

US rule to end work permits for H-1B spouses unlikely to go through this year, Technology News, ETtech

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The proposal by the Donald Trump administration to ban spouses of H-1B visa holders from working in the United States may not be implemented until next year, offering temporary relief to thousands of Indian nationals as well as the technology companies employing them.

On Monday, the US Department of Justice (DoJ) told an American court that it has set a time frame of Spring 2020 — or between March and June next year — to bring in rules to revoke the H-4 employment authorisation document (EAD), an Obama-era rule of 2015 that allowed job opportunities to qualified spouses of H-1B visa holders.

“As previously indicated, DHS’ (Department of Homeland Security’s) intention to proceed with publication of the H-4 EAD proposed rule remains unchanged,” the DoJ told the District of Columbia Circuit, in Washington DC. The “proposed rule is currently undergoing the inter-agency process”.

The court is hearing a lawsuit filed against the department by a group of IT workers, who claim they were replaced at Southern California Edison, a power utility firm, by engineers who immigrated to the US on short-term H-1B visas. The complainants have also accused the holders of H-4 EAD visas of competing with local engineers in the job market without the statutory authority to work.

Indian nationals, the majority of them qualified women, have been the primary beneficiaries of the H-4 EAD, receiving over 90% of the 120,000 visas issued since 2015.

In September 2017, the Trump administration first suspended the work visa programme for spouses of H-1B permit holders. This is a part of Trump's 'Buy American, Hire American' push, which has also resulted in a higher rate of H-1B denials in recent years.

Since then, the proposal to ban H-4 EAD has seen several delays.

Trump, who ran an election campaign against immigration to become the US President in 2016, will contest for a second term next year.

According to Rajiv S Khanna, managing attorney at law firm Immigration.com, the delay is not the core issue.

"When you are bringing in a new regulation or deregulation, there has to be some reasonable basis in fact and circumstance. How do you justify taking away an entire cadre of highly qualified, highly motivated people from the workforce when unemployment levels are below 4%?" he said.

A study by the South Asian American Policy & Research Institute warned that the ability of US companies to attract and retain skilled workers would be impacted if the country revokes the H-4 EAD visa.

Vivek Tandon, CEO of EB5 BRICS, a visa consultancy, warned that deferring the proposed ban to next year only offers "minor relief".

"Spouses of H-1B holders still don't have any clarity on EAD status. Employers in the US are likely to avoid hiring H-4 visa holders until a final decision is taken," he said.

Immigration.com's Khanna said the rhetoric against immigrants would not end till there is a change in the perception that foreign workers are taking away local jobs.

"Republicans are perceived as being friends of business, though this administration is neither a friend of businesses nor endeavours that require education such as research, high technology, colleges, universities and hospitals. They think their voter base is the farmer, not the Silicon Valley," Khanna said. "On the other hand, Democrats are more focussed on protecting the US workforce but are also friends of learned pursuits. Therefore, the relationship of both parties with educated foreign workforce is schizophrenic and is unlikely to have an impact on this regulation."