

H-1 - how to revert to old employer

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Submitted by Chief Editor on Oct 16th 2008

My friend was working for Company A and he shifted to Company B, three months back filing a new H1B, But his employer got a 6 page H1B query list, his employer is not revealing the query and is not in a position to respond. Couple of questions, Can I switch back to Company A. 1. Does he need to file with DOL (or) USCIS that I am switching back to company A 2. If his H1B with company B is not approved, will it be a problem that I worked Company B for 3 months and has taken the pay? Other Question is, Company A send a letter to INS saying that he is not working with Company any more (Company A employer is telling that he did not revoke the H1B but send a normal letter to INS), Can he still switch back to Company A??? If he can not join back Company A, Can he file a new H1B with another company, knowing the fact that he has a query on his H1B with Company B.

ANSWER:

In my view, he cannot go back to company A without taking some additional steps.

Here, company A has revoked the H-1 (all that takes is a letter), they will need to reapply the H-1 and he should get a new visa stamp. He can also get an H-1 through another employer but will most probably need a visa stamp before he can start work. The existing query (RFE) should not normally interfere with any future applications unless the RFE contains some allegations of fraud or lack of qualifications related to your friend.

Hypothetically speaking and for the information of those of you who have a similar issue: if Company A had not withdrawn his H-1, he could have gone outside USA, applied for a new H-1 visa based upon the approval of H-1 by Company A. The consulate may have told him his visa is still valid and he would not need another. I would advise that such an applicant will need to inform them that they had worked after filing an H-1 transfer but now wishes to go back to old employer. Under the circumstances, having been technically out of status, they may need a new visa stamp. If the consulate says he does not need a new stamp (in fact he does), then there is no problem in reentering USA on the old stamp and starting work with A.

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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