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Immigration Advisory

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USCIS Proposes Changes to Allow Some H-4 Spouses to Work

BY SUSAN COHEN

On May 12, 2014, US Citizenship and Immigration Services (USCIS) published two notices of proposed rulemaking in the Federal Register. The public is able to comment on the proposed rules during the 60-day comment period. The proposed changes include a provision to allow spouses of *certain* H-1B employees to work, add formal recognition of the E-3 and H-1B1 visa classifications, and add a "general" category of documentation of evidence for outstanding professors or researchers (EB-1B).

Employment Authorization for Spouses of Certain H-1B Workers

The proposal would amend current regulations to grant spouses of H-1B workers (H-4 visa holders) the right to apply for an Employment Authorization Document (which affords a blanket authorization to work in the US) as long as the spouse holding H-1B visa status is the beneficiary of an approved I-140 Immigrant Visa Petition or has filed for an extension of H-1B visa status on the basis of an approved I-140 petition, pursuant to sections 106(a) and/or (b) of the American Competitiveness in the 21st Century Department of Justice Appropriations Authorization Act ("AC21").

Recognizing E-3 and H-1B1 Temporary Work Visa Classifications in the Regulations

Another proposed rule change seeks to amend the regulations to clarify certain conditions of employment and benefits that pertain to persons holding E-3 and H-1B1 temporary work visa status. E-3 visas are available to Australian citizens who will work in temporary professional-level positions in the US, and H-1B1 visas are available to Chilean and Singaporean citizens who will work in temporary professional-level positions in the US.

The proposal would amend the regulations to clarify that people holding these visa classifications may work in the US upon entry into the US with these specific visa types, and also that once the visa holders have entered the US to work, their employers may file extension petitions for them, and benefit from the 240 day rule that applies to other temporary work visa classifications. The "240 day rule" authorizes continued employment authorization for up to 240 days beyond the current work authorization expiration date, so long as the sponsoring employer timely files an extension of stay petition on behalf of an employee holding a temporary work visa status.

Applicants for Outstanding Professor or Researcher Immigrant ("Green Card") Petitions

The final proposed change relates to the "Extraordinary Ability" immigrant visa petition. The proposal seeks to harmonize the Outstanding Researcher or Professor regulations with the Extraordinary Ability regulations by adding a "catch-all" category to the list of allowed criteria.

Mintz Levin will provide an update on the status of these regulatory changes after the comment period has ended, on July 11, 2014.

For more on the proposed rules, read our *Immigration Law* blog post:
USCIS Regulations Slowly Catching up/Catching on to Current Immigration Realities

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