Austin, Deon T

From: Lauver, Tinnina M <Tinnina.M.Lauver@uscis.dhs.gov>
Sent: Friday, July 22, 2011 8:51 AM
To: Sun, Catherina C; Laroe, Lisa A
Cc: Tamanaha, Emisa T
Subject: FW: 1 in 3 requirement for L

VSC/CSC:

Recently, OCC was consulted regarding the general requirement for intracompany transferees as outlined 8 CFR 214.2(l)(3)(iii), which states that a beneficiary must have worked for a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition. Specifically, OCC was asked what analysis officers should use for beneficiaries who are already in the United States in another NIV status specifically for the purpose of engaging in employment for the qualifying U.S. company and are now requesting initial L-1 status.

(b)(5)

Therefore, please follow the statute by counting back from the time of admission for the one year of experience gained within three years requirement.

Please contact me if you have any questions.

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Policy Guidance on the Interpretation of the L-1B Specialized Knowledge Classification

Office of Policy and Strategy

Service Center Operations

Office of Chief Counsel

Topics to be Covered

- Reason for "refresher" L-1B specialized knowledge training
- L-1B statutory and regulatory definitions of specialized knowledge
- L-1B visa classification and characteristics and evaluation
- Distinction between advanced and special knowledge
- Current USCIS policy on L-1B interpretation with case examples:
- Distinguished from O-1/EB-1 and EB-2 aliens
- Factors for Consideration
- "Key" personnel/process and "Essential Process"
- Standard and burden of proof with case examples and RFE/Denial reminders

Reasons for Refresher Training

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U.S. Citizenship and Immigration Services

Draft-Do Not Disclose-Pre-Decisional

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QUESTIONS?

U.S. Citizenship and Immigration Services

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I-129 L-1

Adjudication

September 2011

Training Matters Today

- General Information
- Individual L-1 Petition
- Qualifying Relationships
- Managerial and Executive Capacity
- Specialized Knowledge
- Blanket L-1 Petition
- New Offices
- Limitations on Stay
- Things to know

General Information

Sources of Information

- INA §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- 8 CFR §§ 214.1, 214.2(l), & 248
- *Interpretation of Specialized Knowledge*, Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS (March 9, 1994)
- Form I-129 with L Supplement and Form I-129S

Definition of L-1

...an alien who, within 3 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...

INA § 101(a)(15)(L); see also 8 CFR § 214.2(l)(1)(i)

L Classification

- L-1A classification is for managers and executives.
- L-1B classification is for specialized knowledge aliens.
- L-2 classification is for dependents (dependents use Form I-539).
- LZ is the designation given to an approved blanket petition. The Petitioner is referred to as a Blanket Petitioner, there is no individual beneficiary of an approved LZ.

L Classification

L-1A and L-1B are merely CLAIMS designations. When an intra-company transferee is admitted to the United States, the alien is admitted by CBP as an L-1, or, in the case of an extension of stay or change of status, is granted L-1 classification. Therefore, you will only see the classification "L-1" on the Forms I-94 issued to the alien.

30 day Processing Time

INA § 214(c)(2)(C) of the Act states that USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a completed petition has been filed.

8 CFR § 214.2(l)(7) indicates that a Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS. If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.

Fees

1. I-129 (L-1 and LZ) Petition filing fee: **$325.00.** Note that there is no filing fee for an I-129S, *Nonimmigrant Petition Based on Blanket L Petition.*

2. Fraud Prevention and Detection Fee: **$500.00.** This fee is required to be paid by Petitioners seeking the initial approval of an I-129 L-1 petition (including a change of status to L-1, or a petition for new concurrent L-1 employment). There are no exceptions or waivers available to the Fraud Prevention and Detection Fee. The Fraud Fee does not need be paid when a petition seeking blanket LZ approval is filed. See INA § 214(c)(12).

3. P.L. 111-230 fee: **$2,250.00.** Effective 8/13/2010, this law requires employers filing an L-1 petition prior to October 1, 2015, who are required to pay the $500 Fraud Prevention and Detection fee as detailed above, to pay an additional $2,250 if: (1) they employ 50 or more employees in the United States; and (2) more than 50% of those employees are in H-1B or L-1 status.

L-1 Processing Options

- Petitioners may file an I-129 L-1 petition (Individual L-1 Petition) through the normal procedure of filing with either the California Service Center (CSC) or Vermont Service Center (VSC). This process is known as an *individual petition.*

- Certain L-1 Petitioners may file using a Blanket L processing option. The blanket L processing option involves filing a Blanket LZ petition on Form I-129 with USCIS in order to qualify the Petitioner and filing a subsequent Form I-129S with either USCIS, DOS, or CBP in order to qualify the beneficiary.

- When a Petitioner is filing for Canadian Citizens under either of the above options, the Form I-129 or I-129S may be filed with CBP at a Port Of Entry (POE) on the Canadian-U.S. Land Border or a Pre-Clearance/Pre-Flight Inspection facilities (PFI) in Canada.

- Visa Exempt aliens (Canadian and certain aliens residing in the Caribbean) may file the I-129 or I-129S with the Service Center. If approved, they may seek admission to the United States without a visa by use of the approval notice.

Individual L-1 Petition

Where to File the I-129

- I-129 L-1 petitions are primarily filed at the CSC and VSC.

Where to File the I-129 (Continued)

- I-129 L-1 petitions filed on behalf of Canadian citizens may be filed with CBP at certain POEs on the U.S.-Canadian Land Border or at certain PFIs inside Canada in conjunction with an application for admission to the United States as an L-1 nonimmigrant. The petition will be adjudicated by a CBP Officer. If approved or denied, a copy will be forwarded to the USCIS Service Center for keying into CLAIMS and subsequent interfiling into the Blanket LZ petition. Additionally, if CBP cannot issue a formal denial notice to the alien, they may forward the petition to the CSC for final action. *Note that some USCIS Officers may be required to work petitions that were initially filed with CBP and others may be required to adjudicate EOS petitions for aliens initially approved by CBP.*

See 8 CFR § 214.2(l)(17)

Basic Requirements for an Individual L-1 Petition

1. A qualifying organization is filing the petition.

2. Beneficiary was employed abroad for one continuous year within prior three years in a managerial or executive capacity, or a position that involves specialized knowledge.

3. Proposed employment in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.

- Note that in the case of a *New Office*, an office that has been open for less than one year, there are different requirements. New office petitions are discussed below

8 CFR § 214.2(l)(3)

Qualifying Organization Defined

See 8 CFR § 214.2(l)(1)(ii)(G)

- Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Has a qualifying relationship between the U.S. entity and a foreign entity.

(2) Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Qualifying Organization
- does a qualifying relationship exist?

- The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:
  - Parent. 8 CFR § 214.2(l)(1)(ii)(I)
  - Branch. 8 CFR § 214.2(l)(1)(ii)(J)
  - Subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)
  - Affiliate. 8 CFR § 214.2(l)(1)(ii)(L)

Employment Abroad

- The regulation indicates that a qualifying employee must have at least one continuous year of full-time employment abroad in a capacity that was managerial, executive, or involved specialized knowledge with a qualifying organization within the three years preceding the filing of the petition.

  See 8 CFR § 214.2(l)(3)(iii) and (iv)

- This is referred to as the "1 in 3" rule.

Employment Abroad (Continued)

It is important to note that the 1 in 3 rule is a combination of two separate regulatory requirements which require two different but related analyses.

The Petitioner must submit sufficient documentation establishing that:

- The beneficiary was employed abroad for one continuous year out of the three years prior to admission. See 8 CFR § 214.2(l)(3)(iii).
- For the entire one year of continuous employment abroad, the beneficiary was performing in a capacity that was managerial, executive, or required specialized knowledge. See 8 CFR § 214.2(l)(3)(iv).

This is an important distinction to make as an employee who may have worked abroad for a continuous year (or more) fulfilling the first requirement, may still fail to qualify for the L-1 because the employee may have worked in a qualifying position for less than one year.

Employment Abroad (Continued)

- Both previous foreign employment and the prospective U.S. employment must be in one of the qualifying capacities.

- The prior foreign employment and proposed U.S. employment capacity do not have to be the same. For example, the one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for an L-1A position in the United States. See 8 CFR § 214.2(l)(3)(iv).

  Exception: A beneficiary coming to open or work at a new office in a managerial or executive capacity must have previous foreign employment experience in a managerial or executive capacity.
  See 8 CFR § 214.2(l)(3)(v)(B).

- Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement. See 8 CFR § 214.2(l)(1)(ii)(A).

Position in the United States

The Petitioner must submit sufficient documentation establishing that:

- The position in the United States is a capacity that is managerial, executive, or involves specialized knowledge.

- Generally, if the petitioner establishes that the beneficiary was performing qualifying employment abroad and the beneficiary will be transferring laterally to *the same position* in the United States, the Officer's review may not need to be as extensive as a situation where the beneficiary is transferring to the United States to occupy a different position, involving a different set of job duties. (This happens frequently as the regulation indicates that the employment in the United States need not be the same as the employment performed abroad.)

Is the Beneficiary Qualified to Fill the Position in the United States?

The regulation states that the employee need not be filling the same position in the United States that he/she occupied abroad. However, the regulation indicates that the employee must be qualified for the position in the United States.

Therefore, if the position in the United States appears to be substantially different than the one that the beneficiary occupied abroad, Officers should review the petition to ensure that the beneficiary's prior education, training and employment qualify him/her for the position in the United States.

See 8 CFR § 214.2(l)(3)(iv).

Validity Periods for Individual Petitions

- Petitions filed by established Petitioners may be approved for a period not to exceed three years initially.
- Petitions filed to establish a new business may be approved for a period not to exceed one year. (*New offices* discussed below.)
- Extensions (EOS) are granted in increments of up to two years.

Limitations on Stay

- Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- Recapture time is permitted. Time spent by an L-1 outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.
- L-1's are **not eligible** for extensions beyond the maximum period of stay when a labor certification or I-140 is filed on their behalf or remains pending for a specific period of time (unlike certain H-1B aliens under AC21).

Limitations on Stay (Continued)

- Time in H-1B status counts toward the maximum validity period of stay allowed as an L-1.
- Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.
- Example – An alien is admitted as an H-4 (dependent of an H-1B). After 2 years the alien finds a job and a petition is filed changing his status to H-1B. The alien remains an H-1B for five years. The employer then files a petition to COS the employee to L-1A. If approved, the alien can be granted a 2 year validity period in L-1A status as the maximum amount of time allowed in L-1A status is 7 years. (5 years as H-1B + 2 years as L-1A = 7 years.)

Limitations on Stay (Continued)

- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before an L-1 petition may be approved on his/her behalf. 8 CFR § 214.2(l)(12)(i)

- **Exceptions:** There is no limitation on period of stay for: (1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and (2) Aliens who reside abroad and commute to the United States to engage in part time employment.

8 CFR § 214.2(l)(12)(ii)

Qualifying Relationships

Qualifying Organization
- Does a qualifying relationship exist?

- The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:
  - Parent. 8 CFR § 214.2(l)(1)(ii)(I)
  - Branch. 8 CFR § 214.2(l)(1)(ii)(J)
  - Subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)
  - Affiliate. 8 CFR § 214.2(l)(1)(ii)(L)

Parent

- Parent means a firm, corporation, or other legal entity which has subsidiaries. 8 CFR § 214.2(l)(1)(ii)(I)

- For a broader explanation of what constitutes a 'parent,' the definition of subsidiary at 8 CFR § 214.2(l)(1)(ii)(K) indicates that a parent company is an entity which owns and controls the operations of a subsidiary by:

  (1) Owning either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.

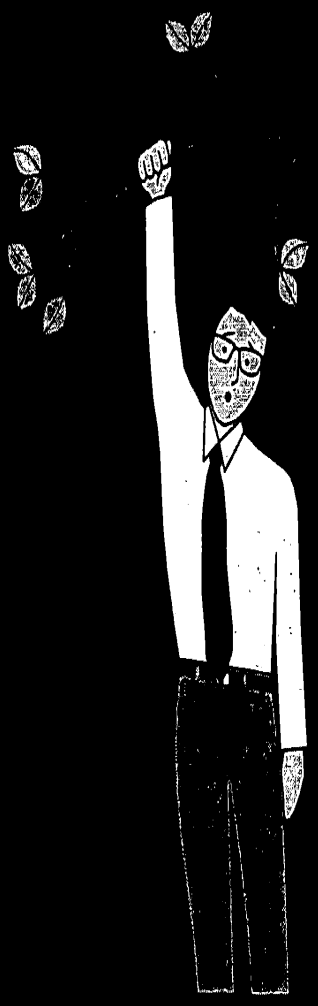
  (2) Owns either directly or indirectly half of the subsidiary and controls the subsidiary.

  (3) Owns either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary.

  (4) Owns either directly or indirectly less than 50% of the entity but in fact controls the entity.

Branch

Branch means an operating division or office of the same organization housed in a different location. 8 CFR § 214.2(l)(1)(ii)(J)



- An "arm" of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign corporation operating in the United States.

Subsidiary

- Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. 8 CFR § 214.2(l)(1)(ii)(K)

It must be established that the parent:

(1) Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.

(2) Owns either directly or indirectly half the subsidiary and controls the subsidiary.

(3) Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary.

(4) Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary.

Example

Subsidiary – More than 50%

Company A
Parent

Company B
Subsidiary
100% Owned

Example

Subsidiary – Exactly 50% and parent has control of the subsidiary

Company A
Parent

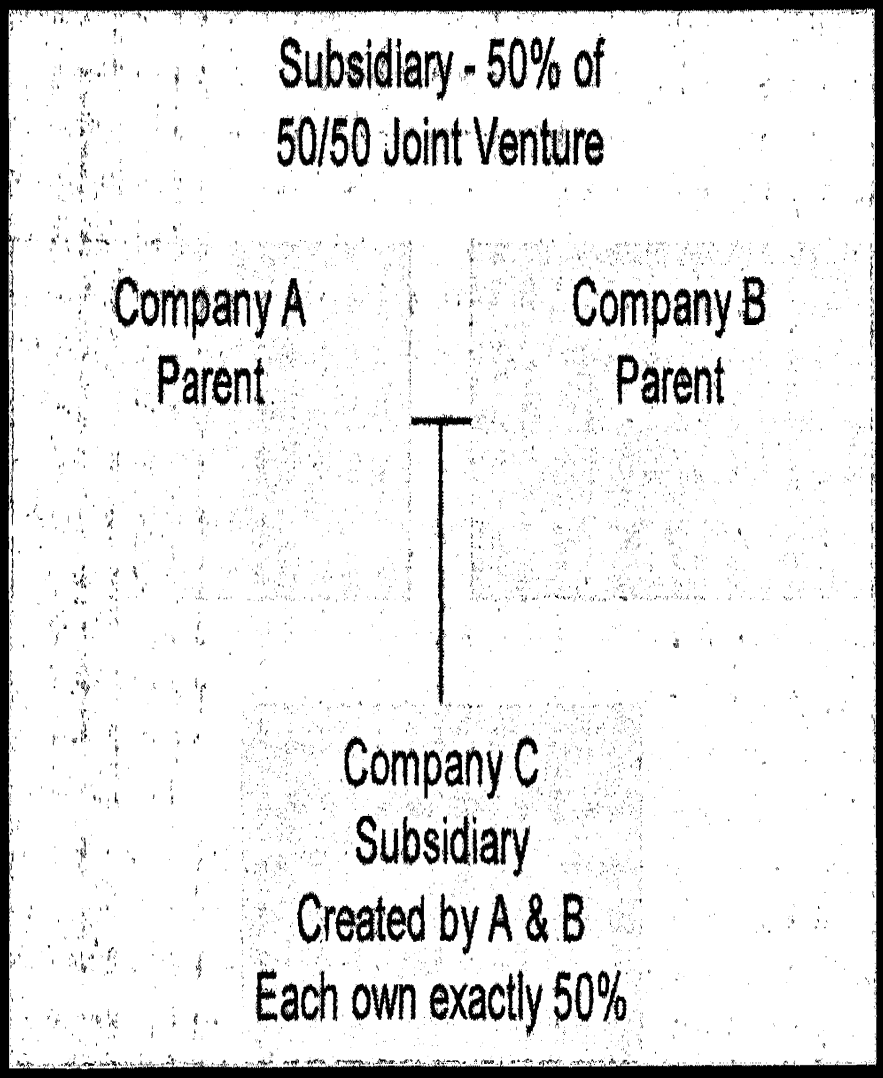
Company B
Subsidiary
50% Owned

Joint Venture as Subsidiary

- Joint venture: Parent owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity.

- Neither parent has sole control. They must agree to all controlled aspects. Thus, both have control. This is called "negative control".

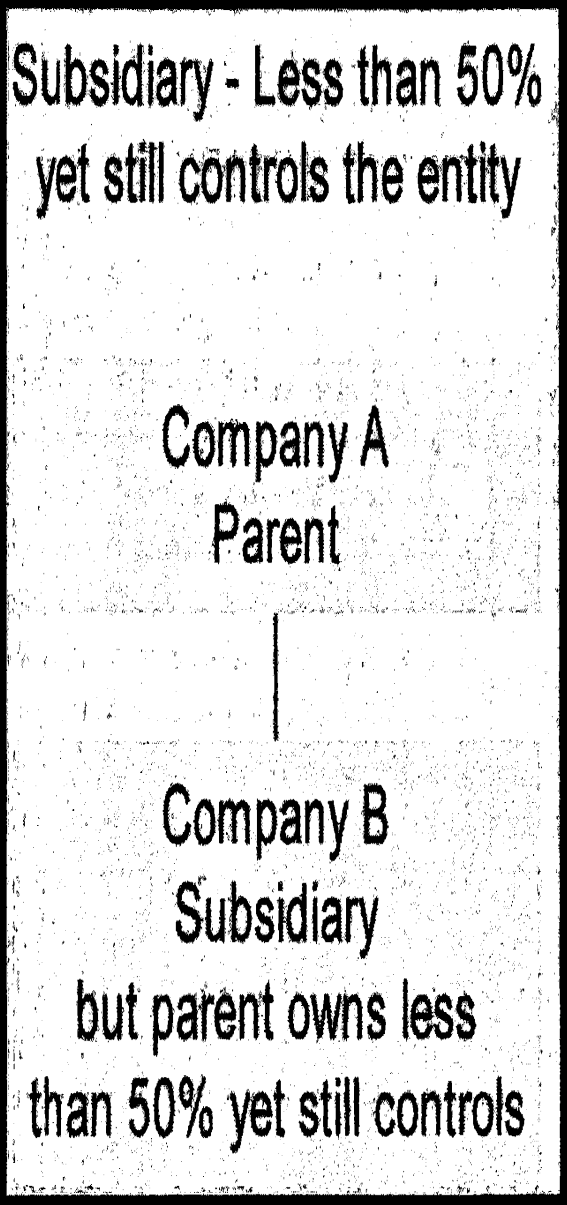
Joint Venture – Two Parent Companies own 50% of a subsidiary



Joint Ventures – Two Parent Companies Own a Subsidiary

- An alien L-1 cannot be transferred through the joint venture.
- In the above chart:
  - An alien <u>can</u> be transferred from A to C or C to A.
  - An alien <u>can</u> be transferred from B to C or C to B.
  - But, an alien <u>cannot</u> be transferred from A to B or B to A.

Example – Parent Owns Less Than 50%



Affiliate

- Affiliate means:

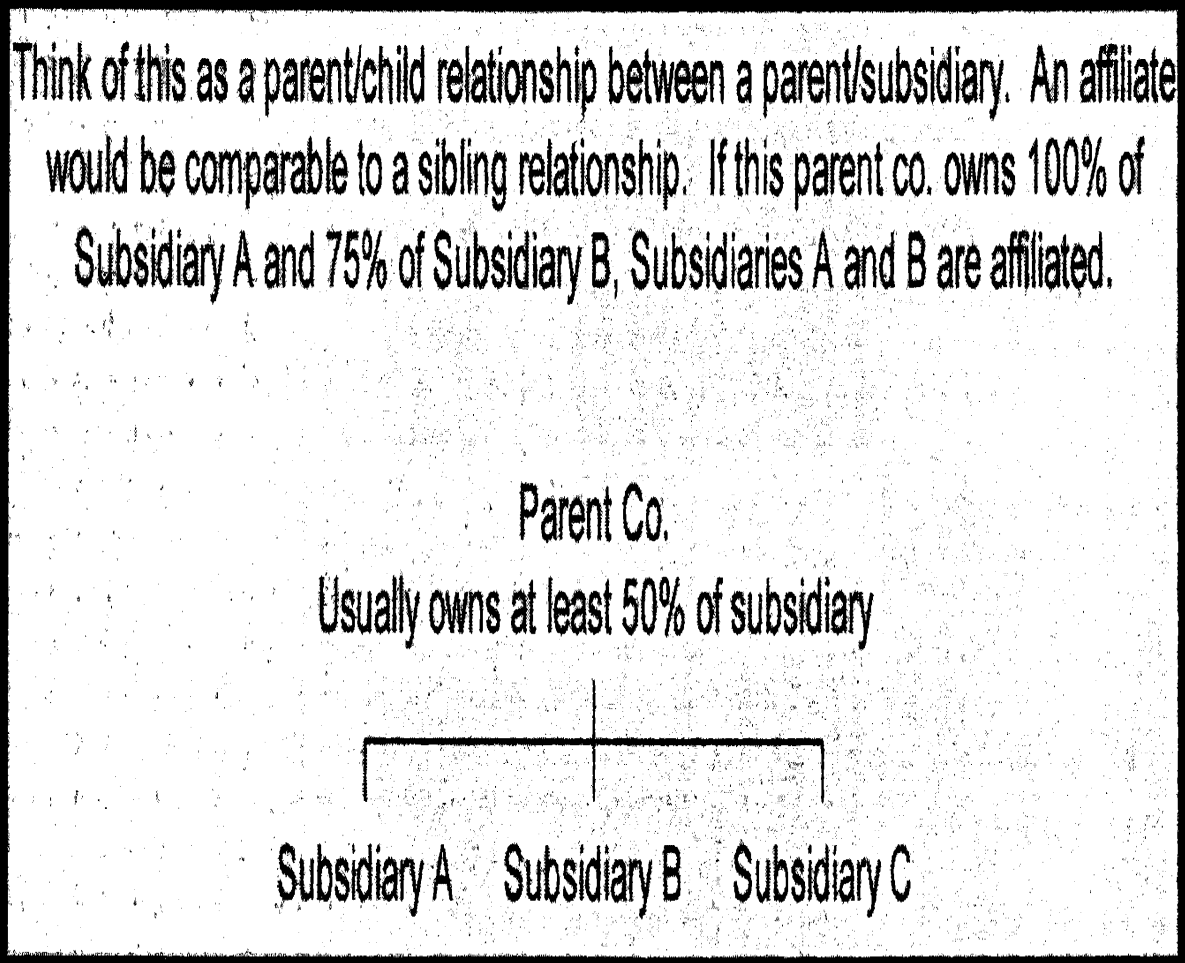
  (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
  (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

  (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

  8 CFR § 214.2(l)(1)(ii)(L)

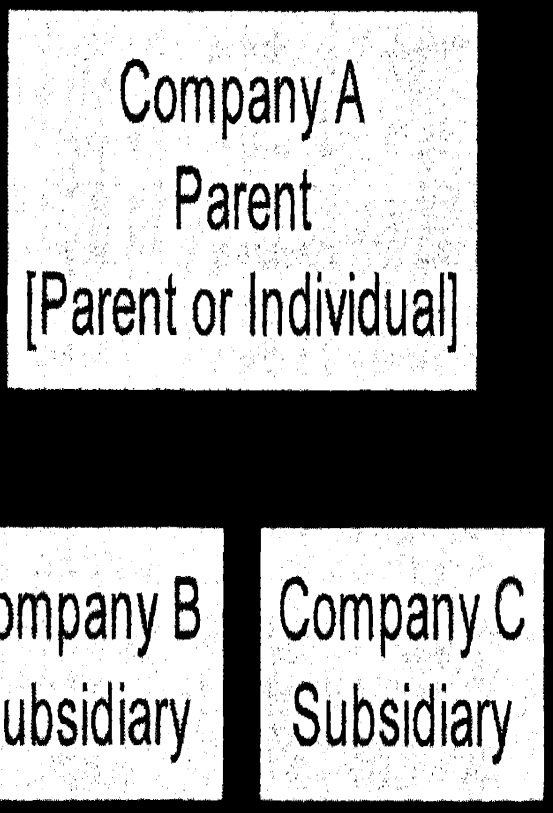
A Note About Subsidiaries and Affiliates

Think of this as a parent/child relationship between a parent/subsidiary. An affiliate would be comparable to a sibling relationship. If this parent co. owns 100% of Subsidiary A and 75% of Subsidiary B, Subsidiaries A and B are affiliated.



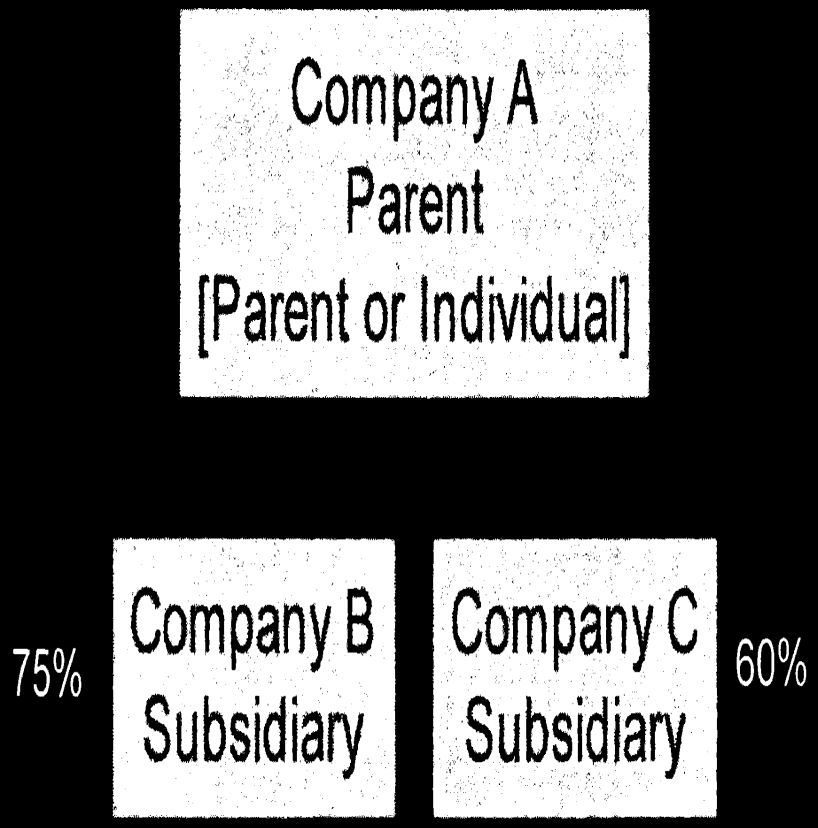
Example – How two separate subsidiaries can be affiliates of each other

Parent Company A owns 100% of both subsidiaries B and C. Company A controls B and C. Companies B and C are affiliates.



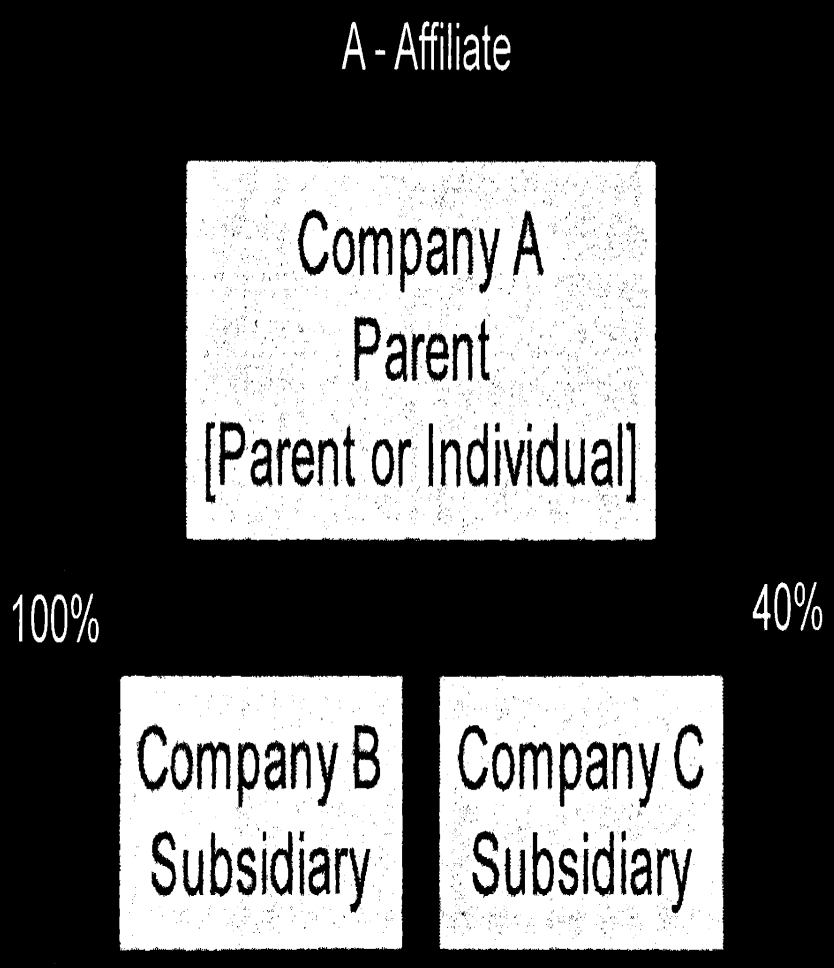
Example 2 – How two separate subsidiaries can be affiliates of each other

Parent Company A owns 75% of subsidiary B and 60% of subsidiary C. Company A controls B and C. Companies B and C are affiliates.



Example 3– How two separate subsidiaries will not be affiliates of each other

Parent Company A owns 100% of subsidiary B and 40% of subsidiary C. Company A controls B but not C. Companies B and C are not affiliates. Company A's employee may qualify to work at B but not C.



Affiliates – Multiple Owners

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.

Example – Multiple Owners of Qualified Affiliates

The two entities below are owned by individuals A, B, C, and D in the percentages indicated

These entities are affiliates as they are both owned by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity

Franchise Agreements

- Franchises are companies operating under franchise agreements. Franchise agreements are entered into to allow one independently owned company to license the name and/or product of another independently owned company. There is usually no qualifying relationship between a foreign entity and a U.S. entity associated by a franchise agreement or contract.

  Example: *Cheap TV's* located in the United States enters into a franchise agreement with *BONY Corp* in Japan. Under the agreement, *Cheap TV's* will be the sole distributer of *BONY* flat screen televisions in the United States and will be able to open and operate stores under the name *BONY Corp* but still wholly owned by *Cheap TV's*. In return, *BONY* will receive 10% of the profit from each flat screen television sold.

  Note: No ownership or control exists in this franchise agreement as neither company owns a portion of the other company. As such, there is no qualifying relationship between *Cheap TV's* and *BONY Corp*.

- Franchises and those relationships based on contractual or licensing agreements usually are not qualifying relationships for L-1 purposes.

  See Matter of Schick, 13 I&N Dec. 647 (Reg. Comm. 1970)

Affiliate – Partnership Accounting

- A partnership that is organized in the United States to provide accounting services along with managerial, and/or consulting services will be considered an affiliate of a foreign partnership (or similar organization) that provides accounting services in another country if:

  (1) They both market their services under the same internationally recognized name,

  (2) Under the agreement with a worldwide coordinating organization that is owned by member accounting firms,

  (3) Both the U.S. accounting partnership and the foreign accounting partnership are members of the worldwide coordinating organization.

  8 CFR 214.2(l)(1)(ii)(L)(3)

Affiliate – Partnership Accounting

- **Explanation**: Accounting firms such as *Deloitte Touche Tohmatsu Limited (Deloitte)* are large internationally branded accounting firms. However, the individual Deloitte firms in each respective country are single entity partnerships that do not normally own any part of the Deloitte firms in the other countries. [Deloitte-U.S. is an accounting firm set up as a partnership that is owned by the U.S. partners that in most instances do not own any part of Deloitte- Spain.] However, these firms are all part of an agreement to provide services under the same name and coordinated through a organization that is set up and owned by the member organizations with no actual control exerted by one member firm. This set-up has significant business benefits as it allows the individual member firms to refer their clients to other foreign member organizations and/or receive new clients through the same referral process. It also allows these firms to meet the different accounting regulations that are set up in each country and to cut ties with offending accounting firms without suffering financial losses. Example: Arthur Anderson/Enron Scandal

- These accounting partnerships are considered affiliates even though they do not exert control on each other or actually own any significant portion of each other.

Example of Accounting Service Affiliates

- *Accounting Partners*, NYC is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.
- *Accounting Partners*, UK is a partnership that is organized in Great Britain and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. It markets its accounting services under the same internationally recognized name as Accounting Partners, NYC, and is a member of the same worldwide coordinating organization.
- *Accounting Partners*, NYC and Accounting Partners, UK are considered to be affiliates because:
- They both offer accounting services under the same internationally recognized name, and
- Are members of the same worldwide coordinating organization.

Well Known Examples

not an exhaustive list

- Pricewaterhouse Coopers L.L.P.
- Ernest & Young L.L.P.
- KPMG Peat Marwick L.L.P.
- Deloitte & Touche, Tohmatsu Limited (Deloitte) L.L.P.
- Schneider Downs & Co. Inc.
- Alpern, Rosenthal & Co.
- Sisterson & Company L.L.P.

Issues Regarding Ownership and Control

- Ownership and control can be two ways:

1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.

2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of an entity yet still controls the entity.

Evidence of Ownership and Control

- Evidence of Ownership and Control must be submitted to establish the qualifying relationship.

- The petitioner may submit any evidence that it feels is appropriate; USCIS must weigh the evidence submitted appropriately. The best evidence would be financial documentation showing that the foreign entity and the U.S. entity are financially linked. However, the submission of Stock Certificates is a common way that Petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated on the stock.

Reviewing Stock
Preferred Stock vs. Common Stock

Companies generally issue two types of stock; common stock and preferred stock.

- Preferred stock usually gives holders certain privileges regarding the assets of the corporation in the event of a bankruptcy, but usually does not give preferred stockholders any voting rights. For L-1 purposes, if control is an issue in determining ownership, the stockholders with preferred stock would not qualify if they lack "control in fact" of the corporation/entity. For this reason, preferred stock certificates are rarely submitted as evidence.

- While common stock holders typically do not receive such privileges, they are, generally, the shareholders who have certain voting rights with respect to how the corporation may be managed. Common Stock holders generally do have various degrees of control over the corporation.

Reviewing Stock Certificates

- When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the entity seeking to establish control. (The total number of stock issued cannot exceed the amount authorized in the company's articles of incorporation.)

  Example: Brown-India indicates that they have a qualifying relationship with Brown-U.S. Brown-U.S. has issued 2 million shares of common stock. Brown-India submits a stock certificate indicating that they own 1.1 million shares of Brown-U.S. stock. Because Brown-India owns more than 50% of the voting stock issued by Brown-U.S., they have a qualifying relationship of parent-subsidiary.

Are the Stock Certificates Genuine?

Caveat: There exists a possibility in some cases that the submitted stock certificates may have been altered in order to make a qualifying relationship appear to exist and/or the possibility that the stock certificates were not issued in the normal course of business.

If submitted, an Officer should review stock certificates to determine if they (and the information contained on them) are genuine and were produced in the normal course of the company's business. Generally, an acceptable stock certificate includes the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

Are the Stock Certificates Genuine?

If the stock certificate does not appear genuine, comparison to a stock ledger may validate the certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or "cancellation" of stock.

Are the Stock Certificates Genuine?

- In those *limited* instances where the officer has *reason to question* the validity or authenticity of the stock certificate(s), it may also be appropriate to ask for evidence of the transfer of payment for the stock certificate(s) in question. Such evidence may include but is not limited to copies of cashed checks or documentation of wire transfers.

When to Ask for Financial Evidence of Ownership and Control

1. As indicated above - the officer has reason to question the validity or authenticity of submitted stock certificates.

2. In the case of a new office, if the submitted evidence is insufficient to determine whether the size of the U.S. investment is sufficient to conduct business.

3. If the entity is a type that does not issue stock certificates, such as a partnership or limited liability corporation.

4. If the Officer can articulate a justifiable reason that necessitates asking for the evidence. Examples: suspected fraud, investments suspected to originate in countries not free to invest in the U.S., the size of the entity in relation to the number of petitions filed.

Examples of Financial Evidence

1. Evidence of the stock purchase or Capital Contribution (if stock has no par value or company is anything other than a corporation, i.e. partnership or LLC).
   - Wire transfer receipts
   - Copies of cancelled checks
   - Deposit receipts
   - Bank statements

   This list is not all-inclusive.

2. Larger well-known companies may submit Annual Report/10-K or Federal Income Tax returns.

Issues Regarding Ownership and Control

- Ownership of a subsidiary need not be majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982).

- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on behalf of a stockholder of a corporation.

Example: Company A owns 49% of the voting stock of Company B and has proxy power over an additional 2% of Company B's voting stock. Company A has control of Company B by having the majority voting power of Company B (51%).

Non-Profit Organizations

- Non-profit organizations may, under certain circumstances, be considered qualifying organizations for L-1 purposes.
- Also frequently referred to as "tax-exempt" organizations or "501(c)(4) tax exempt" organizations, although there are other types of tax exempt organizations.
- Non-profit organizations may also become incorporated.
- Generally, L-1 petitioning non-profit organizations are incorporated and have branch organizations or affiliated corporations abroad. Examples include the Red Cross and Boy Scouts.
- Evidence of ownership and control can include incorporation documents, audited or reviewed financial statements, stocks or federal informational returns.

Non-Profits
Tax Forms as Evidence

- Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

- Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

- Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return.

Qualifying Organization (Continued) - Is the company Doing Business?

- Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. See 8 CFR § 214.2(l)(1)(ii)(H)

- *International trade is not required in order to establish that the entity is doing business.*

Doing Business (Continued)

- Generally, both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee. Exceptions for new offices apply.

- The U.S. entity cannot be one created solely for the purpose of establishing an L-1 qualifying intra-company relationship.

MANAGERIAL and EXECUTIVE CAPACITY

Managerial Capacity Defined

8 CFR § 214.2(l)(1)(ii)(B)

An assignment within an organization in which the employee *primarily*:

(1) Manages the organization, or a department, subdivision, function or a component of the organization;

(2) 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;

Managerial Capacity Defined (Continued)

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

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Executive Capacity Defined

8 CFR § 214.2(l)(1)(ii)(C)

An assignment within an organization in which the employee primarily:

(1) Directs the management of the organization or a major component or function of the organization;

(2) Establishes the goals and policies of the organization, component or function;

(3) Exercises wide latitude in discretionary decision-making; and

(4) Receives only general supervision or direction from higher level executives, the board of directors or stockholders of the organization.

Managers/Executives

- A job description that uses partial definitions of both manager and executive (some of the criteria from the definition of manager and some criteria from the definition of executive) does not qualify for an L-1A.

- An employee's job description must fulfill all four criteria of the definition of either manager or all four criteria of the definition of executive.

Distinguishing Between Executives and Managers

- Generally, an executive may sign a company document, legally binding a corporation. Generally, a manager cannot, by signature, legally bind the corporation.
- An executive may direct multiple plants, sometimes in several different nations. A manager may oversee only one office or plant.
- Generally, executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc.

Evaluating Managerial or Executive Positions

Large, well-known and well-established business entity:

- A description of the position written by a high level executive of the company may be submitted as evidence. Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title. You must always look at the job duties.

Small and/or young, unknown or less substantial business:

- The qualifications of the beneficiary and/or the eligibility of the proposed employment in the United States are more difficult to determine.
- Do not determine eligibility solely by size of company; rather, examine all the facts presented, including the nature of the duties to be performed, the nature of the petitioner's business, and the developmental stage of the company.

Staffing Levels as a Factor

INA § 101(a)(44)(C)

"If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity... take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity...merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed."

Staffing Levels (Continued)

Officers should take into account the reasonable needs of the organization.

In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not just at the number of employees to be managed, but at their duties (e.g., are these professionals, etc.).

Evidence can include an organizational chart and State quarterly wage reports upon request.

The employees managed, as opposed to the beneficiary, perform the majority of the everyday duties.

Too Many Queen Bees Not Enough Worker Bees

- Claims that the majority of its employees are primarily engaged as managers or executives that are inconsistent with the nature of the business in the United States or abroad may or may not require an RFE, depending on the facts presented.

- Request more detailed position descriptions and payroll documentation to determine who is performing the non-qualifying, everyday operational duties of the business.

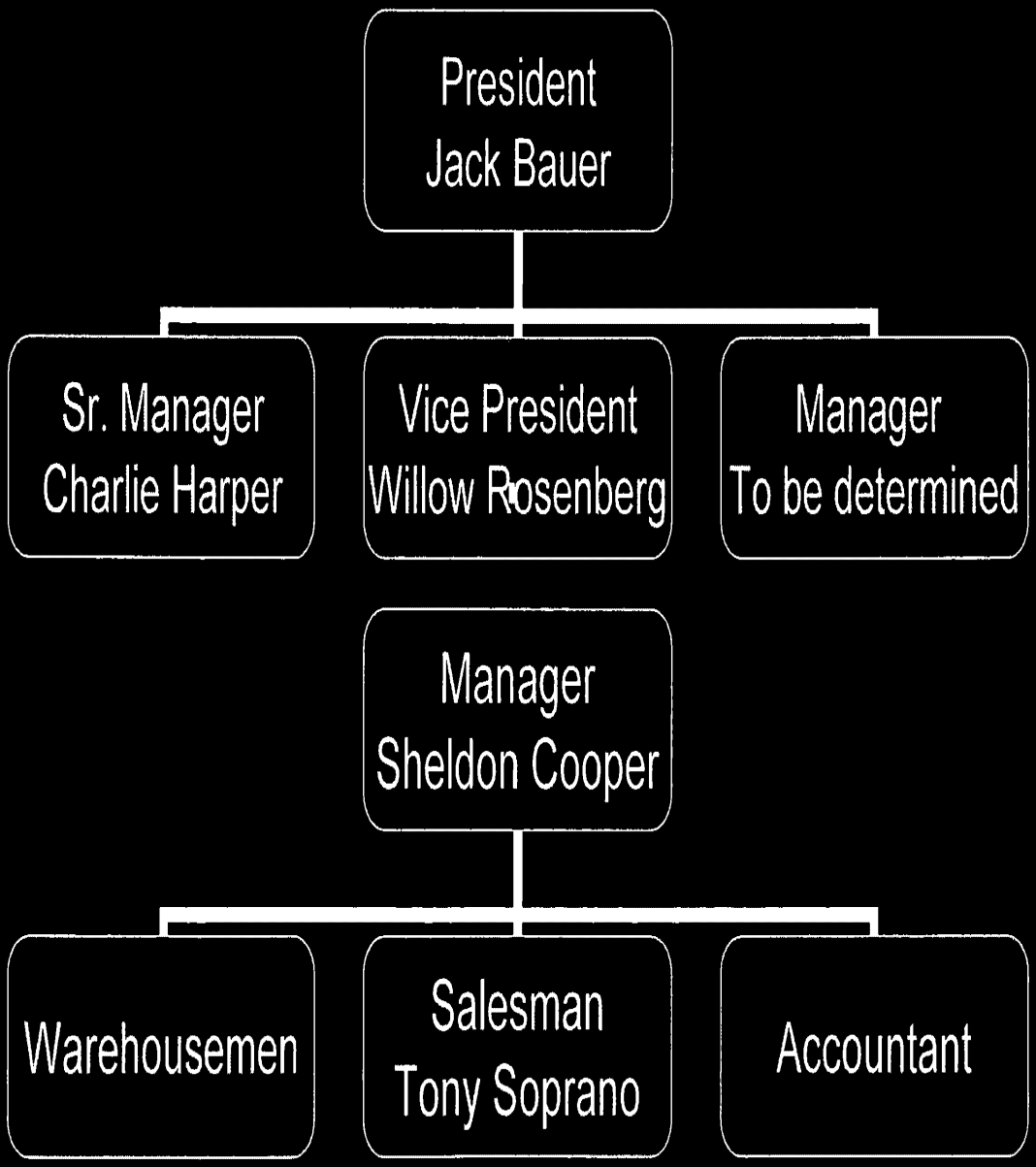
- Even though a beneficiary has a job title of a manager, he or she may or may not be performing primarily non-managerial duties. This is a fact question which you must determine on a case-by-case basis.

L-1A Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The U.S. organizational chart for the U.S. office.
- Quarterly wage reports for the employees in the U.S. office.

Example Organizational Chart
Petition Shows Eight Employees
Does this conform with the other documents submitted with the petition?



Managing a Function

- The organization is structured in such a way that the beneficiary is primarily *managing* the function, not primarily performing the duties of the function.
- Normally does not directly manage workers (NOTE: the person may still qualify as an L-1A *manager of personnel* if the beneficiary meets the requirements of 8 CFR § 214.2(l)(1)(ii)(B)).
- Directs or manages an essential function.

Specialized Knowledge

(SK)

Specialized Knowledge

See 8 CFR § 214.2(l)(ii)(D)

Specialized knowledge means:

- special knowledge possessed by an individual 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.

Specialized Knowledge Terminology

Specialized knowledge means special knowledge possessed by an individual of the petitioning organization's:

- Product
- Service
- Research
- Equipment
- Techniques
- Management, or
- Other interests, and its application in international markets, or
- An individual's advanced level of knowledge or expertise in the organization's processes and procedures.

Policy Regarding the Interpretation of Specialized Knowledge

Puleo Memo – March 9, 1994

The *Puleo* memo is one of the agency's policy memos regarding the interpretation of specialized knowledge. Officers must follow this interpretation when adjudicating SK petitions. The memo instructs that Officers are to utilize common dictionary definitions of the terms "special" and "advanced;" the definitions cited in the Puleo memo are:

- ***Special***: (1) "surpassing the usual, distinct among others of a kind," OR;

  (2) "distinguished by some unusual quality; uncommon; noteworthy."

- ***Advanced***: (1) "highly developed or complex; at a higher level than others," OR

  (2) "beyond elementary or introductory; greatly developed beyond the initial stage."

Puleo Memo – The Special Knowledge Definition

Special: (1) "surpassing the usual, distinct among others of a kind," OR; (2) "distinguished by some unusual quality; uncommon; noteworthy."

Based on the above definition, an alien would possess specialized knowledge if it was shown that the knowledge is different from that generally found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

Puleo Memo – The Advanced Level of Knowledge or Expertise definition

Advanced: (1) "highly developed or complex; at a higher level than others," OR (2) "beyond the elementary or introductory; greatly developed beyond the initial stage."

Based on the above definition, an alien would possess specialized knowledge if it was shown that the knowledge is advanced. There is no requirement that the knowledge be proprietary or unique, or narrowly held throughout the company, the knowledge must only be advanced.

Puleo Memo (Continued)

- The determination of whether the alien possesses SK does not involve a test of the U.S. labor market. Officers should not consider whether there are U.S. workers available to perform the duties in the United States when determining whether the alien has SK.

- Officers adjudicating petitions involving SK must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized. Examples of general knowledge may include: CPR training, First Aid training, and Safety training. These could be regarded as general knowledge in any industry. However, general knowledge will differ from case to case depending on the specific industry.

Possible Characteristics of SK

Puleo Memo

- The alien possesses knowledge that is valuable to the employer's competitiveness in the market place; or
- The alien is qualified to contribute to the U.S. employer's knowledge of foreign operating conditions as a result of knowledge not generally found in the industry (CAVEAT: There may be some industries that are so sophisticated or specialized in nature that even such generalized knowledge may rise to the level of specialized knowledge for L-1B purposes); or
- The alien has been employed abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position; or

Possible Characteristics of SK (Continued)

Puleo Memo

- The alien possesses knowledge which, normally, can be gained only through prior experience with that employer, (NOTE, there is no requirement that the SK must be gained through prior experience with the Petitioner. It may have been obtained through prior employment, education, or experience.); or
- The alien possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; or
- The alien has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States (although in some *limited* cases it may be generally known within a particular industry)

What to Look for in Reviewing SK

- How did the beneficiary obtain specialized knowledge?
- What evidence is there to show that the beneficiary's knowledge is specialized knowledge?
- How can it be shown that the job position in the United States is one of specialized knowledge?

Note on Specialized Knowledge

There is no rule of thumb in every case as to what constitutes specialized knowledge. Such knowledge is highly fact-dependent, and therefore, each case must be adjudicated on its own merits based on the facts presented.

Petitioner's Statements L-1B

- The weight and probative value Officers should give to statements by a Petitioner that a beneficiary possesses specialized knowledge will vary from case to case, and will depend on, among other things, its degree of detail and whether the statement is supported by other evidence (documentary or other) in the file.

- You should be alert to the fact that some Petitioners may base their claim that a beneficiary has specialized knowledge by merely reiterating the definition of specialized knowledge provided in the regulations, without providing evidentiary support to back up such an assertion.

- It is important for the Petitioner to fully explain and describe the beneficiary's position of specialized knowledge.

L-1B Evidence

- The petition should be accompanied by a description detailing how the beneficiary's knowledge of the Petitioner's equipment, system, product, technique, or service is "special" and/or "advanced."

- However, it is just as important for the Petitioner to include documented evidence to prove those assertions.

- Some common types of documentary evidence submitted are:

  Training Records;

  Descriptions of Proprietary Knowledge held by beneficiary;

  Patents held by the company obtained as a result of the beneficiary's work;

  Organizational Charts showing the beneficiary's current position in the organization;

  Published Material by or about the beneficiary;

  High level of Remuneration compared to others;

  Human Resources Records;

  A description of the impact on Petitioner's Business if L-1B not granted.

L-1B Evidence (Continued)

- No specific type of evidence is required under the regulations, but remember, as always, the burden of proof remains with the Petitioner.

Example: If the Petitioner claims that the SK was obtained after the beneficiary underwent training, the Petitioner should be able to submit evidence of that training. Note that certificates of training are not the only way to establish training has occurred. Suppose a Petitioner indicates that the beneficiary underwent a one year training program at the cost of $250,000 paid for by the Petitioner, provided by a third party, in order for the beneficiary to become one of 20 individuals in the world that are qualified to fly a specific type of helicopter.

As evidence of the claimed training, the Petitioner could submit one of the following (or something completely different):

(1) A training certificate;

(2) Records of the $250,000 in tuition payments to the third party;

(3) The beneficiary's flight log that shows he/she underwent the specified training.

L-1 Visa Reform Act of 2004

see INA § 214(c)(2)(F)

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for L-1 classification if –

(i) the alien will be controlled and supervised principally by such unaffiliated employer; OR

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

The L-1 Visa Reform Act applies to L-1B petitions filed on or after June 06, 2005, whether for initial, extended, or amended classification.

L-1B Off-Site Employment – What the Law Means

If an L-1B alien is stationed primarily at the worksite of an employer other than the Petitioner:

- Control and supervision must be with the Petitioner.
- Cannot be "labor for hire."
- The beneficiary's work (the specialized knowledge) must be specific to the Petitioner's product or service.
- The off-site work must require specialized knowledge.

L-1B Extension Adjudication

- When adjudicating L-1B extensions, Officers are required to give deference to the prior Officer's approval; however, Officers should review the claimed SK to determine if in the intervening time, the knowledge has become general knowledge.

- Be cognizant of the fact that:

  "Cutting edge" technologies may become "general industry knowledge" in a rather short period of time.

  The "advanced" nature of the beneficiary's knowledge must be considered in relation to the current level of knowledge.

Specialized Knowledge Becoming General Knowledge

- Note that knowledge that is or was once considered SK, may become common knowledge through the passage of time and technological advances.

Example: In the early nineties, expertise in the creation and maintenance of certain internet websites was not commonly held in the computer industry. Such knowledge was considered truly specialized.

Today, many grade school children possess the knowledge and ability to perform some, many or all of these tasks. Such commonly possessed knowledge is no longer thought of as "special" or "advanced".

BLANKET L-1 PETITION PROCESS

Blanket Petition Authority

INA § 214(c)(2)(A) requires that USCIS provide a blanket L-1 petition process in order to expedite the importation of L-1 aliens.

Blanket Petitions

- In order to bring a qualified L-1 alien into the United States under the Blanket L Petition process, two-steps must occur:

  (1) The Petitioner must file the Form I-129 and L Supplement requesting Blanket Petition (LZ) Approval.

  (2) With a currently valid approved LZ petition, the Petitioner may file Form I-129S on behalf of an employee in order to transfer him/her to the United States as an L-1 nonimmigrant. Note that there is no limit to the number of I-129S petitions that can be filed based on an approved LZ petition.

Filing an LZ Petition

A U.S. or foreign organization may file an I-129 requesting approval of an LZ petition on behalf of itself and its parent, branches, subsidiaries, and affiliated companies.

Officers should review Question 3 on Page 20 of the Form I-129 (the first page of the L Supplement) to determine if the Petitioner is requesting a LZ petition approval.

Filing an LZ Petition (Continued)

With the filing of the LZ petition, the Petitioner needs only to establish that the organizations listed in the petition qualify (that a qualifying relationship exists between them and that they are doing business as required by regulation). The LZ petition must include a list of all the organizations eligible to transfer L-1 workers under the blanket petition as well as documentation of qualifying relationships of the organizations and establishing that they are doing business.

The Petitioner will not submit evidence pertaining to a specific beneficiary as they will not be seeking classification of an employee as an L-1 nonimmigrant with the filing of an LZ petition.

Who May Use the Blanket Process

8 CFR § 214.2(l)(4)

- A Petitioner which meets the following requirements may file an LZ petition:

(A) The Petitioner and each of those entities are engaged in commercial trade or services; AND

(B) The Petitioner has an office in the United States that has been doing business for one year or more; AND

(C) The Petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; AND

(D) The Petitioner and the other qualifying organizations have:

(1) obtained approval of at least ten L-1 petitions during the previous 12 months; OR

(2) have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; OR

(3) have a United States work force of at least 1,000 employees.

LZ Petition Validity

An LZ petition to qualify a company as a blanket Petitioner (with no beneficiary listed) may be approved for an initial period of three years. A subsequent petition for extension may be approved indefinitely if all other requirements are met.

See 8 CFR §§ 214.2(l)(7)(i)(B) and 214.2(l)(14)(iii)(A).

The LZ petition may be approved in part or in whole.

See 8 CFR 214.2(l)(7)(i)(B)(3).

The extension must be filed in timely fashion or the company's LZ petition status will become invalid, and the Petitioner must then wait three years to file a new initial LZ petition.

See 8 CFR § 214.2(l)(14)(iii)(B).

LZ Petition Validity (Continued)

- Petitioner must file an amended petition with fee if:
  - There are changes in approved relationships.
  - There are additional qualifying organizations.

See 8 CFR § 214.2(l)(7)(i)(C).

LZ Petition Validity (Continued)

- An amended petition may only be approved for the validity period of the petition it amends.
- A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely.

Approving an LZ Petition (For the Petitioner)

When approving a case, you **must:**

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**).
- Indicate the dates of approval/validity dates (which will either be **three years** (for an initial) **or "INDEFINITELY"** (for an extension)).
- Make a notation "**BLANKET PETITION**" in the block entitled "PARTIAL APPROVAL (explain)."
- Stamp the petition with your approval stamp and sign it.

Filing an I-129S for the Beneficiary

See 8 CFR § 214.2(l)(4)(ii).

- A U.S. Petitioner listed on an LZ petition approval notice may file a Form I-129S on behalf of an employee. (Note that the I-129S Petitioner must be a U.S. Petitioner unlike an I-129 Petitioner.)

- The Petitioner bears the burden of establishing:

  (1) that the beneficiary meets the 1 in 3 rule and,

  (2) that the beneficiary will be employed in the United States in a managerial or executive capacity or as a specialized knowledge *Professional*. (Note that if filing the I-129S on behalf of a specialized knowledge employee, the position in the United States must be a 'profession' as defined by INA § 101(a)(32) and the beneficiary must be a professional. However, there is no requirement that the beneficiary have been employed abroad in a position as a specialized knowledge Professional.)

Specialized Knowledge *Professional*

- INA § 101(a)(32) provides that the term "profession" includes but is not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

- "Profession," as defined by section 101(a)(32) of the Act, contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. see Matter of Sea, 18 I&N Dec. 817.

- In order to be considered a professional, the alien must hold a U.S. bachelor's degree or equivalent (may include a work experience evaluation) and be working in a position that normally requires a minimum of a bachelor's degree.

Notes about the Form I-129S

- There is no filing fee required. However, the Petitioner must submit the $500 fraud fee and the $2,250 P.L. 111-230 fee if required.

- The Petitioner does not need to establish that they are a qualifying organization as this has already been established with the approval of the LZ petition. The Petitioner only needs to submit a copy of the LZ approval notice with the I-129S filing documenting that the Petitioner is listed on the LZ approval notice.

I-129S Filing Options

The U.S. Petitioner may file the I-129S with:

(a) DOS – If the beneficiary is abroad and requires a visa to seek admission to the United States, the I-129S should be submitted directly to the Consulate or Embassy with the beneficiary's L-1 visa application. If approved, the beneficiary may use the L-1 visa and apply for admission to the United States. See 8 CFR § 214.2(l)(5)

I-129S Filing Options (Continued)

(b) USCIS – If the beneficiary is a visa exempt alien (Canadian citizens and certain aliens resident in the Caribbean) who is outside the United States, the I-129S may be filed with the appropriate USCIS Service Center. If approved, the alien may apply for admission to the United States with the approval notice. [Aliens currently present in the United States may not use Form I-129S to COS or EOS or amend a previously approved I-129S.] See 8 CFR § 214.2(l)(5)(C)

(c) CBP at a Port Of Entry (POE) on the Canadian-U.S. land border or a pre-clearance/pre-flight station (PFI) in Canada – If the beneficiary is a citizen of Canada, the Form I-129S may be filed with CBP at the POE or PFI in conjunction with the alien's application for admission to the United States as an L-1. See 8 CFR § 214.2(l)(17)(ii)

- It is the responsibility of the agency with whom the I-129S is filed to collect all required fees and adjudicate the I-129S properly.

Reassignment Benefits of an I-129S

- An employee admitted under the blanket petition process may be reassigned to any organization on the blanket without filing a petition with USCIS if the employee will be performing virtually the same job duties. Such a reassignment will not be considered a violation of status.

Therefore, when adjudicating EOS petitions for L-1 aliens who were previously admitted by means of an approved I-129S, the Officer may not deny the petition if the employee has moved to a different organization *listed on the blanket LZ petition* without filing a new petition.

Example: Bony-Japan has an approved LZ petition which includes Bony-US, Bony-CA, and Bony-VT. An I-129S completed by Bony-US is filed with the Japanese Consulate and Mr. Bones is issued an L-1 visa and is admitted to the United States as a Blanket L beneficiary for 3 years. After two years, Mr. Bones is reassigned to Bony-CA to perform the same work without requesting an amendment of the petition. One month prior to the expiration of the beneficiary's status, a Form I-129 requesting an EOS is filed on Mr. Bones' behalf. During adjudication, the Officer notes that Mr. Bones has switched employers without notifying USCIS. However, because the new employer was listed on the LZ petition for Bony-Japan, this is not a violation of status and the EOS can be approved if the beneficiary is otherwise eligible.

Notes About I-129S Filed with DOS

- Form I-129S filed with DOS will be adjudicated by a Consular Officer. If approved, the alien will be given copies of the I-129S. One copy should be collected by CBP upon the alien's admission to the United States at a POE and forwarded to USCIS for interfiling in the LZ petition.

- L-1 aliens admitted pursuant to an I-129S petition adjudicated by DOS may, instead of filing an EOS petition with USCIS, return to a Consulate and file a new Form I-129S with an L-1 visa renewal.

- I-129S petitions adjudicated by DOS are not tracked in CLAIMS and there will be no I-797 approval notice available. When reviewing EOS petitions filed on behalf of beneficiaries whose original I-129S was approved by DOS, Officers may need to review the L-1 visa issued to the beneficiary, CCD and/or SQ94 if additional information is required.

Notes About I-129S Filed with CBP

- I-129S petitions filed with CBP at a POE/PFI on behalf of a Canadian citizen will be adjudicated by a CBP Officer. If approved or denied, a copy will be forwarded to the USCIS Service Center for data entry into CLAIMS and interfiling into the LZ petition. Additionally, if CBP cannot issue a formal denial notice to the alien, they may forward the I-129S to the USCIS Service Center for final action. Some USCIS Officers may be required to work I-129S petitions filed with CBP or EOS petitions for L-1 employees whose petitions were initially adjudicated by CBP.

- L-1 aliens admitted pursuant to I-129S petition adjudicated by CBP may, instead of filing an EOS petition with USCIS, return to a POE on the U.S.-Canadian land border or a PFI inside Canada and file a new Form I-129S and seek readmission as an L-1 nonimmigrant.

I-129S Filings

- All I-129S requests filed for an L-1 alien must contain the LZ petition approval notice to show the Petitioner was previously approved as a blanket Petitioner.

Filing For An L-1 Beneficiary Who is in the United States

- If an approved L-1 blanket employer wants to file a petition on behalf of an employee who is in the United States applying for either a change of nonimmigrant status (COS) or an extension of stay (EOS), **Form I-129 must be used, not the Form I-129S**. The petition must be adjudicated as an individual L-1 petition and all the requirements of an individual petition must be met.

- Normally, when a Petitioner files an I-129 Individual L-1 petition, they must submit documentation establishing the fact that they are a qualifying organization (including evidence that they have a qualifying relationship and are doing business). However, in the above instance, where a blanket L-1 Petitioner is filing an I-129 on behalf of an alien who is already inside the United States seeking an EOS or COS, a copy of the LZ Blanket approval notice is often submitted as proof that the qualifying relationship has already been established (this may be acceptable, though the approval notice still should be reviewed by the adjudicating officer).

I-129S Validity Period

- An I-129S filed for a beneficiary under an initial LZ petition of three years or an indefinite blanket petition may be approved initially for a period of up to three years, even if the LZ petition will expire before the three-year validity period granted the beneficiary.

  See 8 CFR 214.2(l)(11)

- Extensions may be granted in up to two year increments.

  See 8 CFR 214.2(l)(15)(ii)

- It is the burden of the Petitioner to file a LZ petition extension in timely fashion and to timely file extensions for individual L-1 aliens approved under a blanket petition.

Blanket Petitions (Continued)

A blanket Petitioner can file an I-129S for an alien under the blanket petition or can file a normal individual petition for an alien, but cannot file both for the same alien.

If an I-129S is filed for an alien at the consulate and is denied, the Petitioner may subsequently file an I-129 individual L-1 petition for that alien at the appropriate Service Center. The petition must contain evidence of the consulate denial including the date of denial, the office where it was denied and the reasons for denial.

NEW OFFICES

New Offices

- A 'new office' is an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. See 8 CFR § 214.2(l)(1)(ii)(F)

New Offices

- An organization seeking to establish a new business entity in the United States must meet different requirements than a petition for an established company.

Requirements for an L-1A New Office petition

see 8 CFR § 214.2(l)(3)(v)

- The Petitioner is not required to establish that the U.S. entity is doing business.

- However the Petitioner must submit evidence establishing that:

  (A) Sufficient physical premises to house the new office have been secured;

  (B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted); AND

New Office L-1A (Continued)

(C) The intended United States operation will within one year of the approval of the petition support an executive or managerial position by submitting:

- (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND
- (2) The size of the United States 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.

Requirements for an L-1B New Office Petition

See 8 CFR § 214.2(l)(3)(vi)

- In all cases, a prerequisite to filing the initial new office is that the Petitioner demonstrate that the U.S. entity – even if it is not yet doing business – is or will be in a qualifying relationship with the foreign entity

- Further, the L-1B new office Petitioner must submit evidence that:

  (A) Sufficient physical premises to house the new office have been secured;

  (B) The business entity in the United States is or will be a qualifying organization; and

  (C) The Petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

Examples of New Office Evidence

- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.
- Evidence of the amount of the U.S. investment, source of funds and ability of the foreign entity to pay the bills related to operating the U.S. office.

More Examples of New Office Evidence

- Evidence that the foreign entity owns the U.S. office (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business.

Note: Purchase and Takeover of an Established Business

- If the Petitioner purchases and takes over the management of an established business that is already staffed and capable of supporting an executive or managerial employee, the petition should not be treated as that for a "new office" and a "new employee."

- Such petition, as any other *non*-new office L-1 petition, if approvable, should be granted for an initial period of up to three years or the period requested by the petitioner, if less.

Dormant Business

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a 'new office.' There is no rule of thumb as to whether to treat such a company as a 'new office;' this is a fact-based question.
- The Petitioner must establish the requirements of a new office.
- The petition may only be granted up to one year initially.

New Office Extensions

see 8 CFR § 214.2(l)(14)(ii)

To extend after the first year, the Petitioner must submit:

(A) Evidence that the United States and foreign entities are still qualifying organizations (that a qualifying relationship exists);

(B) Evidence that the United States entity has been *doing business* for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);

(D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees (such evidence may include organizational chart and quarterly tax returns); and

(E) Evidence of the financial status of the United States operation.

New Office Extensions

Remember:

- In the initial petition for a new office, the Petitioner must meet different standards to qualify the petition. The L-1A was given one year to set up the new office, hire a staff and initiate doing business. An L-1B was given one year for the Petitioner to set up the business and commence doing business. Upon extension, the Petitioner must establish that the new office has commenced doing business. 8 CFR 214.2(l)(14)(ii)

- In new office extensions, adjudicators should be aware that an extension may be granted in situations where the office is in fact progressing, but may not have completely reached the goal stated in the initial new office petition. Where the adjudicator determines that the office is doing business and is well on track to meet its goal, then the petition, if otherwise approvable, may be granted.

- If you have an extension petition and the previous approval was for one year, you *may* have a new office extension, but you must review the petition and the facts presented in the EOS to make that determination.

- Note: After one year, the "new office" will be treated as an existing company; there are no extensions of "new office" status beyond one year

Things to Know

Conversion from L-1B to L-1A

- Aliens who were *initially admitted* as specialized knowledge aliens may change to a manager or executive and stay for seven years, BUT, the alien must have been employed as a manager/executive for at least six months (of the five-year stay) before applying to EOS from L-1B to L-1A, and the change must have been approved by USCIS. [8 CFR § 214.2(l)(15)(ii)]

- This means the change from L-1B to L-1A must have taken place and been approved at least six months before the expiration of the alien's five-year stay. If not, if the alien is otherwise qualified, approve the change for only the balance of the five years. [8 CFR § 214.2 (l)(15)(ii)]

- If the L-1B was initially admitted as an L-1A manager or executive, for example, as an IT manager, then the six month rule noted above does not apply, and the L-1B can file a request to change back to L-1A status at any time (*provided that* he or she has not been in L-1B status for more than five years, and *further provided that* his or her maximum period of stay as an L-1 nonimmigrant does not exceed seven years).

- If an amended petition was filed notifying USCIS of the L-1B being promoted to a managerial position before the 4½-year mark, then this also satisfies the requirement.

Dependents

- Dependents of L-1 principal aliens are L-2s. Their periods of stay depend on the principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.

Requirements for Extension of Stay (EOS)

- Alien must be in the United States at the time of filing the petition.
- Alien does not have to be physically in the United States while the EOS is pending.
- Departure is not treated as abandonment.
- Must be maintaining status.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 214.1(c)(4).

RFEs and Denials on EOS Petitions

A prior determination by an adjudicator that an alien is eligible for the classification should be given deference unless one of the following conditions can be established.

- "Material Error"
- "Substantial Change in Circumstances"
- "New Material Information"

See Memo dated April 23, 2004, titled "The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity".

RFEs and Denials on EOS Petitions

The Deputy Director will review and clear in writing, prior to the issuance of an RFE or final decision, any case involving an extension of stay of petition validity in a nonimmigrant classification where the parties and facts involved have not changed, but where the current adjudicating Officer determines nonetheless that it is necessary to issue an RFE or deny the application for extension of petition validity.

Requirements for Change of Status (COS)

- Unlike EOS, alien must be physically in the United States.
- Departure is treated as abandonment.
- Must be maintaining status.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 248.1(b).

General Things To Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf. EXCEPTION: In the case of an I-129S filed on behalf of a blanket beneficiary, the Petitioner must be a U.S. Petitioner.
- The beneficiary may not directly perform services for a foreign employer.
- The beneficiary's wages may be paid by the foreign organization.

General Things To Know

- The presence of a dormant corporation, an agent or a holding company (not active) abroad is not sufficient for establishing a qualifying relationship for L-1 purposes.

- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.

- Example: L-1A was a manager for Company A in Italy. L-1A transfers to the United States to work for affiliated Company B. After L-1A transfers, Company A ceases to do business and becomes a dormant company. Company B still has foreign affiliate, Company C, that is doing business in Japan. Therefore, the petition remains valid.

Things to Know

- A general manager can, depending on the facts, be an executive position within a company. Therefore, for petitions filed on behalf of "general managers," it is important to look at the company's organization chart to discover where the beneficiary's position falls within the company. In such cases, officers should determine whether the beneficiary can qualify either as a manager or executive

- A denial of a petition filed on behalf of a general manager should include denial language for both executive and manager.

Things to Know Independent Contractors as Employees

- In determining whether an employee meets the criteria of a manager, the persons who the manager supervises abroad or will supervise in the United States may include independent contractors.

- There is no regulation requiring that the employees supervised must be individuals on the company's payroll.

see 9 FAM 41.54 N 7.2-1

Company Owner as Petition Beneficiary

- An owner or majority stockholder of the petitioning or affiliated company may be the beneficiary of a petition for L-1 status if the petition is accompanied by evidence that the beneficiary's services are to be temporary and that the beneficiary will be transferred abroad at the completion of the temporary services in the United States. See 8 CFR § 214.2(l)(3)(vii) and also Matter of M, 8 I&N Dec. 24 (BIA 1958; Ass't Comm'r, AG 1958)

- The petitioner must establish, however, that a foreign qualifying company will be doing business the entire time the owner or majority stockholder is in the United States in L-1 classification.

Things to Know

- Companies may use different corporate titles/forms depending on where the company was set up. Example: In Great Britain, a "Limited" Company is a common form of business, where registration under the Companies Act is comparable to incorporation under state law in the United States. It is abbreviated Ltd.

  Limited = Incorporated; Ltd. = Inc.

- Do not get confused by the type of company that is involved in the petition or the way in which it was formed. The criteria regarding qualifying organizations and establishing the qualifying relationship are the same regardless of the country where the company is set up and the form of company used.

Note on 1 in 3 Rule for Certain Blanket Beneficiaries Adjudicated Prior to June 6, 2005

Prior to June 6, 2005, blanket L-1 beneficiaries were only required to have worked abroad in qualifying employment for 6 continuous months of the prior 3 years.

In reviewing EOS petitions, you may see petitions that were initially filed prior to June 6, 2005 that were approved based on the beneficiary having worked abroad for 6 continuous months in the prior three years. You may not deny these EOS petitions based on the fact that the regulation now requires 1 year of continuous employment abroad.

Required Systems Checks

- IBIS
- SQ94
  - EOS Approval within 15 days before adjudication
  - EOS Denial within 15 days before
  - COS Approval within 15 days before
  - COS Denial within 15 days before
- SEVIS for F, J, or M COS printout on right side of file

No Appeal Rights

There are generally no appeal rights for:

- Status denials – cases where the petition for classification as an L-1 is approved but the requested EOS or COS is denied (split decisions).
- Denial for failure to pay the Fraud Detection fee.
- Abandonment denials (in most cases).

Summary – Three Basic Requirements

In general, when adjudicating an L-1, look for:

- Qualifying Organization (*relationship* and *doing business* requirements).
- Beneficiary was employed abroad for one continuous year within the prior three years as a manager, executive or in specialized knowledge capacity.
- Proposed employment in United States as a manager, executive or in specialized knowledge capacity (if filing under blanket petition, specialized knowledge professional).

Summary

New office - Beneficiary is allowed one year to set up the office. At the conclusion of one year, evidence should be submitted showing that the "new office" has been and is continuing to be "doing business" since the original petition was approved, and that the beneficiary is now and will be performing tasks of a managerial/executive or specialized knowledge nature.

Summary

- L-1A Manager/executive is allowed a total of seven years stay.
- L-1B specialized knowledge alien is allowed a total of five years stay.

Thank You,

The End

Austin, Deon T

From: Laroe, Lisa A <Lisa.A.Laroe@uscis.dhs.gov>
Sent: Monday, September 12, 2011 8:58 AM
To: Lauver, Tinnina M
Cc: Tamanaha, Emisa T
Subject: RE: CBP L Cases - Denials/ITRs

Thank you Tina. We will make sure our processes are in line with this guidance.

Lisa

From: Lauver, Tinnina M
Sent: Monday, September 12, 2011 8:37 AM
To: Laroe, Lisa A
Cc: Tamanaha, Emisa T
Subject: FW: CBP L Cases - Denials/ITRs

Lisa,

CSC requested guidance relating to the following two issues:

- If a CBP L case is denied and sent to the center for final action, should the center issue a written denial based on the limited information CBP provides in their internal memo to USCIS or should the center issues an RFE?
- If a CBP L case is approved, and CBP is requesting USCIS to revoke the case, should the center issue an ITR?

Please see message below containing the guidance provided.

Thank you very much!

Tinnina (Tina) Lauver
Adjudication Officer
United States Citizenship and Immigration Services
Service Center Operations Directorate
Business Employment Services Team
☎: 202.272.0904 | ✉: Tinnina.Lauver@dhs.gov

From: Lauver, Tinnina M
Sent: Monday, September 12, 2011 8:32 AM
To: Sun, Catherina C
Cc: Tamanaha, Emisa T
Subject: FW: CBP L Cases - Denials/ITRs

Catherina,

In response to your request below, SCOPS is issuing the following guidance:

1. If a CBP L case is denied and sent to the center for final action, should the center issue a written denial based on the limited information CBP provides in their internal memo to USCIS or should the center issues an RFE?

   As we know, CBP sends L petitions to USCIS pursuant to 8 CFR 214.2(l)(17)(iv) which states, "If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Service Center for final action." According to CBP, Class A POEs, except

seaports, adjudicate L petitions; however, none of the Class A POEs issue a formal written denial. It is currently CBP's policy and practice to return an L petition to a beneficiary if it is not clear whether the L petition is approvable or deniable based on the documentary record presented at the POE. The beneficiary is instructed to obtain the missing document(s) and reappear at the POE. If CBP determines that a beneficiary is not eligible for L nonimmigrant classification at the Class A POE, the beneficiary is offered the opportunity to withdraw his/her request for admission into the United States at the POE. The withdrawal is in lieu of another form of adverse action. If the beneficiary agrees to withdraw his/her request for admission into the United States, the petition is stamped denied, a copy is provided to the beneficiary and the petition is sent to USCIS with a recommendation for denial. If the beneficiary does not agree to withdraw his/her request for admission into the United Sates, the beneficiary will be processed as a removal and be formally charged with under Section 212(a)(7) of the INA or another ground which may have a bar to entry associated with it. The petition would still be annotated denied and sent to the Service Center, with an indication that the beneficiary was formally charged with 212(a)(7). In that case, if it were in fact favorably adjudicated, the beneficiary may need to obtain a waiver prior to entry, which complicates things. CBP stated that the vast majority of petitions that the centers receive with a recommendation for denial are those in which the beneficiary withdrew his/her request for admission.

If CBP sends an L petition to a center with a recommendation for denial and the reasons for the denial are clearly articulated in the internal memo to USCIS and the center agrees with the denial, the center can issue a formal written denial using the information CBP provides in the memo. However, if the center believes the petition may have been denied in error and with additional evidence the beneficiary may in fact be admissible as an L or the reasons for the denial are not sufficiently explained in the internal memo to USCIS, the center can reopen the denial on a service motion, and issue an RFE, and, if appropriate, issue a NOID and denial notice (or approval notice). In addition, the service motion/RFE should indicate that CBP sent the petition to USCIS with a recommendation for denial; however, upon review of the record, USCIS deems it more appropriate to solicit additional evidence in order to render a final decision. Therefore, USCIS moves to reopen the petition on its own motion and the petitioner will be afforded an opportunity to submit additional evidence to establish the beneficiary's eligibility as an intra-company transferee.

2. If a CBP L case is approved, and CBP is requesting USCIS to revoke the case, should the center issue an ITR?

   If CBP subsequently requests USCIS to revoke a CBP approved L petition and there are clear grounds to do so in accordance to 8 CFR 214.2(l)(9) (See below), then the center can proceed with the ITR. It is important that CBP articulates in writing why they are recommending the issuance of an ITR.

   CFR 214.2(l)(9) states that the director may revoke the approval of an individual and blanket petition at any time and shall send the petitioner an ITR if he/she finds that:
   (1) One or more entities are no longer qualifying organizations;
   (2) The alien is no longer eligible under section 101(a)(15)(L) of the Act;
   (3) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;
   (4) The statement of facts contained in the petition was not true and correct; or
   (5) Approval of the petition involved gross error; or
   (6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

Please contact me if you would like further clarification and/or if you have any concerns.

Thank you very much!

Tinnina (Tina) Lauver
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Service Center Operations Directorate
Business Employment Services Team
☎: 202.272.0904 | ✉: Tinnina.Lauver@dhs.gov

From: Sun, Catherina C
Sent: Monday, July 18, 2011 04:28 PM
To: Lauver, Tinnina M
Cc: Elias, Erik Z; Moran, Karla; Steele, Jenny B

Subject: CBP L Cases - Denials/ITRs

Hi Tina.

Thank you so much for organizing this morning's telecon. Based on our call this morning, there are two main issues:

3. If a CBP L case is denied, do we issue a written denial based on the limited information CBP provides in their internal memo to USCIS? Or do we RFE?
4. If a CBP L case is approved, and CBP is requesting USCIS to revoke the case, what is SCOPS' guidance on this issue?

As always, thank you so much for your assistance!

From: Moran, Karla
Sent: Monday, July 18, 2011 8:48 AM
To: Lauver, Tinnina M
Cc: Sun, Catherina C
Subject: HELI LIFT

Hi Tina,

Here are the Heli Lift copies.
Please distribute to everyone.
Talk to you soon.

Thanks
Karla

Austin, Deon T

From: Lauver, Tinnina M <Tinnina.M.Lauver@uscis.dhs.gov>
Sent: Friday, December 09, 2011 5:29 AM
To: Brouillette, Charlene M
Cc: Laroe, Lisa A; Tamanaha, Emisa T
Subject: RE: I-129L-1B Labor for Hire Denial
Attachments: FW: Labor for Hire (31.4 KB)

Charlene,

Yes, the VSC can include the labor for hire language in L1B denials for 3rd party placement (L-1 Visa Reform Act of 2004). I have attached an e-mail chain which contains OCC's opinion that the center should do such as long as the officer has the facts to support it.

The CSC has confirmed that they have been including this language in their denials.

Thanks!!!

Tinnina (Tina) Lauver
Adjudication Officer
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From: Brouillette, Charlene M
Sent: Thursday, December 08, 2011 4:06 PM
To: Lauver, Tinnina M
Cc: Laroe, Lisa A
Subject: I-129L-1B Labor for Hire Denial

Tina,

Would you please confirm that even though the VSC has most recently not routinely used the provisions from the Reform Act Memo (control and supervision of the work, and labor for hire) as grounds for denial or as additional grounds that we may now do so. I know we have had the conversation but it may have been telephonically.

Thanks.
Charlene

Austin, Deon T

From: Lauver, Tinnina M <Tinnina.M.Lauver@uscis.dhs.gov>
Sent: Tuesday, July 05, 2011 1:07 PM
To: Tamanaha, Emisa T
Subject: RE: L-1B, RFE, Suggested Evidence
Attachments: RE: L-1B, RFE, Suggested Evidence (36.9 KB)

Already did...see attached....I forgot to include you...my bad!!!!!

Tinnina (Tina) Lauver
Adjudication Officer
United States Citizenship and Immigration Services
Service Center Operations Directorate
Business Employment Services Team
☎: 202.272.0904 | ✉: Tinnina.Lauver@dhs.gov

From: Tamanaha, Emisa T
Sent: Tuesday, July 05, 2011 2:02 PM
To: Lauver, Tinnina M
Subject: FW: L-1B, RFE, Suggested Evidence

Thanks, Tina. Although this question came from CSC, I think it is good to inform VSC as well (it is duly noted that VSC is on the same page with CSC). Will you please inform VSC as well since you asked them how they are handling this type of cases?

From: Moran, Karla
Sent: Tuesday, July 05, 2011 1:44 PM
To: Lauver, Tinnina M
Cc: Sun, Catherina C; Tamanaha, Emisa T
Subject: RE: L-1B, RFE, Suggested Evidence

Hi Tina,

Great, thanks for the update.

Karla

From: Lauver, Tinnina M
Sent: Tuesday, July 05, 2011 8:58 AM
To: Moran, Karla
Cc: Sun, Catherina C; Tamanaha, Emisa T
Subject: RE: L-1B, RFE, Suggested Evidence

Hello Karla,

We did discuss your inquiry below with OP&S and OCC. To explain, we inquired about applicability of the attached April 23, 2004 memo to L-1B off-site employment EOS cases. Specifically, we informed both OP&S and OCC, that CSC and VSC are currently issuing an RFE for cases that fit into the following scenarios:

- if the L-1B offsite petition is marked, "Continuation of previously approved employment without change with the same employer," but the petitioner submits documentation indicating otherwise (such as a statement indicating a switch to a new 3rd party employer or paystubs indicating an unauthorized switch to a 3rd party); and/or

- if there is evidence that the L-1B offsite petition marked, "Continuation of previously approved employment without change with the same employer" was not properly adjudicated at the time the initial petition was adjudicated.

The attached memo dated April 23, 2004, states that centers should give deference to the prior petition adjudication except when:

(1) it is determined that there was a material error with regard to the previous petition approval;
(2) a substantial change in circumstances has taken place; or
(3) there is new material information that adversely impacts the petitioner's or beneficiary's eligibility.

The L-1 Visa Reform Act of 2004, effective June 06, 2005, states the following:

SEC. 412. NONIMMIGRANT L-1 VISA CATEGORY.

(a) IN GENERAL- Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if--

(i) the alien will be controlled and supervised principally by such unaffiliated employer; or
(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.'.

(b) APPLICABILITY- The amendment made by subsection (a) shall apply to petitions filed on or after the effective date of this subtitle [June 06, 2005], whether for initial, extended, or amended classification.

SCOPS, OCC and OP&S agree that in light of the above, an RFE would be appropriate in such circumstances, to ensure compliance with the L-1 Visa Reform Act. We need to know the nature of the off-site employment. If, however, the alien continues to be working at the original off-site location (described in the previously approved petition) and his/her duties have not substantially/materially changed, then there would not be a need to RFE (absent an indication of material error, per the Yates memo).

Please let me know if you have any additional questions.

Many thanks!!

Tinnina (Tina) Lauver
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United States Citizenship and Immigration Services
Service Center Operations Directorate
Business Employment Services Team
☎: 202.272.0904 | ✉: Tinnina.Lauver@dhs.gov

From: Moran, Karla
Sent: Wednesday, June 08, 2011 11:53 AM
To: Lauver, Tinnina M
Cc: Sun, Catherina C
Subject: RE: L-1B, RFE, Suggested Evidence

Hi Tina,

Based on the scenarios given below, the CSC would RFE the L1b offsite petitions indicated. However, we do give deference to many of our L1b petitions.

In regards to an L SOP, the CSC does not have an L SOP. While I was at SCOPS, I was tasked with finalizing a national L SOP. I'm almost finished with it but never completed it. I can send it to you if you'd like but it needs to be finished.

Thanks
Karla

From: Lauver, Tinnina M
Sent: Wednesday, June 08, 2011 4:24 AM
To: Moran, Karla
Cc: Sun, Catherina C
Subject: FW: L-1B, RFE, Suggested Evidence

Karla,

In addition to the information requested below, may I obtain a copy of your L SOP? I would like to review in an effort to gain more knowledge in this portfolio.

Thanks so much!

Tinnina (Tina) Lauver
Adjudication Officer
United States Citizenship and Immigration Services
Service Center Operations Directorate
Business Employment Services Team
☎: 202.272.0904 | ✉: Tinnina.Lauver@dhs.gov

From: Lauver, Tinnina M
Sent: Monday, June 06, 2011 9:49 AM
To: Moran, Karla
Cc: Tamanaha, Emisa T; Sun, Catherina C
Subject: FW: L-1B, RFE, Suggested Evidence

Karla,

We are currently reviewing your inquiry below. However, we are curious as to how the center is currently processing L-1B off-site employment EOS cases that fit into the below described scenarios:

- the L-1B offsite petition is marked, "Continuation of previously approved employment without change with the same employer," but the petitioner submits documentation indicating otherwise (such as a statement indicating a switch to a new 3rd party employer or paystubs indicating an unauthorized switch to a 3rd party); and/or
- there is evidence that the L-1B offsite petition marked, "Continuation of previously approved employment without change with the same employer" was not properly adjudicated at the time the initial petition was adjudicated.

Your time and assistance is sincerely appreciated.

Tinnina (Tina) Lauver
Adjudication Officer
United States Citizenship and Immigration Services
Service Center Operations Directorate
Business Employment Services Team
☎: 202.272.0904 | ✉: Tinnina.Lauver@dhs.gov

From: Moran, Karla
Sent: Tuesday, May 31, 2011 9:48 AM
To: Lauver, Tinnina M
Subject: Re: L-1B, RFE, Suggested Evidence

Hi Tina,

Second scenario - only when we have evidence in the petition. Of the off-site employment.

Thanks
Karla
Karla Moran
SISO, CSC
(949) 389-8633

From: Lauver, Tinnina M
Sent: Tuesday, May 31, 2011 07:00 AM
To: Moran, Karla
Subject: FW: L-1B, RFE, Suggested Evidence

Karla,

I am working to follow-up on the message below. I have a quick follow-up question for you. Are you asking if the center can *broadly* issue an RFE for L-1B off-site EOS cases **or** if the L-1B offsite petition is marked "Continuation of previously approved employment without change with the same employer," but the petitioner submits documentation indicating otherwise (such as a statement indicating a switch to a new 3rd party employer or paystubs indicating an unauthorized switch to a 3rd party) and/or if there is evidence that the L-1B offsite petition marked "Continuation of previously approved employment without change with the same employer" was not properly adjudicated at the time the first petition was adjudicated, can the center issue an RFE on that L-1B off-site issue?

Thanks!!!

Tinnina (Tina) Lauver
Adjudication Officer
United States Citizenship and Immigration Services
Service Center Operations Directorate
Business Employment Services Team
☎: 202.272.0904 | ✉: Tinnina.Lauver@dhs.gov

From: Moran, Karla
Sent: Thursday, May 19, 2011 7:29 PM
To: Ammerman, Michael J; Lauver, Tinnina M
Cc: Sun, Catherina C; Steele, Jenny B; Brokx, John B
Subject: RE: L-1B, RFE, Suggested Evidence

Hi Michael,

We had a follow up meeting to last weeks L1B Stakeholder call today. Director Melville asked about deference on L1B (off-site). I explained to her that we give deference to L1B (on-site) but L1B (off-site) we are able to revisit based on the regs. She wanted me to follow up with you again and ask if this was still correct, after Don Neufeld's information on giving deference for O's. Director Melville wanted to know if we were applying this to the L1B off-site.

If I'm not making sense – I'll call you to talk.

Thanks
Karla

From: Moran, Karla
Sent: Thursday, May 19, 2011 1:54 PM
To: Ammerman, Michael J; Brokx, John B; Lauver, Tinnina M
Subject: RE: L-1B, RFE, Suggested Evidence

Hi Michael,
John isn't in today but I'm sending you the most current L1B RFE.

From: Ammerman, Michael J
Sent: Thursday, May 19, 2011 1:55 PM
To: Moran, Karla; Brokx, John B; Lauver, Tinnina M
Subject: RE: L-1B, RFE, Suggested Evidence

John,

Sorry, I didn't get a chance to review yet. Can you send me a copy of the RFE template you currently use? I don't want to make any revisions, I just want to see how these suggestions look in the overall context of the RFE. There might be an easier way of doing this.

Thanks,
Michael

From: Moran, Karla
Sent: Wednesday, May 18, 2011 2:29 PM
To: Brokx, John B; Ammerman, Michael J; Lauver, Tinnina M
Subject: RE: L-1B, RFE, Suggested Evidence

[redacted]

(b)(5)

We also *suggest* in the beginning of the RFE:

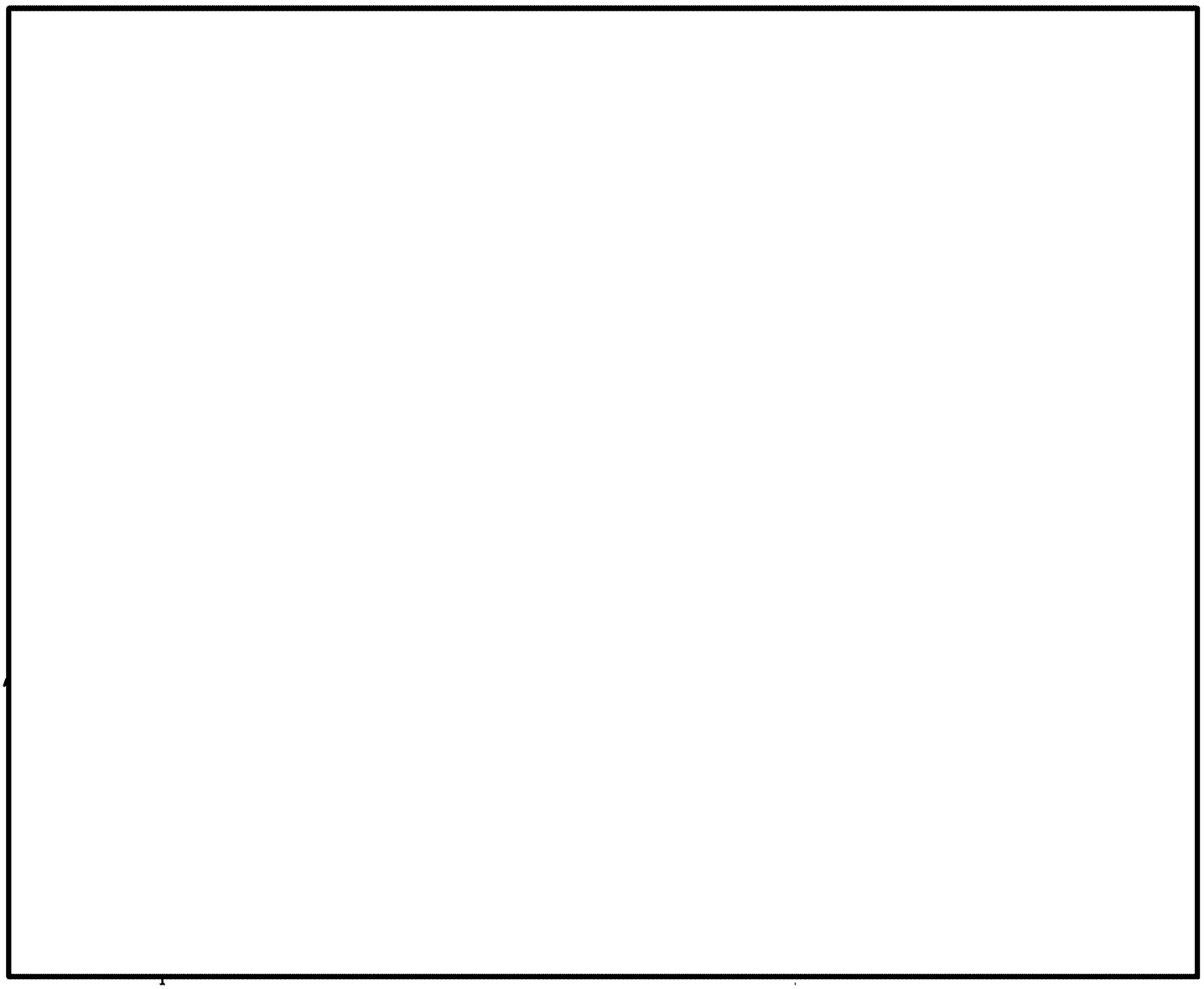
[redacted]

From: Brokx, John B
Sent: Wednesday, May 18, 2011 10:47 AM
To: Ammerman, Michael J; Lauver, Tinnina M
Cc: Moran, Karla
Subject: L-1B, RFE, Suggested Evidence

Michael and Tina,

[redacted]

--Suggested Evidence to Establish the Beneficiary has Specialized Knowledge:



Thanks,

John Broky

(b)(6)

(b)(5)