The L-1 Intra Corporate Transferee Visa

It is difficult in the course of an article like this one to discuss the entire field of U.S immigration law. There is so much going on. So instead of doing a shallow survey of all the immigration alternatives open to a would-be U.S. immigrant, this article will focus on one key visa of interest to many executives. The L-1 visa is a favorite work visa because it is fast and because once it is obtained, it can become a stepping stone towards getting a green card and permanent residence in the U.S. Also, for Canadians, this visa can be obtained in one stop right at the port of entry to the United States provided all the paper work is properly done.

The main advantage to an L-1 Visa is that the applicant can immediately move to the U.S. and work for a U.S. company. However, the immigrant is restricted to working for the U.S. employer who acted as the L-1 visa sponsor and must get permission from the Immigration and Naturalization Service (INS) to change employers. Another benefit is that with this intra-company transfer visa you can travel in and out of the U.S., or remain there continuously until the L-1 visa expires. Also, spouses and unmarried children under age 21 can get L-2 visas simply by providing proof of their family relationship to the L-1 visa holder. Such L-2 visas authorize accompanying relatives to stay in the U.S. and even attend schools in the case of children. However, L-2 visa holders cannot work unless they get separate work authorization on their own. Possibly the best aspect of an L-1A visa for executive or managerial level personnel is that they can apply for green cards through employment and do not have to go through labor certification, a major step required with other U.S. visas. This is not true for L-1B visa holders who are granted permission to work in the U.S. not because they are executives or managers, but by virtue of their specialized knowledge of their company's processes or procedures.

L-1A visas are usually issued for three years and can be renewed for up to a total of seven years. L-1B visas can only last for a maximum five years. With new business start ups in the U.S. the visa is normally only issued for one year, and then is very difficult to renew without substantial proof of growth, profit and employment of U.S. workers.

For non-Canadians, the first step in getting an L-1 visa is for the employer to file the petition with the INS service center having jurisdiction over the future place of employment of the foreign worker in the United States. Processing can take four to eight weeks. The second step is the application which may take a few more weeks. The successful applicant can then apply for entry into the United States at a port of entry. Let us look at this process in more detail.

The Petition - Step One

Turning to the first step, the petitioning employer, or petitioner, attempts to prove that the alien qualifies for the L-1 visa. In order to do so the petitioning company must establish that:

The applicant is a manager, executive, or person with specialized knowledge within the company

The company the applicant worked for outside the US was a branch, subsidiary, affiliate, or joint venture partner of the company in the U.S.

The applicant was employed outside the U.S. within the related company for at least one of the past three years as an executive, manager or person with specialized knowledge4. The applicant will fill a position of a similar nature as the one he or she held outside the U.S. when they get the visa.

In meeting these criteria certain definitions apply:

I Managers

A manager is defined as a person who has all four of the following characteristics:

He or she manages the organization or a department of the organization.

He or she supervises and controls the work of other supervisory, professional or managerial employees or manages an essential function of the organization.

He or she has the authority to hire and fire those persons supervised. If none are supervised, the manager must work at a senior level within the organization.

He or she has the authority to make decisions concerning the day-to-day operations of the portion of the organization which he or she manages.

II Executives

An executive is defined as a person who has all four of the following characteristics:

He or she directs the management of the organization or a major part of it.

He or she sets the goals or policies of the organization or a part of it.

He or she has extensive discretionary decision-making authority.

He or she receives only general supervision or direction from higher level executives, a board of directors or the stockholders of the organization.

III Persons with Specialized Knowledge

"Specialized knowledge" covers any knowledge that specifically concerns the employer's company, its procedures, products or international marketing methods. This is quite liberally applied by the INS and has enabled even executive secretaries to enter under this category.

IV Branches

Branches are different operating locations of the same company. An example of a branch office would be a company with the head office in the U.S. and a smaller office in another country, or vice versa.

V Subsidiaries

In a subsidiary relationship, one company owns a controlling percentage of another company, that is, 50 per cent or more. Either the U.S. or the foreign company may be the controlling company.

VI Affiliates

Affiliate business relationships have no direct ownership between the two companies. Instead, both are controlled by a common third entity.

VII Joint Venture Partners

A joint venture exists when there is no common ownership between the two companies, but they have undertaken a common business project together. To qualify for L-1 purposes, each company must have veto power over decisions, take an equal share of the profits and bear the losses on an equal basis.

VIII International Accounting Firms

L-1 visas are available to employees and partners of international accounting firms, provided the firm is part of an international accounting organization with an internationally recognized name.

There are many documents required to verify the claims in the petition:

1. Proof of Employment Abroad

The U.S. employer must supply documents proving that the applicant was employed outside the U.S. by the non-U.S. company for at least one of the past three years. Some possibilities are pay stubs, wage statements or personal income tax returns filed abroad. A notarized statement from the accounting department of the non-U.S. employer may be used if other documentation is unavailable. A statement explaining why the tax returns could not be submitted should be added in these circumstances.

2. Proof That The Applicant is a Manager, Executive or Person with Specialized Knowledge

The petitioner must submit evidence that the applicant's employment abroad fit the INS definition of manager, executive or person with specialized knowledge. Detailed statements from the non-U.S. employer that demonstrate
that the applicant fulfilled the criteria must be presented. These statements may be in the employer's own words.

3. Proof of a Business Relationship Between the U.S. and Non-U.S. Companies

The U.S. employer must submit documents showing that the U.S. and non-U.S. companies are in a branch, subsidiary, affiliate or joint venture relationship. Since corporate law, and thus the legal structure of companies,
differs from country to country, many different documents might be required in order to prove the relationship. However, one of the previously mentioned relationships must exist in order for the application to qualify for L-1visa
status. A resume for the alien should also be included.

4. Proof that the Applicant Will Fill a Position of a Similar Nature to the One Held Outside the U.S.

The employer must submit evidence that the position within the U.S. fits the INS definition of manager, executive or person with specialized knowledge. Detailed statements from the U.S. employer that demonstrate that the proposed position will fulfill this criteria must be presented. These statements may be in the employer's own words.

After compiling the relevant documents, the U.S. employer can file the petition. The basic form for filing a petition is Form I-129 and the L Supplement. These can be obtained from the INS web site. Form I-129 is a general form used for many non-immigrant visas, while the L Supplement is
specific for an L-1 visa. The employer must file the petition in duplicate, with a $ 1110 filing fee, at the INS regional service center having jurisdiction over the intended place of employment.

After submitting all of the documents to the INS, it takes about two to eight weeks for INS approval. If further information is required all the documents are returned to your employer with an I-72 which tells the employer what
additional information or documents are needed. If the petition is approved, a Notice of Action Form I-797 is sent. If the applicant choses to apply at a consulate, the INS will also notify the consulate, sending the consulate the file. Sometimes the INS may ask to interview the employer if it doubts that the petition documents are genuine. If everything at the interview is in order, the petition will be approved. If not, the petition will be denied. The best way to avoid an interview is to be meticulous.

Appealing a negative petition decision by the INS is not recommended. If the petition failed due to defective paper work, it makes sense to simply file a new petition. If some necessary documents were left out a written request that the case be reopened, to the same INS office that issued the denial, called a Motion to Reopen, might be employed. There is a $110 fee to file this motion which is much faster than an appeal. An appeal, on the other hand, which deals with questions of law, must be filed within 30 days of the date on the Notice of Denial. The appeal should be filed at the same INS office that issued the denial. There is a $110 filing fee. In an appeal, the INS will forward the papers to the Administrative Appeals Unit of the central INS office in Washington, DC An appeal takes more than six months to be heard and less than five per cent are successful. If an appeal has been denied, the next step is to appeal through the judicial system. The INS appeal is a prerequisite to judicial review. If you are at this point in the appeals process and you are in the U.S. illegally, you are now in danger of being deported, and should seek the advice of a qualified attorney.

The Application - Step Two

The application is the second step to attaining L-1 status. An applicant may only apply within the U.S. if the applicant meets the following extra criteria:

a) the applicant is physically present in the U.S.,
b) the applicant entered the U.S. legally,
c) the applicant has never worked illegally in the U.S., and
d) the expiry date on the applicant's 1-94 card has not passed.

If the applicant does apply from within the United States, this is known as a change of non-immigrant status application, since the application is not for a visa, but rather for a new status within the country. There is an additional $ 220 charge in order to file for a change of status.

Otherwise, the applicant must apply abroad.

When filing the petition in step one, the applicant must state at which U.S. consulate or embassy he or she will apply. The applicant may choose to apply simultaneously with the filing of the petition, or choose to apply at a later date. If the applicant does apply at a consulate and is successful, he or she will receive both a visa stamped into the passport (permission for multiple entries into the U.S.), and an I-94 card which allows the applicant to work with the benefits of non-immigrant status. However if the applicant applies
from within the United States, he or she will not receive the I-94 card, as they are only issued abroad. Thus, if the applicant wishes to leave the U.S. and re-enter, he or she will have to re-apply for an L-1 visa at a consulate even after successful adjustment from within the United States.

On the other hand, if the applicant currently has another visa, such as a H1-B employee status, and wishes to change his or her status, if the applicant applies at a consulate and is turned down, the other visa (eg. H1-b visa) may be canceled and this would make it impossible for the applicant to legally re-enter the U.S. However, if the applicant applies from within the U.S., he or she must prove that they did not intend to change their status at the time they applied for the previous visa. This is known as preconceived intent. The applicant will be turned down if the INS believes that he or she
had the preconceived intent to change status from within the United States when they were applying for their first visa. If there is any such danger it is better for the applicant to apply at a consulate abroad.

The approximate waiting times at consulates are several weeks. This is a loss of time that may be avoided if the applicant applies for the change of status at the same time as when the petition is filed.

If the applicant chooses to apply at a consulate, the approved petition evidenced by a form I-797, is the certification of the INS that the applicant has met the criteria of the particular visa. When filing the application at a consulate, a standard OF-156 or non-immigrant Visa Application must be filled out. In addition to filling this form out the applicant must present a valid passport, and one passport type photograph. If the consulate has not yet received the INS file containing the petition approval, the I-797 Notice of Action form can be used to qualify for their purposes. Accompanying relatives also require a passport and a passport photo, as well as documentation
proving their relation to the applicant. These may include a birth
certificate to prove a parent/child relationship (in countries that have both long and short versions, the long one is required), or, in the case of a spouse, documents that prove the legitimacy of the marriage.

As part of the application the consulate may require an interview before issuing an L-1 visa. The purpose of such an interview would be to check the documents supplied for accuracy. If a consulate turns down an L-1 visa application, however, there is no way to appeal, although the applicant is free to reapply as often as he or she likes.

As was already mentioned, Canadians can short circuit the process since they can file all of these papers in one step at the port of entry. This is a substantial time and procedural advantage.

In conclusion let me mention that if the applicant is eligible for, or now has, an L-1 visa as either a manager or an executive, he or she may also be eligible for a green card through employment without going through the rigorous procedures of Labor Certification. In order to use L-1 eligibility to qualify for a green card, ie. permanent resident status, the applicant does not actually have to have an L-1 visa. Showing eligibility is sufficient. These are significant advantages attached to the L-1 visa.

Andy J. Semotiuk has been practicing immigration law for over 20 years. He is a member of the California, New York, Alberta, B.C. and Ontario bars. He works with professionals and business executives helping them immigrate to the United States or Canada. As a professional speaker he has spoken on Immigration to North America in places as diverse as Hong Kong, Fiji, India, Ukraine and the United Kingdom. In the course of his career he has helped
over 15,000 clients with legal problems. He can be reached at his email address: semotiuk@aol.com.