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The L-1 Intracompany Transfer Visa

I. INTRODUCTION

The L-1 intracompany transfer visa has evolved into a very useful visa for international businesspersons and specialty workers who seek to live in the United States while working in the U.S. as an intracompany transferee from a foreign affiliate to the U.S. company. L-1 visas are available to persons who have worked abroad for one continuous year within the preceding three years in an executive, managerial, or specialized knowledge capacity for a qualifying, related business entity (i.e. parent/subsidiary or affiliate) and who are being transferred temporarily to the United States to work in an executive, managerial, or specialized knowledge capacity for a qualifying, related business entity.

II. BASIC INFORMATION ABOUT THE L CATEGORY

a. Duration of Stay

An alien may be admitted to the United States in L-1 status for the period of time required by the employer, up to a maximum initial period of stay of three years. The total period of stay may reach seven years for L-1A managers and executives, and five years for L-1B specialized knowledge personnel.

Special rule for new office situations.

A special one-year initial period of stay applies when the alien is coming to the United States to open a new office. In this case an extension must be filed in one year, as a part of which the company must establish that it has been doing business both in the U.S. and abroad during the year, before additional periods of stay can be approved.

b. Application Process

The U.S. employer must file a petition with the Immigration Service in order to obtain permission to transfer a foreign national for a temporary period. Once the petition is approved, the approved petition is sent to a U.S. consulate where the alien can obtain an L-1 visa to enter the United States. If the alien is already in the United States in a different nonimmigrant category, his or her status must be changed to the L-1 category.

Nonimmigrant intent and permanent residence papers.

Another advantage for L-1 aliens is that they do not need to show that they maintain a foreign residence during their U.S. stay and they may seek permanent residence and still obtain L-1 visas, petition approvals, and extensions of stay. L-1 aliens need only express their intention to abide by U.S. immigration laws and to depart the United States at the end of their authorized periods of stay if permanent residence has not been granted to them in the interim. A consular officer cannot deny an L-1 visa even if the alien openly expresses an intent to seek permanent residence.

c. Family Members of L-1 Alien

Spouses and unmarried children under the age of 21 of L-1 aliens may be granted L-2 visas. L-2 spouses may request employment authorization (a work permit) from the Immigration Service. L-2 visa holders cannot engage in employment in the U.S. under the L-2. However, they can undertake courses of study in the U.S. while remaining in L-2 status.

III. BASIC REQUIREMENTS FOR OBTAINING L-1 STATUS

- a. The Employee Must Have Worked Abroad for the Overseas Company for a Continuous Period of One Year in the Preceding Three Years
- b. The Company for Which the Employee Has Worked for a Year Abroad Must Be Related to the U.S. Company in a Specific Manner such as parent/subsidiary or affiliate.
- c. The Company Must Be a Qualifying Organization—One That Is Doing Business in the United States and One Other Country During the Whole Period of the Transfer
- d. The Employee to Be Transferred Must Have Been Employed Abroad in an “Executive” or “Managerial” Position or a Position Involving “Specialized Knowledge”
- e. The Employee Must Be Coming to the U.S. Company to Fill One of These Capacities (Executive, Managerial, or Specialized Knowledge)
- f. The Employee Must Be Qualified for the Position by Virtue of His or Her Prior Education and Experience
- g. The L-1 Alien Must Intend to Depart the United States upon Completion of His or Her Authorized Stay (Including Extensions), but May Also Pursue Permanent Residence at the Same Time

IV. BASIC QUESTIONS TO ANSWER BEFORE PROCEEDING WITH AN L-1 CASE

- a. Has the employee been employed with the company abroad for a continuous period of at least one year within the last three years?

The employee must have at least one continuous year of employment within the last three years with the foreign affiliate, parent, subsidiary, or branch office on the date of filing of the petition with the Immigration Service.

- b. Is the company abroad for which the employee works related to the U.S. company in the correct way?

The general rule is that one company that is party to the transfer must have “effective control” of the other company—or both must be “effectively controlled” by the same third

company, individual, or group of individual shareholders. Less than 50% ownership can give a party effective control in the right situation—even as little as 10% can qualify if the rest of the stock is widely dispersed. The smaller the share of ownership, however, the more likely it is that problems will arise with the transfer; competent assistance of counsel in these instances should be sought.

- c. Is the employee to be transferred currently filling an executive, managerial, or specialized knowledge capacity with the company abroad and will he or she fill one of these capacities with your company in the U.S.?

Which of the three capacities is to be filled by the alien in the United States has become increasingly important after the changes made by the 1990 Act. There are two reasons:

1. Different limits on stay apply to executives and managers (7 years of stay) and on specialized knowledge personnel (5 years of stay)
2. Managers and executives have a fast route to permanent residence, unavailable to specialized knowledge personnel, based on the creation of a new preference by the 1990 Act for L-1 type managers and executives.

Therefore, employers must analyze carefully whether an employee may be considered a manager or executive rather than a specialized knowledge employee.

V. CONCLUSION

In conclusion the L-1 visa is a very effective way to obtain immigration benefits in the United States for those companies and employees who qualify for the L-1 intracompany transfer.