

OUR PRACTICE

Multinational Transferees (L-1 and EB-1-1)

Managers, executives, and workers with "specialized knowledge" being transferred to a U.S. operation of a multinational business may obtain nonimmigrant L-1 classifications for between five and seven years. Under similar rules, transferring managers and executives (but not specialized knowledge workers) may obtain permanent residence as "priority workers" (EB-1-1) without the significant obstacle of a labor certification.

The various immigration alternatives for workers in multinational businesses carry different requirements and benefits and often depend on the ownership and operational structure of the overall business and the U.S. operation. Thus, persons with foreign businesses setting up U.S. operations should, if possible, consult a knowledgeable immigration attorney beforehand in order to maximize the immigration opportunities of the business. In some cases, it may even be possible for transactions to be undertaken to make the foreign national eligible.

L-1 cases involve the following issues, each of which are discussed below:

- Eligibility of both the foreign national transferee and the multinational business
- Procedures for existing and new multinational businesses
- Family Members
- Permanent Residence for executives or managers in L-1A status
- New U.S. Businesses
- The "Blanket" L-1 Program
- How We Can Help

Eligibility

The following basic eligibility requirements apply to L-1 temporary and "priority" permanent residence status:

1. The foreign national must have worked continuously for at least one year out of the last three in a foreign operation having a qualifying ownership relationship with the intended U.S. employer.
2. The foreign national must be coming to undertake a qualifying position as a manager, executive, or, for L-1B status only, a specialized knowledge worker.
3. The U.S. employer must have a qualifying ownership relationship (such as a branch office or the same employer, parent/subsidiary, or affiliate relationship) with a foreign operation that will continue to operate outside the U.S. as a foreign business to which the foreign national could ostensibly be transferred back (whether the operation for which the foreign national worked originally or another operation).

Each of the eligibility criteria have spawned numerous evolving interpretations hashed out in immigration service (USCIS) regulations, internal memos, and appeals cases. We can help determine whether a particular situation may qualify and develop a petition package designed to increase the likelihood of prompt approval.

Procedures

A petition to the USCIS is always required. The petition is filed in the U.S. demonstrating eligibility, and USCIS usually acts on the petition within 30 days. If the foreign national was in the U.S. in a nonimmigrant visa status (not visa waiver) at time of filing, the approval can itself accomplish change of status with no further action. If

the foreign national is outside the U.S. or ineligible to change status, the approval is used by the foreign national to obtain an L-1 visa at a U.S. consulate outside the U.S. with a perfunctory application. A Canadian citizen may present the petition directly to a port inspector in seeking admission without a visa. A foreign national who changes status to L-1 and then travels outside the U.S. (other than only to Canada or Mexico for less than 30 days) must obtain an L-1 visa before re-entry.

An L-1 petition is usually granted for three years in the first instance, except new office petitions may be approved for only one year. Extensions are usually granted in two-year increments. Visas and admissions to the U.S. are limited to the duration of the most recently approved petition. An L-1 visa can be renewed only at a U.S. consulate outside the U.S.

The total period of admission (physical presence in the U.S. in L-1 status) is limited to five years for foreign nationals admitted as specialized knowledge workers, and seven years for managers and executives. Once the limit is reached, the foreign national may not reenter the U.S. as an L-1 or H nonimmigrant until the foreign national has resided and been physically present outside the U.S. for one year. The petitioner bears the burden of calculating and proving with supporting documents the absences that may be needed to "recapture" additional periods of admission within the limit. Someone who is always only intermittently in the U.S. (less than half the time each year) can receive extensions without limit.

Family Members

The principal foreign national L-1 worker's spouse or unmarried children under age 21 may receive L-2 status to accompany or follow to join the worker. The duration of the family member's status or visa can never exceed the duration of the principal foreign national's L-1 petition approval or assignment in the U.S. Importantly, an L-2 spouse may obtain unrestricted U.S. work authorization, which is a special benefit to L status.

Permanent Petitions

A petition to USCIS is also required as a first step toward permanent residence for a "priority worker" (a person who has served in the qualifying company abroad as a manager or executive and who is coming to the U.S. to work as a manager or executive). Upon approval, the foreign national manager or executive and family members may apply for permanent residence either through [adjustment of status](#) within the U.S. or through immigrant [visa processing](#) at a U.S. consulate abroad. The pursuit of permanent residence does not jeopardize the acquisition, maintenance, or extension of L-1 or L-2 status or visas.

New U.S. Businesses

L-1 status can be obtained only after formation of a U.S. entity having the requisite relationship with a foreign business and actual U.S. facilities. Thus, prospective L-1 foreign nationals coming to establish a new branch, subsidiary, or affiliate of their foreign employer may come to the U. S. initially in B-1 status without a prior USCIS petition if they will be eligible for L-1 status upon obtaining necessary proof of acquisition of physical premises in the U.S. Petitions for new offices require special documentation of facilities and business plan and can be approved only for a year initially. At the time for extension, special additional evidence is required to show the business is truly doing business and requires the worker in the category requested.

If the petitioning U.S. employer has been doing business for less than one year, no executive/manager priority worker preferences may be obtained for permanent residence.

Blanket L-1 Programs

Certain entities may petition USCIS for approval of a blanket L-1 program under which the qualifying relationship of the U.S. and foreign components of the multinational business are established on a global basis all at once. The blanket program avoids, in most cases, the delay imposed by an individualized petition to the USCIS in advance of a visa application, cutting the entire visa process from weeks or months to days.

The worker presents three copies of a special Form I-129S, each attaching a copy of the blanket petition, in applying for the visa, and the consulate stamps and returns two copies. The worker presents them both to the port on first admission.

The port inspector returns one to the worker (which he should present but retain on future entries) and sends the other to a USCIS service center for data entry (which generates an approval notice that has no actual purpose and can be discarded).

A blanket L worker should be admitted at the port of entry for three years, regardless of the duration of the blanket petition or of the worker's visa, subject to the worker's 5 or 7 year maximum total period of admission. When the worker is depending on absences during the validity of his L-1 visas to add back to his 5 or 7 year maximum, the worker may need to carry carefully organized, cross referenced, and tabulated records about his periods of physical presence in order to obtain the longest period of admission.

How We Can Help

Baker Donelson's Immigration Group facilitates international business through the assignment of key personnel. We use the Blanket L-1 program wherever possible to reduce costs and delays in transfers. We set up technological systems with human resources departments of large companies to streamline the immigration processing even more. We provide real-time status reports over the internet. We coordinate reassignments, assignments of U.S. workers to foreign affiliates, and large groups of workers being transferred in. We help businesses evaluate, minimize, and prepare for the immigration impact of a prospective business transaction before it takes place (when given the opportunity). Our attorneys work personally with transferring managers to ensure their comfort level with the process. We help smaller and newer international businesses find ways to demonstrate the substantial nature of their plans and new operations to enable immigration approval. In combination with our full-service law firm's other practice groups, we help international human resource managers coordinate the innumerable considerations and technicalities that accompany a worker's international assignment, including immigration, benefits, tax, contracts, and employment law.