

## **THOUSANDS OF FOREIGN NATIONALS MAY LOSE EMPLOYMENT AUTHORIZATION WITH THE PROPOSED RULE TO END THE H-4 EAD PROGRAM MOVING FORWARD**

If the Trump administration moves forward with a plan to revoke work authorization for certain H-4 visa holders, over 100,000 foreign nationals could lose their ability to work in the United States.

### **OVERVIEW**

The H-4 nonimmigrant visa allows spouses and unmarried children (under 21 years of age) of H-1B visa holders to join them in the United States. Until recently, H-4 visa holders were not permitted to apply for employment authorization in the United States. Under the Obama administration, U.S. Department of Homeland Security issued a final rule, effective May 26, 2015, extending eligibility for employment authorization to certain H-4 dependent spouses of H-1B visa holders who are in the process of obtaining employment-based permanent resident status. The rule was established because the financial burden to H-1B visa holders and their H-4 spouses can be considerable. A couple must rely on one income while waiting to complete the process of obtaining permanent resident status, which for some can take more than a decade. The H-4 EAD relieves some of this burden.

With its focus still on immigration reform, the Trump administration is proposing to remove from regulation H-4 spouses of H-1B visa holders as a class of foreign nationals eligible for employment authorization. The result would be that H-4 visa holders would no longer have authorization to work in the United States. The Trump administration is proposing this change in light of Executive Order 13788, "Buy American and Hire American," which President Trump signed in early 2017.

Originally, the Trump administration anticipated publishing the proposed rule in the *Federal Register* in June 2018; however, it was not until October 2018 that U.S. Department of Homeland Security released its Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions and Regulatory Plan, which included the anticipated proposed regulation entitled, "Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization." The proposed rule was recently sent to the Office of Management and Budget on February 20, 2019 and is currently pending review. The next step is for a notice of proposed rulemaking to be published in the *Federal Register* and be open to the public for notice and comment.

### **PRACTICAL TAKEAWAYS**

For the time being, the H-4 EAD program remains in effect and USCIS continues to accept I-765 applications. Eligible foreign nationals who plan to apply or renew an H-4 EAD should do so as soon as possible. It is not yet clear how or when a final rule will be implemented or what the immediate impact will be on those with currently valid H-4 EADs or pending I-765 applications for H-4 EADs. Employers should be aware that it is possible that current employees on an H-4 EAD may lose employment authorization in the United States and such employees may need to explore whether they qualify for a change of status from H-4 to another visa status such as H-1B to continue to be authorized to work in the United States.

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