

H-1B Specialty Occupation

Issue: **Successor-in-Interest**

When used: Merger, Acquisition, Restructuring, Spin-off

Katherine contacted our office because her H-1B was about to expire and she had some concerns about the extension process. Since her initial H-1B approval, the ownership of the company had changed hands and the location and name of the company had changed. In fact, it appeared to be a whole new company, which made her think that maybe she should have filed an amended H-1B petition two years ago when the changes occurred. She was truly worried about whether she had been out of status and whether an extension would even be possible.

We advised Katherine that if the new company was a successor-in-interest to the former company, that it may not have been necessary to file an amended petition two years ago and that an extension today might be possible. Specifically, Section 214 of the Immigration and Nationality Act states, “An amended H-1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer and where the terms and conditions of employment remain the same but for the identity of the petitioner.”

We gave Katherine a list of the evidence we would need in order to prove that the company was in fact a successor-in-interest. She took the list to her supervisor who later scheduled a telephone conference to discuss what we needed to prove:

1. that the successor company has substantially assumed the interests and obligations, assets, and liabilities of the former company (this includes the obligations that arose by sponsoring the original H-1B, including the corresponding Labor Condition Attestation); and,
2. that the successor company operates the same business as the original employer.

We reviewed the contract of sale for the company which outlined how assets would be disposed of and found that the successor company had assumed all of the former company’s equipment, inventory, and receivables. The successor company had moved its headquarters, but it retained the lease to the property in which Katherine had worked. Finally, the successor company had assumed liability for most of the debts, income tax payable, and customer contracts. As such, we believed that there was sufficient evidence to demonstrate that the successor company had substantially assumed the interests and obligations of the former company.

We then turned our attention to whether the company operated the same business as the original employer. Although the successor company had expanded its offerings, it still did the same type of business. As such, we thought it was important to show that Katherine was employed by the department that now does what she had done at the previous company and that her job description had remained essentially unchanged. The application was then filed with a comprehensive statement in support of the petition and supporting evidence. A few months later, Katherine's approval notice was received in the mail. Her H-1B status had been extended for 3 years and the approval notice displayed the name of the successor company.

For more information about Successor-in-Interest petitions or to have your case reviewed by an attorney for free, please contact our office at (866) 441-8472 or via e-mail at enquiry@leelanesmith.us.