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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue N.W.
Washington, DC 20529

RE: DHS Docket No. USCIS–2010–0017 – DHS Should Use the Full Scope of its Power Under INA § 274A(h)(3)(B) to Provide Work Authorization to All H-4 Spouses of H-1B Workers

The Department's long-awaited proposed regulations of May 12, 2014, once finalized, will allow H-4 spouses of **certain** H-1B visa holders to apply for work authorization. While a step in the right direction, this proposed rule alone does not meet DHS' stated goals of "remov[ing] the disincentive to pursue the immigration process" caused by "green card backlogs" and of placing US spousal work authorization rules on parity with those of Canada and Australia. Thus, DHS should extend employment authorization to all H-4 spouses of H-1B workers.

In the Immigration and Nationality Act, § 274A(h)(3)(B), Congress gave USCIS broad power to grant employment authorization to anyone, at any time, for any purpose. Thus, it should use its considerable authority to (1) permit US employers to attract and retain qualified employees and (2) help families prosper together and thus increase familial contributions to the US economy.

In the proposed rule, DHS states, without explanation, that it considered extending employment authorization to all H-4 spouses, but "rejected this alternative as overbroad." Not only is broad work authorization permitted under the law, it is the most effective way to achieve the goals of this proposed rule: parity with foreign countries and retention of high-skilled workers. DHS' own estimates of the current proposal provide that in the first year, approximately 100,000 H-4 visa beneficiaries would be eligible to apply for work authorization and 35,000 per year thereafter. The effect on the work force of these added workers would be "negligible." Because of the small number of individuals who are H-4 spouses of H-1B workers, granting employment authorization to all H-4 spouses of H-1B workers would similarly have a "negligible" effect on the US work force.

According to the Department of State, from 2007-2013, each year approximately 75,000 dependents of the H-1, H-2, and H-3 visa were issued an H-4 visa at a consular post. Even if all 75,000 H-4 visa holders became work eligible each year, at only 75,000 people (25,000 less than

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the 100,000 estimated in the first year under the proposed rule) DHS' calculations have determined that this would only be a "fraction of a percent" of the US civilian labor force and as such it would have a "negligible" effect upon the work force. In addition, H-4 work authorization is most beneficial for employees from countries with a long waiting line in the US, such as India; as such, citizens of countries facing a long backlog to permanent residency are most likely to seek H-4 work authorization.[1]

DHS' limits on work authorization in the proposed rule, which make it nearly certain that most beneficiaries of the rule can expect to wait 6 years before applying for work authorization, is exactly how this rule does not put the US on par with Canada and Australia: neither of those countries limits work authorization for the spouses of skilled employees in this manner. In those first 6 years, had the spouse been work authorized, he/she could have been a founder of the next social media phenomenon, the tastiest dumpling or samosa food truck, or a researcher who develops a cure for cancer – all the while contributing to the US economy. But we will never know what that spouse could have done in those first 6 years.

In addition, this rule fails to create parity within the US between spouses of different visa holders. The spouses of L and E visa holders are permitted to work in the US. Unlike the L visa, issued to multinational managers and executives, which does not have a cap, the US caps new H-1B visas at 65,000 annually.[2] Permitting all H-4 spouses of H-1B workers would not even equal the number of seats in Giants stadium! DHS acknowledges that work authorization for H-4 spouses who have taken steps towards attaining permanent residency "would result in a negligible impact on the U.S. labor market given the size of the U.S. civilian work force," so why is DHS limiting work authorization to only those whose employers have taken steps towards permanent residency.

As DHS expressly recognizes in the proposed rule, there are a myriad of reasons why all H-4 spouses of H-1B visa holders are deserving of employment authorization:

1. Many of H-4 spouses are eminently qualified and would benefit the US economy. By granting all H-4 spouses of H-1B workers work authorization, USCIS will increase the

[1] In the past 7 years less than 160,000 H1-B visas, both initial applications and renewals, have been issued annually worldwide. Below is a chart based on visa issuance statistics released by Department of State (http://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FYs97-13_NIVDetailTable.xls).

	Worldwide		China		India	
Year	H-1B	H-4	H-1B	H-4	H-1B	H-4
2007	154,053	86,219	10,761	3,711	83,464	51,326
2008	129,464	71,019	9,141	2,870	72,517	44,277
2009	110,367	60,009	9,223	2,982	55,886	34,490
2010	117,409	66,176	11,242	3,216	58,664	38,833
2011	129,134	74,205	10,849	3,444	72,438	46,969
2012	135,530	80,015	11,077	3,355	80,630	53,877
2013	153,223	96,753	12,632	3,362	99,706	71,953

Note: The H-4 visa is issued to both spouse and child dependents of the H-1, H-2, and H-3 visa.

[2] There is a separate 20,000 H-1B cap for advanced degree holders. Petition from certain employers, such as research and education institutions, are not subject to either H-1B cap.

pool from which US businesses can select workers, thus increasing productivity in the US. As the Wall Street Journal reported in May 2014, a 20-year study in 219 metropolitan areas concluded that the employment of immigrant scientists boosted wages for "native" born workers.[3] An informal survey of 400 H-4 visa holders in the US illustrated that 1% (one percent) of H-4 visa holders in the US have achieved a high school education or less.[4]

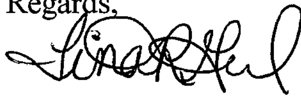
2. Because H-4 spouses are often unable to open bank accounts and maintain finances separately from their H-1B spouses, they often silently suffer abuse, both physical and mental, from their H-1B spouse. As a country proud of its commitment to human rights, the US must do what it can to ensure that this category of dependent spouses does not suffer violations within its borders. Granting work authorization to such H-4 spouses will free them from the tyranny of their H-1B spouse.
3. An ancillary benefit is that issuing work authorization to all H-4 spouses of H-1B workers would ease the pressure on the H-1B category.

Alternatively, DHS could amend 8 CFR § 274a.12(a) so that H-4 spouses are granted work authorization incident to status. This would reduce the workload on USCIS and achieve the goals of granting work authorization to H-4 spouses of H-1B workers.

America suffers when talented H-1B workers choose not to stay here because their H-4 spouses are unable to work. Ultimately, men and women come to the US on the H-4 visa because a US employer decides to employ a foreign national, which requires that the employer prepare an H-1B petition for the foreign worker, pay petition fees to DHS (and perhaps an immigration attorney), open itself to scrutiny by another federal agency, hope that the petition is selected in a lottery, and then finally employ the worker – all this shows the amount of effort the US employer puts in to employ this particular worker and bring the worker's family to the US on the H-4 visa.

Instead of "remov[ing] the disincentive to pursue the immigration process" caused by "green card backlogs" this proposed rule merely reduces the unemployed waiting time of an H-4 spouse from India from 16 years[5] to 6 years. DHS has the power to issue work authorization to all spouses of H-1B visa holders and DHS should use its considerable authority to the benefit of the employers and employees that it regulates.

Regards,



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[3] Josh Zumbrun & Matt Stiles, *Skilled Foreign Workers a Boon to Pay, Study Finds: Research Shows Immigration Benefits for U.S.-Born, College-Educated Employees*, THE WALL STREET JOURNAL, May 22, 2014, http://online.wsj.com/news/articles/SB10001424052702303749904579578461727257136.

[4] H4 Visa Survey (May-July 2014), http://h4-visa-a-curse.blogspot.com/p/survey-results.html.

[5] An employer can wait 6 years to file for permanent residency for an H-1B worker and the green card backlog for an Indian worker is 10 years. Thus an employee of a US company born in India employed on the H-1V visa can except to wait 16 years for permanent residency.