will it impact my H-1B status?

The Cronin Memo states that: "an alien who was an H-1 or L-1 nonimmigrant, but who was paroled pursuant to a grant of advance parole, may apply for an extension of H-1 or L-1 status, if there is a valid and approved petition. If the Service approves the alien's application for an extension of nonimmigrant status, the decision granting such an extension will have the effect of terminating the grant of parole and admitting the alien in the relevant nonimmigrant classification."

Although the Cronin memo contemplates an individual being paroled back into the United States to apply for an H-1 or L-1 extension, an individual who is the beneficiary of a valid H-1 or L-1 petition and maintained that status prior to departure should immediately be considered to be maintaining H or L status after returning to the US on advance parole without the need to reapply or apply for an extension. Individuals in this situation should not need to obtain an EAD, and should be able to work immediately.

With many U.S. consulates still operating on a limited basis due to the pandemic, this strategy can be helpful for individuals who have AP and wish to travel, but still want to maintain H or L status.

Q: Does this answer still apply if I have L-1 status?

Yes, the guidance provided in the Cronin Memo also applies to L-1 nonimmigrants.

Q: Can I travel on advance parole and be paroled back into the United States in O-1 status?

No. The Cronin Memo applies only to those who were in H-1B and L-1 status prior to departing the US on advance parolee.

Q: Can my spouse travel on an EAD and be paroled back into the United States in H-4 status?

Although the Cronin Memo does not explicitly speak to this issue, it can be argued that since the principal spouse can maintain H-1B status even though

admitted under advance parole, the dependent spouse can also be paroled into the United States in H-4 status.

Q: If my spouse works on an EAD, or travels on AP, will it harm my own H-1B status?

No, a spouse's utilization of EAD/AP should not jeopardize the principal's maintenance of H-1B status.

Q: If I have a pending adjustment application and have received EAD/AP can I continue to get H-1B or L-1 extensions?

Yes. H and L visas are "dual intent" visas, which allow one to maintain the underlying nonimmigrant status even while an adjustment application is pending.

Q: If I have received my EAD/AP card, do I even need to maintain H or L status anymore?

Even if you have received your EAD/AP, it is still a good idea to maintain your nonimmigrant status for several reasons. If for any reason your adjustment application is denied, having an underlying nonimmigrant status could provide you with a safety net. Because EAD cards have a limited validity, they have to be frequently renewed, and there is no assurance that a renewal will get approved before the current card expires, particularly in light of COVID-related USCIS backlogs. Even if one can avail of the auto extension of an EAD, there is no guarantee that the new EAD will be issued within the 180 days of the auto extension. Moreover, there is no auto extension when renewing AP.

Maintaining H-1 or L-1 status ensures your ability to continue to work uninterrupted. If an H-1B extension is filed with the same employer before your current H-1B status expires, you are granted an automatic 240 day extension during which you can remain in the United States and continue working, even though the H-1B extension is not yet approved.

Q. Does my obtaining AP and returning in H-1B status under the Cronin

Memo interfere with my ability to interfile my I-145 with a previously approved I-140 under EB-2?

No.

Q. I stopped maintaining H-1B status as I found it easier to use EAD when porting to new employers Does the Cronin memo still apply when I travel and return on AP?

The Cronin Memo will not apply under your circumstances as you left the US after you stopped maintaining H-1B status. When you return under AP, you will have to continue to rely on the EAD even if the validity period of the H-1B petition has not expired.

(This blog is for informational purposes and should not be viewed as a substitute for legal advice).

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