

Continued Rollout of Obama's Executive Action on Immigration

February 24, 2015

Work Authorization for Some H-4 Spouses - Increased Costs for Employers

Far and away the best prize that life offers is the chance to work hard at work worth doing.

- Theodore Roosevelt

Today, the United States Citizenship and Immigration Service (USCIS) announced that starting May 26, 2015 it will be accepting applications for employment authorization (EAD) for H-4 dependent spouses of H-1B nonimmigrants who are in the process of applying for employment-based lawful permanent resident (LPR) status. After years of anticipation, some spouses of H-1B holders will be able to enjoy a benefit that has long been granted to the spouses of L and E visa holders.

Goals:

One of the objectives announced by President Obama in November 2014 was modernizing the immigration system to promote economic growth in the United States. Reducing the "economic burden and personal stresses on H-1B non-immigrants and their families" during the protracted green card process would encourage these high-value workers to make their permanent homes in the United States. The goal is to retain H-1B workers that contribute to the United States economy rather than them departing to our global competitors, many of which already offer spousal work authorization.

Eligibility:

The Department of Homeland Security (DHS) amended the regulations to allow H-4 dependent spouses to accept employment in the United States, if their H-1B spouse:

- Is the principal beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or

Has been granted H-1B status beyond the six-year limit pursuant to sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21).

Employers of H-1B Visa Holders:

Employers can anticipate inquiries and requests from their H-1B employees regarding this new benefit immediately. We recommend that companies review their existing immigration policies and practices to ascertain how such requests for H-4 spousal work authorization will be handled, bearing in mind that L and E visa spouses already have the ability to seek work authorization. Moreover, we would anticipate that requests for employment based permanent residence sponsorship will increase, including requests for expedited or Premium Processing. As such, it is important for employers to understand what costs may be shared by the employee under the law, what the goals of the organization are regarding talent acquisition and retention, and review whether green card repayment policies should be implemented, if not already in place.

H-4 EAD Processing:

As noted above, USCIS will begin accepting applications on May 26, 2015. Currently USCIS takes about 90 days to process applications for employment authorization. Individuals must have a valid EAD prior to beginning employment. As such, H-4 spouses will likely not be eligible for employment until the end of the summer. Further, depending on the federal court case, USCIS may begin accepting Deferred Action for Childhood Arrivals (DACA) program and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) applications in the next weeks and months. This increased caseload will likely result in delays. (See: client alert: [Forecasting USCIS Delays This Summer, February 12, 2015](#))