

**PROTECTING RIGHT & \$**

## Changing jobs while on pending Form I-485



ATTY. JOEL R. BANDER

I-140 petition shall remain valid when an alien changes jobs or employers if: (1) the Form I-485 has been pending for at least 180 days; and (2) the new job is in the same or similar occupational classification as the job for which the Form I-140 petition was filed. Under current regulations, the Form I-140 must have been approved before a favorable determination of a portability request can be made.

In filing a request for Form I-140 portability, the alien is expected to submit evidence that the new offer of employment is in the same or similar occupational classification as the offer of employment for which the Form I-140 petition was filed. The USCIS adjudicators consider the following factors in determining whether the two employments are same or similar: (1) job descriptions; (2) Dictionary of Occupational Title and/or Standard Occupational Classification code assigned to the Form I-140 job offer and that which may be appropriate for the new position; and (3) substantial discrepancy between the Form I-140 wage and

the wage offered for the new position.

An alien availing of the Form I-140 portability benefit is not required by law to notify the USCIS. However, under certain circumstances, it would be prudent to do so. Under USCIS rules, if the approved Form I-140 is revoked or withdrawn by the employer after the Form I-485 has been pending for at least 180 days, and the alien has not submitted evidence of a new qualifying offer of employment, the adjudicating officer is required to issue a Notice of Intent to Deny the pending Form I-485. If the alien fails to respond or fails to establish that the new offer of employment is in the same or similar occupation, the adjudicating officer may immediately deny the Form I-485.

The successor employer is not required to apply for a new labor certification or file a new Form I-140 to enable the alien to port to the new employment. It is also not necessary that the new employer

► PAGE A9

**BARRISTER'S CORNER**



ATTY. KENNETH URSUA REYES

## Awarding Child Custody in California

state specifically the periods of time the child will be under the supervision of each parent.

Legal custody on the other hand deals with the right and responsibility of a parent to make decisions regarding the health, education, and welfare of the child. Family Code §3006. Examples would be decisions such as where the child shall attend school, whether the child can travel to another jurisdiction or state, legal decisions involving the child. In cases where joint legal custody is ordered by the court, either parent alone can make decisions concerning the health, education, and welfare of the child unless otherwise specified in the order.

In making its determination on child custody issues, the court considers various factors depending on the specific facts of the case. The court usually follows the public policy of ensuring and encouraging the child's frequent and continuing contact with both parents after the divorce unless it would not be in the best interest

of the child. Fam. Code §3011. If the court is inclined to order sole custody to one parent, the consideration boils down to which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent. Family Code §3040(a)(1). A major factor that would tilt the courts decision are incidents or history of child abuse and domestic violence. This can be from the part of a parent, a parent's co-habitant, or other person to whom a parent has a relationship with. The child's amount and nature of contact with the parents is also another factor considered. Fam. Code §3011(c). Other factors that can be considered are the parent's use of controlled substance, prior criminal convictions and registration as a sex offender, and existence of restraining order against a parent.

The family code requires that the parties go to mediation and attempt to agree on the custody issue prior to the court hearing the contested case. Family Code

► PAGE A10

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