III. INTRACOMPANY TRANSFEREES: TEMPORARY VISAS AND PERMANENT RESIDENCE

§ 12:12 Temporary L-1 intracompany transferee visas—Basic concepts

Research References
West's Key Number Digest, Aliens ″ 53.9
Federal Procedural Forms § 40:393

The L-1 visa category facilitates the temporary exchange of personnel by international corporations. The basic elements of the L-1 visa classification, as set forth in the INA, render the classification applicable to:

> [a]n alien who, within three years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge[.] [1]

In short, foreign nationals must show: (1) that they have been employed abroad by a foreign firm in a managerial, executive, or specialized knowledge capacity for at least one year during the three years preceding their application for admission to the United States; and (2) that they will be employed by a legally related United States firm in one of these three capacities upon entering the United States. [2]

Before a foreign national can apply for an L-1 visa at a consulate abroad, the prospective employer must first secure DHS approval.[3] While L-1 visa applicants must evidence an intent to enter the

[24] 8 C.F.R. § 216.6(c)(iii).

[25] 8 C.F.R. § 216.6(c)(iv).

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[1] 8 U.S.C.A. § 1101(a)(15)(L).

[2] When a "blanket" L-1 petition has been filed, the one year requirement is reduced to six months.

[3] The employer files a Form I-129 Petition for Nonimmigrant Worker and L Supplement with the DHS Service Center with jurisdiction over the proposed location of employment. That form is accessible at http://uscis.gov/graphics/formsfee/fo

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United States temporarily for the L-1 assignment, they are not required to maintain a residence abroad, and they are permitted to seek United States permanent residence while in L-1 status.[4]

The Legal Relationship Between the Foreign and United States Employers

Foreign national beneficiaries who seek L-1 status must have been employed abroad by a qualifying organization and must be seeking prospective employment in the United States with a parent, branch, affiliate, or subsidiary of that organization.[5] The qualifying organization must continue to do business in the United States and in at least one other country through legally related entities for the duration of the foreign national's stay in the United States.[6] "Doing business" is defined in the regulations as the "regular, systematic, and continuous provision of goods and/or services."[7]

Although the petitioning employer can be either the United States or the foreign entity, the U.S. parent, branch, affiliate, or subsidiary must be physically located in the United States.[8] Consistent with the broad statutory language allowing employment with a "firm or corporation or other legal entity," no particular legal form is required.[9] The U.S. entity may be a sole proprietorship or a partnership, as well as a corporation, as long as it is a parent, branch, affiliate, or subsidiary of the foreign entity.

The regulations define a "branch" as "an operating division or of-

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rms/index.htm. While adjudication times for L-1 Petitions are not to exceed 30 days by regulation [8 C.F.R. § 214.2(1)(7)(i)] they often run past the 30-day mark. Under DHS's Premium Processing Program, however, the employer can submit an additional filing fee of $1,000, which guarantees that the L-1 Petition will be reviewed within 15 days of the DHS's physical receipt of the petition. 66 Fed. Reg. 29682–29686 (June l, 2001). H-1B petitions may also be submitted to the DHS under the Premium Processing Program.

[4] 8 U.S.C.A. § 1184(b); 8 C.F.R. § 214.2(*l*)(16). DHS regulations also provide that an L-1 nonimmigrant with a pending application to adjust status to that of permanent resident does not require advance parole from the DHS to travel outside the United States so long as the foreign national remains in valid L-1 status and possesses a current L visa. 8 C.F.R. § 245.2(a)(4)(ii)(C).

[5] 8 C.F.R. § 214.2(*l*)(1)(i).

[6] 8 C.F.R. § 214.2(*l*)(1)(ii)(G). Requiring the qualifying organization to continue a legal relationship with an entity that does business in the United States (and at least one other country) throughout the foreign national's authorized stay in the United States ensures that the foreign national will have an employer to which he or she can be transferred at the completion of the temporary assignment. Nothing in the regulations, however, requires that the foreign entity be the foreign national's previous employer. See 2 C. Gordon, S. Mailman & S. Yale-Loehr, Immigration Law and Procedure § 24.02[2][d] (rev. ed. 2003).

[7] 8 C.F.R. § 214.2(*l*)(1)(ii)(H).

[8] Matter of Penner, 18 I. & N. Dec. 49, 1982 WL 190669 (B.I.A. 1982).

[9] 8 U.S.C.A. § 1101(a)(15)(L).

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fice of the same organization housed in a different location."[10] A "subsidiary relationship" can take several forms. In each case, the parent organization controls the subsidiary organization by virtue of: (1) direct or indirect majority ownership; (2) direct or indirect equal ownership (i.e. through a joint venture) with veto power over the subsidiary; or (3) minority ownership with de facto control through some mechanism.[11] The phrase "directly or indirectly" makes clear that several layers of organizations are permitted as long as there exists both the required legal relationship and the requisite control over the subsidiary.

An "affiliate" relationship can also take several forms. For example, it may arise from: (1) two subsidiaries owned and controlled by the same parent or individual; (2) two legal entities owned and controlled by the same group of individuals with "each individual owning and controlling approximately the same share or proportion of each entity"; or (3) a partnership of certain accounting firms that markets services under "an internationally recognized name under an agreement with a worldwide coordinating organization."[12] This last type of affiliation was added by the Immigration Act of 1990 and constitutes an exception to the general rule that a contractual or nonownership relationship between the foreign and U.S. entities will not suffice.

Proof of the legal relationship between the foreign and U.S. entities can take various forms, such as stock certificates, minutes of shareholder meetings, annual reports, articles of incorporation, or financial statements reflecting the required ownership and control.[13]

Employment Abroad for One Year

During the three years preceding the application for admission into the United States, prospective L-1 visa beneficiaries must have been "employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof."[14] Although the statute is silent as to where the one year of employment must occur, the regulations expressly require that it be abroad with the foreign entity.[15] Temporarily working in the United States for the foreign employer does not interrupt compliance with the one-year-abroad requirement, but such time in the United States does not count toward the one-year requirement.

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[10] 8 C.F.R. § 214.2(*l*)(1)(ii)(J).

[11] 8 C.F.R. § 214.2(*l*)(1)(ii)(K).

[12] 8 C.F.R. § 214.2(*l*)(1)(ii)(L).

[13] Instructions to Form I-129 Petition for Nonimmigrant Worker accessible at http://uscis.gov/graphics/formsfee/forms/index.htm.

[14] 8 U.S.C.A. § 1101(a)(15)(L).

[15] 8 C.F.R. § 214.2(*l*)(1)(ii)(A).

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The qualifying relationship between the foreign and U.S. entities need not have existed during the year in which the foreign national was employed by the foreign company. Thus, if a U.S. company acquires a foreign entity, the managers, executives, or persons with specialized knowledge who have been employed for one year abroad with that foreign company may be immediately transferred to the U.S. company with an L-1 visa.[16]

Nature of Employment Abroad and in United States

In order to qualify for an L-1 visa, a foreign national's employment abroad and prospective employment in the United States must be in a capacity that is managerial, executive, or which involves specialized knowledge.[17] Furthermore, foreign nationals must demonstrate that their "prior education, training, and employment qualifies [them] to perform the intended services in the United States."[18] Foreign nationals need not hold the same positions in the United States as they did abroad provided that they were employed with the foreign entity in one of the three specified capacities and will be so employed in the United States.[19]

L-1 managers and executives may remain in the United States for up to seven years. Specialized knowledge personnel are limited to a maximum of five years.[20] If a specialized knowledge employee is promoted to a managerial or executive position, he or she may seek an extension of stay for up to a total of seven years but only if the promotion occurred at least six months prior to the request for an extension. Moreover, a change of this sort to a managerial or executive capacity must have been approved by the DHS at the time it occurred.[21]

All time spent outside of the United States can be "recaptured" or subtracted from the L-1 worker's maximum period of stay in L-1 status as long as the worker can demonstrate with documentary evidence that he or she was in fact outside of the United States for

[16]In re Joshua Yan Kee So, CHI-N-2758 (Commr 1984), cited in 2 C. Gordon, S. Mailman & S. Yale-Loehr, Immigration Law and Procedure § 24.06[1] (rev. ed. 2003).

[17]8 U.S.C.A. § 1101(a)(15)(L).

[18]8 C.F.R. § 214.2(*l*)(3)(iv). However, aliens do not necessarily have to hold a baccalaureate degree or its equivalent.

[19]8 C.F.R. § 214.2(*l*)(3)(iv); Matter of Vaillancourt, 13 I. & N. Dec. 654, 1970 WL 18761 (B.I.A. 1970) (disapproved of by, 1756, Inc. v. Attorney General of U.S., 745 F. Supp. 9 (D.D.C. 1990)).

[20]8 C.F.R. § 214.2(*l*)(12).

[21]8 C.F.R. § 214.2(*l*)(15)(ii).

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the stated period of time.[21.30] Previously, L-1 beneficiaries were required to demonstrate that time spent outside of the United States that they wished to recapture was "meaningfully interruptive" of their presence in the United States. Now, any time that can be documented will suffice, regardless of whether it is considered to be "meaningfully interruptive." In addition, spouses and minor children of a principal alien who recaptures L-1 periods may receive periods of L-2 stay coextensive with that of the principal alien.[21.70]

Foreign nationals who have been in L-1 status for seven years as managers or executives (or five years as specialized knowledge employees) can be readmitted to L-1 status only if they have resided and been physically present outside of the United States for the immediate prior year.[22] However, the five- or seven-year maximum is inapplicable to foreign nationals who do not reside continually in the United States and whose employment in the United States is seasonable, intermittent, or lasts for less than an aggregate of six months per year.[23]

§ 12:13 Specific requirements for L-1 executives

Research References

West's Key Number Digest, Aliens ⚷53.9
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The INA holds that an individual acts in an "executive capacity" when he or she:

(i) directs the management of the organization or a major component or function of the organization;
(ii) establishes the goals and policies of the organization, component, or function;
(iii) exercises wide latitude in discretionary decision-making; and
(iv) receives only general supervision or direction from higher

[21.30] Memorandum of USCIS Acting Associate Director for Domestic Operations Michael Aytes, "Procedures for Calculating Maximum Periods of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants," (Oct. 21, 2005). See also Matter of IT Ascent, EAC# 0404753189 (serving as binding policy guidance on USCIS as designated by Acting Deputy Director Robert Divine on Oct. 18, 2005).

[21.70] Memorandum of USCIS Acting Associate Director for Domestic Operations Michael Aytes, "Procedures for Calculating Maximum Periods of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants," (Oct. 21, 2005). See also Matter of IT Ascent, EAC# 0404753189 (serving as binding policy guidance on USCIS as designated by Acting Deputy Director Robert Divine on Oct. 18, 2005).

[22] 8 C.F.R. § 214.2(*l*)(12)(i). Brief visits for business or pleasure to the United States do not interrupt compliance with the one-year-abroad requirement.

[23] 8 C.F.R. § 214.2(*l*)(12)(ii).

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level executives, the board of directors, or stockholders of the organization.[1]

Although executives normally supervise employees, supervision of outside independent contractors may suffice to demonstrate executive capacity where the organization is a substantial business and where significant executive decision making is involved.[2] Moreover, as with managers, when the DHS uses staffing levels to determine whether positions are "executive," the INA directs the agency to take into account "the reasonable needs of the organization. . . in light of the overall purpose and stage of development of the organization."[3] Similarly, the DHS is prohibited from determining executive capacity solely on the basis of the number of employees supervised.[4]

§ 12:14 Specific requirements for L-1 managers

Research References

West's Key Number Digest, Aliens ⚷53.9
Federal Procedural Forms § 40:393

During the mid-1980s, the INS took a restrictive view of the L-1 visa classification, requiring that foreign nationals seeking admission as L-1 managers directly supervise other managers, rather than line employees, unless those employees were professionals.[1] This requirement made it particularly difficult for employees of small businesses that lacked two tiers of management. As a result, Congress made changes to the INA to soften the L-1 visa requirements. It eliminated the two-tier management requirement, stating that it was now sufficient for L-1 managers to supervise an essential component or function of a company. The INA now holds that an individual acts in a "managerial capacity" when he or she:

(i) manages the organization or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees or manages an essential function within the organization or a department or subdivision of the organization;

[Section 12:13]

[1] 8 U.S.C.A. § 1101(a)(44)(B).

[2] In re Irish Dairy Bd., Inc., A28-845-412 (A.A.U. 1989), 66 No. 46 Interpreter Releases 1329 (1989).

[3] 8 U.S.C.A. § 1101(a)(44)(C).

[4] 8 U.S.C.A. § 1101(a)(44)(C).

[Section 12:14]

[1] 52 Fed. Reg. 5738, 5752 (Feb. 26, 1987), superseded by 8 U.S.C.A. § 1101(a)(44)(A) (current version at 8 C.F.R. § 214.2(*l*)(1)(ii)(B)).

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(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.[2]

When the DHS examines staffing levels to determine managerial capacity, the INA directs it to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and state of development of the organization, component, or function."[3] Indeed, the DHS is instructed to refrain from determining managerial capacity "merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed."[4] In cases where prospective managers do supervise other employees, however, it is necessary to show that they have "authority to hire or fire or recommend those as well as other personnel actions."[5] Finally, it is important to keep in mind that being a "first-line" supervisor is not per se sufficient to demonstrate managerial capacity unless the employees supervised are professionals.[6]

§ 12:15 Specific requirements for L-1 workers with "specialized knowledge"

Research References

West's Key Number Digest, Aliens ⚿53.9
Federal Procedural Forms § 40:393

Under the INA, foreign nationals are considered to be serving in a "specialized knowledge capacity" if they have "a special knowledge of the company product and its application in international markets or "an advanced level of knowledge of processes and procedures of the company."[1] The regulations expand this definition to apply to special knowledge concerning a company's "product, service, research, equipment, techniques, management, or other inter-

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[2] 8 U.S.C.A. § 1101(a)(44)(A).

[3] 8 U.S.C.A. § 1101(a)(44)(C).

[4] 8 U.S.C.A. § 1101(a)(44)(C).

[5] 8 U.S.C.A. § 1101(a)(44)(A)(iii).

[6] 8 U.S.C.A. § 1101(a)(44)(A)(iv).

[Section 12:15]

[1] 8 U.S.C.A. § 1184(c)(2)(B).

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ests."[2] The INS has also advised that a foreign national should possess:

> a type of specialized or advanced knowledge that is different from that generally found in a particular industry. The knowledge need not be proprietary or unique. Where the alien has specialized knowledge of the company product, the knowledge must be noteworthy or uncommon. Where the alien has knowledge of company processes and procedures, the knowledge must be advanced. Note [that] that the advanced knowledge need not be narrowly held throughout the company.[3]

L-1B specialized knowledge workers are prohibited from working primarily at a worksite other than that of their petitioning employer if either: (a) the work is controlled and supervised by a different employer; or (b) the offsite arrangement is essentially one to provide a nonpetitioning party with local labor for hire, rather than a service related to specialized knowledge of the petitioning employer.[4] The petitioning employer must retain ultimate authority over the L-1B worker. However, the bar does not apply if the satisfactory performance of off-site employment duties requires that the L-1B worker have specialized or advanced knowledge of the petitioning employer's product, service, or other interests.[5]

§ 12:16 L-1 blanket petitions

Research References

West's Key Number Digest, Aliens ⚷53.9
Federal Procedural Forms § 40:393

The normal L-1 procedure begins with an employer petitioning the DHS for approval of L-1 visa status on behalf of a particular foreign national beneficiary. The foreign national then obtains an L-1 visa from a consulate abroad. If the foreign national is already present in the United States, he or she changes nonimmigrant

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[2] 8 C.F.R. § 214.2(*l*)(1)(ii)(D).

[3] Memo of INS Associate Commissioner of Service Center Operations, "Interpretations of Specialized Knowledge" (Dec. 20, 2002).

[4] The L-1 Visa Reform Act of 2004, Pub. L. No. 108-447, Div. J. Title IV (Dec. 8, 2004) enacting INA § 214(c)(2)(F). See also "USCIS Implements L-1 Visa Reform Act of 2004: New Provision Changes Aspects of Temporary Work Program," USCIS Press Release (June 23, 2005); Memorandum of USCIS Associate Director of Operations William R. Yates, "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004," (July 28, 2005).

[5] The L-1 Visa Reform Act of 2004, Pub. L. No. 108-447, Div. J. Title IV (Dec. 8, 2004) enacting INA § 214(c)(2)(F). See also "USCIS Implements L-1 Visa Reform Act of 2004: New Provision Changes Aspects of Temporary Work Program," USCIS Press Release (June 23, 2005); Memorandum of USCIS Associate Director of Operations William R. Yates, "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004," (July 28, 2005).

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status to that of L-1. In certain cases involving large multinational companies, however, the INA authorizes an employer to file a "blanket petition" for L-1 nonimmigrants.[1] The L-1 blanket petition streamlines the application process. The basic eligibility criteria for L-1 blanket petitions are as follows:

(1) the petitioner and each legally related entity must engage in commercial trade or services;
(2) the petitioner must have an office in the United States doing business for one year or more;
(3) the petitioner must have three or more domestic or foreign branches, subsidiaries or affiliates;
(4) the petitioner or the other qualifying organizations must have obtained approvals of L-1 petitions for at least 10 managers, executives, or specialized knowledge professionals during the previous 12 months or have U.S. subsidiaries or affiliates with combined annual sales of at least $25,000,000 or a United States work force of at least 1,000 employees; and
(5) all of the entities listed on the blanket petition must be qualifying entities.[2]

A blanket petition is not concerned with foreign national beneficiaries; it is, however, concerned with the relationships between the entities in the corporate structure.[3] Approval of a blanket petition means that the DHS has predetermined that the companies listed on the petition are qualifying organizations.[4] A foreign national for whom an L-1 visa was obtained under a blanket petition may not be transferred to any company not listed on the blanket petition.[5]

Once the DHS has approved the blanket petition, consular officials are authorized to determine the eligibility of individual

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[Section 12:16]

[1] 8 C.F.R. § 214(*l*)(2). Employers also use the Form I-129 Petition for a Nonimmigrant Worker and L Supplement to file a blanket petition for employees in the U.S. for whom a change of status or extension of stay is being requested. For employees outside of the United States, a different form is used: Form I-129S Nonimmigrant Petition based on Blanket L Petition, also accessible at http://uscis.gov/graphics/formsfee/forms/index.htm. A completed Form I-129S is presented to the appropriate consulate if the foreign national beneficiary requires a visa. If the foreign national does not require a visa, the Form 1-129S is filed with the DHS Service Center that approved the blanket petition.

[2] 8 C.F.R. § 214.2(*l*)(4)(i).

[3] 78 Interpreter Releases 546-549 (March 13, 2001).

[4] 78 Interpreter Releases 546-549 (March 13, 2001).

[5] 78 Interpreter Releases 546-549 (March 13, 2001).

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foreign national beneficiaries who are outside of the United States.[6] Because the blanket petition has already been approved, the requirement that one demonstrate the legal qualifying relationship between the U.S. and foreign employers is obviated. An applicant for an L-1 visa under a blanket petition must prove that he or she possesses 12 months of qualifying employment abroad.[7]

The blanket petition can be approved for up to three years initially. Thereafter, the petition's validity can be extended indefinitely as long as the qualifying organizations comply with the regulations.[8] For each prospective intracompany transferee, the employer may proceed under the approved blanket petition or through an individual L-1 petition. If the application under the blanket petition is denied for a particular employee by a consular official, it can be refiled as an individual L-1 petition with the DHS.[9] Once admitted into the United States under the blanket petition procedure, foreign nationals may be reassigned to any organization listed in the approved blanket petition without notifying the DHS during their authorized stay as long as they are "performing virtually the same job duties."[10]

§ 12:17 New office openings

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[6] 8 C.F.R. § 214.2(*l*)(5)(i). These foreign nationals must submit the following to the consulate: (1) a completed Form I-129S and three copies of same; (2) a copy of the DHS blanket approval notice; (3) a letter from the foreign qualifying employer summarizing the foreign national's job duties and dates of employment during the three years prior to the application; and (4) if they are specialized knowledge professionals, a copy of a U.S. Bachelor's degree, a foreign degree equivalent to a U.S. Bachelor's degree, or evidence of a combination of schooling, training, and experience that is the equivalent of a U.S. Bachelor's degree. The beneficiary will be provided an endorsed Form I-129S, along with an L-1 visa, for presentation to an immigration officer at a port-of-entry. For foreign nationals in the United States, this information is provided to the DHS in support of an application to change to L-1 status.

[7] The L-1 Visa Reform Act of 2004, Pub. L. No. 108-447, Div. J. Title IV (Dec. 8, 2004) amending INA § 214(c)(2)(A) (requiring that beneficiaries of an L-1 blanket petition must have been employed abroad by the L entity for a period of at least 12 months, as opposed to the six-month period that was previously required.) See also Memorandum of USCIS Associate Director of Operations William R. Yates, "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004," (July 28, 2005).

[8] 8 C.F.R. § 214.2(*l*)(14)(iii). See also Cook Memorandum, p 2. If the petitioner fails to apply for an extension or if the DHS denies the extension, the petitioner may not file a new blanket petition for three years. Cook Memorandum, p 2.

[9] 8 C.F.R. § 214.2(*l*)(5)(ii)(F).

[10] 8 C.F.R. § 214.2(*l*)(5)(ii)(G).

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The managerial and executive capacity requirements are somewhat less demanding when managers and executives are coming to the United States to open or be employed in a "new office," which is defined by the regulations as an office doing business for less than one year.[1] Initially, the regulations require a showing—usually through a lease—that sufficient physical space has been secured to house the new office.[2] Recognizing that a new office may get off of the ground slowly, the DHS does not require the U.S. entity to prove that it can immediately support an executive or managerial position. The entity must show, however, that the operation will support such a position within one year of approval of the L-1 petition. The petition must describe: (1) the proposed nature of the office, its scope, its organizational structure, and its financial goals; (2) the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and (3) the organizational structure of the foreign entity.[3] Despite the normal L-1 requirement that an executive or manager transferee can qualify by serving one year abroad as an executive, manager, or specialized knowledge employee, the proposed executive or manager of a new U.S. office must have spent the qualifying year as an executive or manager.[4]

For specialized knowledge employees coming to the United States to be employed in a new office, the requirements are less demanding than for executives and managers. The regulations require only that: (1) sufficient physical premises have been secured; (2) the business entity in the United States is or will be a qualifying organization; and (3) the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.[5]

Initial approval of an L-1 petition for a new office transferee is limited to one year. In these cases, extending the L-1 beneficiary's stay beyond one year requires documentation of the financial status of the U.S. operation as well as a demonstration that: (1) the U.S. and foreign entities are still qualifying organizations; (2) the U.S. entity has been doing business for the previous year; and (3) the beneficiary will henceforth be employed in a managerial, executive, or specialized knowledge capacity.[6] With the expansion of the definition of manager to include individuals in charge of a "function"

[Section 12:17]

[1] 8 C.F.R. § 214.2(*l*)(1)(ii)(F).

[2] 8 C.F.R. § 214.2(*l*)(3)(v)(A).

[3] 8 C.F.R. § 214.2(*l*)(3)(v)(C).

[4] 8 C.F.R. § 214.2(*l*)(3)(v)(B).

[5] 8 C.F.R. § 214.2(*l*)(3)(vi).

[6] 8 C.F.R. § 214.2(*l*)(14)(ii).

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and the diminished importance of the number of employees in determining both managerial and executive capacities, meeting the company's burden at the one-year mark has become more feasible.

§ 12:18 Employment authorization for the spouses of L-1 intracompany transferees

Research References

West's Key Number Digest, Aliens ⚷53.9
Federal Procedural Forms § 40:393

As is the case for spouses of E nonimmigrants, the spouse of an L-1 visa holder may obtain authorization to engage in employment in the United States.[1] The scope and nature of the authorized employment is unlimited.

The lack of clarity that exists for spouses[1.50] of E visa holders as to whether they are required to secure an EAD to obtain work authorization exists for spouses of L visa holders as well. While the Social Security Administration has announced that spouses of E and L visa holders are not required to obtain an EAD, USCIS has yet to promulgate regulations or make other policy pronouncements to that effect. Because of this lack of clarity, spouses of L visa holders should obtain an EAD prior to gaining employment in the United States.

To obtain employment authorization, the spouse of an L-1 nonimmigrant must submit an application to the DHS Service Center with jurisdiction over his or her place of residence.[2] The applicant must provide evidence of his or her spouse's L-1 nonimmigrant status, which may include a photocopy of the pertinent Form I-94 card or a Form I-797 Approval Notice. In any case, a copy of both the principal's and the dependent spouse's I-94 card (which should be notated to reflect admission as an L-1 dependent) must accompany the application.[3] A copy of the couple's marriage certificate must also be included. Once the DHS approves the application, it will issue an employment authorization document (or EAD card)

[Section 12:18]

[1] 8 U.S.C.A. § 1184(e)(6).

[1.50] Spouses, not children, of L visa holders are entitled to work in the United States as a result of their relationship with the principal visa holder.

[2] One files the Form I-765 Application for Employment Authorization, accessible at http://uscis.gov/graphics/formsfee/forms/index.htm.

[3] Memorandum of INS Deputy Executive Associate Commissioner for Immigration Services, "Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determinations on the Requisite Employment Abroad for L Blanket Petitions" (Feb. 22, 2002).

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usually valid for a period of two years.[4] Renewal applications should be filed no less than 90 days before the expiration of the EAD to ensure no break in employment authorization.

§ 12:19 Permanent residence for multinational executives and managers

Research References

West's Key Number Digest, Aliens ⚷44, 51.5

Construction and application of sec. 203(a)(3) of Immigration and Nationality Act of 1952 (8 U.S.C.A. sec. 1153(a)(3)) as amended giving preference visas to professionals or persons having ability in arts and sciences, 18 A.L.R. Fed. 287

Federal Procedural Forms § 40:446

As discussed above, the INA features five employment-based categories for permanent residence. Certain multinational executives and managers are included within the first classification of "priority workers" for whom approximately 40,000 immigrant visas are available each fiscal year.[1] For these workers, there is no requirement to obtain a labor certification from the DOL, typically saving several years in the time it takes for a foreign national to obtain permanent resident status.[2] In general, the requirements of the immigrant category for executive and managerial intracompany transferees mirror those for L-1 status. An immigrant intracompany transferee must demonstrate past employment for one year within the three years prior to admission into the United States as a manager or executive with a foreign branch, affiliate, subsidiary, or parent of the U.S. company sponsor that seeks to employ him or her in a managerial or executive capacity.[3] Unlike the L-1 category, however, specialized knowledge employees are ineligible for the immigrant priority worker classification.[4]

The regulations regarding immigrant transferees define affiliate, subsidiary, executive, and managerial capacities in terms that

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[4] Memorandum of INS Deputy Executive Associate Commissioner for Immigration Services, "Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determinations on the Requisite Employment Abroad for L Blanket Petitions" (Feb. 22, 2002).

[Section 12:19]

[1] 8 U.S.C.A. § 1153(b)(1)(C).

[2] 8 U.S.C.A. § 1153(b)(1)(C).

[3] Though the issue is not yet settled, the INS verbally indicated at a 2002 American Immigration Lawyers Association conference that the requirement of one year of employment abroad will continue to apply as a necessary qualification to the filing of an Immigrant Petition for an L-1 intracompany transferee, even if only six months were required to obtain nonimmigrant status under an L-1 blanket petition.

[4] 8 C.F.R. § 204.5(j).

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closely parallel the L-1 regulations.[5] In the past, however, the INS has insisted—without pointing to any authority in the INA—that the sponsoring U.S. employer must do business for at least one year before it can file an immigrant visa petition.[6]

Finally, the regulations address a potential problem that faces many L-1 holders seeking to adjust their status to that of permanent resident. While the INA requires that applicants for the multinational executive or manager immigrant visa be employed by a qualified foreign entity for one year within the three years preceding their application,[7] many L-1 holders have been in the United States for more than three years. The regulations clarify and soften this requirement by requiring these applicants to be employed by the foreign entity for one year within the three years "preceding entry as a nonimmigrant."[8]

[5] 8 C.F.R. § 204.5(j).

[6] 8 C.F.R. § 204.5(j).

[7] 8 U.S.C.A. § 1153(b)(1)(C).

[8] 8 C.F.R. § 204.5(j)(3)(B).

[Section 12:20]

[1] One files Form I-129 Petition for Nonimmigrant Worker with H Supplement, along with a Form I-129W H-1B Data Collection & Filing Fee Exemption and an approved Labor Condition Application. The first of these forms is accessible at http://uscis.gov/graphics/formsfee/forms/index.htm, while the Labor Condition Application may be submitted online at http://www.lca.doleta.gov.

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