H-1B CHANGE OF EMPLOYER (PORTING)

HOW TO DOCUMENT H-1B PORTABILITY NEW HIRES IN TRACKER

This guide shows how to complete a new Form I-9 for an H-1B employee who qualifies to begin employment with the new employer as soon as the Form I-129 H-1B Portability petition is filed.

To create a new I-9 for an H-1B Change of Employer employee within Tracker I-9 Complete, take the following steps.

1. In Section 2, select the List A ‘Foreign Passport with I-94 or I-94A’ option

   ![Select a Document from List A - OR - one from both List B and C]

   - Employment Authorization Document (I-766)
   - U.S. Passport Card
   - Foreign Passport with I-94 or I-94A
   - Marshall Island Passport with Form I-94 or I-94A
   - Micronesian Passport with I-94 or I-94A
   - Receipt: Form I-94/I-94A with refugee stamp (or RE class of admission)
   - U.S. Passport
   - Permanent Resident Card (Form I-551)
   - Alien Registration Receipt Card (Form I-551)
   - Foreign Passport with Temporary I-551 Stamp
   - I-551 Stamp on a Form I-94 with a Photograph (No foreign passport)
   - Temporary I-551 Printed Notation on a Machine-Readable Immigrant Visa (MRIV)

2. Click Yes on the Additional Documents Confirmation alert.

   ![Additional Documents Confirmation]

   You have indicated that the employee presented a Foreign Passport with a Form I-94 or I-94A. Some foreign national employees may present additional documents to establish employment authorization in combination with their Foreign Passport and Form I-94, such as a Form I-20, Form DS-2019, or Form I-797 Receipt Notice.

   Did the employee present additional documents?

   Yes  No
3. In the Additional Document selector that appears, choose "H-1B Portability (AC-21)" and click the continue button.

<table>
<thead>
<tr>
<th>Select an Additional Document</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>List A</strong> (Documents Both Identity &amp; Employment Eligibility)</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td>F-1/M-1 Employee (Form I-20)</td>
</tr>
<tr>
<td>J-1 Employee (DS-2019)</td>
</tr>
<tr>
<td><strong>H-1B Portability (AC-21)</strong></td>
</tr>
<tr>
<td>H-2A Portability</td>
</tr>
<tr>
<td>Nonimmigrant Extension w/ Current Employer</td>
</tr>
</tbody>
</table>
4. Enter the Foreign Passport, I-94 and Additional Document information, including the H-1B Filing Date and Reverification Due Date.
5. The I-9 Manager should enter the date the Form I-129 H-1B petition to change employers was filed with USCIS per the Form I-797C Receipt Notice. As a reminder, this date must be before the employee’s I-94 expiration date in order to be considered timely filed. Once the H-1B Filing Date is entered
   a. The Reverification Due Date will automatically calculate to 120 days from the H-1B Filing date. The Reverification Due date is an approximation since reverification for an H-1B employee who is changing employers must take place when USCIS issues a decision for the petition.
   b. The Additional Information text field in Section 2 will auto-populate with the text “Section 2 AC-21/I-129 filing Date [Extension Filing Date]”.

When the I-9 Manager updates Section 3, the Additional Information text field will auto-populate with the text “Section 3 240 Day Ext. I-129 Filing Date [Extension Filing Date]”.

6. The I-9 Manager should click Save/Acknowledge and electronically sign the amendment recording the changes.

7. The employer must reverify the employee’s employment authorization in Section 3 once they receive a decision from USCIS.

Alternatively, if the employee has not yet received the I-797C, you should upload copies of the following documents while you await the I-797C:
   • A copy of the new Form I-129
   • Proof of payment for filing a new Form I-129
   • Evidence that you mailed the new Form I-129 to USCIS

BACKGROUND INFORMATION
U.S. businesses use the H-1B program to temporarily employ foreign workers in a specialty occupation that requires theoretical or technical expertise in a certain field, such as science, engineering, or computer programming. As a U.S. employer, you may submit a Form I-129, Petition for a Nonimmigrant Worker, to USCIS for nonimmigrants who have certain skills, provided they meet established requirements. You must also include an approved Form ETA 9035, Labor Condition Application, with Form I-129 and other documentation.
An H-1B employee who is changing H-1B employers may begin working for the new employer as soon as the employer files a Form I-129 petition on behalf of the employee, however, the employer must do this before the employee's period of authorized stay expires. You must also complete a new Form I-9 for this newly hired employee. An H-1B employee's unexpired Form I-94 issued for employment with the previous employer, along with their foreign passport, qualifies as a List A document. You should write “AC-21” and enter the date you submitted Form I-129 to USCIS in the Additional Information field in Section 2. See Section 6.7, Completing Form I-9 for Nonimmigrant Categories When Requesting Extensions of Stay.

**DOCUMENTS**

After submitting the petition for extension to USCIS, USCIS will send you a Form I-797C, Notice of Action, acknowledging that the petition is pending. This should be kept with the employee's I-9.

If you don't yet have the I-797C, keep the following documents with the employee's existing Form I-9 to show that you filed for an extension of stay on their behalf:

- A copy of the new Form I-129 or Form I-129CW;
- Proof you paid the filing fee; and
- Proof you mailed the new petition to USCIS.

Once you receive the Form I-797C, you no longer need to keep copies of the I-129 application, proof of payment, and mailing receipt.
SAMPLE I-797C RECEIPT NOTICE