

# Spousal H-4 Visa Holders: Important Changes on the Horizon Regarding Employment Authorization for Certain H-4 Dependent Spouses

## Labor & Employment Law Update

By Jacqueline Lentini McCullough on August 21, 2014

In May 2014, the Department of Homeland Security announced a proposed rule to allow for work authorization for certain spouses of H-1B visa holders. The work permit is called an Employment Authorization Document or EAD. No time frame has yet been finalized for this benefit.

Employment authorization could be extended to H-4 nonimmigrant spouses in the following situations:

(1) The principal H-1B spouse is the beneficiary of an approved I-140 Immigrant Petition; or

(2) the H-1B nonimmigrant's period of stay is authorized under sections 106(a) and/or (b) of the American Competitiveness in the Twenty- First Century Act of 2000 (AC21). AC21 provides for a one-year extension of H-1B status beyond the six-year limitation if the H-1B visa holder is the beneficiary of a labor certification application or an I-140 petition that has been pending for at least 365 days prior to reaching the end of the sixth year of H-1B status. H-4 spouses of H-1B visa holders who meet these eligibility requirements would still need to apply for an EAD and pay the appropriate fee.

Further implementations to be considered include the following:

1) *Expand Eligibility to All H-4 Spouses.* This would make the U.S. a more attractive place to work and set up home, for **all H-4** spouses. In turn, it would make highly skilled foreign workers (H-1B's) much happier in their work and private lives, if spouses are able- or at least have the option- to have a career and generate income for the family unit.

2) *Expand EAD Eligibility to H-4 Spouses Where the H-1B Nonimmigrant is the Beneficiary of a Pending Labor Certification Application or I-140 Petition.* This approach towards H-4's would remain true to the spirit and goal of enhancing the ability of the U.S to attract and more permanently retain highly-skilled foreign workers.

Spousal H-4  
Visa  
Holders:  
Important  
Changes on  
the Horizon  
Regarding  
Employment  
Authorization  
for Certain  
H-4  
Dependent  
Spouses