



**U.S. Department of Justice  
Immigration and Naturalization Service**

HQ 70/6.2.8

Office of Adjudications

425 I Street NW  
Washington, DC 20536

APR 24 2002

Ms. Sheela Murthy  
10451 Mill Run Circle, Suite 100  
Owings Mills, MD 21117

Dear Ms. Murthy:

This refers to your letter of February 12, in which you pose a number of questions relating to the H-1B nonimmigrant classification. I apologize for the delay in responding to your letter.

In the first scenario described in your letter, an H-1B alien works for Company A and subsequently transfers to Company B. After 6 months, the alien transfers back to Company A.

In the second scenario, an alien is the beneficiary of two H-1B petitions filed by two separate companies. The alien works for Company A for two years and then decides to transfer to Company B. Based on these scenarios you ask whether the alien has maintained status.

Approved H-1B petitions remain valid until they either expire or are revoked by the Immigration and Naturalization Service. In the scenarios described above, the alien can transfer between the two employers as long as both supporting H-1B petitions remain valid. The alien is also considered to be maintaining nonimmigrant status during these transfers.

You also asked whether the alien continues to maintain status if he or she was unemployed before he or she transferred between the two employers.

An alien is considered to be maintaining lawful status if he or she continues to comply with the terms of his or her H-1B admission. An alien is not considered to be maintaining status if he or she is terminated from his or her H-1B employment regardless of the validity of the supporting petition.

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As you note, the Department of Labor has issued regulations that address the liability of H-1B employers for back wages in these types of situations. These new regulations have no impact on the policy described in this letter.

Finally, you are reminded of the provisions of Section 105 of the American Competitiveness in the Twenty-First Century Act that allows for certain H-1B aliens to begin employment with a new H-1B employer if the employer merely files an H-1B petition in the beneficiary's behalf. As a result, even if the petitions filed by the first employer described in your letter were deemed invalid, the alien could return to the initial employer upon the filing of an I-129 petition by that employer.

I trust this response satisfactorily addresses your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Eiren Hernandez III", written over a vertical line that extends from the word "Sincerely,".

Eiren Hernandez III  
Director, Business and Trade Services