



Published on *US Immigration Lawyer, Law Offices of Rajiv S. Khanna, PC, Rajiv S. Khanna* (<https://immigration.com>)

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Submitted by Chief Editor on Jun 3rd 2009

This is regarding my sister who is going through lot of stress due to visa issues. She has been on H4 for past 9 years. Her H1 was approved in 2007 with an employer who wanted to hire when she was doing her MBA from a reputed University here in US. They were even willing to hire her once she is done. 3 months back her husband lost his job and had to go on EAD since (My sister could not do it because she was traveling out of US in 2007 when the window opened). She has decided to go on H1 status. She has to get it stamped outside US as she had lost her H4 status. It has been now more than a month and she is stuck out of US (in UAE). Her employer is a small firm and due to THE bad economy she is very nervous about the future even if she gets H1 B. Here are our questions/ concerns. Please do answer these: 1. If she gets H1 B could her husband still file for Follow to Join. There is no guarantee in this environment it would give her peace of mind if he could. 2. God forbid - If she doesnot get H1B and her husband files for Follow to Join - would she have to stay out side US to do consulate processing?? How much time it takes? 3. Any advise/ suggestions are welcome.

ANSWER:

I am assuming the situation is that the husband's AOS is pending and he is using AC21 portability. That said, she is entitled to follow to join because she was (is) married to him before his green card got approved. There is NO requirement that a spouse must on a derivative visa (like H-4) in order to follow to join. She can follow to join even if she is outside USA, OR on F-1, H-1, L-1 or any independent visa. She will have to stay outside USA if her H-1 is denied, unless he revives his H-1 and brings her back on H-4.

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]

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