

Litigation Over H-4 EAD Rule Rescission Continues

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The uncertainty regarding the rescission of the H-4 Employment Authorization Document (EAD) Rule continues to drag on and the plaintiffs in *Save Jobs USA v. United States Department of Homeland Security* are getting tired of waiting.

Save Jobs, a group of technology workers who claim to have been displaced by foreign nationals, initially challenged the H-4 EAD Rule in 2015 after it was instituted by the Obama Administration. The H-4 EAD Rule provides work authorization for spouses of certain H-1B workers who are in the Green Card process. Although Save Jobs lost in the U.S. District Court, it appealed to the Court of Appeals for the D.C. Circuit just before President Donald Trump was inaugurated. Since then, the government has been stalling and requesting that the case be held in abeyance because DHS is working on rescinding the Rule. If DHS rescinds the Rule, the case becomes moot.

Oral argument on the case was [originally set for March 31, 2017](#). The government has asked for five continuances since March 2017:

- A 60-day pause until April 3, 2017
- A 180-day pause until September 27, 2017
- A pause until January 2, 2018
- A pause until February 2018

- A pause until June 2018

On August 20, 2018, [DHS filed another status report in the case](#), stating that “[a]s represented to the Court in prior status reports, DHS’s intention to proceed with publication of an NPRM [a new rule] concerning the H-4 visa rule at issue in this case remains unchanged.”

Save Jobs’ attorney, John Miano, [noted that the DHS update](#) “gives no time table and no explanation for the delay. . . . At this point it was clear that any proposed rule has just been sitting on someone’s desk for months.”

Close to 100,000 individuals hold EADs based upon the H-4 EAD Rule. They have been in limbo, unable to make decisions about how to move forward with their lives in the U.S. ever since the Trump Administration announced its intention to rescind the Rule. Employers have had to decide whether to try to make “back-up” immigration plans, where possible, for employees on H-4 EADs. The Business Roundtable [sent a letter](#) to DHS Secretary Kirstjen Nielsen expressing concern “about changes in immigration policy that are causing considerable anxiety for many thousands of our employees while threatening to disrupt company operations.” On the impending revocation of H-4 EAD status, the letter noted that “[o]ther countries allow these valuable professionals [spouses of H-1B beneficiaries] to work, so revoking their U.S. work authorization will likely cause high-skilled immigrants to take their skills to competitors outside the United States.”

We will continue to follow this litigation and any announcements regarding the NPRM. Meanwhile, individuals in H-4 EAD status should continue to apply for and renew H-4 EADs as early as possible.

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