Council for Global Immigration
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JUST THE FACTS: L-1 INTRACOMPANY TRANSFEREES

In 1970, Congress recognized that employers need the ability to temporarily transfer professionals between related overseas and American entities to work on products, services and projects by creating the L-1 visa. These transfers are good for U.S. employers because they encourage growth, facilitate cross-fertilization of ideas and harmonize international business operations. With these transfers, employers make a direct investment in competitiveness and innovation in the United States. Here are the facts about this important visa category.

How is the L-1 classification used?

L-1 intracompany transferees help U.S. businesses share knowledge within their organizations, harmonize operations, expand markets and service clients, customers and partners. Professionals coming to the United States as intracompany transferees play an important role within the company and ***do not*** fill positions that would otherwise be vacant.

What relationship must the U.S. entity have with the foreign entity where the employee works?

Both the U.S. and foreign entity must be shown to be doing business, and must show that they are doing so together. The two entities demonstrate this through a qualifying parent-subsidiary, affiliate, parent or branch corporate relationship.

What types of jobs qualify for an L-1 visa?

There are two subcategories under the L-1 classification:

1) The **L-1A category** is available for:

- *Executives* who direct the management, goals and policies of the organization or a major component or function of the organization, and who exercise wide discretionary decision-making authority, or
- *Managers* whose assignment primarily focuses on overseeing a department or division of the organization, or overseeing an essential function within the organization.

2) The **L-1B category** is available for employees who possess **specialized knowledge** about the organization. Specialized knowledge is either:

- *"Special" knowledge* of the petitioning organization's product, service, research, equipment, techniques, management or other interests and the application of one of these in international markets that is distinct or uncommon in comparison to that generally found in the particular industry, or
- *An "advanced" level of knowledge* or expertise in the petitioning organization's specific processes and procedures that is not commonly found in the relevant industry and is greatly developed or further along in progress, complexity and understanding than that generally found within the employer.

How long must the employee work for the foreign subsidiary, parent, branch or affiliate before qualifying for an L-1 visa?

The employee must have at least one year of qualifying employment experience in a managerial, executive or specialized knowledge position abroad for a qualifying foreign entity during the last three years to qualify for an L-1 visa.

How many L-1 employees work in the United States?

The Department of State reports that 79,306 L-1 visas were issued in fiscal year 2016.[1] This number is, however, ***not a reliable estimate*** of the number of L-1s with new employment entering the United States because it includes more than just new transferees. The number also includes:

- Extensions of previously issued L-1 visas;
- Changes of employer (i.e. working for a different parent, subsidiary, branch or affiliate of the U.S. entity that originally petitioned);
- Amended L-1 petitions for reasons such as change in job duties; and
- Replacement of lost visas.

U.S. Citizenship and Immigration Services (USCIS) reports that it only approved 10,167 L-1 petitions in fiscal year 2016 – a number that includes both initial and continuing employment.[2] The agency now also reports how many L-1A and L-1B petitions the agency approved by fiscal year, for both initial and continuing employment, for each employer. The numbers show that employer use of the visa categories is limited – all but two employers had fewer than 300 approved L-1 petitions in fiscal year 2016.[3]

What protections are there for American employees under the L-1 program?

Regulations implementing the 2004 *L-1 Visa Reform Act* explicitly ***prohibit "labor for hire,"*** meaning that the petitioning employer may not merely supply workers and issue paychecks to them. For example, when an employer places an L-1B visa holder offsite at a third-party location, the employer must show that the beneficiary: (1) will not be "controlled and supervised principally" by the unaffiliated employer; and (2) will be placed "in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary."[4]

Federal adjudicators also consider the compensation of L-1 employees relative to their American counterparts in determining whether to approve petitions. Guidance on L-1B adjudications issued by USCIS instructs adjudicators to consider "whether the total compensation provided to the beneficiary is comparable in dollar value to similarly situated peers in such U.S. operations."[5]

Employers of L-1 visa holders also pay a $500 anti-fraud fee with each new petition they file at USCIS. These fees are used to fund various anti-fraud initiatives within the agency, including random site visits conducted by the agency's Fraud Detection and National Security Directorate to ensure full compliance.

For more information, please visit www.cfgi.org.

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[1] Department of State, https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY16%20NIV%20Detail%20Table.pdf

[2] USCIS, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_I1b_performancedata_fy2017_qtr3.pdf

[3] USCIS, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/L1-Approved-Petitions-FY2016.pdf

[4] INA 214(c)(2)(F)

[5] USCIS, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/L-1B_Memorandum_8_14_15_draft_for_FINAL_4pmAPPROVED.pdf