

# The Mercury News

## H-1B foreign-worker visa: Fate of Trump's changes unclear but work ban for 'H-4 spouses' unlikely

Ethan Baron

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President Joe Biden's immigration plan signals changes to employment of skilled foreign workers, but whether reforms made in the last days of the Trump administration will stand remains unclear. One Trump policy has already been shelved.

Experts believe, however, that a long-running but never-delivered-on promise by the administration of former President Donald Trump to strip work authorization from spouses of workers on the H-1B visa and on track for green cards will not survive. An estimated 90,000 to 100,000 spouses on the H-4 visa, mostly Indian women and many in the Bay Area, have been facing the prospect of losing their right to work since the rule was proposed in 2017.

"There's zero chance," said David Bier, an immigration policy analyst at the libertarian Cato Institute. "I don't think there's any way that rule will see the light of day."

The Biden plan released this week pledges to undo many of the highly controversial policies of the Trump administration, from the so-called Muslim ban to refugee restrictions to the treatment of asylum seekers and undocumented people. Biden's immigration proposal contains less material on changes to employment of skilled foreign workers, but it does emphasize the need to protect U.S. workers.

"High skilled temporary visas should not be used to dis-incentivize recruiting workers already in the U.S. for in-demand occupations," the plan said. "An immigration system that crowds out high-skilled workers in favor of only entry-level wages and skills threatens American innovation and competitiveness."

Biden, according to the plan, will work with Congress to reform temporary visas and "establish a wage-based allocation process and establish enforcement mechanisms to ensure they are aligned with the labor market and not used to undermine wages."

Those promises align with Trump administration reforms, one of which replaced a lottery-based allocation for the H-1B program with a system prioritizing positions with the highest wages. Another rule, now tied up in court, increased minimum wage levels for the visa, and policy guidance released last week sought to impose liability for H-1B abuse on clients of staffing and outsourcing firms.

“That’s where the near-term action is. What do they do with the rules that have been issued by Trump?” said Ron Hira, a Howard University professor who studies the H-1B. Biden may initially seek to make changes to skills-based employment through executive action and regulations, Hira believes.

On Wednesday, the Biden administration announced it was shelving the policy that would have imposed liability on employers using contract H-1B labor, saying it would review the policy. The administration also delayed the new wage-levels rule until July.

“That decision may keep the rule as-published, or it could reopen it for change,” Hira said.

The H-1B, intended for jobs requiring specialized skills, became a frequent target for the Trump administration, which dramatically increased visa denials for staffing and outsourcing companies that place foreign workers in other firms.

There’s bipartisan anger in Congress at abuses of the H-1B program, which have included cases in which U.S. workers were forced to train their H-1B replacements and staffing companies supplying foreign workers at discount rates, Bier noted.

“That program is really poisoned on the Hill right now,” Bier said.

While Silicon Valley’s technology giants rely heavily on the H-1B to secure top talent and push for an expansion to the annual 85,000 cap on new visas, they also employ many H-1B workers through staffing companies. Congressional support for an expansion of the program under Biden would likely depend on an effective crackdown on abuses, Bier said.

It’s not clear that the Trump rule scrapping the H-1B lottery, if supported by Biden, could survive a legal challenge, Bier said. In general on skills-based employment and immigration, Bier believes, the Biden administration will “take their own look and eliminate any remnant of Trump action, and start over.”