

## NRI Helpdesk: Can I start my own business if I'm an H-1B visa holder?

### Synopsis

For our NRI readers, we have started an immigration helpdesk. Write to us at [nri.economictimes@gmail.com](mailto:nri.economictimes@gmail.com) and our team of experts will address the most pressing issues.



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*With immigration rules constantly changing with the pandemic situation, it is difficult to keep up to date with it all.*

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*\*Please note that questions have been edited and/or clubbed so that we can address similar queries at once and that the answers are clear and relevant to our*

*audience.*

**In one of your FAQs you had mentioned that you managed to get an extended dependent visa (not very sure which visa) for a parent. I am in a perplexing situation wherein my husband would be transferred to the US with an L-1 A visa. My mother lives with us and she has nowhere else to go. She has multiple chronic health problems. I am planning to bring her along, but can we get an extended dependent visa for her to stay with us in the [USA](#)?**

The US State Department (DOS) notes that “the B-2 classification is appropriate for applicants who are members of the household of another noncitizen in long-term nonimmigrant status, but who are not eligible for derivative status under that applicant's visa classification....Such applicants include but are not limited to the following: cohabitating partners or

elderly parents of temporary workers.”

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Because your mother squarely fits the DOS criteria, her B-2 visa can and should be applied under these criteria. Subsequent extensions can be attempted once she is in the USA.

**My wife earned her Ph.D. in clinical psychology in 2015 from a university in India. She has published some papers in international journals in Psychology. Also, she was working with a psychiatrist in a clinical setup for close to 7 years. She had to stop professional work due to marriage, children, and health conditions. Now she is all well and at the age of 40, can she still apply for EB-1B?**

The answer is yes, it is potentially possible. EB-1B, unlike EB-1A, does not necessarily require “sustained acclaim.” Assuming she meets the EB-1B criteria for “international recognition,” a hiatus in her career should not be a bar.

**Can I port my pending I-485 (EB3) to a new employer under AC21 and then interfile the I-485 to a prior employer's approved EB2 I-140? Is it possible to use the current employer's EB-2 I-140 to interfile with a new employer?**

You can only use AC 21 for the I-485 that has been pending 180 days and its companion I-140 is approved. Also, you cannot use the current employer's I-140 to interfile with a new employer. You should get a detailed consultation on these issues. I am merely skimming the surface.

**My wife's birth certificate has spelling mistakes/errors in name and also the date of birth is wrong (three months behind). We couldn't fix this problem recently. What if I get an RFE from USCIS? How do I respond and is there a solution for this?**

In cases like this I usually recommend that you start the process of correction of the official records in your home country. Then provide evidence and affidavits to the USCIS that you are correcting the situation.

**My Mother-in-law came on a visitor's visa (B-2) from India to the USA in September 2020. We filed two extensions (6 months + 6 months) so far due to ongoing [COVID](#) issues and her 2nd visa extension period is expiring. She has a return ticket booked to India in 7 days. But due to the sudden spike in COVID cases (Omicron variant) across**

**INDIA/USA, we would like to extend her visa for the 3rd time by at least 2 months. Also, she was recently diagnosed as COVID positive. Luckily, she had both Vaccine shots and a booster shot, so the symptoms were mild, and she is recovering well and doing fine.**

- 1. Can we file for her visitor visa extension for the 3rd time owing to the reasons (due to the rise in COVID cases in INDIA plus she herself being COVID positive very recently)**
- 2. Will the 3rd extension filing cause any issue in the future (travel and stay in the USA)**
- 3. If filing a visitor visa extension for the 3rd time is going to be an issue, can we file for Adjustment of Status (concurrent filing of I-485 and I-130 for a Green Card) as she is currently in the USA?**

1. You should apply for their extension because you don't want them to get out of status.

2. Yes, I have seen recurring issues in these situations. The government agencies claim that people in this situation must get a new visa. That claim is a clear misapplication of policy and may be correctable through your member of congress. Also, even a new visa stamp should not be a problem, because there is a good explanation for the extensions she had sought.

3. Discuss with competent counsel. In my view, filing for adjustment of status for a green card is a viable option, and once the green card is applied all these issues get resolved.

**My spouse and kids went for their dropbox in Chennai. We got an appointment for my spouse along with the kids. We have added the kids' application to the primary applicant. Neither my wife nor I have a valid visa, but we have the latest I-797 approved. Will the children get stamped only after my primary H-4 applicant stamping?**

You should send a quick email to the consulate, but I believe they should not insist upon the [H-1B visa](#) before issuing H-4.

**I am working on H-1B as a software engineer and got my EAD as a derivative applicant.**

- 1. I registered for an LLC and would like to know if I can work for my own company.**
- 2. Can I hire people while still maintaining my H-1B with my current employer?**
- 3. Since I registered the company What is my status now? H-1 or EAD.**
- 4. My friend is a GC. Can I be a partner to start a new company and hire people?**

When you are a derivative applicant for a green card, you are permitted to start your own business. I see no problem with that. You can also hire other people for your company. But there appears to be a basic confusion in your question. Once you start using your employment authorization, you are no longer on H-1B status.

You can also be a partner in another company if you so wish, but your H-1B status would then become inactive and you would be using your employment authorization. That, of course, it's perfectly legal. Note that merely registering a company without doing any business or business activity does not violate your H-1B status in my opinion.

**I Came to the USA in 2017 on L-1B. My current visa expires in May 2022, and I am currently in the USA. I have applied for H-1B from another employer in 2021 and my name comes in the second lottery (in July). Now my H-1B petition has been approved, I would like to know, can I join my first company directly without joining the company that filed my petition. Also, how soon do I have to join the company to be having valid status in the USA?**

Your H-1B was approved past October 1, 2021, with a change of status. In my opinion, you can obtain an H-1B transfer for another company without joining the original petitioner.

**I am currently based out of India and working with the organization here. My Indian organization has filed for my H1B petition last year (2021) for its US office. I got my H1B approved & stamped.**

**Q1: If I change my firm (move from my current organization to another organization), would my H1B still remain valid?**

Yes. Your new employer must apply for an H-1B transfer with the USCIS.

**Q2. If your answer to point 1 is yes, can I make a job switch to a different company in the United States without being present in the US? Would it cause any issues for my H1B transfer from India? The reason I asked point 2 is that I have heard we cannot remain unemployed for more than a certain period if one is staying on H1B in the US. In my case, it seems that H1B from my current employer has not been started yet.**

I do not believe this will be a problem in your case.

**Can an employee participate in the [H-1B lottery](#)?**

The H-1B lottery is entered into by employers, not employees. Therefore, you need a US employer to apply for you.

**My previous employer received my H-1B approval in 2013. I received only an email and not the I-797 approval copy.**

**1. Can my new employer file a new H-1B under cap exemption? I don't have the receipt number or the approval copy.**

**2. I raised a FOIA request to get a copy of I-129 approval. Not sure if I can be successful.**

This is worth looking into, but only your H-1B lawyers can help your employer and you decide the best course of action. Follow this up.



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