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# I-140 Revoked after AC21 Portability

## I-140 Revoked after AC21 Portability <sup>[1]</sup>

Submitted by Chief Editor on Jan 7th 2015

### **ANSWER:**

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

[https://www.youtube.com/watch?v=LK\\_Y0Vma0Mk#t=452](https://www.youtube.com/watch?v=LK_Y0Vma0Mk#t=452)<sup>[2]</sup>

### **ANSWER TRANSCRIPT**

First of all a company does not file labor or I-140. They are not going to do green cards.

Now Kurapati actually does not stand for this. Let me explain to you what happens. First of all I-140 can be revoked by the USCIS for fraud at any time. In addition they can also revoke an I-140 where it was not approvable when filed. So if it was incorrectly approved it can also be revoked. If it does get revoked unfortunately USCIS reading of the law is it gives you no portability right and it gives you no right to priority date. I think that's a question because if they revoke an I-140 after they have approved it I can still argue for the priority date if the revocation was not for a fraud. Although I think I would probably lose that argument. So in any case right now the rule is that if they revoke a case either for fraud or for not having been approvable when filed you get nothing out of it. You cannot get the priority date, you cannot get anything. The problem is what do you do? Can you file an appeal and while the appeal is pending keep getting H-1B extensions and the answer is doubtful unless the old employer wants to file the appeal.

About five years ago we had a series of cases like this where a company went under - couple of hundred employees was put under the street. We were able to file appeals on behalf of the employees using the Kurapati logic. What is the Kurapati logic? That's the case in which the 11th circuit this year decided that even employees have the right to fight an I-140 revocation. So in our view we always took the position that especially where AC21 rights are involved employees have a clear actionable plan to the I-140. So it's not only the employer but even the employee who should be allowed to file the appeal.

### **What can you do?**

In my view the best thing to do is leave this employer and find another employer who is willing to start your green card process because if this green card can go away really you need to

have a backup plan. That is the only thing I can recommend.

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### **Green Card:**

[AC21 AOS Portability](#) <sup>[4]</sup>

[Form I-140](#) <sup>[5]</sup>

[Form I-140](#) <sup>[5]</sup>

[AC21 AOS Portability](#) <sup>[4]</sup>

**Unless the context shows otherwise, all answers here were provided by [Rajiv](#) <sup>[6]</sup> and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) <sup>[7]</sup>**

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### **Links:**

[1] <https://immigration.com/faq/ac21-aos-portability-form-i-140-ac21-aos-portability-form-i-140/i-140-revoked-after-ac21>

[2] [https://www.youtube.com/watch?v=LK\\_Y0Vma0Mk#t=452](https://www.youtube.com/watch?v=LK_Y0Vma0Mk#t=452)

[3] <http://www.immigration.com/faq#sthash.DTqPrkHp.dpuf>

[4] <https://immigration.com/greencard/green-card/adjustment-status/ac21-aos-portability>

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

[6] <http://www.immigration.com/law-offices-rajiv-s-khanna-pc>

[7] <http://www.immigration.com>

[8] <https://immigration.com/JavaScript%3Avoid%280%29%3B>