



## Teleconference Recap: The Adjudication of L-1B "Specialized Knowledge" Worker Petitions - How Is It Working for You?

On February 7, 2012, the Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) hosted a teleconference to learn about the experiences of employers filing L-1B nonimmigrant petitions with USCIS.

Frederick Troncone, Senior Advisor to the Ombudsman on Employment Immigration, interviewed Bo Cooper, former General Counsel of the Immigration and Naturalization Service from 1999 until February 2003, when he became responsible for the transition of immigration services to the Department of Homeland Security. Mr. Cooper explained the intricacies of the L-1B visa classification and shared concerns frequently expressed by employers and their representatives.

The L-1B classification allows an employer to petition for an employee who has "specialized knowledge" of the employer's products, services, research, equipment, techniques, management, or other interests, or expertise in the employer's processes and procedures, from a qualified affiliated entity outside the United States. Stakeholders have expressed concerns that USCIS adjudicators are interpreting the term "specialized knowledge" too narrowly.

Mr. Cooper explained that the L-1B visa classification is an important tool for multinational companies seeking to manage globally competitive workforce mobility strategies. Companies make deliberate choices where to set up new operations, develop research centers, expand or add new product lines. In coming to the U.S., these multinational companies facilitate the expansion of U.S. job creation and the U.S. economy. Mr. Cooper explained that due to increasing immigration challenges directly related to transferring in specialized knowledge workers and other managers and executives, these multi-national companies are increasingly evaluating whether to do so in the United States. Mr. Cooper emphasized that the timely transfer of key personnel is a critical factor in this decision-making process.

Mr. Cooper encouraged USCIS to move to automatic extensions of L-1B petitions, giving deference to prior adjudication of the company's continuing need for the same "specialized knowledge" worker, and referenced the USCIS Adjudication Field Manual at Section 10.17 Note 1.

Teleconference participants joined the discussion, sharing their experiences with USCIS "specialized knowledge" petition adjudications.

- One stakeholder expressed concern that smaller companies are disparately impacted because the company or its annual income is considered too small by USCIS adjudicators. L-1B petitions are not statutorily or by regulation subject to a statutory minimum size or income requirements; small and medium-sized multinational companies are equally entitled and need to utilize the specialized knowledge worker transfers to compete in the global marketplace.
- Current L-1B processing times are routinely exceeding the 30 days. Petitioners need faster final adjudications due to tight planning schedules to stay competitive in the global environment.
- Stakeholders indicated they are not appealing denials to the Administrative Appeals Office (AAO) even when they think the decision was incorrect due to long processing times at AAO. Even if the company successfully secured a reversal, the outcome would be untimely, and therefore, irrelevant.
- Stakeholders expressed frustration with inconsistencies across the sister service centers despite USCIS's bi-specialization model. A caller referenced receiving one L-1B petition approval and one denial for the same company for beneficiaries equally situated in terms of experience, training and knowledge, and expected to perform the same jobs at different locations. One petition was adjudicated at the Vermont Service Center and the other at the California Service Center.
- Attorneys have lamented a lack of predictability with regard to L-1 adjudications, making it difficult for multinational companies to plan.

Mr. Cooper stated that USCIS must be clearer on what is driving its increasing restrictive L-1B petition policy and

adjudications. If the concern is fraud, then USCIS should address this directly and not mask it with restrictive actions. Multiple stakeholders inquired as to whether USCIS planned to issue further guidance on the issue of specialized knowledge, and recent announcements made by USCIS suggest that USCIS is working on this currently.

USCIS previously held a teleconference where some stakeholders expressed opposition to further L-1B guidance. These stakeholders explained that the existing L-1B guidance is sufficiently clear and flexible. Stakeholders further claim that despite a lack of any fundamental change in the governing law or regulations, USCIS is shifting to a more restrictive policies on L-1B cases, following a non-precedent 2008 AAO decision commonly referred to as the "GST" decision. Other stakeholders want clearly defined guidance for better predictability.

During the teleconference, the Ombudsman's Office suggested USCIS engage in formal notice and comment rulemaking under the Administrative Procedure Act to address stakeholder concerns. Rulemaking would help establish a clear set of rules to govern and guide both stakeholders and adjudicators as they seek to apply for or adjudicate these very important visa petitions.

The Ombudsman's Office continues to study USCIS' adjudication of L-1B petitions. Please share any comments or feedback related to this topic by emailing CISOmbudsman.PublicAffairs@hq.dhs.gov.

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