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H-1B Portability

Overview

AC21 §105 authorizes foreign nationals in H-1B visa status to switch to new employers. Foreign nationals will not have to wait until their H-1B petitions are approved and may begin the new employment once the new employer has filed the H-1B petitions.

Qualifying criteria

A person in H-1B status may start new employment *immediately* upon the filing of a new H-1B petition by the prospective employer if:

- She or he was lawfully admitted;
- The new petition is “nonfrivolous;”
- The new petition was filed **before** the date of expiration of the period of stay authorized by the Attorney General; and
- Subsequent to such lawful admission the H-1B beneficiary has not been employed without authorization before the filing of such petition.

Filing Procedures

The prospective employer will complete Form I-129, including all of I-129 supplements, file the Labor Condition Application (LCA) and submit the application package to the USCIS Service Center. Upon filing of the new I-129, foreign employees may begin working immediately for the new employer. Foreign employees under the portability provision may be admitted at the border if he or she can establish that: (1) he or she is otherwise admissible, (2) he or she is in possession of a valid unexpired passports and visa, (3) he or she was previously admitted in the H-1B status by presenting the I-94 or I-797 (Notice of Action), and (4) he or she presents current filing receipt notice.

Timeframe

The processing time for Form I-129 is about 3-4 months if the premium processing option is not used, depending on the service center.