

H-1B Change of Employer Issues

When a person is already in the U.S. and is employed while in valid H-1B status, they are allowed to change employers if the new employer files a change of employer petition. Upon the filing of an approvable petition, the person may begin working for the new employer. This scenario, however, has raised some significant questions about maintaining lawful status when plans change.

The following are some common scenarios in the context of an H-1B change of employer petition. Suppose that a person is working for Company A and then Company B files a change of employer petition and they begin working for Company B. Thereafter, they decide that they would like to return to the employ of Company A. What do they need to do to return to the employ of Company A?

The first thing that this person should do is find out if Company A has submitted a revocation request to the U.S. Citizenship and Immigration Services (USCIS). If the petition has not been revoked, then the USCIS will view it as a valid petition. As such, the person can simply transfer back to Company A and resume employment under this valid petition. If the USCIS has already revoked the petition, however, Company A would have to file its own change of employer petition in order to re-employ this person. Again, they can begin working upon the filing of an approvable petition.

The general rule is that approved H-1B petitions remain valid until they either expire or are revoked by the USCIS. Therefore, if the person changes employers upon the filing of an approvable petition, they can then return to the employ of the original company so long as the H-1B petition has not expired or been revoked. This general rule combined with the ability to work upon filing, is extremely useful in situations where there are multiple change of employer petitions pending. Keep in mind, however, that the situation is changed greatly where there is a change of *status* petition involved.

Please note that the above scenarios apply where the H-1B visa holder is simply transferring between H-1B employers. If they are terminated by Company B and then want to return to Company A, Company A would have to file a change of employer petition on their behalf. This is because the termination caused the person to not maintain their status as such calls for employment with an H-1B sponsoring employer. Again, the person could begin working for Company A upon the filing of an H-1B petition by Company A.

For assistance with your H-1B change of employer petition, please contact attorney Myron Morales at info@mmoralespllc.com or visit our website at www.mmoralespllc.com.