

MOST COMMON U.S. VISAS

L-1 VISA

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COMMON NON-IMMIGRANT VISAS

L-1 VISA

THE SMOOTH TRANSFER of your company's key employees to the United States is always of great concern. Many executives, managers, and employees with specialized knowledge can come to work in the United States using the L-1 intracompany transferee visa. This brochure provides a brief description of some of the benefits, requirements, and procedures relating to L visas. It should not be taken as legal advice. To be certain your individual situation is handled properly, be sure to consult with an attorney experienced in immigration matters.

Which Companies Qualify to Transfer Employees to the United States?

Only those companies that exactly meet the U.S. Citizenship and Immigration Services (USCIS) definitions of a parent, branch, subsidiary, or affiliate qualify to petition for an L-1 intracompany transferee visa. These definitions are very precise and require an analysis of both the foreign and U.S. ownership of the related companies. Both the foreign and U.S. operations must be doing business for the entire time that the L-1 employee is working in the United States.

There are provisions to allow a new office to open in the United States, provided that evidence is submitted to USCIS to prove that the new office has a suitable place to do business, a qualifying business structure exists, a viable business plan is in place, and the employer has the ability to pay the employee and to begin doing business in the United States. Each case must be well documented with evidence proving that all of the legal criteria are met.

Which Employees Qualify as L-1 Intracompany Transferees?

Intracompany transferees are executives, managers, and employees with specialized knowledge. The definition of manager includes an employee who manages an essential function of the business within a qualifying organization. An executive directs the management of the organization, establishes its goals and policies, exercises wide latitude in discretionary decisions, and receives only general supervision. In determining whether the position is managerial or executive USCIS will look beyond mere job titles and descriptions. For example, it typically and seriously considers staffing levels, among many other factors. Specialized knowledge employees must have special knowledge of the organization's products, services, research, equipment, management, or other interests, and its application in international markets, or an

advanced knowledge or expertise in the organization's processes and procedures. Classifying the employee in the correct category is important, particularly if the company might later want to sponsor the employee for permanent residence. The intracompany transferee petition should always be structured to allow the easiest transition to permanent resident status.

A key qualification for all employees is continuous employment abroad with a qualifying foreign employer for one year within the three years preceding the time of the employee's application for admission into the United States.

How Long Can L-1 Employees Remain in the United States?

The L-1 is a temporary visa with specific limitations on periods of stay in the United States.

- If the employee is qualified as a *manager* or *executive*, he or she may remain in the United States for up to seven years.
- If the employee is classified in the *specialized knowledge* category, he or she may stay up to five years.
- An exception to these limits exists where the employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year.

How Does the Company Get an L-1 Visa for Its Employees?

A petition for an L-1 visa must be filed by the company with the USCIS service center having jurisdiction over the place of intended employment. Except for a company that is opening a new office in the United States, the initial petition may be granted for a three-year period and renewed in two-year increments up to the maximum permitted stay. New offices are limited to an initial 12-month period, with extensions depending on the business and financial performance of the new office. Once the petition is approved, the employee may apply for an L-1 visa at a U.S. consulate abroad. If the employee is in the United States and maintaining some other legal status, in many cases he or she may apply for a change of status in the United States. However, this option is not available to those who entered the United States pursuant to the Visa Waiver Program. A transferee's spouse or unmarried children under 21 years old may be granted L-2 visas. Spouses of L-1 visa holders may apply for work authorization. Other L-2 visa holders, however, are not permitted to work, although they may attend school.