

Cross Border Business Law Blog

U.S. Department of Homeland Security Expected to Submit Proposed Rule Rescinding H-4 EAD Regulations by June 2018

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The U.S. Department of Homeland Security (USDHS) recently confirmed its plans to publish a Notice of Proposed Rulemaking by June 2018 to remove from its regulations certain H-4 spouses of H-1B nonimmigrant workers as a class of noncitizens eligible for employment authorization.

The plans regarding timing were gleaned from documents the government filed on February 28, 2018, in a case pending at the D.C. Circuit Court of Appeals. That case, *Save Jobs USA v. DHS*, involves a challenge by a group of tech workers to the legality of the original H-4 EAD rule, which became effective on February 25, 2015.

The current rule allows H-4 spouses to apply for an employment authorization document (commonly referred to as an “EAD” card) if their H-1B spouse has reached a certain point in the employer-based U.S. permanent residence (green card) process, but are facing long delays due to backlogged yearly quotas and per-country limits. The EAD card allows those H-4 spouses to seek employment with any U.S. employer (called “Open Market Work Authorization”).

It is unknown how the government intends to implement its revised regulations. Rather than invalidating all existing H-4 EAD cards immediately upon the effective date of the regulation, the agency will likely cease issuing initial or renewed H-4 EAD cards. However, until the agency submits its formal Notice of Proposed Rulemaking with the Office of Management and Budget, the specifics on implementation will not be known.

The rescission of the H-4 EAD rule will have widespread consequences. According to data compiled by the U.S. Citizenship and Immigration Services (USCIS), over 104,000 H-4 spouses have received employment authorization under the current rule.

It is strongly recommended that employers who have workers who presented an H-4 EAD card

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as their I-9 document consider sponsoring that individual for H-1B status this upcoming fiscal year. Employers planning to submit H-1B petitions under the government's 2019 quota must be prepared to submit their paperwork during the first five (5) business in April, which occurs this year from Monday, April 2 to Friday, April 6.

Tags: Department of Homeland Security, employment authorization, H-1B nonimmigrant workers, H-4 EADs, H-4 spouses, U.S. Citizenship and Immigration Services, USDHS