provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) *Petitions*—(i) *Filing of petitions*—

(A) *General*. A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee must file a petition on Form I–129, Petition for Nonimmigrant Worker, as provided in the form instructions.

(B) *Service or training in more than one location*. A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the Form I–129 shall be where the petitioner is located for purposes of this paragraph.

(C) *Services or training for more than one employer*. If the beneficiary will perform nonagricultural services for, or receive training from, more than one employer, each employer must file a separate petition with USCIS as provided in the form instructions.

(D) *Change of employers*. If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on Form I–129 requesting classification and an extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay must conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. Except as provided by 8 CFR 274a.12(b)(21) or section 214(n) of the Act, 8 U.S.C. 1184(n), the alien is not authorized to begin the employment with the new petitioner until the petition is approved. An H–1C nonimmigrant alien may not change employers.

(E) *Amended or new petition*. The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H–1C, H–1B, H–2A, or H–2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H–1B petition, this requirement includes a new labor condition application.

(F) *Agents as petitioners*. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as it agent. A petition filed by a United States agent is subject to the following conditions;

(*1*) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(*2*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202/434-7300
Fax: 202/434-7400

Telephone: 617/542-6000
Fax: 617/542-2241

Susan J. Cohen

Direct Dial Number
617/348-4468

August 29, 1995

Mr. Lawrence Weinig
Assistant Commissioner, Adjudications
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Re: **Amended H-1B Petitions**

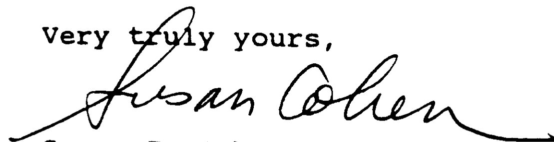
Dear Mr. Weinig:

I would appreciate it if you would be able to provide guidance regarding what constitutes a "material change in the terms and conditions of employment" for purposes of filing an amended H-1B petition. I recognize that when a material change occurs, an amended H-1B petition, including a new labor condition application, is required. However, I am seeking practical guidance regarding what types of changes are considered "material".

For example, assume an employer obtains approval of an H-1B visa petition to employ an individual as a Loan Administrator for a three-year period at an annual salary of $27,000. If, after a one year period, the employer seeks to employ that H-1B employee as a Finance Coordinator, performing some of the same duties, but adding responsibilities, including supervisory duties, at a salary of $35,000, would an amended petition be required? If so, would such an employer be penalized for filing an amended petition after the change had already taken place, as opposed to filing an amended petition prospectively?

I appreciate your guidance on this matter.

Very truly yours,



Susan J. Cohen

U.S. Department of Justice
Immigration and Naturalization Service

HQ 214h-C

425 I Street NW.
Washington, DC 20536

OCT 12 1995

Ms. Susan J. Cohen
One Financial Center
Boston, Massachusetts 02111

Dear Ms. Cohen:

This refers to your letter of August 29 in which you seek guidance on what constitutes a "material change" for the purpose of filing an amended H-1B petition.

The regulation at 8 CFR 214.2(h)(2)(i)(E) provides that the petitioner shall file an amended petition to reflect any material changes in the terms and conditions of the alien's employment. A material change is a change that directly impacts the alien's continued eligibility for H-1B classification. The regulation does not contain any specific examples of situations where an amended petition should be filed. The determination must be made on a case-by-case basis.

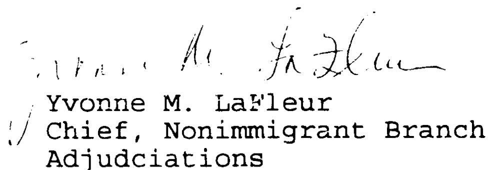
In general, a promotion to a higher position within the same occupation would not normally require the filing of an amended petition provided that the alien is required to utilize the same academic training as was required in the former petition. For example, the promotion of an accountant to a supervisory accountant would not require the filing of an amended petition if the supervisory accountant would still be required to possess the theoretical knowledge of accounting normally possessed by an H-1B accountant.

In the example provided in your letter, an amended petition would most likely not be required since, based on the information which you furnished, the alien will still be required to utilize the knowledge of an H-1B financial coordinator in the performance of his or her supervisory duties.

Finally, there is nothing in the current regulation which specifies when the amended petition should be filed. Therefore a petitioner would not be penalized for filing an amended petition after the occurrence of the material change.

I trust this response satisfactorily addresses your concerns.

Sincerely,



Yvonne M. LaFleur
Chief, Nonimmigrant Branch
Adjudciations

Matter of SIMEIO SOLUTIONS, LLC

Decided April 9, 2015

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office

(1) A change in the place of employment of a beneficiary to a geographical area requiring a corresponding Labor Condition Application for Nonimmigrant Workers ("LCA") be certified to the U.S. Department of Homeland Security with respect to that beneficiary may affect eligibility for H-1B status; it is therefore a material change for purposes of 8 C.F.R. §§ 214.2(h)(2)(i)(E) and (11)(i)(A) (2014).

(2) When there is a material change in the terms and conditions of employment, the petitioner must file an amended or new H−1B petition with the corresponding LCA.

ON BEHALF OF PETITIONER: Candie Tou Clement, Esquire, Clawson, Michigan

The California Service Center Director ("Director") revoked the petitioner's nonimmigrant visa petition and certified the decision to the Administrative Appeals Office ("AAO") for review. The AAO finds that the petitioner has not overcome the specified grounds for revocation.[1] Accordingly, the Director's decision will be affirmed and the petition's approval will be revoked.

I. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) to classify the beneficiary as an H−1B temporary nonimmigrant worker pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b) (2012). In support of the petition, the petitioner submitted a certified Department of Labor ("DOL") Labor Condition Application for Nonimmigrant Workers (ETA Form 9035/9035E) ("LCA"). On the Form I-129, the petitioner described itself as an enterprise that provides information technology services. At the time the petition was filed, the beneficiary maintained nonimmigrant status as an

[1] The AAO conducts appellate review on a de novo basis. *See Dor v. Dist. Dir., INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

F−1 student and was employed by the petitioner pursuant to post-degree optional practical training.

On the Form I-129, in the LCA, and in a letter of support, the petitioner attested that it would employ the beneficiary to serve on an in-house project at the petitioner's facility, with an annual salary of $50,232. The petitioner identified an address in Long Beach, California (Los Angeles-Long Beach-Santa Ana, CA Metropolitan Statistical Area) as the beneficiary's place of employment.[2] The petitioner stated that the beneficiary would provide services for a specific client and emphasized that "[the beneficiary] is and will continue to work from [the petitioner's] Long Beach office." The petitioner did not request other worksites and did not submit an itinerary. *See* 8 C.F.R. § 214.2(h)(2)(i)(B) (2014) (requiring an itinerary for services performed in more than one location). Based upon this record, the Director approved the Form I-129 petition.

After working for the petitioner in H−1B status for approximately 2 months, the beneficiary departed from the United States and applied for an H−1B visa at the United States Embassy in New Delhi, India, based on the approved petition. After interviewing the beneficiary, the Department of State consular officer requested additional documentation, including a letter from the petitioner's client regarding the work to be performed by the beneficiary. The petitioner did not submit the requested documentation and, instead, indicated that the beneficiary provided services to clients not previously identified in the approved petition. The Embassy returned the petition to the Director for review, stating that during the course of the visa interview process, the beneficiary and the petitioner presented information that was not available to the Director at the time the petition was approved.

Thereafter, officers of the United States Citizenship and Immigration Services ("USCIS") conducted a site visit at the petitioner's Long Beach facility, the place of employment specified in the H−1B petition and supporting documents.[3] The officers' site visit report is summarized in

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[2] With certain limited exceptions, the applicable DOL regulations define the term "place of employment" as the worksite or physical location where the work actually is performed by the H−1B nonimmigrant. *See* 20 C.F.R. § 655.715 (2014). The Office of Management and Budget established Metropolitan Statistical Areas to provide nationally consistent geographic delineations for collecting, tabulating, and publishing statistics. *See* 31 U.S.C. § 1104(d) (2012); 44 U.S.C. § 3504(e)(3) (2012); Exec. Order No. 10,253, 16 Fed. Reg. 5605 (June 11, 1951); 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas, 75 Fed. Reg. 37,246, 37,246–52 (June 28, 2010) (discussing and defining, inter alia, Metropolitan Statistical Areas).

[3] Although the petitioner bears the burden to establish eligibility for the benefit sought, USCIS may verify information submitted to meet that burden. Agency verification methods may include, but are not limited to, review of public records and information;

(continued . . .)

relevant part as follows: Unable to locate the petitioner's office at the address identified in the petition and LCA, the officers ascertained from the property manager that the petitioner had vacated the facility 2 months after the start date of the beneficiary's H−1B employment. The officers then contacted the petitioner's director of operations, the Form I-129 petition signatory, who indicated that the company currently utilized an employee's home as the company address. The officers then visited the company's newly provided address, at which the resident-employee stated that the petitioner employed approximately 45 to 50 people, the beneficiary was assigned to the petitioner's Los Angeles office, and all employees assigned to that office either worked from home or from a client worksite.

Thereafter, the Director issued a notice of intent to revoke the approval of the petition ("NOIR"). The NOIR provided a detailed statement of the related revocation ground and afforded the petitioner an opportunity to provide a rebuttal. *See* 8 C.F.R. § 214.2(h)(11)(iii)(B).

In response, the petitioner confirmed that the beneficiary was no longer working on the project or at the location specified in the original petition. The petitioner stated that the beneficiary's services had been used for "various end users" and that he had worked either out of the petitioner's Long Beach office or from his home office. With its response, the petitioner submitted a new LCA that provided two new worksites—in Camarillo, California (Oxnard-Thousand Oaks-Ventura Metropolitan Statistical Area), and Hoboken, New Jersey (New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area)—as the beneficiary's places of employment. Both worksites are located in metropolitan statistical areas different from the worksite listed on the original petition.

The Director concluded that the changes in the beneficiary's places of employment constituted a material change to the terms and conditions of employment as specified in the original petition. Pursuant to 8 C.F.R. § 214.2(h)(2)(i)(E), the petitioner was required to file an amended Form I-129 corresponding to a new LCA that reflects these changes. The petitioner failed to file an amended petition, and accordingly, the Director revoked the nonimmigrant visa petition and certified the decision to the AAO.

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contact via written correspondence, the Internet, facsimile or other electronic transmission, or telephone; unannounced physical site inspections of residences and places of employment; and interviews. *See generally* sections 103, 204, 205, 214, 291 of the Act; 8 U.S.C. §§ 1103, 1154, 1155, 1184, 1361 (2012); 8 C.F.R. § 103.2(b)(7) (2014).

II. LCA AND H−1B VISA PETITION PROCESS

In pertinent part, the Act defines an H−1B nonimmigrant worker as

> an alien . . . who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . who meets the requirements for the occupation specified in section 214(i)(2) . . . and with respect to whom *the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1).*

Section 101(a)(15)(H)(i)(b) of the Act (emphasis added).[4]

In turn, section 212(n)(1)(A)(i) of the Act, 8 U.S.C. § 1182(n)(1)(A)(i) (2012), requires an employer to pay an H−1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services.[5] *See* 20 C.F.R. § 655.731(a) (2014); *see also Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, No. 07-097, 2009 WL 2371236, at *8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009).

Implemented through the LCA certification process, section 212(n)(1) is intended to protect United States workers' wages by eliminating economic incentives or advantages in hiring temporary foreign workers. *See, e.g.*, Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H−1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110–11, 80,202 (Dec. 20, 2000) (Supplementary Information). The LCA currently requires petitioners to describe, inter alia, the number of workers sought, the pertinent visa classification for such workers, their job title and occupational classification, the prevailing wage, the actual rate of pay, and the place(s) of employment.

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[4] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

[5] The prevailing wage may be determined based on the arithmetic mean of the wages of workers similarly employed in the area of intended employment. 20 C.F.R. § 655.731(a)(2)(ii) (2014).

To promote the United States worker protection goals of a statutory and regulatory scheme that allocates responsibilities sequentially between DOL and the Department of Homeland Security ("DHS"), a prospective employer must file an LCA and receive certification from DOL before an H−1B petition may be submitted to USCIS. 8 C.F.R. § 214.2(h)(4)(i)(B)(1); 20 C.F.R. § 655.700(b)(2) (2014).[6] If an employer does not submit the LCA to USCIS in support of a new or amended H−B petition, the process is incomplete and the LCA is not certified to the Secretary of Homeland Security. *See* section 101(a)(15)(H)(i)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(i)(B)(1); 20 C.F.R. § 655.700(b); *see also* Labor Condition Applications and Requirements for Employers Using Aliens on H−1B Visas in Specialty Occupations and as Fashion Models, 57 Fed. Reg. 1316, 1318 (Jan. 13, 1992) (Supplementary Information) (discussing filing sequence); Labor Condition Applications and Requirements for Employers Using Aliens on H−1B Visas in Specialty Occupations, 56 Fed. Reg. 37,175, 37,177 (Aug. 5, 1991) (Supplementary Information).

In the event of a material change to the terms and conditions of employment specified in the original petition, the petitioner must file an amended or new petition with USCIS with a corresponding LCA. Specifically, the pertinent regulation requires the following:

> The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H–1C, H–1B, H–2A, or H–2B petition must be accompanied by a current or new Department of Labor determination. *In the case of an H–1B petition, this requirement includes a new labor condition application.*

8 C.F.R. § 214.2(h)(2)(i)(E) (emphasis added). Furthermore, petitioners must "immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility" for H−1B status and, if they will continue to employ the beneficiary, file an amended petition. 8 C.F.R. § 214.2(h)(11)(i)(A).

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[6] Upon receiving DOL's certification, the prospective employer then submits the certified LCA to USCIS with an H−1B petition on behalf of a specific worker. 8 C.F.R. § 214.2(h)(2)(i)(A), (2)(i)(E), (4)(iii)(B)(1). DOL reviews LCAs "for completeness and obvious inaccuracies" and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H−1B visa petition, including the specific place of employment. 20 C.F.R. § 655.705(b) (2014); *see also* 8 C.F.R. § 214.2(h)(4)(i)(B).

A change in the place of employment of a beneficiary to a geographical area requiring a corresponding LCA be certified to DHS with respect to that beneficiary may affect eligibility for H−1B status; it is therefore a material change for purposes of 8 C.F.R. § 214.2(h)(2)(i)(E) and (11)(i)(A).[7] When there is a material change in the terms and conditions of employment, the petitioner must file an amended or new H−1B petition with the corresponding LCA. 8 C.F.R. § 214.2(h)(2)(i)(E).

III. ANALYSIS

In this matter, the petitioner claimed in both the Form I-129 petition and the certified LCA that the beneficiary's place of employment was located in Long Beach, California (Los Angeles-Long Beach-Santa Ana, CA Metropolitan Statistical Area). After conducting the site visit, USCIS determined that the beneficiary was not employed at that designated place of employment. In response to the Director's NOIR, the petitioner indicated the beneficiary's places of employment as Camarillo, California (Oxnard-Thousand Oaks-Ventura Metropolitan Statistical Area), and Hoboken, New Jersey (New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area).[8] No other locations were provided.

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[7] This interpretation of the regulations clarifies, but does not depart from, the agency's past policy pronouncements that "[t]he mere transfer of the beneficiary to another work site, in the same occupation, does not require the filing of an amended petition, provided the initial petitioner remains the alien's employer and, provided further, the supporting labor condition application remains valid." Memorandum from T. Alexander Aleinikoff, INS Exec. Assoc. Comm'r, Office of Programs (Aug. 22, 1996), at 1–2 (Amended H−1B Petitions), *reprinted in* 73 *Interpreter Releases* No. 35, Sept. 16, 1996, app. III at 1222, 1231–32; *see also* Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,420 (June 4, 1998) (Supplementary Information) (stating in pertinent part that the "proposed regulation would not relieve the petitioner of its responsibility to file an amended petition when required, for example, when the beneficiary's transfer to a new work site necessitates the filing of a new labor condition application"). To the extent any previous agency statements may be construed as contrary to this decision, those statements are hereby superseded. *See, e.g.*, Letter from Efren Hernandez III, Dir., Bus. and Trade Branch, USCIS, to Lynn Shotwell, Am. Council on Int'l Pers., Inc. (Oct. 23, 2003). We need not decide here whether, for purposes of 8 C.F.R. § 214.2(h)(2)(i)(E), there may be material changes in terms and conditions of employment that do not affect the alien's eligibility for H−1B status but nonetheless require the filing of an amended or new petition.

[8] The record indicates that the new places of employment were not short-term placements. *See generally* 20 C.F.R. §§ 655.715, 655.735 (2014). The petitioner did not claim, and the AAO does not find, that these new work locations fall under "non-worksite" locations, as described at 20 C.F.R. § 655.715, or short-term placements or assignments, as described at 20 C.F.R. § 655.735.

A change in the terms and conditions of employment of a beneficiary that may affect eligibility under section 101(a)(15)(H) of the Act is a material change. *See* 8 C.F.R. § 214.2(h)(2)(i)(E); *see also* 8 C.F.R. § 214.2(h)(11)(i)(A) (requiring that a petitioner file an amended petition to notify USCIS of any material changes affecting eligibility of continued employment or be subject to revocation).

Because section 212(n) of the Act ties the prevailing wage to the "area of employment," a change in the beneficiary's place of employment to a geographical area not covered in the original LCA would be material for both the LCA and the Form I-129 visa petition, since such a change may affect eligibility under section 101(a)(15)(H) of the Act. *See, e.g.*, 20 C.F.R. § 655.735(f) (2014). If, for example, the prevailing wage is higher at the new place of employment, the beneficiary's eligibility for continued employment in H−1B status will depend on whether his or her wage for the work performed at the new location will be sufficient. Fundamentally, for an LCA to be effective and correspond to an H−1B petition, it must specify the beneficiary's place(s) of employment.[9]

Here, the Form I-129 and the originally submitted LCA identified the Long Beach, California, facility as the place of employment. The LCA did not cover either the Camarillo, California, or the Hoboken, New Jersey, addresses requested in response to the NOIR. In addition, the petitioner attested on the Form I-129 that it would pay the beneficiary a salary approximately $9,000 less than would be required for the subsequently identified places of employment in Camarillo, California, and Hoboken, New Jersey, contrary to sections 101(a)(15)(H)(i)(b) and 212(n)(1) of the Act.[10] Such changes in the terms and conditions of the beneficiary's employment may, and in this case did, affect eligibility under section 101(a)(15)(H) of the Act.

[9] A change in the beneficiary's place of employment may impact other eligibility criteria, as well. For example, at the time of filing, the petitioner must have complied with the DOL posting requirements at 20 C.F.R. § 655.734. Additionally, if the beneficiary will be performing services in more than one location, the petitioner must submit an itinerary with the petition listing the dates and locations. 8 C.F.R. § 214.2(h)(2)(i)(B); *see also* 8 C.F.R. § 103.2(b)(1).

[10] The LCAs list the prevailing wage for the designated occupational category as $50,232 per year in Long Beach, California (Los Angeles-Long Beach-Santa Ana, CA Metropolitan Statistical Area); $59,904 per year in Camarillo, California (Oxnard-Thousand Oaks-Ventura Metropolitan Statistical Area); and $59,613 per year in Hoboken, New Jersey (New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area). On each LCA, the petitioner identified the source of the prevailing wage as the DOL Office of Foreign Labor Certification's Occupational Employment Statistics.

Having materially changed the beneficiary's authorized place of employment to geographical areas not covered by the original LCA, the petitioner was required to immediately notify USCIS and file an amended or new H−1B petition, along with a corresponding LCA certified by DOL, with both documents indicating the relevant change.[11] 8 C.F.R. § 214.2(h)(2)(i)(E), (h)(11)(i)(A). By failing to file an amended petition with a new LCA, or by attempting to submit a preexisting LCA that has never been certified to USCIS with respect to a specific worker, a petitioner may impede efforts to verify wages and working conditions. Full compliance with the LCA and H−1B petition process, including adhering to the proper sequence of submissions to DOL and USCIS, is critical to the United States worker protection scheme established in the Act and necessary for H−1B visa petition approval.

IV. CONCLUSION

It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361 (2012); *Matter of Skirball Cultural Center*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met. The AAO will affirm the decision of the Director. The Form I-129 petition's approval is revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(1), (A)(3), and (A)(4).[12]

ORDER: The Director's decision is affirmed. The petition is revoked.

[11] Here, the petitioner submitted a new LCA certified for the beneficiary's places of employment in Camarillo, California, and Hoboken, New Jersey, in response to the NOIR. This LCA was not previously certified to USCIS with respect to the beneficiary and, therefore, it had to be submitted to USCIS as part of an amended or new petition before the beneficiary would be permitted to begin working in those places of employment. *See* 8 C.F.R. § 214.2(h)(2)(i)(E).

[12] Since the identified ground for revocation is dispositive of the petitioner's continued eligibility, the AAO need not address any additional issues in the record of proceeding.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

July 21, 2015 **PM-602-0120**

Policy Memorandum

SUBJECT: USCIS Final Guidance on When to File an Amended or New H-1B Petition After *Matter of Simeio Solutions, LLC*

Purpose

This Policy Memorandum (PM) provides guidance regarding the implementation of *Matter of Simeio Solutions, LLC,* 26 I&N Dec. 542 (AAO 2015).

Scope

This memorandum applies to and shall be used to guide determinations by all U.S. Citizenship and Immigration Services (USCIS) employees. The updated guidance that follows is effective immediately.

Authorities

- Sections 101(a)(15)(H)(i)(b) and 214(a)(1), (c)(1) of the Immigration and Nationality Act (INA), Title 8, United States Code, sections 1101(a)(15)(H)(i)(b) and 1184(a)(1), (c)(1).
- Title 8 Code of Federal Regulations (CFR), section 214.2(h).
- *Matter of Simeio Solutions, LLC* 26 I&N Dec. 542 (AAO 2015).

Policy

On April 9, 2015, USCIS' Administrative Appeals Office (AAO) issued the precedent decision, *Matter of Simeio Solutions, LLC* (*Simeio*), which held that an H-1B employer must file an amended or new H-1B petition when a new Labor Condition Application for Nonimmigrant Workers (LCA) is required due to a change in the H-1B worker's place of employment.

Specifically, the decision stated:

1. A change in the place of employment of a beneficiary to a geographical area requiring a corresponding LCA be certified to the Department of Homeland Security (DHS) with

respect to that beneficiary may affect eligibility for H-1B status; it is therefore a material change for purposes of 8 C.F.R. §§ 214.2(h)(2)(i)(E) and (11)(i)(A) (2014).

2. When there is a material change in the terms and conditions of employment, the petitioner must file an amended or new H-1B petition with the corresponding LCA.

This precedent decision represents the USCIS position that H-1B petitioners are required to file an amended or new petition before placing an H-1B employee at a new place of employment not covered by an existing, approved H-1B petition.

When a petitioner must file an amended or new petition based on *Simeio*

Except as provided below in the *Simeio* compliance section, a petitioner must file an amended or new H-1B petition if the H-1B employee is changing his or her place of employment to a geographical area requiring a corresponding LCA to be certified to USCIS, even if a new LCA is already certified by the U.S. Department of Labor and posted at the new work location.

Note: Once a petitioner properly files the amended or new H-1B petition, the H-1B employee can immediately begin to work at the new place of employment, provided the requirements of section 214(n) of the INA are otherwise satisfied. The petitioner does not have to wait for a final decision on the amended or new petition for the H-1B employee to start work at the new place of employment.

When a petitioner does NOT need to file an amended petition

- **A move within an "area of intended employment":** If a petitioner's H-1B employee is simply moving to a new job location within the same area of intended employment, a new LCA is not generally required. *See* INA section 212(n)(4); 20 CFR 655.734.
  Therefore, provided there are no changes in the terms and conditions of employment that may affect eligibility for H-1B classification, the petitioner does not need to file an amended or new H-1B petition.

  However, the petitioner must still post the original LCA in the new work location within the same area of intended employment. For example, an H-1B employee presently authorized to work at a location within the New York City metropolitan statistical area (NYC) may not trigger the need for a new LCA if merely transferred to a new worksite in NYC, but the petitioner would still need to post the previously obtained LCA at the new work location. *See* 20 CFR 655.734. This is required regardless of whether an entire office moved from one location to another within NYC, or just the one H-1B employee.

- **Short-term placements:** Under certain circumstances, a petitioner may place an H-1B employee at a new worksite for up to 30 days, and in some cases 60 days (where the employee is still based at the "home" worksite), without obtaining a new LCA. *See* 20 CFR 655.735. In these situations, the petitioner does not need to file an amended or new H-1B

petition provided there are no material changes in the terms and conditions of the H-1B worker's employment.

- **Non-worksite locations:** If H-1B employees are only going to a non-worksite location and there are no material changes in the authorized employment, the petitioner does not need to file an amended or new H-1B petition. A location is considered to be a "non-worksite" if:
    - The H-1B employees are going to a location to participate in employee developmental activity, such as management conferences and staff seminars;
    - The H-1B employees spend little time at any one location; or
    - The job is "peripatetic in nature," such as situations where their job is primarily at one location but they occasionally travel for short periods to other locations "on a casual, short-term basis, which can be recurring but not excessive (i.e., not exceeding 5 consecutive workdays for any one visit by a peripatetic worker, or 10 consecutive workdays for any one visit by a worker who spends most work time at one location and travels occasionally to other locations)." *See* 20 CFR 655.715.

Compliance with *Simeio*

As explained in *Simeio*, this USCIS interpretation of the law clarifies, but does not depart from, existing regulations and previous agency policy pronouncements on when an amended H-1B petition must be filed. To accommodate petitioners who need to come into compliance with *Simeio*, USCIS will exercise its discretion as follows:

- **Pre-*Simeio* changes in the place of employment requiring certification of a new LCA:** If a petitioner's H-1B employee moved to a new area of employment (not covered by an existing, approved H-1B petition) on or before the date of publication of *Matter of Simeio Solutions, LLC* (April 9, 2015), USCIS will generally not pursue *new* adverse actions (e.g., denials or revocations) solely based upon a failure to file an amended or new petition regarding that move after July 21, 2015. USCIS will, however, preserve adverse actions already commenced or completed prior to July 21, 2015 and will pursue new adverse actions if other violations are determined to have occurred.

- **Safe harbor period:** If a petitioner wishes, notwithstanding the above statement of discretion, to file an amended or new petition to request a change in the place of employment that occurred on or before the *Simeio* decision, the petitioner may file an amended or new petition by January 15, 2016. USCIS will consider filings during this safe harbor period to be timely for purposes of the regulation and meeting the definition of "nonimmigrant alien" at INA section 214(n)(2). **Note:** See the additional guidance in the table below for situations where a petitioner must file an amended or new petition.

- **Post-*Simeio* changes in the place of employment requiring certification of a new LCA:**

- If by January 15, 2016 (deadline for filing) a petitioner does not file an amended or new petition for an H-1B employee who moved to a new place of employment (not covered by an existing, approved H-1B petition) after the date of publication of *Matter of Simeio Solutions, LLC* (April 9, 2015) but before August 19, 2015, the petitioner will be out of compliance with DHS regulations and the USCIS interpretation of the law, and thus subject to adverse action. Similarly, the petitioner's H-1B employee will not be maintaining nonimmigrant status and will also be subject to adverse action.

- If the change in the place of employment (not covered by an existing, approved H-1B petition) occurs on or after August 19, 2015, then the petitioner must file an amended or new petition before the employee begins working at the new location.

If a petitioner's H-1B employee moved to a new place of employment (not covered by an existing, approved H-1B petition)…	**Then…**
On or before April 9, 2015	The petitioner may choose to file an amended or new petition by January 15, 2016. Such requests to change an H-1B employee's place of employment will be deemed timely. Even if the petitioner does not file the amended or new petition by this date, USCIS will generally not pursue new revocations or denials based upon failure to file an amended or new petition. However, notices of intent to revoke, revocations, requests for evidence, notices of intent to deny, or denials issued prior to July 21, 2015 (date of this final guidance) remain in effect and the petitioner must comply with them. If the petitioner has received a notice of intent to revoke a petition and the response period has not ended, filing an amended or new petition now and providing evidence of that filing prior to the response deadline may avert a revocation. This is only if there are no other grounds for the revocation except the failure to file an amended or new petition for a change to a place of employment not covered

	by an existing, approved H-1B petition. If the petitioner has received a request for evidence or a notice of intent to deny a petition based on a failure to file an amended petition, USCIS may consider the current, pending petition under review to satisfy the safe harbor filing requirement if it included, at the time of filing, a copy of the certified LCA covering the beneficiary's current work location. In these cases, please ensure petitioners provide a copy of this guidance with their response, an explanation that their current petitions satisfy the safe harbor filing requirement for an amended or new petition, and any other evidence requested before the expiration of the response deadline. Note: A petitioner may not amend a pending petition in response to a request for evidence or a notice of intent to deny. In the event there are material changes after the filing of a petition, the petitioner must immediately file an amended or new petition to reflect those changes.
After April 9, 2015 but prior to August 19, 2015	The petitioner **must** file an amended or new petition by January 15, 2016. USCIS will consider filings prior to the deadline for this safe harbor period to be timely for purposes of the regulation. However, if the petitioner does not file the amended or new petition within the time permitted, the petitioner will be out of compliance with DHS regulations. The petitioner's current Form I-129, Petition for a Nonimmigrant Worker, H-1B petition approval will be subject to a notice of intent to revoke and the employee may be found to not be maintaining his or her H-1B status. If the petitioner has received a notice of intent to revoke a petition and the response period

	has not ended, filing an amended or new petition now and providing evidence of that filing prior to the response deadline may avert a revocation. This is only if there are no other grounds for the revocation except the failure to file an amended or new petition for a change to a place of employment not covered by an existing, approved H-1B petition. If the petitioner has received a request for evidence or a notice of intent to deny a petition based on a failure to file an amended petition, USCIS may consider the current, pending petition under review to satisfy the safe harbor filing requirement if it included, at the time of filing, a copy of the certified LCA covering the beneficiary's current work location. In these cases, please ensure petitioners provide a copy of this guidance with their response, an explanation that their current petitions satisfy the safe harbor filing requirement for an amended or new petition, and any other evidence requested before the expiration of the response deadline. As noted above, a petitioner may not amend a pending petition in response to a request for evidence or a notice of intent to deny. In the event there are material changes after the filing of a petition, the petitioner must immediately file an amended or new petition to reflect those changes.
On or after August 19, 2015	The petitioner **must** file an amended or new petition before an H-1B employee starts working at a new place of employment not covered by an existing, approved H-1B petition.

Additional information regarding amended petitions

- **If a petitioner's amended or new H-1B petition is denied**, but the original petition is still valid, the H-1B employee may return to the place of employment covered by the original petition as long as the H-1B employee is able to maintain valid nonimmigrant status at the original place of employment.

- **If an amended or new H-1B petition is still pending**, the petitioner may file another amended or new petition to allow the H-1B employee to change worksite locations immediately upon the latest filing. However, every amended or new H-1B petition must separately meet the requirements for H-1B classification and any requests for extension of stay. In the event that the H-1B nonimmigrant beneficiary's status has expired while successive amended or new H-1B petitions are pending, the denial of any petition or request to amend or extend status will result in the denial of all successive requests to amend or extend status. See Memorandum from Michael Aytes, Acting Director of Domestic Operations (December 27, 2005), for similar instructions about portability petitions.

- **If a petitioner's employee needs to travel while an amended or new H-1B petition is still pending**, please read our past guidance on admission procedures for nonimmigrants claiming portability. See Memorandum from Michael D. Cronin, Executive Associate Commissioner (June 19, 2001).

Use

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications and petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the USCIS Office of Policy and Strategy.

described in section 1101(a)(15)(O) or 1101(a)(15)(P) of this title to accommodate the exigencies and scheduling of a given production or event.

(ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 1101(a)(15)(O)(i) or 1101(a)(15)(P)(i) of this title in the case of emergency circumstances (including trades during a season).

(F) No consultation required under this subsection by the Attorney General with a nongovernmental entity shall be construed as permitting the Attorney General to delegate any authority under this subsection to such an entity. The Attorney General shall give such weight to advisory opinions provided under this section as the Attorney General determines, in his sole discretion, to be appropriate.

(7) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(8) The Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing, with respect to petitions under each subcategory of subparagraphs (H), (O), (P), and (Q) of section 1101(a)(15) of this title the following:

(A) The number of such petitions which have been filed.

(B) The number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions.

(C) The number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions.

(D) The number of such petitions which have been withdrawn.

(E) The number of such petitions which are awaiting final action.

(9)(A) The Attorney General shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 1001(a) of title 20, a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before[1] a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(i)(b) of this title;

(ii) to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien); or

(iii) to obtain authorization for an alien having such status to change employers.

(B) The amount of the fee shall be $1,500 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(s) of this title.

(10) An amended H–1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer and where the terms and conditions of employment remain the same but for the identity of the petitioner.

(11)(A) Subject to subparagraph (B), the Secretary of Homeland Security or the Secretary of State, as appropriate, shall impose a fee on an employer who has filed an attestation described in section 1182(t) of this title—

(i) in order that an alien may be initially granted nonimmigrant status described in section 1101(a)(15)(H)(i)(b1) of this title; or

(ii) in order to satisfy the requirement of the second sentence of subsection (g)(8)(C) of this section for an alien having such status to obtain certain extensions of stay.

(B) The amount of the fee shall be the same as the amount imposed by the Secretary of Homeland Security under paragraph (9), except that if such paragraph does not authorize such Secretary to impose any fee, no fee shall be imposed under this paragraph.

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(s) of this title.

(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in subparagraph (H)(i)(b) or (L) of section 1101(a)(15) of this title; or

(ii) to obtain authorization for an alien having such status to change employers.

(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section 1101(a)(15)(L) of this title, if the alien is covered under a blanket petition described in paragraph (2)(A).

(C) The amount of the fee imposed under subparagraph (A) or (B) shall be $500.

(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

(E) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(v) of this title.

(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 1101(a)(15)(H)(ii)(b) of this title.

(B) The amount of the fee imposed under subparagraph (A) shall be $150.

[1] So in original. The word "before" probably should not appear.

(6) *Copies of supporting documents.* The petitioner may submit a legible photocopy of a document in support of the visa petition, in lieu of the original document. However, the original document shall be submitted if requested by the Service.

(7) *Approval of petition*—(i) *General.* The director shall notify the petitioner of the approval of an individual or a blanket petition within 30 days after the date a completed petition has been filed. If additional information is required from the petitioner, the 30 day processing period shall begin again upon receipt of the information. The original Form I–797 received from the USCIS with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (l)(13) of this section.

(A) *Individual petition*—(*1*) Form I–797 shall include the beneficiary's name and classification and the petition's period of validity.

(*2*) An individual petition approved under this paragraph shall be valid for the period of established need for the beneficiary's services, not to exceed three years, except where the beneficiary is coming to the United States to open or to be employed in a new office.

(*3*) If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate as required by paragraph (l)(14)(ii) of this section that it is doing business as defined in paragraph (l)(1)(ii)(H) of this section to extend the validity of the petition.

(B) *Blanket petition.* (*1*) Form I–797 shall identify the approved organizations included in the petition and the petition's period of validity.

(*2*) A blanket petition approved under this paragraph shall be valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with these regulations.

(*3*) A blanket petition may be approved in whole or in part and shall cover only qualifying organizations.

(C) *Amendments.* The petitioner must file an amended petition, with fee, at the USCIS office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (*i.e.*, from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to L nonimmigrant classification, subject to the same period of admission and limits as the beneficiary, if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she has been granted employment authorization.

(8) *Denial of petition*—(i) *Individual petition.* If an individual is denied, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial.

(ii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial. If the petition is denied in part, the USCIS office issuing the denial shall forward to the petitioner, along with the denial, a Form I–797 listing those organizations which were found to quality. If the decision to deny is reversed on appeal, a new Form I–797 shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) *Revocation of approval of individual and blanket petitions*—(i) *General.* The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any individual or blanket petition is automatically revoked if the petitioner withdraws the petition or the petitioner fails to request indefinite validity of a blanket petition.

Appendix II

10-22

CO 214h-C
CO 2141-C

Guidelines for the Filing
of Amended H and L Petitions

All Service Center Directors
All District Directors
All Officers in Charge

Office Of
Operations
(HQOPS)

This memorandum provides general policy guidelines relating to the requirements for filing amended or new petitions for H and L nonimmigrants. As stated in the relating regulation, an amended petition must be filed when there is a material change in the terms and conditions of employment or the beneficiary's eligibility. The amended petition procedure was not devised merely as an avenue to advise the Service of minor changes in the conditions of employment or the beneficiary's eligibility. Petitioners should apprise the Service of these minor, immaterial changes when extensions of the beneficiary's stay are filed.

H Petitions

When a beneficiary is transferred from one employer to another, a new petition must be filed by the new employer. This procedure insures that the new employer is liable for the alien's return transportation abroad and that the employer files a labor condition application.

When a beneficiary is transferred from a firm to another firm within the same organization, a new or amended petition should be filed if the new firm becomes the beneficiary's employer. The mere transfer of the beneficiary to another work site, in the same occupation, does not require the filing of an amended petition provided the initial petitioner remains the alien's employer and, provided further, the supporting labor condition application remains valid.

The current operations instructions provide that when a beneficiary is transferred from one branch of a firm to another branch of the same firm, a new or amended petition need not be filed. This is not inconsistent with the above paragraph since a branch of a firm is not considered to be a separate entity from its parent company.

Appendix II, continued

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All Service Center Directors
All District Directors
All Officers in Charge

An amended or new petition need not be filed when the petitioner changes its name. The petitioner should advise the Service of the name change if and when it files to extend the alien's stay.

Changes in the ownership structure of the petitioning entity do not require the filing of a new or amended petition. It is understood that the new owner(s) of the firm assumes the previous owner's liabilities which would include the assertions the prior owner made on the labor condition application.

When the beneficiary's employer merges with another firm to create a third entity which will subsequently employ the beneficiary, a new or amended petition must be filed since the merger has created a new legal entity. This circumstance is distinguished from a change in ownership, which does not necessarily create a new entity.

A change of the alien's duties from one specialty occupation to another requires the filing of an amended petition. For example, an alien physician admitted to the U.S. to teach or conduct research must have an amended petition filed in his/her behalf in order to do clinical care.

L Individual Petitions

A significant change in the beneficiary's duties, for example, from specialized knowledge to managerial/executive, requires the filing of an amended petition. Changes from one managerial position to another do not require an amended petition. However, the petitioner must inform the Service of the change in the beneficiary's duties when an extension of stay is filed for the alien.

If the alien is transferred from one company to another company in the same organization and becomes the employee of the new company, an amended petition must be filed. This is the only way the Service will be able to ascertain if the new firm is related to the foreign firm in a qualifying capacity.

If the alien is transferred from one company to another company in the same organization but does not become the employee of the new company, an amended petition need not be filed.

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All Service Center Directors
All District Directors
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L-1 Blanket Petitions

The transfer of the beneficiary to another firm in the same organization does not require the filing of an amended or new petition provided that the new firm is listed in the blanket petition. Petitioners can utilize the amended petition procedure to add new organizations to the initial blanket petition.

Changes in the duties of an alien admitted to the U.S. under a blanket petition do not require the filing of amended petition. Since blanket petitions do not relate to specific beneficiaries, there is no petition to amend. The Service should be apprised of this change when an extension of the beneficiary's stay is sought.

In both individual and blanket petitions, a change in the name of the petitioning firm does not require the filing of an amended petition.

In both individual and blanket petitions, changes in the ownership of the U.S. firm require the filing of an amended petition. This is the only way the Service will be able to ascertain if the U.S. firm continues to be related in a qualifying capacity to the foreign entity. Likewise, the merger of the beneficiary's U.S. employer with another firm or firms requires the filing of an amended petition.

James J. Hogan
Executive Associate Commissioner,
Operations

Appendix III

Immigrant Investor Questions

20 JUL 1992

Joseph L. Thomas
Director, WSC
ATTN: Blake Goto, I-140 Unit

Adjudications
(HQADN)

The following are answers to questions raised in your facsimile transmittal of July 13.