



104 Kenner Avenue, Suite 202
Nashville, TN 37205
Tel 615-340-5000 Fax 615-216-2118
www.immigrationgrp.com

Can An Employee Change Job Positions or Job Locations During the Green Card Process?

A green card involves a test of the labor market where the sponsored job is located. At that location, the employer must advertise in the local paper and take several other steps to determine whether any able, willing, qualified, and available applicant comes forward. Throughout the green card process, the sponsored foreign national can be, but is not required to be, in the sponsored position. Instead, the law requires only that he or she fill the sponsored position after the green card is approved.

The Job Position Issue

Presently, green cards take many years to complete from the time that sponsorship begins. During that time, the sponsored individual may fill any job position at any location, so long as his or her temporary visa status permits work at that location. Here are a few examples of permissible options under federal immigration law:

- The company sponsors John for a green card based on the position of Engineer in Toledo. He must fill the Engineer position when the green card is approved many years from now. Until then, he can fill any position at any location in the United States, so long as his temporary visa status permits or is amended to permit that location.
- The company knows that, many years hence, it wants Mary to serve as Engineering Director in Seattle. Mary is presently an Engineer in Connecticut. She must fill the Engineering Director position in Seattle when the green card is approved many years from now. Until then, she can fill any position at any location in the United States, so long as her temporary visa status permits or is amended to permit that location. She can even fill the Engineering Director position now, but is not required to do so until the green card is issued.
- For John and Mary, if the USCIS takes more than 180 days to approve the final step of their three-step green card processes, then an “escape” clause erases the requirement that they fill the sponsored job position (Engineer for John and Engineering Director for Mary). Instead, they may work in the “same or similar occupation” for any employer. Whether the escape clause will come into play in a case is unknown, of course, until the very last moment many years down the line. Accordingly, an employer should not rely upon it.

The Job Location Issue

A PERM certification for a green card applies to a specific place of intended employment and the outlying area within normal commuting distance of the place of intended employment. There is no fixed distance that constitutes a normal commuting distance under USDOL guidelines, as the USDOL acknowledges that there may be widely varying factual circumstances among different areas (for example, normal commuting distances might be 20, 30, or 50 miles).

If the place of intended employment is within a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA), then any place within that MSA or PMSA is deemed to be within normal commuting distance of the place of intended employment. (In contrast, not all locations within a Consolidated Metropolitan Statistical Area (CMSA) are deemed automatically to be within normal commuting distance.) In addition, MSA/PMSA borders are not controlling in terms of defining the normal commuting distance. Therefore, a location outside of the MSA/PMSA may nevertheless be within normal commuting distance of place of intended employment.

Here are a few examples of permissible options under federal immigration law, with the term “MSA” including normal commuting distance:

- The company sponsors a green card for Anne for the position of Pharmacist in Dallas. Before her green card arrives, the Dallas store closes, but the employer opens a store in Mesquite, which is in the same MSA as, or within normal commuting distance of, Dallas. When the green card arrives, Anne must fill the position of Pharmacist in Mesquite or at another store within the Dallas MSA.
- The company sponsors a green card for Ravi for the position of Financial Analyst in Chicago. Before his green card arrives, Ravi moves to the Milwaukee office. The company must either sponsor a new green card based on the Milwaukee location or return Ravi to Milwaukee or its MSA when the green card arrives.

Much of the dilemma with green cards arises from the fact that the governing federal law was written decades ago, when green cards did not take years to finish and when employees did not change positions and locations often. Fortunately, an employee can, but does not have to be, in the sponsored position when sponsorship begins. However, having an employee in the right position at the right time is challenging when the green card process takes many years to finish.