

NSC Liaison Committee Practice Tip - Filing an I-140 Petition More Than 180 Days After the Underlying Labor Certification Has Been Approved

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The NSC Liaison Committee reminds attorneys that it is possible to file a new I-140 petition more than 180 days after the underlying labor certification has been approved *if the labor certification was used as the basis for another I-140 by the same sponsoring employer (or its successor-in-interest) and same beneficiary that was filed within the 180 day validity period. This is true even if the previously filed I-140 was denied, provided it was not denied due to fraud relating to the labor certification application.* In the absence of fraud, once the labor certification is filed with an I-140 within its 180 validity period, it remains valid indefinitely for the purpose of filing a future I-140 petition by the same sponsoring employer or its successor-in-interest on behalf of the same beneficiary.

The USCIS has affirmed that they recognize an exception to the 180 day expiration rule "when a new petition is required due to successor-in-interest, where the petitioning employer wishes to file a new petition subsequent to the denial, revocation or abandonment of the previously filed petition and the labor certification was not invalidated due to material misrepresentation or fraud relating to the labor certification application, in the instances where the amended petition is requesting a different visa classification than the visa classification requested in the previously filed petition, or when the previously filed Form I-140 petition has been determined to have been lost by USCIS or DOS." [See Neufeld Memo, June 1, 2007 ([AILA Doc. No. 07062172](#)).] The basis for this interpretation lies in the language of the DOL regulation at 20 CFR 656.30(b) (adopted May 17, 2007), which states that "an approved permanent labor certification . . . expires if not filed in support of a Form I-140 petition with the Department of Homeland Security within 180 calendar days of the date the Department of Labor granted the certification." The NSC Liaison Committee recommends that a copy of the Neufeld Memo be included with I-140 filings in this situation.

NOTE: There are no exceptions to the 180 day rule, so if NSC rejects an I-140 filing due to attorney error (e.g., incorrect filing fee, missing signature, etc.) and the labor certification expires in the meantime, then no recourse would be available. If a labor certification expires due to NSC error, then NSC will review on a case by case basis.