

Mobility: immigration alert

December 2017

United States

Department of Homeland Security (DHS) publishes Notice of Proposed Rulemaking to remove H-4 dependent spouses from the classes of aliens eligible for employment authorization

Executive summary

In December 2017, the United States Department of Homeland Security (DHS) published a Notice of Proposed Rulemaking. The proposed rule intends to eliminate the eligibility of H-4 dependent spouses as a class of aliens eligible for employment authorization. This comes after the April 2017 Presidential Executive Order "Buy American and Hire American" in which DHS listed this initiative as one of several upcoming regulatory priorities. The rule is currently in the "Proposed Rule Stage" and the text of the proposed rule is expected to be published in 2018.

Key points

- ▶ Generally, H-4 nonimmigrant status holders, who are dependent spouses of H-1B nonimmigrant status holders, are not eligible for employment authorization.
- ▶ In February 2015, DHS published a final rule amending its regulations to extend employment authorization eligibility to H-4 dependent spouses under certain conditions.
- ▶ Under the current DHS regulations, an H-4 dependent spouse is only eligible for employment authorization if his or her spouse in H-1B nonimmigrant status and the H-1B spouse: 1) is the principal beneficiary of an approved I-140 Immigrant Petition for Alien Worker or 2) has been granted H-1B status beyond his or her six-year nonimmigrant maximum period of stay.
- ▶ In December 2017, in light of the Executive Order "Buy American and Hire American," DHS published a Notice of Proposed Rulemaking to review and amend its regulations with the intent to remove H-4 dependent spouses from the classes of aliens eligible for employment authorization previously granted in the February 2015 final rule.
- ▶ After publishing the Notice of Proposed Rulemaking, and as part of rulemaking procedures, DHS must open the rule for public comment and revise the rule if necessary and submit the proposed rule to Congress to be implemented for submission.

Impact and next steps

As the informal rulemaking process is lengthy, there is currently no immediate impact on H-4 dependent spouses' ability to apply for or extend employment authorization, provided they are otherwise eligible under the current regulations. DHS has not yet published text of the proposed rule other than the abstract a proposal to remove from its regulations certain H-4 spouses of H-1B nonimmigrants as a class of aliens eligible for employment authorization. The proposed rule is expected to be released in 2018, per DHS's Regulatory Plan and Unified Agenda. In the meantime, EY Law will be monitoring progress of this and other DHS proposed rules that are expected to be published in the 2018 fiscal year.

How we can help

We recommend a conversation with your EY Law legal advisor to identify and consider possible alternatives for any individuals within your organization who may be impacted by the proposed rule. We understand that some of your employees impacted may either be in H-4 status themselves or be H-1B status holders who rely on dual incomes.

To this end, we can help you understand how to identify impacted individuals and assist with questions or concerns as to how this may impact your business and their status. With significant changes in US immigration policy and the potential for legislative reform comes



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much uncertainty and anxiety for affected individuals. We encourage you to stay connected to your EY Law legal advisor and reach out to us directly for additional information. We can provide clear advice on what options may be available in these changing times.

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