



U.S. Citizenship and Immigration Services

USCIS Draft Guidance on When to File an Amended H-1B Petition after the Simeio Solutions Decision

On April 9, 2015, USCIS' Administrative Appeal Office (AAO) issued a precedent decision, *Matter of Simeio Solutions, LLC*, which held that employers must file amended H-1B petitions when a new Labor Condition Application for Nonimmigrant Workers (LCA) is required due to a change in the H-1B worker's worksite location. Specifically, the decision stated:

1. When H-1B employees change their place of employment to a worksite location that requires employers to certify a new Labor Condition Application for Nonimmigrant Workers (LCA) to the Department of Homeland Security, this change may affect the employee's 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 employers are required to file an amended petition before placing an H-1B employee at a new worksite. USCIS will accept comments on the below draft guidance for a limited period of time.

When You Must File an Amended Petition

You must file an amended H-1B petition if your H-1B employee changed or is going to change his or her place of employment to a worksite location outside of the metropolitan statistical area (MSA) or an "area of intended employment" (as defined at 20 CFR 655.715) covered by the existing approved H-1B petition, even if a new LCA is already certified and posted at the new location.

Note: Once you file the amended petition, your H-1B employee can immediately begin to work at the new location. You do not have to wait for a final decision on the amended petition for your H-1B employee to start work at the new location.

When You Do NOT Need to File an Amended Petition

- **A move within an MSA:** If your H-1B employee is **moving to a new job location within the same MSA or area of intended employment** a new LCA is not required. Therefore, you do not need to file an amended H-1B petition. However, you must still post the original LCA in the new work location within the same MSA or area of intended employment. For example, an H-1B employee moving to a new job location within the New York City MSA (NYC) would not trigger the need for a new LCA, but you would still need to post the previously obtained LCA at the new work location. This is required regardless of whether an entire office moved from one location to another within NYC or if just one H-1B employee moves from one client site to another within NYC.
- **Short term placements:** Under certain circumstances, you may place an H-1B employee at a new job location for up to 30 days, and in some cases 60 days (where the employee is still based at the original location), without obtaining a new LCA. See 20 CFR 655.735. In these situations, you do not need to file an amended H-1B petition.
- **Non-worksites locations:** If your H-1B employee is only going to a non-worksite location, you do not need to file an amended H-1B petition. A location is considered to be "non-worksites" 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 primary job is 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 five 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.

Filing Amended H-1B Petitions

- **If your H-1B employees were changing worksite locations at the time of the *Simeio Solutions* decision**, you have 90 days from the date of this web alert (May 21, 2015) to file amended petitions for H-1B employees who changed their place of employment to an MSA or area of intended employment requiring coverage by a new or different LCA than that submitted with the original H-1B petition. Therefore, if you have not filed an amended petition for an H-1B worker who moved worksite locations before May 21, 2015, you have until August 19, 2015 to file an amended petition.
- **If your H-1B workers changed their worksite location before the *Simeio Solutions* decision**, USCIS will not take adverse action against you or your employees if you, in good faith, relied on prior non-binding agency correspondence and did not file an amended petition due to a change in an MSA or area of intended employment by May 21, 2015. However, as noted above, you must now file an amended petition for these H-1B employees by August 19, 2015.
- If you do not file an amended petition for these employees by August 19, 2015, you will be out of compliance with USCIS regulation and policy and thus subject to adverse action. Similarly, your H-1B employees would not be maintaining their nonimmigrant status and would also be subject to adverse action.
- **If your amended H-1B petition is denied**, but the original petition is still valid your H-1B employee may return to the worksite covered by the original petition as long as the H-1B employee is able to maintain valid nonimmigrant status at the original worksite.
- **If your previously-filed amended H-1B petition is still pending**, you may still file another amended petition to allow your H-1B employee to change worksite locations immediately upon your latest filing. However, every H-1B amended 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 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 (Dec. 27, 2005) [for similar instructions about portability petitions](#).

To the extent possible, you should submit receipt notices of prior petitions. USCIS will determine, on a case-by-case basis, whether a petition was filed before the current I-94 expired.

For More Information

If you have any questions about filing an amended H-1B petition, please visit our Customer Contact Center.

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