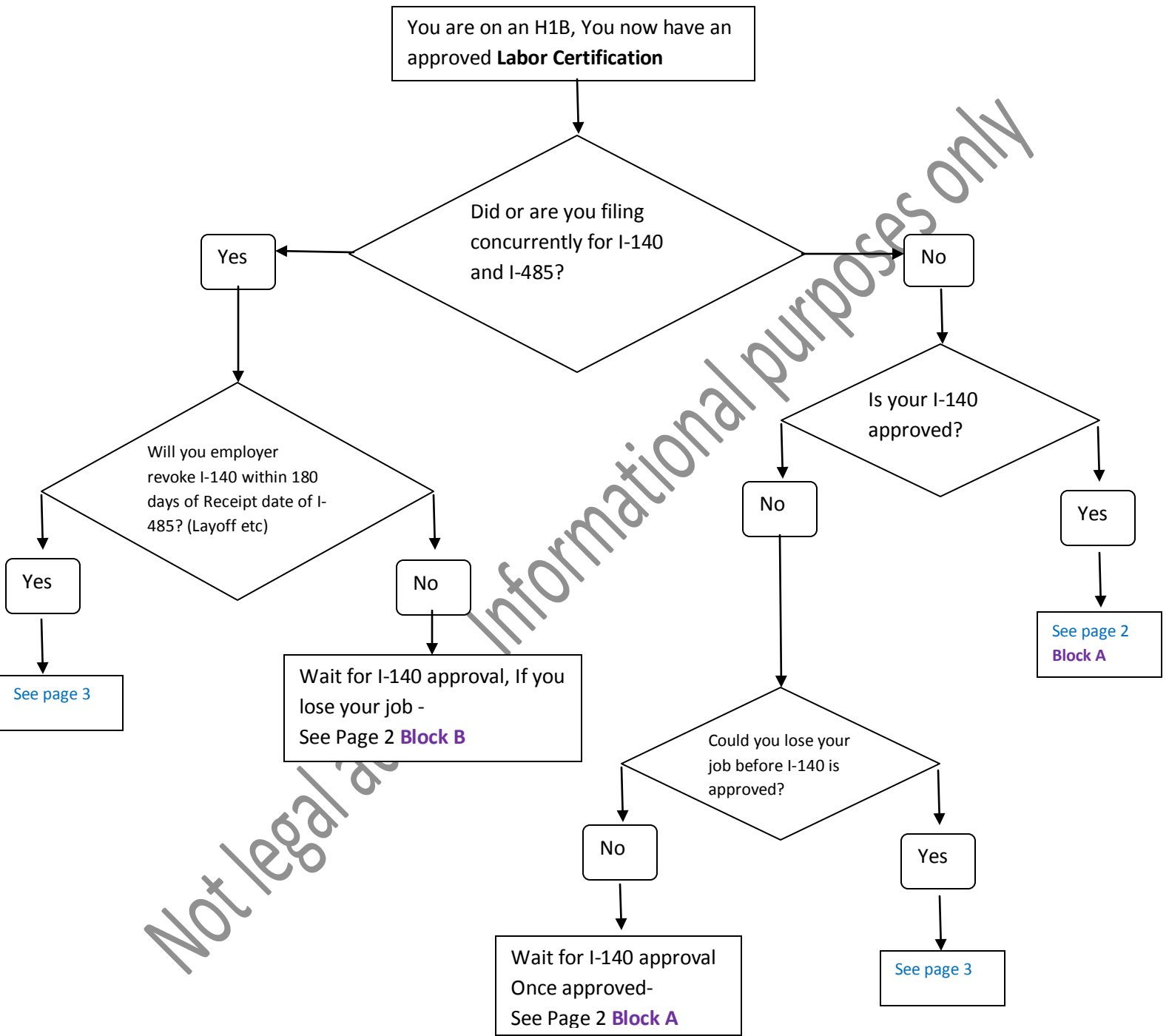
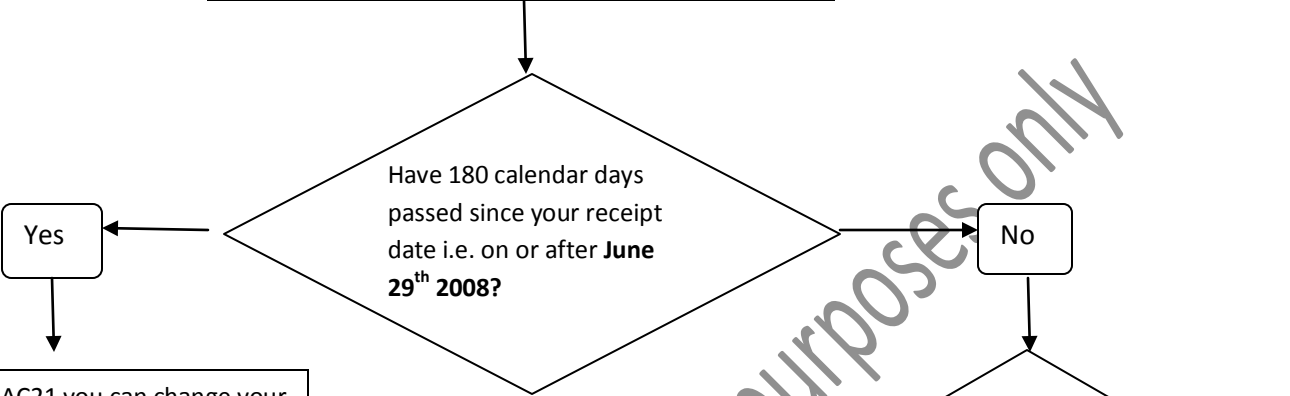


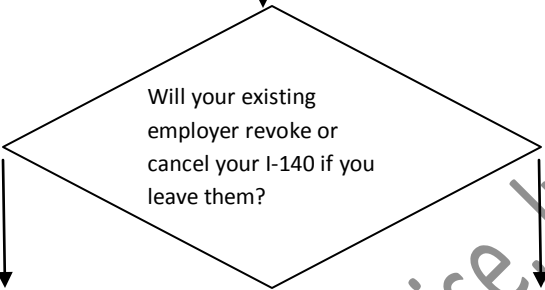
Scenarios and Strategies for dealing with AC21 Portability



Block A - You are on an H1B, I-140 is approved and you have filed for Adjustment of Status I-485 for an Employment based Green Card and the USCIS receives your application – This is the **RECEIPT DATE say Jan 1 2008**



Under AC21 you can change your Job, or start a business under **certain circumstances¹**



Yes

No

Block B - You are in same situation as a person who has 485 pending for 180 days since your 140 was not revoked in 180 days, regardless of a layoff or not.

Yes

See page 3

What do we recommend you do?
-File an AC21 Portability letter with USCIS (template provided)
-Be open with your new employer and let them know the situation, if they have an immigration lawyer, consult them.
What is the likely scenario?
-Most likely that during adjudication USCIS based on your letter, will issue a RFE, and ask for proof of same / similar job and W-2's or employment verification.
- Also possible that USCIS will ignore your AC21 letter and directly issue a NOID, you will then have to open a MTR with the help of a lawyer within 30 days.

What do we recommend you do?
- Do not do anything.
- Please do monitor your case status at USCIS to make sure your employer does not cancel your I-140 if they do follow previous strategy.
-Be open with your new employer and let them know the situation, if they have an immigration lawyer, consult them.
What is the likely scenario?
-Most likely USCIS will issue your green card after adjudication.

If you lose your job before the I-485 had been pending 180 days. Can you still use portability?

It can be attempted, and there are cases of people having done it successfully. **One of the major concerns in a layoff situation is the I-140. If the I-140 has been approved, then the concern is whether the employer will withdraw it before the 180-day point.**

Under most circumstances "The I-140 must remain intact until the I-485 reaches the 180-day point"

Alternatively, if the I-140 has not been approved, there is still the possibility of using AC21, but it is much riskier.

This issue is addressed in a USCIS memo - Yates May 2005 Memo on AC21 and I-140s, <http://www.uscis.gov/files/pressrelease/AC21intrm051205.pdf>

Synopsis of the Yates May 2005 Memo - AC21 Portability without approved I-140

The clarification pertains to the use of AC21 portability in green card cases for which the I-140 petition has not been approved. The Memo is in Q & A format, and poses the question,

"How should the USCIS process unapproved I-140s where the I-485 has been pending for 180 days and the foreign national is attempting to 'port' to new employment under AC21?"

- In this situation, the USCIS is supposed to review the I-140 to see if it is approvable or would have been approvable if it had been adjudicated within 180 days of filing. If the petition is approvable in all respects, except for a problem that arose after filing, the Memo states that it should be approved. The adjustment of status case should be adjudicated based upon whether the new job fits within the AC21 "same or similar" occupational classification requirements.
- Alternatively, if, after a review of the I-140, it is necessary to issue an RFE to resolve a material matter other than a post-filing problem, the USCIS can issue an RFE. When the response is received, the case is to be adjudicated as described above.
- It is this last portion of the guidance that was clarified. The May 12, 2005 Memo stated that an RFE should be issued if there was a material post-filing problem. The new Memo changes the wording, so as to clarify that an RFE is to be issued if there is a material problem, other than something that arose post filing. Thus, no RFE is to be issued on matters that arise after the I-140 is filed.

Suggestions for Portability without Approved I-140

- Do not rely on this to succeed, Leaving before I-140 petition is approved, intending to continue the case under AC21, is not recommended. As can be seen from the procedure described above, an RFE is possible. If an RFE is received on an I-140 case for a former employee, a company may choose to ignore it or to withdraw the I-140 petition, since the employee is no longer in their employ. That will be the end of the case.
- The provisions in the Memo are helpful when there is no other choice like a layoff. In such situations, consider it prudent to try AC21 to preserve the pending green card case, but also advise starting a new PERM case as a backup plan in the event that portability is denied.