

**The claimant, a citizen of India, resided in the United States on O-1A visa for persons with extraordinary ability or achievement in science. Because the claimant could not find a new employer to file an O-1A petition during the period between his separation and the approval date of his employment authorization card under a classification which did not require employer sponsorship, the Board held that he was not eligible for benefits under G.L. c. 151A, § 24(b), until he received his employment authorization card effective November 28, 2025.**

**Board of Review  
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**Charlene A. Stawicki, Esq.  
Member  
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**Issue ID: 352-MP34-LHRL**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from his position with the employer on June 20, 2025. He filed a claim for unemployment benefits with the DUA, effective June 22, 2025, which was denied in a determination issued on August 1, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 8, 2025. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work, and, thus, he was disqualified under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to ask additional questions regarding the claimant's employment authorization documentation. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's current work authorization was limited to his former employer, and although his application for new work authorization under a different class was approved, he was not available to work until he was in possession of the actual authorization card, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant was previously employed as a senior scientist 2 for an employer (employer A) until he separated on June 20, 2025.
2. The claimant was born in and is a citizen of India.
3. The claimant last resided in Singapore prior to coming to the U.S. on February 17, 2018.
4. The claimant submitted a petition for nonimmigrant worker authorization in the U.S. through employer A.
5. The claimant was granted work authorization in the U.S. most recently on June 7, 2023, through June 4, 2026, for the claimant to work with employer A.
6. After separating from employer A, no other employer filed a new or amended Form I-129 with USCIS authorizing the claimant to work for a new employer during the period beginning June 20, 2025, through November 27, 2025.
7. After separating from employment, the claimant submitted an application for employment authorization.
8. On November 28, 2025, the claimant's application was approved and the claimant was sent a notice informing him of his authorization from November 28, 2025, through November 27, 2030.
9. The claimant possesses his employment authorization card.
10. The full name appearing on the claimant's employment authorization card is, "No Name Given [claimant's name]."
11. The claimant's name on his employment authorization card does not reflect the same first name on his application for unemployment benefits. The claimant's last name on his employment authorization card matches his last name on his application for unemployment benefits.
12. The claimant's USCI[S] number on his employment authorization card is [authorization number]. The claimant's category listed on his employment authorization card is C09.
13. There are no terms or restrictions on the claimant's employment authorization card.
14. The employment authorization card is valid 11/28/25 and expires 11/27/30.

15. The claimant has filed a Form I-485 application to become a permanent resident. As of the date of the remand hearing, the claimant's application is still pending.
16. For the week ending June 28, 2025, and the following weeks, the claimant does not have any medical conditions preventing him from working.
17. For the week ending June 28, 2025, through January 3, 2026, the claimant was available for fulltime work without restrictions.
18. For the week ending June 28, 2025, through January 3, 2026, the claimant searched for work three (3) to five (5) times each week.
19. The claimant searched for positions including senior scientist roles, scientist consultant roles, and scientific writing roles.
20. The claimant searched for work through online employment search engines and by visiting prospective employers' websites.
21. The claimant kept a log consisting of his work search activities and reported them on his weekly certifications each week.
22. The claimant obtained new employment and began working for his new employer on January 6, 2026.

Credibility Assessment:

The review examiner entered a scanned copy of his employment authorization card into the record as exhibit 5. A screenshot of the claimant's employment authorization card presented during the hearing was entered into the record as exhibit 6.

The claimant's testimony during the original hearing and the remand hearing is deemed to be credible.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We clarify Consolidated Finding # 4 to note that employer A submitted an I-129 Petition For Nonimmigrant Worker on behalf of the claimant. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we disagree with the review examiner's decision to deny benefits for the entire benefit year.

The review examiner determined that the claimant failed to provide his unrestricted Employment Authorization Document (EAD) card showing he was authorized to work, and, as such, the claimant has not shown that he was available for work during his benefit year. In reaching this conclusion, the review examiner applied the state law provision under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted. . . .

As a state agency administering the unemployment insurance program, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered “available for work.” Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

(f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien’s status.

Thus, in order to determine that the claimant was available for work under G.L. c. 151A, § 24(b), the claimant must show that, during his benefit year, he was legally authorized to work by the appropriate U.S. agency, currently the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS). Here, the claimant seeks unemployment benefits under a claim effective June 22, 2025. Consequently, the claimant must show that he was authorized to work during his benefit year, beginning June 22, 2025.

In 2018, the claimant arrived in the United States as a citizen of India. *See Consolidated Findings ## 2 and 3.* The USCIS granted the claimant an O-1A visa, based upon sponsorship by his then-current employer, to work as a senior scientist for that employer. *See Consolidated Findings ## 1, 4, and 5.*<sup>1</sup> However, on June 20, 2025, the claimant separated from that employer. *See Consolidated Finding # 1.*

The record establishes that the claimant had maintained his O-1A visa status, a visa for persons with extraordinary ability or achievement in science, and continued to maintain lawful presence in the United States while his application to register as a permanent resident remained pending pursuant to 8 C.F.R. 274a.12(c)(9). *See Consolidated Findings ## 3–5, 7, 8, 12, and 15.*<sup>2</sup> Although

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<sup>1</sup> The claimant’s O-1A status is shown on the I-797A Notice of Action with attached I-94, dated June 7, 2023, which is Exhibit # 5. While not explicitly incorporated into the review examiner’s findings, this exhibit, as well as Exhibits ## 3, 9, and Remand Exhibit # 5 referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); *Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training*, 64 Mass. App. Ct. 370, 371 (2005).

<sup>2</sup> *See also* 8 C.F.R. Part 245, and 8 U.S.C. § 1255.

the claimant was allowed to reside in the United States, the regulations provide that the claimant is not permitted to work until such time as a new employer filed a O-1A petition on his behalf.<sup>3</sup>

However, the claimant filed an application to adjust his status to a lawful permanent resident along with an application for employment authorization under a new classification. *See Consolidated Findings ## 7 and 15.*

On November 28, 2025, USCIS granted the claimant authorization to work pending adjudication of his permanent resident application (class C-09) beginning November 28, 2025, until November 17, 2030.<sup>4</sup> *See Consolidated Findings ## 8, 9, 12, and 14.* With no terms or restrictions listed on the employment authorization card, the regulations permit the claimant to work for any employer without the need for a petitioner. *See Consolidated Finding # 13.*<sup>5</sup>

During the interim period between the claimant's separation date and the issuance of his employment authorization card under a new classification, the claimant was not authorized to work because a new employer did not file an O-1A petition on his behalf. *See Consolidated Finding # 6.* Thus, the claimant did not show that he was legally available to work from June 22, 2025, through November 27, 2025.

Although the claimant received notice from USCIS that his application for employment authorization was approved beginning November 28, 2025, the review examiner denied the claimant benefits because he failed to present the actual employment authorization card at the initial hearing. *See Consolidated Finding # 8.* As the approval notice explicitly states that it is not proof of employment authorization, we see no error in her reasoning. *See Exhibit # 9.* During the remand hearing, the claimant presented his government issued employment authorization card which contained his full name, USCIS number, category, and the dates of validity. *See Consolidated Findings ## 9, 10, and 12–14.*

Because the claimant's USCIS employment authorization documentation shows that he was authorized to work in the United States for any employer beginning November 28, 2025, the claimant established that he was legally available to work beginning November 28, 2025.

In rendering our decision, we attribute no weight to the portion of Consolidated Finding # 11 that states that the claimant's first name on his employment authorization card does not match the first name used for his claim for benefits. The DUA's electronic record system shows that the claimant filed a claim using "FNU" as his first name. This first name also appears on his MA driver's license. *See Exhibit # 3.* We note that "FNU" is an acronym, which the U.S. Department of State recognizes to mean "First Name Unknown."<sup>6</sup> His USCIS employment authorization card shows a first name of "No Name Given." *See Consolidated Finding # 10 and Remand Exhibit # 5.* Effectively, the terms "FNU" and "No Name Given" both mean that the claimant does not have a given first name. Since it appears that different government agencies have chosen different acronyms to mean the same thing, we decline to penalize the claimant for this discrepancy.

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<sup>3</sup> *See* 8 C.F.R. §§ 214.2(o)(1)-(2)(iv)(C), and 8 C.F.R. § 274a.12(b)(13).

<sup>4</sup> Exhibit # 9 is the claimant's USCIS Notice of Approval, dated November 29, 2025. It states that the claimant's I-765 Application for Employment Authorization was approved under class C09.

<sup>5</sup> *See* 8 C.F.R. § 274a.12(c)(9).

<sup>6</sup> *See* Travel.State.Gov, U.S. Department of State DS-160: Frequently Asked Questions (last visited March 4, 2026).

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was available to work withing the meaning of G.L. c.151A § 24(b), during a portion of his benefit year.

The review examiner's decision is affirmed in part and reversed in part. We affirm the portion of the review examiner's decision that disqualified the claimant from June 22, 2025, through November 27, 2025. We reverse the portion of the review examiner's decision that disqualified the claimant beginning November 28, 2025. The claimant is entitled to receive benefits beginning November 28, 2025, and thereafter, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 18, 2026**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

DY/rh