US-based spouses queue up for H-1B as work permits get scarce

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MUMBAI: The US immigration authorities will begin to accept applications for H-1B visas + (a popular skilled-work visa among Indians) from April 2. These visa applications are for the fiscal year which commences from October 1 (referred to as FY 2019). Spouses of current H-1B visa holders are expected to queue up. The reason is simple: with the Trump administration's decision to rescind granting of work permits to these spouses, an H-1B visa, even if challenging to obtain, seems a safer bet.

SLEEPLESS MOMENTS IN THE AMERICAN DREAM

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HOPE FOR H4 HOLDERS

H4-EAD holders are finding supporters from various quarters, such as industry associations. The American Immigration Council, a not for profit entity, has issued a fact sheet which says that allowing H4 spouses to work is advantageous as it brings US in line with other countries, which are competing to attract talented foreign nationals. Highly-educated immigrants are more likely to choose a country where immediate family members are welcome. For instance, Canada permits spouses to work

WHY SPOUSES OF H1-B VISA HOLDERS ARE LINING UP?

Spouses of H1-B visa holders are currently granted H4 visas, which do not allow them to work or run a business unless they obtain an 'employment authorisation document (EAD)'. However, not all dependent spouses of H-1B visa holders are eligible to apply for an EAD. This route is available only if the H-1B visa recipient is on track for a green card. Hence many are exploring the H-1B option

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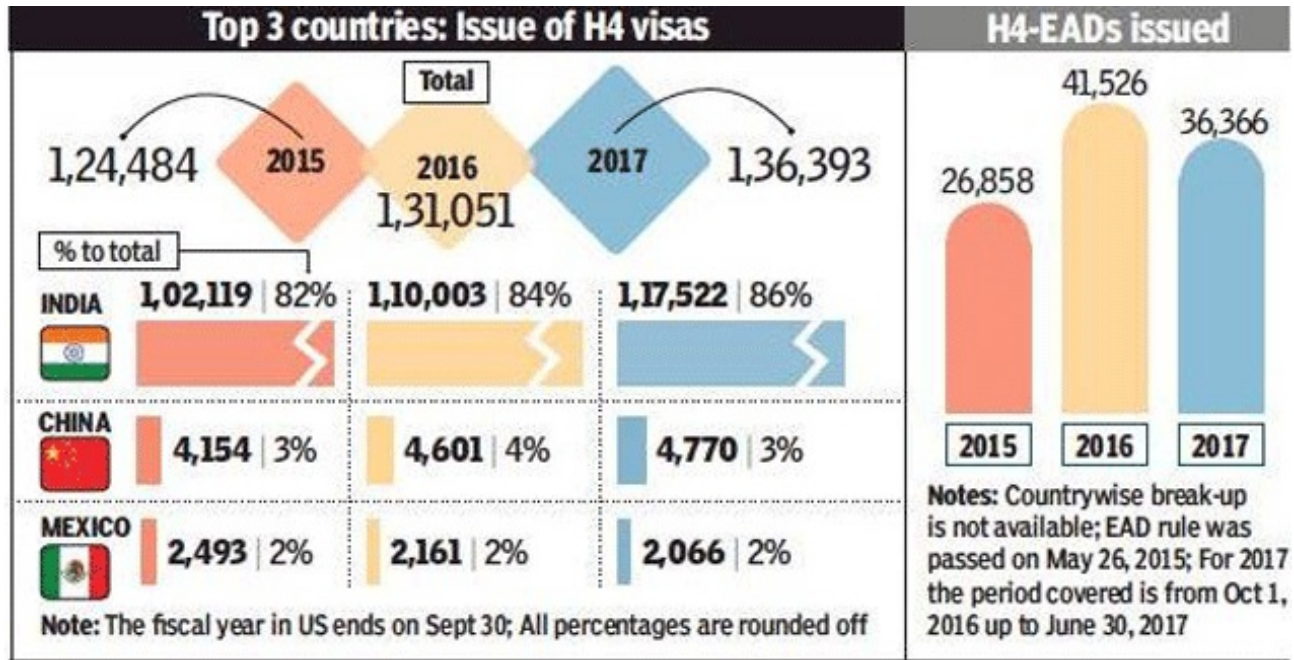
Snehal Batra | ATTORNEY, NPZ LAW GROUP

Spouses of H-1B visa holders are granted an H4 visa. They are not entitled to work or carry on their own business unless they obtain an 'employment authorisation document' (EAD), which is a work permit.

H-1B visa: The procedural changes and 5 key challenges for India Inc

However, not all dependent spouses of H-1B visa holders are eligible to apply for an EAD. This route is available only if the H-1B visa recipient is on track for a green card. A draft proposal, which will be the first step towards rescinding the existing policy that permits issue of EADs is expected in June. The entire process of bringing in a new rule could take up to the end of 2018 or even stretch to 2019, say immigration experts. Meanwhile H4-EAD holders are exploring various options, which includes the H-1B route.

Priya Mehta (name changed), who holds a master's degree in business management from a US University, is deep in discussion with immigration counsels on the pros and cons of applying for an H-1B visa. She currently works in a non-profit entity and is hopeful that her employer will consider sponsorship for an H-1B visa.

Top 3 countries: Issue of H4 visas

	2015	2016 (Total 1,31,051)	2017
Total	1,24,484		1,36,393
INDIA (% to total)	1,02,119 | 82%	1,10,003 | 84%	1,17,522 | 86%
CHINA	4,154 | 3%	4,601 | 4%	4,770 | 3%
MEXICO	2,493 | 2%	2,161 | 2%	2,066 | 2%

Note: The fiscal year in US ends on Sept 30; All percentages are rounded off

H4-EADs issued

2015	2016	2017
26,858	41,526	36,366

Notes: Countrywise break-up is not available; EAD rule was passed on May 26, 2015; For 2017 the period covered is from Oct 1, 2016 up to June 30, 2017

Snehal Batra, managing attorney, at NPZ Law Group says, "We have many H-4 visa holders applying for the 2019 H-1B cap hoping that they will get selected in the lottery. This gives them a fall-back position in the event the H-4 EAD is taken off line. If these individuals are able to file under the Master's cap then they are in better shape to get selected."

There is a cap for H-1B visas. Only 65,000 visas are allotted under the regular cap and an additional 20,000 visas under the Master's cap (for those having a degree from US universities).

"If eligible individuals are not selected under the Master's cap then they are counted towards the regular H-1B cap, thus effectively getting another chance," adds Batra.

The demand for H-1B is so high, that within the first few days, from the application date, the quota is met. For instance, for fiscal 2018, the US authorities received nearly two lakh applications. Thus historically over the past few years, it has resulted in allocation via a computer generated random selection process known as a lottery. This makes it a hit or a miss situation for the applicants.

Rajiv S Khanna, managing attorney, at Immigration.com says, "Finding a sponsor is usually not a challenge, if the H4-EAD holder already has a job. In such cases, the employers are generally willing to sponsor them for the H-1B. However, lottery remains an issue."

Not all H4-EAD holders currently hold a job, further not all those who hold a job are able to

convince employers for a H-1B sponsorship. In fact, some are finding that they are the first to be retrenched as the employer is uncertain of what the future policy will hold.

The number of H-4 visas allocated to family members of those holding an H visa (which includes H-1B) increased by 190% over a decade. From 47,206 in 1997 to 1.36 lakh in 2017. Indians were allotted the maximum of such visas. Compared to this, the number of EADs issued are miniscule. In fact, not all those who have an EAD work, some seek it as it enables them to obtain a social security number and open a bank account (see table).

However, a group of laid off American tech workers filed a suit way back in 2015 to block the rule permitting issue of EADs. This suit is currently in abeyance as the US administration take steps to rescind the policy.