

Business Standard

US allows automatic job authorisation for spouses of H1-B visa holders

This may be applicable to L2 visa holders as well

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In a breather to thousands of Indian-American women, the US administration has agreed to provide automatic work authorisation permits to the spouses of H1-B visa holders, majority of them are from the Indian IT services.

A settlement was reached by the Department of Homeland Security in a class-action lawsuit, which was filed by the American Immigration Lawyers Association (AILA) on behalf of immigrant spouses this summer.

“Although this is a giant achievement, the parties’ agreement will further result in a massive change in position for the USCIS, which now recognises that L-2 spouses enjoy automatic work authorisation incident to status, meaning these spouses of executive and managers will no longer have to apply for employment authorisation prior to working in the United States,” AILA said according to a PTI report.

Moreover, spouses of L1 visa holders will no longer have to apply for a separate work permit before arriving to the US.

This will be a huge breather not only in terms of getting clarity on the work environment but also in terms of the financial burden as each work permit application costs \$495 for submission, according to reports in the media.

Poorvi Chothani, founder and managing partner, LawQuest, an immigration law firm said: “This is a huge win for the people who fought for this in a US court. Though the USCIS is yet to come

out with specific guidelines, they have agreed to grant automatic extensions to employment authorisation documents (EAD) or work authorisation to qualified H-4 spouses.”

She further explained: “An H-4 visa holder, spouse of an H-1B worker who is approved for a Green Card (but can’t be granted a Green Card) required an EAD card to be able to work in the U.S. These are generally granted with validity for two years or until the validity of H-4 status and have to be extended before the expiry date. In recent times EAD extensions are taking between 6 to 12 month to be adjudicated. This required the H-4 worker to stop working until the EAD extension was approved. As part of a court settlement the USCIS has granted 180-day automatic extensions provided the EAD extension was filed timely. This benefit is also granted to those workers who are on L-2 visas. In addition, L-2 visa holders no longer require an EAD before they can begin working in the U.S. The right to work is inherent to the L-2 visa.”

There is no agency that tracks the actual number of H4 visa holders in the US, according to a Cato Institute writeup, Indians dominate the category with 106,162 H-4 visas issued in 2019.

The H1-B visa application has a cap of 85,000 each year of this 65,000 is for regular cap and 20,000 exemption is for H1-B visa holders with a master’s degree or higher US university degree. H1-B visa is valid for 3 years with an extension of 6 years.

According to a statement from international immigration law firm Fragomen on its website, “The Shergill settlement is good news for some H-4 and L-2 spouses who could see relief from disruptions to their employment due to USCIS processing delays. However, there are some limitations in the new policies. Based on the terms of the settlement, H-4 non-immigrants who file EAD renewals concurrently with an I-539 extension may receive only a brief auto-extension, just to the end of their current I-94 date. L-2s who do not hold an I-94 specifically noting their spousal status will still need an EAD to work until they are issued a new L-2 spousal I-94.”