



MERGER & ACQUISITION FREQUENTLY ASKED QUESTIONS (FAQ)

In today's fast paced global business environment, corporate reorganization or corporate restructuring is more prevalent than ever. Most employer organizations will experience mergers, acquisitions, spin-offs, or transfer of assets and liabilities at least once in the lifespan of a business.

Two main issues of concern for employers and their foreign national population will be whether nonimmigrant petitions (particularly H1Bs) will need to be amended and whether permanent residency applications already begun may continue to exist and be processed under the new corporate structure. Questions surrounding these issues may arise even before the finalization of the corporate change. The below Frequently Asked Questions provide some basic analysis of possible action items that may need to be addressed in the event your company announces a corporate reorganization or corporate restructuring.

Q1: If my Employer is acquired, how will it impact my H1B status?

A1: It will depend upon the nature of the acquisition. If the acquisition is a successor-in-interest (SII) acquisition where the purchasing company acquires the assets and liabilities of the acquired company (including immigration liabilities), an employer is not required to submit H1B amendment petitions to the USCIS for existing H1B employees, even if there is a change in federal employer identification number as a result of the acquisition. H1B amendments may be advisable if there is a change in company name so that employer name on all documentation is consistent for ease in international travel. An employer would be required to amend the H1B with the USCIS if there was a material change in job duties.

If the acquisition is not a successor-in-interest acquisition, the purchasing company may have to file H1B Change of Employer petitions with the USCIS on behalf of the



employees before the acquisition takes place. The filing of the H1B Change of Employer petitions prior to the acquisition ensures the ability of the H1B employees to begin employment with the new corporate entity that emerges as a result of the acquisition.

Q2: If my Employer is acquired, how will it impact my L-1A or L-1B status?

A2: Like the H1B, the answer will depend upon the nature of the acquisition. The L-1 visa is based on a qualifying parent, subsidiary or affiliate relationship between the U.S. petitioner employer and the foreign entity abroad. If the acquisition results in the purchasing company also purchasing the acquired company's entities abroad and maintaining the same ownership structure of those entities, the L-1 qualifying relationship between the entities also remains valid. If there is no change in company name or federal employer identification number as a result of the acquisition, the employer is not required to submit L-1 amendment petitions to the USCIS for existing L-1 employees. Like the H1B, L-1 amendments may be advisable if there is a change in company name so that employer name on all documentation is consistent for ease in international travel. An employer would also be required to amend the L-1 if there was a material change in job duties.

If the purchasing company will not be purchasing the acquired company's entities abroad and does itself not have qualifying entities abroad, the L-1 status may need to be changed to another work authorized visa status.

Q3: If my Employer is acquired, how will it affect my pending green card process sponsored by My Employer?

A3: The employment based permanent residency process is typically a three step process for most employees: PERM Labor Certification, I-140 Immigrant Visa Petition, and I-485 Application to Adjust Status. The green card process contemplates a prospective employment position that the company will offer the employee upon approval of the permanent residency application.



If the acquisition is a successor-in-interest (SII) acquisition where the purchasing company acquires the assets and liabilities of the acquired company (including immigration liabilities), labor certifications approved for the acquired company should survive without a need to re-file, provided that there is no material change in job duties, location or title.

However, I-140 Immigrant Visa petitions that are pending or approved, even if an I-485 has been filed and pending, require that an amendment filing be submitted to the USCIS detailing the nature of the successor-in-interest acquisition. The amendment filing should not typically impact the approvability of the overall permanent residency application, but does serve as a notice to the USCIS that the prospective employer has changed per the successor-in-interest acquisition.

If the acquisition is not a successor-in-interest acquisition, the purchasing company may have to begin new permanent residency application processes for employees of the acquired company. However, if the employee is far enough along in the green card process, the employee may be eligible to “port” the permanent residency process begun by the acquired company. This requires that the I-140 petition be approved; that the I-485 application be pending for at least 180 days at the time of the acquisition and that the position offered by the new corporate entity be same/similar to the position listed in the underlying green card application.

Q4: If my Employer is acquired, how will it affect my pending my green card process if it I filed through my spouse?

A4: A family based permanent residency process is unaffected by changes of your employer and will not require any action.

Conclusion:

At the initial announcement of a corporate reorganization or corporate restructuring, an employer may not have sufficient information to draw definitive conclusions as to the exact nature of the corporate changes that will take place and thus may not be able to



immediately address how immigration petitions will be impacted. However, these Frequently Asked Questions provide a framework for how these issues will be reviewed and how the next action items will be determined.

Younossi Law will work with your corporate counsel and/or human resources manager to clarify any outstanding questions or concerns that may aid in the analysis. Younossi Law can then provide recommendations and action items to be taken on nonimmigrant and permanent resident applications so that your company remains compliant with immigration regulations, minimizes immigration liability, and ensures that employees remain work authorized.