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RFE after the I-140 was approved

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Submitted by Chief Editor on Jul 14th 2009

1. One of my friend had his 140 approved in 2005. He has his 485 pending since 2005. now he got RFE which essentially says that 140 was approved in error and asks for ability pay proof. Can USCIS go back and raise RFE's in this manner? 2. If yes then would he have been better if he had changed the job using AC21 ? My impression was that Once one is eligible for ac21(180 days past 485) , RFE's related to old employer should not come. seeing this , using AC21 seems very risky. what happens if someone changes job and then USCIS says that 140 approved was in error , and asks for bunch of proof from the old company. what is your take?

ANSWER:

1. There is some legal argument for saying no, but in my opinion, USCIS can do this. In fact, I think there is a 9th circuit case from last week that says they can.

2. My take is AC21 would be a better idea, although, not fool proof.

I detest this current trend of USCIS of over-scrutinizing every case and making impossible demands while operating in an environment of regulation by memorandum. I could share some horror stories with you.

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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