

May 4, 2015

The Honorable Leon Rodriguez
Director, United States Citizenship & Immigration Services
Department of Homeland Security
20 Massachusetts Ave, N.W.
Washington, DC 20529

**RE: Administrative Appeals Office Decision on Amended Petitions - *Matter of Simeio Solutions, LLC*,
26 I&N Dec. 542 (AAO 2015)**

Dear Director Rodriguez:

I am writing to seek guidance on an issue of utmost concern for our members who have H-1B workers. The recent Administrative Appeals Office (AAO) decision on amended petitions in *Matter of Simeio Solutions, LLC* overturns longstanding precedent regarding when amended petitions must be filed when an H-1B worker's worksite location changes. This change in policy will significantly increase workload for both American employers and USCIS and will require American employers to spend millions of dollars in legal fees and filing fees to come into compliance. Furthermore, there is substantial concern that thousands of H-1B employees could be deemed out of status, despite reliance in good faith on publicly-available USCIS correspondence on this subject. Such outcomes would be contrary to the spirit of President Obama's administrative actions which seek to facilitate the legal employment of talented foreign nationals. Our specific concerns and recommendations are elaborated below. We urge you to expeditiously offer guidance for employers as well as to provide opportunity for further feedback prior to enforcement of *Simeio Solutions'* holding.

In *Simeio Solutions*, the AAO held that amended H-1B petitions must be filed for any H-1B petition where a new Labor Condition Application (LCA) is required due to a change in the beneficiary's worksite location outside the Metropolitan Statistical Area (MSA) covered by the existing approved H-1B petition. This decision contradicts the longstanding policy established by the correspondence from Efren Hernandez III to me (the "Hernandez-Shotwell correspondence") on October 23, 2003:

As long as the LCA has been filed and certified for the new employment location, the appropriate worksite posting has taken place, and other wage and hour obligations are met, no amended petition would be required regardless of when the LCA was filed and certified, as long as the certification took place before the employee was moved.

While *Simeio Solutions* expressly overrules the prior policy confirmed by the Hernandez-Shotwell correspondence, many employers have workers currently employed or have location changes already in progress in reliance on and in accordance with that prior policy.

Several important questions remain open about how USCIS will implement policy in light of the decision. We urge USCIS to issue a guidance memorandum that will minimize inconvenience and adverse action for employers and H-1B visa holders who changed worksite locations in good-faith reliance on the Hernandez-Shotwell correspondence. Specifically, we urge USCIS to take the following adjudicatory positions with regard to amended H-1B petitions:

- For H-1B location changes in process at the time of the *Simeio Solutions* decision, USCIS should allow petitioners a reasonable time after the change of location to file amended petitions. We recommend 90 days from the issuance of USCIS guidance as a reasonable time.
- For H-1B changes of location that occurred prior to the *Simeio Solutions* decision, USCIS should not take adverse action against employers and employees who, in good faith, relied on the Hernandez-Shotwell correspondence.
- USCIS should affirm that, consistent with established H-1B portability rules, H-1B work can begin in a new location immediately after the filing of an amended petition.
- USCIS should affirm that an amended petition need not be filed on the basis of a change of location *within* an MSA or an “area of intended employment” as defined at 20 C.F.R. § 655.715 (which includes “normal commuting distance” in addition to the area covered by an MSA).
- USCIS should provide reasonable means by which employers can file amended petitions when a prior amended petition is still pending. Given that current processing times can extend beyond six months, situations will almost certainly arise where an H-1B worker must move to a new worksite location before a previous amended petition has been adjudicated. Employers will already incur significant expense to file the amended petition and should not be placed in the position of having to rely on premium processing in all these cases. There should be a simple mechanism to identify and reconcile these cases and we would be happy to work with you to devise a solution which minimizes burdens for both employers and USCIS.

Thank you for your consideration of these points, and we look forward to your response.

Sincerely,



Lynn Shotwell
Executive Director

cc:

Lori Scialabba, Deputy Director, USCIS

Juliet Choi, Chief of Staff, USCIS

Denise Vanison, Chief, Office of Policy and Strategy, USCIS

Donald Neufeld, Associate Director, Service Center Operations, USCIS

Mariela Melero, Associate Director, Customer Service and Public Engagement, USCIS



U.S. Citizenship
and Immigration
Services

July 22, 2015

Lynn Shotwell
Executive Director
Council for Global Immigration
1800 Duke Street
Alexandria, VA 22314

Dear Ms. Shotwell:

Thank you for your letter dated May 4, 2015 requesting that U.S. Citizenship and Immigration Services (USCIS) issue policy guidance on the recent precedent decision in *Matter of Simeio Solutions, LLC (Simeio)*.

As you know, on May 21, 2015, USCIS issued draft guidance on this topic and solicited public comments regarding the implementation of *Simeio*. The agency has now reviewed and carefully considered the feedback submitted, including your thoughtful recommendations. In response to the public feedback received, USCIS has issued Policy Memorandum 602-0120, USCIS Final Guidance on When to File an Amended or New H-1B Petition After *Matter of Simeio Solutions, LLC*. We expect this policy memorandum will provide for greater predictability when an H-1B worker changes worksite locations.

Thank you again for your letter and your recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "León Rodríguez".

León Rodríguez
Director