



Some H-4 Spouses to be Eligible for EADs

Montserrat C. Miller, Teri A. Simmons and Jay I. Solomon

The USCIS is expected to publish a final regulation on February 25, 2015, which will allow the spouses of certain H-1bs to apply for employment authorization. The regulation will go into effect on May 26, 2015.¹

We are looking forward to helping eligible H-4 spouses who want to work in the United States obtain employment authorization.

FAQs

- Who can apply for work authorization?
 - The H-4 spouse of an H-1b holder if:
 - the H-1b holder has an approved I-140 petition, **or**
 - the H-1b holder has a PERM or I-140 petition which has been pending for more than 365 days.
- When can the H-4 spouse apply for work authorization?
 - The final regulation is set for publication on 2/25/2015. The effective date is 90 days later. The earliest date applications will be accepted is May 26, 2015.
- Is work authorization as an H-4 spouse automatic?
 - Work authorization requires filing an application with USCIS, and only becomes valid when that application is approved.
- How long does it take for an EAD application to be approved?
 - The USCIS promises processing in 90 days or less. The processing may take more than 90 days if the application is incomplete or the USCIS requires additional information.
- How many H-4 spouses will this impact?
 - The USCIS estimates as many as 179,600 EAD applications for H-4 spouses may be filed the first year.
- If an I-140 has not been approved (and neither an I-140 petition nor a PERM application has been pending for a year), can an H-4 spouse obtain an EAD?
 - No.
- Can an H-4 spouse work after May 26, 2015 without filing for an EAD?
 - No.
- If the H-1b has an approved I-140, and is working for a different employer than filed the I-140 petition, can the H-4 spouse obtain an EAD?
 - Yes .
- Does the H-1b have to maintain their H-1b status for the H-4 to obtain an EAD?
 - Yes. The H-4 spouse cannot maintain H-4 status unless the H-1b maintains H-1b status.
- Is there a filing fee for an EAD application by an H-4 spouse?
 - Yes. The USCIS filing fee is currently \$465.
- Will this rule be impacted by controversy over Obama's Executive Order?
 - It should not be impacted at all. The H-4 EAD rule was promulgated through the normal rule making process. In addition, the EAD program is funded by user fees rather than appropriated fees, so even if the Department of Homeland Security loses budget funding, this program should still go forward.

¹ For more information, please see <http://www.whitehouse.gov> and <http://www.uscis.gov>.

Authors and Contributors

Montserrat C. Miller

Partner, DC Office
202.677.4038
montserrat.miller@agg.com

Teri A. Simmons

Partner, Atlanta Office
404.873.8612
teri.simmons@agg.com

Jay I. Solomon

Partner, Atlanta Office
404.873.8506
jay.solomon@agg.com

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Atlanta Office

171 17th Street NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office

1775 Pennsylvania Ave., NW,
Suite 1000
Washington, DC 20006

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