

U.S. Department of Homeland Security to Reconsider H-4 EAD Program

The United States Department of Homeland Security has announced plans to review and reconsider the current H-4 employment authorization document (EAD) program over the next six months. Although eligible H-4 spouses can still apply for EADs, the government review could lead to modification or termination of the program in the future.

On April 3, 2017, The Department of Homeland Security disclosed in a court filing that it intends to review and reconsider a 2015 regulation established by the Obama Administration that permits certain spouses of H-1B workers to apply for employment authorization documents (EADs). Although the H-4 EAD program remains in place for now, DHS could elect to restrict or terminate it in the future.

Under current rules, H-4 nonimmigrants are eligible to apply for employment authorization if their H-1B spouse meets the following criteria: (1) has an approved Form I-140 immigrant worker petition; or (2) has received a one-year extension of H-1B status beyond the sixth year, based on a filed Form I-140 or Labor Certification.

DHS announced its plans to review the H-4 EAD rule in a motion filed with the U.S. Court of Appeals for the District of Columbia Circuit, in a pending lawsuit brought by a group of U.S. technology workers challenging the H-4 EAD rule. The lawsuit was dismissed last year, however, the plaintiffs are appealing that ruling. In February, the Trump Administration asked the court to place the appeal on hold while it considered its position on the regulation. In today's filing, the Administration has asked for an additional six months to review the regulation.

DHS's announcement does not have an immediate impact on the H-4 EAD program. Qualifying H-4 spouses can still apply for new or renewed employment for the time being. However, DHS has indicated that it may publish a new proposed rule concerning H-4 employment authorization in the coming months, which could seek to limit or terminate the H-4 EAD program. We will provide updates as developments occur.