

One Minute Memo[®]



Work Authorization for Spouses of Certain H-1B Workers May Become a Reality

By Jason E. Burritt and Gabriel Mozes

On May 6, 2014, following an executive order from President Obama, the Department of Homeland Security (“DHS”) published a proposed rule that would provide employment authorization for the dependent spouses of certain H-1B nonimmigrant workers who have initiated the employment-based U.S. permanent residence process (“green card process”).

Eligible individuals would include H-4 dependent spouses of principal H-1B workers who:

- Are the beneficiaries of an approved Form I-140, Immigrant Petition for Alien Worker; or,
- Have been granted an extension of their authorized period of stay in the United States under the American Competitiveness in the Twenty-first Century Act of 2000 (“AC21”) as amended by the 21st Century Department of Justice Appropriations Authorization Act. The AC21 statute permits H-1B workers who have reached their six-year limit to continue to work in the United States in H-1B status while seeking lawful permanent residence.

The proposal is subject to a 60-day period of public comment, which could lead to changes. DHS officials said they hope to issue final regulations by the end of the year.

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Seyfarth Shaw LLP One Minute Memo[®] | May 7, 2014

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