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GC future job; H-1 ext. revocation upon 140 denial, etc

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Submitted by Chief Editor on Apr 6th 2009

I have just been accepted into a residency program here at a university. I am currently working in the same department as a clinical research associate on H1B since april 2006, they have applied for my permanent residency in EB-2 for the same position and I am on 7th year H1B valid till nov 2009. My I-140 is in process and I have responded to RFE on oct 16th and have not got any reply so far. Priority date is oct 2007. The residency starts in july I think I can continue on H1B till my I-140 is pending and since my green card process is in the same department they have assured me that they will not withdraw my I-140 and that I'll come back and work in the position of research associate after my residency(4years). Please let me know if this is legally possible as they have the intent to hire and I have the intent to join them when green card is approved.

ANSWER:

Ans. Yes. As long as the employer has the intention of keeping the job open for you and you have the intention to join them, the green card process can continue.

Quote: If by any chance they say that I can do it, does it involve just an amendment to my H1b or will it be a fresh H1b? My job responsibilities will change and \$8000 change in salary only.(from Research Associate to resident). If yes, can I join residency before the amendment is approved? I heard that INS should receive the petition before the join date and I am fine.

Ans. The petition would need to be amended/extended and you can start residency any time after filing the amendment.

Quote: Worst case scenario my I -140 get?s rejected what are my options to start residency in july? I remember last time you told me that my current H1b will not be revoked, so I can continue for residency till nov 2009 , but what after that?

Ans. I have considered the question of revocation of existing H-1 if the 140 etc is denied. As I see the law, USCIS COULD, some day, start revoking these H-1 extensions already given. Currently, they do not. After Nov 2009, you can still get extensions of H-1 based upon your pending GC. Remember also that if I-140 is rejected, it can be refiled/appealed. You are

entitled to H extensions while the refiling/appeal is pending.

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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