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Working Outside USA While in GC or H-1 Process

Submitted by Rajiv S. Khanna on Apr 17th 2012

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Transcript: Working Outside USA While in Green Card or H-1 Process

April 17, 2012

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

I have in front of me a couple of questions from two different people. They're related so I thought I would club them together. The basic idea is this:

Can I, as an H-1 holder or as Green Card pending status individual, work outside USA instead of being inside USA?

I am just going to do a quick talk on the implications of a person working outside USA while he or she is an H-1 or a Green Card applicant.

The first question relates to somebody who has an EB-3 Green Card pending. As you know, that's a decade-long wait. So, people have to make some plans about their lives.

So this gentleman says, actually, he's one of our clients, both myself and my wife are working on EAD and traveling on Advanced Parole. So they have got an I-485 pending but they are EB-3. He is the primary. She is the dependent. The wife wants to move to India for longer than one year and is planning to come back before her EAD gets expired.

First of all, is this okay? Yes, of course. As long your Advanced Parole is alive, EAD doesn't matter if you are working outside USA with I-485 pending. Only thing we care about is your Advanced Parole or your H-1 visa. Under the circumstances, I would recommend Advanced Parole. Keep it active. Keep it alive. For a derivative, there is absolutely no problem if they are working outside USA. If you are the primary applicant for an I-485, things could be a little different. Now, what happens is that there's a decision tree.

You can have two situations. One, you are still working for your Green Card sponsoring employer, but you're working outside USA. The second situation is you're working outside USA for somebody other than your sponsoring employer. What happens then? There is

nothing illegal about it. Both of these situations are allowed. But there is a common sense rule here. The government could say, "Why is it if you have a permanent job in USA, your sponsoring employer can get the job done without you?" Now, there could be many reasons for this. One of the reasons could be the nature of the job is such that could be done anywhere for the time being. So the employer is willing to accommodate you. But, whatever the reasons are, be prepared to be sensitive to that question. Is there really a job? They can ask you that. The idea is that you could be working from anywhere. That is not the main issue here. The most important thing here is that there should be a good explanation that you have a job in USA that is ready and open for you.

One of the issues here is keep in mind that certain technologies don't allow people from outside USA to work. Most people don't know that. I think there is some restriction, for example, on encryption technology. I think certain encryption technology is considered weapons grade. Just look into that.

Otherwise, just ordinary commercial jobs, ordinary software development, ordinary financial consulting, can be done from anywhere. That is not an issue. Remember whether or not you have proper work authorization in USA. This is very important to also keep in mind. For example, if you are working from, for example, India, it is not required that you have proper work authorization in USA. I don't care if you have an EAD. That's perfectly legal. You are working on Indian soil, not on American soil. I don't care if you have an EAD. I don't care if you have an H-1. And that will bring me to my next question in a minute or two.

It also does not matter whether you come to USA periodically or not, as long as the job is alive and well and waiting for you, you should be okay. For the primary and the derivative. For the derivative, it is absolutely no problem. Her job is not implicated at all. She can work from anywhere. But, for the primary applicant, this idea that job is still there and waiting has to be kept in mind. And don't make things up, guys. We've to be truthful about this.

The same situation for H-1 people. I've got people who go to India or go to their home countries and get stuck in long, long adversarial processes that go on to three months, four months, five months, six months. What should they do? If you can get your job outsourced and you can work from your home country while the H-1 process is going on, it's absolutely no problem. You can continue working. Now there can be tax aspects that you've got to figure out with your CPA's. How do you get paid? Where do you pay taxes? Things like that. But those are tax issues and they can be figured out. People do it all the time. In fact, our own office has a couple of employees from other countries. I don't think that's a problem. That can be worked out.

The more important question--What is the impact on my H-1?

For example, I am outside USA for more than one year. What happens to your H-1 is that, after one year outside USA, you can reset the clock and have six years of H-1 all over again, or you can go with something like a remainder option. It's called the remainder option. I'll explain the rule in a minute. The idea here is this. If you are outside USA for more than one year, you get six years of H-1 back, but then you are subject to the H-1 quota. If you're outside, good news is six years back. Bad news is quota. If you don't want to be subject to the quota, you have to give up your right to six years of H-1 and take whatever is remaining in your H-1 six years initially. That's called the remainder option. Those are the choices you have. There is nothing wrong in working outside USA.

Bear in mind these principals. If a primary applicant, make sure there's a job available. If a derivative on an I-485, work from anywhere. No problem. If on H-1, you can outsource the job. You can work from anywhere in the world. Doesn't matter where you are. The only thing is, at some point, if it's more than one year outside USA, you have to make a choice of either a remainder or resetting the clock and being subject to the quota.

I hope that explains things adequately, guys. As always, it's good talking with you. I will speak with you folks soon.

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