DHS Extends Employment Authorization Documents For Certain Dependent Spouses of H-1B Visa Holders

Insights
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U.S. Citizenship and Immigration Services (USCIS) Director León Rodríguez announced today that, effective May 26, 2015, the Department of Homeland Security (DHS) will allow H-4 dependent spouses of certain H-1B nonimmigrants to apply for employment authorization.

Eligible individuals include H-4 dependents where the H-1B spouse:

- Is the principal beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or
- Has been granted H-1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), which permits H-1B nonimmigrants seeking lawful permanent residence to work and remain in the United States beyond the six-year limit on their H-1B status.

Sections 106 (a) and (b) of AC21 apply to H-1B nonimmigrants where 365 days or more have passed since the filing of a labor certification application, Form ETA 9089, or 365 days or more have passed since the filing of the I-140 immigrant petition.

Eligible H-4 dependent spouses will be required to file Form I-765, Application for Employment Authorization, with supporting evidence and the required $380 fee in order to obtain an employment authorization document (EAD). USCIS will begin accepting applications on May 26, 2015. Once USCIS approves the Form I-765 and the H-4 dependent spouse receives an EAD, he or she will be able to apply for a U.S. Social Security Number and may begin working in the United States.

Despite the fact that the USCIS is not currently accepting applications for Employment Authorization under this program, individuals who believe they may be eligible should start to gather evidence establishing identity, spousal relationship to the H-1B nonimmigrant, current status documentation, and eligibility under the program. We will continue to monitor the development of this new policy and provide updates as new information becomes available.

For more information visit our website at www.fisherphillips.com or contact any member of our Global Immigration Practice Group at 404-231-1400.

Related People

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