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USCIS ISSUES FINAL GUIDANCE FOR AMENDING H-1B PETITIONS

US Citizenship and Immigration Services (USCIS) recently issued a final guidance policy statement on H-1B worksite location changes that will significantly impact all employers who sponsor H-1B workers at multiple worksite locations. This clarification of longstanding USCIS policy comes in the wake of the USCIS Administrative Appeals Office's (AAO) April 9, 2015 precedent-setting decision, *Matter of Simeio Solutions (Simeio)*, which held that an H-1B employer must file an amended or new H-1B petition when a new Labor Condition Application (LCA) is required due to a change in the H-1B worker's place of employment.

The final guidance clarifies USCIS' application of the *Simeio* decision and slightly relaxes filing deadlines from draft guidance earlier this year. For relocations occurring after April 9, 2015, but prior to August 19, 2015, employers will have until January 15, 2016 to file amended petitions. Effective August 19, 2015, employers must file amended or new petitions prior to the H-1B employee changing worksite locations.

Subject to the following exceptions, an H-1B employer must file an amended or new H-1B petition if its H-1B employee is changing his or her place of employment to a new geographical location that requires a corresponding LCA to be posted at the worksite and certified by the Department of Labor (DOL). According to USCIS, an amendment is not required for "short-term placements" (temporary worksite changes that may last 30 or 60 days) or time spent at non-worksite locations. Similarly, there is no requirement to file an amended petition when the H-1B employee moves to a worksite within the same geographic area (or Metropolitan Specific Area) already covered by an LCA and petition approved by USCIS – provided that there are no other material changes in the terms and conditions of employment and the employer posts notice of the LCA at the new work location.

In addition, the final guidance emphasizes the employee need not wait for approval of the amended petition before commencing work at the new location.

Significantly, the guidance expresses the agency's intention not to retroactively apply the Simeio decision and challenge employers who decide against filing amendments related to pre-April 9, 2015 relocations. However, USCIS appears to reserve at least some discretion to challenge the failure to file an amended petition by stating it will "generally not pursue new adverse actions (e.g., denials or revocations)" for failure to amend. The guidance does provide employers a safe harbor period through January 15, 2016 if they choose to submit an amended petition covering pre-April 9, 2015 relocations.

For more information regarding this guidance or immigration developments, please contact your principal Squire Patton Boggs lawyer or one of the individuals listed in this publication

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