

THE INTRA-COMPANY TRANSFEREE (L-1) VISA

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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. This power point 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.

Key Factors

DURATION OF STAY

An L-1 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

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, or,
- b) 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 thereof;
- 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.

DEFINITIONS

Executive Capacity: Refers to an assignment within an organization in which the employee primarily

- a) Directs the management of the organization or 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.

DEFINITIONS

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.

DEFINITIONS

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.

DEFINITIONS

Parent: A firm, corporation, or other legal entity, which has subsidiaries.

Branch: An operating division or office of the same organization housed in a different location.

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 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.

DEFINITIONS

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 & Beach own 26% of both the U.S. and foreign entities, it is irrelevant who owns the remaining 48% of either organization.²

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.

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.