

# Management Alert



## H-4 Spouses to be Eligible to Apply for Employment Authorization

By *Dyann DelVecchio Hilbern, Michelle Gergerian and Maura K. Travers*

In a long-awaited move, the Department of Homeland Security (DHS) has amended regulations to extend eligibility for employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants in the process of seeking lawful permanent resident status through employment. The regulations will be published on Wednesday, February 25, 2015 and will take effect 90 days later, on May 26, 2015. Dependent H-4 employment eligibility was an important element of President Obama's immigration executive actions announced on November 20, 2014. The government estimates that as many as 179,600 people will be eligible to apply for employment authorization in the first year, and 55,000 annually in subsequent years.

### Background

The proposed rule on "*Employment Authorization for Certain H-4 Spouses*" was published in the Federal Register on May 12, 2014 with the official comment period ending in July 2014. On November 20, 2014, the President announced a series of actions to modernize, improve and clarify immigrant visa programs to improve the U.S. economy and create jobs. One such proposed action was to finalize a rule to provide work authorization to the spouses of certain H-1B visa holders who are on the path to lawful permanent resident status.

These recent regulatory changes were designed to mitigate the potential economic burden to H-1B principals and H-4 dependent spouses during the transition from nonimmigrant to lawful permanent resident ("green card") status, furthering the nation's goals of attracting and retaining high-skilled foreign workers and remaining competitive with other developed countries. Depending on an individual's nationality and the nature of his or her role within the sponsoring company, a nonimmigrant employee may be subject to a waiting period of up to 7-10 years before he or she is eligible to adjust to lawful permanent resident status. Prior to the promulgation of these amended regulations, an H-4 dependent spouse was ineligible to apply for work authorization until the tail end of this often lengthy waiting period.

### The Final Rule: Who is Eligible?

According to U.S. Citizen and Immigration Services (USCIS) Director León Rodríguez, individuals eligible to seek employment authorization under the amended regulations will include certain H-4 dependent spouses of H-1B nonimmigrants who:

- Are the principal beneficiaries of an approved Form I-140, Immigrant Petition for Alien Worker; or
- Have been granted H-1B status under sections 106(a) and (b) of the [American Competitiveness in the Twenty-first Century Act of 2000](#) as amended by the 21st Century Department of Justice Appropriations Authorization Act (AC21).

The Act permits H-1B nonimmigrants seeking lawful permanent residence to work and remain in the United States beyond the six-year limit on their H-1B status.

## Next Steps

Under the rule, eligible H-4 dependent spouses must file Form I-765, Application for Employment Authorization, with supporting evidence and the required \$380 fee in order to obtain employment authorization and receive a Form I-766, Employment Authorization Document (EAD). USCIS will begin accepting applications on May 26, 2015. Once USCIS approves the Form I-765 and the H-4 dependent spouse receives an EAD, he or she may begin working in the United States.

## What to Expect

Employers should anticipate inquiries from existing H-1B employees whose spouses may be eligible to apply for this new benefit. After May 26, 2015, employers should also expect to receive I-766 EADs as proof of employment verification for H-4 visa holders. It is important to note that as of May 26, 2015 certain H-4 visa holders will be *eligible to apply for* EADs. Based on current processing times, I-765 Applications for Employment Authorization are typically approved within 90 days. Depending on the volume of applications received, this processing estimate is subject to change. The H-4 visa holder will not be eligible to commence work until the EAD is received. Seyfarth Shaw LLP will continue to monitor this situation and will send updates as soon as they occur.

*Dyann DelVecchio Hilbern* is a Partner in Seyfarth's Boston office, *Michelle Gergerian* is an associate in the firm's Boston office, and *Maura K. Travers* is an attorney in the firm's Boston office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Dyann DelVecchio Hilbern at [ddelvecchio@seyfarth.com](mailto:ddelvecchio@seyfarth.com), Michelle Gergerian at [mgergerian@seyfarth.com](mailto:mgergerian@seyfarth.com), or Maura K. Travers at [mtravers@seyfarth.com](mailto:mtravers@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

**Seyfarth Shaw LLP Management Alert | February 24, 2015**

©2015 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.