*Stephen M. Perlitsh, P.C.*

**COUNSELLOR AT LAW**

**110 WEST 34TH STREET – SUITE 300**

**NEW YORK, NEW YORK 10001**

**---------------**

**TEL: (212) 840-3878 FAX: (917) 510-0872**

**--------------**

**E-MAIL:** [**stephen@perlitsh.com**](mailto:stephen@perlitsh.com)

**8. Portability of the H-1B Petition**

An individual in H-1B status who has not violated said status, and has filed another H-1B petition prior to the expiration of their present H-1B status, with either the same employer, or a different employer, can commence employment with the new employer, or remain employed by the present petitioning entity, as long as the petition has been submitted and the start date listed on the petition has been reached. Accordingly, an individual who is presently in H-1B status may be able to avoid paying for Premium Processing, since the individual can be employed while the petition is pending.

However, if you are changing from an employer who was exempted from the H-1B cap, to an employer who is subject to the cap, and the H-1B cap has not been reached, you should speak to an attorney about whether you should rely on this provision. According to some interpretations, you may be able to commence employment on July 1, if the Labor Condition Application listed July 1 as the start date, even though the H petition listed October 1, as a start date. However, if an individual does this, they must leave the US, obtain an H-1B visa in their passport and reenter the US in H-1B status, in order to avoid any questions as to violation of status

Last update: October 7, 2013