

# **The ABC'S Of Immigration: L-1 Intracompany Transfer Visas**

by Gregory Siskind

## **What is an L-1 intracompany transfer visa?**

L-1 intracompany transfer visas are non-immigrant visas available to persons coming to work in the US for an employer that is related to a company the applicant worked for prior to entering the US.

## **What are the advantages of an L-1 intracompany transfer visa as opposed to other types of visa?**

While there are a number of important requirements to qualify in this category, the category offers a number of advantages that make it worth considering over other types of visas. For example, there is no annual limit on the number issued, one may pursue permanent residency while on an L-1 visa and for many L-1As, there is a matching permanent residency category that makes getting a green card relatively quick and pain-free.

## **What are the requirements for an L-1 intracompany transfer visa?**

The first requirement for the L-1 is for the applicant to have been continuously employed abroad for one year of the last three for a parent, affiliate, or subsidiary of a US employer. The employer may be a company or other legal entity including a profit, non-profit, religious, or charitable organization. It does not matter if the company is incorporated or not. Any time spent working in the US will not count toward the one year of required employment, though time spent in the US will not be considered to have disrupted the continuity of employment abroad. It is possible to use a combination of part-time employment for affiliated companies under certain circumstances.

Second, the foreign firm and the US firm must have a "qualifying relationship." Both the US and the foreign firm must have common majority ownership, or, where there is less than majority ownership, common control by the same person or entity. Ownership by a common group of owners where no owner has control or a majority interest can cause a problem if each individual owner does not own approximately the same amount of both the US and the foreign company. This problem can sometimes be worked around if the owners have set up a voting agreement to ensure that there are not different groups controlling the foreign firm and the US firm.

Third, the applicant must be coming as a manager, executive or specialized knowledge employee. "Specialized knowledge" refers to employees with

- o a special knowledge of the company's products and their applications in world markets;
- o an advanced or proprietary knowledge of the company's processes or procedures.

Fourth, the applicant must intend to depart the US when his or her stay is over. But the applicant may also pursue permanent residency simultaneously without a negative impact on the ability to keep or extend an L visa. This is because the doctrine of dual intent

applies to L-1 visas (just like H-1B visas). This makes the L visa a popular option for multinational firms.

### **What is the difference between an "executive" and a "manager"?**

An "executive" is one who directs the management of the company or a major part or function of the organization. Typical executive positions are presidents, vice-presidents and controllers. An executive is expected to have a supervisory role in the company (either over personnel or a function) and would not include people who are primarily performing the specific tasks of production or providing service to customers. A "manager" directs the organization, a department, or a function of the organization. Like executives, a qualifying manager will not be overseeing the primary performance of a task. Exceptions apply when a manager or executive is coming to open a new office.

### **How long can executives and managers stay in L-1 status?**

Executives and managers may stay in L-1 status for up to seven years. They are granted L-1A status.

### **How long can "specialized knowledge" employees stay in L-1 status?**

Specialized knowledge employees may stay in the US for up to five years. Their visas are called L-1Bs. Those who wish to obtain L-1B visas must do labor certification. The visas will be granted with an expiration of up to three years. Whether the visas are multiple entry or not depends on the applicant's country of origin.

### **What about people coming to open up a new office in the US?**

Persons coming to open up a new office in the US will only be granted a one-year stay in the US. The INS will also typically require additional information about the plans for the new office such as proof that office space has been obtained, that the applicant has had the appropriate experience with the foreign company and that the foreign company will remain in existence during the full period of the applicant's transfer to the US. If the company wants to have the L-1 visa extended beyond the initial year, it will have to demonstrate at the time of extension that it has proceeded with the plans outlined in the initial petition.

The INS will also more closely scrutinize cases where the transferred employee also has an ownership interest in the company, since the INS may not believe the owner intends to ever leave the US. The US employer will need to show here that the firm's need for the transferee is not indefinite and that the transferee's foreign business interests are a strong lure for the person to return upon the expiration of the transferee's stay in the US.

### **How do I apply for L-1 status?**

Applications for L-1 visa status must first be approved by the Regional INS Service Center having jurisdiction over the location where the transferred employee will be situated. The employer must send the Application for Non-Immigrant Visa and L Supplement, petition letter, supporting documentation and filing fee to the INS Service Center. After the INS Service Center approves the application, the employee must apply at the US Consulate for the visa. The Consulate normally approves the application unless it believes the INS has been defrauded or the INS was not aware of important information.

### **What if my company has a large number of applicants?**

There are special procedures that make it easier for companies sending over large numbers of applicants to get L-1 visas for their employees. Companies that qualify can receive a "blanket approval" for all of their workers rather than having to apply to INS individually for each employee. To qualify for a blanket petition, the company must meet the following tests:

- o The US and foreign offices must be engaged in commercial trade or services;
- o The employer's US office must have been in business for at least a year;
- o The employer must have at least three domestic or foreign branches, subsidiaries, or affiliates;
- o The Employer must show one of the following: a) at least ten L-1 visas were approved in the last year; b) the company had US sales of at least million, or c) the US work force numbers over 1,000 workers.

The procedures for filing are largely similar to a normal L-1 application except that the employer must also submit evidence showing the above requirements are met and the firm's petition letter can be replaced with a company letter summarizing the basis for the L-1 petition. A key difference between blanket L-1 employees and regular L-1 employees is that the employee need only work for six months outside the US for the company rather than a year.

### **Are there any benefits available to L-2 spouses of L-1 visa holders?**

L-2s can seek employment authorization by submitting an I-765 application after acquiring L-2 status. Applicants for employment authorization should remember, however, that it could often take up to three months to get this work authorization.

### **What is the difference between EB-1 Multinational Manager/Executive category for employment-based green cards and the L-1A visa category?**

The EB-1 Multinational Manager/Executive category for employment-based green cards closely resembles the L-1A visa category. The green card requires a showing of all of the same evidence. The main additional requirement is that the US operation be in existence for at least a year. The category is very popular because applicants can avoid the onerous labor certification process, they can have an ownership interest in the company and they can proceed to the green card relatively quickly. Note, however, that if an employee hopes to get a green card via the multinational executive route, he or she will need a year abroad working for the company. That could be a problem for L-1s who came on blanket petitions and only had six months with the company.

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