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More questions on AC21, EAD, losing job, etc.

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Submitted by Rajiv S. Khanna on Nov 5th 2009

Here is a series of questions that should be relevant for many people:

I've been having a whole lot of sleepless nights trying to ascertain facts from fiction relating to AOS, job change, job loss etc. I have poured through your blogs and posts and have the following questions.

Situation: On 5th year of H1. Single employer till date from day one of H1. Same employer has sponsored GC applications, I-140 approved, I-485 filed in Aug-07, EAD and AP approved and successfully renewed.

1. What is the real value of CIS issuing EADs to people like me?

a. Does this allow me in addition to the current job I have, take up 'any' other job using EAD?

Yes.

b. Does having an EAD permit me to work multiple jobs?

Yes, but you will then lose H-1 status (which can be revived by reentering USA using an H-1 visa during the life of your H-1 and taking up single-employer job with the H-1 sponsoring employer ' not a difficult task, usually).

2. If due to economic situation my employer (who has sponsored GC) has to lay off people and I am let go:

a. Am I out of status? Reading through your blogs I understand that since I-485 is pending, one is NOT out of status even if NOT working is this correct?

Correct. You are in authorized period of stay. That has been explained in my blog.

b. How long can one stay without working (no job) while I-485 is pending? Will not working be seen as 'abandoning the GC application'?

You can stay as long as CIS does not send an RFE or a Notice of Intent to Deny requiring you to prove similar, alternate employment (AC21 portability also explained in detail on my blog).

c. Do we have to let CIS know that one has been laid off? If we have to do this wouldn't CIS see that the job for which GC is being processed is no longer available and immediately terminate the I-485 application?

There is no such obligation for the employee. If the employer informs CIS, they should send (eventually) an NOID requiring proof of employment see the answer above.

d. Do I lose EAD and AP?

No.

e. My wife is working using her EAD will she lose her EAD?

No.

f. Is it possible to invoke EAD and take up similar job if one can be found? Is there a time period within which this has to be done?

I am not sure I understand, but there is no deadline unless an RFE or an NOID is issued.

g. Is it possible to invoke EAD and take up 'any' job if a 'similar' job is unavailable? If this route is chosen I understand that Labor Certification & I-140 may have to be re-applied, but would the priority date remain where it was originally (as obtained in original GC application) OR would priority date change to the date when new I-140 is filed?

Since your I-140 is approved and I-485 has been pending over 180 days, you are entitled by law to change jobs to a similar position with any employer. And you do not have to start your green card all over again. This is referred to as AC21 portability discussed in exhaustive detail on my blog. But if the jobs are not similar, you can only carry forward the PD and have start your GC all over again. Make sure you maintain H-1 status.

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