

L-1A Intracompany Transferee

Purpose

The L-1A Intracompany Transferee status was created by Congress to assist international companies with branches, subsidiaries, affiliates or parent companies in the United States move key personnel into the United States for work purposes.

Three-year Rule

A beneficiary of an L-1A petition must have been employed by the foreign company for at least one of the three years preceding the date of the application. The rule contemplates continuous employment for a period of twelve months. Time spent in the United States on behalf of the foreign company will not interrupt the foreign employment, but cannot be counted toward the aggregate twelve months.

Evidence of employment can include paycheck stubs and/or financial records showing payment to the employee.

The Company Relationship

A qualifying company is one that will be doing business in the United States and abroad during the validity period of the employee's L-1A status. The USCIS will not recognize companies who are related solely on a contractual, interlocking directorship or other non-equity relationships. Accounting firms, however, may be exempt if they market their services under the name of the same international company.

The companies do not have to be organized in any particular format, as even a sole proprietorship may qualify. Further, there is no requirement that a business organization be registered or incorporated in the United States. These companies need not be engaged in international trade with each other, as the requirement is only to show a valid relationship.

Applications should include a chart that demonstrates the relationship between the two companies. Although not required, it is also advisable to include proof of the company's financial viability when demonstrating a qualifying relationship.

The Employee Relationship

The qualifying employment with the foreign entity must have been in an executive, high-level manager or specialized skill position. The proposed employment in the United States must continue to be in an executive, managerial or specialized skill capacity. This means that the position must be the same or a similar position. The employment must be undertaken on a regular basis, as merely attending meetings will be deemed insufficient.

Executive, managerial or specialized skilled positions are assumed to involve proprietary knowledge not readily available in the United States. Thus, the application should include a statement in support of the petition that stresses the applicant's knowledge of the company's proprietary information,

machinery, processes, etc.

Opening a New Office in the United States

The procedures for applying for L-1A intracompany transferee status are the same, except financial viability must be shown. The USCIS will only issue a “New Office L” for one year, so the proposed duties should not take more than one year to complete. If an extension is needed, a new petition will need to be filed.

Adjudication Timeline

A L-1A application is normally processed within 30 days of filing as required by statute. Many factors, such as USCIS workload, can cause this time to vary. During the adjudication period, the USCIS reserves the right to request additional information/documents.

Premium Processing

For an additional \$1,000.00 filing fee, the employer can request the premium processing service. This service guarantees adjudication (e.g. approval, request for additional evidence, denial) within 15 days of filing. Please note that this form can be filed after the L-1A application has already been submitted.

Dependents

Dependents, spouse or children, of the beneficiary are eligible for an L-2 visa upon proof of the relationship. Dependents can file Form I-539, Application to Extend/Change Nonimmigrant Status or provide a marriage or birth certificate to a Consulate of the United States to obtain this status.

Once in the United States, an L-2 visa holder is eligible for issuance of an Employment Authorization Document. Upon the issuance of this document, the L-2 visa holder is entitled to accept any type of employment.

Visa Issuance

Once the L-1A application is approved, the beneficiary must apply for visa issuance at the nearest United States Consulate. Normally, this process involves the filing of Form DS-156 and providing the original approval notice and a copy of the L-1A application. It is advisable to check with the individual Consulate for their local filing procedures.

Normally, the L-1A visa is issued for three years with the ability to renew it for an additional four years.

For More Information

For more information, please contact Lee Lane Smith LLP at enquiry@leelanesmith.us or toll free at (800) 513-5699.