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Green card through two employers and future employer

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Submitted by Chief Editor on Mar 16th 2015

I am in a very difficult/complex situation, the situation is as below:

Have been on H-1 for 3 + 3 + 3 + 1 years (last 4 years extended based on approved I140).

Have approved I-140 with priority date of June 2010 in EB-2 category. H-1 extension was denied last year hence had to leave employer A, now I am on H-4 and will be soon filing H-1 with employer B. I have following questions on which I am requesting your opinion.

Q1. When my priority date becomes current and if I am still with employer B, can employer A still file my I-485 and that way I can then get the EAD and join him on EAD? :

Q2. Further, do I have to be working with employer A on an active H-1 visa to be eligible to file EAD when my priority date becomes current? :

Q3. If question 1 approach works, can I then continue to work with employer B and employer A can process my green card in parallel. :

Q4. What are the risks in working for employer B when my I140 is with employer A. Note that employer A is willing to preserve my I-140 and process green card eventually without me working for him, because he is unable to find me any projects? :

Q5. I do plan to file for a new GC with employer B but worry is the priority date is likely to become current before I complete GC process with B. :

Q6. Do I need to be with employer A for my wife to apply H-4 EAD based on my I-140 with A (note that currently I am with employer B).

ANSWER:

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

<https://www.youtube.com/watch?v=baprYGs8lzQ&t=893> ^[2]

FAQ Transcript

Answer to Q1. In other words you have the intention to join both of them but you haven't chosen yet and I think that's quite OK as long as that intention remains and the employer's intention remains to hire you at the present date or future date you can file a green card or even an I-485 that's perfectly permissible. Actually you don't have to join them on EAD you can join them after the green card is approved as long as you have the intention to join

them the green card can go forward.

Answer to Q2. No you do not.

Answer to Q 3. The answer is yes

Answer to Q 4. The problem is USCIS can always question this arrangement from a common sense perspective. This type of situation has not been questioned very frequently. In my entire twenty plus years of practice of immigration law I have had only one instance out of Chicago where this issue was raised and questioned. We get a kick back from USCIS saying well you know if he wants to work permanently for this employer why is he working for the other one why did he leave and we had a very good answer. In fact being paranoid we had prepared for that and made sure we knew what the reason was and it was genuine. This company was specialized in JD Edwards ERP and JD Edwards had lost a lot of market share so the individual in question the green card employee was a senior technical person and he went to get experience in other types of ERP. He looked at SAP and he was doing work in oracle finances and applications. He was learning all these technologies and the idea was he would be able to bring it back to the employer and they would be able to expand their ERP offerings and we were able to get that green card approved without any problem. So even though he was working for another employer the prior employer got his green card approved and once the green card was approved he joined. By the way under AC21 once the I-485 has been pending 180 days you can file an AC21 without joining the prior employer. The intent to join has to remain active in your own mind till 180 days or I-485 pendency has passed.

Answer to Q 5. I think that's OK.

Answer to Q 6. No because the government has made it clear we just want one active I-140 we don't care which employer it has been approved with.

Nonimmigrant Visas:

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

Green Card:

[Employment Based Green Cards](#) [4]

[EB2 Green Card](#) [5]

[Form I-140](#) [6]

[Form I-485](#) [7]

Immigration Law :

[EAD](#) [8]

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [9] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [10]

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