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ALTERNATIVES TO THE H1B: INTRA-COMPANY TRANSFEREE (L-1) VISA

This article is the second in a weekly series I am publishing presenting the alternatives to the H1B professional visa for those who missed the deadline to apply or who applied and were not lucky enough to be selected in the H1B visa lottery, as a result of the quota on the visas. This article is about the L1 visa alternative for executives, managers and persons of “specialized knowledge”

An L-1 intracompany transferee visa is available to qualified international executives, managers, and specialized knowledge employees transferred from an overseas organization to work for the same organization in the United States or for its American subsidiary or affiliate.

Most importantly, persons who qualify as managers or executives often can apply for immigrant (permanent resident) status once their U.S. employer has been doing business for at least one year.

An intracompany transferee is accorded an L-1 visa initially for one to three years. Extensions are available for a total of six years in the case of specialized knowledge employees and up to seven years for managerial or executive employees.

L-1 visas are particularly advantageous because it is not necessary to prove either that the applicant has a residence abroad to which he or she intends to return or that the applicant lacks immigrant intent to receive an L-1 visa stamp from a U.S. Consul.

Moreover, in many cases, an L-1 visa holder is eligible to receive permanent resident status without a determination by the Department of Labor that there are insufficient U.S. workers for the job available to the intracompany transferee.

To qualify for intracompany transferee status, it must be demonstrated that within the three years preceding the time of application the employee has been employed continuously abroad for one year by a firm, corporation or other legal entity, or a branch, affiliate or subsidiary thereof, and that the employee seeks to enter the United States temporarily to continue rendering services for the same employer, or a branch, subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Thus, L-1 cases present two basic issues: whether the U.S. employer is a branch, subsidiary or affiliate of the employee's employer abroad; and, whether the employee worked abroad continuously for one year during the past three years in a capacity which is managerial, executive, or involves specialized knowledge.

To qualify as an eligible sponsoring company, the petitioner must be:

- 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;
- owns, directly or indirectly, half of the entity and controls the entity;
- owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

"Affiliate" means

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

"Managerial capacity" means an assignment within an organization in which the employee personally manages the organization, department, subdivision, function or component; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization or department or subdivision of the organization.

"Executive capacity" means an assignment in an organization in which the employee primarily directs the management of an organization or a major component or function; establishes goals and policies; exercises wide latitude in discretionary decision-making and receives only general supervision or direction from higher level executives, the Board of Directors, or stockholders of the business.

"Specialized knowledge" is defined to include persons who have "special knowledge of the company product and its application in international markets" or who have "an advanced level of knowledge of processes and procedures of the company."

An application for intracompany transferee L-1 status must be supported by the following:

- Evidence that the overseas company has established a subsidiary, affiliate, or branch office in the United States.
- A detailed description of the services to be performed in the United States by the L-1 beneficiary.
- Evidence that the L-1 beneficiary has at least one continuous year of full-time employment abroad with the overseas company in the last three years and evidence that this employment abroad was in a position that was managerial, executive or involved specialized knowledge.
- Evidence that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States.
- Evidence that sufficient physical premises to house the U.S. employer have been leased.
- Evidence that the U.S. company has sufficient financial resources to support its business activities in the United States and pay the salary of the beneficiary.

In the case of a new business, evidence that within one year of approval of the L-1 petition, the U.S. operation will support an executive or managerial position as documented by a description of the following: the proposed number of employees and the type of positions they will hold; the size of the United States investment and the financial ability of the foreign entity to remunerate

the L-1 beneficiary and support the U.S. company's conduct of business; and, the size and staffing levels of the overseas company.

The CIS generally requires 60-120 days to adjudicate an L-1 petition, unless the petitioner pays for “premium processing” fee of \$1225, in which case the CIS provides an answer in 15 days.

Once the petition is approved, it is forwarded to the United States Consulate in the beneficiary's home country for visa issuance. The L-1 beneficiary's spouse and unmarried children under twenty-one are eligible for L-2 status. L-2 spouses are eligible to apply for employment authorization. Employment authorization is normally issued within ninety days of the application.

As an alternative to the H1B, the L1 visa is attractive for managerial and executive employees of multi-nationals who are sent to the US for specific time to work in a US subsidiary or parent. Others should probably look for another alternative; we'll cover those in future articles in this series.

WARNING: The above is a summary discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case.