



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.8

Office of Adjudications

425 I Street NW
Washington, DC 20536

JUN -7 2001

Ms. Martha Schoonover
Greenberg & Traurig, LLP
1750 Tyson Blvd., Ste. 1200
McLean, VA 22102

Dear Ms. Schoonover:

This letter is in response to your March 29, 2001, letter regarding the merger of Company A into your client, Company B. As a result of the merger, on February 1, 2000, Company A transferred its employees to your client. On January 31, 2000, your client prepared certification indicating that it would assume all obligations, liabilities and undertakings with regard to certified and effective labor condition applications (LCAs) for 244 H-1B employees that would be transferred into its workforce. Your client did not attest to the same assumption of liabilities for approximately 100 additional H-1B employees whose LCAs could not be located prior to the February 1 transfer date.

As you noted, the Department of Labor (DOL) published regulations on December 20, 2000, stating that a new employing company is not required to file new LCAs and H-1B petitions provided that the new employing company maintains in its records a list of the H-1B nonimmigrants transferred and adheres to other regulatory requirements, including making a sworn statement that it will assume all obligations, liabilities and undertakings arising from or under attestations made in each certified and still effective LCA. 20 C.F.R. 655.730(e). According to DOL's regulations, this acknowledgement must be prepared before the new company may employ an alien. As your client did not make this acknowledgement with regard to approximately 100 H-1B employees before the merger was complete, you ask whether your client may now submit evidence that it will assume responsibility for the remaining 100 H-1B employees by sending a sworn statement and a list of the 100 H-1B employees to the Immigration and Naturalization Service (INS). There is no provision by which an employing company may meet the regulatory requirements of 20 C.F.R. 655.730 by providing the requisite sworn statement and list of employees to INS. Since all of the sworn statement requirements are part of DOL's regulations, this question would be more appropriately addressed to that agency.

You also ask whether your client is required to file amended nonimmigrant petitions with the INS for the 100 H-1B employees who were not covered by your client's January 31 sworn statement. Although DOL regulations at 20 C.F.R. 655.730(e)(1)(iv) require that a new employing company submit a new LCA and nonimmigrant petition if the company failed to submit its declaration of assumption of liabilities before the alien is employed, DOL does not have authority over filing requirements for nonimmigrant petitions, and INS regulations contain no such requirement. You should note however, that DOL is free to attach whatever consequences it chooses to as it exercises its authority. The fact that there may not be an INS consequence to an action does not guarantee that there will not be a DOL-imposed consequence.

A new employing company must file an amended petition to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. 8 C.F.R. 214.2(h)(2)(i)(E). The INS has consistently interpreted this requirement to mean that where a second company assumes substantially all of the assets and liabilities of the first company, amended petitions are not required. The INS has also stated both at conferences and in correspondence that the assumption of liabilities refers to immigration-related liabilities, such as LCA obligations and violations thereof. It does not refer to non-immigration related obligations and liabilities, such as environmental or tort obligations, for example. If the only change, when viewed from the alien worker's perspective, is the name of the employer, then no amended filing is required. If there is any other change, such as in job duties, locations, or terms and conditions of employment, including contract length, then an amended petition may be required. While this office cannot adjudicate this matter, the situation you describe does appear to be one in which amended petitions are not required under existing Service policy, notwithstanding DOL regulatory language to the contrary.

Please note that until extension petitions are filed, the INS cannot issue documentation reflecting the alien workers' H-1B status for the new employing company. Accordingly, if any one of the acquired H-1B employees wishes to travel before that time, your client may wish to file an amended petition in order to obtain a new I-797 approval notice reflecting the beneficiary's current status for re-entry purposes.

Sincerely,



Efren Hernandez III
Director, Business and Trade Services