



U.S. Citizenship
and Immigration
Services

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Chapter 5 - Job Portability after Adjustment Filing and Other AC21 Provisions

Guidance

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A. Background

In 2000, Congress enacted the American Competitiveness in the Twenty-First Century Act of 2000^[1] (AC21) which, in part, added [INA 204\(j\)](#). This provision allows certain employment-based adjustment of status applicants experiencing delays in the employment-based adjustment of status process some flexibility to change jobs or employers while their Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) is pending.^[2]

If eligible under INA 204(j), the Immigrant Petition for Alien Workers ([Form I-140](#)) (and underlying permanent labor certification, if applicable) may remain valid and the beneficiary of an approved employment-based immigrant visa petition in the 1st, 2nd, or 3rd preference category may transfer, or “port,” to a qualifying new job offer that is in the same or a similar occupational classification as the job offer for which the petition was filed. The new job offer may be through the same employer that filed the petition or a different employer.

These provisions are referred to as “portability.” Employment-based adjustment applicants who use such benefits are considered to have “ported” the petition filed on their behalf to the new job offer.

An applicant who successfully ports the petition on which the adjustment application^[3] is based to a new job or employer retains the priority date of the underlying petition.

B. Eligibility Requirements

1. General Portability Requirements

To qualify for portability under INA 204(j), the adjustment applicant must meet the following eligibility requirements:

- The applicant is the beneficiary of an approved Form I-140 petition or of a pending petition that is ultimately approved;
- The petition is filed in the employment-based 1st, 2nd, or 3rd preference category;^[4]
- The applicant's properly filed adjustment application has been pending with USCIS for 180 days or more at the time USCIS receives the request to port;^[5]
- The new job offer through which the applicant seeks to adjust status is in the same or similar occupational classification as the job specified in the petition; and
- The applicant submitted a request to port. If the applicant makes a request to port on or after January 17, 2017, the applicant must submit a Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j) ([Form I-485 Supplement J](#)). If the applicant requested to port before January 17, 2017, the applicant could have requested to port through a letter, since Form I-485 Supplement J did not go into effect until January 17, 2017.

The new job offer may be with the same petitioner or with an entirely new employer, including self-employment. Applicants can submit the portability request and evidence with the adjustment application or in any in-person interviews or in response to a request or other notice from USCIS.

2. Approved Petition Required

If USCIS has approved an applicant's Form I-140 petition and the applicant's adjustment application remained adjudicated for 180 days or more (from the adjustment application receipt date), the approved petition remains valid unless the petition's approval is later substantively revoked. This applies even if the applicant changes jobs or employers so long as the new offer of employment is in the same or similar occupation. If the adjustment application has been pending for less than 180 days, the approved petition does not remain valid with respect to a new offer of employment.

An adjudicated petition is not valid merely because the petition was filed with USCIS or through the passage of 180 days. Rather, the petition must have been filed on behalf of an alien who was entitled to the employment-based classification at the time that the petition was filed, and therefore must be approved prior to a favorable determination on a portability request. If at any time USCIS revokes approval of the petition, the applicant is not eligible for the job flexibility provisions of Section 106(c) of AC21.^[6]

In revocation cases, the officer adjudicating the adjustment application may deny the adjustment application and Supplement J request. In all cases, an offer of employment must have been bona fide and the employer must have had the intent (at the time the petition was approved) to employ the beneficiary upon adjustment.

3. Withdrawal of Petition

In general, if USCIS receives a request from a petitioner to withdraw a pending Form I-140 petition, USCIS issues an acknowledgment of the withdrawal request and denies any corresponding adjustment

application. However, if the pending petition is approvable and the adjustment application was pending for 180 days or more, the petition may remain valid for priority date retention and possible eligibility under INA 204(j) for the adjustment application.^[7]

In addition, if USCIS receives a request from a petitioner to withdraw a petition that has been approved for fewer than 180 days, and any corresponding adjustment application has not been pending for at least 180 days (or has not been filed), USCIS automatically revokes the approval of the petition.^[8] However, if USCIS receives a withdrawal request from a petitioner 180 days or more after the approval of the petition, or a corresponding adjustment application has been pending for 180 days or more, the petition remains valid for priority date retention. The alien may be eligible under INA 204(j) for the adjustment application (unless USCIS revokes the approval of the petition under substantive grounds) if he or she satisfies all of the requirements to port based on a new same or similar position and the adjustment application has been pending 180 days or more at the time of withdrawal.^[9]

If the adjustment applicant is not eligible under INA 204(j), the applicant must obtain a new employment-based preference petition in order to file a new adjustment application, even if withdrawal of the original petition occurred after it had been approved for at least 180 days or a corresponding adjustment application was pending for at least 180 days.

4. Termination of Original Petitioner's Business

In general, if the Form I-140 petitioner's business terminates before USCIS approves the Form I-140 petition, USCIS denies the petition and denies any corresponding adjustment application.^[10] However, if the petition was approvable at the time of filing and remained approvable until the adjustment application had been pending for 180 days or more, the petition remains valid for priority date retention, and possible eligibility under INA 204(j) for the adjustment application.^[11]

In addition, USCIS automatically revokes the approval of the petition in cases where:

- The petitioner's business terminates after the approval of the petition;
- The petition has been approved for fewer than 180 days at the time; and
- A corresponding adjustment application has not been pending for at least 180 days (or has not been filed).^[12]

However, if the business termination occurs 180 days or more after the approval of the petition or a corresponding adjustment application has been pending for 180 days or more, the petition may remain valid for priority date retention. The alien may be eligible to port under INA 204(j) for the adjustment application (unless USCIS revokes the approval of the petition under substantive grounds) if he or she satisfies all of the requirements to port based on a new same or similar position and the adjustment application has been pending 180 or more days when the business terminated.^[13]

If the applicant is not eligible under INA 204(j) but otherwise meets the timing criteria to sustain the validity of the petition, the applicant must obtain a new employment-based preference petition in order to file a new adjustment application.^[14]

5. Adjustment Application Pending 180 Days or More

For portability purposes, counting the number of days the adjustment application has been pending begins on the day the applicant properly filed the adjustment application with USCIS and includes every subsequent calendar day until USCIS receives the applicant's request to port (so long as the application remains unadjudicated).

If the Form I-140 petitioner withdraws the petition or the petitioner's business terminates before USCIS approves the petition, the portability provisions only apply if the adjustment application has been pending for 180 calendar days or more. If the adjustment application has been pending for fewer than 180 calendar days, portability does not apply and the petition is not approvable.^[15]

An immigrant visa must be available at the time an applicant files an adjustment application.^[16] However, a visa does not need to remain continuously available for the 180 days to accrue. The fact that a visa number becomes unavailable after the filing of the adjustment application does not stop the number of days required for Form I-140 petition portability eligibility from accruing.

6. New Job in Same or Similar Occupational Classification

To determine whether a new job offer is valid for purposes of INA 204(j) portability, the new job offer must be in either the same occupational classification or a similar occupational classification as the job specified in the underlying Form I-140 petition.

Same Occupational Classification

The term "same occupational classification" means an occupation that resembles in every relevant respect the occupation for which the underlying employment-based immigrant visa petition was approved.^[17] Accordingly, USCIS evaluates whether the jobs are identical, resembling in every relevant respect, or the same kind of category or thing when determining whether two job offers are in the same occupational classification.

Similar Occupational Classification

The term "similar occupational classification" means an occupation that shares essential qualities or has a marked resemblance or likeness with the occupation for which the underlying employment-based immigrant visa petition was approved.^[18] When determining whether two job offers are in similar occupational classifications, USCIS evaluates whether the jobs share essential qualities or have a marked resemblance or likeness.

Factors to Consider

To determine if the new job offer is in the same or similar occupational classification as the job listed on the petition, officers evaluate the totality of the circumstances. As part of this evaluation, officers may consider and compare various factors and evidence relating to the jobs. Relevant factors include, but are not limited to:

- The U.S. Department of Labor (DOL) occupational codes assigned to the respective jobs;
- Job duties;
- Job titles;
- The required skills and experience;

- The educational and training requirements;
- Any licenses or certifications specifically required;
- The offered wage or salary; and
- Any other material and credible evidence relevant to a determination of whether the new position is in the same or a similar occupational classification.

A change to the same or a similar occupational classification may involve lateral movement, career progression, or porting to self-employment, either in the same or a different geographic location.

With respect to porting to self-employment, all other eligibility requirements must be satisfied. First, as with all other portability determinations, the employment must be in a same or similar occupational classification as the job for which the original petition was filed. Second, the adjustment applicant should provide sufficient evidence to confirm that the applicant's business and the job offer are legitimate. If the submitted evidence is insufficient to confirm the legitimacy, or the officer identifies fraud indicators that raise doubts about the legitimacy of the self-employment, the officer may request evidence to show that the self-employment is legitimate. Third, as with any portability case, USCIS focuses on whether the petition represented the truly intended employment at the time of the filing of both the petition and the adjustment application. This means that, as of the time of the filing of the petition and at the time of filing the adjustment application (if not filed concurrently), the original petitioner must have had the intent to employ the beneficiary, and the beneficiary must also have intended to undertake the employment upon adjustment.^[19] Officers may take the petition and supporting documents themselves as evidence of such intent, but in certain cases requesting additional evidence or initiating an investigation may be appropriate.

7. Using Standard Occupational Classification Codes

U.S. Department of Labor's Standard Occupational Classification

Standard Occupational Classification (SOC) codes may help address uncertainty in the portability determination process. As mentioned above, USCIS does not consider SOC codes or their descriptions as the sole determining factor(s) or mandatory factor(s) in portability determinations. USCIS considers other relevant factors or evidence in the totality of the circumstances.^[20]

In making portability determinations, officers may refer to DOL's labor market expertise as reflected in its [SOC system](#). The SOC system is used to organize occupational data and classify workers into distinct occupational categories.^[21] Occupations are generally categorized based on the type of work performed and, in some cases, on the skills, education, and training required to perform the job.

Organization of SOC System

The SOC organizes all occupations into major groups, which are then broken down in descending order into minor groups, broad occupations, and detailed occupations.^[22] All workers are classified into one of these detailed occupations. Detailed occupations with similar job duties and, in some cases, skills, education, and training are generally grouped together in the same broad occupation.

The SOC system is organized using numeric codes consisting of six digits. Each digit or group of digits represents the level of similarity of positions. An occupation is not assigned to more than one category at

the lowest level of the classification (sixth digit).

For example, the SOC code for the detailed occupational classification of “web developer” is 15-1254 and is broken down as follows:

- The first two digits (15) indicate the major group classification, which includes all computer and mathematical occupations. Major Group 15-0000: Computer and Mathematical Occupations.
- The third digit (1) indicates the minor group classification, which includes all computer occupations. Minor Group 15-1200: Computer Occupations.
- The fourth and fifth digits (25) indicate the broad occupation classification, which includes software and web developers, programmers, and testers. Broad occupation 15-1250 Software and Web Developers, Programmers, and Testers.
- The sixth digit (4) indicates the detailed occupation classification, which includes only web developers. Detailed Occupation 15-1254: Web Developers.

The SOC system classifies supervisors and managers of other workers distinctly. Supervisors of workers in many major groups may be classified along with the workers they supervise. As such, supervisors usually have work experience and perform activities similar to the workers they supervise. [\[23\]](#)

Management Occupations (such as those primarily engaged in planning and directing) are generally classified in a separate major group (Major Group 11-0000). [\[24\]](#) Persons classified in this major group are generally managers of persons categorized in other major groups and their duties may include supervision of such other persons.

For example, the SOC code 11-9041 is assigned to the detailed occupation Architectural and Engineering Managers, which covers persons who “[p]lan, direct, or coordinate activities in such fields as architecture and engineering or research and development in these fields.” [\[25\]](#) Under normal career progression, a person in an occupation in any given major group may advance to a corresponding and related occupation in the major group for managers.

In all cases, USCIS officers should review all relevant evidence when determining whether two jobs are in the same or similar occupational classification(s) for purposes of INA 204(j) portability (see above), to include SOC codes to compare the respective jobs as well as relevant information in alternative resources. [\[26\]](#)

Determining Appropriate SOC Code

Determining the appropriate SOC codes for the relevant jobs depends on the type of petition filed on behalf of the adjustment applicant:

- For petitions that are supported by labor certifications from DOL, the SOC codes for the original position have been certified by DOL. The SOC code associated with the new position, as reported on Supplement J, must be established by the applicant with supporting evidence from the intending employer.
- For petitions that do not require labor certifications from DOL, the applicant must establish the proper SOC code for both the original position and the new position. The applicant should submit supporting evidence from the intending employer for the new position.

With respect to SOC codes other than those certified by DOL in a labor certification, the burden is on the applicant to demonstrate by a preponderance of the evidence that the SOC code may properly be associated with the relevant position. [\[27\]](#)

If the applicant establishes by a preponderance of the evidence that the detailed occupational codes describing the original and new positions are the same (for example, those where all six digits of the code match), and the totality of the circumstances supports that determination, officers may generally treat such evidence favorably in determining whether the two positions are in the same or similar occupational classification(s) for INA 204(j) portability purposes. [\[28\]](#)

Similarly, if the applicant establishes by a preponderance of the evidence that the two jobs are described by two distinct detailed occupation codes within the same broad occupation code, officers may treat such evidence favorably in determining whether the two positions are in similar occupational classifications. USCIS generally considers such positions to be in similar occupational classifications unless the preponderance of the evidence indicates that favorable treatment is not warranted (upon review of the evidence and considering the totality of the circumstances). [\[29\]](#)

For example, the detailed occupations of Computer Programmers (15-1251), Software Developers (15-1252), Software Quality Assurance Analysts and Testers (15-1253), Web Developers (15-1254), and Web and Digital Interface Designers (15-1255) are found within the broad occupational group of Software and Web Developers, Programmers, and Testers (15-1250). Officers may consider these detailed occupations to be in similar occupational classifications given the largely similar duties and areas of study associated with each classification. [\[30\]](#)

In certain instances, however, simply establishing that the two jobs are described within the same broad occupation may not be sufficient to establish by a preponderance of the evidence that the two jobs are in similar classifications.

For example, the detailed occupations of Geographers (19-3092) and Political Scientists (19-3094) are found within the broad occupational code for Miscellaneous Social Scientists and Related Workers (19-3090). [\[31\]](#) Although such occupations are grouped together in the same broad occupational code, the workers in those respective occupations largely do not share the same duties, experience, and educational backgrounds. In such cases, the officer may determine that the two jobs are not in similar occupational classifications for purposes of INA 204(j) portability.

The burden is on the applicant to demonstrate that the relevant positions are in the same or similar occupational classification(s). When making such determinations, and when determining whether the relevant positions have been properly categorized by the applicant under the SOC, USCIS reviews the evidence of each case and considers the totality of the circumstances.

Career Progression

USCIS recognizes that persons earn opportunities for career advancement as they gain experience over time. As with other cases, USCIS considers cases involving career progression under the totality of the circumstances to determine whether the applicant has established by a preponderance of the evidence that the relevant positions are in similar occupational classifications for INA 204(j) portability purposes.

In many instances, a person's progress in his or her career may easily fit the standards discussed in the preceding guidance, such as when a person moves into a more senior but related position that does not have a managerial or supervisory role (such as a promotion from a software engineer to a senior software

engineer). In such cases, officers should consider whether the original position and the new position are in the same or similar occupational classification(s), consistent with the preceding section.

In other instances, career progression may involve a different analysis, such as when a person moves from a non-managerial or non-supervisory position into a managerial or supervisory role. In such cases, officers may treat certain evidence favorably in determining whether the two jobs are in similar occupational classifications for purposes of INA 204(j) portability. Specifically, in cases where the evidence submitted by the applicant establishes that the applicant is primarily responsible for managing the same or similar functions of their original jobs or the work of persons whose jobs are in the same or similar occupational classification(s) as the applicants' original positions.

Example (Similar Occupational Classification)

If the occupation described in the original job offer was assigned the SOC code of 15-1152 for Software Developers, officers may determine that a new job offer described in the SOC code of 11-3021 for Computer and Information Systems Managers is in a similar occupational classification. [\[32\]](#)

This is because Computer and Information Systems Managers generally manage those in positions that fall within occupational classifications that are the same as or similar to the occupational classification of the original job offer (such as Computer Programmers (15-1251), Software Developer (15-1252), and Web Developer (15-1254), all of which are grouped together under the broad occupational code for Software and Web Developers, Programmers and Testers (15-1250)). [\[33\]](#)

Example (Not Similar Occupational Classification)

If the occupation described in the original job offer was assigned the SOC code of 35-2014 for Cooks, Restaurant, officers may determine that a new job offer described in the SOC code of 11-9051 for Food Service Managers is not in a similar occupational classification.

This is because the duties of Food Service Managers (duties that include planning, directing, or coordinating activities of an organization that serves food and beverages) are generally different from those of restaurant cooks, who largely prepare meals. Moreover, the SOC code for Food Service Managers specifically excludes "Chefs and Head Cooks," who supervise restaurant cooks and persons in other similar positions. [\[34\]](#)

Non-Managerial Career Progression

There may be instances where the evidence (in light of the totality of the circumstances) warrants a favorable portability determination based on normal career progression. This may apply even though the person is not managing persons in jobs that are in the same or similar occupational classification(s) as the applicant's original position.

For example, if an applicant's original job duties as a restaurant cook included ordering supplies, setting menu prices, and planning the daily menu, a change to a food service manager position may be considered a normal career progression. This may apply if the applicant's responsibilities as a food service manager include ordering food and beverages, equipment, and supplies; as well as overseeing food preparation, portion sizes, and overall presentation of food.

While the applicant may not be directly supervising cooks in his or her new position, the applicant may provide evidence that he or she is overseeing some of the functions that a cook would perform to demonstrate that the two positions are in similar occupational classifications.

As noted above, in all cases that involve career progression, officers must consider the totality of the circumstances to determine whether the preponderance of the evidence establishes that the two positions are in similar occupational classifications for INA 204(j) portability purposes.

Other Variations

Even in cases where SOC codes are not grouped together or the relevant positions do not reflect normal career progression, USCIS reviews the evidence presented under the totality of the circumstances to determine if the two jobs can be considered to be in the same or similar occupational classification(s).

For example, a person whose original job was coded within the major group code of 15-0000 for Computer and Mathematical Occupations may find a job in an engineering field that is classified under the major group code of 17-0000 for Architecture and Engineering Occupations.^[35] If the preponderance of the evidence indicates that the two jobs share essential qualities or have a marked resemblance or likeness, the person may be eligible to port to the new position.

USCIS also recognizes that variations in job duties arising from performing jobs for different employers, including employers in different economic sectors, do not necessarily preclude two positions from being in similar occupational classifications for purposes of INA 204(j) portability.

For example, if the original position was for a Personal Financial Advisor (13-2052) at a financial consulting firm, the applicant's duties may have included reviewing financial information.^[36] This may include using knowledge of tax and investment strategies; assessing clients' assets, liabilities, cash flow, taxes, and financial objectives; and networking and business development.^[37]

If the new position is for a Financial Analyst (13-2051) in-house with a pharmaceutical company, the job duties may involve reviewing and recommending the financial objectives of the organization, including quantitative analyses of information involving investment programs or financial data of public or private institutions, including valuation of businesses.^[38]

While the duties of the two positions differ to some degree, such positions may be similar to each other when viewed in the totality of the circumstances considering that the overarching duty of both positions is to apply accounting and investment principles in order to develop financial strategies; and the same skills, experience, and education may be required to perform both jobs.

As a further example, if the original position was for a Microbiologist (19-1022) at a federal research laboratory, the applicant's duties may have included: investigate the growth, structure, development, and other characteristics of microscopic organisms, such as bacteria, algae, or fungi. Includes medical microbiologists who study the relationship between organisms and disease or the effects of antibiotics on microorganisms.^[39]

If the new job offer is for a Medical Scientist, Except Epidemiologist (19-1042) at a private medical research laboratory, the duties may include: research dealing with the understanding of human diseases and the improvement of human health. Engage in clinical investigation, research and development, or other related activities.^[40]

When reviewing the evidence under the totality of the circumstances, USCIS may consider the two positions to be similar because the primary duties involved share essential qualities or have a marked resemblance or likeness, particularly if they require similar education, experience, and skills to perform the associated duties, even though the two positions do not share the same broad occupation.

Differences in Wages

USCIS may consider the wages offered for the original position and the new position in determining whether the two positions meet the requirements for INA 204(j) portability. The mere fact that both positions offer similar wages is not conclusive evidence to establish that the two positions are in the same or similar occupational classification(s). Likewise, a difference in salaries alone would not preclude an officer from finding that two positions are in the same or similar classification.

USCIS recognizes that normal raises occur through the passage of time to account for inflation or promotion. USCIS also recognizes that there may be differences in pay due to varying rates of pay in different economic sectors or geographic locations, as well as other factors, such as corporate mergers, size of employer, or differences in compensation structure. Additionally, there could be differences in wages in cases involving moves from for-profit employers to nonprofit employers, academic institutions, or public employers (or vice versa).

Applicants should explain in detail any substantial discrepancy in wages between the original position and the new position. In all instances, officers review a difference in wages and any explanation for that difference along with all other evidence presented.

C. Making a Portability Request

1. When Required

If an applicant is filing or has filed an adjustment application as the principal beneficiary of a valid Form I-140 petition in an employment-based immigrant visa category that requires a job offer, the applicant must file a Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j) ([Form I-485 Supplement J](#)) in order to confirm the job offer remains bona fide, or to request job portability under INA 204(j) to a new, full-time, permanent job offer that he or she intends to accept once the adjustment application is approved.

Applicants seeking or granted a national interest waiver of the job offer requirement^[41] and applicants seeking or granted classification as an alien of extraordinary ability^[42] do not need to file Supplement J or request job portability under INA 204(j) because these employment-based immigrant visa categories are not tied to a specific job offer.

2. Timing of Request

Applicants may request portability after the adjustment application has been pending 180 days, including during an adjustment interview or in response to a Request for Evidence or Notice of Intent to Deny sent by USCIS following a request to withdraw the petition.^[43]

3. Format and Suggested Evidence

If the applicant makes a request to port on or after January 17, 2017, the applicant must submit a Supplement J. If the applicant requested to port before January 17, 2017, the applicant could have requested to port through a letter. However, even for requests filed before that date, USCIS may request Supplement J to validate the employment offer. While the applicant completes the portions of the

supplement pertaining to him or herself, the employer completes the sections pertaining to itself and the new job.

The applicant should submit the following documents in support of the Supplement J when requesting portability:

- A copy of Notice of Action (Form I-797), establishing the date of acceptance of the adjustment application under INA 245, which shows that the Form I-485 has been pending for 180 days or more (receipt date); and
- A copy of Notice of Action (Form I-797), showing that the alien is the principal beneficiary of an approved or still pending Form I-140 petition.

USCIS also considers secondary evidence when the above evidence is not available, but failure to provide these notices of action may result in delayed processing.

4. Adjudication

When adjudicating the Supplement J, USCIS reviews the evidence of record in the totality of the circumstances to determine if the new job offer is in the same or similar occupational classification as the job listed on the underlying petition. ^[44]

If the officer determines that the new job is in the same or similar occupational classification, the officer approves the Supplement J and continues with adjudication of the adjustment application. If USCIS determines that the new job offer is not in the same or similar occupational classification, USCIS denies the Supplement J. Therefore, USCIS denies the adjustment application and may add any other bases for denial (if applicable).

D. Effect of Principal Beneficiary's Death on Portability

Derivative adjustment applicants may remain eligible to adjust despite the death of the principal applicant. ^[45] In these circumstances, USCIS may approve a pending petition or reinstate approval of an automatically revoked petition without regard to portability considerations.

Footnotes

^[^ 1] In 2002, AC21, [Pub. L. 106-313 \(PDF\)](#), 114 Stat. 1251, 1254 (October 17, 2000), was amended by the Twenty-First Century Department of Justice Appropriations Authorization Act (the 21st Century DOJ Appropriations Act), [Pub. L. 107-273 \(PDF\)](#), (November 2, 2002).

^[^ 2] See Section 106(c) of AC21, [Pub. L. 106-313 \(PDF\)](#), 114 Stat. 1251, 1254 (October 17, 2000). See [8 CFR 245.25](#).

^[^ 3] See Application to Register Permanent Residence or Adjust Status ([Form I-485](#)).

^[^ 4] Portability is not applicable to adjustment applicants whose approved immigrant visa petitions are based on classification as an alien with extraordinary ability or for whom USCIS has waived the job offer and labor certification requirements in the national interest. See [8 CFR 204.5\(e\)\(5\)](#). See [INA 204\(j\)](#).

Although these applicants are not eligible for AC21 portability, they are permitted to change employers, including becoming self-employed. Aliens of extraordinary ability do not require a job offer but must show clear evidence that they intend to work in the area of their expertise. See [8 CFR 204.5\(h\)\(5\)](#). Physicians for whom USCIS has waived the job offer and labor certification requirements in the national interest under [INA 203\(b\)\(2\)\(B\)\(ii\)](#) must file a new Form I-140 petition if they desire to change employers or establish their own practice. See [8 CFR 204.12\(f\)](#). For more information regarding physicians who are adjusting based on a physician national interest waiver, see Chapter 7, National Interest Waiver Physicians [7 USCIS-PM E.7].

[^ 5] See [8 CFR 245.25\(a\)\(2\)\(i\)](#). See [8 CFR 205.1\(a\)\(3\)\(iii\)\(C\)-\(D\)](#).

[^ 6] See [8 CFR 245.25\(a\)\(2\)\(iii\)](#). See *Matter of Al Wazzan (PDF)*, 25 I&N Dec. 359, 365 (AAO 2010) (“[T]he petition must be ‘valid’ to begin with if it is to ‘remain valid with respect to a new job.’”).

[^ 7] See [8 CFR 205.1\(a\)\(3\)\(iii\)\(C\)](#). If the petition is subsequently approved, it remains valid unless USCIS revokes the approval under substantive grounds.

[^ 8] See [8 CFR 205.1\(a\)\(3\)\(iii\)\(C\)](#).

[^ 9] See [8 CFR 205.1\(a\)\(3\)\(iii\)\(C\)](#). See [8 CFR 205.1\(a\)\(3\)\(iii\)\(D\)](#). See [8 CFR 245.25\(a\)\(2\)\(iii\)](#).

[^ 10] See [8 CFR 103.2\(b\)\(1\)](#).

[^ 11] See [8 CFR 245.25\(a\)\(2\)\(ii\)\(B\)\(2\)](#). If the petition is subsequently approved, it remains valid unless USCIS revokes the approval under substantive grounds.

[^ 12] See [8 CFR 205.1\(a\)\(iii\)\(D\)](#).

[^ 13] See [8 CFR 205.1\(a\)\(iii\)\(D\)](#).

[^ 14] See [8 CFR 205.1\(a\)\(iii\)\(D\)](#).

[^ 15] See [8 CFR 245.25\(a\)\(2\)\(ii\)\(B\)\(2\)](#).

[^ 16] See [8 CFR 245.1\(a\)](#) and [8 CFR 245.1\(g\)\(1\)](#).

[^ 17] See [8 CFR 245.25\(b\)](#).

[^ 18] See [8 CFR 245.25\(b\)](#).

[^ 19] See [8 CFR 245.25\(a\)\(3\)](#).

[^ 20] Officers may reference additional resources to determine whether two jobs are in the same or similar occupational classification(s), including, for example, the DOL Bureau of Labor Statistics (BLS)' [Occupational Outlook Handbook](#), the DOL Employment and Training Administration-sponsored [Occupational Information Network \(O*NET\)](#), or the DOL BLS' [Occupational Employment Statistics](#) database.

[^ 21] See DOL BLS' [Standard Occupational Classification](#). DOL revises the SOC codes periodically.

[^ 22] See DOL BLS' [Standard Occupational Classification](#).

[^ 23] See DOL BLS' [2018 Standard Occupational Classification User Guide \(PDF\)](#).

[^ 24] See Classification Principles and Coding Guidelines, DOL BLS, [2018 Standard Occupational Classification User Guide \(PDF\)](#). See Standard Occupational Classification, [11-0000 Management Occupations](#), DOL BLS, [2018 Standard Occupational Classification User Guide \(PDF\)](#).

[^ 25] See DOL BLS, Standard Occupational Classification, [11-0000 Management Occupations](#).

[^ 26] As noted above, officers may reference additional resources to determine whether two jobs are in the same or similar occupational classification(s), including, for example, the DOL BLS' [Occupational Outlook Handbook](#), the DOL Employment and Training Administration-sponsored [Occupational Information Network \(O*NET\)](#), or the DOL BLS' [Occupational Employment Statistics](#) database.

[^ 27] See [Matter of Chawathe \(PDF\)](#), 25 I&N Dec. 369, 375 (AAO 2010).

[^ 28] If an occupation is not included as a distinct detailed occupation in the structure, it is classified in an appropriate "All Other" occupation. "All Other" occupations are placed in the structure when it is determined that the detailed occupations comprising a broad occupation group do not account for all of the workers in the group, even though such workers may perform a distinct set of work activities. These occupations appear as the last occupation in the group with a code ending in "9" and are identified in their title by having "All Other" appear at the end. See DOL BLS' [2018 Standard Occupational Classification User Guide \(PDF\)](#). Under such circumstances, officers should carefully review the evidence to determine that the two positions are in the same or similar occupational classification.

[^ 29] According to DOL: "Broad occupations often include several detailed occupations that are difficult to distinguish without further information. For example, people may report their occupation as biologist or psychologist without identifying a concentration. Broad occupations, such as psychologist, include more detailed occupations, such as industrial-organizational psychologists, for those requiring further detail. For cases in which there is little confusion about the content of a detailed occupation, the broad occupation is the same as the detailed occupation. For example, because it is relatively easy to identify lawyers, the broad occupation, lawyers, is the same as the detailed occupation." See Chester Levine et al., [Revising the Standard Occupational Classification System \(PDF\)](#), *BLS Monthly Labor Review* (May 1999), 39-40. Therefore, broad occupational codes may be helpful indicators that two positions are similar.

[^ 30] See DOL BLS, [2018 Standard Occupational Classification System, 15-0000 Computer and Mathematical Occupations](#).

[^ 31] See DOL BLS, [2018 Standard Occupational Classification System, 19-0000 Life, Physical, and Social Science Occupations](#).

[^ 32] See DOL BLS' [2018 Standard Occupational Classification System](#).

[^ 33] See DOL BLS, [2018 Standard Occupational Classification System, 15-1250 Software and Web Developers, Programmers, and Testers](#).

[^ 34] See DOL BLS, [2018 Standard Occupational Classification System, 11-0000 Management Occupations](#).

[^ 35] See DOL BLS, [2018 Standard Occupational Classification System, 15-0000 Computer and Mathematical Occupations and 17-0000 Architecture and Engineering Occupations](#).

[^ 36] See DOL BLS, [2018 Standard Occupational Classification System, 13-2052 Personal Financial Advisors](#).

[^ 37] See DOL BLS, [2018 Standard Occupational Classification System, 13-2052 Personal Financial Advisors](#).

[^ 38] See DOL BLS, [2018 Standard Occupational Classification System, 13-2051 Financial and Investment Analysts](#).

[^ 39] See DOL BLS, [2018 Standard Occupational Classification System, 19-1022 Microbiologists](#).

[^ 40] See DOL BLS, [2018 Standard Occupational Classification System, 19-1042 Medical Scientists, Except Epidemiologists](#).

[^ 41] See [INA 203\(b\)\(2\)\(B\)](#).

[^ 42] See [INA 203\(b\)\(1\)\(A\)](#).

[^ 43] For more information on how withdrawal or revocation of the petition may affect portability, see Section B, Eligibility Requirements, Subsection 2, Approved Petition Required [[7 USCIS-PM E.5\(B\)\(2\)](#)].

[^ 44] See Section B, Eligibility Requirements, Subsection 6, New Job in Same or Similar Occupational Classification [[7 USCIS-PM E.5\(B\)\(6\)](#)].

[^ 45] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 9, Death of Petitioner or Principal Beneficiary [[7 USCIS-PM A.9](#)].

Current as of November 18, 2020
