

MEMO ON L-1 INTRACOMPANY TRANSFEREE VISA CLASSIFICATION

A. General

- 1. Availability.** The L-1 intracompany transferee visa is for a person who has worked abroad for 1 continuous year within the preceding 3 in an executive, managerial or specialized knowledge capacity for a qualifying employer, and who is coming to the US temporarily to work in an executive, managerial or specialized knowledge capacity for a parent, branch, affiliate or subsidiary of the employer.
- 2. Procedure.** Individual petitions are filed by the US entity (the “petitioner”) with the US Citizenship and Immigration Services (“CIS”), which has assumed certain functions of the former INS. An L-1 beneficiary can be admitted for an initial three-year period with a total consecutive five year limit (in the case of "L-1B") specialized knowledge workers or a total consecutive seven year limit (in the case of "L-1A" executives and managers) and thereafter may not be readmitted on an L or H (temporary worker) visa unless and until he has resided outside the US for 1 year. However, a beneficiary coming to open a “new office,” i.e., that has been in existence for less than one year, will only be admitted for an initial one-year period with subsequent extensions available until the above limits are reached.

3. Other Considerations.

- a. Blanket Petitions. Blanket petitions can be filed with the CIS and permit additional intracompany transferees to apply for L-1 visa at the Consul without prior CIS approval of an individual petition. This is useful for multinational firms that transfer large numbers of workers. In contrast to rules for individual petitions, the L-1 blanket specialized knowledge category is restricted to professionals (i.e. position must require bachelor's degree in area of specialty and individual must possess such degree or equivalent).
- b. Permanent Residence. Persons meeting qualifications for L-1A status may also qualify for permanent residence (i.e., the green card), as multinational managers or executives.
- c. Spousal Work Authorization. Spouses of L nonimmigrants may apply for work authorization.

B. Checklist of Evidence

1. Evidence of Qualifying Relationship.

- a. Provide explanation of goods/services provided by US employer and foreign entity (affiliate, subsidiary, branch, parent, etc.). Include company literature, articles, and other documentation.

- b. Explain petitioner's history of doing business in the US to show that the business is more than one year old and is a viable concern. Include documentation, e.g., certificate of incorporation, articles of incorporation, bylaws, business licenses, current annual report, securities filings, etc.
- c. Explain relationship between the US and foreign related entity and provide supporting corporate documentation to show how the entities have a qualifying relationship (defined in footnote below), e.g., annual reports that list subsidiaries and affiliated companies and the percentage of ownership, 10-K statements or similar federal securities filings, corporate organizational charts, affidavits from corporate secretary, copies of stock certificates, etc.¹
- d. Provide paragraph establishing that US employer will be doing business as an employer in the US and at least one other country directly or through a parent, branch, subsidiary for the duration of beneficiary's stay in the US as an L-1. Provide documentation, e.g., substantial investments, market share, revenues, contracts, technological research and development, business plans, etc.

2. Evidence of Eligibility for Blanket Petition Approval.

- a. If applicable, provide paragraph and supporting documentation that, among all the qualifying organizations within parent organization, one of the following is present:
 - at least 10 L-1 approvals in the past year or
 - US entities have combined annual sales of at least \$25 million (demonstrated by an annual report, federal securities filing, audited financial statements, etc.) or
 - US work force of at least 1000 employees.
- b. Provide paragraph and documentation establishing that US employer has at least 3 branches, subsidiaries or affiliates, foreign or domestic.

¹ "Parent" is defined as a firm, corporation or other legal entity that has subsidiaries.

"Subsidiary" includes a 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 50% of a 50-50 joint venture and has equal control and veto power; or owns less than half of the entity but, in fact, controls the entity.

"Branch" means an operating division or office of the same organization housed in a different location.

"Affiliate" means (special rules for accounting/managerial/consulting partnerships organized in US marketing under internationally recognized name)

- i. one of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- ii. 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.

3. Proof Required for “New Offices”.

If applicable, i.e., if the L-1 beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States that is less than one year old, provide evidence that:

- a. Sufficient physical premises to house the new office have been secured;
- b. The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- c. The intended US operation, within one year of the approval of the petition, will support an executive or managerial position as defined below as shown by documentation regarding:
 - The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - The size of the US investment and the financial ability of the foreign entity to pay the beneficiary and to commence doing business in the US; and
 - The organizational structure of the foreign entity.

4. Evidence of Employee Eligibility

- a. Provide paragraph establishing that employee’s immediate prior year of continuous employment abroad was with a qualifying, related entity. Include employment and tax records.
- b. With reference to the definitions below, explain how the employment abroad was in a managerial, executive or specialized knowledge capacity. Describe specific duties to show how the applicable definition is met.
 - Managerial capacity means an assignment in which the employee primarily (1) manages the organization or a department, subdivision, function or component thereof; (2) 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 of the organization; (3) has the authority to hire, fire or recommend personnel actions of any employees supervised, and if no employees are supervised, functions at a senior level in the organization or with respect to the function managed; and (4) exercises discretion over day-to-day operations of the activity or function managed (1st line supervisor not managerial by virtue of supervisory duties unless supervising professional employees).
 - Executive capacity means an assignment in which employee primarily (1) directs the management of the organization or a major component or function thereof; (2) establishes goals of the organization, component or function; (3) has broad discretion in decision-making; and (4) receives only general direction from higher level executives, Board or stockholders.

- Specialized knowledge means special knowledge of the petitioner's product, service, research, equipment, techniques, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.
- c. Provide paragraph establishing that employee will be employed in US in position as manager, executive or specialized knowledge professional. Explain specific duties of prospective position and describe how it is managerial, executive or specialized knowledge **with reference to above definitions.**