

# PUBLICATION

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## All H-4 Spouses Free From Maximum Stays

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**USCIS has made policy that the H-4 spouse and children of H-1B, H-2, and H-3 workers are free from maximum stays separate from the H worker.**

In 2007 USCIS had already ruled that H-4 and L-2 spouses and children of H-1B "specialty occupation" and L-1 multi-national company transferee workers are free from the 6 year total maximum "period of admission" applicable to H-1B workers. Thus, for example, a person who already spent 6 years in H-1B or L status independently and then changed to H-4 status to accompany his or her H-1B spouse could stay in the U.S. for as long as the H-1B worker. The maximum "period of admission" applies only to the worker.

The new USCIS memorandum applies this same "de-coupling" policy to the spouses and children of H-2A agricultural workers, H-2B temporary workers in short supply, and H-3 trainees.

The policy still prohibits workers from "parking" their family members in the U.S. in L-2 or H-4 status while the workers are hardly if ever in the U.S. (as both categories allow unlimited maximum stays for workers who are present in the U.S. less than half the time), since the derivative classifications only allow the family member to "accompany" the worker in the U.S. Family members returning from travel abroad, renewing visas, or requesting extension of stay may need to be prepared to show that the principal worker is spending significant time in the U.S. Ostensibly "parking" family of H-2 or H-3 workers would be discouraged as well, but it is far less likely that an H-2 or H-3 worker would be absent from the U.S. during the shorter periods of stay authorized for those classifications.

### How We Can Help

The Baker Donelson Immigration Group can review the goals and characteristics of the international worker and the U.S. employer to help determine the most advantageous and efficient temporary visa classification to pursue. We inform the clients of the information and documents needed in the least burdensome manner possible, and we prepare and submit the papers necessary to obtain the desired results. We coordinate visa applications and the status of accompanying family members. We coordinate cases of multiple workers for the same employer or sponsor. We strategize for possible permanent residence even as we pursue temporary status. Once the clients are ready (which is sometimes immediately), we prepare papers for permanent residence and manage the sometimes lengthy process to the most expeditious conclusion possible.