

When Are Amended H-1B Petitions Required for Worksite Changes?

On April 9, 2015, the U.S. Citizenship and Immigration Services' Administrative Appeal Office issued a precedent decision, [Matter of Simeio Solutions, LLC](#), which has had a significant impact on H-1B employees who frequently relocate to new worksites. Under *Simeio*, employers generally must file an amended H-1B petition where the physical worksite of an H-1B employee changes to a new location that falls outside the commutable distance of the worksite authorized by a prior, valid H-1B petition filed for the employee.

Previously, the understanding of the immigrant bar was that no amended H-1B petition would be required so long as a new Labor Condition Application for Nonimmigrant Workers ("LCA") were filed prior to the employee's transition to a non-commutable location. That understanding was premised upon a 2003 memorandum by then USCIS official Efren Hernandez ("[Hernandez Memo](#)"). The *Simeio* decision has now upended the Hernandez Memo.

While the general rule is now that a new worksite will require an amended H-1B petition, a number of exceptions apply. Significantly, no amended H-1B petition is required if the H-1B employee is moving to a new job location within a "commutable" distance of the old location specified on a prior, still-valid H-1B petition by the same employer. While commutability is not fully defined, the regulations provide some rough guidance: two locations within the same metropolitan statistical area (MSA) are considered "commutable." In some cases, MSAs encompass wide swathes of area. (For example, a shift from Montauk, NY to Milford, PA would be considered commutable under the regulation, even though the travel time is close to 4 hours by car.) Even if no amended H-1B petition is required, an LCA notice posting, required under 20 C.F.R. Sec. 655.734, must still be posted at all worksites.

Amendments are also not required in cases of short-term placement of employees at new worksites or travel to non-worksite locations. Under the short-term placement rule, if the employee is still based out of the original location, under particular circumstances the H-1B employee may be shifted on a temporary basis to a new location for up to 30 or 60 days. A new LCA need not be obtained, and an amended H-1B petition does not need to be filed. Similarly, if the employee is traveling to a non-worksite location (such as a location specified for employee developmental activity, or a "peripatetic" work location), an amended H-1B petition is not required.

The *Simeio* decision is now law, and going forward all H-1B employers must file an amended H-1B petition, where required, before the shift in work location occurs. USCIS [Policy Guidance dated July 21, 2015](#) creates a phased-in compliance period for H-1B amendments. If an H-1B employee shifted to a non-commutable location not covered by a

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prior H-1B petition before April 9, 2015 (the date of the *Simeio* decision), then an amended petition is not required. If the shift occurred between April 9, 2015 and August 19, 2015, petitioners have until January 15, 2016 to file an amended petition. Any shift that occurs after August 19, 2015 must be preceded by an H-1B amendment. If an amended petition is not filed for affected employees within these guidelines, the company and its employees will be out of compliance with USCIS policy and would thus be subject to adverse action. H-1B employees would not maintain their nonimmigrant status and would be subject to penalties as a result.

If the amended H-1B petition is denied, but the original petition is still valid, the employee may return to the worksite authorized and approved by the initial petition. In the case that a previously submitted amended H-1B petition is still pending, the company may continue to file another amended petition to allow the H-1B employee to change worksite locations immediately upon its 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.

It is highly recommended that H-1B employers review the current worksites of all H-1B employees and determine if the current worksite is outside the normal commuting area of the worksite listed on the employee's prior H-1B petition. Such employers should seek the advice of experienced H-1B counsel for confirmation on whether amended petitions are required on a case-by-case basis.

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