Can H-4/F-2 holders perform volunteer work?

Can H-4/F-2 holders perform volunteer work? [1]

Submitted by Chief Editor on Jan 17th 2009

ANSWER:

The following discussion applies to all visas where working is not permitted. Most typical examples of these types of visas are F-2 and H-4. The question often arises whether or not it is legal for such folks to volunteer their time or are they constrained to stay at home.

Quote: Q. May an H-4 (or F-2 type visa) holder volunteer for work to provide charitable service, to gain experience or just to stay busy?
A. Probably yes. The provisions of law noted below are vague and unclear. But it appears as long as you do not receive any money or other remuneration, you should not be considered to be violating any laws. If you do receive any ?in kind? benefits, things get very tricky. Such benefits may be permitted if the H-4/F-2 holder did not ask for the benefits as a condition for volunteering, nor were they offered in exchange for the volunteer work, and if the volunteer would have performed the services regardless of whether he or she were to receive the in-kind benefits. Subsection (f) below defines ?employee? as someone who works for an ?employer? for ?wages or other remuneration.

Subsection (g) defines an ?employer? as an individual or entity who engages the services or labor of an ?employee? for ?wages or other remuneration.?

The problem clause is (h), which states that the term ?employment means any service or labor performed by an employee for an employer within the United States.? This subsection makes no reference to wages or remuneration. So, is it legal to perform volunteer work without receiving any money in any form? My best GUESS is yes. Even though subsection (h) makes no reference to money and contains in its definition ?any service or labor,? such work must be performed by an ?employee,? who by definition (subsection (f)) is someone who works for an ?employer? for ?wages or other remuneration.?

The Regulations

TITLE 8 OF CODE OF FEDERAL REGULATIONS (8 CFR)/8 CFR PART 274a -- CONTROL OF EMPLOYMENT OF ALIENS/Sec. 274a.1 Definitions.

Sec. 274a.1 Definitions.

For the purpose of this part--

(a) The term unauthorized alien means, with respect to employment of an alien at a particular time, that the alien is not at that time either:
(1) Lawfully admitted for permanent residence, or
(2) authorized to be so employed by this Act or by the Attorney General;

(b) The term entity means any legal entity, including but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association;

(c) The term hire means the actual commencement of employment of an employee for wages or other remuneration. For purposes of section 274A(a)(4) of the Act and Sec. 274a.5 of this part, a hire occurs when a person or entity uses a contract, subcontract or exchange entered into, renegotiated or extended after November 6, 1986, to obtain the labor of an alien in the United States, knowing that the alien is an unauthorized alien;
?.

(f) The term employee means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section;

(g) The term employer means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term employer shall mean the independent contractor or contractor and not the person or entity using the contract labor;

(h) The term employment means any service or labor performed by an employee for an employer within the United States, including service or labor performed on a vessel or aircraft that has arrived in the United States and has been inspected, or otherwise included within the provisions of the Anti-Reflagging Act codified at 46 U.S.C. 8704, but not including duties performed by nonimmigrant crewmen defined in sections 101(a)(10) and (a)(15)(D) of the Act. However, employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent;

INS Comments
Back in 1989, INS had commented on the definition of "volunteer" in the context of the employer sanctions provisions of the Immigration Reform and Control Act of 1986 (IRCA).

In an October 10, 1989 letter, Mr. Schroeder speaking on behalf of INS stated that while the INS regulations implementing IRCA define such terms as "employer," "employee" and """employment," they fail to define "volunteer." It is clear, however, that employer sanctions apply only to acts of employment, and referral or recruitment for a fee. The regulations, Mr. Schroeder continued, define an employee as a person employed by another for "wages or other remuneration." Any determination as to whether an individual is an employee or a volunteer is made on a case-by-case basis.

Quoting from a hypothetical presented, Mr. Schroeder stated that an individual on an H-4 visa who does volunteer work for a theatrical group does not appear to fall within the definition of

employee simply because he or she receives free tickets for the group's performances or is permitted to attend at no cost. Mr. Schroeder continued:
Factors that the Service would examine in making such a determination would be that the volunteer work was entered into without any expectation of compensation, that the volunteer did not require the free tickets, nor were they offered, in exchange for the volunteer work, and that the volunteer would have performed the services regardless of whether he or she were to receive free tickets or attend performances at no cost.

Unless the context shows otherwise, all answers here were provided by Rajiv [2] and were compiled and reported by our editorial team from comments and blog on immigration.com [3]

Add new comment [4]

Links:
[1] https://immigration.com/faq/general-nonimmigrant-visa/can-h-4f-2-holders-perform-volunteer-work
[2] http://www.immigration.com/law-offices-rajiv-s-khanna-pc
[3] http://www.immigration.com
[4] https://immigration.com/JavaScript%3Avoid%280%29%3B