CIS TO BEGIN STRICTER ENFORCEMENT OF H-1B AMENDMENT REQUIREMENTS WHEN EMPLOYEES CHANGE WORK LOCATION

On July 21, 2015, U.S. Citizenship & Immigration Services (CIS) issued a Policy Memorandum to provide guidance concerning the requirement of filing an amended H-1B petition when an H-1B worker will be placed at a new place of employment. While the notion that a change in the place of employment is a "material change" that requires an H-1B amendment is not new, the CIS position has found recent support in the April 2015, precedent decision of the Administrative Appeals Office (AAO) in *Matter of Simeio Solutions, LLC*.

Following the AAO decision, CIS has provided guidance on how the CIS will enforce the requirement that employers file amended H-1B petitions when their H-1B employees move to a new place of employment. The guidance memorandum specifies when an amended petition is required and provides a period of time for employers to come into compliance before new adverse measures will be undertaken to enforce the requirement.

When Is an Amended H-1B Petition Required Due to a Change in Work Location?

Movement *outside the geographic area* listed in the original Labor Condition Application (LCA) and H-1B petition require certification of a new LCA by the U.S. Department of Labor and will require an amended H-1B petition. The employee may begin work at the new location only after the employer files the amended petition. The CIS has confirmed that movement of the H-1B employee *within the same geographic area* does *not* require an amended H-1B petition, so long as all other material terms and conditions of employment remain the same.

CIS has further confirmed that short-term placements that meet the requirements of the short-term placement regulations will not require an amended H-1B petition. Similarly, placements at locations that do not meet the regulatory definition of a worksite will not require an amended H-1B petition so long as other material terms and conditions of employment remain the same.

In What Time Frame Must an Amended H-1B Petition Be Filed?

For changes in work location that occurred on or before April 9, 2015, employers should file amended H-1B petitions before January 15, 2016, in order to come within a safe-harbor provision that will allow the employee to be considered not to have violated the terms and conditions of his or her H-1B status.

For changes in work location that occurred between April 9, 2015, but before August 19, 2015, employers must file an amended petition on or before January 15, 2016, in order to come into compliance with regulatory requirements and avoid potential revocations or future petition denials. Failure to file the amended petition by January 15, 2016, could result in CIS revocation of the existing H-1B petition and/or denial of a future request for extension of H-1B status.

Finally, for future changes in work location that occur on August 19, 2015, or after, the employer must file an amended H-1B petition before the employee moves to the new work location. Failure to file

the amended H-1B petition before the employee moves to the new work location could result in a determination that the employee has failed to maintain lawful nonimmigrant status and could result in CIS revocation of the existing H-1B petition and/or denial of future requests for extension of H-1B status.

What Steps Should Employers Take Now?

Foster recommends that all employers evaluate their current H-1B workers' work locations to confirm that each employee remains employed in the location or locations identified in the original H-1B petition filing. Employees who have moved to locations outside the original area of employment may require amended H-1B petitions.

When evaluating employee work locations, employers should also consider whether there have been any other material changes in the terms and conditions of authorized employment, such as a significant change in job duties or a change in occupational classification or reduction in the salary. Other changes such as the addition of direct reports or promotions to higher levels of responsibility may also be deemed material. An example would be a promotion from an individual contributor role as an Engineer to a supervising role as an Engineering Manager. Such changes may be considered material changes requiring an amended H-1B petition.

Employers should consult their Foster immigration attorneys to evaluate specific cases where there have been changes in the H-1B worker's employment, and to initiate amended H-1B petitions for those employees who have already moved to different work locations outside the original area of intended employment.

Foster will continue to monitor changes in CIS enforcement priorities and new enforcement initiatives and will provide additional information in future Immigration Updates© and on our firm's website at www.fosterglobal.com.