

Litigation Over H-4 EAD Rule Progresses

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Although the Biden Administration [has taken steps](#) to maintain H-4 EADs for spouses of highly skilled H-1B workers, the program is still in jeopardy. Now, the Biden Administration is representing the Department of Homeland Security (DHS) in defending the H-4 EAD rule.

In 2014, the Obama Administration published the H-4 EAD rule, giving certain H-4 spouses the ability to apply for work authorization. These spouses were married to H-1B workers who were being sponsored for green cards and who were waiting in line, along with their spouses, to get permanent residence, including work authorization. By 2015, a group of technology workers filed a suit in federal court claiming that the Obama Administration had exceeded its authority by granting work authorization to non-citizens without legislation. That case had various starts and stops and ups and downs, but it [is now active again](#). During the Trump Administration, the case was slowed down because it seemed that President Donald Trump was going to withdraw the H-4 EAD rule. Despite many threats, that never happened.

Summary judgment motions have been filed in the lawsuit, and a group of tech giants and trade groups have filed an amicus brief arguing, along with DHS, that there was nothing illegal about the program's establishment. The companies argue that:

- Granting spouses work authorization makes it easier to hire and retain highly skilled H-1B workers; and
- Eliminating H-4 EADs could mean that needed talent would be more attracted to other countries that are more hospitable.

More than 90,000 spouses currently work pursuant to H-4 EADs. Most of these spouses [are highly educated themselves and are married to Indian nationals](#). Further, most of them are women – many of whom have already been negatively affected economically by the COVID-19 pandemic.

The amicus brief [explains the problem](#) succinctly:

This is a case of enormous practical consequence: The regulation at issue here—the H4 Rule . . . —provides work authorization to more than 90,000 H-4 visa-holders (spouses of certain H-1B visa-holders), more than 90% of whom are women. Invalidation of this rule would result

in these talented individuals being barred from the workplace, forcibly severing tens of thousands of employment relationships across the country. The results would be utterly destructive for the families impacted; by just one measure, about 87% of these families have made crucial life decisions on the promise of H-4 employment, including whether to have a child and whether to buy a house.

Regardless of the result of the summary judgment motions, there will probably be appeals and, with the appeals, more uncertainty. At a time when our economy needs boosting, this uncertainty can prevent new H-1B workers from coming to the United States and prevent those who are already here from making long-term economic commitments. The best solution is legislation.

President Joe Biden has included work authorization for H-4 spouses in his [American Citizenship Act of 2021](#). The Biden Administration has indicated that it is open to passing parts of the legislation where there can be bipartisan agreement. Bills [have been previously introduced](#) that would have prevented the rescission of the H-4 EAD rule. Perhaps actually providing H-4 employment authorization will also come to the fore.

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