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# US department's 'agenda': Scrapping the right of migrant spouses to work

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MUMBAI: 'Buy American, Hire American,' executive order signed by US President Trump in April is now making Sunita (name changed) and many of her Indian friends jittery. It's possible that in the near future, dependent spouses of a certain set of H-1B visa holders may cease to be eligible to work in the US.

While the official country-wise data of those who obtained such employment eligibility is not available, Industry watchers say that around 40,000 such applications were approved in 2016 (year ending September 30, 2016). As bulk of the applications were filed by Indians, nearly 10,000 Indians (on a most conservative estimate) could be denied the right to work, if the proposal sees the light of the day.

An 'agenda item' published by the Department of Homeland Security (DHS) on December 14, points towards the agency's move to review an existing Obama-era rule which enabled 'eligible' spouses to obtain an 'employment authorisation document (EAD)' and find gainful employment. This potential review by the DHS, is a fallout of the executive order.

Immigration experts hasten to point out that the development is in a 'proposal stage'. Even if it were to materialise, it may take months before anything is finalised as there is usually a grace period available.

"Is it back to the kitchen and herb garden, for me?" Sunita (name changed), an Atlanta based hardware engineer wonders. Spouses of H-1B work visa holders obtain an H-4 visa. 'The employment authorisation for certain H-4 dependent spouses rule' which was passed on May 26, 2015 enabled many like Sunita to obtain an EAD. Prior to implementation of this rule, many spouses had to fight for their right to work.

Not all dependent spouses of H-1B visa holders are eligible to apply for an EAD. This route is available only if the H-1B visa recipient is on track for a green card - which means that either the green card petition had been approved or the H1-B visa

status had been extended beyond six years pending such approval.

What's next: Incidentally, an existing litigation is pending on the same issue and a judicial order is expected in early 2018. The suit was filed by 'Save Jobs USA' - a group of American tech workers. Further, the existing rules cannot be rescinded overnight. "Before the existing rules can be suspended, the Trump administration has to go through several procedural steps. First, they need to consider the underlying facts and circumstances that gave rise to the original rule. They must consider all pertinent factors, including the 'reliance interest' - the fact that thousands of individuals and US business are relying on the existing rules," explains Rajiv S. Khanna Managing Attorney at Immigration.com

Khanna adds that a deregulation requires drafting of new regulations which need to be made public and comments invited and taken into cognizance. Only then can final rules be published. Thus, all this could months and the deregulation could still be challenged which may further delay its implementation.

David H Nachman, managing attorney at NPZ Law Group says "Often, when the government makes a move of this nature, they provide a way to handle 'pipeline' cases. There is usually a guidance given about the phase out.

That said, it is important for individuals who may be impacted by this potential move to consider other alternatives. They could apply for an H-1B themselves, if they qualify, in their own right. Or they could change their visa status from H-4 to F-1 to pursue further studies which could ultimately enable them to obtain an H-1B visa. They could even consider an O-1B, which is a non-immigrant work visa for those who can demonstrate recognition in their field," adds Nachman.

However, Sunita avers that with H-1B visa rules getting tighter, obtaining employment (even if she manages to convert her status to an H-1B) will be difficult.