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Considerations for AC21 job portability

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Submitted by Editor on Mar 30th 2015

ANSWER:

See clip from Attorney Rajiv S. Khanna's conference call video that addresses this question.

<https://youtu.be/GtOqgggEG6I?t=242>^[2]

FAQ Transcript

Very important issue is Job portability. Today the way it works is an AC 21 portability was basically enacted by Congress back in October 2000 under a law called American Competitiveness in the 21st Century Act, the kind of abbreviation or acronym for AC21. What does it mean? If you're I-140 is approved and your I-485 is pending whether it was filed with the I-140 or after I-140 approval. If it has been pending 180 days, you may change employers to any same or similar job anywhere in the United States and you will not have to do your Green Card again. So basically you can port your job over as long as it is same or similar. Tricky problem, what is same or similar? No one knows. If you are a software engineer and you remain as software engineer in the next job then same or similar. If you are a software engineer and you become IT manager in next job then not sure same or similar job.

This is where Obama steps in and he says look I will make it clear for the record that natural progression in a job does not take away from being a job same or similar that's the first thing President Obama wants to do and hopefully they will implement really quickly. So, natural progression is considered to be same or similar. Second thing President Obama wants to do is to let you file I-485 without the priority date becoming current. So that means you will earn a right for AC-21 almost a year- year and half, two years into your Green Card process which is very good. Right now if you are India born or China born you could have to wait minimum years to earn that right. So that's in a nut shell what AC-21 is.

Further down somebody was asking a question today: Do we have to inform USCIS?

Interesting thing is that there really is no formal process for implementing in AC-21 transfer over, job portability. Basically, you are not required to file a letter but we usually have employees, people, individual in that situation, file a letter and inform USCIS. Because USCIS is prone to making mistakes, sometimes if the old employer revokes your I-140, if you are an AC-21 eligible individual it does not make any difference if the employer revokes the I-140 as long as you cross the 180 days deadline. Even if they revoke you are entitled to AC-21. But the problem is USCIS sometimes is not aware of the new laws especially the less trained officers. They could revoke your I-485 and send you notice. Next thing is you are running around and trying to solve this problem and if the AC-21 is revoked you are immediately unlawfully present, you cannot work and work is debatable. Let's just say you are unlawfully present, it's

just a whole lot of mess that should be avoided and that's why I also advice people to keep their H-1 active. So AC-21 letter should be sent.

Another question asked is should I hire a lawyer?

Please do not do this yourself, many things I OK with people doing by themselves you may be ok and you may be get through it. But this is not worth taking chance as downside is too terrible so get a lawyer don't do it by yourself.

Now the question before me

My I-485 (based on EB-1B) is pending more than 180 days. If I decide to change jobs under AC 21 rule -

1. Does the new job description be same as by definition of Eb-1B or should it match my current job description based on which I applied for GC in EB-1B?

Answer: Current job description. If you are trying to take advantage of EB-1 portability or AC-21 portability your job description should be same or similar in relation to job description is already being filed.

2. Do you advise to change using EAD or transferring H1-B?

Answer: I told you H-1 is better; keep your H-1B alive.

3. Based on your experience, will you advise to change jobs under AC 21 or stay in the present job until GC is approved?

Answer: Yes if you have good opportunity. We have done thousands of AC-21 in last few years and we never had an issue as long as job is same or similar you should be fine.

Nonimmigrant Visas:

[H-1 Visa](#) [3]

[H-1 Visa](#) [3]

Green Card:

[AC21 AOS Portability](#) [4]

[EB1 Green Card](#) [5]

[Form I-485](#) [6]

[EB1 Green Card](#) [5]

[Form I-485](#) [6]

[AC21 AOS Portability](#) [4]

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Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [8] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [9]

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Links:

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