

REQUIREMENTS FOR OBTAINING AN L-1 VISA

An L-1 intracompany transferee visa is available to qualified international executives, managers, and specialized knowledge employees transferred from an overseas organization to work for the same organization in the United States or for its American subsidiary or affiliate. Significantly, persons who qualify as managers or executives often can obtain immigrant (permanent resident) status promptly and easily once their U.S. employer has been doing business for at least one year. An intracompany transferee is accorded an L-1 visa initially for one to three years. Extensions are available for a total of six years in the case of specialized knowledge employees and up to seven years for managerial or executive employees.

L-1 visas are particularly advantageous because it is not necessary to prove either that the applicant has a residence abroad to which he or she intends to return or that the applicant lacks immigrant intent to receive an L-1 visa stamp from a U.S. Consul. Moreover, in many cases, an L-1 visa holder is eligible to receive permanent resident status without a determination by the Department of Labor that there are insufficient U.S. workers for the job available to the intracompany transferee.

To qualify for intracompany transferee status, it must be demonstrated that within the three years preceding the time of application the employee has been employed continuously abroad for one year by a firm, corporation or other legal entity, or a branch, affiliate or subsidiary thereof, and that the employee seeks to enter the United States temporarily to continue rendering services for the same employer, or a branch, subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Thus, L-1 cases present two basic issues: whether the U.S. employer is a branch, subsidiary or affiliate of the employee's employer abroad; and, whether the employee worked abroad continuously for one year during the past three years in a capacity which is managerial, executive, or involves specialized knowledge.

"Branch" means an operating division or office of the same organization housed in a different location.

"Subsidiary" means

- a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity;
- owns, directly or indirectly, half of the entity and controls the entity;
- owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

"Affiliate" means

- one of two subsidiaries both of which are owned and controlled by the same parent corporation or individual,

- one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

"Managerial capacity" means an assignment within an organization in which the employee personally manages the organization, department, subdivision, function or component; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization or department or subdivision of the organization; has authority to hire and fire or recommend personnel actions (if another directly supervises employees), or if no direct supervision, functions at a senior level and exercises discretionary authority over day-to-day operations of the activity or function.

"Executive capacity" means an assignment in an organization in which the employee primarily directs the management of an organization or a major component or function; establishes goals and policies; exercises wide latitude in discretionary decision-making and receives only general supervision or direction from higher level executives, the Board of Directors, or stockholders of the business.

"Specialized knowledge" is defined to include persons who have "special knowledge of the company product and its application in international markets" or who have "an advanced level of knowledge of processes and procedures of the company." Characteristics of a specialized knowledge employee include the possession of knowledge that is valuable to the employer's competitiveness in the market place; unique qualifications that contribute to the U.S. employer's knowledge of foreign operating conditions; possession of knowledge which can be gained only through extensive prior experience with that employer; and, employees abroad who have been given significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position. Significantly, a specialized knowledge employee is not simply a highly skilled or professional worker.

An application for intracompany transferee L-1 status must be supported by the following:

- Evidence that the overseas company has established a subsidiary, affiliate, or branch office in the United States.
- A detailed description of the services to be performed in the United States by the L-1 beneficiary.
- Evidence that the L-1 beneficiary has at least one continuous year of full-time employment abroad with the overseas company in the last three years and evidence that this employment abroad was in a position that was managerial, executive or involved specialized knowledge.
- Evidence that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States.
- Evidence that sufficient physical premises to house the U.S. employer have been leased.
- Evidence that the U.S. company has sufficient financial resources to support its business activities in the United States and pay the salary of the beneficiary.

In the case of a new business, evidence that within one year of approval of the L-1 petition, the U.S. operation will support an executive or managerial position as documented by a description of the following: the proposed number of employees and the type of positions they will hold; the size of the United States investment and the financial ability of the foreign entity to remunerate

the L-1 beneficiary and support the U.S. company's conduct of business; and, the size and staffing levels of the overseas company.

The INS generally requires thirty days to adjudicate an L-1 petition. Once the petition is approved, it is forwarded to the United States Consulate in the beneficiary's home country for visa issuance. The L-1 beneficiary's spouse and unmarried children under twenty-one are eligible for L-2 status. L-2 spouses are eligible to apply for employment authorization. Employment authorization is normally issued within ninety days of the application. In employment-based immigration cases, the attorney represents both the petitioning employer and the employee-beneficiary. In fact, in this type of case, immigration documents can only be submitted to the government by a petitioning employer on behalf of an employee-beneficiary.

Therefore, the attorney must be authorized by the employer to file papers on the employer's behalf which, if approved, will enable the employee-beneficiary to receive a visa. Attorneys are permitted to represent two parties simultaneously, if so authorized, unless their interest conflicts. Representing two parties simultaneously in one matter also requires an attorney to disclose information and be equally loyal to both parties. Under those rare occasions when a conflict of interest develops between a petitioning employer and the employee-beneficiary, the attorney cannot take sides regardless of which party pays the attorney fees, and, the attorney must withdraw from representing both parties. If you have any questions about the dual representation issue which exists in almost all employment-based immigration cases, please call our office.