Written by **Warren Mass** on February 26, 2015

DHS Extends Employment Authorization to Spouses of H1-B Visa Holders

The Obama administration's Department of Homeland Security (DHS) is extending eligibility for employment authorization to some dependent spouses of H-1B nonimmigrants who are seeking employment-based lawful permanent resident (LPR) status.

U.S. Citizenship and Immigration Services (USCIS) Director León Rodríguez announced the change in policy on February 24, stating that it will become effective on May 26, 2015. Rodríguez said in a statement posted on the USCIS website:

> Allowing the spouses of these visa holders to legally work in the United States makes perfect sense. It helps U.S. businesses keep their highly skilled workers by increasing the chances these workers will choose to stay in this country during the transition from temporary workers to permanent residents. It also provides more economic stability and better quality of life for the affected families.

The H-1B is a non-immigrant visa created under the Immigration and Nationality Act that allows U.S. employers to temporarily employ foreign workers in specialty occupations. The H-4 visa is issued to the dependent family members (spouse and children) of H-1 visa holders who would like to accompany the H1B visa holder in the United States during the period of their stay. Before the new policy, H-4 visa holders were not authorized to be employed in the United States or get a Social Security number. However, they could get a driver's license, pursue education, open bank accounts, or apply for an ITIN (Tax ID for IRS tax purposes).

A statement posted on the USCIS website notes: "Finalizing the H-4 employment eligibility was an important element of the immigration executive actions President Obama announced in November 2014."

Though reports in some conservative publications have tried to tie this latest action by USCIS to the recent court order blocking the Obama administration's grant of amnesty to illegal aliens, there is no direct connection. USCIS's policy change is yet another example of executive overreach by the Obama administration — indeed, as noted above, it cites Obama's November announcement as its foundation — but the judicial order did not address H-4 employment eligibility. At best, it could accurately be said that USCIS's new policy is a parallel example of the administration's use of executive department action to increase the economic burden on Americans stemming from too liberal an immigration policy.

On February 16, U.S. District Judge Andrew S. Hanen of the U.S. District Court for the Southern District of Texas in Brownsville issued an order of temporary injunction blocking the federal government from implementing the Obama administration's use of executive actions to grant amnesty to four million illegal aliens. Hanen's order specifically enjoined Homeland Security (DHS) Secretary

Jeh Johnson from implementing the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program described in Johnson's November 20 memorandum.

In that memorandum, Johnson addressed the subject of employment several times, but none of these statements pertained to the new benefits for H-4 visa holders. Under the heading "expanding DACA," Johnson directed that beginning on Nov. 24, "USCIS should issue all work authorization documents valid for three years, including to those individuals who have applied and are awaiting two-year work authorization documents based on the renewal of their DACA grants."

Johnson's grant of amnesty and work authorization pertains only to "unauthorized" (illegal) aliens, whom he defines as aliens who have not been "lawfully admitted for permanent residence, or … authorized to be so employed by … regulations establishing classes of aliens eligible for work authorization."

Since both H-1B nonimmigrants and their H-4 visa spouses and dependents are in the country legally, Johnson's memorandum did not apply to them. In his Memorandum Opinion and Order accompanying his decision, Hansen wrote: "There are no executive orders or other presidential proclamations or communiqué that exist regarding DAPA. The DAPA memorandum issued by Secretary Johnson is the focus in this suit." Johnson's injunction, therefore, has no bearing on this latest expansion of benefits to immigrants (legal though they may be) implemented by USCIS.

Because the extension of eligibility for employment authorization to dependent spouses of H-1B workers is legal, however, does not mean that it is good policy or that it is not harmful to American workers.

This point was hammered home in a statement released on February 24 by Senator Jeff Sessions (R-Ala.), who is chairman of the Senate Subcommittee on Immigration and the National Interest. Sessions stated:

> Only days ago, a major utility company laid off hundreds of workers and forced them to train the H-1B guest workers hired to replace them. Tech companies have been laying off workers by the tens of thousands. How does the Obama Administration respond? By bowing to special interest demands and expanding foreign worker programs by another 180,000. The Administration says this is to reduce the "personal stresses" on guest workers. What about the stresses on American workers, and their families and spouses, and their children?

Rodríguez claimed that the expansion of work authorization to the spouses "is important because the inability of those spouses until now to apply for employment has imposed, in many cases, significant hardships on the families of H1-B visa holders. This will now facilitate the ability of those families to remain in the United States."

As Sessions asked, however, what about American workers, and their families and spouses, and their children?

Even if it were the responsibility of the U.S. government to ensure that alien families enjoy a stress-free, affluent lifestyle (which it is not), it is interesting to look at how well many of these H-1B guest workers are doing. A report posted online by the technology firm Dice Holdings, Inc. included data that developer Swizec Teller took from the U.S. Department of Labor. Teller found that the average salary in 2014 for an engineer with an H-1B visa is $87,000 a year, while developers earn ($74,000) and programmers $61,000.

In California, the 9,466 engineers who held H-1B visas in 2014 made an average annual salary of

$103,120.

Another report compiled five years ago by professors Hank Lucas and Sunil Mithas at the University of Maryland's Robert H. Smith School of Business indicated that foreign-born IT professionals with temporary skilled worker visas actually earn more than their American counterparts.

An article about the report published online by CIO.com noted:

> After adjusting for educational qualifications, work experience, and other individual characteristics, Lucas and Mithas found that IT professionals without U.S. citizenship earned 8.9 percent more than American citizens. Tech workers on temporary visas, such as the H-1B and L-1, were paid 6.8 percent more than those with U.S. citizenship, and green card holders took home 12.9 percent more than their American-born counterparts, according to Lucas' and Mithas' research, published this month by the Institute for Operations Research and the Management Sciences.

Lucas and Mithas reported that H-1B visa holders earned an average of $75,358 from 2000 to 2003, compared with the average U.S. citizen's salary of $66,836.

Considering that American computer professionals and software engineers who are often the primary breadwinners for their families have been displaced by foreign workers with H-1B visas, it is hard to justify adding the spouses of these foreign workers to the mix. As Lucas and Mithas reported, these H-1B visa holders are already earning more, on average, than U.S. citizens. With many Americans struggling to find jobs in today's economy, the last thing we need is thousands of spouses of foreign workers competing with Americans for employment.

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