

MODERNIZING THE H-4 VISA FOR SPOUSES OF TEMPORARY WORKERS

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EXECUTIVE SUMMARY

In recent months, women have bravely spoken out in service of correcting gender inequalities, harassment, and sexual misconduct in the workplace. Unfortunately, many foreign-born women continue to face unique risks amidst this feminist moment. One such group are the spouses of some temporary workers—overwhelmingly women—who are often denied the ability to work in the United States.

In order to preserve the nuclear family, some temporary workers can bring their spouses (and children under 21) to the United States on what is called an H-4 visa. While better than no opportunity to bring immediate family members, the H-4 program is based on too limited a conception of a spousal visa. As a result, it fails to allow immigrant families to maximize their contributions both to the American labor market and to their own income streams.

While H-4 visa holders can attend school, they cannot automatically work, and are entirely dependent on their spouses for their immigration status. These spouses can pursue employment opportunities *only* if they are the spouse of an H-1B holder and in the process of obtaining permanent residency. The implications of this policy are worrisome: tens of thousands of foreign-born women are denied the right to work and the chance to pursue or further their careers. However, the failures of this policy don't merely hurt the dependent spouse, but also the family, American business, and the economy as a whole.

To best realize the potential of all women and to keep the United States attractive as a destination for skilled foreign talent, lawmakers should provide work authorization for this population.

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CURRENT POLICY

In 2015, the Obama administration sought to alleviate H-4 visa dependency issues by allowing some foreign spouses to work. The Department of Homeland Security issued a rule¹ allowing work authorization for the spouses of America's high-skill-visa holders, the H-1B, if they are in line for a green card. As of December 2017, U.S. Citizenship and Immigration Services had received 90,946 petitions for work authorization.² Of H-4 spouses that applied, 93 percent of applicants were female—about 85,000 in total.

Nonetheless, instead of looking to reform the H-4 visa to better address work authorization and dependency shortfalls, the Trump administration is seeking to roll back H-4 employment for all spouses.³

In a rule expected to be published in June 2018, the administration is considering eliminating the employment pathway President Obama had created, reversing the workplace progress made in the last three years. If work authorization is axed, those tens of thousands women could lose their jobs as their employment authorization expires.

Such a regulatory change will discourage highly-skilled and high-value temporary workers with spouses and families from seeking employment in the United States in the future, in addition to placing new restrictions on immigrant women looking to work.

¹ Department of Homeland Security, U.S. Citizenship and Immigration Services, "[Employment Authorization for Certain H-4 Dependent Spouses](#)," *Federal Register* 80 (Feb. 5, 2015), 10,283-10,312.

² "[I-765 Applicants for Employment Authorization for H-4 Non-Immigrants by Gender, Fiscal Years 2015-2018](#)," (Washington, D.C.: USCIS, 2017).

³ "[Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization](#)," (Washington, D.C.: Department of Homeland Security, Fall 2017).

The reversal will constitute a step backward for our economy and the advancement of women.

Bars on Employment Hurt Families

While one intention of the H-4 visa is to keep families united and stable, in some cases, the visa's restrictions undermine that goal, by isolating the spouse and straining the principal.

Interviews of H-4 holders⁴ reveal that without work, spouses lose confidence and self-worth. Research suggests⁵ that the dependency of the spouse on the principal "imposes constraints on relationships, family, and belonging." Spouses on dependent visas are more likely to suffer intimate partner violence,⁶ a disturbing trend worsened by the victims' lack of social support systems, alone in a new country.

One H-4 holder told the *Seattle Times* that her three years in the United States without a job were marked by depression and a loss of independence.⁷ She volunteered with nonprofit organizations, but felt useless in a society that places great weight on people's professions. She said, "It hurt me on many emotional levels. I didn't want to become a shadow of my husband."

In its H-4 rule of 2015, DHS anticipated that extending employment eligibility to spouses would "reduce personal and economic burdens"

⁴ Divya Ravindranath, "[Visa Regulations and Labour Market Restrictions: Implications for Indian Immigrant Women in the United States](#)," *Indian Journal of Labour Economics* 60, no. 2 (June 2017): 217-232.

⁵ Pallavi Banerjee, "[Constructing Dependence: Visa Regimes and Gendered Migration in Families of Indian Professional Workers](#)," (PhD diss., University of Illinois at Chicago, 2012).

⁶ Anita Raj and Jay G. Silverman, "[Immigrant South Asian Women at Greater Risk for Injury From Intimate Partner Violence](#)," *American Journal of Public Health* 93, no. 3 (March 2003): 435-437.

⁷ Rachel Lerman, "[With work permits in limbo, spouses of H-1B visa holders worry they'll lose jobs](#)," *The Seattle Times*, 17 Feb. 2018.

that H-1B holders and their spouses face.⁸ The economic challenges include the difficulty of breaking back into the workforce after a prolonged hiatus, financial strain that affects the entire family, and the tensions that arise within a one-income household.

Shikha Dalmia of the Reason Foundation adds, “A job is not just income. It is also an assimilation program because it offers an entry into a new culture and a chance to form new friendships.”⁹ Employment enhances integration and is a powerful antidote to the loneliness and isolation that arise from the inability to work.

Minimizing Disruption to Business

As justification for the 2015 rule, DHS wrote that it received comments both from employers that lost valued H-1B employees because of their spouses’ lack of work, and immigrants themselves who left the United States for more flexible employment options.¹⁰

DHS emphasized the importance of retaining the highly-skilled temporary workers on H-1Bs who intend to acquire green cards. This population is important to U.S. businesses and the economy as a whole because they contribute to advances in entrepreneurship, research, and development—all crucial to economic growth and job creation.

The rule allowed DHS to ameliorate the burdens that lead many of these workers to abandon the heavily backlogged process of adjusting from nonimmigrant visas to employment-based green cards. The long wait times make spousal work restrictions more damaging, as spouses are sidelined for what could be a decade. Some leave

⁸ DHS, “Employment Authorization for Certain H-4 Dependent Spouses.”

⁹ Shikha Dalmia, “[Fixing the ‘Involuntary Housewife Visa.’](#)” *The New York Times*, 18 April 2018.

¹⁰ DHS, “Employment Authorization for Certain H-4 Dependent Spouses.”

the United States for work elsewhere. Retaining temporary workers who put their time into the U.S. economy and remain committed to the United States ensures we maximize the returns from our temporary worker program.

Moreover, the U.S. Treasury has much to gain from spousal work authorization because these workers will likely pay more in taxes than the general population. And, they are not eligible for welfare programs.¹¹ From a fiscal point of view, H-4 work authorization is an unambiguous good, reducing the fiscal burden on U.S. citizens. Plus, dual-income households can buy more from American businesses.

Reducing Productivity

As other countries like Canada, Germany, Singapore, and Australia reform their immigration laws to better recruit and capitalize on high-value immigrants,¹² the United States must also modernize to remain the world’s top destination for immigrant talent.

The U.S. economy is at the frontier of innovation, with some of the most creative and productive companies as well as the most talented people in the world. Highly skilled people can produce more here than they would elsewhere. While it is obviously in the United States’ own interest to attract the most-highly-skilled, the global economy, too, benefits when top talent is drawn to where the most productive economy can maximize the potential of those individuals.

Attracting talent to where it is most productive globally requires us to remember that immigration is a family affair. Skilled immigrants looking for opportunities in the United States often have families to consider and support. For example, the National Science Foundation found

¹¹ Sara Ashley O’Brien, “[I’m a legal immigrant, but not allowed to work.](#)” CNN, 15 Sept. 2014.

¹² *State of Immigration: How the United States Stacks Up in the Global Talent Competition*, (Washington, D.C.: Business Roundtable, March 2015): 19-24.

the most common justification scientists and engineers gave for coming to the United States was “family-related reasons.”¹³

Attracting talent in a competitive, 21st-century economy requires open pathways for spouses to consider work. Offering work authorization strengthens the attractiveness of the United States to the family of a high-skilled person. Therefore, work authorization doesn’t just capitalize on the labor of the spouse, it helps attract better H-1B talent in the first place.

Never-ending green card backlogs, an H-1B system stuck in the 1990s, and foreign competition for high-skilled talent ensure that the need to reform skilled immigration is not going away, and will likely worsen in years to come. Lawmakers should address this population sooner rather than later.

PROPOSED CHANGES TO CURRENT POLICY

Given the administration’s antagonism towards legal immigration, Congress should codify the 2015 H-4 rule in statute and thereby remove the ability of the executive branch to scuttle the progress made over the last few years.

But although the 2015 rule was a step forward in correcting some injustices for spouses, full H-4 reform requires modernizing the program to better address the needs of all foreign-born spouses seeking employment, not just H-1B spouses in line for green cards.

If full work authorization is too ambitious, lawmakers could give the spouses of H-1B holders the ability to participate in the Optional Practical

¹³ Nirmala Kannankutty and Joan Burrelli, “[Why Did They Come to the United States? A Profile of Immigrant Scientists and Engineers](#),” InfoBrief, NSF-07-324 (Arlington, VA: National Science Foundation, Directorate for Social, Behavioral, and Economic Sciences, June 2007): 2.

Training (OPT) program, in which foreign students who graduate from U.S. institutions of higher learning can work for one year.¹⁴ STEM graduates receive work authorization for three years. Currently, H-4 holders are unable to apply for OPT. It’s foolish to allow H-4 holders to study but bar them from capitalizing on those skills to better their families and communities.

Also, Congress should create an entrepreneurial or start-up visa.¹⁵ Immigration lawyer Leon Fresco has noted that H-4 employment authorizations come with fewer restrictions than H-1B authorizations, and this has allowed for the promotion of women’s entrepreneurship and small business.¹⁶ An entrepreneurial visa would allow such H-4 spouses to continue building their businesses and creating American jobs while obtaining immigration status on their own merit.

CONCLUSION

Throughout this administration, vulnerable and at-risk groups such as the Dreamers, “temporary protected status” holders, and refugees have dominated the immigration discourse. But another group—albeit less visible and vulnerable—are the foreign-born spouses who remain locked out of the workplace. They are underserved and underutilized to the detriment of our economy and the well-being of their families.

The H-4 visa needs to be modernized. Right now, the visa fails to meet the needs of visa holders, their families, and the broader American economy. Rather than remove work authorizations and restrict the options for H-4 spouses to engage in meaningful employment, this

¹⁴ “[Optional Practical Training \(OPT\) for F-1 Students](#),” (Washington, D.C.: USCIS, 24 Jan. 2018).

¹⁵ Kristie De Peña, “[Niskanen Immigration Policy Brief: Entrepreneurial Visas](#),” (Washington, D.C.: Niskanen Center, July 2017).

¹⁶ Stef W. Knight, “[Women would be hit hardest by ending H-4 work permits](#),” Axios, 29 March 2018.

administration—which has advocated for an immigration system based more on merit and skills¹⁷—should seek to leverage the talents and capacities of the ambitious spouses of today’s foreign-born workforce.

Feminism in the workplace takes many forms, all of which should further an environment of inclusive opportunities for all women. Blocking H-4 visa holders—overwhelmingly women—from working unfairly lessens opportunities for immigrant women while damaging the U.S. economy.

¹⁷ Jeff Sessions, “[Trump’s merit-based immigration system](#),” *The Washington Times*, 21 Jan. 2018.