

L-1 VISA GUIDE: How to Transfer Your Key Employees to the U.S.

Introduction

An L-1 (intracompany) visa is a non-immigrant visa used by foreign nationals to enter the United States to work. Generally speaking, L-1 visas are available to qualified employees of international companies with offices in both the U.S. and abroad. L-1 visas allow foreign companies to send their key employees to work in their U.S. subsidiary, affiliate, branch or parent office. As such, the L-1 visa is a popular vehicle used to support corporate expansion to the U.S.

The L-1 visa is also an attractive employment visa for many foreign executives and managers seeking to relocate themselves and their families to the U.S. because it allows them to file for permanent residence (that is, a green card) without jeopardizing their L-1 status.

L-1 Visa Basic Requirements

To qualify for an L-1 visa, the petitioning employer must show that:

- the employee is coming to U.S. on a temporary assignment, and will return to his or her home country after the work assignment has ended;
- the employee will work for the same employer, or the parent, affiliate or subsidiary employer in the U.S. (These entities are categorized as "*qualifying organizations*");
- the employee has worked for the qualifying organization abroad continuously for at least one (1) year within the preceding three (3) years;

Interestingly, this rule permits employers to rehire past employees to transfer to the U.S., provided that the previous employee otherwise worked for a minimum of one (1) year sometime within the past three (3) years.

- the employee worked abroad in a managerial or executive capacity or one involving specialized knowledge; and
- the employee will continue to work in the U.S. in a managerial, executive, or specialized knowledge capacity.

As detailed below, these terms have specific meanings in the L-1 visa context.

Employment in a managerial, executive or specialized knowledge capacity is a requirement for *both* the qualifying year abroad and the intended L-1 assignment in the U.S. However, the qualifying employment capacities need not be the same; for example, the employee can have worked abroad in an executive capacity, and then in a managerial or specialized knowledge capacity in the U.S.

How to Qualify as a Manager?

To qualify as a “manager” for L-1 visa purposes, the transferred employee must primarily:

- manage the organization or a department of the organization;
- supervise and control the work of other supervisory, professional or managerial employees, or manage an essential function, division or department of the organization, if there are no other professional-level employees; and
- have a fair amount of discretionary authority within the organization, including (i) the authority over the day-to-day operations of the portion of the organization which he or she manages; and (ii) the authority to hire, fire, and promote those persons supervised.

How to Qualify as an Executive?

To be classified as an “executive” for L-1 visa purposes, the transferred employee must:

- direct the management of the organization or a major component or function of the organization;
- establish the goals and policies of the organization or a part of it;
- exercise extensive discretionary decision-making authority; and
- receive only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

What is Specialized Knowledge?

“Specialized knowledge” is defined to include any knowledge that specifically concerns the employer’s company, its procedures, products, or international marketing methods.

Specialized knowledge employees are employees who:

- possess knowledge that is valuable to the employer's competitiveness in the market place;

- are qualified to contribute to the U.S. employer's knowledge of foreign operating conditions;
- have been utilized as key employees abroad and have been given significant assignments which have increased the employer's productivity, competitiveness, image or financial position; and
- possess knowledge which normally can be gained only through prior experience with that employer.

Note that the knowledge that the employee possesses need not necessarily be proprietary, unique, or known only by a very few.

Requirements for "New Offices"

There are additional legal requirements imposed on companies seeking to establish a new office in the U.S., that is, an office doing business for less than one year. These requirements fall into two categories: one for managers and executives; the other for employees with specialized knowledge.

A. "New Offices" – Managers/Executives

If an employee is coming as a *manager* or *executive* to open or be

employed in a "new office", then it must be established that:

- the employer has the physical premises needed for the new office, such as a lease or a deed; and
- the U.S. operation will support a managerial or executive position within one (1) year of the application's approval, which can be demonstrated with reference to (i) the nature of the office, including its scope, organizational structure and financial goals; (ii) the size of the U.S. investment; and (iii) the foreign entity's financial ability to pay the employee and to begin doing business in the U.S.

B. "New Offices" – Persons with Specialized Knowledge

If an employee is coming as a *person with specialized knowledge* to open or be employed in a "new office", then it must be established that:

- sufficient physical premises to house the new office have been secured;
- the new office is or will be a "qualifying organization"; and
- the employer has the financial means to remunerate the employee and commence *doing business* in the U.S.

"Doing business" is defined to cover the regular, systematic, and continuous provision of goods or services; it does not include the mere presence of an agent or office in the U.S. or abroad.

Lengths of Stay & Extensions

The length of stay available for a person on an L-1 visa depends upon whether the qualifying organization in the U.S. is an existing or a new office. The same holds true for extension requests.

For *existing offices*, L-1 visas are initially valid for up to three (3) years.

With limited exceptions, extensions of stay can be granted for up to a total of seven (7) years for executives and managers, and up to five (5) years for specialized knowledge personnel.

The authorized period of stay for an employee coming to open a *new office* is one (1) year initially, with extensions possible after the first year if the U.S. business has commenced operations and the company is doing business both in the U.S. and abroad.

Extensions of stay for *new offices* require a new petition, and additional evidence, the most important of which is:

- evidence that the foreign and U.S. entities are still "qualifying organizations;"

- evidence that the U.S. employer has been "doing business" for the prior year;
- verification of the employee's duties for the prior year and the period of extension;
- documentation of the new office's staffing pattern; and
- evidence of the U.S. operation's financial status, which normally consists of its financial statements, bank statements, and tax returns.

Advantages of the L-1 Visa

The L-1 visa enjoys several distinct and significant advantages.

First, managers and executives coming to work for a U.S. office that has been in operation for at least one (1) year qualify for lawful permanent residence (a green card).

Further, managers and executive-level L-1 visa holders filing for permanent residence can bypass the "Labor Certification" requirement. (Labor Certification usually requires that foreign nationals seeking permanent residence must first demonstrate that no U.S. worker is ready, willing, and able to do the job through which the foreign national is seeking to obtain permanent residence. Individuals in L-1 status, however, skip this process and can have their petition filed directly with the USCIS.)

Another benefit to the L-1 visa is that there are no limits to the number of L-1 visas that can be issued per year. (This is an important benefit because other nonimmigrant business visas have annual caps. The H-1B visa, for example, has an annual cap of 65,000, with certain exceptions.)

“Premium processing” is also available. Premium processing allows an L-1 petitioner to pay a fee (currently \$1,225) in exchange for a 15-calendar day processing of their petition. If the USCIS fails to process the petition within 15 days, it will refund the filing fee and continue to process the petition on an expedited basis.

Another important benefit of the L-1 visa is that the spouse and unmarried minor children—that is, children under 21—of an L-1 visa holder may accompany him or her to the U.S.

Additionally, the L-1 visa holder’s spouse is entitled to work, and their dependent children may engage in part-time or full-time study.

Further, the L-1 visa holder is permitted to freely travel in or out of U.S., or remain in the U.S., until the expiration of his or her period of authorized stay. There is no requirement that the L-1 visa holder maintain a foreign residence while in the U.S.

These advantages are summarized as follows:

- Employee may qualify for Lawful Permanent Residence (Green Card)
- No “Labor Certification”
- No limits on number of L-1 visas that can be issued per year
- “Premium Processing” available
- Visas are available for L-1 visa holder’s spouse and unmarried minor children
- Spouse may work; minor children allowed part-time or full-time study
- Employee may freely travel in/out of U.S.

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