U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.8

Office of Adjudications

425 I Street NW
Washington, DC 20536

MAR 22 2001

Mr. Steven M. Ladik
Jenkins & Gilchrist
1445 Ross Avenue
Dallas, TX 75202

Dear Mr. Ladik:

This refers to your letter of March 15, regarding the impending acquisition of a substantial portion of company S by your client, company E.

In the situation you describe, company E will acquire a substantial portion of the information technology division of company S, including its contract obligations. Company E will expressly agree to succeed to all obligations of company S with regard to all attestations on the labor condition application (LCA).

As you know, the petitioner 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 entity assumes substantially all of the assets and liabilities of the first entity, amended petitions are not required. We have 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.

The recent legislation you cite amending section 214(c) of the INA merely amplifies the fact that a merger, acquisition, or consolidation does not automatically create material changes to the terms and condition of the employment and is consistent with INS interpretations in this area.

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 INS policy.

Please note that until extension petitions are filed, the INS cannot issue documentation reflecting the alien workers' H-1B status for the new employing entity. Accordingly, if any one of the acquired H-1B employees wishes to travel before that time, company E 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