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ATTORNEYS AT LAW

WHO IS ELIGIBLE FOR AN L-1 VISA?

An L-1 visa is a temporary nonimmigrant visa available to foreign nationals who have been employed for at least one continuous year outside of the United States by a foreign company affiliated to the prospective U.S. employer. The U.S. company must be a branch, subsidiary, parent, or affiliate of the foreign company and the foreign national must have worked for the foreign company for at least one year prior to their arrival in the United States.

The three basic types of employees that qualify for an L-1 visa are:

- **Managerial (L-1A Visa)**

An employee is considered managerial under the immigration laws where he or she:

1. manages the organization or department, subdivision, function or component of the organization;
2. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department, or subdivision of the organization;
3. has the authority to hire, fire, or recommend similar personnel actions (such as promotion or leave authorization) if another employee or other employees are directly supervised; and
4. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

- **Executive (L-1A Visa)**

An employee is considered executive under the immigration laws where he or she:

1. directs the management of the organization or a major component or function of the organization;
2. establishes the goals and policies of the organization, component, or function;
3. exercises wide latitude in discretionary decision-making; and
4. receives only general supervision or direction from higher level executives.

- **Specialized Knowledge (L-1B Visa)**

An employee is considered to have specialized knowledge under the immigration laws where he or she possesses an advanced level of expertise and proprietary knowledge of the company's products, services, research activities, in-house procedures and processes, management or other interests of the company that are not readily available in the U.S. labor market. The knowledge does not have to be unique or narrowly held within the company, but it must be more than a general expertise merely required to produce the product or provide the service of the company. Note that due to recent changes, an L-1B visa holder may be restricted from working on the site of companies other than the petitioning employer.

Practice Tip 1: What is meant by “nonimmigrant visa”?

A nonimmigrant visa entitles a foreign national to enter the United States for a limited duration pursuant to the terms of admission as defined by the given visa class. In the L-1 context, this means that the individual applicant should only evidence an intent to remain in the United States for limited duration and purpose as set forth in the L-1 visa petition.

Practice Tip 2: The L-1A “Functional Manager”

Certain professionals can be classified as L-1A managers even if their responsibilities do not include managing people. These professionals, known as functional managers, include people who have authority over a key function or component of a company’s business. Many positions, particularly in technology companies, fit nicely into this designation. Given the benefits of the L-1A category discussed below, it is worth serious consideration whether or not an employee can be considered a functional manager. Some examples of functional managers would include an Account Manager who manages a large corporate account; a Project Manager who manages the development of a product, such as a software application, but who does not have any direct reports; or a senior-level engineer who has no direct reports but who acts as a mentor to other engineers or as a project leader.

WHAT ARE THE BENEFITS OF AN L-1 VISA?

An L-1 visa allows a foreign national to pursue professional employment in the United States for up to seven (7) consecutive years. The initial petition is granted for up to three years and can be extended for an additional three years. Additionally, dependents of L visa holders can apply for US work authorization, which is generally not available to dependents in other visa categories.

Practice Tip 3: Limits on L-1 Visa Status: L-1B = 5 Years; L-1A = 7 Years

An individual can remain in the United States for a maximum of five (5) consecutive years in L-1B visa status or seven (7) consecutive years in L-1A visa status. In addition, any time spent in the United States in H-1 visa status counts against these time limits. Therefore, if you are looking to hire an individual who is employed in H-1B status by another company, but who is eligible for an L-1 visa with your company, it is necessary to determine the individual’s total time in the United States in H status in order to determine the total time that the employee can work for your company in L-1 nonimmigrant visa status.

Therefore, continuing from the example in Tip 2, Sally can work for Dutch Company U.S.A., Inc. for a total of four (4) years in L-1A status.

Another benefit of the L-1 visa category is that it also allows for what is referred to as “dual intent.” The dual intent doctrine allows for an individual to pursue permanent residency in the United States while in L-1 nonimmigrant visa status.

Practice Tip 4: “Dual Intent” allowed for L-1 visa holders:

An individual in L-1 visa status can have both nonimmigrant and immigrant intent. This allows an L-1 visa holder to lawfully pursue U.S. Permanent Residence while in the United States.

The L-1 visa category also offers much more flexibility than the H-1B visa category. Unlike the H-1B visa, there is no prevailing wage requirement and L-1 visa holders can work off-site and change locations and positions much more easily.

Another key benefit of the L-1A category is that the requirements for this category and for the immigrant visa category for multinational executives and managers are very similar.

Practice Tip 5: L-1A visa holders and Permanent Residency

The legal requirements for the L-1A visa category and the multinational executive and manager employment-based immigrant visa category are very similar, though not identical. If an individual served in a managerial or executive capacity for a qualifying foreign employer for at least one year and serves in a managerial or executive capacity in L-1A status in the United States, they most likely qualify for an immigrant visa. This is one of the fastest ways in which a foreign national can seek to attain U.S. permanent residency.

HOW LONG DOES IT TAKE TO GET AN L-1 VISA?

It is important to consider timing issues when transferring an individual on an L-1 visa. As a rule of thumb, you should allow 4 to 6 weeks for the Citizenship and Immigration Service (CIS) to process the case after the documents are filed. If the individual is outside the United States, it may take an additional several weeks for the foreign embassy or consulate to issue the visa stamp that allows the foreign national to enter the United States in L-1 visa status. The amount of time necessary for this process will vary dramatically depending upon the embassy or consulate where the visa application will be filed.

Practice Tip 6: Extensions of L-1 Stay

Where the L-1B petition is being filed to extend the stay of a current employee already in L-1 status, the extension must be filed with the INS prior to the expiration of the current L-1 status as indicated on the Form I-94 issued to the foreign national. The employee is then granted an automatic 240 day extension of work authorization while the petition is pending. The employee should not leave the United States, however, during the pendency of the L-1 extension petition.

WHAT IS AN L-1 BLANKET PETITION?

An L-1 Blanket petition is a special classification that can be granted to a company or group of affiliated companies that allows individual L-1 petitions to be made directly at the embassy or consulate in the L-1 candidates home country. This greatly reduces the processing time required, as the 4-6 week period required for the INS to adjudicate the petition is removed. L-1 Blanket status is available to a U.S. company and its affiliates, branches, parent, and subsidiaries where the petitioning company meets the following qualifications:

1. The petitioner and each of the affiliate companies are engaged in commercial trade or services;
2. The petitioner has an office in the United States that has been doing business for one year or more;
3. The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a United States work force of at least 1,000 employees.

Practice Tip 7: L-1B Applications under a Blanket Approval

Although, in general, the L-1 category does not require any specific level of education or background, an important exception exists when an application for an L-1B visa is made pursuant to an L-1 Blanket approval. In these cases, the consular officials are instructed to approve L-1B cases where the applicant possesses the equivalent of at least a U.S. Bachelor's degree in a field related to the specialized knowledge position.

Please note that this memorandum provides general information and is not intended to be a substitute for specific legal advice regarding an individual matter. As the immigration laws are constantly changing, we strongly encourage you to work closely with legal counsel when pursuing any employment-based immigration benefits. If we can be of further assistance to you or your employees regarding this or any other area of Corporate Immigration Law, please contact our office directly at (650) 617-8888.