

Appendix II

10-22

CO 214h-C
CO 214l-CGuidelines for the Filing
of Amended H and L PetitionsAll Service Center Directors
All District Directors
All Officers in ChargeOffice Of
Operations
(HQOPS)

This memorandum provides general policy guidelines relating to the requirements for filing amended or new petitions for H and L nonimmigrants. 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 or the beneficiary's eligibility. The amended petition procedure was not devised merely as an avenue to advise the Service of minor changes in the conditions of employment or the beneficiary's eligibility. Petitioners should apprise the Service of these minor, immaterial changes when extensions of the beneficiary's stay are filed.

H Petitions

When a beneficiary is transferred from one employer to another, a new petition must be filed by the new employer. This procedure insures that the new employer is liable for the alien's return transportation abroad and that the employer files a labor condition application.

When a beneficiary is transferred from a firm to another firm within the same organization, a new or amended petition should be filed if the new firm becomes the beneficiary's employer. 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.

The current operations instructions provide that when a beneficiary is transferred from one branch of a firm to another branch of the same firm, a new or amended petition need not be filed. This is not inconsistent with the above paragraph since a branch of a firm is not considered to be a separate entity from its parent company.

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An amended or new petition need not be filed when the petitioner changes its name. The petitioner should 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 do not require the filing of a new or amended petition. It is understood that the new owner(s) of the firm assumes the previous owner's liabilities which would include the assertions the prior owner made on the labor condition application.

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. This circumstance is distinguished from a change in ownership, which does not necessarily create a new entity.

A change of the alien's duties from one specialty occupation to another requires the filing of an amended petition. For example, an alien physician admitted to the U.S. to teach or conduct research must have an amended petition filed in his/her behalf in order to do clinical care.

L Individual Petitions

A significant change in the beneficiary's duties, for example, from specialized knowledge to managerial/executive, requires the filing of an amended petition. Changes from one managerial position to another do not require an amended petition. However, the petitioner must inform the Service of the change in the beneficiary's duties when an extension of stay is filed for the alien.

If the alien is transferred from one company to another company in the same organization and becomes the employee of the new company, an amended petition must be filed. This is the only way the Service will be able to ascertain if the new firm is related to the foreign firm in a qualifying capacity.

If the alien is transferred from one company to another company in the same organization but does not become the employee of the new company, an amended petition need not be filed.

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L-1 Blanket Petitions

The transfer of the beneficiary to another firm in the same organization does not require the filing of an amended or new petition provided that the new firm is listed in the blanket petition. Petitioners can utilize the amended petition procedure to add new organizations to the initial blanket petition.

Changes in the duties of an alien admitted to the U.S. under a blanket petition do not require the filing of amended petition. Since blanket petitions do not relate to specific beneficiaries, there is no petition to amend. The Service should be apprised of this change when an extension of the beneficiary's stay is sought.

In both individual and blanket petitions, a change in the name of the petitioning firm does not require the filing of an amended petition.

In both individual and blanket petitions, changes in the ownership of the U.S. firm require the filing of an amended petition. This is the only way the Service will be able to ascertain if the U.S. firm continues to be related in a qualifying capacity to the foreign entity. Likewise, the merger of the beneficiary's U.S. employer with another firm or firms requires the filing of an amended petition.

James J. Hogan
Executive Associate Commissioner,
Operations

Appendix III

Immigrant Investor Questions

20 JUL 1992

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Adjudications
(HQADN)

The following are answers to questions raised in your facsimile transmittal of July 13.