Department for Professional Employees, AFL-CIO

July 10, 2014

Laura Dawkins
Chief Regulatory Coordinator
U.S. Citizenship and Immigration Services, DHS
20 Massachusetts Avenue NW
Washington, DC 20529

Re: USCIS-2010-0017

Dear Ms. Dawkins:

On behalf of the 22 national and international unions in the Department for Professional Employees, AFL-CIO (DPE), I am writing to oppose the adoption of the proposed rule, but make two suggested changes in the event DHS moves to adopt the proposed rule. DPE represents over four million professional and technical workers employed in many sectors, including science, engineering, and technology; education and information resources; health care; arts, entertainment, and media; and public administration.

One issue of paramount importance to professional and technical workers is temporary guest worker visas. DPE has been working on high-skilled guest worker visa issues for nearly 20 years. DPE has advocated for comprehensive immigration reform and supported many of the provisions in U.S. Senate Bill S. 744. However, DPE opposes any changes to the H-1B program without comprehensive immigration reform. Granting work authorization to certain H-4 dependent spouses is a reform of the U.S. non-immigration system. This is clear from S. 744, which took up the issue of H-4 dependent spouses working in the "Reforms to Non-Immigrant Visa Programs" chapter.

Reasons for Opposition to the Proposed Rule

DHS should not adopt the proposed rule for two reasons. First, the proposed rule is H-1B reform without comprehensive immigration reform. Piecemeal reforms will make it harder to compel all interested parties to move toward comprehensive reform. Second, based on the comments already submitted by supporters of the proposed rule, the DHS rationale for the proposed rule (encouraging H-1B skilled workers to remain in the U.S.) is not fulfilled by the rule.

1. *The proposed rule is H-1B expansion without comprehensive reform*

DPE strongly opposes the proposed rule because it is H-1B expansion without comprehensive immigration reform. The H-1B visa is badly in need of reform. Well documented abuses of the H-1B visa led the U.S. Senate to include major reforms of the H-1B program in the

comprehensive immigration reform bill that passed on June 27, 2013 (S. 744). Additionally, numerous government and non-partisan evaluations of the H-1B program have found serious deficiencies in the program.[1] These deficiencies damage the integrity of the program and draw strong opposition from U.S. citizens and permanent residents.

As a union coalition that represents the interests of working men and women, DPE urges DHS to take into consideration the concerns of U.S. citizens and permanent residents, especially those in high tech, when assessing the costs and benefits of this rule. Many U.S. workers in high tech recognize that the U.S. government created a non-immigrant visa system with wholly inadequate safeguards for both foreign and domestic workers.

A July 6, 2014 article by the *Associated Press*, "Backlash stirs in US against foreign worker visas," notes the growing frustration with the H-1B visa. Reports of highly qualified Americans being required to train their H-1B replacements are numerous.[2] Many employers find it cost effective to replace American workers with non-immigrants because the wage standards for the H-1B visa are so low that they are insufficient to protect U.S. workers from unscrupulous employers seeking to reduce labor costs by hiring non-immigrants.

Comprehensive reform of the H-1B visa program would be a step toward restoring confidence in U.S. non-immigrant programs. S. 744 would raise wage standards and create new protections for U.S. workers. If the American workforce had trust that the H-1B program was being used to supplement the U.S. workforce and not replace U.S. workers, there would be little opposition to the H-1B visa and H-4 spouses working.

Comprehensive immigration reform will not happen if piecemeal changes to immigration are pursued. DPE is not opposed to H-4 spouses working if the provision is part of comprehensive reform that includes higher wage standards and protections for U.S. workers. Making piecemeal changes to the H-1B program makes it harder to demand comprehensive reform, which is why the H-4 rule should be shelved.

2. The comments to the rule show that the intended purpose of the rule will not be fulfilled

DPE also opposes the proposed rule on the grounds that the purported purpose of the rule is not met, which is evidenced by the comments to the proposed rule. The stated purpose of the

[1] **Ron Hira**, "Bridge to Immigration or Cheap Temporary Labor? The H-1B and L-1 Visa Programs are a Source of Both," Economic Policy Institute, February 17, 2010; **Andrew Sherrill**, "H-1B Visa Program: Multifaceted Challenges Warrant Re-examination of Key Provisions." Testimony before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, House of Representatives. March 31, 2011; **United States Government Accountability Office**, "H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program." Washington, DC: GAO-11-26, January 2011; **David Finegold** "The Modern Indentured Servants." Rutgers University, School of Management and Labor Relations Blog, June 22, 2011, http://smlr.rutgers.edu/modern-indentured-servants.

[2] **Patrick Thibodeau**, "The H-1B visa as a job replacement tool," *ComputerWorld*, April 1, 2009; **Josh Harkinson**, "How H-1B Visas Are Screwing Tech Workers," *Mother Jones*, February 22, 2013; **Ron Hira**, "The H-1B and L-1 Visa Programs: Out of Control," Economic Policy Institute, October 14, 2010.

rule is to "further encourage H-1B skilled workers to remain in the United States…and not abandon their efforts to become lawful permanent residents" and "remove the disincentive for many H-1B families to start the immigrant process due to the lengthy waiting periods associated with acquiring" U.S. citizenship. (Executive Summary, sec. A. para. 1.)

The vast majority of the comments posted on regulations.gov in favor of the proposed rule do not indicate that potential immigrants have abandoned the immigration process because their spouse cannot work or decided against coming to the U.S. because their spouses would not be permitted to work. Comments indicate that it would be beneficial for a variety of reasons if the spouse could work, but the inability of the spouse to work has not influenced the decision to seek lawful permanent residence in the U.S. If the proposed rule does not fulfil its intended purpose, then the rule should not be adopted. DHS will only achieve its intended purpose with comprehensive immigration reform.

Suggested Changes in the Event DHS Moves to Adopt the Rule

In the event DHS moves toward adoption of the rule, DPE recommends two changes to the proposed rule. First, H-4 dependent spouses should be precluded from working for the same employer as his or her spouse because a power imbalance exists between employers and non-immigrants which can be exacerbated if the H-4 and H-1B beneficiary have the same employer. Second, as in S. 744, work authorization for H-4 dependent spouses should be suspended if the native country of the H-4 spouse does not allow similar U.S. spouses to work.

1. *The H-1B beneficiary and H-4 spouse should not have the same employer*

All H-1B employers enjoy a power imbalance when it comes to their temporary labor force. The power imbalance applies even if the employer is sponsoring the H-1B beneficiary for a green card since job termination will mean that the H-1B beneficiary will be required to quickly find another employer willing to sponsor the H-1B and the I-140. Failure to secure new employment will likely force the H-1B beneficiary and accompanying family to leave the U.S.

The power imbalance is created by the employer's ability to fire the H-1B beneficiary, thereby increasing the likelihood that the worker will be forced to leave the country. This power imbalance keeps wages low for most H-1B workers, compels them to work longer hours without additional compensation, and generally keeps them compliant in an effort to keep the employer happy.

DPE is concerned that if spouses are working for the same employer the power imbalance enjoyed by the employer with its H-1B beneficiary will apply to the H-4 spouse as well. The H-4 spouse will be less likely to demand a higher wage, a sane work schedule, or the other benefits for fear that such demands will affect the future employment of the H-1B beneficiary. If the H-4 spouse is not employed by the H-1B beneficiary's employer, then the H-4 spouse will have greater freedom to aggressively negotiate over wages, hours, and working conditions with his or her employer without fear of retribution.

Sponsoring H-1B employers could even require, as a condition of the H-1B beneficiary's employment, that the H-4 spouse also work for the sponsoring employer. This would give unscrupulous employers power over two employees for up to two decades while they wait for green cards. I know this scenario may seem unlikely, but just when I think I have seen and heard it all when it comes to H-1B employers I read about an employer that exploits workers in unthinkable ways to advance the bottom line.

2. *H-4 work authorization should be suspended if the spouse's native country does not permit U.S. spouses to work*

The second suggested change was passed in S. 744 which granted work authorization to H-4 spouses, but allowed for suspension of work authorization if the native country of the H-4 did not allow similar U.S. spouses to work. (S. 744 §4102) For example, India generally does not permit U.S. spouses living in India to work, so Indian spouses in the U.S. would not be permitted to work. The provision in S. 744 was a reasonable proposal as it puts pressure on foreign governments to allow U.S. spouses living abroad to work.

The H-4 provision, which was adopted by the U.S. Senate should be incorporated into the proposed rule. Foreign spouses in the U.S. should not be afforded rights and opportunities that similar U.S. spouses living abroad are denied. These U.S. spouses living abroad face the same hardships and challenges as H-4 spouses living in the U.S. It is worth noting that if this rule is adopted and S. 744 passes, thousands of spouses who received EAD authorization under this proposed rule may no longer be allowed to work.

Conclusion

In summary, DPE urges that DHS not adopt the proposed rule because comprehensive immigration reform is necessary to restore confidence in our non-immigrant and immigrant systems. Piecemeal changes that provide no protections for U.S. and naturalized citizens further weaken the integrity of the H-1B program. If DHS goes forward with the proposed rule, DPE urges that its narrowly focused suggestions that preclude H-1B and H-4 spouses from working for the same employer and make work authorization for the H-4 spouse contingent upon the work authorization status of the H-4's native country be adopted.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Paul E. Almeida
President