

L-1A and L-1B Intracompany Transferees

GENERAL

This classification provides companies operating in the United States the opportunity to transfer key personnel to the United States from their foreign parents, subsidiaries, branches or affiliates.

ANNUAL QUOTA

Congress has not specified a maximum number of L-1 nonimmigrants that may be admitted to the United States each year. Accordingly, there is *no annual quota*.

QUALIFYING EMPLOYEES

Foreign nationals who have worked outside the United States for a parent, subsidiary, or affiliate of the U.S. company on a full-time basis for one continuous year out of the last three years may qualify for L-1 classification. The principal purpose of an L-1 nonimmigrant's stay must be to work for the approved U.S. employer. As long as this remains true, the foreign national may divide work between the United States and abroad.

QUALIFYING ORGANIZATIONS

The foreign and U.S. employers must be related, through at least 50 percent common ownership, as parent and subsidiary, affiliates, branches, or joint venture partners.

DEFINITIONS

An *Executive* directs management of the organization, division, or major function, including establishing goals and policies and exercising discretionary decision-making. An executive is supervised by higher level executives, board of directors or stockholders.

A *Manager* manages the operational affairs of the organization as a whole, or a major function of an operating division. Management includes responsibility for personnel decisions affecting supervisory and professional personnel unless a function is managed. A functional manager must operate at a senior level.

A *Specialized knowledge individual* is one who possesses special knowledge (as opposed to knowledge that is common throughout an industry) of the petitioning organization's products, services, research, equipment, techniques, management, or other important factors relating to its international competitive position, or knowledge, which could only have been gained through experience with a related foreign entity. A slightly lower level of knowledge is acceptable if knowledge of the organization's processes and procedures is not available in the U.S. labor market. Specialized knowledge need not be proprietary, unique, or narrowly held throughout the company, but must be advanced or complex, primarily gained through prior experience with the petitioning employer, and not easily transferable or taught to another individual.

A *Parent company* is a firm, corporation, or other legal entity that has subsidiaries.

A *Subsidiary* is a company that is controlled by its parent company, regardless of degree of ownership.

An *Affiliate* is one of two companies owned/controlled by the same parent or group of equal owners. ¹

A *Joint Venture* is a business venture wherein two entities share 50-50 percent ownership and control.

DEPENDENTS IN L-2 STATUS

Spouses and minor children of L-1 nonimmigrants fall under the L-2 classification. Under fairly recent legislation, spouses of L-1 nonimmigrants are eligible to apply for blanket work authorization. In addition, L-2 spouses and children may study in L-2 status or apply for change of status to any classification for which they qualify.

EXTENSION OF STAY

L-1A Initial admission for three years maximum, extendible twice for periods of two years each

L-1B Initial admission for three years maximum, extendible once for two years

CHANGE OF NONIMMIGRANT STATUS

To or from the L classification:

An L-1 nonimmigrant may change status to another classification (including but not limited to H-1B or F-1), but may not commence services or activities under the requested classification until USCIS has approved the change of status. Changes between the H-1 and L-1 classifications count the United States duration of stay under the old classification toward the maximum stay allowable under the new classification.

From L-1B to L-1A:

If promoted to a position of manager or executive, an L-1B employee may change status to L-1A provided that the amended petition is submitted six months or more prior to the expiration of the L-1B duration of stay. Once the change to L-1A is approved, the new manager or executive becomes entitled to the maximum stay of seven years. In addition, the individual in L-1A status becomes eligible for the first employment-based immigration preference.

DUAL INTENT

An L-1 nonimmigrant, although required to abide by the terms of the approved classification and must have the intention to leave the United States at the end of the approved stay unless permanent residence has been granted, is not required to overcome the presumption of immigrant intent. Because L-1 nonimmigrants are

permitted to work in the United States in temporary status while pursuing steps leading to permanent residence, they need not prove ties to their home country or unabandoned foreign residence in order to be issued a consular visa and admitted to the United States. The existence of operations and an appropriate position abroad to which an alien can be transferred at the end of an authorized stay is the most significant factor considered in a determination of intent.

FILING PROCEDURE

The Form I-129 with L supplement must be filed by the employer/ *petitioner* at the USCIS Service Center with jurisdiction over the place of employment of the foreign national employee (the *beneficiary*). Instructions accompanying the Form I-129 specify the documentation that must be submitted to USCIS to support the petition.

*Note:*L-1 classification does not involve a test of the U.S. labor market (labor certification). Payment of a prevailing wage is not required, but U.S. income must be sufficient to prevent the alien from becoming a public charge.

L -1 ADJUDICATION

Qualifying as a Manager or Executive (L-1A):

The L-1A classification is intended for employees who manage or direct and not for those who produce a company's work product. This classification is available to *Managers* and *Executives*. A Manager must supervise other supervisory, professional, or managerial employees (i.e. direct the management) and may not be involved in nonmanagerial aspects of the business. However, a manager of an operation with nonprofessional employees may qualify as a *manager* as long as he or she does not have operational duties.

To qualify as a *Manager*, the inquiry is not the number, but the nature of employees and the *nature* of his/her other duties. Where an L-1 beneficiary is the only *employee* of the petitioning U.S. employer, and therefore is either solely responsible for or otherwise involved in production, he or she does not qualify as an *Executive* or *Manager*².

Qualifying as a Specialized Knowledge Individual (L-1B)

To qualify as a *specialized knowledge* worker, the individual must possess knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, OR an advanced level of knowledge or expertise in the organization's processes and procedures.

Attributes Expected of a United States Company

Physical premises and equipment must be sufficient for the type of operation, even for new offices. That negotiations for either or both of these are underway is not sufficient. In addition, revenues must be sufficient to carry on the described operations, including payment of wages, salaries and other regular business expenses.

NEW U.S. OFFICES

A subsidiary, affiliate, branch, or joint venture partner that has been in business in the United States for less than one year may petition for intracompany transferees; however, L-1 employees approved to work for such new offices will only be admitted initially for a maximum of one year. A successful petition from a new office will include proof that a physical premises has been secured for the new operation, and that the new office's nature, size, scope, operations, and organizational structure are significant to warrant the services of a Manager or Executive. The petition must also demonstrate that the size of the U.S. investment in this office, including its ability to pay the beneficiary, is sufficient for the business to commence and continue doing business in the United States.

Note: New office petitions for intracompany transferees, which establish upon filing that they can already support the services of a full-time Manager or Executive, may be processed as standard L-1 petitions.

Extension of Stay for "New Office"

To be granted an extension of stay after one year, the petitioning "new office" must:

- New U.S. operations must be capable of supporting a regular managerial or execution position within one year;
- Establish that the U.S. and foreign entity retain qualifying relationships;
- Submit evidence that the U.S. entity has been doing business (regular and continuous provision of goods and services, whether or not as described in initial petition) during the initially approved period;
- Submit a statement of beneficiary's duties to date as well as expected duties; and
- Submit evidence of the current staffing and financial status of U.S. operation (new office).

OFFSITE SERVICES OF L-1 EMPLOYEES

In general, L-1 employees may not engage in contract labor. Business relationships based on contractual, licensing, and franchise agreements, for example, are nonqualifying relationships for classification purposes. *However*, offsite service is not necessarily inconsistent with the L-1B classification unless (1) the individual does not possess, and is not using pursuant to a contract involving the approved employer, specialized knowledge particular to the approved employer's organization or (2) supervision of the employee is under the direction of a third party.

BLANKET L-1 PETITIONS (for unnamed beneficiaries)

Petitioning companies with the following characteristics may file blanket petitions for unnamed intracompany transferees, seeking determinations as to whether the petitioner and specified parent, branches, affiliates, and subsidiaries are qualifying organizations:

- Petitioner and each named affiliate are engaged in commercial trade or services
- Petitioner has a U.S. office that has been doing business for at least one year
- Petitioner has at least three domestic and foreign branches, subsidiaries, or affiliates
- Petitioner and related qualifying organizations have obtained approval for at least 10 L-1 beneficiaries in the preceding year or have U.S. subsidiaries *or* affiliates with combined annual sales of at least \$25 million *or* have a U.S. workforce of at least 1000 employees

Procedure:

An approved blanket L-1 petitioner transmits a completed Form I-129S, together with a copy of the Form I-797 blanket L approval notice, to the foreign national(s) it seeks to transfer from abroad to an approved qualifying organization in the United States. The foreign national uses these documents to apply for an L-1 visa at a U.S. consulate abroad. The consular officer determines whether the position in which the foreign national will be employed in the United States is with an organization named in the approved petition and whether the specific job is for a manager, executive, or specialized knowledge professional. The consular officer shall determine further whether the foreign national was employed abroad for one year of the three years preceding admission with an organization named in the petition and was in a position as a manager, executive or specialized knowledge professional. Visa exempt foreign nationals may apply for admission, with the I-129S, at any U.S. port of entry.

Note: An L-1B blanket beneficiary must be a member of a profession whose credentials include at least a bachelor's degree or equivalent.

CONSULAR PROCESSING

The L-1 applicant may take the original (or copy, if acceptable to the issuing consular officer) of the I-797 approval notice to a U.S. consulate abroad and apply for an L-1 visa. Usually, the consulate to which a visa application is made is in the intending nonimmigrant's home country. However, since the nature of work for multinational corporations frequently involves foreign postings, it is sometimes possible to obtain the L-1 visa in a third country.

Note: A foreign national who seeks a visa under an approved L-1 blanket petition may apply for the L-1 visa without an I-797 naming him or her as a beneficiary (see blanket petitions above).

MERGERS, ACQUISITIONS, DIVESTITURES

- Following a sale, merger, or acquisition, USCIS must review an amended petition to examine the connection between the new employer and the foreign entity on which the original qualifying relationship depended. If the connection between the foreign entity and the approved L-1 employer has been severed, intracompany transferees may need to change nonimmigrant status.
- USCIS' Hogan memo (October 22, 1992) states that an amended petition must be filed if an L-1 employee changes from L-1A to L-1B, or is transferred from one company to another within the same organization and becomes an employee of the new organization. This includes mergers or acquisitions where the acquiring/merged company³ is the new employer. Change of employer name does not require an amended petition, but change in ownership, because it may affect the qualifying relationship with the foreign affiliate, does require an amended petition.
- Divestiture of the subsidiary, branch, or affiliate abroad at which the approved L-1 employee gained qualifying experience does not disqualify that employee as an intracompany transferee as long as the approved L-1 employer retains one or more other related entities outside the United States. The other foreign entity/ies need not be in the L-1 employee's home country.

INSPECTION AND FORM I-94

A consular visa will allow the approved L-1 beneficiary to board a common carrier, travel to the United States and apply for admission at a border or port of entry. At that point, a USCIS inspector will determine the individual's admissibility to the United States and stamp the I-94 Arrival-Departure Record with his or her L-1 classification and period of authorized stay.

SPECIAL NAFTA RULES

The same rules apply for intracompany transferees from other countries except as follows:

L-1 Beneficiaries:

- A Canadian citizen beneficiary of an approved I-129 petition for an intracompany transferee (L-1A or L-1B) is not required to obtain a nonimmigrant L visa from a U.S. consulate. Proof of Canadian citizenship is acceptable.
- An I-129 petition involving a Canadian citizen L-1 beneficiary may be submitted, together with filing fee and an application for admission, at a Class A port of entry⁴ located on the United States-Canada land border or at a U.S. pre-clearance/pre-flight station in Canada.
- A Mexican citizen must apply for an L visa at a U.S. consulate abroad. This visa, together with a valid Mexican passport, must be presented for admission to the United States under the L-1 classification.

L-2 Dependents:

- L-2 dependents of Canadian L-1 aliens are not required to obtain consular visas.
- L-2 dependents of Mexican (and all other) L-2 aliens must obtain consular visas in order to be admitted to the United States.

FRAUD PREVENTION AND DETECTION FEE

The L-1 provisions of the Fiscal 2005 Omnibus Appropriations Act creates a Fraud Prevention and Detection Fee of \$500, which must be paid by petitioners seeking a beneficiary's initial grant of L-1 nonimmigrant classification. Other than petitions to amend or extend stay filed by an L-1 employer, there are no exemptions from the \$500 fee. The fee will also be charged for a foreign national filing a visa application abroad under the L blanket program. The \$500 fee applies to all petitions filed with USCIS (after March 8, 2005).

ADJUSTMENT OF STATUS TO UNITED STATES LAWFUL PERMANENT RESIDENT

The immigration preference category for which a given L-1 foreign national will be eligible depends upon his or her circumstances and qualifications, as follows:

FIRST Priority Workers(40,000 visas/year)

- Managers and Executives (L-1A) subject to international transfer to the United States

*Note:*Unless an L-1B foreign national who changed status to L-1A has had qualifying management experience *abroad* for a related organization, adjustment of status of an L-1B worker under the Multinational Manager or Executive Preference is not possible.

SECOND Priority Workers (40,000 visas/year)

- Foreign nationals of *exceptional* ability in the sciences, arts, or business
- Advanced degree professionals
 - This category requires an alien labor (PERM) certification (unless a National interest waiver is approved)

THIRD Priority Workers (40,000 visas/year)

- Professionals with bachelor's degrees (not qualifying for a higher preference category)
- Skilled workers (minimum two years training and experience)
 - This category requires an alien labor (PERM) certification (unless a National interest waiver is approved)

Contact our office to speak with a member of our immigration group.

- ¹ Congress created an exception that qualified franchised accounting firms offering services under the same internationally recognized name under an agreement with a worldwide coordinating organization.
- ² Approved new offices get relief from this standard for one year. However, the exception disappears upon extension of stay for the L-1A as a manager or executive.
- ³ For employment eligibility verification purposes, 8 CFR 274A.2(B)(1)(viii)(a)(7) defines as related, successor, or reorganized employer to include the same employer at another location or an employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets.
- ⁴ Class A means that the port is a designated Port-of-Entry for all aliens. See 8 CFR 100.4(c)(2).