

United States Senate

WASHINGTON, DC 20510

September 26, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security

L. Francis Cissna
Director
U.S. Citizenship and Immigration Services

2018 SEP 26 PM 3:18
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Dear Secretary Nielsen and Director Cissna:

In light of representations made by the Department of Homeland Security (DHS) in an August 20, 2018 court filing that senior leadership were “actively considering” terms of a proposal to revoke the employment authorization of certain H-4 dependent spouses of nonimmigrant H-1B workers – the “H-4 rule” – we urge you to reconsider any such proposal.¹ A regulation that would permanently force approximately 100,000 predominantly high-skilled women to abandon their professional careers will harm the wellbeing of these women and their families and have negative consequences for American communities where they live and work.²

The H-4 rule allows women who have relocated to the U.S. with their H-1B spouses to employ their education and professional training as doctors, nurses, scientists, teachers, academics, and technology professionals, amongst other careers. Many of these women work in high-demand, skilled labor fields such as medicine, STEM, and education. They provide critical services to disadvantaged and under-resourced communities. They own businesses that create American jobs.³

¹ Kapoor Aff. at 2, *Save Jobs, USA v. Dep't of Homeland Sec.*, No. 16-5287 (D.C. Cir. March 6, 2017).

² *Id.*; USCIS, *Number of Approved Employment Authorization Documents by Classification and Basis for Eligibility* (Sept. 2018),

<https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-basis-for-eligibility.pdf>.

³ Ethan Baron, “H1-B spouses: bay area tech workers fear they’ll have to leave,” *San Jose Mercury News* (Sept. 14 2018), <https://www.mercurynews.com/2018/09/14/h-1b-spouses-bay-area-tech-workers-fear-theyll-have-to-leave/>; Pavní Mittal, *Thousands of women await visa rule’s uncertain future*, *PBS News Hour* (July 8, 2018), <https://www.pbs.org/newshour/nation/h4-visa-h1b-work-permit-immigration-india>; Parija Kavilanz, *Doctors, teachers and entrepreneurs on visas fear losing their businesses and jobs*, *CNN* (May 9, 2018), <https://money.cnn.com/2018/05/09/news/economy/h4-visa-holders-jobs/index.html>; Henri Gendreau, *These Women Could Lose Their Right to Work in The US*, *Wired Magazine* (March 9, 2018), <https://www.wired.com/story/these-women-could-lose-their-right-to-work-in-the-us>; Katy Long, *Silicon Valley’s reluctant housewives: immigration law bars women from work*, *The Guardian* (May 19, 2016), <https://www.theguardian.com/technology/2016/may/19/silicon-valley-wives-women-visa-immigration-work>.

A revocation of the H-4 rule, in fact, would disproportionately target South Asian women. In 2017, 94 percent of H-4 visa holders with work authorization were women and 93 percent were from India.⁴ Currently, no more than seven percent of approximately 375,000 family and employment-based green cards issued annually can go to nationals from the same country. As a result, over 306,000 Indian applicants and 67,000 Chinese applicants whose applications have been approved are currently in line to receive a green card.⁵ Because of the backlog, H1-B visa holders and dependent H-4 visa holders from certain countries in the U.S. are forced to wait from 12 years to an impossible 150 years to receive green cards.⁶

Rescinding the H-4 rule will result in significant personal hardship to women who will be forced to abandon their professional careers. Preventing women from engaging in employment can lead to isolation, depression, anxiety, feelings of guilt, and a loss of self-worth.⁷ Revoking a wife's ability to work leaves her and her children entirely dependent on her spouse. Increased isolation—coupled with complete financial dependence—can make leaving an abusive relationship dangerous and, in some cases, impossible.⁸

Requiring professional women to give up their careers to keep their families united will cause serious harm to their children, further. Many H-1B families live in higher-cost areas like Silicon Valley or Seattle, where having two incomes is not simply a luxury—it is a necessity.⁹ In such areas, a second income helps parents provide essential resources and opportunities for their children, many of whom are U.S. citizens. In addition, children—particularly young girls—benefit from seeing their mothers pursue and thrive in their chosen careers. Strong, successful, female role models encourage children to set ambitious goals and be more confident in their own abilities.¹⁰ Rescinding the H-4 rule would create a permanent barrier to employment—including self-employment—for these women, reinforcing a harmful stereotype that women do not belong in the workplace and widening the gender equality gap.

⁴ Sarah Pierce and Julia Gelatt, *Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform*, Migration Policy Institute (March 2018), <https://www.migrationpolicy.org/research/evolution-h-1b-latest-trends-program-brink-reform>.

⁵ USCIS, *Count of Approved Petitions as of April 20, 2018* (May 2018), https://www.uscis.gov/sites/default/files/files/nativedocuments/Count_of_Approved_I-140_I-360_and_I-526_Petitions_as_of_April_20_2018_with_a_Priority_Date_On_or_After_May_2018.PDF.

⁶ David Bier, *150-Year Wait for Indian Immigrants With Advanced Degrees*, Cato Institute (June 8, 2018), <https://www.cato.org/blog/150-year-wait-indian-immigrants-advanced-degrees>.

⁷ Jennifer R. Pharr, et al., *The Impact of Unemployment on Mental and Physical Health, Access to Health Care and Health Risk Behaviors*, ISRN Public Health (2012); Katy Long, *Silicon Valley's reluctant housewives: immigration law bars women from work*, The Guardian (May 19, 2016), <https://www.theguardian.com/technology/2016/may/19/silicon-valley-wives-women-visa-immigration-work>.

⁸ See generally Adrienne E. Adams, *Measuring the Effects of Domestic Violence on Women's Financial WellBeing*, Center for Financial Security (2011), <https://centerforfinancialsecurity.files.wordpress.com/2015/04/adams2011.pdf>; The National Network to End Domestic Violence, *Financial Abuse Fact Sheet* (2018), <https://nnedv.org/content/about-financial-abuse/>.

⁹ Vindu Goel, *How Trump's 'Hire American' Order May Affect Tech Worker Visas*, NY Times (April 18, 2017), <https://www.nytimes.com/2017/04/18/technology/h1b-visa-facts-tech-worker.html>.

¹⁰ Penelope Lockwood, *"Someone Like Me Can Be Successful": Do College Students Need Same-Gender Role Models?*, *Psychology of Women Quarterly* (2006).

Independence and equal opportunity are fundamental American values. An action to deprive spousal H-4 visa holders the ability to continue to pursue their professional careers is antithetical to principles this country is built on. We urge you to consider the economic, psychological, and personal harms that rescinding the H-4 rule will cause to more than 100,000 professional women, their families, and their American communities.

We hope that you will reconsider the revocation of the H-4 rule and look forward to your timely response.

Sincerely,



Kamala D. Harris
United States Senator



Kirsten Gillibrand
United States Senator



U.S. Citizenship
and Immigration
Services

October 16, 2018

The Honorable Kamala D. Harris
United States Senate
Washington, DC 20510

Dear Senator Harris:

Thank you for your September 26, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

The Department of Homeland Security (DHS) is committed to safeguarding the integrity of the immigration system and protecting the wages and job opportunities for U.S. workers. In fact, pursuant to Executive Order (E.O.) 13788, *Buy American and Hire American*, DHS is required to “propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of U.S. workers in the administration of our immigration system, including through the prevention of fraud or abuse.” The public will be given an opportunity to provide feedback during a notice and comment period on any proposed revisions to regulations providing employment authorization to certain H-4 nonimmigrants.

Thank you again for your letter and interest in this important issue. Senator Gillibrand, who co-signed your letter, will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the U.S. Citizenship and Immigration Services Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink that reads "L. Francis Cissna".

L. Francis Cissna
Director