

CASES & DECISIONS, FEDERAL COURT CASES, AMICUS BRIEFS/ALERTS

D.C. Circuit Affirms District Court’s Grant of Summary Judgment to DHS in *Save Jobs USA v. DHS* H-4 EAD Litigation

8/2/24 | AILA Doc. No. 15052675. | [Business Immigration](#), [H-1B & H-1B1 Specialty Occupation](#)

August 2, 2024

[The D.C. Circuit affirmed](#) the [district court’s decision awarding summary judgment to DHS](#), holding that Save Jobs USA had not meaningfully distinguished the case from binding precedent in [Washington Alliance of Technology Workers v. DHS](#), in which [the court held](#) that the 2016 STEM Optional Practical Training (OPT) regulations were within DHS’s statutory authority to set the time and conditions of F-1 admission. The court reasoned that its recent decision in WashTech interpreted the INA to authorize immigration-related employment rules like the [H-4 EAD rule](#), and that Save Jobs USA had made little effort to dispute that reading of WashTech. (*Save Jobs USA v. DHS, et al.*, 8/2/24)

February 8, 2024

After SCOTUS denied cert. in *Save Jobs USA v. DHS, et al.*, the plaintiffs appealed to the DC circuit court. [AILA and AIC](#) filed an amicus brief urging the circuit court to affirm the district court decision granting summary judgment.

The amici brief counters appellant’s argument that DHS does not have the authority to permit certain H-4 spouses to work by providing a detailed explanation of the shared congressional and executive responsibility in the INA that the executive followed for almost 35 years in authorizing work for certain categories of noncitizens and its subsequent ratification in 1986 when Congress explained that a noncitizen was “unauthorized” for purposes of the new employment verification provisions if not “authorized to be so employed by this Act or by the Attorney General.” 8 U.S.C. § 1324a(h)(3)(B).

October 30, 2023

[The U.S. Supreme Court denied the petition for a writ of certiorari](#) before judgment, leaving in place the March 2023 ruling from the U.S. District Court for the District of Columbia granting summary judgment in favor of DHS. Justice Kavanaugh took no part in the consideration or decision of the petition. (*Save Jobs USA v. DHS, et al.*, 10/30/23)

March 28, 2023

[Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia granted DHS’s motion for summary judgment](#), concluding that DHS possessed the requisite statutory authority to issue the H-4 EAD rule, and that the plaintiff had failed to demonstrate that the H-4 EAD rule was arbitrary and capricious. (*Save Jobs USA v. DHS, et al.*, 3/28/23)

April 2, 2021

On April 2, 2021, Save Jobs USA filed its [second renewed motion for summary judgment](#) in the U.S. District Court for the District of Columbia. The updated court schedule is provided below:

- May 3 - Defendant's combined opposition and cross-motion
- May 17 - Intervenor's combined opposition and cross-motion
- May 31 - Plaintiff's combined oppositions and replies

June 14 - Defendant's reply
June 28 - Intervenor's reply

February 2, 2021

In light of recent executive and administrative actions, on February 2, 2021, Judge Chutkan ordered a joint status report due by March 5, 2021, advising the court: 1) whether the current dispute has been mooted or the parties anticipate that it will be mooted; 2) whether the parties wish to stay this action for any reason, including the parties' negotiations over resolving this dispute; or 3) whether the parties agree that this litigation should continue as anticipated pursuant to the federal rules, local rules or a scheduling order.

October 5, 2020

On October 5, 2020, the parties provided a [joint status report](#) to the court. In the joint status report, DHS stated “[A]lthough DHS formally submitted the proposed rule, titled *Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization* (“H-4 EAD proposed rule”) to both the Office of Management and Budget (“OMB”) and Office of Information and Regulatory Affairs (“OIRA”) for review under Executive Order 12866 on February 20, 2019, this proposed rule is still in the same stage due to urgent competing priorities that have arisen during the COVID-19 pandemic.”

Save Jobs asked to move promptly for summary judgment. Immigration Voice (Intervenors) asked for a stay until after the Presidential election.

November 8, 2019

[The court reversed](#) the U.S. District Court for the District of Columbia’s 2016 grant of summary judgment in favor of DHS, concluding that Save Jobs USA had demonstrated that DHS’s H-4 EAD rule would subject its members to an actual or imminent increase in competition, and that it therefore has standing to pursue its challenge. (*Save Jobs USA v. DHS*, 11/8/19)

September 16, 2019

In a [letter to the court](#), DHS states that,

"The proposed rule is currently undergoing the interagency process as required by Executive Order 12866. As previously indicated, DHS's intention to proceed with publication of the H-4 EAD proposed rule remains unchanged. At this point, **DHS has informed counsel that it believes the earliest possible publication date for that rule would be in spring 2020. Although that timeframe is aspirational**, DHS believes that the September 27, 2019 oral argument should be removed from the calendar and postponed and DHS ordered to provide status updates in accordance with a schedule the Court deems appropriate." (emphasis added)

In a [response to order to show cause](#), Save Jobs USA argued that the appeal should move forward and that the court should hold oral argument as scheduled.

Immigration Voice, Sudarshana Sengupta, and Anuj Dhamija, [submitted a letter](#), arguing that "based on prudential considerations and in the interest of judicial economy the oral argument should be removed from the argument calendar and indefinitely postponed."

March 13, 2019

On March 13, 2019, the D.C. Circuit Court of Appeals [granted the appellee's consent motion for a 14-day enlargement of all parties' briefing deadlines](#). The following revised briefing schedule will now apply in this case:

- Appellee's Brief - April 1, 2019
- Intervenor for Appellee's Brief - April 8, 2019
- Appellant's Reply Brief - April 29, 2019

(*Save Jobs USA v. DHS*, 3/13/19)

January 23 , 2019

On January 23, 2019, the D.C. Circuit Court of Appeals [granted the appellee's motion for an enlargement of all parties' briefing deadlines](#). The following revised briefing schedule will now apply in this case:

- Appellee's Brief – March 18, 2019
- Intervenor for Appellee's Brief – March 25, 2019
- Appellant's Reply Brief – April 15, 2019

(*Save Jobs USA v. DHS*, 1/23/19)

December 17 , 2018

On December 17, 2018, the D.C. Circuit Court of Appeals [granted a motion to intervene](#) that Immigration Voice, a non-profit organization, filed with the court in March 2017. The court also ordered the case to be removed from abeyance and directed the clerk to enter a [briefing schedule](#). The following briefing schedule will apply in this case:

- Appellant's Replacement Brief & Appendix - January 16, 2019
- Appellee's Brief - February 15, 2019
- Intervenor for Appellee's Brief - February 22, 2019
- Appellant's Reply Brief - March 15, 2019

(*Save Jobs USA v. DHS*, 12/17/18)

September 21, 2018

[DHS submitted a status report in the case](#), which is still being held in abeyance. The status report indicates that DHS's intention to proceed with publication of an NPRM concerning the H-4 EAD Rule remains unchanged and that DHS continues to proceed in line with that intention. Since the filing of the status report on 8/20/18, DHS senior leadership has reviewed the proposed rule and returned it to USCIS this month for revisions. When the necessary revisions are incorporated, USCIS will return the proposed rule to DHS for final clearance and submission to OMB. DHS anticipates that the rule will be submitted to OMB within three months. (*Save Jobs USA v. DHS*, 9/21/18)

August 20, 2018

DHS submitted a [status report](#) in the case, which is still being held in abeyance. The status report indicated that final DHS clearance of the proposed rule to remove from regulations certain H-4 spouses of H-1B nonimmigrants as a class of noncitizens eligible for employment authorization is ongoing. Senior levels of DHS leadership are actively considering the terms of the proposed rule for approval. Once it is cleared through DHS, it will be sent to the Office of Management and Budget (OMB) for review. (*Save Jobs USA v. DHS*, 8/20/18)

May 22, 2018

[DHS submitted a status report in the case](#), which is still being held in abeyance. The status report indicated that the proposed rule to remove from regulations certain H-4 spouses of H-1B nonimmigrants as a class of noncitizens eligible for employment authorization is currently in final DHS clearance. Once it is cleared through DHS, it will be sent to the Office of Management and Budget for review. (*Save Jobs USA v. DHS*, 5/22/18)

February 28, 2018

DHS submitted a [status report](#) in the case, which is still being held in abeyance. The status report indicated that DHS intends to publish a Notice of Proposed Rulemaking to remove from its regulations certain H-4 spouses of H-1B nonimmigrants as a class of noncitizens eligible for employment authorization by June 2018. (*Save Jobs USA v. DHS*, 2/28/18)

According to [USCIS data](#), 104,750 H-4 spouses have received employment authorization under the current [H-4 employment authorization rule](#), which was published at 80 FR 10284 on 2/25/15.

November 17, 2017

The D.C. Circuit Court of Appeals [granted the government's motion](#) to hold proceedings in abeyance pending further order of the court and denied the motion to reschedule briefing and oral argument. Parties were directed to file motions to govern further proceedings by January 2, 2018.

September 27, 2017

DHS filed a [motion to hold proceedings in abeyance](#) through December 31, 2017. (*Save Jobs USA v. DHS*, 9/27/17)

September 20, 2017

Save Jobs USA filed a [motion to reschedule briefing and oral argument](#).

June 23, 2017

The D.C. Circuit Court of Appeals [granted the government's motion](#) to hold the proceedings in abeyance and denied the motion to reschedule briefing and oral argument. Parties were directed to file motions to govern further proceedings by September 27, 2017.

April 3, 2017

[The government filed a motion](#) with the D.C. Circuit Court of Appeals requesting that the court hold the proceedings in abeyance for 180 days, up to and including September 27, 2017, to permit DHS to reconsider the H-4 EAD rule and whether it should revise the rule through notice-and-comment rulemaking. (*Save Jobs USA v. DHS*, 4/3/17)

September 27, 2016

[The U.S. District Court for the District of Columbia granted summary judgment](#) in favor of DHS, holding that Save Jobs USA lacked Article III standing to challenge DHS's H-4 EAD rule.

May 24, 2015

[Memorandum opinion denying Save Jobs motion](#), finding that Save Jobs failed to show it would suffer irreparable harm absent preliminary relief.

April 23, 2015

A group of tech workers formed by Americans who were employed at Southern California Edison, filed a [complaint for declaratory and injunctive relief](#) and a [motion for preliminary injunction](#) staying the implementation of [USCIS's final rule on employment authorization for certain H-4 dependent spouses](#).

Related Resources

- [USCIS Final Rule on Employment Authorization for Certain H-4 Dependent Spouses](#)
- [USCIS Started Accepting Applications for Employment Authorization for Certain H-4 Dependent Spouses](#)