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Changing Employers Before 180 days of I-485 Pendency

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Submitted by Rajiv S. Khanna on Jan 9th 2020

One of the biggest problems in transactions with the USCIS is uncertainty and inconsistency. We are often confronted with decisions that are contrary to long-standing policy and may even be illegal.

One such decision recently arose in an adjustment of status case where the beneficiary (employee) had moved from one job to another after the approval of the I 140 but before I 485 had been pending 180 days. The USCIS interviewed this gentleman and proceeded to issue a notice of intent to deny based upon a finding that he had no intention to stay with the green card sponsoring employer as is evident from him leaving before the 180 days of pendency of the I 485 were reached.

This decision is against long-standing policy.

USCIS has never required that an employee must stay with an employer for 180 days after filing the I 485. The requirement has always been that once the I -85 pendency of 180 days is crossed, USCIS does not question the motives of an employee. This case seems to be headed to the courts.

The lesson to be learned from this unreasonable attempted denial is to examine very carefully what an employee's state of mind is on the date the I-485 is filed. If indeed, there was no intention to leave the employment on that date, I think the USCIS will be defeated in the courts every time. If on the other hand, an employee had already decided that they would leave before 180 days of I-485 pendency, the government could argue with perhaps some rationality for their denial. Albeit, in my view, that is also a poor ground of denial and should not be sustained. Another variable that can be helpful to the employee is if the employee is willing to continue the job, but the employer has withdrawn the job offer or the circumstances are such that the job no longer exists.

In view of all these fuzzy and confusing considerations, it is important that we discuss this matter in detail before adjustment of status interview and be prepared to respond to the government truthfully and with full knowledge of the law..

Green Card:

[Adjustment of Status](#) ^[2]

[AC21 AOS Portability](#) ^[3]

[Form I-485](#) ^[4]

Comments

Daya Shankar replied on Jan 10th 2020 [Permalink](#) ^[5]

Is it safe to change jobs? ^[5]

Rajiv sir, are you saying we should not change jobs before 180 days? What happened in the case you gave as an example? Thanks a lot and happy new year.

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