

PUBLICATION

DOS on Corporate Restructuring

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January 25, 2002

No new H-1B petition needed for restructuring company

A law enacted in 2000 allowed H-1B professionals to keep working for an employer whose ownership was restructured through merger, acquisition or consolidation, without the employer having to file an amended petition. This provision, as interpreted by INS and DOL since enactment, has been quite helpful in reducing the stress surrounding the acquisition of a business, or assets of a business, that employed H-1B professional alien workers, because in the past the new employer technically had to file new petitions before, or promptly after the transaction, and the H-1B workers often were left worried about whether the employer had made timely filings to preserve their status.

In order to avoid new filings, the successor employer must keep the job and location basically the same and agree to assume all of the responsibilities under the petition and the LCA rules to which the original employer agreed. To do this the new employer places certain certifications in the ?public access file? that satisfy Department of Labor requirements.

The Department of State (DOS) has now issued guidance to consulates regarding this provision and cleared the way for H-1B workers to apply for new visas after the restructuring, without a new petition approval. Unfortunately, INS instructions to airport and border inspectors has not been quite as clear. At the very least, the foreign worker should not leave the United States and/or apply for a new visa without being armed with sufficient evidence of the nature of the restructuring, the continued terms and conditions of employment, and the new employer's assumptions of the responsibilities mentioned above. To avoid uncertainties, however, many employers and their H-1B workers opt to obtain a new petition approval before traveling internationally.

How We Can Help

Baker Donelson's Immigration Team has successfully assisted alien clients in obtaining new visas abroad after corporate restructuring by sending H-1B workers out of the country armed with copies of the relevant laws, regulations, applicable government announcements and supporting documents. We have also assisted employers in complying with Department of Labor regulations regarding the corporate restructuring. We can assist you if you have recently undergone restructuring and have foreign workers.