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.