



Big Tech's Spousal Work Permits in Limbo: H-4 Visas Explained

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Big tech companies such as Amazon.com Inc., Apple Inc., and Alphabet Inc.'s Google are throwing their weight behind the U.S. government's efforts in federal court to preserve the jobs of spouses of their foreign employees who are working in the U.S.

The companies joined a coalition of over 20 businesses and organizations that filed a "friend of the court" brief in a case at the U.S. District Court for the District of Columbia. Plaintiffs in the long-running litigation are a group formed by technology workers who were laid off by Southern California Edison and replaced with workers on H-1B specialty occupation visas.

The U.S. workers argue the additional work permits for H-4 visa holders awaiting green cards created unfair competition from foreign workers by encouraging more H-1B workers to come to the U.S. and seek green cards.

The tech companies that signed on to the brief don't see it that way. They say eliminating the H-4 work permit program would "result in these talented individuals being barred from the workplace, forcibly severing tens of thousands of employment relationships across the country," affecting "employees, employers, and the economy as a whole."

1. What is the H-4 visa?

H-4 visas are issued to the spouses and minor children of H-1B specialty occupation visa holders, a temporary work visa program popular in STEM industries in the U.S. H-1B visas are capped at 85,000 annually, but workers and their families can remain in the U.S. after their initial six years with sponsorship for lawful permanent residency, or a green card, from their employer.

In 2015, the Obama administration, via the Department of Homeland Security, published a rule to give certain H-4 spouses the option to apply for employment authorization. To qualify, the H-4 spouses must be approved for green cards but still be waiting for them to become available.

2. Who are H-4 visa holders?

Cancellation of the H-4 employment authorization program would result in over 90,000 H-4 spouses, mostly women, losing their ability to work, according to the coalition's brief.

Research from the Cato Institute estimates that nearly 92% of initial applicants for H-4 work permits from 2015 to 2019 were born in India, 6% from China, and 2% from all other countries. H-4 employment authorization document holders are also highly educated, Cato found.

“While exact statistics for the entire population are not available from the government, the Department of Labor reports that 90 percent of H-4 visa holders who employers sponsored for permanent residence in fiscal year 2019 had a bachelor’s degree or above, and 41 percent had a college degree,” it said.

3. How has the pandemic affected the program?

In March 2019, the Trump administration added a biometrics requirement to H-4 visa renewals and applications for work authorization. That additional step led to increased wait times for processing, which have only been exacerbated by the Covid-19 pandemic.

As wait times have ballooned, visa holders have lost employment and health benefits due to the delays. The need to have an in-person appointment for fingerprinting has been a large cause of those delays, because agency support centers closed at the start of the pandemic and have been slow to reopen or are operating in a limited capacity.

According to court documents in a separate case over H-4 visa delays, the backlogs for the spousal visas of H-1B and L intracompany transferees have grown to 123,000 waiting to extend their status, and 57,500 in line for work authorization approvals.

Starting May 17, U.S. Citizenship and Immigration Services will suspend biometric requirements in an effort to get control of the ballooning backlog.

4. What might come next?

The parties in the *Save Jobs USA v. DHS* case have filed cross-motions for summary judgment at the U.S. District Court for the District of Columbia this month. The case was kicked back to the lower court after the appellate court ruled in November 2019 that the former Southern California Edison workers had standing to bring their challenge.

The latest briefing schedule extends to mid-June, and then it’s possible there could finally be a decision about whether the H-4 work permit program is here to stay.

A legislative solution, however, could solve at least part of the issue. President Joe Biden has proposed including the H-4 work program as part of the Democrats’ comprehensive immigration package. That would give the current H-4 work permit program a more permanent place in immigration law than it previously had, making it less vulnerable to litigation.