The L-1 Visa Alternative Solution

by Giselle Carson

Multinational companies can take advantage of certain temporary and permanent visa categories to bring in key personnel who would otherwise not be able to enter the United States for temporary or permanent employment. The L-1A and L-1B visa categories permit multinational companies to import managers and executives (L-1A) and specialized knowledge personnel (L-1B) for temporary assignments. Furthermore, managers and executives are considered priority workers under INS §203(b)(1)(C), placing them in the employment-based first preference category (EB-1-3), and exempting a petitioning employer from the labor certification requirement. Moreover, because the same statute and regulations govern both the L-1A temporary visa category and the EB-1-3 permanent category, much of the documentation that is submitted with an L-1A petition can be relied upon to support an EB-1-3 petition.

L-1 Visa Eligibility

The L-1 is available to a foreign national employed abroad for at least one continuous year within the previous three years on the date of filing, and is being transferred to work at a qualifying related U.S. company such as a parent, branch, affiliate, or subsidiary. Time spent in the United States by the foreign national is not interruptive of the continuous year, but such time may not be counted toward the qualifying year of employment abroad. The foreign national must have been employed abroad and come to the United States to serve in a managerial or executive (eligible for L-1A category) or specialized knowledge capacity (eligible for L-1B category). The beneficiary does not have to be transferred to the United States in the same capacity in which he or she was employed abroad (for example, the beneficiary could have been a manager abroad but transferred in the specialized knowledge capacity).

L-1A Executives and Managers vs. L-1B Specialized Knowledge

Managerial duties are defined under INA §101(a)(44)(A), and executive duties are defined under INA §101(a)(44)(B). First line supervisors are not considered managers unless they supervise professionals—as shown by the relevant credentials of those supervised. A person may be a manager or executive where he or she manages and/or directs multiple independent contractors and/or where the business is complex.

On the other hand, the L-1B "specialized knowledge" nonimmigrant category has no analogous immigrant category. A "specialized knowledge" employee is defined under 8 CFR §214.2(l)(1)(ii)(D) and includes one who has advanced and "specialized knowledge of the company's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge of the company's processes and procedures."

L-1 Visa Procedure

The petitioner/employer files Form I-129 with the L supplement (in duplicate with original signatures on both and other supporting evidence) with the appropriate service center. Once approved, the petition is sent to the designated U.S. consulate where the foreign national applies for an L-1 visa. Check the consulate's website as processing procedures can vary from consulate to consulate and plan for a 30– to 60-day processing time. With the visa, the foreign national presents at a U.S. port of entry to obtain admission for the period of validity of the petition (generally three years). Canadian citizens do not need a visa and may file Form I-129 with the L supplement in duplicate, directly to a Class A port of entry.

If the beneficiary is coming to open a new office, special regulations apply that can be found at 8 CFR §214.2(l)(3)(v). If the beneficiary is in the United States in a different nonimmigrant category, he or she can file for a change of status with the appropriate service center.

Anti-Fraud Fee Application

A fraud prevention and detection feeof $500 applies to an initial individual L-1 application; a new petition involving a change of employer; and all blanket L applications (initial and renewals). The fee must be submitted in a separate remittance from a U.S. employer. It does not apply to dependents.

Obtaining Extensions of Stay

Extensions are mostly obtained through filing with the appropriate service center on Form I-129 with the L supplement, a copy of the initial approval notice, copy of the I-94 card, and employer's letter in support of the extension. Although the regulations do not require the submission of additional supporting documentation to show the qualifying relationship between the foreign employer and the employer in the U.S. and the qualifying nature of the employment, it is recommended to do so. Extensions for L-2 family members are filed on Form I-539. The extension may be filed between four months and 45 days before the expiration of the stay. Extensions are available in two-year increments. The L-1A maximum stay is seven years and may receive two extensions. The L-1B maximum stay is five years and may receive one extension.

Changing from L-1B to L-1A Status

If an employee in L-1B status qualifies for a managerial or executive position, he or she might benefit from changing to L-1A status. The regulations require that U.S. Citizenship and Immigration Services (USCIS) approve the change to a manager or executive position at the time of the change. Moreover, if filing to obtain the second extension under the L-1A category, the beneficiary must have been in the managerial or executive capacity for at least six months prior to the filing. However, according to AILA/USCIS Liaison meeting minutes at AILA InfoNet Doc. No. 06060761, the centers should not deny an extension simply because it was filed during the final six months of the five-year stay.

Immigrant Petition for Multi-National Manager

The beneficiary of an L-1A petition could qualify to file an immigrant petition in the first preference category for priority workers and bypass the permanent labor certification process. To qualify: (1) the beneficiary must have been employed with a qualifying organization in a managerial or executive capacity abroad for at least one of the three years prior to the application; (2) the U.S. position must be in a managerial or executive capacity; (3) the petitioning employer must have been engaged in active business in the United States for at least one full year; and (4) the U.S. employer and at least one qualifying organization abroad must be doing business up until the time of visa issuance or adjustment of status. Though the evidence for the L-1A category and the evidence for the EB-1-3 category is virtually identical, and one would think that having been found to be qualified for L-1A classification would mean that approval of an EB-1-3 petition should be virtually automatic, that is not the case, and the EB-1-3 petition should be fully documented, despite a prior L-1A approval.

Giselle Carson works at Marks Gray, P.A. in Jacksonville, FL. She can be reached at *gc@marksgray.com*.

The Young Lawyers Division (YLD) recently has been renamed the New Members Division (NMD).