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PD Can Be Carried Forward Even If Old I-140 Is Revoked (Unless Fraud or Misrepresentation) 5 November 2015

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Submitted by Rajiv S. Khanna on May 26th 2012

This entry is now old law. The new law is at <http://www.immigration.com/blogs/i-140-ead-regulations-effective-17-janu...> ^[2]

5 November 2015: After some flip flops, USCIS has gone back to allowing carry forward of priority dates even if I-140 is revoked by employer - as described in this discussion. So, we are good for now.

Hello, everyone. This is Rajiv S. Khanna for immigration.com, the Law Offices of Rajiv S. Khanna, P.C.

I am very pleased to report this morning that I saw a news report from USCIS Nebraska Service Center teleconference on April 12, 2012, that clarified you can carry forward the Priority Date from one I-140 approval to another I-140 approval for another employer, even if the old employer revokes the I-140. USCIS has flip-flopped on this issue several times.

Let me first bring you to the news. Right here it says. If you look at the question number two. The answer is, both centers adhere to retaining the earlier priority date, unless the I-140 was revoked for fraud or willful misrepresentation. So the idea here is this: even if you go from Employer A to Employer B, and Employer A revokes the I-140 approval, the Priority Date is yours to carry forward to any employer you like--B,C,D,E--

unless the employer A's I-140 was revoked for fraud or misrepresentation.

The history of this interpretation is strange. A few years ago, this was the position. USCIS always said you can carry the Priority Date forward. A couple of years ago, they started saying, "No, you cannot." We had several cases in which they raised this issue, so anybody who has had this issue decided against them can actually go back and file a motion to reopen/reconsider. I advise you to think about this very carefully. You could actually go back and ask USCIS for the Priority Date to be carried forward if they had earlier denied it. There's a whole lot of people who went through this. File a motion to reconsider. Then USCIS started saying, "Well, you cannot do it."

Now they are back to their old, very good interpretation, which is in line with Congressional intention for AC-21, where Congress wanted to create room for people to leave their jobs and move on to other jobs because Green Cards were taking so long. So Congress said, "We'll put in AC-21." That will make it easier for employees to change jobs without losing their Green Card benefits.

This is excellent news, folks. Once again, I am summarizing it for you. You can carry your Priority Date forward, even if the old I-140 is revoked, unless the I-140 is revoked for some fraud or some willful misinterpretation.

One more thing I wanted to add. This is not good for H-1. Don't think that if the I-140 is revoked, you can still use it for H-1 extensions. You cannot. If you want H-1 extensions beyond six years, you've got to have something else going. You cannot rely on the revoked I-140.

That's all I have to say on this issue. I will speak with you folks soon.

Thank you for listening.

Green Card:

[Form I-140](#) ^[3]

[Priority Date](#) ^[4]

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Links:

[1] <https://immigration.com/blog/form-i-140-priority-date/pd-can-be-carried-forward-even-if-old-i-140-revoked-unless-fraud-or>

[2] <http://www.immigration.com/blogs/i-140-ead-regulations-effective-17-january-2017>

[3] <https://immigration.com/greencard/green-card/form-i-140>

[4] <https://immigration.com/greencard/green-card/priority-date>