U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

February 21, 2001

Ms. Lynn Shotwell
Director, Government Relations
American Council of International Personnel
1212 New York Ave. N.W., #475
Washington, D.C. 20005

Subject: Determination of H-1B-Dependent Employer Status

Dear Ms. Shotwell:

In response to a question and concern which you raised in our January 16, 2001 technical assistance meeting concerning the H-1B Interim Final Rule, we are adopting the following enforcement policy:

> In applying section 655.736(d)(7), the Wage and Hour Division will not assess penalties if an employer which is a single employer under the Internal Revenue Code (IRC) definition at 26 U.S.C. 414(b), (c), (m), or (o), does not perform the "snap-shot" test where all of the entities which make up the single employer have readily apparent non-dependent status. However, if any of the entities has borderline status and, therefore, would have to perform the "snap-shot" test, then the employer, as a whole, must perform the test. Whether or not such a test is performed, the employer must retain in its public access file a list of all the entities included within the "single employer" under the IRC definition. Under these circumstances, it is our view that the failure to perform the test would not impede our ability to determine whether an employer is a dependent employer. See section 655.810(b)(1)(vi).

We note that this enforcement policy will not affect the right of any aggrieved party to file a complaint challenging the employer's failure to perform the "snap-shot" test.

We trust that this application of the regulation will accommodate your concerns, as you described them at our meeting. If you have further questions, please do not hesitate to call me at (202) 693-0563.

Sincerely,

Michael Ginley
Director
Office of Enforcement Policy