

Employment Authorization for Certain H-4 Spouses of H-1B Visa Holders

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The Department of Homeland Security recently announced a series of administrative reforms which will be completed in the future.

One of these proposed changes to the current DHS regulation would allow certain spouses of H-1B visa holders to legally work while their visa holder spouse waits for his or her adjustment of status application to be adjudicated.

Specifically, employment will be authorized for H-4 dependent spouses of principal H-1B visa holders who have begun the process of seeking lawful permanent resident status through employment after meeting a minimum period of H-1B status in the U.S.

Employment authorization is to be extended only to those “H-4 spouses of principal H-1B non-immigrants who have begun the process of seeking lawful permanent resident status through employment and have extended their authorized period of admission or “stay” in the U.S. under section 104(c) or 106(a) of Public Law 106-313 also known as the American Competitiveness in the 21st Century Act.”

This means that the H-1B holder will have had to extend his or her H-1B status beyond the normal 6 year period, either by virtue of a PERM petition pending for 12 months, or a pending or approved I-140 petition.

There is no official timeline for implementation.