Bad news for H-1B visa holders: Trump administration advances process to scrap work permit for spouses

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The H-4 visas are given to immediate family members of H-1B visa holders, which include spouses and children below 21 years of age. The work permits for such visa holders has benefitted over 1 lakh Indian immigrants since 2015.

The Trump administration has moved to the next step on the Department of Homeland Security's (DHS) proposal to ban the practice of granting work permits to H-4 visa holders, mostly spouses of H-1B visa holders. On May 22, the US government issued a notice to kick-off public consultations for the proposed rule.

More than 1 lakh Indian immigrants working in the US would be staring at job loss in the near future, if this four-year-old rule is scrapped. The H-4 visas are given to immediate family members of H-1B visa holders, which include spouses and children below 21 years of age. Work permits for certain categories of H-4 visa holders were issued under an executive order by the previous Obama administration in 2015 in a bid to address the skill shortage in the technology domain.

Before that, spouses could not be employed while H-1B visa holders sought out permanent resident status-a process that can take a decade or longer. Indians, largely female engineers, have reportedly been the biggest beneficiaries of the H4 EAD (Employment Authorisation Document) visa programme, taking over 90% of the 1.2 lakh visas issued since 2015.

However, even if this proposal goes through, it would take a while for it to take effect. "The process is currently at the second last stage. Once it is approved here, it will be posted in the federal register and people will have 30 or 60 days to post comments, following which the regulation will be made final," Rajiv S. Khanna, managing attorney at immigration law firm Immigration.com, told the Economic Times. The administration is obligated to comment before publishing and implementing the final rule, a process that could take as much as a year, he added.

The Trump administration, already well-known for its hard-line anti-immigration stance, moved to scrap this programme in February last year. Then, in October, the DHS claimed in its Unified Fall Agenda that

"Some US workers would benefit from this proposed rule by having a better chance at obtaining jobs that some of the population of the H-4 workers currently hold, as the proposed rule would no longer allow H-4 workers to enter the labour market early". Hence, this proposed rule is clearly aligned with US President Donald Trump's Buy American and Hire American executive order.

It's not just H-4 visa holders who are running scared but also H-1B visa holders. The latter is a popular non-immigrant work visa that allows US companies to employ foreign workers in speciality occupations, and American tech companies have long depended on it to hire highly-skilled employees from countries like India and China. In fact, Indians typically garner more than 60% of these visas and our IT services sector is a major beneficiary.

The United States Citizenship and Immigration Services (USCIS) has, in recent times, tweaked H-1B visa rules not only mandate electronic pre-registration with the USCIS for the annual visa lottery but also allow the agency to reverse the order by which it selects H-1B petitions under the regular cap and the advanced degree exemption. As a result, US employers seeking to employ foreign workers with a US master's or higher degree will have a greater chance of selection in the H-1B lottery. The number of rejections for existing visa holders who seek extension for another three years is reportedly also on the rise.

According to experts, a fallout of the scrapping of the H-4 visa programme would be a shortage of talent for US tech firms as these families are likely to return to India. While most tech firms have increased their local hiring in the US, it has been difficult to find people, given the low unemployment rates coupled with a shortage in the number of people with the kind of skills required. If an employee's spouse can no longer pursue a career in the US, it may lead to more people turning down US postings.