

Biden admin withdraws move to rescind work authorisation for H-1B spouses

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MUMBAI: The steps that were underway, by the Trump administration to rescind the employment authorisation program, for certain categories of spouses of H-1B visa holders, is history. Nearly a lakh Indian spouses can now breathe a sigh of relief.

Way back in February 2019, when the Trump administration began to take concrete steps towards rescinding this employment authorisation program, US Vice-President Kamala Harris (who was then a Senator) had tweeted, “This is outrageous and will force immigrant women who are doctors, nurses, scientists and academics among others to abandon their professional careers. I called on DHS last year to withdraw this proposal and will continue to fight this.” Nearly two years later, this fight comes to an end.

The proposed rule - ‘Removing H-4 dependent spouses from the class of aliens eligible for employment authorisation’ was under review by the Office of Management and Business (OMB). In other words, it was in its final stages of a roll-out.

Soon after the Biden administration stepped in, it stayed for a 60-day period, subject to further extensions, various proposed policies including the proposal to rescind the employment authorisation program. Now, the Department of Homeland Security (DHS) has formally withdrawn this proposed rule.

Spouses of H-1B workers are given an H-4 visa. Only in certain cases, such as where the H-1B visa recipient is on track for a green card or where the H-1B visa recipient has got an extension beyond the permitted six years, could the H-4 spouse apply for an employment authorisation document.

To take care of the decades-long green card backlog for certain sections, such as applicants from India, the Obama administration in 2015 had introduced the ‘H-4 Employment Authorization Document (EAD) rule.’”

Given that the expected wait time for Indians caught in the backlog of the employment-based green card for EB-2 and EB-3 (skilled category) runs to 84 years, according to a CATO Institute study – the EAD program proved to be very useful, especially for families struggling to survive on a single income.

According to the latest available official data, up to December, 2017, nearly 84,360 Indian spouses (largely wives) held an EAD (this was 93% of the total EADs issued). The number of such Indian spouses is now estimated to be over a lakh.

The EAD program meant more than financial freedom by enabling them to take up jobs or be self-employed, as the work authorisation also enabled spouses to obtain a social security number, open a bank account and get a driving license.

SaveH4EAD, a group that started in December 2017, which currently has an outreach of several thousands has tweeted, “After years of advocacy, meeting Congress members, DHS/OMB and collecting irrefutable data on value-add of H4-EAD not only to economy but also to provide life of dignity to thousands of immigrants, we are pleased to announce that the new administration has withdrawn regulation to help #SaveH4EAD.”

TOI has in the past covered the efforts of this group and had narrated how the American dream for many families would be shattered, if the EAD program came to an end.

The H4-EAD program has been involved in a long-drawn lawsuit filed by Save Jobs USA, which states that the EAD program takes away American jobs. Lately delays in getting the EAD extensions in a timely manner, has led to many H-4 visa holders filing lawsuits across the country.

The next step according to SaveH4EAD is to streamline the process so that no one loses their jobs owing to processing delays.

Todd Schulte, President of FWD.us, a bipartisan political organisation, whose founders include Bill Gates, Mark Zuckerberg and others stated, “We commend the Biden-Harris Administration for taking immediate action to turn the page from the Trump-Pence Administration’s disastrous immigration policies, and to do right by more than 100,000 hardworking immigrants who are contributing to the United States every single day in the midst of a deadly pandemic. Allowing H-4 visa holders the ability to continue working and providing for their families has profound, life-changing effects for these individuals and our communities. Roughly 93 percent are women, and many are working in essential roles that are key to supporting our nation’s economic recovery from the coronavirus pandemic.”

“At the end of the day, there is no successful economic or public health recovery without bold action from lawmakers to protect immigrant essential workers and keep immigrant families safe and together. Congress must work together to immediately pass the U.S. Citizenship Act of 2021, which would formalize work authorization for H-4 visa holders, create a pathway to citizenship for undocumented immigrant essential workers, and address the bureaucratic backlogs that plague our broken immigration system,” added Schulte.