

## Donald Trump's agenda: New rule to rescind spouse's right to work out in May

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- The plan also includes revising the definition of employment and employer-employee relationship to better protect US workers



(Representative image)

NEW DELHI: The Trump administration's 'Unified Regulatory Agenda' unveiled late night on Wednesday has two key takeaways for the Indian diaspora.

After a long delay, the US government has stated that it will publish by this month end, a rule that will rescind the right available to certain categories of H-1B spouses to work. This will impact nearly 80,000 plus Indian families, many of whom have a plan B ready – such as migrating to another country or returning home to India, as was covered by TOI in its edition of March 29.

The second major take away relates to the strengthening of the H-1B work visa program, by revising the definition of 'speciality occupation', so as to obtain the 'best and brightest workers'. It also includes revising the definition of employment and employer-employee relationship to better protect US workers. In addition, the US Department of Homeland Security (DHS) will propose additional requirements

designed to ensure employers pay appropriate wages to H-1B visa holders. These agenda items are largely a repeat of the earlier fall agenda announcements, which was analysed by TOI, in-depth in its edition of October 19.

In those cases, where the H-1B holder is on track for a green card, the spouse (who holds an H-4 or dependent visa) can apply for an employment authorisation document (EAD), which is work permit. The draft rule to rescind the EAD program was sent for review to the Office of Management and Budget (OMB) on February 21, which has a 90-day time frame to approve it. A case filed by Save Jobs USA against the EAD program is also being heard by a Federal court. Many immigration attorneys are sceptical of the month-end timeline that has been announced. Greg Siskind, the founding partner at Siskind Susser, has tweeted "Doubting that will happen that fast. On the other hand, it is a Memorial Day weekend so a 5 pm release on Friday wouldn't surprise me. It's still got a long way to go (including the court)." Once the draft is made public, comments will be invited within a 30-60 day time frame and litigation cannot be ruled out.

An H-1B, is a work visa for professional workers, in 'speciality occupations' that normally require a bachelor's degree or equivalent as a minimum requirement.

"The term speciality occupation is defined in the Immigration and Nationality Act, so a definition change cannot be brought about by mere agency regulation," Rajiv S. Khanna, managing attorney at Immigration.com told TOI.

Several lawsuits have been filed by companies or H-1B holders, where an application such as for visa extension or H-1B transfer on change of employment was denied on the ground that the position is not a speciality occupation.

"Unfortunately, the definitions of employment and employer-employee relationship are not provided in the statute. That definition can be tinkered with. But to what degree it can be redefined remains to be seen," he adds.

Siskind views that a change in the employee-employer definition will target Indian staffing companies, it could also impact larger IT consultancy companies that place their H-1B employees at third-party client sites.

"The US government does have more latitude in trying to force the H-1B employers to pay higher level wages, but regulations cannot be revised without rational foundations and consideration," sums up Khanna.