

# Health Law

## Hospitals & Health Systems

### Mergers & Acquisitions Issues in Health Care

#### A Brief Guide to Immigration Consequences of Mergers and Acquisitions in the Hospital Industry

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The pace of merger activity in the hospital industry has increased dramatically over the past few years. In 2010, there were 89 mergers involving 227 hospitals, a substantial increase over the prior year, and mergers continued to be announced on a regular basis in 2011.<sup>1</sup> In addition, the purchase of physician practices by hospitals is a trend that is transforming the health care industry. At the same time, U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Labor (DOL) have dramatically expanded enforcement activity, including imposing substantial fines and debarment orders against both large and small employers of professional workers.

While the consequence of lax attention to immigration issues in mergers and acquisitions was likely not severe in the past, ignoring such issues today could have severe consequences for hospitals, health care professionals, and patients. Doctors, nurses, and other employees may find themselves rendered illegally present

and subject to deportation, while their employers face significant fines and penalties. Hospitals could find their operating licenses and access to government contracts threatened, and they could face lawsuits from employees whose immigration status was ignored in a merger deal. Patients may find that some health care professionals are no longer available, either because their immigration status has been jeopardized or because they have left for another employer that has been proactive in managing the employee's visa process.

#### More Than an Inconvenience

Inheriting immigration problems is no longer a mere inconvenience for a company. Consider, for example, these developments:

- At the federal level, the Department of Homeland Security is aggressively targeting employers for I-9 and work visa compliance audits, which can result in significant fines and even jail time.<sup>2</sup>
- At the state level, new laws in dozens of states allow authorities to fine employers, revoke business licenses, and eliminate access to state contracts for immigration law violations.<sup>3</sup>
- Employees on work visas are suing companies for negligence when employees fall out of legal status, have problems pursuing permanent residency, and face bars on coming back to the United States as a result of the companies' actions.
- Major companies now include strong immigration compliance provisions in their vendor contracts.
- Companies with immigration law violations risk facing front page coverage that can impact the company's economic performance and stock price.<sup>4</sup>

In some cases, companies pick up immigration problems that occurred prior to closing. In other instances, the closing

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triggers immigration violations. In such cases, employees may find themselves converted to an illegal status and subject to deportation. Unfortunately, these consequences are frequently not discovered until long after the celebration of the closing has occurred and it is too late to reverse the damage.

### Immigration Risks Associated with Closing a Transaction

There are a few major immigration risks associated with the closing of a transaction. First, employee visas or pending applications could potentially be affected by the deal. Second, all employers in the United States are, barred from hiring unauthorized workers and are required to maintain documentation, in the form of the I-9 and supporting paperwork, demonstrating that each worker is legally permitted to work in the United States. Companies may also be required to file new paperwork, on the closing day or before, regarding the status of their employees.

Corporate changes that typically have immigration consequences are stock or asset acquisitions, mergers, consolidations, initial public offerings, spin-offs, corporate name changes, changes in payroll source, and the relocation of an employer or its employees.

No “one size fits all” approach to advising clients about the effect of a transaction on the immigration consequence of a merger or acquisition is available. Rather, there are a number of important questions to ask as the due diligence process begins. They include:

1. How is the deal to be structured? Is it a merger or spin-off where employees will have a new employer with a different taxpayer identification number? Is it a stock purchase? Is it an asset acquisition where no liabilities are being assumed (or where just immigration liabilities are assumed)? Or a successor in interest where liabilities are to be assumed?
2. What are the timing issues in the case? Is there enough time to file new petitions? Are employees going to suffer adverse consequences as a result of the timing? Is it possible to lease employees to the successor entity until the necessary transfer paperwork can be filed? Can filings be deferred until after the closing without a penalty or risk?
3. For I-9 forms and e-Verify filings, will the documentation of the post-transaction entities survive? And, if so, does the convenience of not being required to have employees prepare new I-9s or have to re-file in e-Verify outweigh the risk of assuming liabilities associated with the old employer’s prior filings?

Those questions should initially be addressed in the due diligence request and in early discussions between the lawyers involved in a transaction. However, in many cases, immigration is not addressed during the due diligence period.

The impact of a corporate change will vary depending on an employee’s visa or status and the employee’s stage in the

immigration process. One goal of the due diligence process will be to determine whether the company that is the subject of due diligence has complied with immigration laws and the scope of any potential liability. Another will be to determine pre-closing and post-closing immigration steps that will help to ensure a smooth transition.

To meet those objectives, the due diligence review should cover the visa history of employees potentially affected by the transaction. The review will also test the I-9 compliance of the company that is the subject of the due diligence. This may take the form of a full review of the I-9s or a sample audit if a full review is not practical. A full audit may be warranted if a sampling determines that there are many problems.

### Different Visas, Different Implications

Workers coming to the United States for employment normally hold either non-immigrant or immigrant status. Non-immigrant workers at corporations normally are in the H-1B, L, E and TN visa categories as well as on training tied to J-1 and F-1 visas.

#### – H-1Bs

The key questions with respect to H-1Bs are whether a corporate change results in a new employer and, if so, to what extent are the interests of the target corporation being assumed.

An H-1B visa requires separate applications to the DOL and the USCIS. A petitioner should first obtain an approved Labor Condition Application from the DOL, and then get the I-129 Petition for a Nonimmigrant Worker approved by the USCIS.

Prior to December 2000, the DOL considered a change in an employer’s Federal Employer Identification Number enough to trigger a need to file a new LCA. Under the rules adopted December 22, 2000, however, a new LCA will not be required merely because a corporate reorganization results in a change of corporate identity, regardless of whether there is a change in EIN, as long as the successor entity agrees to assume the predecessor’s obligations and liabilities under the LCA with a memorandum to the “public access file” kept for LCA purposes.<sup>5</sup>

Material changes in the employee’s duties and job requirements and the relocation of the employee may also require a new LCA. For example, if employees are relocated due to a merger or sale, new LCAs will be required for H-1B workers (DOL uses the Standard Metropolitan Statistical Area (SMSA) as criteria in determining the need for a new LCA or Labor Certification. If the employee is relocated outside the SMSA, then new filing is required). However, a simple name change will not trigger the need for a new LCA.<sup>6</sup>

The rules governing when a new I-129 petition must be filed are similar to the LCA, but not identical. The need to file a new I-129 can be a fairly expensive requirement. For each new employment petition, the employer must pay the American Competitiveness

and Workforce Improvement Act fee, which is currently \$1500 for companies with more than 25 employees and \$750 smaller companies. Couple this with a \$500 fraud fee, a \$320 base filing fee and a \$1225 premium processing fee for fast adjudication and you are looking at as much as \$3500 per worker as well as, of course, additional attorney fees.<sup>7</sup>

The Immigration and Nationality Act (INA) contains an exemption from filing a new I-129 in cases of corporate structuring where the new employer is a successor in interest that assumes the interests and the obligations of the prior employer.<sup>8</sup> This is a restatement of a prior USCIS policy, and states that if an employer, for H-1B purposes, “assumes the previous owner’s liabilities which include the assertions the prior owner made on the labor condition application” then there is no need for a new or amended petition.<sup>9</sup> If a new or amended petition is not needed, then the employer may wait until filing an extension petition for the employee to notify the USCIS.

One potential pitfall involving H-1B employees relates to the “dependency” provisions in the H-1B statute. Employers with over a certain number or a certain percentage of H-1B employees are considered “H-1B dependent” and such companies face tight restrictions in terms of documenting recruiting efforts and hiring H-1Bs before and after layoffs.<sup>10</sup> The numbers will need to be recalculated for a company after a transaction and this could dramatically affect a company’s bottom line. The fact that a company is H-1B dependent might also be since the dependency status may be the result of a past finding that the employer has had serious prior H-1B violations and a poor history of compliance.

#### – Health Care Employers

An issue likely to affect employers in the health care sector involves loss of eligibility for cap-exempt status. Congress has set an annual quota of 65,000 H-1B visas.<sup>11</sup> Exemptions from the annual quota are available to universities, non-profit research institutions and non-profit employers affiliated with a university or non-profit research institution.<sup>12</sup>

If an employer’s status as exempt from the quota limitations on H-1B visas was the basis for an employee’s H-1B status, the corporate practitioner will want to examine whether cap exempt status is lost after the closing. This may happen, for example, when a non-profit entity is replaced by a for-profit entity as a sponsoring employer. A loss of H-1B cap exempt status could make it impossible for an employee to continue being employed by the succeeding entity as an H-1B status holder. USCIS has never stated that a loss of H-1B cap exemption status is a material change requiring an amendment, but the issue would certainly need to be dealt with at the time of an extension.

Timing of the filing of H-1B visas in such a case or the timing of the closing of the transaction may be affected by visa availability. Some employers will seek to file new cap-subject petitions as early as possible in order to secure visa numbers while available. Employers can file up to 180 days ahead of the start date of an employee which, in an acquisition, would normally be the closing

date. In some cases, the acquiring entity may lack flexibility if a new subsidiary entity is being created for the acquisition. Other employers may seek to time the closing of the acquisition to happen when visa numbers are available.

Teaching hospitals also face the challenge of having residency programs that start annually on July 1st, when, even in a down economy, it is extremely unlikely that H-1B cap numbers will be available. And because residents are not typically selected until only a few months before that date, filing far in advance for an H-1B may not be realistic. Some employers facing this situation have elected to shift to the J-1 exchange program to employ medical residents and fellows. But even though the proportion of J-1s has increased in recent years compared to H-1Bs, some teaching hospitals may be concerned that they could lose some of their best prospects if they only use the J-1 program.

Some for-profit employers have dealt with the cap exemption challenge by creating a new non-profit subsidiary entity and re-establishing an appropriate affiliation between the non-profit entity and a qualifying university or non-profit research institution. In 2011, USCIS began challenging the affiliations of many employers claiming cap exemption status, including numerous teaching hospitals around the country. The decisions proved sufficiently controversial that USCIS backed down and released a memorandum stating that entities that had previously been granted cap exempt status would be given deference if the employer had filed an H-1B cap exempt petition after June 6, 2006.<sup>13</sup> However, the memorandum does not speak to successor in interest situations and it is possible employers will face close scrutiny to determine if the affiliation qualifies.

Acquisitions may also affect physicians completing their three year service requirement in H-1B status following a J-1 waiver. If the employer is changing and a new H-1B petition is being filed, the physician will need to demonstrate that it continues to work in an underserved area, that it has a contract for the balance of the three year service requirement and that there are extenuating circumstances justifying the change of employers.<sup>14</sup> An acquisition would likely be considered such an exceptional circumstance. One potential pitfall that should be considered, however: States may grant up to ten “Flex” slots per year to J-1 waiver applicants.

Flex applicants can work in areas not federally designated as shortage areas if they can show they are serving patients from shortage areas. Unfortunately, the transfer rules don’t permit transfers from a flex location to another flex location. So USCIS could, in theory, deny the change of employer petition if the work is not being done in a federally designated shortage area even if the actual work location is not changing.

#### – NAFTA

The rules governing recipients of TN work status under the North American Free Trade Agreement (NAFTA) are certainly easier to navigate than other nonimmigrant categories. While physicians engaged in patient care can’t use the TN visa, the TN category is

popular in the health care field because it is, in practicality, the only non-immigrant category used by nurses. Hospitals in border states are often heavy users of the TN category for their nurses.

USCIS has provided virtually no guidance since the agreement went in to effect nearly two decades ago, but in the absence of guidance on NAFTA, practitioners are advised to look to the predecessor US-Canada Free Trade Agreement. Guidance does exist under the FTA and it presumably covers TN cases today.<sup>15</sup>

According to a 1993 INS memorandum, “it is important to underscore that the professional category under the United States Canada Free Trade (FTA) is not a petition driven classification. There is no need to request an extension of temporary stay as TC if the only change in employment is a successor in interest situation.”

The guidance means that in successor situations, no action is necessary until an extension petition is filed with USCIS or the applicant applies at a port of entry for TN status. The fact that a company may change nationality won't matter in these cases because the TN visa is tied to the worker's nationality, not the nationality of the company. At ports of entry, TN status holders should only need to present documentation of the successor in interest status to be admitted based on a prior approval. Once the approved TN stay has ended, the new employer will petition for the TN professional.

#### – L-1 Intracompany Transfers

L-1 visas are used for transferring executives, managers and specialized knowledge employees to a US employer from a related overseas entity. The category is not used frequently in health care because most employers do not have overseas related entities. Staffing companies that employ nurses, physical therapists and other health care professionals sometimes have such relationships. However, the employees being transferred to the United States from an overseas entity would typically not qualify as an executive, manager or specialized knowledge employee. Employees who might qualify are likely to be business professionals involved in the management of the health care company.

#### – E Visas

Like the L-1 category, the E-1 and E-2 category is rarely used in the health care sector. E-1 visas are for treaty traders and E-2s are for treaty investors and both are available only to executives, managers and essential skills employees. Like the L-1, to the extent the E category is used, it would probably be for those working in management of the health care company as opposed to a health care professional. Still, the category has been used by physicians who establish medical practices in the United States, if the physician is from a country that has a qualifying treaty.

#### – J-1 Visas

The J-1 visa is the most popular non-immigrant visa used by physicians pursuing graduate medical training in the United States. Fortunately, an acquisition typically would not affect the ability of physicians to continue working without disruptions. That is because the petitioner in a J-1 case is the Educational Commission on Foreign Medical Graduates and not the actual teaching hospital. ECFMG expects to be notified when an institution changes hands, but the DS-2019 form that each J-1 doctor possesses often only notes the name of the hospital and unless the hospital's name is changing in the transaction, the existing DS-2019 forms need not be altered.

#### – Permanent residency

The most common employment-based lawful permanent residency (LPR) application consists of three steps. First, the employer usually must prove that despite reasonable recruitment efforts, it has not been able to find a domestic employee to fill the alien's position. This is called the labor certification or PERM process, and is adjudicated by the DOL. Second, the employer files a Form I-140, Immigrant Petition for Alien Worker, with USCIS. After the I-140 petition is approved, the employee files a petition for the adjustment of her immigration status to the status of a lawful permanent resident with the USCIS.

The DOL takes a liberal view of when a new labor certification petition must be re-filed. If after an acquisition, a new owner remains the worker's employer, and has assumed all of the past owner's obligations, the new owner should qualify as a “successor-in-interest” and a labor certification will survive.<sup>16</sup>

In LPR cases, USCIS previously used a stricter version of the successor in interest theory, and permitted an employer to continue with the prior employer's petition, only if the new employer assumed “all” of the prior employer's liabilities. Without successorship, a new I-140 petition would be necessary even when an adjustment of status application is already pending.

#### The Neufeld Memorandum

A 2009 memorandum on successorship and I-140 petitions has eased the requirements and set out a process for employers to follow in successor in interest situations. Employers need not show that all of the assets and liabilities have been assumed. Instead, a 2009 USCIS memorandum written by Donald Neufeld, USCIS Associate Director of Service Center Operations, now directs USCIS examiners to consider three factors in determining if an employer is a successor in interest:

“(1) whether it's the same job; (2) if the successor has established eligibility for the requested visa classification in all respects; and (3) if the successor has adequately detailed the nature of the transfer of rights, obligations, and ownership of the prior entity. If a business can establish these three factors, it is possible to find a valid successor-in-interest

relationship even in situations where a successor does not wholly assume a predecessor entity's rights, duties and obligations."<sup>17</sup>

Successor employers are required to submit an I-140 amendment reaffirming the labor certification and including documentation of the three factors listed above.<sup>18</sup>

Some permanent residency petitions are based on self-sponsorship by an applicant. These include national interest petitions and EB-1 extraordinary ability cases. These matters are normally not affected by a major transaction except that in some cases, an employment relationship is how an applicant demonstrates that he or she will work in the field upon approval of permanent residency. If the transaction will result in an employee losing the position, this could, in theory, affect qualifying for EB-1 or EB-2 status.

In the 2009 Neufeld memorandum, USCIS stated that permanent residency petitions not requiring a labor certification (such as EB-1 extraordinary ability cases and EB-2 non-physician national interest waivers) do not require an I-140 amendment. EB-1 multinational managers and executives, EB-1 outstanding researchers and professors and employer-petitioned physician national interest waiver cases all require new I-140 petitions, according to the memorandum.<sup>19</sup> However, the employee would retain the priority date of the previously filed I-140 approved in the same category.

Physicians have the option of pursuing permanent residency via a national interest category that is tied to working five years in a medically underserved area. Physician national interest cases may be sponsored by the employer or self-sponsored by the doctor. A new I-140 would need to be filed in a successor situation for employer-sponsored cases, as the Neufeld memorandum noted above indicates. However, physicians who self-sponsor petitions likely do not need to file a new I-140 since the petition is not based on an employer's petition.

Even if an employer does not qualify as a successor in interest, employees with pending adjustment of status applications may have an additional option for maintaining a permanent residency application. An adjustment application pending six months or more will survive if an employee finds new employment in the same or a very similar occupation. Unfortunately, because of long green card backlogs, many applicants are not in a position to file an I-485 adjustment of status application. Hence, the applicant may find that a petition becomes worthless if the original job offer disappears.<sup>20</sup>

### I-9 Compliance

Finally, a successor also assumes the I-9 liabilities of a corporation. Failure to comply with I-9 requirements may result in serious sanctions running in the thousands of dollars per employee and a number of new state immigration laws tie various sanctions, including the loss of a business license, to I-9 violations. Therefore, before a corporate re-structuring, the transition team should

examine the I-9 compliance of the entity by either a sample I-9 audit or a review of the alien employees' I-9s. If a company does not assume the liabilities of the acquired corporation, new I-9s will potentially be required for all of the acquired employees and in the case of a merged entity which is completely new, I-9s may be needed for all employees of both entities.

The good news here may be that a successor in interest can assume the I-9s in place at the time of closing.<sup>21</sup> But many companies will want to consider as a matter of course requiring all employees of an acquired or merged entity complete new I-9s on the date of closing in order to ensure that past violations are not continued and also to ensure that they have a handle on which employees have a temporary employment authorization document that will require re-verification at a later time. Of course, the employer must require every employee to fill out a new I-9.

### Practical Advice for Managing Immigration Issues

As noted above, given the potential risks, immigration issues will need to be carefully analyzed in a corporate transaction. In general, employers should:

1. Ensure visas are transferred to a new employer prior to closing when a closing will affect their validity or consider changing the closing date of a transaction if it will significantly impact the ability of employees to continue working;
2. File amendments before or shortly after closing (unless regulations specifically require filing before closing);
3. Move employees to new visa categories before the closing when they will no longer be eligible in a particular category post-closing;
4. Start green card processing early in order to minimize the number of non-immigrant visas requiring attention.

Immigration queries should be incorporated into the due diligence inquiry and representations and warranties addressing immigration issues should be incorporated into the transaction documents.

Once the acquiring employer has identified all of the employees on non-immigrant visas or in the process of applying for permanent residency, an employee by employee analysis should be conducted to determine what actions must be taken and when.

Transactions can understandably create a great deal of anxiety for employees and human resources professionals. Employers should jointly communicate with affected workers about what a transaction means for their immigration status and what procedures will be undertaken to maintain their immigration status without adverse consequences. Preparing a written explanation and addressing likely questions is advisable. And having the acquiring company's immigration lawyer conduct one on one or group meetings or phone calls with employees also can be very helpful.

Employee travel can be tricky in the period following a closing. While an employer may meet successor in interest tests that ensure new petitions are not required, that does not guarantee an employee won't encounter problems when seeking a visa stamp or entering at an airport or land point of entry. Employers may want to consider having their immigration counsel prepare travel packets for each employee providing, among other things, a letter to the CBP or consular officer explaining what has happened and what immigration law specifically requires the employer do for a particular employee, documentation of successorship in interest, and any additional relevant documents (such as an H-1B corporate reorganization memorandum). If a new petition needs to be filed for an employee (such as if a successor in interest test is not being met), employees should be advised that they may want to consider traveling prior to closing or face a delay in reentering the US if a new visa stamp must be issued.

Finally, immigration and transaction counsel should be in regular contact, particularly because closing dates often are delayed and required filings may need to be timed to coincide with the closing.

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<sup>1</sup> See American Hospital Association, Mergers: What are the trends over the past decade?, <http://aharesourcecenter.wordpress.com/2011/01/20/mergers-what-are-the-trends-over-past-decade/> (last visited Nov. 9, 2011). The pace of merger activity remained strong during the first three quarters of 2011 with 71 mergers totaling nearly \$7 billion. Laura Ungar, *Merger Mania: Louisville hospitals part of U.S. surge*, *Courier-Journal*, available at <http://www.courier-journal.com/article/20111106/NEWS01/311070008/Merger-mania-Louisville-hospitals-part-U-S-surge>.

<sup>2</sup> See Society for Human Resource Management, I-9 Audits on the Rise in Obama Administration, <http://www.shrm.org/LegalIssues/FederalResources/Pages/I9AuditsObamaAdministration.aspx> (last visited Nov. 9, 2011). Penalties under existing laws can be severe. An employer can be imprisoned for up to six months and fined up to \$11,000 per unauthorized worker, an amount that can quickly pile up. Simple I-9 paperwork violations can also be substantial even if a company has never employed an unauthorized worker. Each mistake on an I-9 form can be fined \$110 up to \$1100 per I-9 form. 8 C.F.R. § 274a.10.

<sup>3</sup> According to the National Conference of State Legislatures, as of June 30, 2011, 40 state legislators had passed 151 laws and adopted 95 resolutions relating to immigration. National Conference of State Legislatures, 2011 Immigration-Related Laws and Resolutions in the States (January-June), available at <http://www.ncsl.org/default.aspx?TabId=23362>.

<sup>4</sup> For example, clothing retailer American Apparel saw its stock prices plummet after having to fire 1500 workers in response to an I-9 audit. Dana Ford, *American Apparel shares plunge 14 percent after layoffs*, *Reuters*, Mar. 25, 2010, available at <http://www.reuters.com/article/2010/03/26/us-americanapparel-idUSTRE62P09B20100326>.

<sup>5</sup> 20 C.F.R. § 655.730(e).

<sup>6</sup> Letter from Flora T. Richardson, chief of Labor Department's Division of Foreign Labor Certification, to Harry J. Joe (July 16, 1996), reprinted in 73 Interpreter Releases 1045 (Aug. 5, 1996). And later from James Norris, chief of Labor Department's Division of Foreign Labor Certifications, to Donald H. Freiberg (March 4, 1997), reprinted in 74 Interpreter Releases 1094 (July 14, 1997).

<sup>7</sup> USCIS's current fee schedule can be found at <http://www.uscis.gov/files/nativdocuments/G-1055.pdf>.

<sup>8</sup> See Visa Waiver Permanent Program Act, Pub. L. 106-396, 114 Stat. 1637, at § 401.

<sup>9</sup> James Hogan, INS Headquarters Memorandum CO 214-H, CO 214-L-C

(Oct. 22, 1992), reprinted in 69 Interpreter Releases 1448 (Nov. 6, 1992).

<sup>10</sup> 20 C.F.R. §655.736(a)

<sup>11</sup> Immigration and Nationality Act, *as amended*, at § 214(g)(1)(A)(vii).

<sup>12</sup> *Id.* at § 214(g)(5).

<sup>13</sup> USCIS Policy Memorandum 602-0037 (April 28, 2011).

<sup>14</sup> 8 C.F.R. Section 212.7(c)(9)(iv) and (v).

<sup>15</sup> Letter from Jacqueline A. Bednarz, Chief, Nonimmigrant Branch, Adjudications, to Mark Bravin (September 10, 1993), reprinted at 70 Interpreter Releases 1573-1574, App 1 (November 22, 1993).

<sup>16</sup> *Matter of Dial Auto Repair Shop Inc.*, 19 I & N Dec. 481 (1986).

<sup>17</sup> Memorandum to USCIS Field Leadership from Donald Neufeld, USCIS Acting Associate Director, Field Operations, August 6, 2009.

<sup>18</sup> *Id.* The Neufeld memorandum outlines the procedure employers must undertake to maintain a previously approved I-140. According to the memorandum: "Successor-in-interest entities which need to reaffirm the validity of an I-140 petition and the labor certification filed by a predecessor entity must file an amended I-140 petition that demonstrates that a qualifying successor-in-interest relationship exists in accordance with the three successor-in-interest factors described in Section B. above. Each amended I-140 petition should be supported by:

- \* Documentation, such as a copy of the Form I-797 approval or receipt notice, that provides the previously filed I-140 petition's receipt number, and the petitioner's name and address;

- \* A statement that provides the alien beneficiary's name, date of birth, and alien registration number (if any);

- \* Documentation to establish the ability to pay the proffered wage by the predecessor and the successor;

- \* Documentation to establish the qualifying transfer of ownership of the predecessor to the successor; and

- \* Documentation from an authorized official of the successor evidencing the transfer of ownership of the predecessor, the organizational structure of the predecessor prior to the transfer, and the current organizational structure of the successor; and the job title, job location, rate of pay, job description and job requirements for the permanent job opportunity for the alien beneficiary."

<sup>19</sup> *Id.*

<sup>20</sup> American Competitiveness in the Twenty-first Century Act of 2000, Pub. L. No. 106-313, 114 Stat. 1251 (2000).

<sup>21</sup> 8 CFR § 274a.2(b)(1)(viii)(A)(7)(ii).