U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/9/1

Office of Adjudications

425 I Street NW
Washington, DC 20536

APR 24 2002

Ms. Emily J. Curray
Stern and Elkind LLP
650 South Cherry Street, Ste. 900
Denver, CO 80246

Dear Ms. Curray:

This letter is in response to your February 19, 2002, letter regarding the revocation of approval of your client's Form I-140, immigrant worker petition. Your client was the beneficiary of an approved Form I-140 that was filed by Employer A. On September 25, 2000, your client filed a Form I-485, adjustment of status application. On April 13, 2001, your client ceased his employment with Employer A when that employer filed for bankruptcy. Employer A then notified the Immigration and Naturalization Service (INS) that your client had ceased to be its employee, and the INS revoked its approval of the Form I-140 on May 24, 2001. On July 15, 2001, your client began working for Employer B.

You cited section 204(j) of the Immigration and Nationality Act (Act), language that comes from section 106 of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), and argued that "it seems that where a petition or labor certification application has been withdrawn by an employer, the applicant should be allowed to obtain permanent residence based on the petition."

The language you cite at section Section 106(c) of AC21 states:

> A petition under subsection (a)(1)(D) for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

We agree that the language of AC21 appears to provide that an employment-based petition and the supporting labor certification shall remain valid with respect to a new job offer if the individual changes jobs or employers as long as the adjustment application has been filed and remained unadjudicated for 180 days or more. This interpretation would appear to apply even if approval of the initial Form I-140 had been revoked, provided the I-140 was revoked after the 180 days had passed. Please be aware that this interpretation is being explored within the context of the rulemaking process for AC21.

We hope that this information has been useful to you. If you have further questions concerning this matter, please do not hesitate to contact this office at the above address.

Sincerely,

Efren Hernandez III
Director, Business and Trade Services