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SUBJECT: New Guidance on H-1B Adjudications Involving Changes in Place of Employment

1. On April 9, 2015, USCIS' Administrative Appeals Office issued the precedent decision, *Matter of Simeio Solutions, LLC*, (Simeio), which held that an H-1B petitioner must file an amended or new H-1B petition when a new labor condition application (LCA) is required because of a change in the H-1B worker's place of employment. On July 21, 2015, USCIS issued a policy memorandum implementing the Simeio decision, available at http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0721_Simeio_Solutions_Transition_Guidance_Memo_Format_7_21_15.pdf. This cable summarizes USCIS' policy guidance on this decision and provides guidelines for consular officers in its implementation.

When an Amended or New Petition is Required

2. The 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 new geographical area. The place of employment is defined as the worksite or physical location where the work is actually performed by the H-1B nonimmigrant. As used in this guidance, geographical area means the area within normal commuting distance of the place of employment or within the same Metropolitan Statistical Area (available at http://www.bls.gov/oes/current/msa_def.htm). 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. The petitioner does not have to wait for a final decision on the amended or new petition.

When an Amended or New Petition is NOT Required

3. If there are no other material changes in the terms and conditions of the H-1B worker's employment, petitioners are not required to file amended petitions for:

- Movement of an employee's place of employment within the same geographical area;
- Short-term placements of up to 30 days, or in some cases up to 60 days (where the employee is still based at the "home" worksite) or less, provided certain provisions of 20 CFR 655.735 are met; or
- "Non-worksite" locations. A location is considered a non-worksite if the employee is attending training or a conference, the employee spends little time at any one location, or the job involves short periods of travel to other locations on a casual short term basis.

Consular Officer Responsibilities

4. The primary responsibility of consular officers in visa adjudication is to carry out the requirements of U.S. immigration law. As such, consular officers are not expected to verify the LCA or place of employment for all H-1B adjudications. However, if an adjudicator becomes aware of a change in an H-1B applicant's place of employment, the adjudicator should verify the petitioner has taken the appropriate steps outlined below or give them an opportunity to do so. For example, if the beneficiary presents a cover letter from the petitioner stating that the beneficiary's place of employment is different than that stated on the approved H-1B petition, an additional line of inquiry may be necessary to determine the actual place of employment. If the consular officer determines the applicant's place of employment has changed, the appropriate action on the visa application will be determined by the date on which the employee's place of employment (if not covered by an existing, approved H-1B petition) changed:

- If the move to a new worksite occurred on or before **April 9, 2015**, then the petitioner may choose to file a new petition by January 15, 2016. However, USCIS will generally not pursue new revocations or denials based upon failure to file an amended or new petition. Consular officers should not require petitioners to file amended or new petitions in these cases, and should process the case to conclusion based on the original, approved petition.

- If the move to a new worksite occurred **after April 9, 2015, but prior to August 19, 2015**, then the petitioner must file an amended or new petition by January 15, 2016. Consular officers should not require petitioners to file new or amended petitions in these cases before January 15, 2016; prior to that date, consular officers should adjudicate the case to conclusion based on the original, approved petition. After January 15, 2016, consular officers should refuse the visa application under Section 221(g) of the Immigration and Nationality Act (INA) until the petitioner has provided a copy of a USCIS Notice of Receipt (Form I-797) or the consular officer has verified that an amended or new petition has been filed. The case should be adjudicated to conclusion even if the amended or new petition has not yet been approved. The PIMS record should use the original, approved petition number, and the visa should be annotated with: "New worksite - petition [new receipt number] filed [date].

- If the move to a new worksite occurred **on or after August 19, 2015**, then the petitioner must file an amended or new petition before the employee begins work at the new place of employment not covered by an existing, approved H-1B petition. Consular officers should refuse the visa application under INA Section 221(g) until the petitioner has provided a copy of a USCIS notice of receipt that an amended or new petition has been filed. The case should be processed to conclusion based on the receipt notice, even if the amended or new petition has not yet been approved. The PIMS record should use the original, approved petition number, and the visa should be annotated with: "New worksite - petition [new receipt number] filed [date]."

5. Minimize considered.