



**DEPARTMENT OF HOMELAND SECURITY PROPOSES RULE TO PERMIT CERTAIN H-4 SPOUSES TO APPLY FOR WORK AUTHORIZATION**

May 12, 2014

The Department of Homeland Security (“DHS”) published a proposed rule today that may allow certain spouses of H-1B employees to receive authorization to work in the United States. **Please note that at this time, DHS has only proposed this rule for public comment—H-4 spouses cannot currently apply for work authorization and cannot do so unless/until this rule becomes final.** DHS has not provided a timeframe for when the proposed rule could become final. However, it may take 4-6 months (or longer) for a final rule to be implemented.

The proposed rule would allow spouses of H-1B employees who are in the U.S. in H-4 status to apply for work authorization if either:

1. The H-1B principal has an approved Immigrant Petition (I-140) OR
2. The H-1B principal has received an H-1B extension based on a permanent labor certification application or I-140 petition that has been pending for at least 1 year.

This proposed rule would only provide work authorization to H-4 spouses who satisfy one of these criteria. It would not provide work authorization to H-4 children.

The popular H-1B visa category is available for certain foreign nationals with an offer of employment in a position that requires at least a university degree to perform. Spouses and children under the age of 21 of an H-1B worker are generally eligible for H-4 status in the U.S. Individuals in H-4 status are not currently authorized to work in the U.S.

The complete proposed rule from DHS is available [here](#).

As previously mentioned, DHS has not provided a timeframe for when the proposed rule could be final. An update will be provided by McCandlish Holton when a final rule is published. In the meantime, if you have questions about this proposed rule, please contact one of the McCandlish Holton immigration attorneys below.

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