EB5 ATTORNEYS

Changing Employers on a Work Visa: Guide

A comprehensive guide from EB5 Attorneys

Changing employers while on a work visa or during the green card process raises immediate immigration questions. The rules depend on the visa category: H 1B workers can transfer to a new employer by filing a new petition; L 1 workers generally cannot transfer; and green card applicants may port their case to a new employer after meeting specific conditions. Acting without understanding the rules risks falling out of status, losing green card priority dates, or triggering unauthorized employment.

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H 1B Employer Transfers

H 1B portability under INA section 214(n) allows an H 1B worker to begin employment with a new employer as soon as the new employer files a non frivolous H 1B petition (Form I 129) on the worker's behalf. The worker does not need to wait for USCIS to approve the new petition before starting work with the new employer. This is one of the most employee friendly provisions in immigration law.

Requirements for H 1B portability: the worker must be in valid H 1B status at the time the new petition is filed (or within the authorized grace period); the new employer must file a complete, non frivolous I 129 petition; and the worker must have been lawfully admitted to the United States. The new employer must obtain a certified Labor Condition Application (LCA) from the Department of Labor before filing the I 129, specifying the wage, work location, and working conditions.

If the new petition is ultimately denied, the worker must stop working for the new employer immediately. If the worker has not returned to the original employer or obtained another valid status, they may be out of status. For this reason, some H 1B workers request premium processing ($2,805 for a 15 business day response) for portability petitions to reduce the risk period.

The 60 day grace period (8 CFR 214.1(l)(2)) provides H 1B workers whose employment ends (through resignation, termination, or completion of the authorized period) up to 60 consecutive days to find a new employer to file a transfer petition, change to another nonimmigrant status, or depart the United States. Employment is not authorized during the grace period unless a new petition with portability is filed.

Impact on the Green Card Process: AC21 Portability

The American Competitiveness in the Twenty First Century Act (AC21), codified at INA section 204(j), allows green card applicants to change employers without losing their application or priority date, provided two conditions are met:

The I 140 (Immigrant Worker Petition) filed by the original employer has been approved; AND the I 485 (Adjustment of Status) has been pending for at least 180 days.

When both conditions are met, the applicant may change to a new job in the "same or similar occupational classification" as the job described in the original PERM labor certification and I 140. The new employer does not need to file a new PERM or I 140; the original approved I 140 supports the I 485 based on AC21 portability.

"Same or similar" is evaluated by comparing the job duties, requirements, and SOC (Standard Occupational Classification) code of the original position to the new position. A software developer moving to a senior software developer role at a different company is typically same or similar. A software developer moving to a marketing manager role is not.

The applicant (or their attorney) should send a letter or supplemental filing to USCIS notifying them of the new employer and confirming that the new job meets the same or similar requirement. While USCIS does not require this notification until the I 485 is being adjudicated, proactive notification avoids surprises at the interview.

If the I 485 has been pending for fewer than 180 days, changing employers before the threshold generally requires the new employer to file a new PERM and I 140, effectively restarting the green card process.

Priority Date Retention After Employer Change

One of the most valuable protections for employment based green card applicants is priority date retention. Under INA section 203(h)(4) (as codified by AC21) and USCIS policy, an approved I 140 retains its priority date even if the petition is later withdrawn by the employer or revoked (with certain exceptions, such as fraud or willful misrepresentation).

This means that if your I 140 has been approved for at least 180 days before the employer withdraws or revokes it, you retain the priority date. A new employer can file a new PERM and I 140, and your priority date from the original I 140 will apply to the new case. This is critical for applicants from countries with long backlogs (India, China), where the priority date determines when a visa number becomes available.

Example: an Indian born EB 2 applicant whose employer filed PERM in 2018 has a 2018 priority date. If that employer later withdraws the I 140 (after it has been approved for 180+ days), the applicant can join a new employer, file a new PERM and I 140 in 2026, and retain the 2018 priority date for Visa Bulletin purposes.

This protection encourages employee mobility by ensuring that workers are not permanently tethered to the employer that originally sponsored their green card.

L 1, O 1, and TN Visa Considerations

L 1 intracompany transferees: L 1 status is employer specific and tied to the qualifying relationship between the U.S. entity and the foreign entity. L 1 workers cannot "transfer" to an unrelated employer. Changing to a new employer requires either: changing to H 1B status (through the regular cap or a cap exempt employer); or having the new employer file a new L 1 petition if the worker qualifies through a different multinational corporate relationship.

O 1 extraordinary ability visa holders: O 1 status is technically employer/agent specific, but changing the sponsoring entity is more flexible than L 1. A new employer or agent can file a new O 1 petition (Form I 129), and the worker can begin employment with the new sponsor upon filing under a portability concept similar to H 1B. The worker must continue to meet the extraordinary ability standard.

TN (USMCA/NAFTA) professionals: TN status is employer specific. Changing employers requires filing a new TN petition (or applying at the border or pre flight inspection for Canadian citizens). There is no portability provision allowing work for the new employer before approval.

E 2 treaty investors: E 2 status is tied to the specific treaty investor enterprise. Changing employers within the same enterprise is generally fine, but transferring to a completely different business requires a new E 2 application.

Practical Steps When Changing Employers

Before changing employers while on a work visa or during the green card process:

Consult an immigration attorney before resigning. The timing of your resignation relative to petition filings, approval dates, and I 485 pendency can determine whether you retain your immigration benefits.

Confirm the new employer's willingness to sponsor. Not all employers are prepared to file H 1B transfers, new PERMs, or support AC21 portability notifications. Discuss immigration sponsorship during the offer negotiation, not after accepting.

Gather copies of all immigration documents from your current employer. Obtain copies of your approved H 1B petition (I 797 approval notice), approved I 140 (if applicable), PERM labor certification (if applicable), and any other immigration filings. You have a legal right to copies of immigration documents that pertain to you.

Time the transition carefully. If your I 485 has been pending for 170 days, waiting 10 more days before resigning ensures AC21 portability protection. If your I 140 has been approved for 175 days, waiting 5 more days ensures priority date retention.

Maintain continuous lawful status. Use the 60 day grace period if needed, but file the new employer's petition as quickly as possible. Gaps in status can create complications for future immigration applications.

Frequently Asked Questions

1. Can I start working for a new employer before my H 1B transfer is approved?

Yes. Under INA section 214(n), you may begin working for the new employer as soon as the new H 1B petition is filed, provided you are in valid H 1B status at the time of filing. You do not need to wait for USCIS approval. However, if the petition is ultimately denied, you must stop working for the new employer immediately.

2. What happens to my green card case if I change employers?

It depends on the stage of processing. If your I 140 has been approved and your I 485 has been pending for 180+ days, you can change employers under AC21 portability without losing your case or priority date. If you have not yet met these conditions, changing employers typically requires the new employer to restart the PERM and I 140 process. Your priority date from the original I 140 may still be retained if it was approved for at least 180 days.

3. What does same or similar occupational classification mean?

Under AC21 portability, the new job must be in the same or similar occupational classification as the one described in the original PERM and I 140. USCIS compares the job duties, educational requirements, experience requirements, and SOC code. The positions do not need to be identical, but they must be substantially similar. A software engineer moving to a senior software engineer role at a new company is typically acceptable. A software engineer moving to a product manager role may not qualify.

4. I was laid off. How long do I have to find a new sponsor?

H 1B workers have a 60 day grace period (or until the end of their authorized validity period, whichever is shorter) after employment ends to find a new employer to file a transfer petition, change to another nonimmigrant status, or depart the United States. You are not authorized to work during the grace period unless a new petition with portability is filed. If you cannot find a new sponsor within 60 days, you must depart or risk accruing unlawful presence.

5. Can my former employer revoke my I 140 after I leave?

Yes, an employer can withdraw an I 140 petition at any time. However, if the I 140 was approved for at least 180 days before the withdrawal, you retain the priority date and the I 140 remains valid for immigration purposes. If the I 140 was approved for fewer than 180 days when withdrawn, USCIS will revoke the approval, and you may lose the priority date and need to restart the process with a new employer.

6. Do I need to notify USCIS when I change employers under AC21?

> USCIS does not require a formal notification at the time of the job change, but it is strongly recommended. Filing a supplement J to Form I 485 (or a letter from the new employer and the applicant's attorney) notifies USCIS of the new employment and provides documentation that the new position meets the same or similar requirement. If you do not notify USCIS proactively, you will need to provide this information if called for an I 485 interview or if USCIS issues an RFE.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

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