

The ABC's of Immigration: First Preference Employment-Based Immigrants - International Managers and Executives

by Gregory Siskind

Over the last few weeks, we've discussed two subcategories of the EB-1 employment green card category. The last group within the first employment-based immigration preference is reserved for multinational executives and managers. Because there is no need for a labor certification, this is a popular green card strategy for executives and has been of tremendous assistance for international business. While the petition must be filed by an employer, no labor certification is required.

How does one qualify as an executive or manager?

To qualify for immigration as an executive or manager, the alien must have worked for the petitioner for at least one year of the previous three. This does not need to have been completed in one stretch, but can be aggregated. This work must be in an executive or managerial capacity. Also, the alien must be coming to the US to work in an executive or managerial capacity. If the alien is already in the US, the required one year of employment in the past three will be determined by looking at the three years prior to the alien's transfer to the US. The US business must have been established for at least one year before filing the petition.

How is one considered for executive capacity?

For a person to be considered an executive, the job must meet the following requirements:

- o Manage an organization or major component
- o Have authority to make policy and establish goals
- o Have discretionary decision-making authority
- o Be subject to only general supervision from higher executive, the board of directors, or stockholders.

The overall size of the organization is a factor in determining executive capacity. The larger the organization, the more reasonable it will be seen to require the international transfer.

How is one considered for managerial capacity?

For a person to be considered a manager, the job must meet the following requirements:

- o Manage an organization or department
- o Supervise and control other managers or professional level personnel
- o Authority to make personnel decisions
- o Have discretion to make decisions about operations
- o As with executives, the size of the business is an important factor.

If this category sounds familiar, it is because it is very similar to the L-1 nonimmigrant category. There are a few differences. EB-1s are only available to managers and executives, and not workers with specialized knowledge. Also, unlike L-1's, the US branch of the business must have been in operation for one year before petitioning for an immigrant worker.

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