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ANALYSIS

Mixed Messages in DHS Office of Inspector General's Report on L-1 Program

The Department of Homeland Security's Office of Inspector General (OIG) has released a report on the L-1 intracompany transferee visa program. The L-1 visa permits multinational companies to bring managers, executives, and workers with specialized knowledge into the United States. It is a modestly used but critical program. It drives the creation of U.S. jobs on a very large scale.

In 2003, there were scattered media reports that the L-1 program was being used to get around protections for US workers in the H-1B program, and that US workers were losing jobs to cheap foreign labor entering with L visas. While abuse of the L program was never documented in any systematic way, a number of highly restrictive bills were introduced in Congress that would have made wide-ranging, unnecessary, and very damaging changes to the program. Instead, Congress passed the L-1 Visa Reform Act of 2004, a carefully targeted set of reforms. The Act required the Department of Homeland Security's Office of Inspector General (OIG) to prepare a report of the L-1 program. In January 2006, the OIG released its report.

Based almost exclusively on the face value of unsubstantiated concerns expressed by government adjudicators and consular officers, the OIG report draws vague conclusions that the program is "vulnerable" to fraud and abuse. The report does not go behind these concerns, and there is no statistical or other methodical analysis of whether there actually is abuse. Nor does it offer even an illustrative real-life instance of fraud or abuse. Instead, there is mere innuendo that "abuse … appears to be occurring." From this, the OIG jumps to a recommendation that Congress should address the L-1 program through legislation.

Read closely, however, much in the report actually indicates the health and integrity of the L-1 program. The OIG report concludes that:

- L-1 visas "are not widely used as alternatives" to circumvent the requirements of H-1B or other visa programs.
- Press and other reports that the L-1 visa is used to displace American workers "do not seem to represent a significant national trend."

- "The current criteria for determining whether an alien is eligible for L-1B classification are not lax," and agency guidance "covers L requirements in considerable detail."

Most important, the report emphasizes that Congress has acted to correct potential misuses of the program when it passed the L-1 Visa Reform Act of 2004.

In a very thoughtful response to the report, U.S. Citizenship and Immigration Services (USCIS) concluded even more clearly that there is no widespread evidence of L-1 program misuse. USCIS specifically did not "agree that any legislative recommendations regarding the L-1 visa program are necessary or appropriate." USCIS noted that "there continues to be a relatively low number of aliens granted L-1B classification annually." USCIS agreed with the conclusion in the report that "there does not appear to be a significant trend toward using the L-1B classification to circumvent the normal requirements of the H-1B category."

While it is critical to safeguard the integrity of any visa program against fraud and abuse, there are administrative standards already in place to ensure that only those meeting the statutory requirements for L-1B visas actually receive them. There also are administrative tools to detect fraud, and authority to deny or revoke petitions where fraud or other misuse of the program has taken place. Indeed, in its L-1 reform legislation Congress even provided for a $500 "fraud detection" fee to accompany each L-1 petition, in order to fund additional enforcement efforts.

It is therefore problematic that the report would reach unfounded conclusions that abuse "appears" to be taking place, and that legislation is needed to stop it. Perhaps this stems from a serious flaw in the report: the OIG did not speak to any actual users of the L-1 program. Had it done so, the OIG would have been exposed to an entirely different side of the story. After evaluating only one side, the OIG concluded that the specialized knowledge visa category is "so broadly defined that adjudicators believe that they have little choice but to approve almost all petitions." This would come as a big surprise to users of the L-1B program. They are used to having petitions rejected for incorrect or unclear reasons, or being subjected to repeated requests for additional supporting evidence, or having to make costly and repeated trips to consulates overseas in order to satisfy skeptical consular officials that they are entitled to a visa.

Had it consulted L-1 program users, the OIG would also have seen how significant the L-1 program has been to the international competitiveness of U.S. companies. The report might have focused on the huge number of jobs that have been created for U.S. workers when companies bring in a small handful of managers, executives, and specialists in order to establish or expand U.S. operations. And it might have noted what serious interruptions U.S. employers face when inappropriate L-1 visa denials or delays keep them from transferring key personnel.

The issuance of a report like this creates a risk of real damage to a valuable program. Incomplete or unsubstantiated conclusions can lead to others, to the detriment of careful policy analysis and well-informed public opinion. For example, the day after the release of the report – in which both OIG and USCIS specifically concluded that the L-1 program is *not* being used as an end-run around the H-1B program – a headline in the Washington Times stated: "Temporary manager visas used to circumvent limits."

Thus, in two simple steps, the actual conclusions in the OIG were turned in the exact opposite direction. The country can ill afford another round of debate filled with exaggerations and unfounded conclusions about the L-1 visa program. Instead, we should keep our eye on the most important points contained in the OIG report: that the L-1 visa program is being used modestly; that it is not being used to avoid requirements of other visa programs or to displace American workers; and that Congress has already addressed program vulnerabilities with the L-1 Visa Reform Act.