



2025 H-1B Visa Material Changes Guide

FEBRUARY 4TH 2025



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H-1B Petitions -Material Changes After Approval

The rules regarding H-1B amendments remain unchanged, but H-1B employer and employees should be on high alert and conservatively file H-1B amendments any time there is a material change in employment. While Matter of Simeio did not outline every possible change USCIS may consider material, we know from RFEs and site visits that USCIS considers end client or project changes to be material, thereby requiring an amendment before the change takes place. This is true even when the work location is not changing. What this means is that even if an H-1B employee is working remotely from their residence, if the project or end client changes, an H1B amendment must be filed before the employee begins working on the new project/with the new end client. Other material changes include salary changes, location changes, title changes, and increases or changes in responsibilities.

Notably, we have also seen USCIS targeting situations where an H-1B employee is between projects, but an amendment was not filed to notify USCIS the original project ended. In other words, it is USCIS' position that if the project ends, an amendment needs to be filed notifying USCIS. Once the employee is placed on a new project, another amendment is then required. This is official policy, which can be found in USCIS' policy memorandum published following the ITServe lawsuit (PM-602-0114, published June 17, 2020). Both the ITServe lawsuit and USCIS' subsequent policy memo address this common situation within the IT industry, where an employee is in between projects and considered to be in "nonproductive" status.

In the ITServe lawsuit, Judge Collyer held that “periods without work are now allowed for H-1B visa holders as long as they continue to be paid.” ITServe Alliance, Inc. v. Cissna, No. CV 12-02350 (RMC), 2020 WL 1150186, Footnote 15 (D.D.C. March 10, 2020). The court held that the itinerary requirement, as imposed by the CIS interpretation of the INS 1991 Regulation and applied to Plaintiffs by the CIS 2018 Policy Memo, was incompatible with the 1998 ACWIA that addresses the same subject, in immediately related administrative schemes, and “authorizes employers to place H-1B visa holders in paid non-productive status”

In its subsequent policy memo, addressing this specific point, USCIS stated:

“Guidance concerning benching remains unchanged. The officer may issue a Notice of Intent to Deny (NOID) for failure to maintain status or a Notice of Intent to Revoke (NOIR), as appropriate, if evidence in the record indicates that there has been a material change in the terms and conditions of employment that may affect eligibility. Lack of work may be a material change in the terms and conditions of employment that could affect eligibility for H-1B nonimmigrant classification and could require the filing of an amended petition.

The regulations further state that being “no longer employed in the capacity specified in the petition” is a basis for revocation on notice. Being placed in non-productive status or training for an extended time period, even if paid, may qualify as being “no longer employed in the capacity specified in the petition.” If a beneficiary is in non-productive status because of a lack of work, that could indicate that the beneficiary no longer is in a specialty occupation and there has been a material change in the terms and conditions of employment that may affect eligibility.”

Accordingly, when a project ends, H-1B employers should quickly place the employee on a new project and timely file an amendment. If the beneficiary will be between projects for more than 30 days, employers should consider filing an H-1B amendment with USCIS to notify USCIS that the beneficiary is no longer working on the previously approved project. If the time in nonproductive status is less than 30 days, it can be defended under the Matter of Simeio guidance as a short-term placement, but anything longer than 30 days can raise an issue that there was a material change in employment which USCIS was not notified of. When filing an amendment petition for the time in between projects, it will be very important to work with an attorney to determine how the role should be presented, to ensure it still meets the available specialty occupation criteria.

If you have questions about the 2025 H-1B Visa, please reach out to an ILBSG attorney today.

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