

Navigating the H-4 EAD Process: Be Ready to File

Labor & Employment Law Update

By Jacqueline Lentini McCullough on May 14, 2015

Moments after President Obama announced that he would be expediting H-4 work authorizations last November, I received a call from a client inquiring about how to start the application process for his wife. I can understand their desire to jump on the opportunity. The green card acquisition process can drag on for years, testing the patience of many foreign nationals and frustrating their spouses who want to work, but who cannot by law. A dependent spouse's inability to work can strain the couple's economic viability and their marriage and prompt them to consider moving to another country.

The prospect of H-4 work authorization has lifted the hopes of many of those couples. The Department of Homeland Security (DHS) estimated that 179,600 spouses would apply for an Employment Authorization Document (EAD) in first year of availability with 55,000 requests each year afterward. In February DHS announced that they would begin considering applications for employment authorization for certain H-4 dependent spouses on May 26, 2015. Eligible individuals include H-4 dependent spouses of H-1B nonimmigrants who either:

1. Are the principal beneficiaries of an approved Form I-140 Immigrant Petition for Alien Worker; or
2. Were granted H-1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000. The Act permits H-1B nonimmigrants seeking lawful permanent residence to work and remain in the U.S. beyond the six year limit on H-1B status.

However, on Thursday April 23, three employees from Southern California Edison sued the DHS to stop the work authorization provision, claiming that they had been displaced by H-1B workers and would face increasing competition if H-4 spouses were authorized to work. Save Jobs USA has also filed a preliminary injunction against the H-4 work authorization rule.

Given that the U.S. has not issued H-4 EADs before, we are in uncharted territory. It is hard to say how these cases and the H-4 EAD process will go. Rather than lose hope though, those interested in an H-4 EAD should be ready to file in case the May 26, 2015 date holds or for whenever DHS is able to accept applications.

Taking action to prepare to file will feel better than just waiting and will allow you to file as soon as the window for applications opens. Here's what you will need to file an H-4 application for employment authorization:

1. Form I-765, plus filing fee of \$380.
2. Two passport style photographs.
3. Proof of your marital relationship. If your marriage certificate is in a language other than English, you'll need an English translation for it.
4. A valid passport.
5. A copy of your visa stamp. Make sure that you have a visa stamp and that you have a copy of it to submit with your application.
6. Your H-4 approval notice if you have one.
7. Evidence of your I-94 stamp. The I-94 stamp is the stamp you received in your passport on the day you entered the United States.
8. A copy of any prior EAD cards that you had. If you were a student and obtained an EAD card then, you'll need to submit a copy of that card with your application.

Note: the above list is not meant to be an exhaustive list of documents to include nor is it meant as legal advice for any one specific individual.

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