

THE LAW OFFICE OF SHEELA MURTHY, P. C.

U.S. IMMIGRATION LAW

10451 Mill Run Circle, Suite 100
Owings Mills, Maryland, 21117-5594, USA

Tel: 410-356-5440 | Fax: 410-356-5669
Email: law@murthy.com | Website: www.murthy.com

February 12, 2002

Mr. Efren Hernandez,
Director, Business and Trade Services Branch
Immigration and Naturalization Service
Office of Adjudications
425 I Street, NW
Washington, D.C. 20536

Re: Utilization of "Dormant" H-1B Approvals

Dear Mr. Hernandez:

We are writing to obtain clarification regarding the Service's position with respect to the following issue affecting H-1B workers. Some H-1B workers have multiple petition approvals. We have received a number of inquiries regarding the ability to maintain status by returning to work for a prior employer with a valid petition approval and I-94 or initiating employment based upon a petition and I-94 that were approved quite some time previous to the employment.

Specifically, the first scenario is as follows. H-1B worker works for company A for a year and a half, pursuant to a valid H-1 petition and valid status. The petition is valid for three years, as is the I-94. Thereafter, the worker changes employment to company B, pursuant to a new H-1 petition, which is approved. He works for company B for six months. After the six months, he wants to go back to company A. One year remains on the company A petition and I-94.

With respect to this, we would like to know the following, of course always based upon employment during a time period when the petitions in question and I-94s are valid:

1. Does the return to company A place the individual in lawful immigration status?
2. Does the answer change if there is a period of unemployment between the work for company B and the return to company A?

The second, related scenario is as follows. H-1 worker has petitions and I-94s approved through company A and company B; they each run concurrently for three years. The H-1B worker works for company A for 2 years and wants to take up employment with company B. The questions for this scenario remain the same:

1. Does the move to company B maintain the individual's status?
2. Does the answer change if there is a period of unemployment between the work for A and starting work for B?

We are aware that the Service addressed this matter in 1993, and indicated that an H-1 worker could take up employment and continue status on old, "dormant"

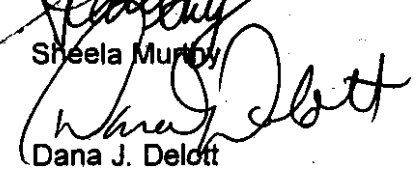
petitions. Since that time, the Department of Labor issued regulations and interpretations indicating that the employer in such a case will be liable for back pay throughout the validity of the petition. Since it is highly unlikely that employers will be willing to pay back pay in these scenarios, unless specifically fined by the DOL, we are wondering whether the INS interpretation of this matter is in any way impacted by the DOL regulations, or has changed in any way over time.

We appreciate your guidance on this matter.

Very truly yours,



Sheela Murphy



Dana J. Delott