



U.S. Citizenship
and Immigration
Services

Questions about Same or Similar Occupational Classifications Under the American Competitiveness in the Twenty-first Century Act of 2000 (AC21)

Introduction

Section 106(c) of AC21, commonly known as the job flexibility provision, was enacted as Immigration and Nationality Act (INA) [section 204\(j\)](#). This portion of the INA is provided below for convenience:

A petition under subsection (a)(1)(D) [redesignated as (a)(1)(F)] 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.

This section of law allows certain aliens to change or port the offer of employment on which their adjustment of status application is based from one job to another job as long as both jobs are in the same or similar occupational classification. Within these questions and answers, the term “port” or “porting” means to change the offer of employment from one job to another job in a way that allows an applicant to remain eligible to adjust status without having to file a new I-140 immigrant petition. For an alien to change the offer of employment, his or her adjustment of status application, Form I-485, must have been pending with USCIS for 180 days or more.

Questions and Answers

Q1. What is an “occupational classification”?

A1. The Department of Labor (DOL) uses the Standard Occupational Classification (SOC) system to group and classify jobs and occupations. The purpose of the SOC system is to classify workers into occupational categories to organize occupational data. The SOC system covers all occupations where work is performed for pay or for profit. Occupations are categorized based on the type of work performed. Additionally, certain

occupations are also classified based on the skills, education and training required to perform the job.

The SOC system is organized using codes, which generally consist of six numerical digits. For example, the SOC code for a stonemason is 47-2022.

- [47]-2022: The first two digits, “47” represent the major group, which includes all construction and extraction occupations.
- 47-[2]022: The third digit, “2” represents the minor group, which includes all construction trade workers.
- 47-2[02]2: The fourth and fifth digits, “02” represent the broad occupation, which includes brickmasons, blockmasons, and stonemasons.
- 47-202[2]: The sixth digit, “2” represents the detailed occupation, which only includes stonemasons.

47-0000 Construction and Extraction Occupations
 47-2000 Construction Trades Workers
 47-2020 Brickmasons, Blockmasons, and Stonemasons
 47-2022 Stonemasons

No occupation will be assigned to more than one category at the lowest level of the classification (sixth digit). A USCIS memo titled, *Interim Guidance for Processing Form I-140 Employment-Based Immigrant Petitions and Form I-485 and H-1B Petitions Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Public Law 106-313) (December 27, 2005 AC21 Memo)* instructed USCIS officers to consider the [Dictionary of Occupational Titles \(DOT\)](#) code as part of the same or similar occupational classification analysis. The DOT has been replaced by the Occupational Information Network (O*NET) under the sponsorship of DOL’s Employment and Training Administration (ETA). The O*NET system relies upon the SOC codes.

Q2. How does USCIS determine what qualifies as a same or similar occupational classification?

A2. USCIS generally makes a determination as to whether one job is in the “same or similar” occupational classification as another by referring to the DOL’s SOC system. USCIS officers also consider multiple factors to conclude if two jobs are considered to be in similar occupational classifications for porting purposes (see above question for definition of “porting”). USCIS officers may compare factors including, but not limited to:

- The job duties of both positions
- The SOC code from the Immigrant Petition for Alien Worker (Form I-140) and the appropriate SOC code for the new position
- The wages associated with each position

USCIS officers will view the totality of the circumstances to determine if the two jobs are the same or similar for porting purposes.

Q3. Does USCIS only use the first two or the first three numbers of the SOC code to determine if two occupational classifications are same or similar?

A3. As noted above, USCIS does not use a simple numerical comparison of SOC codes to determine if two jobs are the same or similar. USCIS aims to determine in all cases whether a new position is in the same or similar occupational classification as the original job offer.

When referring to the SOC system, USCIS will analyze the SOC codes of the two jobs it is comparing. However, there is no hard and fast rule for matching any particular order of digits in two SOC codes.

In the example in Q.1, the “47” encompasses all construction and extraction occupations, which is a broad category and would not determine whether two jobs are similar. In this particular example, even matching additional digits of the SOC codes may not show whether or not two jobs are similar.

For example, the SOC code for a stonemason is **47-2022**. The job description for a stonemason is:

Build stone structures, such as piers, walls, and abutments. Lay walks, curbstones, or special types of masonry for vats, tanks, and floors.

The SOC code for a boilermaker is **47-2010**, which contains the same first four numbers of the stonemason’s SOC code (**47-20**). However, the job description for a boilermaker is significantly different from that of stonemason:

Construct, assemble, maintain, and repair stationary steam boilers and boiler house auxiliaries. Align structures or plate sections to assemble boiler frame tanks or vats, following blueprints. Work involves use of hand and power tools, plumb bobs, levels, wedges, dogs, or turnbuckles. Assist in testing assembled vessels. Direct cleaning of boilers and boiler furnaces. Inspect and repair boiler fittings, such as safety valves, regulators, automatic-control mechanisms, water columns, and auxiliary machines.

Q4. The December 27, 2005 AC21 Memo states that a discrepancy between the wages of two jobs may be used to decide if the two positions are the same or similar, but the memo also states that a difference in the wages of the two jobs cannot be used as the sole basis for denial in adjustment of status portability cases. Can USCIS provide further explanation on how wages are used to determine whether two jobs are in the same or similar occupational classification?

A4. Section I, Question 3 from the December 27, 2005 AC21 Memo provides USCIS officers with the flexibility to consider a “**substantial discrepancy**” in the wages offered in two positions to assist them in deciding if the two jobs are in the same or a similar occupational classification. A “**substantial discrepancy**” in the wages of the two jobs may be a contributing factor in a denial when the evidence is considered in its totality. However, a USCIS officer should not deny a case solely because a second position pays more or less than the original.

Section 1, Question 5 from the December 27, 2005 AC21 Memo references a “**difference**” in the wages to inform both USCIS officers and the public that a difference in wages should not be used as the sole basis for a denial. This means there can be an allowance for normal raises that occur through the passage of time to account for inflation and other factors such as higher rates of pay in different metropolitan locations.

Q5. Can I accept a different position or receive a promotion from my employer and remain eligible to adjust my status to permanent residence?

A5. USCIS will evaluate these situations on a case-by-case basis. The job duties for each position, the SOC codes for each position, and any differences in the wages will be the determining factors as to whether you remain eligible. Regardless of whether the new job is considered a demotion, a lateral move or a promotion within the company for which the beneficiary is employed, the job duties must be sufficiently similar. USCIS officers will view the totality of the circumstances in light of the congressional intent, expressed in INA section 204(j), as enacted by 106(c) of AC21, to facilitate job mobility within the same or similar

occupational classification for qualifying aliens with long-pending adjustment applications.

Last updated:04/07/2011

[Plug-ins](#)