
THE INTRA-COMPANY TRANSFEREE (L-1) VISA

By Allen E. Kaye

General Overview

The L-1 visa category was established to facilitate the transfer or rotation of foreign personnel of an international company into the United States. Although originally targeted toward large U.S. multi-national corporations, this is an appropriate method for companies of all sizes to seek immediate immigration benefits for their qualifying employees. Further, the L-1 visa may provide quick access to lawful permanent resident (immigrant) status in the United States. This memorandum outlines the general process and procedure for L-1 approval.

Key Factors

QUALIFYING PERSONNEL

The L-1 is available to a foreign national who, within the three years immediately prior to entering the U.S., has been employed abroad for at least one continuous year and is now seeking temporary admission to the U.S. to be employed by a parent, branch, affiliate, or subsidiary of that foreign employer in a managerial or executive capacity, or in a position requiring specialized knowledge. An managerial or executive employee will be classified as L-1A, one with specialized knowledge as L-1B.

DURATION OF STAY

An L-1A petition may be approved initially for up to three years, with the possibility of extension for up to four more years. In the case of a "new office" in the U.S., the L-1 will be limited to one year initially with extensions provided thereafter, if the new office flourishes.

DEFINITIONS

1. **Managerial Capacity:** Refers to an assignment within an organization in which the employee primarily:
 - a) Manages the organization or a department, subdivision, function, or component,
 - b) Supervises and controls the work of other supervisory, professional, managerial employees, or manages an essential function within the organization, or a department or subdivision thereof; and
 - c) Has the authority to hire and fire or recommend those actions (promotion, leave authorization, etc.) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and,
 - d) 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 supervisory duties unless the employees supervised are professional.

2. **Executive Capacity:** Refers to an assignment within an organization in which the employee primarily
 - a) Directs the management of the organization or a major component or function thereof;
 - b) Establishes the rules and policies of the organization, components, or functions;
 - c) Exercises wide latitude in discretionary decision-making; and,
 - d) Receives only general supervision or direction from higher-level executives, the Board of Directors, or stockholders of the organization.

3. **Specialized Knowledge:** This is knowledge, possessed by an individual, of the U.S. employer's product, service, research, equipment, techniques,

management, or other interests and its application in international markets, or an advanced level of knowledge or expertise of the employer's processes and procedures.

4. **Qualifying Organization:** This refers to a U.S. or foreign firm, corporation, or other legal entity which is, or will be, doing business as an employer in the U.S. and in at least one other country, directly or through a parent, branch, affiliate, or subsidiary, for the duration of the foreign national's stay in the U.S. as an intra-company transferee, and which meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate, or subsidiary.
5. **Parent:** A firm, corporation, or other legal entity, which has subsidiaries.
6. **Branch:** An operating division or office of the same organization housed in a different location.
7. **Subsidiary:** A firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, fifty percent of a fifty joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity but in fact controls the entity.
8. **Affiliate:** One of two subsidiaries, both of which are owned and controlled by the same parent or individual, or 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. The paramount issue is that of control. If A & B each own 26% of both the U.S. and foreign entities, it is irrelevant who owns the remaining 48% of either organization.
9. **New Office in the U.S.:** An organization, which has been doing business in the U.S. through a parent, branch, affiliate or a subsidiary for less than one year.

10. **Doing Business:** 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 U.S. and abroad.

It is crucial to obtaining approval of an L-1 visa petition that you read and fully understand the definitions and qualifications described in this article, particularly as they apply to you and your case. The words used in the L-1 statutes and regulations are carefully defined. Your organization and the individual worker to be transferred must fit exactly within each relevant definition. For example, the requirement that the employee have worked for the foreign entity for one out of the three years immediately preceding his entry in L-1 status means 12 consecutive calendar months; not 11 or even 11 1/2. The three years before entry means just that. If a worker was employed by the foreign organization 3 1/2 years ago and left that employ 2 1/2 years ago, he or she does **NOT** qualify. Similarly, the ability of a first-line supervisor to qualify if the individual supervised professionals means, specifically, that those supervised must hold a baccalaureate degree (4 years of college) and be doing work which normally requires that degree (or one in a narrow range of disciplines including that field or its equivalent in education and/or experience and/or training) in order to enter the field.

Thus, it is extremely important to consult with your attorney to ensure that each of the requirements have been properly evaluated before taking any further steps toward obtaining the visa.

SPOUSE AND DEPENDENT CHILDREN

The spouse and children (under 21 and unmarried) may obtain L-2 visas allowing them to enter the U.S. with the principal alien. They are allowed to attend school and/or participate in voluntary organizations. The L-2 spouses can also apply for and obtain employment authorization from the United States Citizenship and Immigration Services.

Required Action and Documentation

DOCUMENTS FROM FOREIGN ENTITY

1 -

- a. Charter or legal document creating or establishing the company.
- b. Income tax return for the last year. If not possible, the last income tax return filed with a letter from the company accountant giving a reason why the income tax return for the immediately preceding year was not filed. This is not required if your country does not tax the company's income.
- c. Bank statements for the last three months.
- d. Payroll records. The person being transferred should be included on the list with salary and position included. However, many countries do not have this. If no payroll records exist, consult us for alternatives.
- e. The last personal income tax return of the person being transferred, showing the petitioning company as employer with an executive or managerial position, if this document exists.
Stock certificates and a shareholder register showing ownership of company and any transfers in ownership, or an official certificate from the chamber of commerce, government or other agency detailing this information. Include, where possible, a certificate from the secretary of the corporation or business entity stating the number of shares issued and outstanding. This quantity should match exactly the total of the share certificates provided. Wording might be:

I, the undersigned, being the Secretary of ABC Corporation and having custody of the Corporation records, do hereby certify that there exist 100 shares of stock of the Corporation issued and outstanding.

2 -

- a. Business deed or lease of business premises.
- b. Licenses or permits to do business
- c. Balance sheet/financial statement signed by the company accountant. If annual income on income tax return does not match the figures on the financial statement, include a letter from the company accountant explaining the discrepancy. A corporate annual report would be helpful, if published.
- d. Invoices, purchase orders, important correspondence and/or contacts evidencing business activity.
- e. Advertisements or sales literature bearing the company's name.
- f. Listing in telephone directory.
- g. Photographs of the business operation and/or premises abroad.

DOCUMENTS FROM U.S. ENTITY

1 -

- a. Articles and Certificate of Incorporation.
- b. All the stock certificates, which have been issued. A relationship must be established between the foreign company and U.S. entity. The company can be a branch of the same employer, a parent, an affiliate, or a subsidiary. A branch is defined as a division or office of the same organization housed in a different location. If the company is a subsidiary, then the parent company owns directly or indirectly more than 1/2 (50% or more) and controls the entity. This is the simplest situation for USCIS to comprehend. If less than 50% of the stock of the U.S. Company is issued to the foreign company, then we must prove that the foreign

company owns it indirectly. The shares of the U.S. Company can also be issued to an individual but that same individual or group of individuals should own the same amounts or percentages of the foreign company. Unless a single individual owns a controlling interest in both companies.

- c. Lease or deed to business premises. The lease must have not expired, and the rental amount of space leased must be enough to support the existence of the United States Company.
- d. Valid occupational license and/or other business permit from city and/or county.

2-

- a. Letter from bank where the corporation has the corporate account, stating the amount deposited. The amount must be sufficient to support the startup of the business.
- b. Application for federal tax i.d. number, and all State sales and Federal tax returns, if applicable.
- c. Telephone installation records.
- d. Letter explaining the basic plans for the company, plans for expansion, any possible new areas the company may get into, projected number of employees and projected annual income. This can be a separate letter or included in the petitioner's letter. It may also be a detailed business plan.

If the United States Company has been in existence for more than a year, the following documents are necessary in addition to 1(c) through 4(c):

3-

- a. Bank statements for the last three months.
- b. Latest income tax return. If one has not been filed for the last year, a copy of the application for an extension to the IRS is necessary.

- c. Telephone bills and listing in the telephone directory.
- d. Invoices, purchase orders, important correspondence, and/or contacts evidencing business activity.
- e. Letter from company. Letter can be from either the foreign company or the United States Company. It must be on company stationery. If possible, it should be notarized. It should have the name of the person signing the letter (under his or her signature) and his or her position in the company.

The letter should contain the following:

1. The L-1 candidate's position and duties with the foreign company. Be sure to read the definition of managerial, executive and/or specialized knowledge before this letter is written.
2. The length of time the person has worked for the foreign company. Use accurate dates. (Also include payroll or tax records).
3. The position the person will hold with the U.S. Company. As in number one (1) above, it must be an executive or managerial position, or specialized knowledge. A detailed description of the duties that the person will carry out with the U.S. Company should be included.
4. How long the entire organization has been in existence.
5. The number of employees, their names, positions and salaries. If the United States operation is new, a statement, that the intended U.S. operation within one year of approval of the petition will support an executive or managerial position, or one involving specialized knowledge, including, the number of employees and the types of position they will hold, the size of the United States investment and the financial ability of the foreign entity to remunerate the person being transferred and the ability to commence doing business in the United States and the size and staffing of the foreign entity.

6. A list of the shareholders and the number of shares each owns. (The Commercial Register of the foreign company will have this information).

For your information

Allen E. Kaye
Of Counsel
Pollack, Pollack, Isaac & DeCicco, LLP
225 Broadway
3rdFloor
New York, NY 1007
212-964-5858 or
212-233-8100
AllenEKaye5858@gmail.com
Immigration & Naturalization Law