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End of career draws nearer for spouses of H-1B visa-holders

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The US department of homeland security (DHS) may in the coming weeks issue a proposed regulation to rescind the H-4 employment authorisation document (EAD) programme. This will be ahead of its deadline of March 18, by which the government agency has to make its submission to the court in the 'Save Jobs USA' lawsuit. Rescinding the EAD would impact as many as one lakh Indian spouses, largely women, who constituted 94% of the total EADs issued since inception of the programme up to December 2017.

Given the massive greencard backlog for H-1B visa holders, especially those from India and China, the Obama administration had in May 2015, introduced a rule known as H-4 EAD. It enabled spouses to work while the principal H-1B visa holder waited for a green card. Prior to this rule, spouses of H-1B workers could stay in the US on an H-4 visa but were not allowed to obtain a work permit and take up employment.

WHAT'S NEXT FOR WORKING SPOUSES?

➤ **File an EAD renewal application** – they can do so six months prior to the expiry of the current eligibility tenure

➤ **An H-4 EAD application can also be filed at the same time as the H-1B principal's application to extend status**



beyond the sixth year

➤ **Delays in processing of applications could prove to be a challenge**

➤ **Once the draft rule is issued, solicit support of employer organisations to file public comments on the advantages of EADs**

Obtaining an EAD also enabled a spouse to get a social security number and open a bank account or obtain a driving license. It promised freedom, in more ways than one.

The likely timeline for introduction of a proposed rule to rescind the EAD programme was indicated by Fragomen, a global firm specialising in immigration laws, in its client alert. Termination of the EAD programme could be within months of the release of the proposal, it added.

'Save Jobs USA', a group of American workers who had been replaced by H-1B visa holders, had filed a lawsuit way back in 2015. This lawsuit had recently been kept in abeyance at the request of the Trump administration, pending rescinding of the EAD programme. As reported by TOI earlier, the 'Save Jobs USA' group, over the past few months, submitted to the US court that the DHS was taking far too long to rescind the programme. In 2018, the US Court of Appeals gave the go ahead for hearing of the lawsuit. It also permitted intervention by 'Immigration Voice' — a non-profit which works to alleviate the problems

faced by high-skilled immigrant workers. “Details of the proposed rescission are confidential and will not be disclosed until the rule is released for publication in the Federal Register.

The proposed rule is expected to specify when DHS would cease accepting new H-4 EAD applications, and how long those holding a valid H-4 EAD would continue to be work- authorised,” Fragomen stated. Fragomen pointed out that foreign nationals can file an EAD renewal application up to six months before the expiration of their current document.