

AC-21 AND H-1B PORTABILITY

Under a law called the American Competitiveness in the 21st Century Act of 2000 ("AC-21"), individuals originally authorized to perform H-1B employment with one employer are permitted to commence H-1B employment with a new employer upon the filing (not approval) of new petition if:

- (A) they were lawfully admitted into the United States;
- (B) their employer filed a nonfrivolous H-1B petition for new employment before the expiration date of their authorized period of stay; and
- (C) subsequent to their lawful admission and before the filing of such petition, they were not employed without authorization in the United States.

USCIS has provided guidance in the context of the USCIS Employer Handbook (M-274) which provides employers instructions on the completion of the Forms I-9. This handbook is available at: <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/70-evidence-of-employment-authorization-for-certain-categories/75-h-1b-specialty-occupations>.

Please do note that if/when the H-1B visa petition is approved, the employer will need to re-verify the Form I-9 to capture the H-1B approval information. If the petition is denied, the individual must stop his/her employment with the company immediately. Corporate clients desiring legal advice on particular I-9 situations may wish to contact Jackson & Hertogs.