HQ 70/6.2.8-P

Amended H-1B Petitions

AUG 22 1996

Service Center Directors
Director, Service Center Operations
District Directors
Officers-in-Charge

Office of Programs
(HQPGM)

The purpose of this memorandum is to recap the current Service position regarding the filing of amended petitions within the H-1B classification. This information was previously furnished to the field in a memorandum signed by then Executive Associate Commissioner for Operations, James J. Hogan (CO 214h-C/CO 214L-C dated October 22, 1992).

This memorandum provides general policy guidelines relating to the requirements for the filing of amended or new petitions for H nonimmigrant petitions. As stated in the relating regulation, an amended petition must be filed when there is a material change in the terms and conditions of employment which affect the beneficiary's eligibility for the H-1B classification. The amended petition procedure was not devised as an avenue to advise the Service of minor, immaterial changes in the conditions of the alien's employment which do not affect the alien's eligibility for the classification. Petitioners should apprise the Service of these minor, immaterial changes when applications for extensions of the beneficiary's stay are filed.

When a beneficiary is transferred from one United States employer to another United States employer, a new petition must always be filed by the new employer. This procedure, among other things, insures that the new employer is liable for the alien's return transportation abroad and that the new employer obtains a labor condition application relating to the occupation.

When a beneficiary is transferred from one entity to another entity within the same organization, a new or amended petition should be filed if the new entity becomes the beneficiary's United States employer as defined in 8 CFR 214.2(h)(ii)(4). The mere

transfer of the beneficiary to another work site, in the same occupation, does not require the filing of an amended petition, provided the initial petitioner remains the alien's employer and, provided further, the supporting labor condition application remains valid. An amended H-1B petition must be filed in a situation where the beneficiary's place of employment changes subsequent to the approval of the petition and the change invalidates the supporting labor condition application.

An amended or new petition need not be filed when the petitioner merely changes its name, provided that the remaining terms and conditions of the alien's employment remain the same. The petitioner should, however, advise the Service of the name change if and when it files to extend the alien's stay.

Changes in the ownership structure of the petitioning entity generally do not require the filing of a new or amended petition if the petitioning entity continues to remain the alien beneficiary's employer, provided the new owner(s) of the firm assumes the previous owner's duties and liabilities, including those of the prior owner relating to the filing of the labor condition application. See section 212(n) of the Act and corresponding regulations.

When the beneficiary's employer merges with another firm to create a third entity which will subsequently employ the beneficiary, a new or amended petition must be filed since the merger has created a new legal entity, and therefore, a new employer. This circumstance is distinguished from a change in ownership which does not create a new entity.

A change of the alien's duties from one specialty occupation to another specialty occupation requires the filing of an amended petition. For example, an alien physician admitted to the United States to teach or conduct medical research must have an amended petition filed in his/her behalf in order to provide clinical care. Whether a change in duties rises to the level of a change in specialty occupation depends on the specific circumstances of each case.

Contact John W. Brown, Headquarters Adjudications, at (202) 514-5014, for additional information.

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