

President Biden Acts to Stabilize H-4 EAD Workforce, Extend Employment Eligibility for Spouses of H-1B Workers

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The Biden administration has taken an important step to stabilize employment eligibility within the H-4 immigration category.

On January 25, President Biden terminated the prior administration's unfinished efforts to end H-4 eligibility for Employment Authorization Documents (EADs). This action by the Biden administration is consistent with the President's January 21, 2021 Regulatory Freeze of unpublished rule making left over from the prior administration. The beneficiaries of this action include the US businesses which employ the approximately 100,000 work-authorized H-4 visa holders. As explained below, in recognition of the value of this largely well-educated workforce, the Biden administration plans to further secure and expand H-4 employment eligibility benefits.

Background: H-4 Spouse Employment Authorization Created During Obama Administration

The H-4 visa category is for the spouses and minor children of H-1B temporary, professional workers. Historically, H-4 holders were not legally eligible for employment in the US. This changed for a limited group of H-4 spouses in 2015, as the result of regulatory changes made under the Obama administration.

Under the 2015 regulations, a subset of H-4 spouses (not children) gained eligibility to request EADs. As a prerequisite for the H-4 EAD, the H-1B primary spouse must a) be undergoing the process to become a US permanent resident ("green card holder") and b) must have reached designated stages within the green card process.

The eligible group are those who experience the longest backlogs in the green card process—often exceeding a decade—due to annual category and country quotas. Studies reflect that most recipients of the H-4 EAD are well-educated women, many of whom now hold positions which benefit their communities as well as their families.

Trump Administration Sought to End the H-4 EAD

The Trump administration targeted the H-4 EAD benefit over the entirety of the Trump presidency. There were multiple proposed revocations of the H-4 EAD regulations, with the final proposal transmitted to the Office of Management and Budget (OMB) in February 2019.

The initial attempts to rescind the Obama-era program sent panic through the impacted immigrant community and generated pushback from the affected business community. For the past four years, the uncertainty surrounding the future of this benefit impacted decisions—including job changes and entrepreneurial ventures—within this community. The reversal in policy eliminates much of the uncertainty and possible business disruption generated by the earlier plans to eliminate the H-4 EAD.

Biden Administration Long-Term Plans for H-4 EAD

As explained in our Alert, “[Biden-Harris Administration Takes Swift Action with Immigration Initiatives](#),” the Biden administration is moving quickly on numerous short-term immigration initiatives, while laying groundwork for long-term immigration reform.

The withdrawal of the prior administration’s proposal to terminate the H-4 EAD is a short-term, initial, effort to restore what supporters see as a common-sense approach to the legal immigration system. A June 2020 CATO Institute report found that H-4 EAD employees hold professional positions in all areas of our economy including essential worker jobs such as physicians, nurses, technicians and scientists. The same report estimated that nearly 90 percent of H-4 workers were women with college degrees—something that most familiar with immigration can confirm anecdotally based on the general pattern that educated individuals qualified for the H-1 category generally seek out other educated individuals as marriage partners. Per the CATO institute, the economic effect of terminating H-4 EAD employment would contract the economy by at least \$7.5 billion annually.

In light of this economic benefit, the Biden administration is endeavoring to secure the H-4 EAD on a long-term basis by including this benefit as part of their comprehensive immigration reform proposal. The proposed U.S. Citizenship Act of 2021 measures would grant this security for the H-4 EAD benefit by elevating it by enactment into law, rather than allowing it to remain more vulnerable to change as a regulation. The U.S. Citizenship Act of 2021 also proposes to expand H-4 EAD eligibility, and addresses the green card backlogs that plague the business immigration system and, in many cases, drive the need for this benefit.

Maintaining the H-4 workforce reinforces the economy directly through the professional and skilled workers, as well as many entrepreneurs, within the H-4 ranks. It further reinforces the economy, by making the US attractive to potential H-1 professionals with spouses who will not sacrifice their career opportunities in order to immigrate to the United States. These measures better position the United States to attract and retain those with needed skills which are in short supply, notwithstanding the country’s current economic downturn. This is just one component of the ongoing roll backs of legacy Trump-administration immigration restrictions and the parallel effort to secure immigration reform on a long-term basis.