

**IP 52 - L NONIMMIGRANT VISA PROGRAM**

**TALKING POINTS:**

- In 1970, Congress created the L-1 nonimmigrant visa classification.
  - The legislative history makes it clear that Congress intended that the L-1 classification be limited to “key” personnel, in order to ensure that there would be no adverse impact on U.S. workers.
- The L-1 (“intracompany transferee”) nonimmigrant visa classification permits multinational companies to transfer certain categories of employees from their foreign operations to their operations in the United States.
  - The L-1A classification is available for intra-company transfers of corporate managers and executives.
  - The L-1B visa classification enables intracompany transfers of employees who possess “specialized knowledge.”
    - Congress has never defined the term “specialized knowledge” with specificity, rather defining it in general terms, to include ‘advanced knowledge’ or ‘special knowledge.’
    - As a result of the lack of a clear definition of what constitutes “specialized knowledge,” the L-1B classification has been subject to abuse by employers seeking to hire persons other than the types of employees contemplated by Congress. In particular, the L-1B classification was subject to abuse by job shops who used the L-1B classification to place workers at off-site locations, to the detriment of U.S. workers.
    - To address this problem, Congress enacted the L-1 Visa Reform Act of 2004 (VRA), which imposes specific restrictions on companies who seek to use the L-1B classification for the purpose of “job shopping,” even if the workers in question would otherwise have met the basic requirements for L-1B classification.
    - Under the VRA, if a person will be employed in the United States at locations other than that of the petitioner, such persons must be controlled and supervised principally by the petitioner and be placed in connection with the provision of a product or service for which specialized knowledge specific to the petitioner is necessary.
    - In 2015, USCIS issued a policy memorandum, PM 602-0111, “L-1B Adjudications Policy,” which provided guidance for interpreting what constitutes “specialized knowledge” for L-1B purposes. USCIS is currently reviewing that memorandum and considering ways to provide additional protections to the U.S. labor force.
  - To save time and administrative costs to both petitioners and the U.S. Government, certain organizations may file a “blanket L petition,” which enables an organization to establish the required qualifying relationship in advance of filing L-1 petitions on behalf of individual workers. Under this process, a petitioner may submit for USCIS approval a blanket petition listing multiple qualifying organizations/affiliates within its corporate family, thereby obviating the need to resubmit extensive paperwork each time an entity listed in the approved blanket petition files a petition on behalf of an individual worker.
- USCIS is committed to detecting and preventing immigration fraud and abuse in the L-1 program; it is working on a combination of rulemaking, policy memoranda, and operational changes to implement the Buy American and Hire American Executive Order.

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## FOR OFFICIAL USE ONLY

- USCIS is creating and carrying out these initiatives to protect the economic interests of U.S. workers and prevent fraud and abuse within the immigration system and are working on:
  - Further enhancing information sharing with the Department of State, Department of Labor, and Department of Justice, including the exchange of petition, fraud, and site visit information to help to combat and prevent immigration fraud.
  - Enhancing the current site visit program to further ensure the integrity of the immigration system.
  - Ensuring L-1 employers comply with appropriate laws.
    - In April 2017, USCIS issued a policy memorandum (PM-602-0143), designating *Matter of I-Corp* as an adopted decision. *Matter of I-Corp* clarifies that USCIS cannot approve a visa petition that is based on an illegal or otherwise invalid employment agreement. To prevent a potential conflict with the Fair Labor Standards Act, USCIS must ensure that a beneficiary will not be paid a wage that is less than the minimum required wage under state or Federal law, whichever is higher, before approving an employment-based visa petition.
- USCIS is committed to protecting U.S. workers in adjudications.
  - When adjudicating L-1 petitions, USCIS officers are careful to ensure that the classification is available only to those foreign workers for whom Congress intended.
  - In this regard, the L-1 nonimmigrant visa category is not intended for ‘open market’ hires, but was established solely to facilitate the *intracompany* transfer of certain select personnel within a family of companies. Significantly, L-1 nonimmigrant workers must have worked within a narrowly defined “family” of companies involved in the transfer either as a manager, executive, or someone having specialized knowledge.

### **BACKGROUND:**

#### **General Requirements**

- There is no numerical cap or requirement that there be no U.S. workers available to fill L-1 positions.
- A Form I-129 petition requesting L-1 classification may be filed by either a qualifying foreign organization or a U.S. organization that intends to employ the beneficiary.
- The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary’s services.
- In general, L-1 petitions must be filed at the Service Center that has jurisdiction over the area where the beneficiary is to be employed.
- To qualify for L-1 classification, the employer must have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate), and currently be or will be doing business as an employer in the U.S. and in at least one other country directly or through a qualifying organization for the duration of the beneficiary’s stay in the U.S. as an L-1.
- For L-1 petitions that do not involve a qualifying “new office” in the United States, qualified employees will be allowed a maximum initial stay of three years. Requests for extensions of stay may be granted in increments of up to two years, until the employee has reached the maximum limit of seven years for L-1A employees and five years for L-1B employees.

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### L-1A – Executives and Managers

- To qualify for an L-1A, the employee must generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the U.S.; and be seeking to enter the U.S. to provide service in an executive or managerial capacity for a branch of the same employer or one of its qualifying organizations.

### L-1B – Specialized Knowledge Employees

- To qualify for an L-1B visa, the employee must generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; and the employee must be seeking to enter the U.S. to provide services in a specialized knowledge capacity to a branch of the same employer or one of its qualifying organizations.
  - Specialized knowledge is defined under the statute as either: (1) special knowledge of the company's product and its application in international markets, or (2) an advanced level of knowledge of processes and procedures of the company in question. See section 214(c)(2)(B), 8 U.S.C. 1184(c)(2)(B).
  - Policy Memorandum PM 602-0111, "L-1B Adjudications Policy," became effective on August 31, 2015.
    - This policy memorandum rescinded certain prior L-1B memoranda and consolidated L-1B adjudications guidance into one source.
    - USCIS also updated the Request for Evidence (RFE) templates to reflect the consolidated guidance included in the memorandum.

### L-1 Visa Reform Act of 2004

- The L-1 Visa Reform Act of 2004, which applies to all petitions filed on or after June 6, 2005, pertains to petitions filed on behalf of L-1B employees who will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent. In order for the employee to qualify for L-1B classification in this situation, the petitioning employer must show that the employee will not be principally controlled or supervised by an unaffiliated employer; and the work being provided by the employee is not considered to be labor for hire by an unaffiliated employer.

### New Office Petitions

- For foreign employers seeking to send an employee to the United States as an *executive or manager* to establish a new office, the employer must also show that:
  - The employer has secured sufficient physical premises to house the new office;
  - The employee has been employed as an executive or manager for one continuous year in the three years preceding the filing of the petition; and
  - The intended U.S. office will support an executive or managerial position within one year of the approval of the petition.
- For foreign employers seeking to send an employee with specialized knowledge to the United States to be employed in a qualifying *new office*, the employer must show:
  - The employer has secured sufficient physical premises to house the new office; and
  - The employer has the financial ability to compensate the employee and begin doing business in the United States.
- Since a "new office" petition is inherently prospective in nature, in order to ensure that an employer will actually fulfill the commitments it makes in the new office petition, qualified

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employees entering the U.S. to establish a new office will be allowed a maximum initial stay of one year. At the end of the first year, the employer must file an extension petition demonstrating that the L-1 worker in fact is employed as a manager, executive, or specialized knowledge employee, as promised in the initial new office petition.

### **Blanket Petitions**

- Certain organizations may establish the required intracompany relationship in advance of filing individual L-1 petitions by filing a blanket petition. A petitioner is eligible for blanket L certification if:
  - The petitioner and each of the qualifying organizations are engaged in commercial trade or services;
  - The petitioner has an office in the U.S. which has been doing business for one year or more;
  - The petitioner has three or more domestic and foreign branches, subsidiaries, and affiliates; and
  - The petitioner along with the other qualifying organizations, collectively, meet one of the following criteria:
    - Have obtained at least ten L-1 approvals during the previous 12-month period;
    - Have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or
    - Have a U.S. work force of at least 1,000 employees.
- A petitioner with an approved blanket L petition may file Form I-129S to petition for executive, managerial, or specialized knowledge employees.
- In order to qualify under the blanket petitioning process, employees having specialized knowledge must also be “professionals,” that is, hold a bachelor’s degree or higher.
- If the employee is a beneficiary under a blanket L petition and is seeking an extension of stay or change of status, a petitioner must concurrently file a new Form I-129S and the Form I-129 requesting an extension of stay/change of status along with a copy of the previously approved Form I-129S.

### **Additional Fee**

- Under Public Law 114-113, certain L-1 petitioners are required to pay an additional \$4,500 fee if:
  - The petitioner employs 50 or more employees in the U.S.;
  - More than half of the petitioner’s employees in the U.S. are in H-1B, L-1A or L-1B nonimmigrant status;
  - The L-1 petition was filed with a postmark date or sent by courier of Dec. 18, 2015 or later; and
  - The petition was filed to (a) seek initial L-1A or L-1B nonimmigrant status for a foreign national, or (b) obtain authorization for an L-1A or L-1B worker to change employers.

### **Dependents**

- Congress enacted legislation specifically allowing spouses of L-1 nonimmigrants to seek “open market employment,” that is, work without a restriction requiring the spouse to be tied to a specific employer.