



May 4, 2021

The Honorable Zoe Lofgren  
Chair, House Committee on the Judiciary, Immigration and Citizenship Subcommittee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Tom McClintock  
Ranking Member, House Committee on the Judiciary, Immigration and Citizenship Subcommittee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Subject: Statement for the Record to strengthen and improve the H4-EAD work authorization program for the spouses of high skilled immigrants

Dear Chairwoman Lofgren and Ranking Member McClintock

We offer our heartfelt gratitude and thank you for your leadership to hold the hearing on “Why Don't They Just Get in Line? Barriers to Legal Immigration?”

SaveH4EAD is a group of individuals and nation-wide grassroots volunteers who have worked tirelessly over the years to raise awareness, protect, preserve and strengthen the H-4 EAD program, which offers employment eligibility to the spouses of high skilled immigrants, who are on path to permanent residency, and are often described as “Americans-in-Waiting”.

#### **H-4 EAD PROGRAM:**

The genesis of the H-4 EAD program lies in the crippling green card backlogs for employment-based immigrants, and those born in India almost entirely bearing the brunt of it due to discriminatory country of origin caps. According to estimates by the nonpartisan Congressional Research Service in a March 2020 report, it would take 195 years to clear the backlog for employment-based immigrants born in India. This wait time is expected to grow to 436 years in 2030.

H-4 EAD (Employment Authorization for H-4 spouses) came into effect on 26th May 2015 through federal rule-making with the intention to “support the retention of highly skilled workers who are on the path to permanent residency”.<sup>1</sup> An overwhelming majority (>90%) of H-4 EAD recipients

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<sup>1</sup> Federal Register, *DHS available at:* <https://www.govinfo.gov/content/pkg/FR-2015-02-25/pdf/2015-04042.pdf>



are female, with over 95% of those were born in India. The recipients of H-4 EAD are highly educated, skilled, and work in a wide variety of occupational fields<sup>2</sup>.

## H-4 EAD PROCESSING DELAYS

### Current Status

Presently, the H-4 EAD program is facing extraordinary processing delays running as high as two years<sup>3</sup>, while the application (renewals, for example) can only be done six months prior to expiry of an existing EAD. This mathematically guarantees that the recipients of H-4 visa (Spouses of High Skilled Immigrants) and those utilizing Employment Authorization Document for Spouses of High Skilled Immigrants (H-4 EAD) will lose their jobs and be forced to shut down their businesses. Current estimates indicate that over 91,000 H-4 EAD recipients have been impacted by these delays.

This is adversely impacting the lives of hundreds of thousands of families across the United States and is effectively killing the very intent of the H-4 EAD program. Most of the H-4 EAD applicants are highly skilled women of color working in a variety of occupations. Many of them are essential workers, healthcare workers, small business owners<sup>4</sup>, among others. They are suffering severe mental health issues, severe financial issues, unable to pay for mandatory medical expenses, and childcare expenses. Many have reportedly lost their health insurance during this pandemic and are also unable to renew their driver's license because several state DMVs require H-4 approvals to renew driver's licenses.

### Key Contributing Factors

1. In March 2019, the USCIS introduced a new process as per the Executive Order 13780 mandating in-person biometrics for H-4 approval<sup>5</sup>.
  - This is a completely new policy requirement which was not in place prior to March 2019 and we view it as wholly unnecessary, as there is no evidence to point to any increased risk factors from the H-4 population.

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<sup>2</sup> USCIS data for 1765 Applicants for H4 non-immigrants available at:

[https://www.uscis.gov/sites/default/files/document/foia/I-765\\_Applicants\\_for\\_Employment\\_Authorization\\_for\\_H-4\\_Non-Immigrants\\_by\\_Gender\\_for\\_FY2015-FY2018.pdf](https://www.uscis.gov/sites/default/files/document/foia/I-765_Applicants_for_Employment_Authorization_for_H-4_Non-Immigrants_by_Gender_for_FY2015-FY2018.pdf)

<sup>3</sup><https://www.forbes.com/sites/stuartanderson/2021/02/09/uscis-taking-two-years-to-process-many-applications-for-h-1bspouses/?sh=6dff0fe63276>

<sup>4</sup> Brannon, Ike and McGee, M. Kevin, Repealing H-4 Visa Work Authorization: A Cost-Benefit Analysis (April 2, 2019) available at SSRN: <https://ssrn.com/abstract=3349786> or <http://dx.doi.org/10.2139/ssrn.3349786>

<sup>5</sup> USCIS Policy available at <https://www.uscis.gov/archive/uscis-to-publish-revised-form-i-539-and-new-form-i-539a>



- Additionally, the H-4 population undergoes biometric checks every time during visa stamping at consulates outside the US as well as during entering the US at ports of entry.
  - Furthermore, the H-4 EAD population, by the nature of being in the employment based green card backlogs, are longtime residents of the US and have provided biometrics numerous times over the years.
  - Lastly, the collection of additional biometrics, even though unnecessary and arbitrary in our opinion, has been severely curtailed due to the pandemic related in-person restrictions.
2. In 2019 there was an internal USCIS policy by which the concurrent processing for H-1B (I-129), H-4 (I-539) and H-4 EAD (I-765) was stopped<sup>6</sup>
- Additionally, due to the new in-person biometric requirements for H-4 (I-539) processing, it is guaranteed that the H-4 and H-4 EAD applications will not be processed together with the H1B application.
  - The median processing times for I-539 applications have increased to 8.1 months for FY 2021

#### **RELIEF SOUGHT FOR H-4 EAD PROGRAM:**

##### **Short-term relief (Administration and/or Agency action):**

- DHS should publish a federal register notice (FRN) to automatically extend or grant the validity period of H-4 visa and H-4 EAD to a period equal to the validity of the underlying approved H-1B petition of the spouse. This temporary action should be made effective via FRN notice until 90 days after the period of public health emergency (COVID 19 pandemic) declaration is over.
- DHS/USCIS should provide relief by allowing the H-4 EAD application acknowledgement receipt (I-797C Notice of Action) to be used as proof of employment eligibility until USCIS is able to adjudicate the application.
- USCIS should immediately follow the revocation of Executive Order 13780 and accordingly remove the additional in-person biometrics requirement for H-4 processing for all in-flight and future applications.

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<sup>6</sup> Gudla v. Koumans *available at* [https://nfap.com/wp-content/uploads/2019/06/Plaintiffs-Filing\\_June-6-2019.pdf](https://nfap.com/wp-content/uploads/2019/06/Plaintiffs-Filing_June-6-2019.pdf) at page 6 of 20



## Long-term relief (Legislative action)

As a long-term permanent solution, we request that the H-4 EAD program be codified into law, either as a stand-alone legislation or as part of any upcoming immigration legislation. This provision can be found in Section 3409 of H.R.1177 United States Citizenship Act of 2021 introduced in the current 117th Congress and reads as follows:

*WORK AUTHORIZATION FOR H-4 NONIMMIGRANTS—The Secretary of Homeland Security shall authorize a nonimmigrant spouse or child who is accompanying or following to join a nonimmigrant described in section 101(a)(15)(H)(i)(b) to engage in employment in the United States and shall provide such nonimmigrant spouse or child with an ‘employment authorized’ endorsement or other appropriate work permit.*

In addition to the above, we are proposing the following provisions to further strengthen the H4 EAD program and to future-proof any H-4 EAD processing delay issues. This is extremely crucial, given the multi-decades long wait times for employment-based immigrants, especially those born in India. As a result, there are many H-4 and H-4 EAD recipients (currently >125,000 and growing every year) who will continue to have the need to renew their employment authorization document every 1 to 3 years. This codification should include the following provisions:

- a. Auto-extension of H-4 EAD (I-765 c26 category) to 180 days. This provision is already provided to many other Employment Authorization categories<sup>7</sup>
- b. Allow concurrent processing of the spousal visa (H-4) and H-4 EAD applications along with the primary H-1B application
- c. A set timeline shall be established by the USCIS for processing the H-4 and H-4 EAD applications with a maximum upper limit of 90 days.
- d. The H-4 (I-539) and H-4 EAD (I-765 c26 category) applicants should be able to apply in premium processing as per H.R.8337 - Continuing Appropriations Act, 2021 and Other Extensions Act

We highly appreciate the Committee’s attention to the various crucial aspects of immigration and urge the Committee to provide immediate relief measures to protect the intent of the H-4 EAD program and to take steps to further strengthen and improve it.

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<sup>7</sup> USCIS Automatic Employment Authorization Extension categories *available at* <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/automatic-employment-authorization-document-ead-extension>