Federal Government to Extend Work Authorization to Certain Spouses of H-1B Aliens

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The H-1B visa is the most popular option for foreign nationals seeking to live and work in the United States, and many U.S. companies rely on H-1B workers to fill key positions in engineering, computer science, and a host of other fields. One of the primary drawbacks to the H-1B has been the inability of an H-1B's spouse (holding H-4 status) to work in the U.S., unless the H-4 spouse independently meets the criteria for a visa category providing work authorization.

Starting on May 26, 2015, U.S. Citizenship and Immigration Services will allow H-4 spouses to apply for work authorization under the following circumstances, both of which are related to the H-1B spouse being in the process of pursuing an employment-based green card:

> (1) If the H-1B is the beneficiary of an approved I-140 immigrant petition filed by a sponsoring employer.
>
> (2) If the H-1B has been granted an H-1B extension under the American Competitiveness in the 21st Century Act, which allows extensions to H-1B aliens where an employer has filed a Labor Certification Application, or an I-140 immigrant visa petition, on behalf of the H-1B alien, and the application or petition has remained pending without a final decision for at least 365 days.

An eligible H-4 spouse must apply to Citizenship and Immigration Services for an employment authorization document. Upon receipt of the employment authorization document, the H-4 spouse will be authorized to work for any U.S. employer for the validity period of the employment authorization document. This benefit is limited to spouses, and does not extend to any other H-4s.

This change could be a huge boon to H-1B families that until now have had to rely on a sole breadwinner, often for years on end.

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Employers willing to help the spouses of H-1B employees acquire work authorization may also find this is a useful tool in the competition to attract and retain talented employees. If you are interested in helping an H-1B employee's H-4 spouse obtain work authorization, or learning more about the process, please contact Matt Wagner, Peggy Shukairy, or any member of the Frost Brown Todd Immigration Service Team.

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