

ALERTS

Immigration Update: Employers Must File Petition When H-1B Worker Changes Locations

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Following the precedent decision issued on April 9, 2015 by the USCIS Administrative Appeals Office (AAO) in *Matter of Simeio Solutions, LLC* employers must now be more cognizant than ever before of the requirements when moving a H-1B worker from one worksite location to another. Specifically, whenever there is material change in the H-1B workers employment, which now includes a change in worksite location, an amended petition must be filed with USCIS. This is a departure from the previous longstanding guidance, which relieved employers of the obligation to file an amended petition when moving H-1B visa workers to a new worksite location provided they obtained the certified Labor Condition Application (LCA) and complied with the LCA requirements for posting and continued to satisfy the wage and hour obligations.

Now that *Simeio* is the "law of the land," an amended H-1B petition **must** be filed anytime a H-1B worker changed or is going to change their place of employment such that their worksite location places them outside the Metropolitan Statistical Area (MSA) covered by the existing approved H-1B petition. This means before a H-1B worker changes worksite locations, employers must now ask if the move will necessitate an amended H-1B filing. If the answer is yes, then the H-1B worker should not change worksite locations until the amended petition has been filed with USCIS.

Finally, employers should also note the following points regarding amended H-1B petitions following the *Simeio* decision:

- Employers are NOT required to file amended petitions for H-1B workers who changed their worksite location before the decision became effective on May 21, 2015.
- Employers have until August 19, 2015, to file amended petitions for H-1B workers who changed their place of employment to an MSA outside of what was covered by the existing approved H-1B petition if the change took place on or after May 21, 2015.
- In the event the amended petition is unsuccessful, the H-1B worker may return to the worksite covered by the original petition as long as the original petition is still valid.
- Employers may have multiple amended petitions filed so as to allow for the H-1B worker to swiftly begin working at the new location while the petition is pending adjudication with USCIS.

Considering the implementation of *Simeio*, it is imperative that employers review their records and identify any H-1B worker who changed worksite locations since May 21, 2015, as an amended H-1B petition may now be necessary. Additionally, it is equally important for employers going forward to ensure amended H-1B petitions are filed anytime an H-1B worker changes to a worksite location not covered under the current approval.