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Memorandum

To: Clients and Interested Parties

From: Pampanin Law Offices

Date: Wednesday, February 25, 2015

Subject: Employment Authorization Document Applications for Certain H-4 Nonimmigrants;
Government Announces Can File Effective May 26, 2015

The Department of Homeland Security, on Tuesday, February 24, 2015, released the thrilling update that as of Tuesday, May 26, 2015, *certain* H-4 spouses of principal H-1B workers will—*for the first time ever*—be able to file for Employment Authorization Documents, the receipt of which would make them employment eligible in the United States. Unfortunately it will not apply to all H-4 nonimmigrants. To qualify, the associated H-1B spouse must be the beneficiary of an approved I-140 petition, or otherwise be benefitting from a “seventh-year” H-1B extension. While the news is exciting, expectations should be tempered to some degree, as this initiative is tied to President Obama’s intended Executive Action to facilitate immigration reform (currently the subject of a temporary injunction issued by a federal court in Texas, preventing its implementation at least for now, as well as traditional Washington politicking on Capitol Hill).

Form to file would be the standard I-765, Application for Employment Authorization. It is a relatively simple, one-page form to complete. Filing fee is presently \$380.00 and would apply (with fee waiver eligibility either outright unavailable or at best unclear). Other supporting material to be tendered would presumably consist of: proof of marriage to H-1B principal; passport-style photographs; evidence the H-1B worker is actively maintaining status; and copy of qualifying I-140 approval notice, or other evidence showing “seventh-year” H-1B benefit accorded.

These applications, historically, carry a processing window of sixty to ninety days. Regulation (while not always followed) entitles applicants to receipt of some form of Employment Authorization Document or “EAD” after waiting ninety. Once secured, application for Social Security Number generally comes next, after which the person would be good-to-go. For I-9 compliance purposes, the I-766 Employment Authorization Document is a “List A” document, evidencing both identity and employment eligibility in the same form. This, importantly, would be “blanket” work permission. It would not be tied to any one employer, nor type of occupation (so as to include and embrace non-professional employment, thereby distinguishing this benefit from the more restrictive H-1B). Employment Authorization Documents issue for one or two years in length. Provided the above criteria continues to be met, we would imagine these can be renewed indefinitely.

The government expects more than one hundred thousand applications will be filed the first year alone. We would be happy to begin helping folks assemble application packages, beginning in mid- to late-April. We will not be taking cases or questions on this prior thereto, and applaud the announcement.