

U.S. Department of Homeland Security
Citizenship and Immigration Services

*425 I Street NW
ULLICO, 3rd Floor
Washington, D.C. 20536*

October 23, 2003

Ms. Lynn Shotwell
American Council on International Personnel, Inc.
515 Madison Avenue, 6th Floor
New York, NY 10022

Dear Ms. Shotwell:

We regret the delay in responding to your July 12 letter regarding the requirements for filing an amended petition when an H-1B employee transfers to a new location not included on the original Form I-129, but which is covered by a labor condition application (LCA) that was in place prior to the employee's move.

Based on the information you provided, an amended Form I-129 petition would not be required simply on the basis of the geographic move. 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. Please note, however, that if any other change takes place that constitutes a material change in the terms and conditions of employment and that affects the beneficiary's eligibility for H-1B classification, an amended petition would be required.

Please also note, as discussed in a legacy INS correspondence, that the U.S. Citizenship and Immigration Services (USCIS) does not encourage "speculative employment," and the better practice would be for employers to include alternative locations in itineraries filed with the original Form I-129 petition if they are planning to move employees. Note that the itineraries must be reflected in a multiple location LCA or multiple LCAs that have already been appropriately posted and certified. The USCIS must be apprised of the move when the subsequent LCA is filed with a request for an extension. Additionally, in all instances, foreign nationals who change their place of residence must comply with immigration regulations pertaining to filing changes of address on Form AR-11 and special registration, if applicable.

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Please be aware that the USCIS will explore the issue of the need to file amended H-1B petitions in the context of regulations implementing the American Competitiveness in the Twenty-First Century Act (AC21), and related legislation. Our position on this issue, therefore, is subject to change.

We hope that this information has been useful to you. If you have further questions concerning this matter, please do not hesitate to contact this office at the above address.

Sincerely,

Efren Hernandez III
Director, Business and Trade Branch