

## Position paper: Dependent work access and US immigration reform

Permits Foundation is an international not-for-profit corporate initiative. Working globally at government level, we advocate for legislative change to enable direct work authorization for dependents of highly-skilled mobile employees. In this position paper we set out three key areas where we request improved employment access for dependents of certain temporary nonimmigrant visa holders in the US\*. We make recommendations and provide supporting information to underpin why this policy would help to achieve a more inclusive immigration system that can benefit everyone.

### OUR RECOMMENDATIONS\*

#### 1. A process that is fair and efficient

- In line with international good practice, direct work access for eligible dependents of nonimmigrant visa holders, removing the additional step of requiring an Employment Authorization Document (EAD)
- Where the EAD remains, minimize processing time to significantly below 3 months
- Continued work access for dependents upon proof of receipt of having filed an EAD extension application
- Processing and adjudication of principal applicant and dependent applications together
- Removal of biometric requirements for dependent visa and EAD extensions where biometrics are already on file/allowing work access while biometric appointment is pending
- An affordable premium processing option for dependents, with funds raised going towards addressing regular processing delays

#### 2. Working together to build back better

- Provide employment authorization for *all* H4 spouses
- Provide employment authorization for O3 spouses
- Ensure that those H4 spouses who can currently access employment, have this right enshrined in statute so their job security is not at risk of repeal in future

#### 3. Making families matter

- Facilitate work access for other family members of highly-skilled nonimmigrants (in particular, working age children and non-married partners)
- Protections for children of L, E,O and H1-B visa holders at risk of ageing out of the system when they turn 21

\* In this paper, including in our recommendations, we are referring to the relevant dependents of the following visa categories, reflecting the needs of our network:

- **L1** (intra-company transferees)
- **H1-B** (workers in a specialty occupation)
- **E1/2** (treaty traders and investors)
- **E3** (Australian nationals in a specialty occupation)
- **O** (persons with extraordinary ability in selected fields)
- **J1** (exchange visitors)

## SUPPORTING INFORMATION

### Permits Foundation and the United States

Permits Foundation is supported by over [40 international companies and organizations](#) from a range of sectors. The majority have either head quarters or long term operations in the US. Between them, they provide employment for hundreds of thousands of workers. The Foundation has advocated in support of dual careers in the US since our inception in 2001. Working along side like-minded organizations, we contributed to legislative change enabling work authorization for spouses of L1, E and J1 visas holders. More recently we provided [evidence](#) in support of maintaining the Employment Authorization Document (EAD) for certain H4 spouses at risk of having their work access rescinded. We continue to advocate for improvements that would secure work authorization and peace of mind for dependents of holders of the L1, H1-B, E and O visas as these are the nonimmigrant categories most frequently used by our network, in particular intra-company transferees and increasingly mobile employees with a STEM background.

The Foundation welcomes the new direction of immigration reform already taken this year including the [withdrawal](#) of the proposal to rescind H4 employment access. We are encouraged by provisions within the proposed U.S. Citizenship Act of 2021 that would provide work authorization for dependents of H-1B visa holders, prevent children from “aging out” of the system, keep families together, clear backlogs, recapture unused visas, eliminate lengthy waiting times, and increase per-country visa caps. We applaud recognition of permanent partnerships and LGBTQ+ families as well as efforts to ensure their inclusion. We note that the bill’s proposed work authorization provisions for dependents do not extend to O3 spouses nor working age children of L or E visa holders. We maintain that direct work access on dependent status is preferable to an extra EAD application step.

### Why direct partner employment authorization is important

The Foundation advocates for **direct** employment access for dependents of highly-skilled mobile employees. This provides the vital reassurance before the decision to move, that work will be permitted upon receipt of dependent status and without any unexpected barriers such as lengthy waiting times or extra administrative steps. Research shows that assured partner access to employment is a key factor aiding companies’ ability to attract and retain talent.<sup>1 2</sup> Partner employment access helps to make a country a preferred business and investment destination and to address skills shortages. As our [world map](#) illustrates, around thirty five countries including Canada, Australia, New Zealand, Brazil, the UK and all across the European Union have adopted policy whereby the dependent of a highly-skilled employee can **directly** access work. Although the US does enable work access for some spouses, an extra EAD application step is required. Problematic work authorization procedures have developed, mitigating the benefits that should be associated with facilitating dual careers. The situation for many categories of dependents, who cannot access employment at all, remains a concern for employers, mobile employees and their families.

#### 1. A PROCESS THAT IS FAIR AND EFFICIENT

In recent years and exacerbated by COVID-19, the spousal EAD process has become lengthy and cumbersome with jobs put at risk and families under strain. For example, L2 and H4 visa holders are not able to file an extension of their EAD until 6 months before expiry. With an increase in

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<sup>1</sup> 51% of employers reported that employees have turned down international assignments due to partner employment concerns. 21% of employers reported that assignees returned home early for the same reasons. ([Permits Foundation, 2012](#))

<sup>2</sup> “Employers confirm that the number one reason for employees not accepting an international assignment is the potential disruption to the career of their relocating partner.” ([NetExpat and EY Relocating Partner Survey Report, 2018](#))

administrative and biometric requirements, processing is currently taking much longer and dependents are not eligible for an automatic 180-day extension of their expiring EAD. It adds up to a paradoxical situation whereby the US employment authorization system is pushing people out of work. Concerns have been flagged to us on many occasions by our sponsor companies who, along with their employees' families are dealing first hand with the uncertainty that these processes bring. Our suggested recommendations would help to address some of these concerns.

The Foundation also proposes a simple solution. In over [30 other competitive countries worldwide](#), **direct work access is granted as soon as the partner is recognised as a family member**, there is **no** requirement to apply for a separate work authorization document or permit. A more streamlined approach increases peace of mind and cuts down on processing time and administrative costs both for the company and the host country – a much needed remedy for a system currently burdened by backlogs.

## 2. WORKING TOGETHER TO BUILD BACK BETTER

We urge this administration to take a more inclusive approach to immigration reform so that we do not risk spouses with talent, being unable to access work because they don't have an EAD. This is the reality for thousands of H4 and O3 visa holders. Our research shows that families with dual career earners report more positive family relationships, well being and adjustment into the host country.<sup>3</sup> It makes little sense for a partner to be put on an enforced career break when they could be contributing to the national aim of building back better. Around 80-90% of partners of highly-qualified employees are themselves graduate level or higher yet those cut off from employment access face long term disadvantages related to career stagnation and pension gaps. This restriction feeds inequality, particularly as over 75% of accompanying partners are women. Modern expectations around global mobility mean that enforced career breaks are less and less acceptable to dual careers couples who, particularly in the wake of COVID-19, look for added certainty that they can stay together as a family unit and continue to work. Increasingly, couples depend on the income of both partners during international transfers.<sup>4</sup>

*“Nothing adequately replaces the ability to nurture your own career, earn money independently and have a sense of purpose in life. Whilst my husband is keen to stay in the US after our current visa expires at the end of this year, we are considering returning to the UK even though that will damage his career, simply because I know that I can't go on without any hope of obtaining a work permit in the US.”*

This quote from an O3 spouse reflects the sentiment held by many dependents of highly skilled visa holders in the US.

### Impact on American Jobs

The experience from around the world shows that because the numbers are relatively low, where direct partner employment access is granted to dependents of highly-skilled mobile employees, the local labor market is not negatively impacted.<sup>5</sup> In the US over the past 5 years, there were on average only 4,600 O3 visas and 119,000 H4 visas issued per year and these figures include thousands of non working age children. Rather than detract from the local economy, in many cases, these dependents, mostly highly-skilled, are economic boosters and job creators as this [cost-benefit analysis](#) into the H4

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<sup>3</sup> 68-80% of working spouses say that working has a positive impact in these areas, 30-40% of non-working spouses report a negative impact of not working ([Permits Foundation global spouse survey, 2008](#))

<sup>4</sup>Over three quarters of relocating partners are in work before they relocate [NetExpatriate and EY Relocating Partner Survey Report, 2018](#)

<sup>5</sup> Latest example is Ireland, another notable STEM destination, where direct employment access was granted to spouses and partners of Critical Skills Employment Pass (CSEP) holders in 2019. There was no resulting surge in CSEP applications and companies tell us it is now easier to secure needed talent, making Ireland a more business friendly destination.

EAD has shown.<sup>6</sup> It is expected that the pandemic will exacerbate skills gaps, so why not nurture talent and entrepreneurship that is already in country? There are no special favours here. If granted employment access, dependents still need to find work, adjust to a new environment, navigate without a network or overcome language barriers in order to show that they are the best candidate for the job.

### **3. MAKING FAMILIES MATTER**

In the wake of COVID-19, our sponsors tell us that mobile families want more than ever to move and stay together as a unit. Partner employment access provides a much needed layer of security. International companies see greater value in addressing the needs of the whole family including the partner and children. Younger couples are increasingly relying on a dual income.<sup>7</sup> Because of COVID-19, there are less international assignments but there will always be a demand for specific qualifications to help meet skills-shortages within countries and companies.

In many countries, legislation has evolved to reflect the changing trends in global mobility. Families are less homogenous, and are more likely include same-sex couples and non-married couples yet currently in the US, only married spouses are eligible for the EAD, non-married partners in durable relationships are not. Children under 21 are also prevented from taking up a job. This results in education, skills and talent going to waste. More countries are making the link between contribution, well-being and integration. As our [world map](#) shows, of those countries that enable work access for dependents, around 20 recognise non-married partners. Almost every single good practice country allows family members other than the spouse or partner to access work. In the US, this is only extended to one small category – the unmarried children of J1 visa holders. The American value of nurturing the family would be further upheld where there are protections for children of L,E,O and H1-B visa holders currently at risk of removal when they age out of the system.

#### **Next steps**

Through 2021 and beyond, Permits Foundation will make the case to the Department of Homeland Security, US Citizenship and Immigration Services and US Congress representatives to take up our recommendations, both where there can be short term solutions and via longer term legislative change. We offer our support and assistance to the authorities and to representatives from both sides of the House.

*Permits Foundation US Position Paper: March 2021*

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<sup>6</sup> “Providing H-4 visa holders with the ability to obtain gainful employment has provided a positive and significant economic and fiscal boost to the U.S. economy... the data suggest that this cohort does little to displace domestic workers in the occupations and industries where they predominate.” (Repealing H-4 Visa Work Authorization: A Cost-Benefit Analysis, Jack Kemp Foundation and UW Oshkosh, 2019)

<sup>7</sup> [NetExpat and EY Relocating Partner Survey Report, 2018](#)