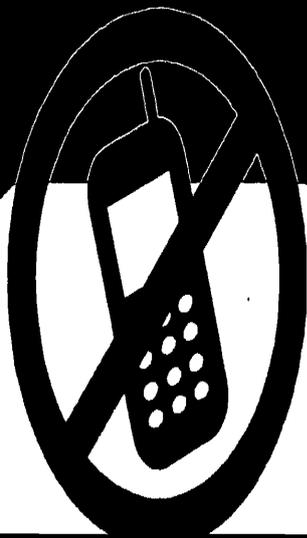


**I-129 L-1**

**Intra-Company Transferees**



## Ground Rules...

- Please turn off your cell phone.
- Use your computer to access relevant training materials.
- Please do not check your email during the training presentation.
- Please keep side-bar conversations to a minimum.

Thank you.

# NOVA

- You will back out the time spent in the training presentation and time spent with your mentor reviewing training cases under:

**“Group Activities” and “Production Trainee.”**

- Your mentor will back out the time spent in the training presentation and time spent with you reviewing cases under:

**“Group Activities” and “Production Trainer/Mentor.”**

# ePAS

- Trainees will back out the time spent in the training presentation and time spent with the mentor reviewing training cases under:

**“Administrative”, “Classroom Training” and “Formal Classroom Training”.**

- Mentors will back out their time spent in the training presentation and time spent with the trainee reviewing cases under:

**“Administrative”, “Classroom Training” and “Authorized Peer to Peer”**

# Training Back-out

- All time in the classroom working the training cases is back-out.
- All time spent with the your mentor until certified is back-out.
- After certification, you are granted two hours per week up to 10 hours or 150 actions total (to meet with your mentor).

# Training Variance

- Given on the first given on the first 150 non-denial actions and for the first 25 denials.

# General Training Information

- This presentation was created to facilitate the training process.
- All information in this presentation is superseded by the relevant laws, regulations, SOPs, policies, and guidance from management.

## Course Objective

To provide Officers with a strong foundation of knowledge upon which a quality, timely adjudicative decision can be made on a Petition for a Nonimmigrant Worker, Form I-129 Intra-Company Transferee filing.

# Performance Objective

- Through application of pertinent laws, regulations, policy, and operation instructions, successfully determine an applicant's initial eligibility and/or eligibility to extend or change his/her nonimmigrant status in the United States.



# The History of L Visa

# Definition of Intra-company Transfers?

- A 8 CFR 214.2 (l)(1)(i)

“Intra-company transfer” means an alien who, within three years preceding the date of his or her application for admission into the United States, has been employed continuously for one year by a firm or corporation, or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge...”

# Introduction

- Prior to 1965, immigration into the United States was based on the national origin, skills, and level of education of the immigrant classification and not exist for intracompany transfers.

# Legislation

■ Congress enacted the following:

- Immigration and Nationality Act Amendments of 1965;
- Public Law 91-231 (April 1970);
- Immigration Act of 2000;
- L-1 Visa Reform Act of 2004;
- Public Law 111-230

# Immigration and Nationality

## 1965 Immigration Act

- Known as the Hart-Celler Act
- The Act ended the national origin quota system that had structured immigration policy since the 1920s, replacing it with a preference system that focused on immigrants' skills and family relationships.

# Immigration and Nationality Act

Amendment of 1965

Continued

Also:

- Limited liability of multinational corporations to transfer top-level personnel visas in the United States.
- Forced foreign workers to apply for immigrant visas if they are not eligible for E nonimmigrant visas.

## Public Law 91-222 (1970)

- Created the E nonimmigrant classification at INA 101(a)(15) for non-immigrant transfers.
- Permitted multinational companies to temporarily employ top-level managers and executives of overseas firms with specialized knowledge to the United States.
- Prior to this Law, those who did not qualify as E nonimmigrants were forced to apply for immigrant visas even if they had no intent to remain permanently in the United States.

# Public Law 91-225 (1970)

## Continued

- Required that the employee worked for the employer company for at least one year prior to coming to the United States.
- Law was not intended to alleviate or remedy a shortage of U.S. workers.
- Created the L2 visa dependents.

# Immigration Act of 1990 (Public Law 101-509)

- Clarified meaning of “specialized knowledge” (knowledge of a company’s own products) creating the following definition:

For purposes of section 21(a)(1)(A), an alien is considered to be so specialized in his or her capacity involving specialized knowledge in respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

# Immigration Act of 1990

(Public Law 101-509)

(Continued)

- Placed a seven (7) year time limit on management executives.
- Placed a five year time limit for specialized knowledge employees.

# Immigration Act of 1990

(Public Law 101-509)

## Continued

- Required employers to work on contracts for a period of 3 years and with the employer for the three years immediately preceding admission.
- Permitted L-1 visas and their dependents "deemed" to apply as lawful permanent residents.
- Permitted L-2 (dependent) to work while in the United States
- Established the L Blanket classification.

# 11th Circuit Reform Act of 2004

- Only L-1Bs.
- Established that employees of a foreign work site at a worksite other than the petitioning employer's work which is controlled and advised by a different employer; or on-site arrangement is essentially to provide labor force, rather than service related specialized knowledge of the petitioning employer.

(Applies to petitions filed on or after June 6, 2005.)

# L-1 Visa Reform Act of 2004

(Continued)

- Repealed that all L-1 employees must have worked for a period of at least one (1) year outside of the United States for an employer with a qualifying relationship to the petitioning employer.
- Created a new Prevention and Detection Fee on which must be paid by the petitioner.

(Applies for petitions filed on or after March 8, 2005).

# Public Law 111-230

- Emergency Supplemental Appropriations for Border Security
  - Requires submission of an additional fee of \$1,000 for certain H-1B petitions and \$2,250 for H-1A and L-1B petitions. The fee application must be postmarked on or after August 1, 2009. Public Law 111-230 will remain in effect through September 30, 2010.

## Public Law 111-52 (continued)

- Petitioning fee applied to employers that employ 50 or more employees in the United States with more than 10% of their employees in the United States in H-1B or L-1A or L-1B1 nonimmigrant status. Petitioners meeting these criteria must submit the annual fee with an H-1B or L-1 petition.

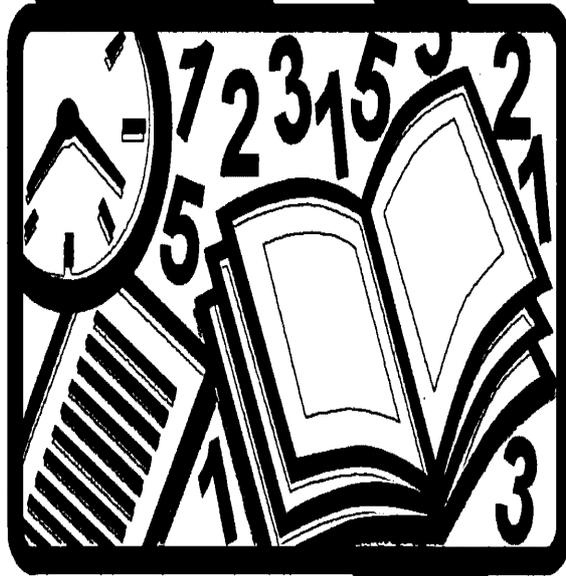
# Public Law 111-20 (continued)

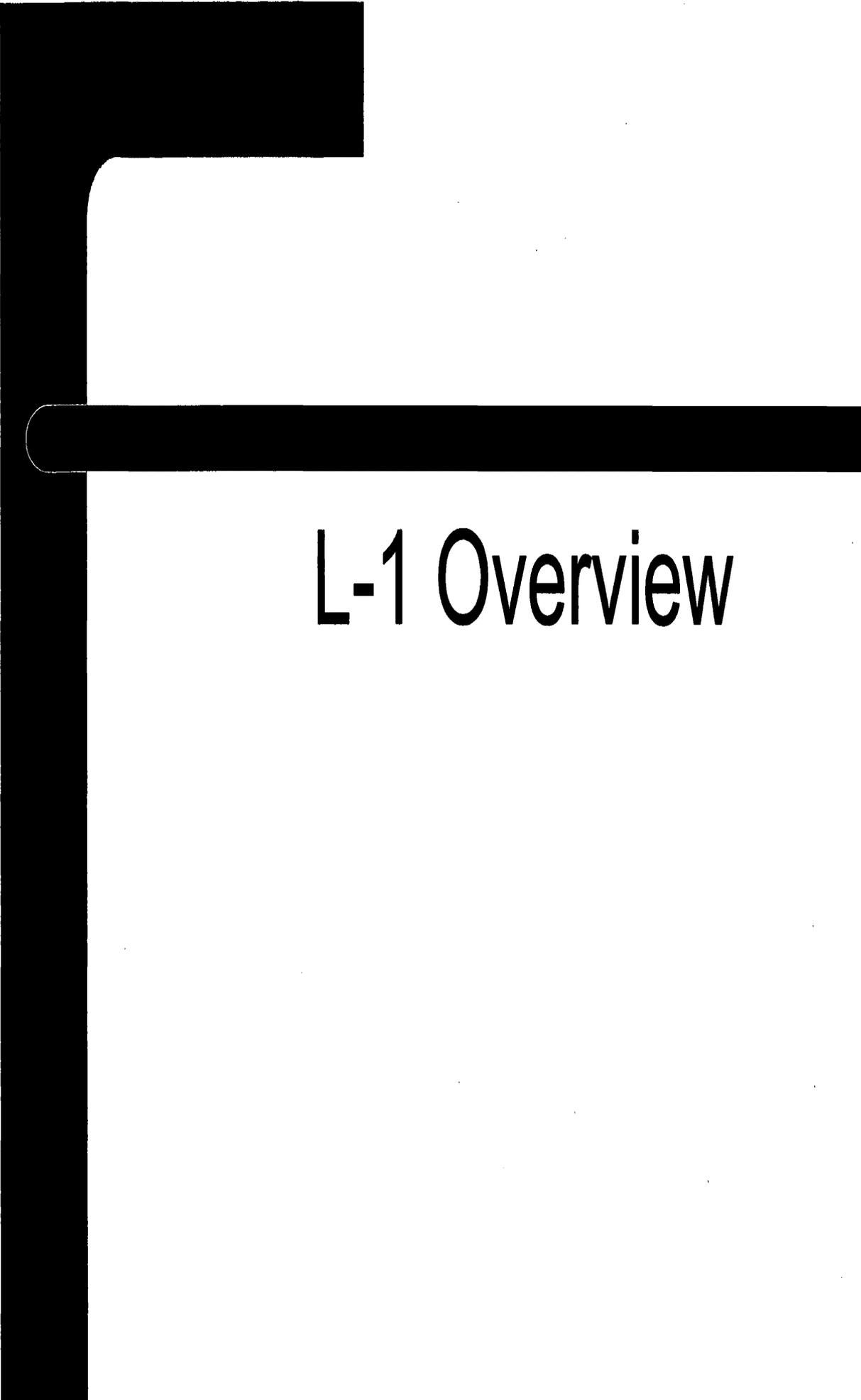
- Seeking initial nonimmigrant status for an alien described in subparagraph (i)(b) or (c) of section 101(a)(15), or
- Seeking an authorization for an alien having that status to change employers.

# The History of the H-1B Visa

- Quotas
- Companies

Thank you and enjoy the rest of  
training!!





# L-1 Overview

# Sources of Information

- INA §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- 8 CFR §§ 214.1, 214.2(l), & 248
- *Interpretation of Specialized Knowledge*, Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS (March 9, 1994)
- Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004, Memorandum of William Yates, Associate Director of Operations
- Form I-129 with L Supplement and Form I-129S

# Definition of L-1

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...an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge...

INA § 101(a)(15)(L); see also 8 CFR §

214.2(l)(1)(i)

# L Classification

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- L-1A classification is for managers and executives.
- L-1B classification is for specialized knowledge aliens.
- L-2 classification is for dependents (dependents use Form I-539).
- LZ is the designation given to an approved blanket petition. The Petitioner is referred to as a Blanket Petitioner, there is no individual beneficiary of an approved LZ.

# L Classification

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L-1A and L-1B are CLAIMS/GUI designations. When an intra-company transferee is admitted to the United States, the alien is admitted by CBP as an L-1, or, in the case of an extension of stay or change of status, is granted L-1 classification. Therefore, you will only see the classification “L-1” on the Form I-94 issued to the aliens.

# 30 day Processing Time

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INA § 214(c)(2)(C) of the Act states that USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a completed petition has been filed.

8 CFR § 214.2(l)(7) indicates that a Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS. If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.

# Where to File the I-129

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- I-129 L-1 petitions are primarily filed at the CSC and VSC.

Exception:

- NAFTA & I-129S filings may be filed at a POE/PFI or Service Center.
- Blanket filings may be filed at a consulate or a Service Center.

**NOTE:** Jurisdiction is determined by the beneficiary's work location or (in the case of I-129S) the Service Center that adjudicated the Blanket petition

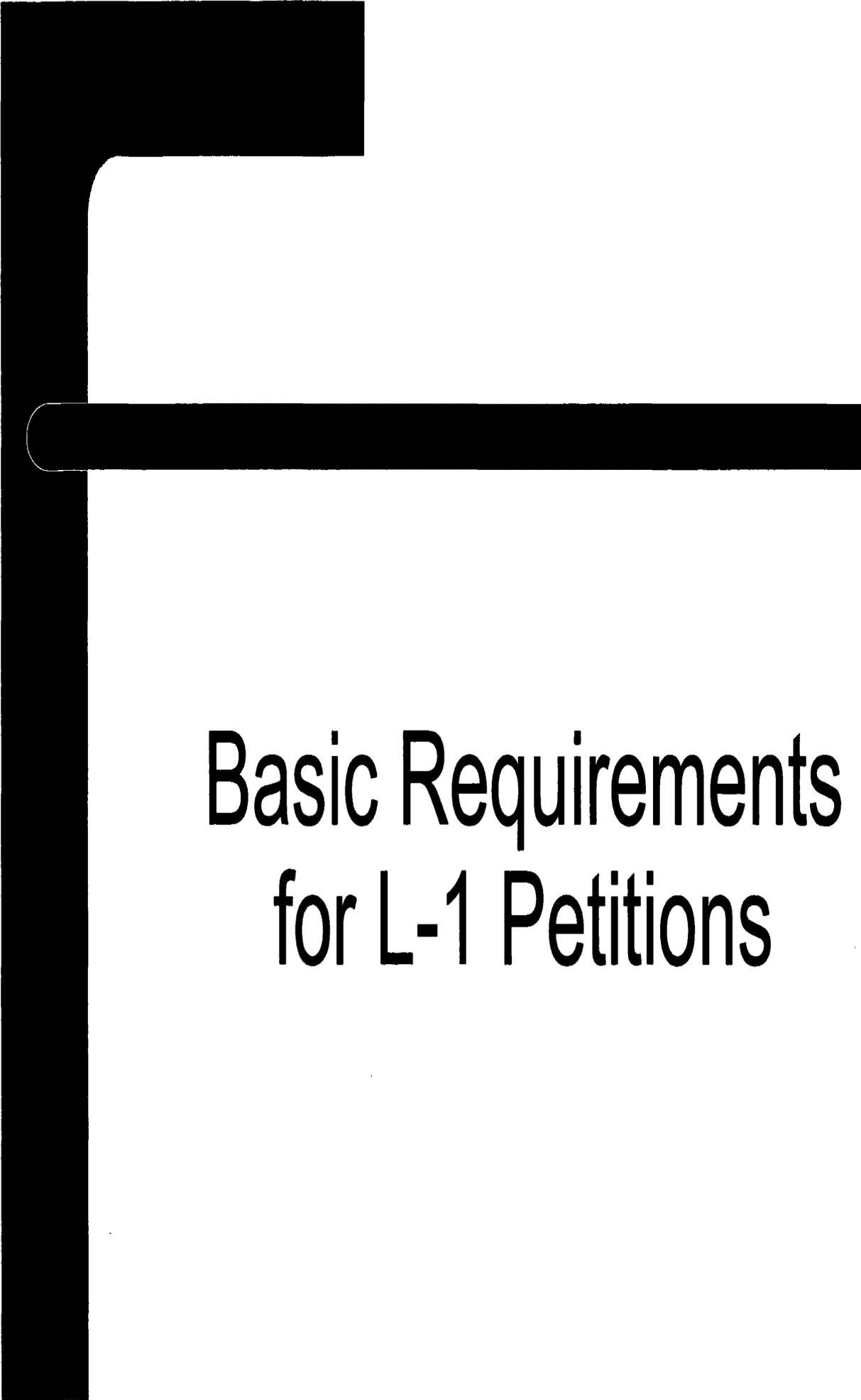
# Fees

- I-129 (L-1 and LZ) Petition filing fee: **\$325.00**. Note that there is no filing fee for an I-129S, *Nonimmigrant Petition Based on Blanket L Petition*.
- Fraud Prevention and Detection Fee: **\$500.00**. This fee is required to be paid by Petitioners seeking the initial approval of an I-129 L-1 petition (including a change of status to L-1, or a petition for new concurrent L-1 employment). There are no exceptions or waivers available to the Fraud Prevention and Detection Fee. The Fraud Fee does not need be paid when a petition seeking blanket LZ approval is filed.

See INA § 214(c)(12).

## Fees, cont.

- P.L. 111-230 fee: **\$2,250.00**. Effective 8/13/2010, this law requires employers filing an L-1 petition prior to October 1, 2014, who are required to pay the \$500 Fraud Prevention and Detection fee as detailed above, to pay an additional \$2,250 if: (1) they employ 50 or more employees in the United States; and (2) more than 50% of those employees are in H-1B or L-1 status.



# Basic Requirements for L-1 Petitions

# Basic Requirements for an Individual L-1 Petition

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1. A qualifying organization is filing the petition.
2. Beneficiary was employed abroad for one continuous year in a managerial or executive capacity, or a position that involves specialized knowledge within the three years prior to his or her admission to the United States.
3. Proposed employment in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.

8 CFR § 214.2(l)(3)

# Qualifying Organization Defined

See 8 CFR § 214.2(l)(1)(ii)(G)

- Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Has a qualifying relationship between the U.S. entity and a foreign entity.

(2) Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

# Employment Abroad

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- The regulation indicates that a qualifying employee must have at least one continuous year of full-time employment abroad in a capacity that was managerial, executive, or involved specialized knowledge with a qualifying organization within the three years preceding the beneficiary's admission.

8 CFR § 214.2(l)(3)(iii) and (iv)

INA 101(a)(15)(L)

8 CFR 214.2(l)(1)(ii)(A)

- This is referred to as the “1 in 3” rule.

## Employment Abroad (Continued)

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It is important to note that the 1 in 3 rule is a combination of two separate regulatory requirements which require two different but related analyses.

The Petitioner must submit sufficient documentation establishing that:

- The beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. See 8 CFR § 214.2(l)(3)(iii).
- For the entire one year of continuous employment abroad, the beneficiary was performing in a capacity that was managerial, executive, or required specialized knowledge. See 8 CFR § 214.2(l)(3)(iv).

## Employment Abroad (Continued)

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- Both previous foreign employment and the prospective U.S. employment must be in one of the qualifying capacities.
- The prior foreign employment and proposed U.S. employment capacity do not have to be the same. For example, the one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for an L-1A position in the United States. See 8 CFR § 214.2(l)(3)(iv).

## Employment Abroad (Continued)

- Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

See 8 CFR § 214.2(l)(1)(ii)(A).

# Position in the United States

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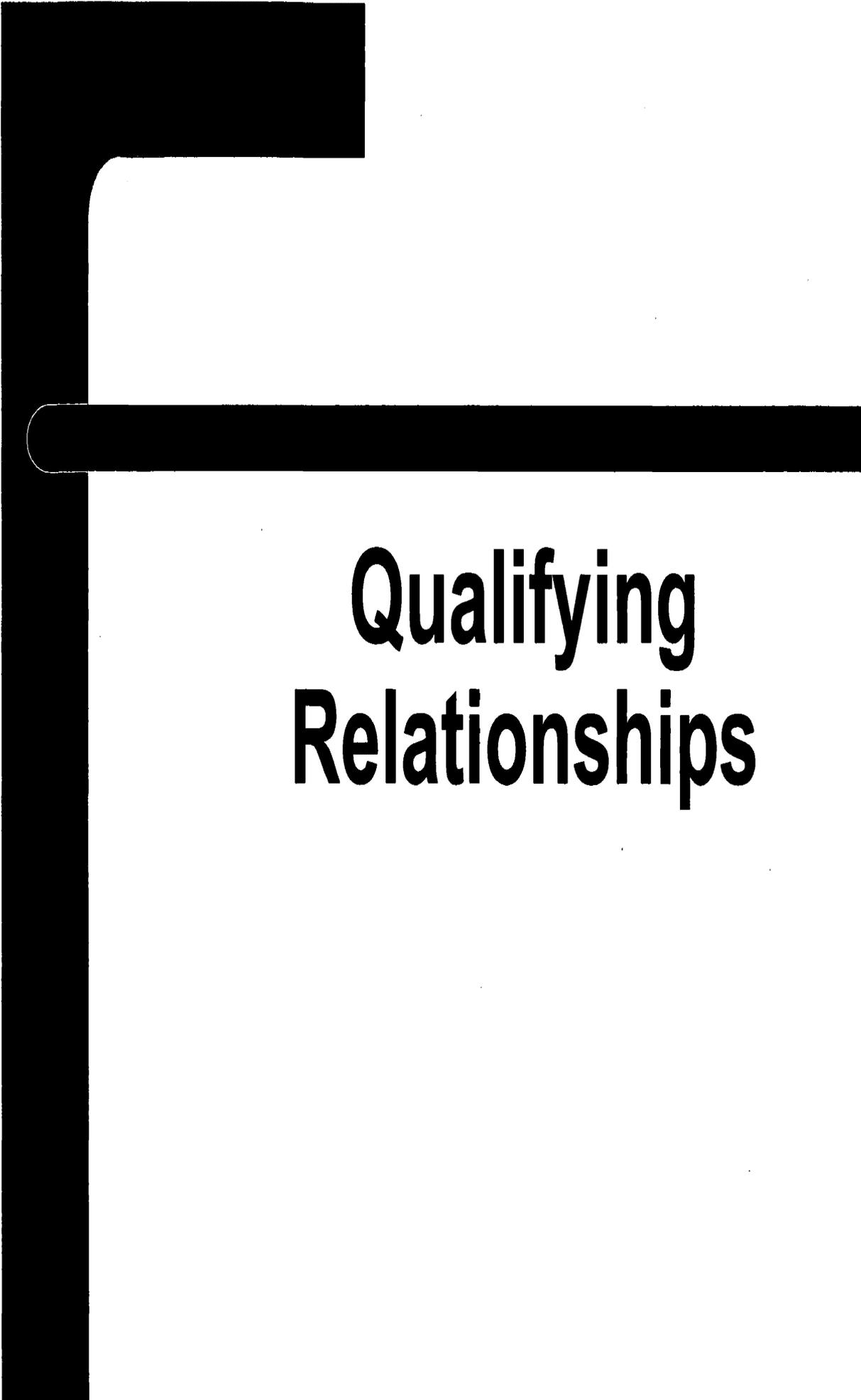
The Petitioner must submit sufficient documentation establishing that:

- The position in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.

## Beneficiary's Qualifications for the Position in the U.S.

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The regulation states that the employee need not be filling the same position in the United States that he/she occupied abroad. However, the regulation indicates that the employee must be qualified for the position in the United States.



# **Qualifying Relationships**

# Qualifying Organization

## - Does a qualifying relationship exist?

- The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:
  - Parent. 8 CFR § 214.2(l)(1)(ii)(I)
  - Branch. 8 CFR § 214.2(l)(1)(ii)(J)
  - Subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)
  - Affiliate. 8 CFR § 214.2(l)(1)(ii)(L)

# Parent

- Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 CFR § 214.2(l)(1)(ii)(l)

- For a broader explanation of what constitutes a 'parent,' the definition of subsidiary at 8 CFR § 214.2(l)(1)(ii)(K) indicates that a parent company is an entity which owns and controls the operations of a subsidiary by:

- (1) Owning either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.

## Parent (Continued)

- (2) Owns either directly or indirectly half of the subsidiary and controls the subsidiary.
- (3) Owns either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary.
- (4) Owns either directly or indirectly less than 50% of the entity but in fact controls the entity.

# Branch

Branch means an operating division or office of the same organization housed in a different location.

8 CFR § 214.2(l)(1)(ii)(J)

- An “arm” of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign corporation operating in the United States.

# Subsidiary

- Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent.

8 CFR § 214.2(l)(1)(ii)(K)

It must be established that the parent:

(1) Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.

(2) Owns either directly or indirectly half the subsidiary and controls the subsidiary.

## Subsidiary (continued)

- (3) Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary.
  
- (4) Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary.

## Issues Regarding Ownership and Control

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- Ownership and control can happen two ways:
  - 1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.
  - 2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of an entity yet still controls the entity.

# ***Example***

Subsidiary – More than 50%

```
graph TD; A[Company A, the Parent] --- B[Company B, the Subsidiary is 100% Owned and Controlled By Company A];
```

Company A, the Parent

Company B, the Subsidiary is  
100% Owned and Controlled  
By Company A

# *Example*

control of the subsidiary

Company A, the Parent

Company B, the Subsidiary is 50%  
Owned and Controlled by Company A

## ***Example – Parent Owns Less Than 50%***

Subsidiary – Less than 50%  
owned by parent but  
controls the entity

Company A, the Parent

Company B, the Subsidiary  
Company A owns less than 50% but controls  
Company B

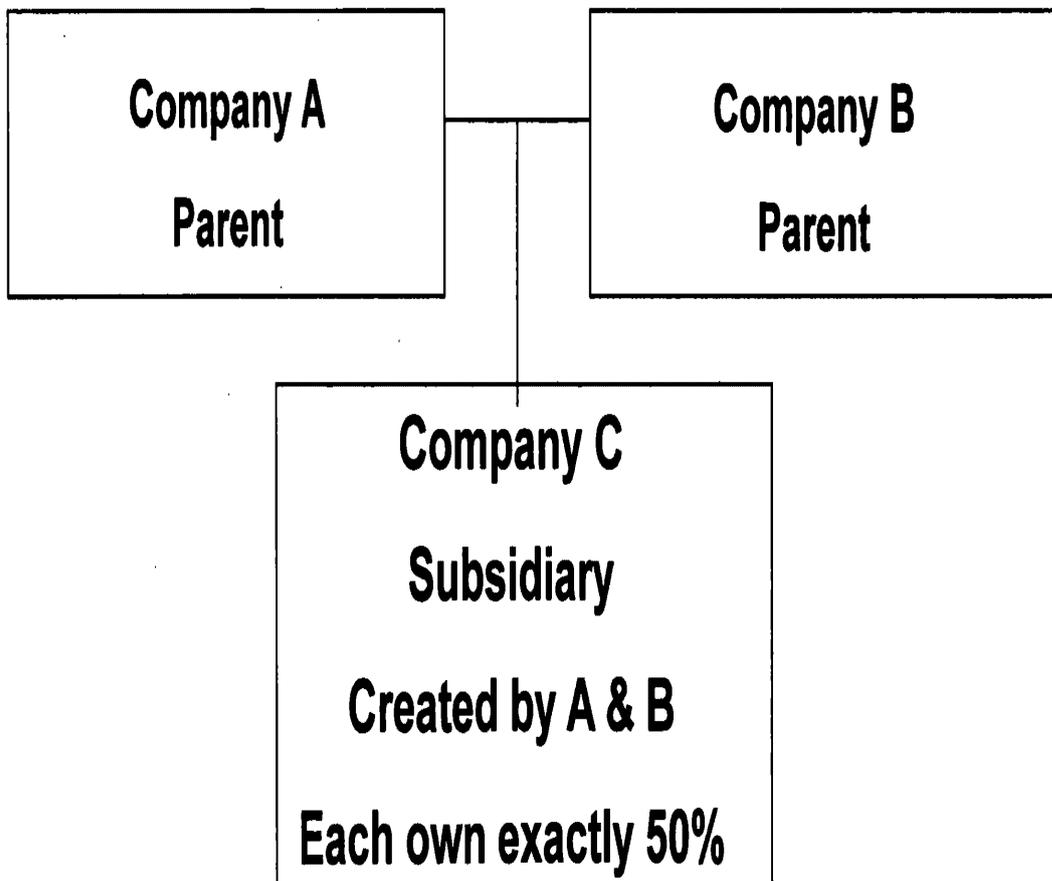
# Joint Venture as Subsidiary

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- Joint venture: Parent owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity.
- Neither parent has sole control. They must agree to all controlled aspects. Thus, both have control. This is called “negative control”.

***Joint Venture – Two Parent Companies own  
50% of a subsidiary***

**Subsidiary – 50% of  
50/50 Joint Venture**



## Joint Ventures – Two Parent Companies Own a Subsidiary

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- An alien L-1 cannot be transferred through the joint venture.
- In the above chart:
  - An alien can be transferred from A to C or C to A.
  - An alien can be transferred from B to C or C to B.
  - But, an alien cannot be transferred from A to B or B to A.

# Affiliate

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Affiliate means:

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

8 CFR § 214.2(l)(1)(ii)(L)

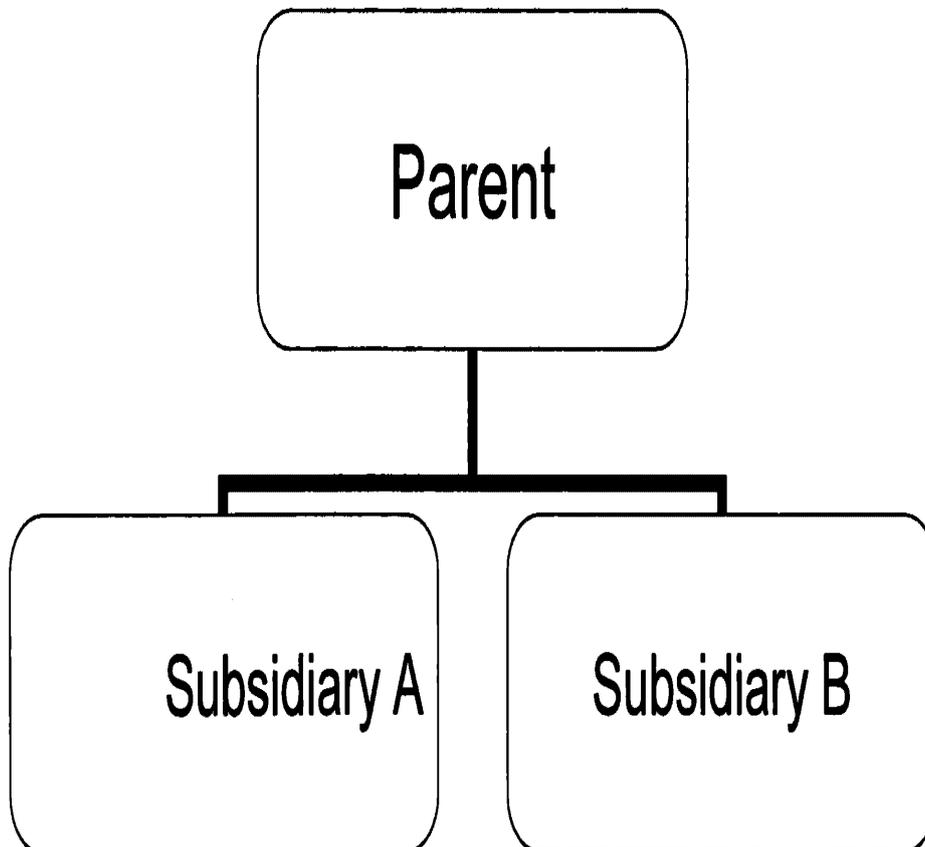
## Affiliate (continued)

- (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

8 CFR § 214.2(l)(1)(ii)(L)

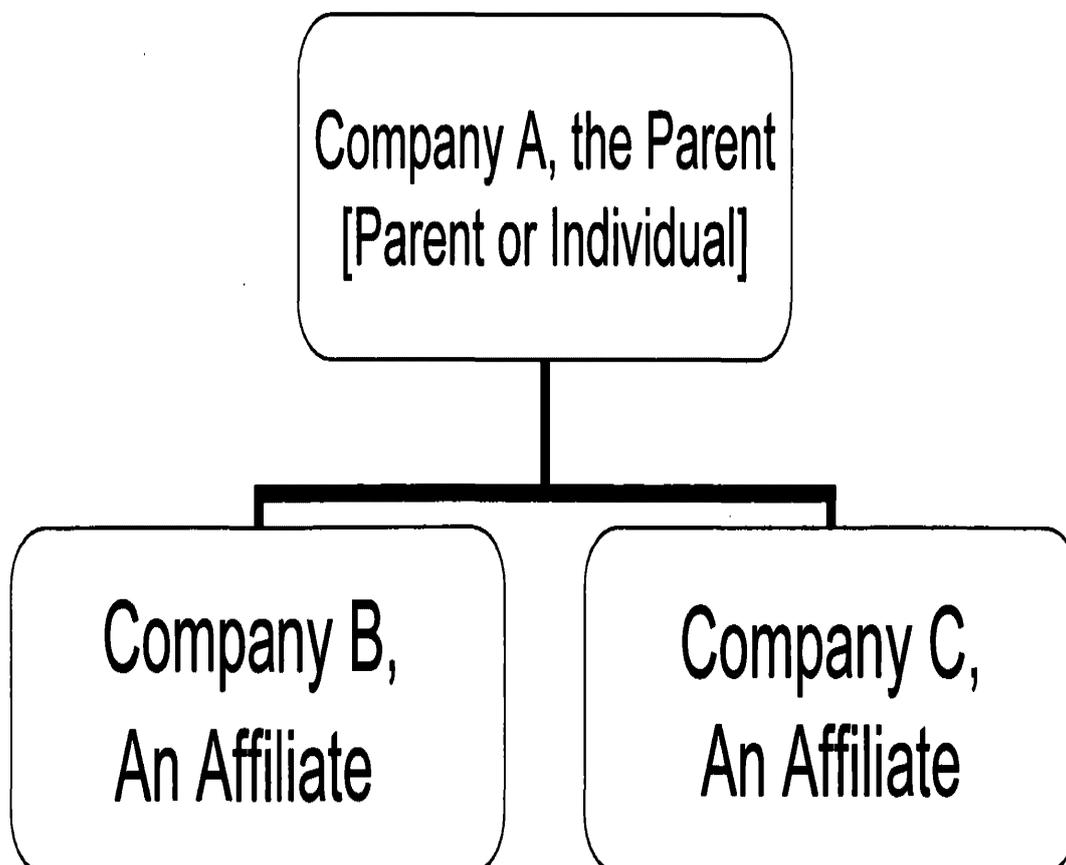
# A Note About Subsidiaries and Affiliates

An Affiliate is comparable to a sibling relationship. If this parent co. owns 100% of Subsidiary A and 75% of Subsidiary B, Subsidiaries A and B are affiliated.



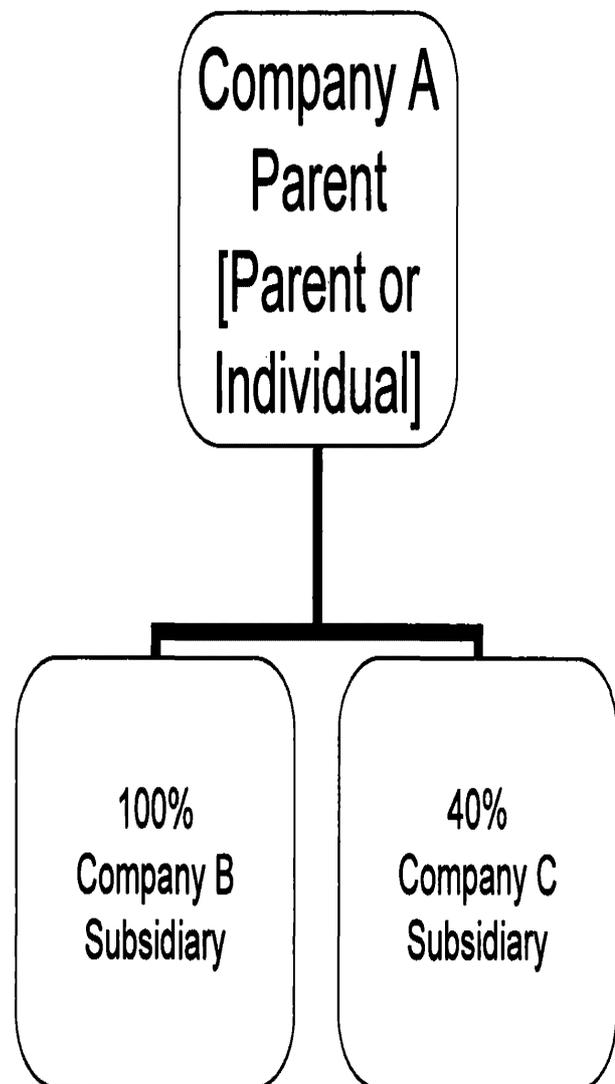
## Example- How two separate subsidiaries can be affiliates of each other

Parent Company A owns 100% of both subsidiaries B and C. Company A controls B and C. Companies B and C are affiliates.



## ***Example 2 – When separate subsidiaries are not affiliates of each other***

Parent Company A owns 100% of subsidiary B and 40% of subsidiary C. Company A controls B but not C. Companies B and C are not affiliates. Company A's employee may qualify to work at B but not C.



## Affiliates – Multiple Owners

---

One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

## Example- Multiple Owners of Qualified Affiliates

The two entities below are owned by individuals A, B, C, and D in the percentages indicated

These entities are affiliates as they are both owned by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity

A	B	C	D
25%	25%	24%	26%

A	B	C	D
26%	24%	25%	25%

# Franchise Agreements

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- Franchises are companies operating under franchise agreements. Franchise agreements are entered into to allow one independently owned company to license the name and/or product of another independently owned company.
- There is usually no qualifying relationship between a foreign entity and a U.S. entity associated by a franchise agreement or contract.

*See Matter of Schick, 13 I&N Dec. 647 (Reg. Comm. 1970)*

## Franchise Agreements (continued)

Example: *Cheap TV's* located in the United States enters into a franchise agreement with *BONY Corp* in Japan. Under the agreement, *Cheap TV's* will be the sole distributor of *BONY* flat screen televisions in the United States and will be able to open and operate stores under the name *BONY Corp* but still wholly owned by *Cheap TV's*. In return, *BONY* will receive 10% of the profit from each flat screen television sold.

# Affiliate – Partnership Accounting

- A partnership that is organized in the United States to provide accounting services along with managerial, and/or consulting services will be considered an affiliate of a foreign partnership (or similar organization) that provides accounting services in another country if:
  - (1) They both market their services under the same internationally recognized name,
  - (2) Under the agreement with a worldwide coordinating organization that is owned by member accounting firms,
  - (3) Both the U.S. accounting partnership and the foreign accounting partnership are members of the worldwide coordinating organization.

8 CFR 214.2(l)(1)(ii)(L)(3)

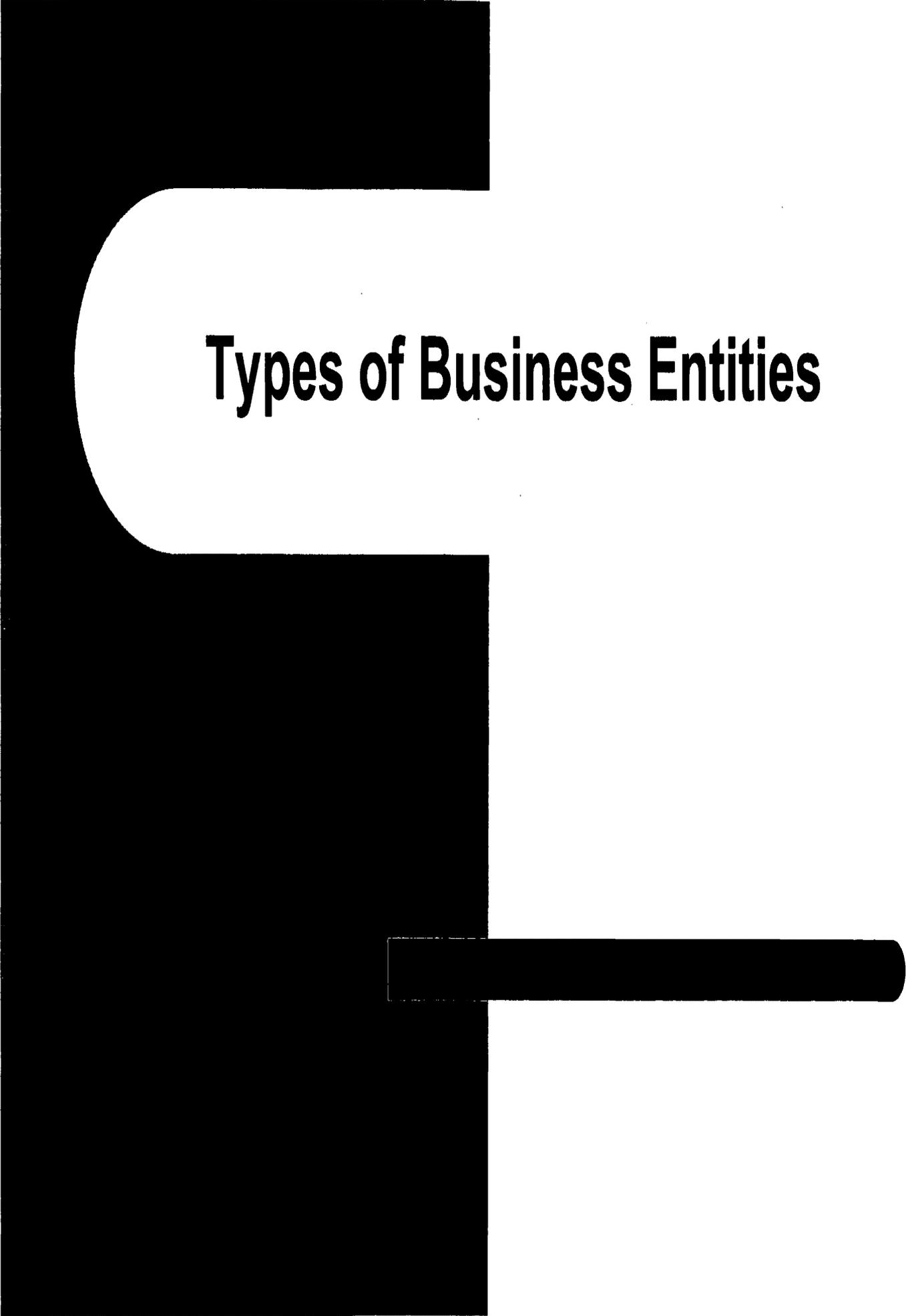
# Affiliate – Partnership Accounting

- **Explanation:** Accounting firms such as *Deloitte Touche Tohmatsu Limited (Deloitte)* are large internationally branded accounting firms. However, the individual Deloitte firms in each respective country are single entity partnerships that do not normally own any part of the Deloitte firms in the other countries. [Deloitte-U.S. is an accounting firm set up as a partnership that is owned by the U.S. partners that in most instances do not own any part of Deloitte- Spain.] However, these firms are all part of an agreement to provide services under the same name and coordinated through a organization that is set up and owned by the member organizations with no actual control exerted by one member firm. This set-up has significant business benefits as it allows the individual member firms to refer their clients to other foreign member organizations and/or receive new clients through the same referral process. It also allows these firms to meet the different accounting regulations that are set up in each country and to cut ties with offending accounting firms without suffering financial losses.
- These accounting partnerships are considered affiliates even though they do not exert control on each other or actually own any significant portion of each other.

## Well Known Examples of Accounting Service Affiliates

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- Pricewaterhouse Coopers L.L.P.
- Ernest & Young L.L.P.
- KPMG Peat Marwick L.L.P.
- Deloitte & Touche, Tohmatsu Limited (Deloitte) L.L.P.
- Schneider Downs & Co. Inc.
- Alpern, Rosenthal & Co.
- Sisterson & Company L.L.P.



# **Types of Business Entities**

# Types of Business Entities

- Sole Proprietorship
- Partnership
- C Corporation
- S Corporation
- Limited Liability Company
- Joint Venture

# Sole Proprietorship

Someone who owns an unincorporated business by him or herself. It is a business owned by an individual.

# **Sole Proprietorship Characteristics**

- **Easiest business to create. Established when an individual starts a business. Not required to execute or file any paperwork.**
- **There is no legal distinction between the owner and the business. The owner is personally responsible for the debts of the business.**
- **Owner's liability may exceed the assets of the business.**

## **Sole Proprietorship Characteristics Continued**

- Business income is not taxed separately from the owner.
- Business net income/loss is reported on Schedule C or C-EZ filed with Form 1040.
- Schedule C shows the profit or loss of the business.

# Partnership

A partnership is the relationship existing between two or more persons who join to carry on a trade or business. Each person (partner) contributes money, property, labor or skill, and expects to share in the profits and losses of the business.

# Types of Partnership

There are two types of partnership:

General

Limited

# General Partnership:

Is two or more partners in which each partner is liable for any debts taken on by the business. Since the partners do not enjoy limited liability, all the partners' assets can be involved in an insolvency case against the company.

No formal, written partnership agreement is required to create a general partnership. However, general partnerships typically do execute agreements.

# Limited Partnership

Entity in which one or more persons, with unlimited liability, called general partners, manage the partnership, while one or more other persons contribute only capital. Limited partners have no right to participate in the management and operation of the business and assume no liability beyond the capital contributed.

# Partnership- Ownership and Control

- Only general partners can be considered to have both ownership and control over a limited partnership. Limited partners are not allowed to participate in the business.
- Common documents provided to show ownership and control:
  - Form 1065 Federal Tax Return
  - Partnership Agreement

# Partnership Agreements

The agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited interest,
- Each partner's initial percentage of ownership,
- The type of business conducted,
- How the partnership interest can be transferred,
- The conditions under which the partnership can be dissolved.

# Partnership Tax Returns

The profits and losses of the partnership are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

# Partnership Tax Returns Continued

The partnership's tax return provides information that is relevant to the adjudication of I-129s:

- Date of origination of the partnership,
- The names and % of ownership of each partner at year end,
- Whether the partnership has limited partners, and
- Evidence of business activity in the U.S.

**NOTE:** A partners percentage of ownership may not equal his or her capital investment.

# C Corporation

## Definition:

separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

# Distinguishing Features of a Corporation

1. Limited Liability
2. Easy transfer of ownership
3. Continuity of ownership
4. Centralized management

# Corporations continued

## Limited Liability:

The debts of the corporation are the responsibility of the corporation.

Shareholders cannot lose any more money than they paid for their stock.

## **Corporations continued**

**Easy transfer of ownership:**

**Ownership is transferred with the sale or transfer of stock.**

# Corporations continued

Continuity of ownership:

Corporation doesn't end with the death of a owner like in a sole proprietorship or partnership.

# Corporations continued

Centralized management:

Each corporation is made up of a board of directors who manage the business.

# Ownership & Control of Corporations

Several documents can be used to demonstrate ownership and control.

- Certificate of Incorporation
- Articles of Incorporation
- By-Laws
- Stock Certificates both common and preferred
- Stock ledger
- Tax Return
- Annual Report
- Form 10 K (typically seen from large companies)

# Certificate of Incorporation

The birth certificate for the corporation. It shows that the corporation exists as a legal entity.

# Articles of Incorporation

Will identify the:

- Acceptable business activities that may be conducted.
- Type and number of stock shares that may be authorized and issued by the corporation.
- Par value, if any of the stock shares.

# By-Laws

Rules made by the board of directors that govern how the corporation will function. The rules may not conflict with any provision of the articles of incorporation.

The bylaws cover such topics as:

- Location of the corporation
- Location of annual meeting and special meetings of the corporation
- For a stock certificate, information about stockholders and voting of shares of stock
- Date and place of the annual meeting
- Corporate officers and their duties
- Board of directors membership, meetings, compensation, selection and removal of board members
- Information about corporate records

# Corporate Tax Returns

Most corporations file Form 1120, U.S. Corporation Income Tax Return.

- A corporate tax return provides information that is relevant to the adjudication of I-129s:
- Date of incorporation
- Evidence of business activity
- The name of individuals or organizations that own the corporation.

# Structure of Corporations

Common terms in corporate structure:

- Parent
- Branch
- Subsidiary
- Affiliate

These terms refer to the degree of ownership. Each term will be discussed later.

# S Corporations

Corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes.

## **S Corporations Continued**

S Corps are not taxable entities. They are required to file an informational tax return called a Form 1120S, U.S. S Corporation Income Tax Return.

Income and expenses flow to the shareholders' individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

## Schedule K

- is comprised of various questions that the corporation needs to answer, including what accounting method is used, business activity codes, and type of product or service offered. This schedule also includes questions about foreign and other related companies.

# To Qualify as a S-Corporation

Corporation must:

- Be a domestic corporation.
- Have only one class of stock, common.
- Have no more than 100 shareholders
- Have as shareholders only individuals, estates, and certain trusts.
- Have shareholders that are U.S. citizens or residents of the U.S.

# Ownership and Control of S Corp.

Corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp. If this type of ownership is claimed, additional evidence will be needed.

Note: A U.S. corporation may own a foreign entity which may create the required relationship.

# Limited Liability Company (LLC)

A form of business organization with the liability-shield advantages of a corporation and the flexibility and tax pass-through advantages of a partnership.

# LLC Continued

## Advantages:

- Like a corporations, owners have limited liability for the debts and actions of the business
- Like a partnership, the profits and losses can pass through to the owners of the LLC.  
Allows owners to avoid double taxation.

## LLC Continued

### Disadvantages:

There is a “transferability restriction test” which means it is not as easy to transfer ownership of the company. This can make it hard for a growing company to get financing.

## LLC Continued

The federal government does not recognize an LLC as a classification for federal tax purposes. An LLC business entity must file as a corporation, partnership or sole proprietorship.

# LLC Continued

## LLC Tax returns:

- LLC filing as a Corporation- Form 1120
- LLC filing as a Partnership- Form 1065
- LLC filing as a S-Corporation- Form 1120S
- LLC filing as a sole proprietorship, Form 1040

# Joint Venture

Two or more individuals or entities working together for a joint profit motive.

A joint venture can be a corporation, a partnership, or a non-entity.

## **Joint Venture Continued**

**Joint venture participants create a separate entity to carry on a trade, business, financial operation, or venture and divide the profits from the entity.**

**A joint venture created solely to share expenses does not create a separate entity.**

## **Joint Venture Continued**

Joint Ventures are typically created for a single project and are for a defined period of time.

# Joint Venture Advantages

- New capacity and expertise
- Access to new markets
- Access to greater resources
- The sharing of risks
- Flexibility

# Joint Venture Disadvantages

- It takes time and effort to build the right relationships.
- Objectives of the venture are not always clear and/or communicated well.
- Imbalance in levels of expertise, investment or assets brought to the relationship.
- Differing cultures and management styles.

# Joint Venture Agreement

A Joint Venture Agreement should cover:

- The parties involved
- The objectives of the joint venture
- The financial contribution of both parties
- Intellectual property developed by the participants in the joint venture.
- Day to day management of finances
- Dispute resolution
- Terminating the agreement
- The use of confidentiality or non-disclosure agreements

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# Non-Profit Organizations

- A non-profit organization is one that is organized for a purpose other than generating a profit.
- A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization.
- A non-profit must be incorporated to obtain tax-exempt status and commence doing business as a legal entity.

# Non-Profit Organizations

Are exempt from federal income tax. Examples of these organizations include:

- 501(c)(3) Charitable, religious, and educational organizations.
- 501(c)(4) Civic leagues and social welfare organizations.
- 501(c)(5) Labor/agricultural/horticultural organizations.
- 501(c)(6) Business and professional leagues.
- 501(c)(7) Social and recreational clubs.

\*The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.;

# **Non-Profit Organizations (continued)**

- Non-Profits are rare in L filings but they do occur.
- Generally, these organizations have “branch” organizations or “sister” corporations abroad.
- Evidence of ownership and control will include incorporation document, audited or reviewed financial statements, or federal informational returns.

# **Non-Profit Organizations (continued)**

**File Form 990 – Information Returns. There are five different Form 990s:**

**Form 990, Return of Organization Exempt from Income Tax.**

**Form 990-EZ, Short Form Return of Organization Exempt from Income Tax**

**Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as Private Foundation**

**Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons.**

# Evidence of Ownership and Control

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- Evidence of Ownership and Control must be submitted to establish the qualifying relationship.
- The petitioner may submit any evidence that it feels is appropriate; Officers must weigh the evidence submitted appropriately. The best evidence is financial documentation showing that the foreign entity and the U.S. entity are financially linked.
- Submission of Stock Certificates is a common way that Petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated on the stock.

# Reviewing Stock

## Preferred Stock vs. Common Stock

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Companies generally issue two types of stock; common stock and preferred stock.

- Preferred stock usually gives holders certain privileges regarding the assets of the corporation in the event of a bankruptcy, but usually does not give preferred stockholders any voting rights. For L-1 purposes, if control is an issue in determining ownership, the stockholders with preferred stock would not qualify if they lack “control in fact” of the corporation/entity. For this reason, preferred stock certificates are rarely submitted as evidence.
- While common stock holders typically do not receive such privileges, they are, generally, the shareholders who have certain voting rights with respect to how the corporation may be managed. Common Stock holders generally do have various degrees of control over the corporation.

# Reviewing Stock Certificates

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- When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the entity seeking to establish control.

Example: Brown-India indicates that they have a qualifying relationship with Brown-U.S. Brown-U.S. has issued 2 million shares of common stock. Brown-India submits a stock certificate indicating that they own 1.1 million shares of Brown-U.S. stock. Because Brown-India owns more than 50% of the voting stock issued by Brown-U.S., they have a qualifying relationship of parent-subsiary.

# Are the Stock Certificates Genuine?

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There is always a possibility that the submitted stock certificates may have been altered in order to make a qualifying relationship appear to exist and/or the possibility that the stock certificates were not issued in the normal course of business.

If this is suspected, an Officer should review the stock certificates to determine if they (and the information contained on them) are genuine and were produced in the normal course of the company's business. Generally, an acceptable stock certificate includes the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

**Certificate**

No. \_\_\_\_\_

For \_\_\_\_\_ Shares

Issued to

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Given \_\_\_\_\_

From whom transferred

\_\_\_\_\_

Given

in legal English	in legal Latin	in the French
_____	_____	_____

Number of Shares to \_\_\_\_\_

For \_\_\_\_\_ Shares

On \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

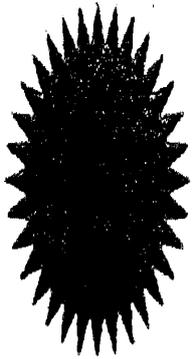
\_\_\_\_\_

No. \_\_\_\_\_ Shares \_\_\_\_\_

**A. Datum Corporation**

*This Certificate that \_\_\_\_\_ is the registered holder of \_\_\_\_\_ Shares of the Capital Stock receivable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.*

*In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal is so hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_*



# STOCK CERTIFICATE

THIS IS TO CERTIFY THAT

\_\_\_\_\_

IS THE OWNER OF \_\_\_\_\_ SHARES OF STOCK

OF \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ IN THE YEAR \_\_\_\_\_

AT: \_\_\_\_\_

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
SIGNED



Certificate provided by [www.usbizforms.com](http://www.usbizforms.com)

# Are the Stock Certificates Genuine?

## Continued

---

A comparison to the company's stock ledger may help validate the certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or "cancellation" of stock.

# Are the Stock Certificates Genuine?

## Continued

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- In those *limited* instances where the officer has *reason to question* the validity or authenticity of the stock certificate(s), it may also be appropriate to ask for evidence of the transfer of payment for the stock certificate(s) in question. Such evidence may include but is not limited to copies of cashed checks or documentation of wire transfers.

# When to Ask for Financial Evidence of Ownership and Control

- As indicated previously - the officer has reason to question the validity or authenticity of submitted stock certificates.
- In the case of a new office, if the submitted evidence is insufficient to determine whether the size of the U.S. investment is sufficient to conduct business.
- If the entity is a type that does not issue stock certificates, such as a partnership or limited liability corporation.
- If the Officer can articulate a justifiable reason that necessitates asking for the evidence.

# Examples of Financial Evidence

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1. Evidence of the stock purchase or Capital Contribution (if stock has no par value or company is anything other than a corporation, i.e. partnership or LLC).
  - Wire transfer receipts
  - Copies of cancelled checks
  - Deposit receipts
  - Bank statements

This list is not all-inclusive.

2. Larger well-known companies may submit Annual Report/10-K or Federal Income Tax returns.

# Issues Regarding Ownership and Control

- Ownership of a subsidiary need not be majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982).
- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on behalf of a stockholder of a corporation.

Example: Company A owns 49% of the voting stock of Company B and has proxy power over an additional 2% of Company B's voting stock. Company A has control of Company B by having the majority voting power of Company B (51%).

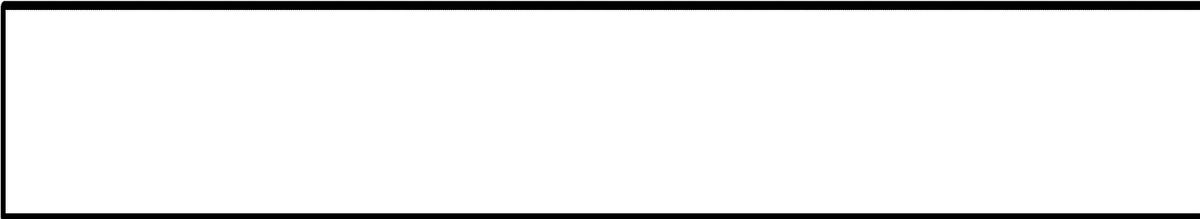
# VIBE for I-129 L Adjudication



# Introduction

How VIBE differs for L-petitions?

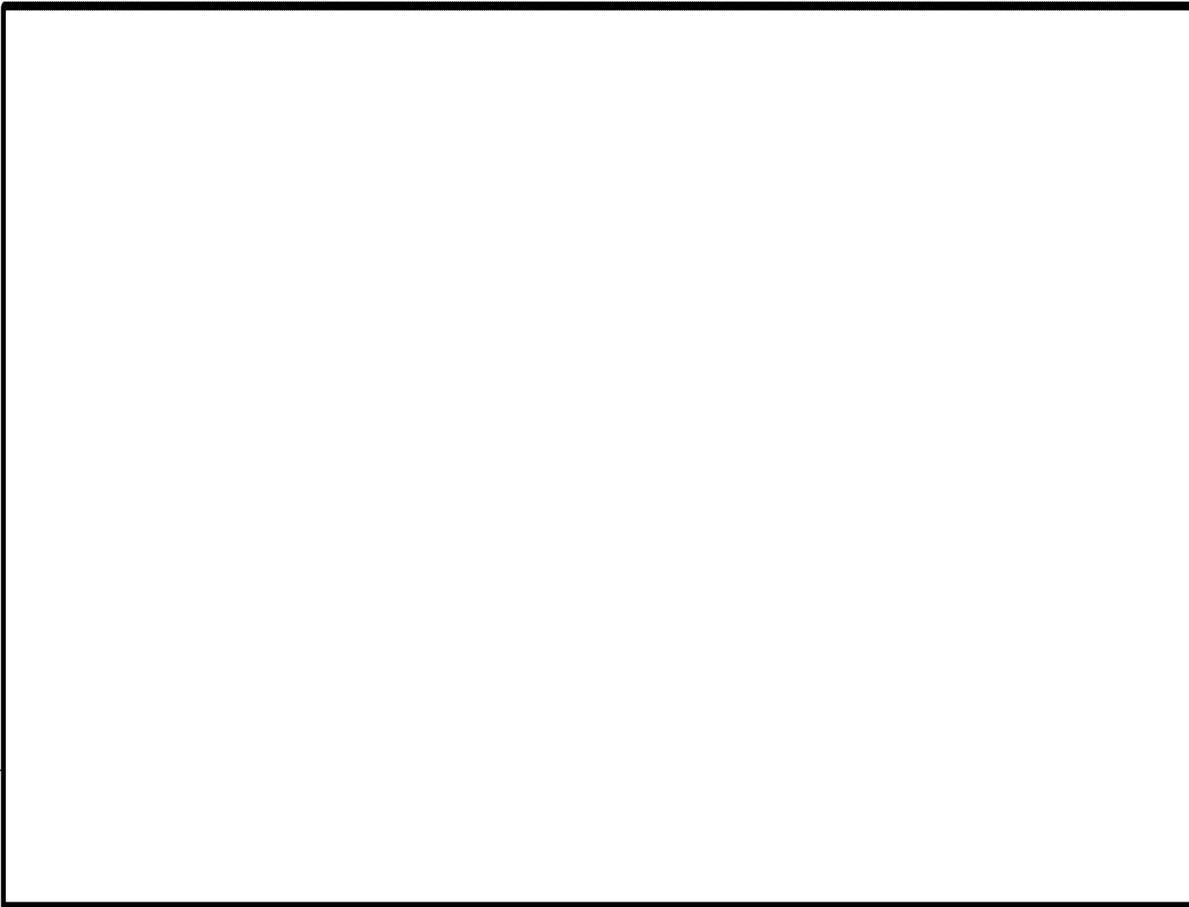
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# VIBE Processing

(b)(7)(e)

- Aside from foreign affiliation issues, process L cases the same as you would other I-129 filings.



# VIBE Exceptions

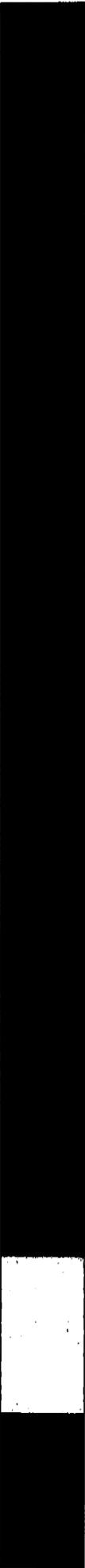
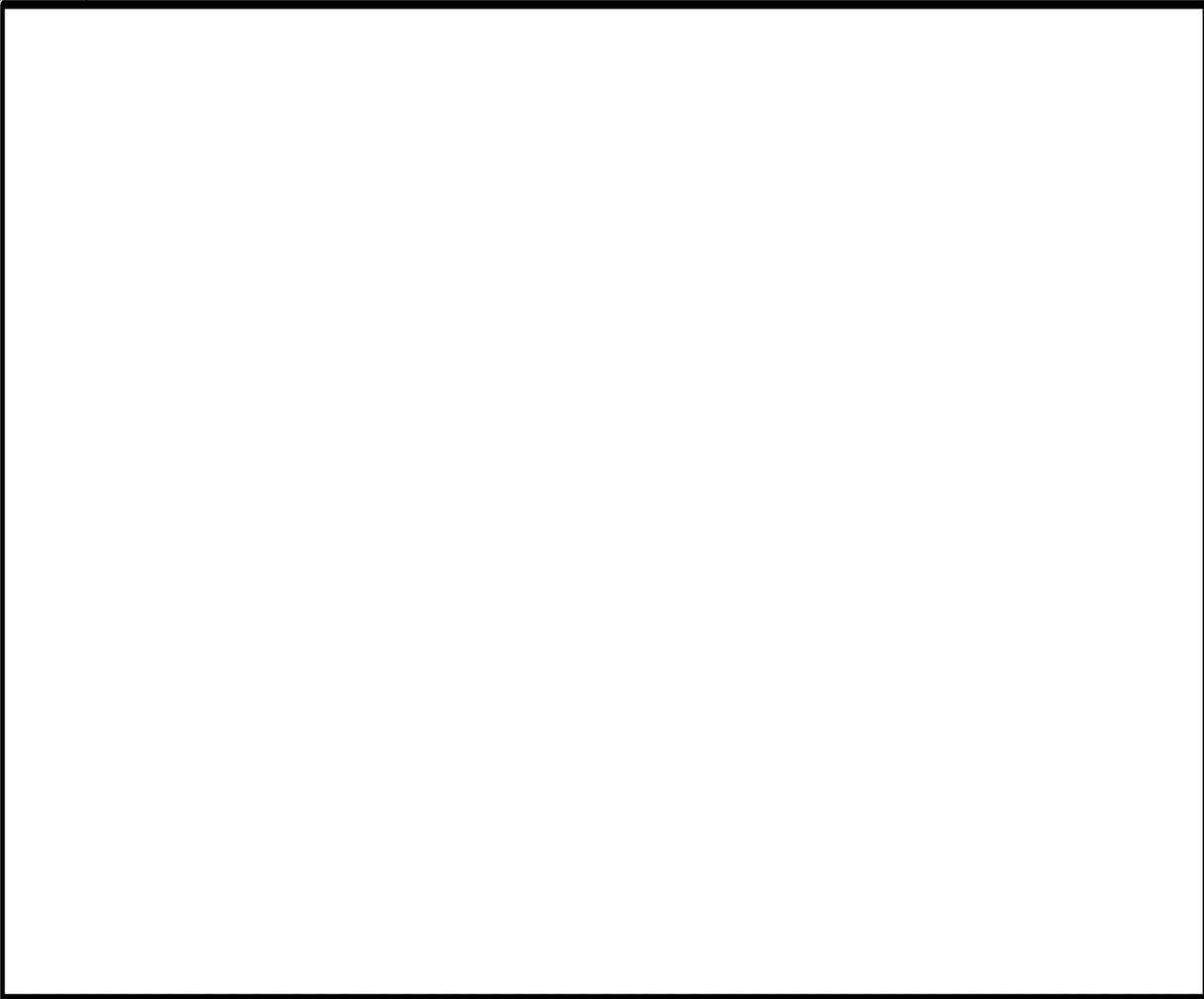
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Adjudicative Action	Guidance



# VIBE and Foreign Affiliation

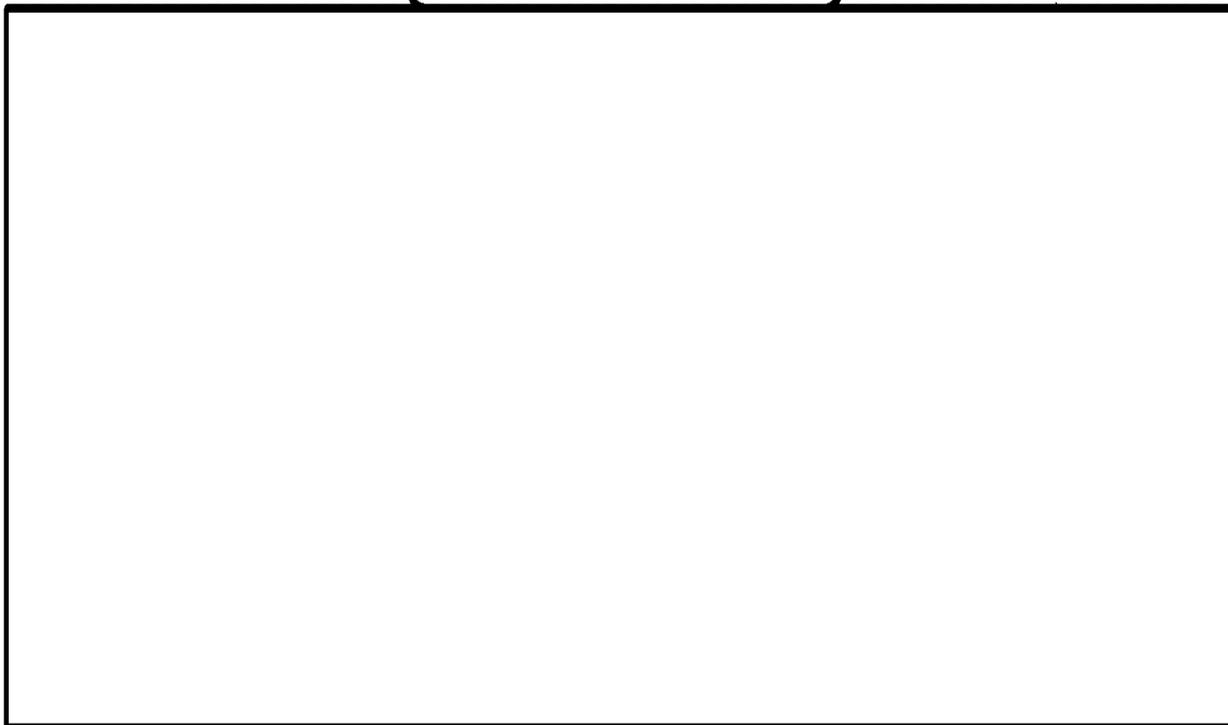
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# VIBE and Foreign Affiliation

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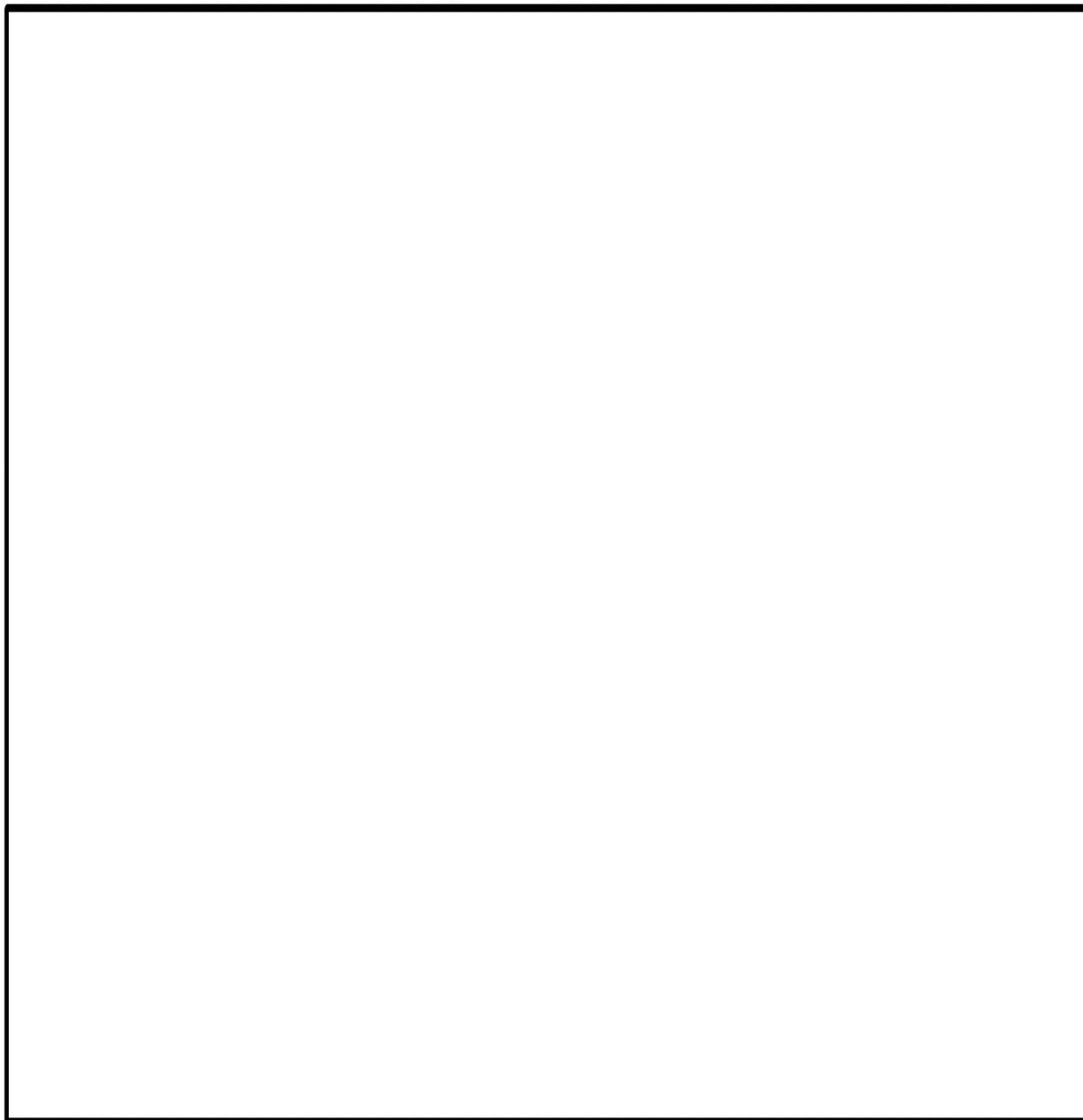
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# VIBE and Foreign Affiliation

(Continued)

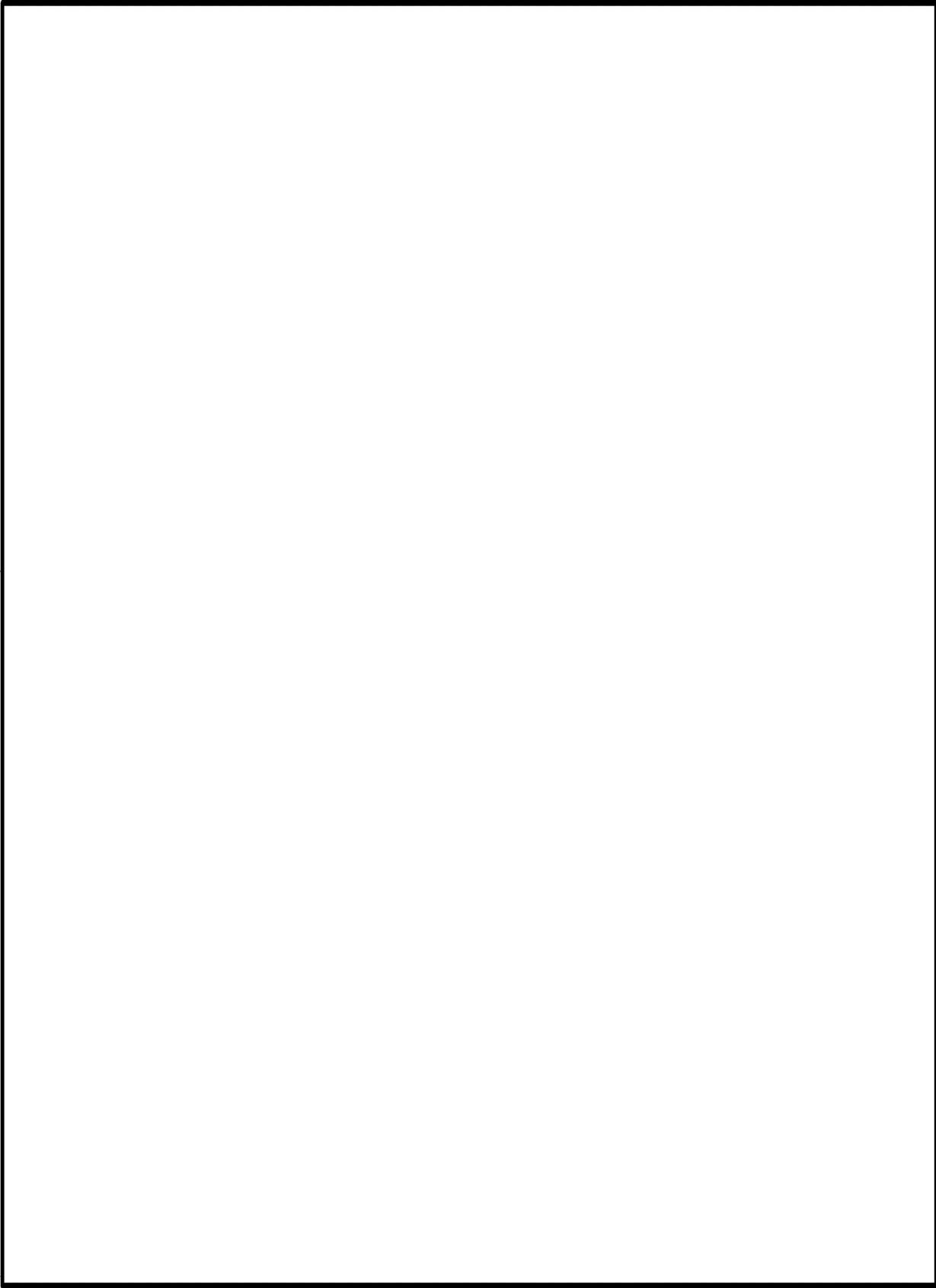
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# VIBE and L Adjudication as it Relates to Foreign Affiliation

Adjudicate on merits regardless of VIBE results :

- Cases where there are individual owners of the foreign and U.S. entities.
- Cases where the U.S. business has been in business for less than one year.\*



## Qualifying Organization Doing Business

- Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

See 8 CFR § 214.2(l)(1)(ii)(H)

## Doing Business (Continued)

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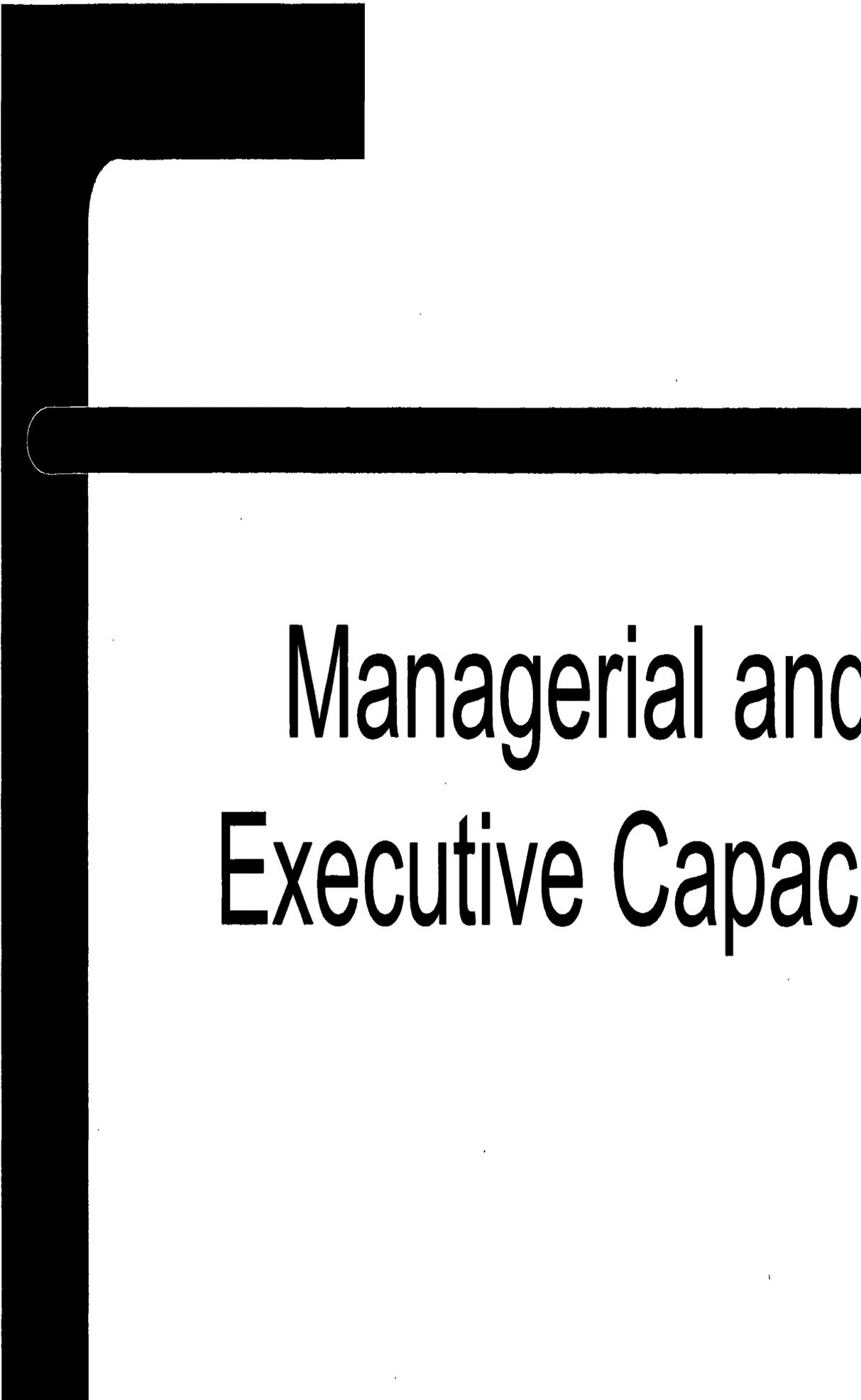
- The U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee.
- There are exceptions for new offices filings.

# Corporate Titles

- Companies may use different corporate titles/forms depending on where the company was set up. Example: In Great Britain, a “Limited” Company is a common form of business, where registration under the Companies Act is comparable to incorporation under state law in the United States. It is abbreviated Ltd.

Limited = Incorporated; Ltd. = Inc.

- Do not get confused by the type of company that is involved in the petition or the way in which it was formed. The criteria regarding qualifying organizations and establishing the qualifying relationship are the same regardless of the country where the company is set up and the form of company used.



# Managerial and Executive Capacity

# Managerial Capacity Defined

8 CFR § 214.2(l)(1)(ii)(B)

An assignment within an organization in which the employee *primarily*:

- (1) Manages the organization, or a department, subdivision, function or a 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;

## Managerial Capacity Defined (Continued)

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(3) Has the authority to hire and fire or recommend those actions as well as other personnel actions, such as promotion and leave authorization if employees are supervised. If no employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

# Executive Capacity Defined

An assignment within an organization in which the employee primarily:

- (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, the board of directors or stockholders of the organization.

8 CFR § 214.2(l)(1)(ii)(C)

# Managers/Executives

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- A job description that uses partial definitions of both manager and executive (some of the criteria from the definition of manager and some criteria from the definition of executive) does not qualify for an L-1A.
- An employee's job description must fulfill all four criteria of the definition of either manager or all four criteria of the definition of executive.

**Note:** This does not preclude the employee from performing duties that fall under the other definition.

# Distinguishing Between Executives and Managers

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- Generally, an executive may sign a company document, legally binding a corporation. Generally, a manager cannot, by signature, legally bind the corporation.
- An executive may direct multiple plants, sometimes in several different nations. A manager may oversee only one office or plant.
- Generally, executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc.

# Evaluating Managerial or Executive Positions

In large, well-known and well-established business entities:

- A description of the position written by a high level executive of the company may be submitted as evidence. Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title. You must always look at the job duties.

In small and/or young, unknown or less substantial business entities:

- The qualifications of the beneficiary and/or the eligibility of the proposed employment in the United States are more difficult to determine.
- Do not determine eligibility solely by the size of company; rather, examine all the facts presented, including the nature of the duties to be performed, the nature of the petitioner's business, and the developmental stage of the company.

# Staffing Levels as a Factor

INA § 101(a)(44)(C)

Officers should take into account the reasonable needs of the organization.

In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not just at the number of employees to be managed, but at their duties (e.g., are these professionals, etc.).

Evidence can include an organizational chart and State quarterly wage reports upon request.

The employees managed, as opposed to the beneficiary, perform the majority of the everyday duties.

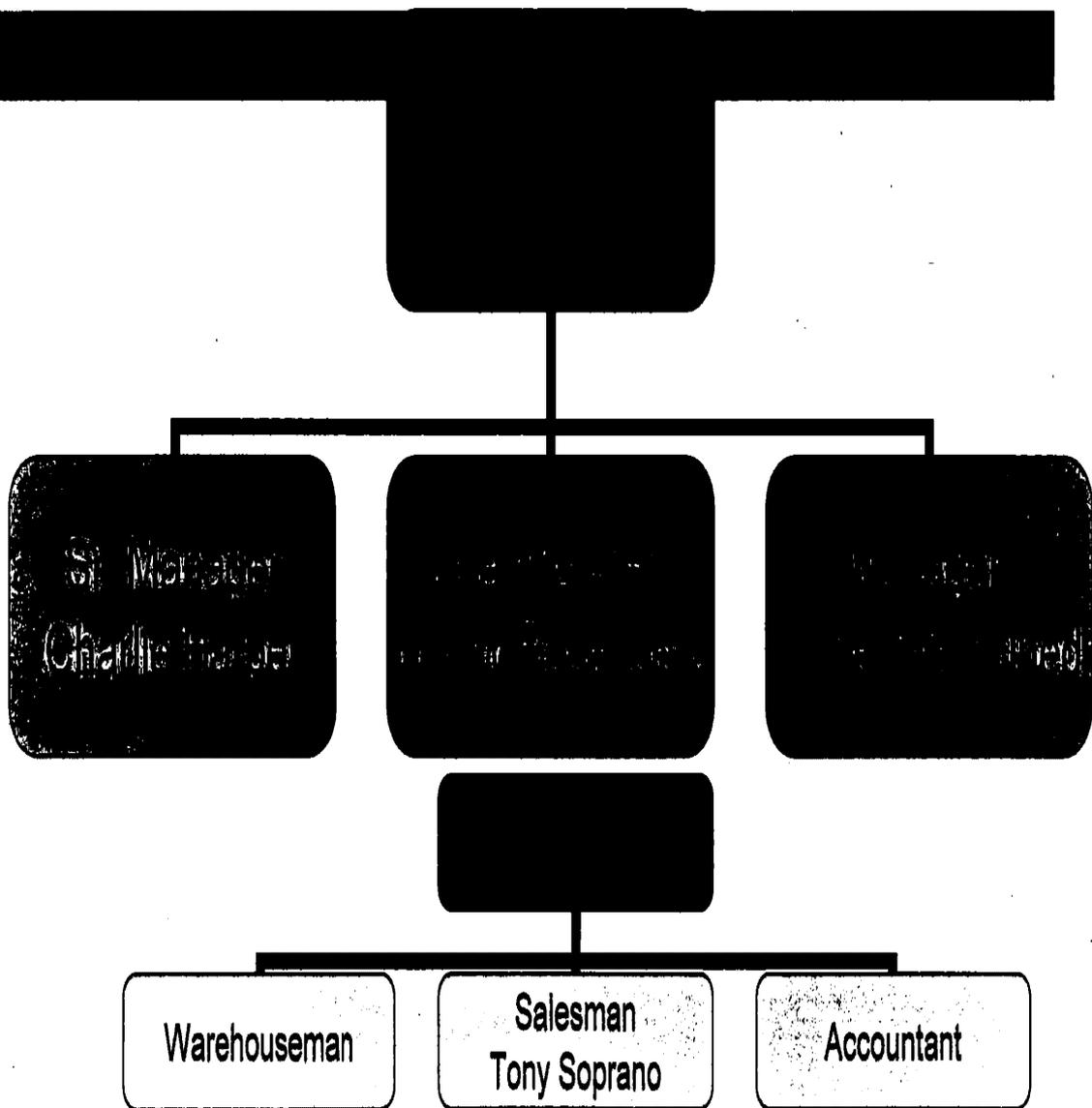
# Too Many Queen Bees Not Enough Worker Bees

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- The petitioner indicates the majority of its employees are primarily engaged as managers or executives. Based on the evidence this may be inconsistent with the nature of the business. An RFE may be warranted.
- Request more detailed position descriptions and payroll documentation to determine who is performing the non-qualifying, everyday operational duties of the business.
- Even though a beneficiary has a job title of a manager, he or she may or may not be performing primarily non-managerial duties. This is a fact question which you must determine on a case-by-case basis.

# Example Organizational Chart

## Possible Example of a Business with too many Queen Bees



# L-1A Manager or Executive

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Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The U.S. organizational chart for the U.S. office.
- Quarterly wage reports for the employees in the U.S. office.

# Managing a Function

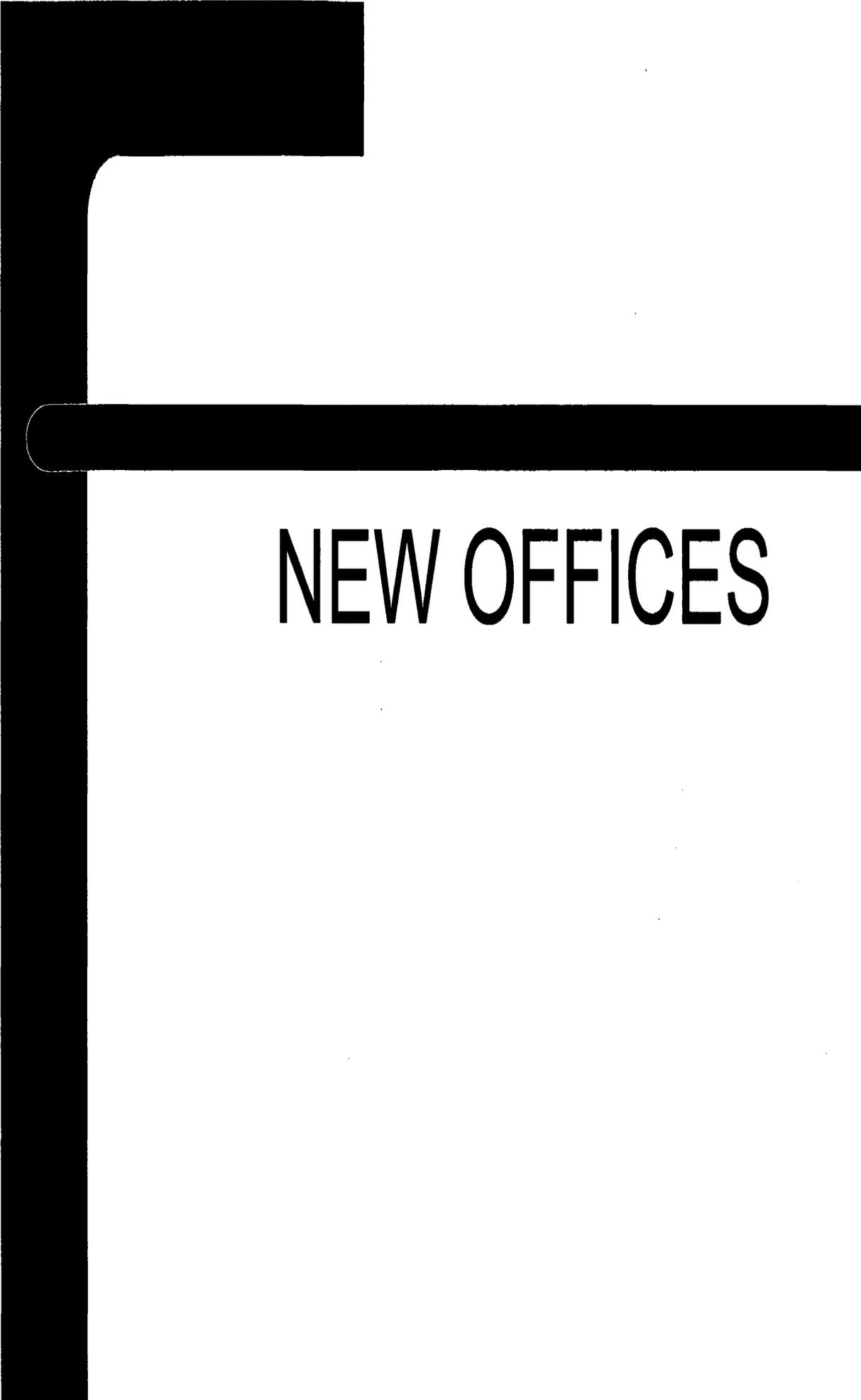
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- The organization is structured in such a way that the beneficiary is primarily *managing* a function, not primarily performing the duties of the function.
- Normally the beneficiary does not directly manage workers. The beneficiary directs or manages an essential function.

## Conversion from L-1B to L-1A

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- Aliens who were *initially admitted* as specialized knowledge aliens may change to a manager or executive and stay for seven years, BUT, the alien must have been employed as a manager/executive for at least six months prior to reaching the L-1B five-year limit. The beneficiary's promotion to a managerial or executive position must have been approved by USCIS. [8 CFR § 214.2(l)(15)(ii)]
- This means the change from L-1B to L-1A must have taken place, a petition was filed with USCIS and was approved at least six months before the expiration of the alien's five-year stay. If not, if the alien is otherwise qualified, approve the change for only the balance of the five years. [8 CFR § 214.2 (l)(15)(ii)]

A large, bold, black graphic of the letter 'F' is positioned on the left side of the page. The vertical stem of the 'F' extends from the top to the bottom of the page. The top horizontal bar of the 'F' is a solid black rectangle. The middle horizontal bar of the 'F' is a thick black line with rounded ends, extending across the width of the page. The text 'NEW OFFICES' is centered horizontally between the middle and bottom bars of the 'F' graphic.

# NEW OFFICES

# New Offices

---

- A 'new office' is an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. See 8 CFR § 214.2(l)(1)(ii)(F)

# New Offices

- An organization seeking to establish a new business entity in the United States must meet different requirements than a petition for an established company.



## Requirements for an L-1A New Office petition

- The Petitioner is not required to establish that the U.S. entity is doing business.
- However the Petitioner must submit evidence establishing that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted); AND

see 8 CFR § 214.2(l)(3)(v)

## New Office L-1A (continued)

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(C) The intended United States operation will within one year of the approval of the petition support an executive or managerial position by submitting:

- (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND
- (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND
- (3) The organizational structure of the foreign entity.

# Requirements for an L-1B New Office Petition

See 8 CFR § 214.2(l)(3)(vi)

- With the filing of the initial new office petition, the Petitioner has to establish that the beneficiary is coming to the U.S. in a specialized knowledge capacity or to be employed in a new office.
- To demonstrate eligibility the petitioner shall submit evidence that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The business entity in the United States is or will be a qualifying organization; and
  - (C) The Petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

# Examples of New Office Evidence

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- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.
- Evidence of the amount of the U.S. investment, source of funds and ability of the foreign entity to pay the bills related to operating the U.S. office.

## More Examples of New Office Evidence

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- Evidence that the foreign entity owns the U.S. office (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business.

## Note: Purchase and Takeover of an Established Business

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- If the Petitioner purchases and takes over the management of an established on going business, the petition should not be treated as that for a “new office” and a “new employee.”
- Such petition, as any other *non*-new office L-1 petition, if approvable, should be granted for an initial period of up to three years or the period requested by the petitioner, if less.

# Dormant Business

---

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a 'new office.' There is no rule of thumb as to whether to treat such a company as a 'new office;' this is a fact-based question.
- All of the "new office" filing requirements must be met.

## **New Office eligibility**

- **Business plans and other documentary evidence must demonstrate the likelihood the business will have the ability to support a managerial or executive position within one year.**

# New Office Extensions

see 8 CFR § 214.2(l)(14)(ii)

To extend after the first year, the Petitioner must submit:

- (A) Evidence that the United States and foreign entities are still qualifying organizations (that a qualifying relationship exists);
- (B) Evidence that the United States entity has been *doing business* for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);

# New Office Extensions (continued)

see 8 CFR § 214.2(l)(14)(ii)

- (D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees (such evidence may include organizational chart and quarterly tax returns); and
- (E) Evidence of the financial status of the United States operation.

## New Office Extensions (continued)

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### Remember:

- In the initial petition for a new office, the Petitioner must meet different standards to qualify. The L-1A was given one year to set up the new office, hire a staff and initiate doing business. An L-1B was given one year for the Petitioner to set up the business and commence doing business. It must be demonstrated that the petitioner is doing business at a level that supports the beneficiary's position.

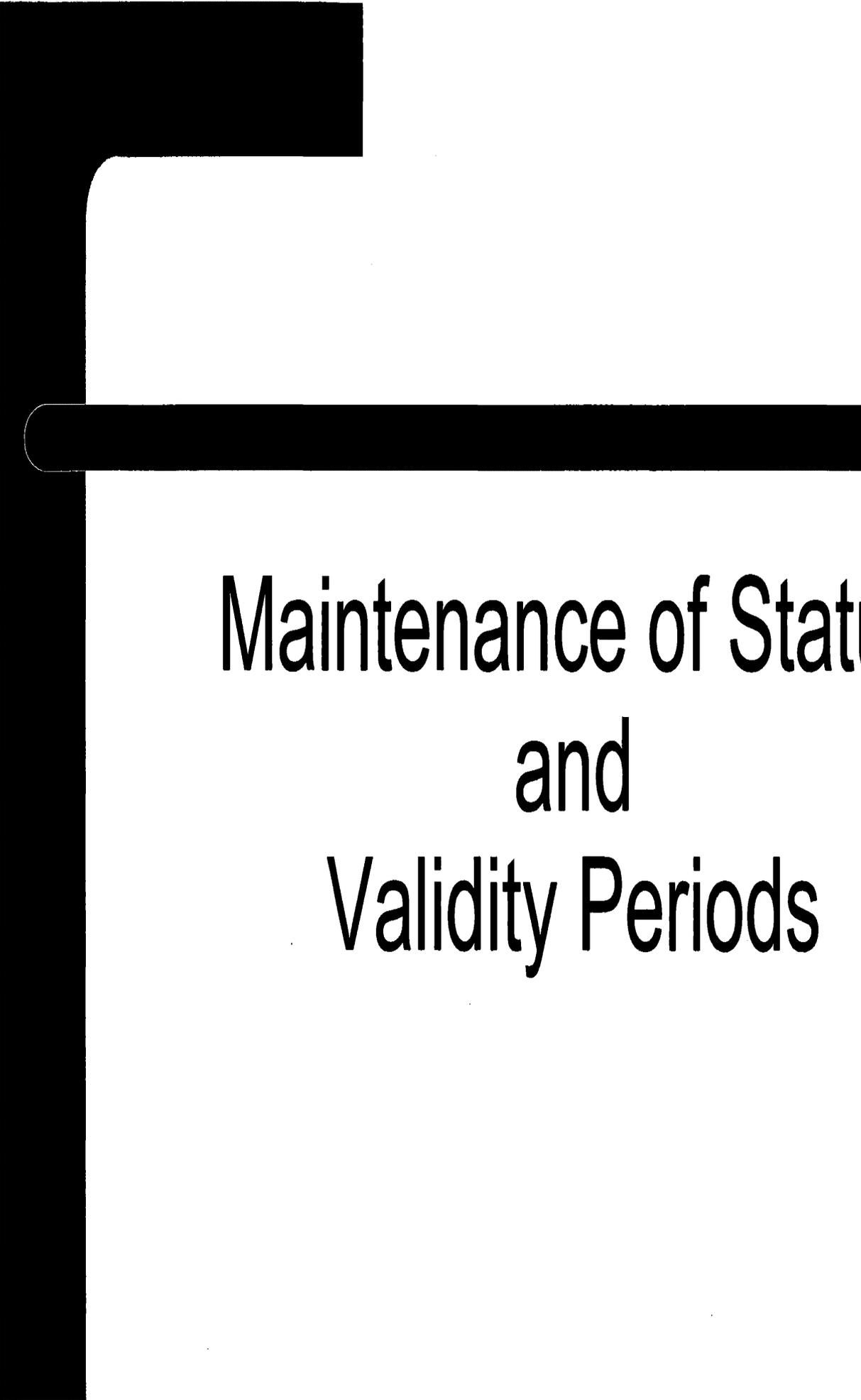
## New Office Extensions (continued)

- If you are reviewing a petition requesting an extension and the previous approval was for only one year, it does not necessarily establish the previous filing was a new office filing, you must review the petition and the facts presented in the EOS to make that determination. Do not apply new office extension standards to long standing businesses.
- After one year of doing business, the "new office" will be treated as an existing company; typically there are no extensions of "new office" status beyond one year.

# Unanticipated Circumstances to a “New Office” Extension

In instances where the start-up of the new office is hampered by circumstances that are beyond the petitioner's control additional time may be granted. Time granted should only be the time effected by the unanticipated event. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
- A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
- Litigation involving the new office which prevented the normal functioning of the business.



# Maintenance of Status and Validity Periods

## Validity Periods for Individual Petitions

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- Petitions filed by established Petitioners may be approved for a period not to exceed three years initially.
- Petitions filed to establish a new business may be approved for a period not to exceed one year.
- Extensions (EOS) are granted in increments of up to two years.

# Limitations on Stay

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- Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- Recapture time is permitted. Time spent by an L-1 outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.

## Limitations on Stay (Continued)

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- Time in H-1B status counts toward the maximum validity period of stay allowed as an L-1.
- Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.

## Limitations on Stay (Continued)

- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before an L-1 petition may be approved on his/her behalf. 8 CFR § 214.2(l)(12)(i)
- **Exceptions:** There is no limitation on period of stay for: (1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and (2) Aliens who reside abroad and commute to the United States to engage in part time employment.

8 CFR § 214.2(l)(12)(ii)

# Dependents

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- Dependents of L-1 principal aliens are L-2s. Their periods of stay depend on the principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.

# Requirements for Extension of Stay (EOS)

- Alien must be in the United States at the time of filing the petition.
- Alien does not have to be physically in the United States while the EOS is pending.
- Departure is not treated as abandonment.
- Must be maintaining status.

## Requirements for Extension of Stay (EOS), Cont

- The petition must be filed prior to the expiration of the alien's stay. Exception: failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 214.1(c)(4).
- If the I-129 requests consular processing, then the I539 EOS or COS must be denied.

## **Part 6 of the I-129**

- **Petitioner must fill out the Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States section.**
- **If the section is not filled, RFE for the information. (call-up 1817)**
- **If the RFE response does not include the information deny the case. (I129CTECH)**

# RFEs and Denials on EOS Petitions

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A prior determination by an adjudicator that an alien is eligible for the classification should be given deference unless one of the following conditions can be established.

- “Material Error”
- “Substantial Change in Circumstances”
- “New Material Information”

See Memo dated April 23, 2004, titled “The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity”.

# RFEs and Denials on EOS Petitions

---

An SISO must approve the issuance of an RFE or final decision for any case involving an extension of stay where the parties and facts involved have not changed, but where the current adjudicating Officer determines that it is necessary to issue an RFE or deny the for extension

## Requirements for Change of Status (COS)

- Must be maintaining status.
- Unlike EOS, alien must be physically in the United States.
- Departure is treated as abandonment.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 248.1(b).

# General Things To Know

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- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf. **EXCEPTION:** In the case of an I-129S filed on behalf of a blanket beneficiary, the Petitioner must be a U.S. Petitioner.
- The beneficiary may not directly perform services for a foreign employer.
- The beneficiary's wages may be paid by the foreign organization.

# General Things To Know

---

- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.

## Things to Know Independent Contractors as Employees

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- In determining whether an employee meets the criteria of a manager, the persons who the manager supervises abroad or will supervise in the United States may include independent contractors.
- There is no regulation requiring that the employees supervised must be individuals on the company's payroll.
- If the claim is made that the beneficiary qualifies based on managing or supervising independent contractors, request evidence of contracts.

see 9 FAM 41.54 N 7.2-1

# Company Owner as Petition Beneficiary

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- An owner or majority stockholder of the petitioning or affiliated company may be the beneficiary of a petition for L-1 status if the petition is accompanied by evidence that the beneficiary's services are to be temporary and that the beneficiary will be transferred abroad at the completion of the temporary services in the United States. See 8 CFR § 214.2(l)(3)(vii) and also Matter of M, 8 I&N Dec. 24 (BIA 1958; Ass't Comm'r, AG 1958)
- The petitioner must establish, however, that a foreign qualifying company will be doing business the entire time the owner or majority stockholder is in the United States in L-1 classification.

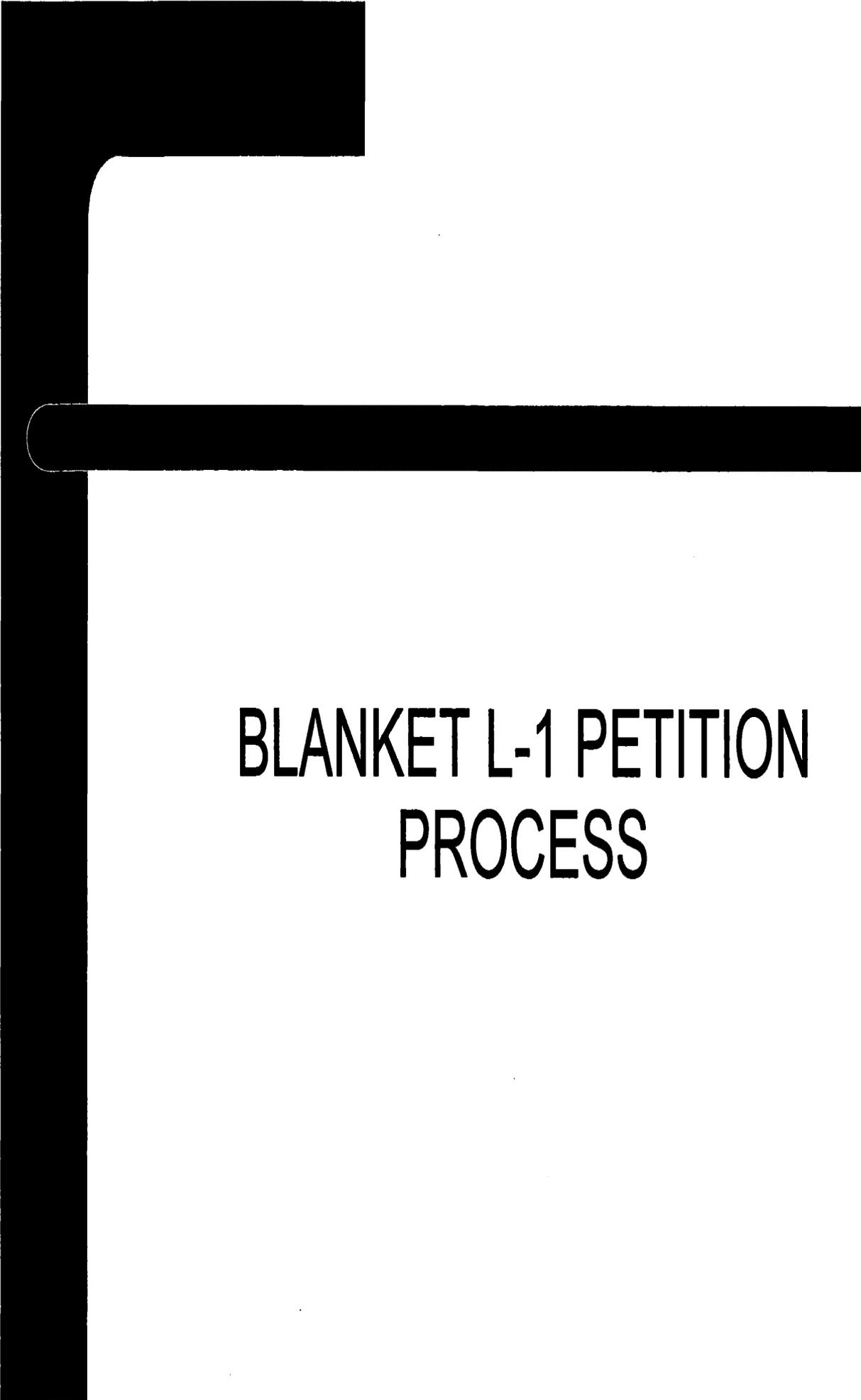
# Required Systems Checks

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- IBIS
- SQ94
  - EOS Denial within 15 days before
  - COS Approval within 15 days before
  - COS Denial within 15 days before
- SEVIS for F, J, or M COS printout on right side of file
- VIBE
- A# check

# No Appeal Rights

- Status denials – cases where the petition for classification as an L-1 is approved but the requested EOS or COS is denied (split decisions).
- Denial for failure to pay the Fraud Detection fee.



# BLANKET L-1 PETITION PROCESS

# Blanket Petition Authority

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INA § 214(c)(2)(A) is the statutory authority for blanket petitions.

# Blanket Petitions

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- In order to bring a qualified L-1 alien into the United States under the L Blanket Petition process, two-steps must occur:

(1) The Petitioner must file the Form I-129 and L Supplement requesting Blanket Petition (LZ) Approval.

(2) With a currently valid approved LZ petition, the Petitioner has established a qualifying relationship to foreign entities and may file Form I-129S on behalf of an employee in order to transfer him/her to the United States as an L-1 nonimmigrant.

# Filing an LZ Petition

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A U.S. or foreign organization may file an I-129 requesting approval of an LZ petition on behalf of itself and its parent, branches, subsidiaries, and affiliated companies.

Officers should review Question 3 on Page 20 of the Form I-129 (the first page of the L Supplement) to determine if the Petitioner is seeking the LZ nonimmigrant classification.

## Filing an LZ Petition (Continued)

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The LZ petition must include a list of all the organizations eligible to transfer L-1 workers under the blanket petition as well as documentation of qualifying relationships of the organizations and establishing that they are doing business.

- The Petitioner will not submit evidence pertaining to a specific beneficiary as they will not be seeking classification of an employee as an L-1 nonimmigrant with the filing of an LZ petition.

# Who May Use the Blanket Process

8 CFR § 214.2(l)(4)

- A Petitioner which meets the following requirements may file an LZ petition:
  - (A) The Petitioner and each of those entities listed are engaged in commercial trade or services; AND
  - (B) The Petitioner has an office in the United States that has been doing business for one year or more; AND
  - (C) The Petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; AND
  - (D) The Petitioner and the other qualifying organizations have:
    - (1) obtained approval of at least ten L-1 petitions during the previous 12 months; OR
    - (2) have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; OR
    - (3) have a United States work force of at least 1,000 employees.

# LZ Petition Validity

An LZ petition to qualify a company as a blanket Petitioner (with no beneficiary listed) may be approved for an initial period of three years. A subsequent petition for extension may be approved indefinitely if all extension requirements are met.

8 CFR §§ 214.2(l)(7)(i)(B) and  
8 CFR §§ 214.2(l)(14)(iii)(A)

The LZ petition may be approved in part or in whole. You may approve some of the organizations entities and deny others.

See 8 CFR 214.2(l)(7)(i)(B)(3).

# Blanket Extensions

- A blanket extension may be filed three months prior to the expiration of the initial blanket of Form I-129
- An extension must be filed in timely fashion or the company's LZ petition status will become invalid, and the Petitioner must then wait three years to file a new initial LZ petition.

See 8 CFR § 214.2(l)(14)(iii)(B).

# Blanket Extension Requirements

- The documentation required to support the blanket extension include:
- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
  - Positions held during that period
  - The employing entity
  - The dates of initial admission and final departure, if applicable, of each beneficiary
- A statement from the petitioner indicating whether it still meets the blanket criteria.
- Documentation to support any changes in approved relationships or additional qualifying organizations.

## Blanket Extension Requirements (Continued)

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- Petitioner must file an amended petition with fee if:
  - There are changes in approved relationships.
  - There are additional qualifying organizations.
- An amended petition may only be approved for the validity period of the petition it amends.
- A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely.

See 8 CFR § 214.2(l)(7)(i)(C).

# Approving an LZ Petition

When approving a case, you **must**:

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**).
- Indicate the dates of approval/validity dates (which will either be **three years** from the date of approval (for an initial) or **"INDEFINITELY"** (for an extension)).
- Make a notation **"BLANKET PETITION"** in the block entitled **"PARTIAL APPROVAL (explain)."**

# Filing an I-129S for the Beneficiary

See 8 CFR § 214.2(l)(4)(ii).

- A U.S. Petitioner listed on an LZ petition approval notice may file a Form I-129S on behalf of an employee.
- The Petitioner bears the burden of establishing:
  - (1) that the beneficiary meets the 1 in 3 rule and,
  - (2) that the beneficiary will be employed in the United States in a managerial or executive capacity or as a specialized knowledge *Professional*.

# Specialized Knowledge *Professional*

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- INA § 101(a)(32) provides that the term “profession” includes but is not limited to “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”
- “Profession,” as defined by section 101(a)(32) of the Act, contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. see Matter of Sea, 18 I&N Dec. 817.
- In order to be considered a professional, the alien must hold a U.S. bachelor's degree or equivalent (may include a work experience evaluation) and be working in a position that normally requires a minimum of a bachelor's degree.

# Notes about the Form I-129S

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- There is no filing fee required. However, the Petitioner must submit the \$500 fraud fee and the \$2,250 P.L. 111-230 fee if required.
- The Petitioner does not need to establish that they are a qualifying organization as this has already been established with the approval of the LZ petition. Instead, the Petitioner needs to submit a copy of the LZ approval notice with the I-129S filing documenting that the Petitioner is listed on the LZ approval notice.

# I-129S Filing Options

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The U.S. Petitioner may file the I-129S with:

- (a) DOS – If the beneficiary is abroad and requires a visa to seek admission to the United States, the I-129S should be submitted directly to the Consulate or Embassy with the beneficiary's L-1 visa application. If approved, the beneficiary may use the L-1 visa and apply for admission to the United States. See 8 CFR § 214.2(l)(5)

## I-129S Filing Options (Continued)

- (b) USCIS – If the beneficiary is a visa exempt alien (Canadian citizens and certain aliens resident in the Caribbean) who is outside the United States, the I-129S may be filed with the appropriate USCIS Service Center. If approved, the alien may apply for admission to the United States with the approval notice. [Aliens currently present in the United States may not use Form I-129S to COS or EOS or amend a previously approved I-129S.]  
See 8 CFR § 214.2(l)(5)(C)
- (c) CBP at a Port Of Entry (POE) on the Canadian-U.S. land border or a pre-clearance/pre-flight station (PFI) in Canada – If the beneficiary is a citizen of Canada, the Form I-129S may be filed with CBP at the POE or PFI in conjunction with the alien's application for admission to the United States as an L-1.  
See 8 CFR § 214.2(l)(17)(ii)
- It is the responsibility of the agency with whom the I-129S is filed to collect all required fees and adjudicate the I-129S properly.

## Reassignment Benefits of an I-129S

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- An employee admitted under the blanket petition process may be reassigned to any organization on the blanket without filing a petition with USCIS if the employee will be performing virtually the same job duties. Such a reassignment will not be considered a violation of status.

Therefore, when adjudicating EOS petitions for L-1 aliens who were previously admitted by means of an approved I-129S, the Officer may not deny the petition if the employee has moved to a different organization *listed on the blanket LZ petition* without filing a new petition.

## Reassignment Benefits of an I-129S (Continued)

Example: Bony-Japan has an approved LZ petition which includes Bony-US, Bony-CA, and Bony-VT. An I-129S completed by Bony-US is filed with the Japanese Consulate and Mr. Bones is issued an L-1 visa and is admitted to the United States as a Blanket L beneficiary for 3 years. After two years, Mr. Bones is reassigned to Bony-CA to perform the same work without requesting an amendment of the petition. One month prior to the expiration of the beneficiary's status, a Form I-129 requesting an EOS is filed on Mr. Bones' behalf. During adjudication, the Officer notes that Mr. Bones has switched employers without notifying USCIS. However, because the new employer was listed on the LZ petition for Bony-Japan, this is not a violation of status and the EOS can be approved if the beneficiary is otherwise eligible.

# Notes About I-129S Filed with DOS

- Form I-129S filed with DOS will be adjudicated by a Consular Officer. If approved, the alien will be given copies of the I-129S. One copy should be collected by CBP upon the alien's admission to the United States at a POE and forwarded to USCIS for interfiling in the LZ petition.
- L-1 aliens admitted pursuant to an I-129S petition adjudicated by DOS may, instead of filing an EOS petition with USCIS, return to a Consulate and file a new Form I-129S with an L-1 visa renewal.
- I-129S petitions adjudicated by DOS are not tracked in GUI/CLAIMS and there will be no I-797 approval notice available. When reviewing EOS petitions filed on behalf of beneficiaries whose original I-129S was approved by DOS, Officers may need to review the L-1 visa issued to the beneficiary, CCD and/or SQ94 if additional information is required.

## Notes About I-129S Filed with CBP

- I-129S petitions filed with CBP at a POE/PFI on behalf of a Canadian citizen will be adjudicated by a CBP Officer. If approved, a copy will be forwarded to the appropriate USCIS Service Center for data entry into GUI and interfiling into the LZ petition.
- CBP cannot issue a formal denial notice to the alien, they will forward the I-129S to the USCIS Service Center for issuance of an ITD and final action.
- L-1 aliens admitted pursuant to I-129S petition adjudicated by CBP may, instead of filing an EOS petition with USCIS, return to a POE on the U.S.-Canadian land border or a PFI inside Canada and file a new Form I-129S and seek readmission as an L-1 nonimmigrant.

# I-129S Filings

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- All I-129S requests filed for an L-1 alien must contain the LZ petition approval notice to show the Petitioner has an approved LZ petition.

# Filing For An L-1 Beneficiary Who is in the United States

- If an approved L-1 blanket employer wants to file a petition on behalf of an employee who is in the United States applying for either a change of nonimmigrant status (COS) or an extension of stay (EOS), **Form I-129 must be used, not the Form I-129S**. The petition must be adjudicated as an individual L-1 petition and all the requirements of an individual petition must be met.
- When a Petitioner files an I-129 Individual L-1 petition, they must submit documentation establishing the fact that they are a qualifying organization (including evidence that they have a qualifying relationship and are doing business). However, in the above instance, where a blanket L-1 Petitioner is filing an I-129 on behalf of an alien who is already inside the United States seeking an EOS or COS, a copy of the LZ Blanket approval notice is often submitted as proof that the qualifying relationship has already been established

# I-129S Validity Period

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- An I-129S filed for a beneficiary under an initial LZ petition of three years or an indefinite blanket petition may be approved initially for a period of up to three years, even if the LZ petition will expire before the three-year validity period granted the beneficiary.

See 8 CFR 214.2(l)(11)

- Extensions may be granted in up to two year increments.

See 8 CFR 214.2(l)(15)(ii)

- It is the burden of the Petitioner to file a LZ petition extension in timely fashion and to timely file extensions for individual L-1 aliens approved under a blanket petition.

## Blanket Petitions (Continued)

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A blanket Petitioner can file an I-129S for an alien under the blanket petition or can file a normal individual petition for an alien, but cannot file both for the same alien.

If an I-129S is filed for an alien at the consulate and is denied, the Petitioner may subsequently file an I-129 individual L-1 petition for that alien at the appropriate Service Center. The petition must contain evidence of the consulate denial including the date of denial, the office where it was denied and the reasons for denial.

# Bundled Petitions

Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”. The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.

# Bundling Requirements

All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.

# Adjudicating Bundled Petitions

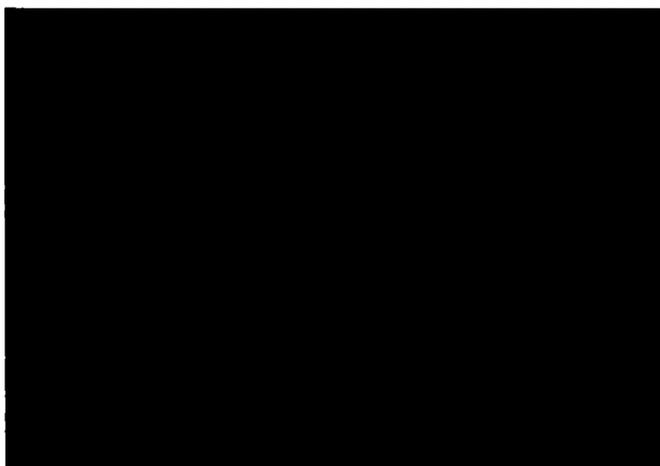
Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time.

## Notes about Bundled Petitions

- L-1A petitions can be included with the bundle if the L-1A beneficiary will be managing the L-1B beneficiaries.
- If one or more of the petitions does not meet the bundle criteria these petitions will be removed from the bundle and adjudicated as single filings.
- Bundled petitions must remain together.



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# I-129 L-1

## Intra-Company Transferees



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## Ground Rules...

- Please turn off your cell phone.
- Please turn on your computers to access relevant training materials.
- Please do not check your email during the training presentation.
- Please keep side-bar conversations to a minimum.

Thank you.



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Presenter's Name: CTU Revised: 2014 3

# NOVA

- You will back out the time spent in the training presentation and time spent with your mentor reviewing training cases under:

**“Group Activities” and “Production Trainee.”**

- Your mentor will back out the time spent in the training presentation and time spent with you reviewing cases under:

**“Group Activities” and “Production Trainer/Mentor.”**



# Training Back-out

- All time in the classroom working the training cases is back-out.
- All time spent with your mentor until certified is back-out.
- After certification, you are granted two hours per week up to 10 hours or 150 non-denial actions total (to meet with your mentor).



# Training Variance

Given on the first 150 non-denial actions and for the first 25 denials.



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Presenter's Name: CTU Revised: 2014 6

# General Training Information

- This presentation was created to facilitate the training process.
- All information in this presentation is superseded by the relevant laws, regulations, SOPs, policies, and guidance from management.



# Course Objective

To provide Officers with a strong foundation of knowledge upon which a quality, timely adjudicative decision can be made on a Petition for a Nonimmigrant Worker, Form I-129 Intracompany Transferee filing.



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Presenter's Name: CTU Revised: 2014 8

# Performance Objective

Through application of pertinent laws, regulations, policy, and operation instructions, successfully determine an applicant's initial eligibility and/or eligibility to extend or change his/her nonimmigrant status in the United States.



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# About this Presentation

- Author: VSC CTU
- Date of last revision: 1/14/2014
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.



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# Overview of Nonimmigrants



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CTU January 2014

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# Definitions

- **Petitioner** – Person, employer, or agent who files a petition on behalf of someone else.
- **Beneficiary** – Person who will receive the immigration benefit from a petition.
- **Applicant** – Person who files an application on his or her own behalf.
- **Nonimmigrant** – See 101(a)(15) of Immigration and Nationality Act or INA.



# Statutory References

- INA Section 101(a)(15) – Definition of Nonimmigrant Classifications:  
    EXAMPLE: 101(a)(15)(B) – Nonimmigrant Visitor
- INA Section 212(a) – Inadmissible Aliens
- INA Section 212(e) – Foreign Residence Requirement for Certain J-1 Exchange Visitors
- INA Section 214 – Requirements for Admission of Nonimmigrants
- INA Section 248 – Change of Nonimmigrant Classification



# Regulatory References

- 8 CFR 103.2 – Application & Petition Filing Requirements
- 8 CFR 214.1 – General Requirements for Admission, Extension of Stay, and Maintenance of Status
- 8 CFR 214.2 – Divided into Subsections (a) through (w) – Regulations for most nonimmigrant classifications:  

EXAMPLE: 8 CFR 214.2(f) = Requirements for Admission, Extension, and Maintenance of Status of F-1 Students
- 8 CFR 248 – Requirements to Change Nonimmigrant Status



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# Entry Documents for Nonimmigrants

Generally required to have at the time of admission to the United States:

- Unexpired Nonimmigrant Visa, and
- Passport valid for period of admission.



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# What is a Visa?

- According to Merriam-Webster's Collegiate Dictionary Tenth Edition:

“A visa is an endorsement made on a passport by the proper authorities denoting that it [the passport] has been examined and that the bearer may proceed.”



# Foreign Nationals

- A visa is issued to a foreign national
- A foreign national is a person who is not a U.S. citizen and applies for entry into the United States.

**NOTE:** In this presentation, foreign nationals are also referred to as aliens, beneficiaries or applicants.



# Common U.S. Visas

- Every foreign national who is inspected and admitted to the United States is given a status. The two most common are:
  - Immigrant, and
  - Nonimmigrant.



# Immigrant Visa

- An immigrant visa is issued to a foreign national who intends to live in the United States permanently.



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# Nonimmigrant Visa

- A nonimmigrant visa (NIV) is issued to a foreign national or alien applying to enter the United States on a temporary basis – whether for tourism, business, temporary work, or study.



# Purpose of Form I-129

Some nonimmigrant classifications require the approval of an I-129 petition by USCIS--

- Before an NIV visa can be issued

and/or

- Before an alien can be admitted in certain NIV classifications.



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# Purpose of Form I-129, *continued...*

USCIS approval of Form I-129 is required for the following nonimmigrant classifications:

- H-1B, H-2A, H-2B, H-3
- L-1
- O-1, O-2
- P-1, P-1S, P-2, P-2S, P-3, P-3S, and
- Q-1 and R-1.

An approved Form I-129 is not required for the following nonimmigrant classifications:

- E-1, E-2, E-3
- L-1 NAFTA
- TN



# NIV Process

1. U.S. employer or agent files Form I-129 with fees and supporting evidence at either the California Service Center (CSC) or the Vermont Service Center (VSC).
2. An Immigration Services Officer (ISO) determines whether the I-129 petition is approvable.



# NIV Process, *continued...*

3. ISO stamps and signs approved I-129 and duplicate petition, if provided.
4. Duplicate petition and any duplicate supporting documentation are sent to the Kentucky Consular Center (KCC).
5. KCC scans the duplicate petition, and any supporting documents sent, into the Consular Consolidated Database (CCD) to appear in a section of the CCD called the Petition Information Management System (PIMS).



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# NIV Process, *continued...*

6. When the beneficiary of the I-129 petition appears at the consulate or embassy to apply for a visa, the consular officer:
  - Checks PIMS for approval of the petition, and
  - Conducts an interview of the beneficiary to determine admissibility and eligibility for classification.



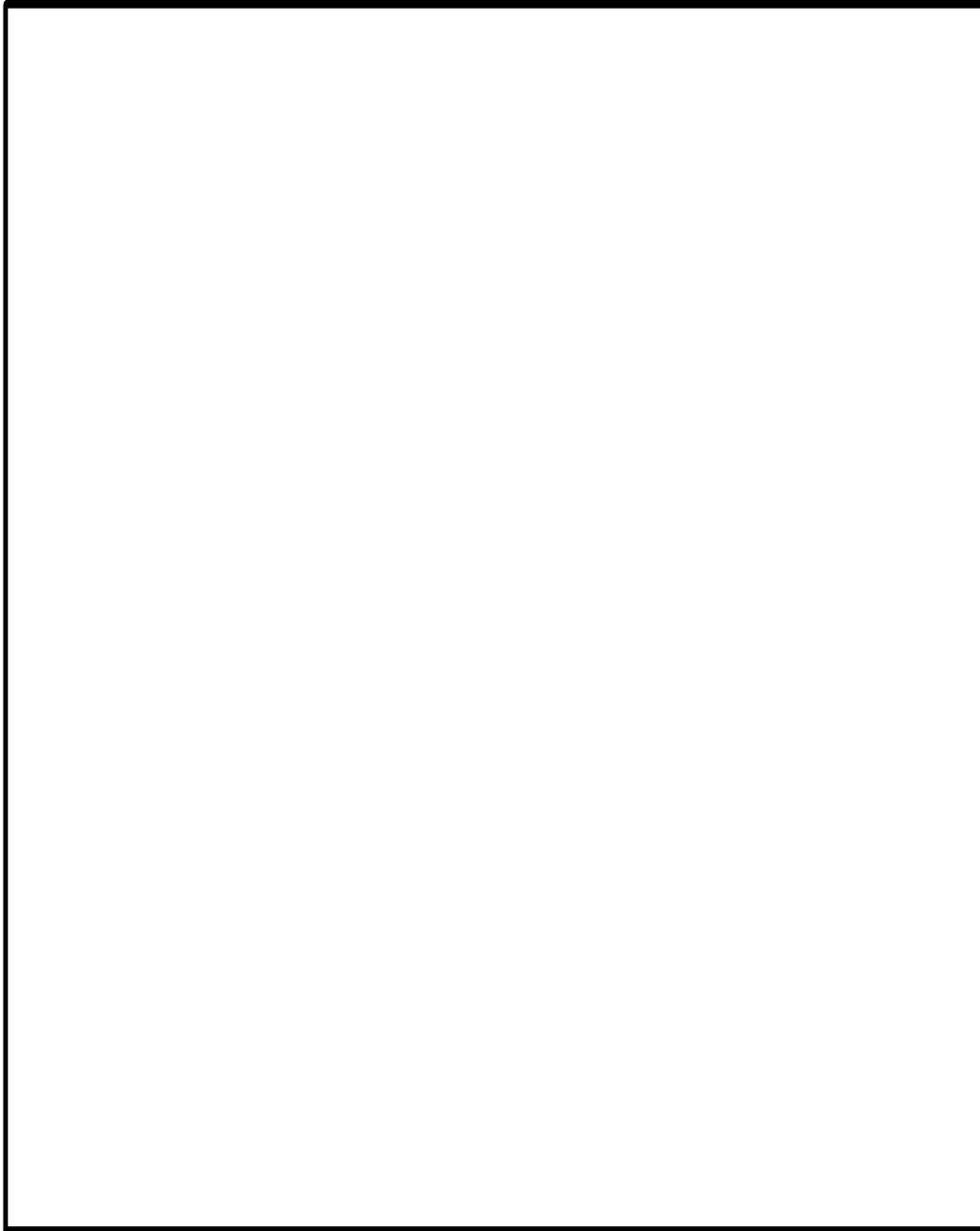
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# NIV Process, *continued...*

7. If the approved I-129 petition is not found in PIMS, the consular officer may contact the KCC and KCC may contact the approving Service Center for verification.
  
8. After receiving a Visa from DOS, the alien may then apply for admission.



# Example of an NIV



(b)(6)



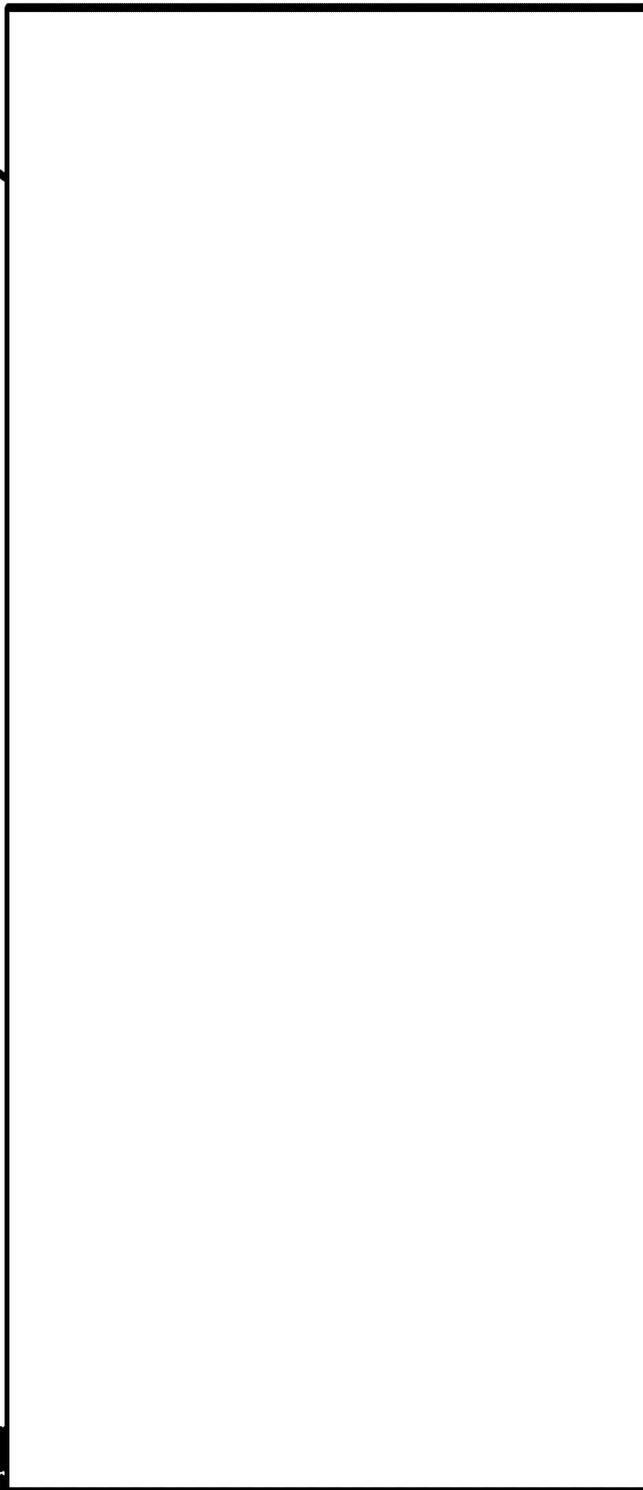
# NIV Process, *continued...*

9. The applicant then applies for admission to the United States at a Port of Entry (POE) or Pre-Flight Inspection (PFI) facility and presents the NIV to a Customs and Border Protection (CBP) officer (a/k/a an inspector).
10. The CBP officer questions the applicant and, if satisfied, grants the applicant nonimmigrant status by stamping and completing an admission stamp in the applicant's passport.



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# Example of Admission Stamp



(b)(6)

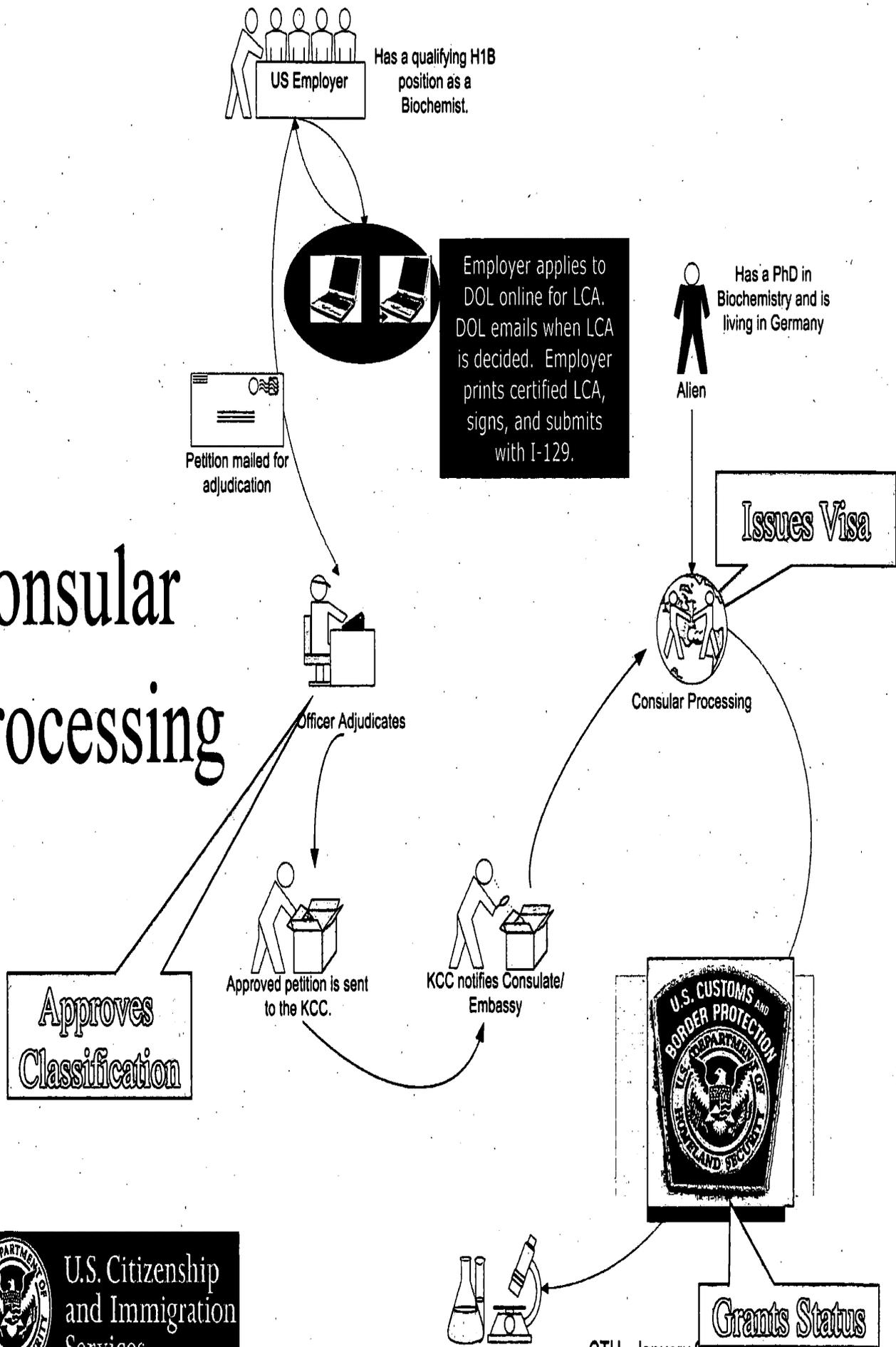


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# Consular Processing



# NIV Process, *continued...*

11. The nonimmigrant will also receive an I-94 # either:
- a) A traditional paper I-94 with the CBP Officer's stamp; or
  - b) An electronic I-94.



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# Example of Paper I-94

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(b)(6)



# Example of Electronic I-94



U.S. Customs and Border Protection  
*Department of Homeland Security*

OMB No. 1651-0111  
Expiration Date: 11/30/2014

## Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 67363482120

Admit Until Date (MM/DD/YYYY): 09/30/2013

Details provided on Admission (I-94) form:

Family Name: [REDACTED]

First (Given) Name: [REDACTED]

Birth Date (MM/DD/YYYY): 08/01/1981

Passport Number: [REDACTED]

Passport Country of Issuance: India

Date of Entry (MM/DD/YYYY): 05/18/2013

Class of Admission: H1B

► Effective April 28, 2013, DHS began automating the admission process. An alien lawfully admitted or paroled into the U.S. is no longer required to be in possession of a preprinted Form I-94. A record of admission printed from the CBP website constitutes a lawful record of admission. See 8 CFR § 1.4(d).

► If an employer, local, state or federal agency requests admission information, present your admission (I-94) number along with any additional required documents requested by that employer or agency.

► Note: For security reasons, we recommend that you close your browser after you have finished retrieving your I-94 number.



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# ADIS

12. The CBP officer will scan the alien's passport which will upload into the Arrival Departure Information System (ADIS).



# Example of ADIS Arrival

ADIS Web - Event Detail

## US-VISIT Arrival Departure Information System



Detail View

Detail Report for: [REDACTED]

LAST NAME: [REDACTED]  
 FIRST NAME: [REDACTED]  
 BIRTH DATE: [REDACTED] 1981  
 GENDER CODE: U  
 DOCUMENT NUMBER: [REDACTED]  
 COC: UNK  
 DOCUMENT COUNTRY: USA  
 DOCUMENT TYPE: S (Social Security Card)  
 TRAVELER STATUS: N/A  
 US-VISIT EXEMPT TYPE: N/A  
 VESSEL NAME: N/A  
 VESSEL NUMBER: N/A

EVENT TYPE: PENDING  
 EVENT DATE: 08/27/2013 12:00 am  
 LOCATION CODE: N/A (NOT APPLICABLE)  
 SITE: N/A  
 ACTION CODE: N/A  
 ADMIT UNTIL DATE: N/A  
 EVENT ADMIT UNTIL DATE: N/A  
 OVERSTAY DAYS: 0  
 RECONCILIATION CODE: AOS  
 EVENT ADMISSION CLASS: 181  
 ADMISSION CLASS: 181  
 CARRIER CODE: N/A  
 FLIGHT NUMBER: N/A  
 DEST ADDRESS: ELEVEN MADISON AVE  
 DEST CITY NAME: NEW YORK  
 DEST STATE CODE: NY

CLOSED VISIT: N  
 PERSON ID: [REDACTED]  
 ENCOUNTER ID: N/A  
 EVENT FIN: N/A  
 SEVIS ID: N/A (b)(7)(e)  
 BIO FLAG: N  
 [REDACTED]  
 LAND WA FEE EXEMPT: N/A  
 [REDACTED]  
 C3 FORM TYPE: 1129 (b)(6)  
 SEVIS ACTION: N/A  
 SEVIS STATUS: N/A  
 SEVIS STATUS CHG DATE: N/A

AID NUMBER: N/A  
 LANE: N/A

TECS HIT: N/A

NCIC HIT: N/A

Events for: [REDACTED]

Event	Event Date	Location	FIN	Action Code	Bio Verified	Class	Admit Until	Document Info	Mode - Name: ID/Flight	C
PENDING	09/02/2013 12:00 am	UNK	N/A	N/A	N	181	N/A	S-USA [REDACTED] UNK		Stat



U.S. Citizenship and Immigration Services

CTU January 2014

# Visa Exempt Nonimmigrants

The following nationals are not required to present a visa for admission to the United States:

- Canadian citizens
- Bermuda citizens
- Bahamian nationals & British subjects residing in Bahamas
- Certain Caribbean residents
- Mexican nationals with BCC
- Visa Waiver Program (WT/WB)



# Visa Exempt Nonimmigrants, *continued...*

- Visa exempt nonimmigrants do not apply at a consulate or embassy. They go straight to the Port of Entry (POE) or to a Pre-Flight Inspection (PFI) facility and seek admission directly from CBP.
- The CBP officer questions the applicant and, if satisfied, grants the applicant nonimmigrant status by stamping and completing an admission stamp in the applicant's passport.



# Visa Exempt Nonimmigrants, *continued...*

- In most instances, the CBP officer does NOT issue an I-94 to a visa exempt nonimmigrant visitor.
- If Canadian Visitors or Mexican Border Crossers wishes to change or extend status in the United States and they qualify to do, the ISO will
  - Issue a paper I-94 Card,
  - Enter the I-94 number into GUI and
  - Send the duplicate copy to the KCC.



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# Change of Status (COS) and/or Extension of Stay (EOS)

- If the beneficiary is already in the United States, the I-129 petition may also be used to request an extension of stay or a change of status.
- A change of status (COS) or extension of stay (EOS) can be requested in Parts 2 and 3, on Pages 2 and 3 of the petition.



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# COS/EOS Requirements

- Beneficiary has to:
  - be in status at time of filing and
  - continue to maintain status as of requested starting employment date.
  
- Beneficiary has to be admissible.
  
- ADIS or SQ94 check is required for all COS requests and all EOS denials.



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# Example

- John Doe was admitted as an F-1 student to study at UVM for his master's degree in Education. BFA would like to hire John as a special education teacher and petitions for him as an H-1B nonimmigrant.
- Does John have to leave the United States and apply for a new NIV and be admitted in his new classification as an H-1B?



# Example, *continued...*

No - BFA can file an I-129 petition to seek both:

- H-1B classification approval for John Doe as well as
- A request to change John's status from F-1 to H-1B.



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# Example of COS Approval Notice

(b)(6)

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797A, Notice of Action

---

**THE UNITED STATES OF AMERICA**

CASE NO. 1129	
PETITION FOR A NONIMMIGRANT WORKER	
RECEIVED June 9, 2011	PETITIONER EDGAR ONLINE INC
APPROVAL DATE September 7, 2011	CLASSIFICATION H1B
VIC OGNL BSO OGNL & ANDERSON LLC 1984 ISAAC NEWTON SQUARE WEST SUITE 203 RESTON VA 20190	
Notice Type: Approval Notice Class: H1B Valid from 10/01/2011 to 09/30/2014	
<p>The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IIS with any questions about tax withholding.</p> <p>The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, Arrival/Departure Record. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-918, Application for Action on an Approved Application or Petition, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.</p> <p>The approval of this visa petition does not in itself grant the immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.</p> <p><b>THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.</b></p>	
Please see the additional information on the back. You will be notified separately about any other cases you filed. U.S. CITIZENSHIP & IMMIGRATION SVCS VERMONT SERVICE CENTER 78 LOWER WELDEN STREET BAINT ALBAN VT 05679-0001 Customer Service Telephone: (800) 375-5283 Form I-797A (Rev. 09/07/09)N	

PLEASE TEAR OFF FORMS AND RETURN TO ORIGINAL OR TO A VENDOR

Detach This Half for Personal Records  Receipt # SAC-11-102-61616 I-94# 383405588 18 NAME [REDACTED] CLASS H1B VALID FROM 10/01/2011 UNTIL 09/30/2014 PETITIONER: EDGAR ONLINE INC 11200 ROCKVILLE PIKE STE 310 ROCKVILLE MD 20852	383405588 18 Receipt Number SAC-11-102-61616 Immigration and Naturalization Service I-94 Departure Record      Petitioner: EDGAR ONLINE [REDACTED] U.S. Department of Homeland Security CAMBRIDGE
---	---

Form I-797A (Rev. 10/20/09) N



# Example

- **EXAMPLE 2:** John Doe received an I-129 approval three years ago and changed his status to work as an O-1A teacher. Now, a new employer wants to employ John as an O-1A teacher.
- Does John have to leave the United States and apply for a new visa and admission to extend his O-1A status?



# Example, *continued...*

No - The new employer can file an I-129 O-1A petition to seek both:

- O-1A classification for John Doe as well as
- A request to extend John's O-1A status.

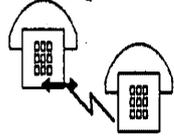


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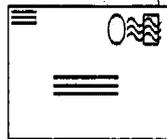


Has a qualifying H1B position as a Biochemist.



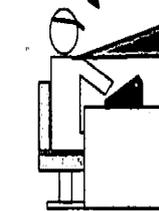
DOL LCA Fax Service

Employer faxes a completed LCA to Labor Dept who in turn faxes it back electronically certified.



Petition mailed for adjudication

Officer approves the nonimmigrant classification and the change of status

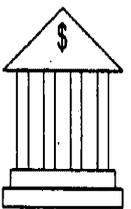


Officer adjudicates

Approval notice with new I-94 attached

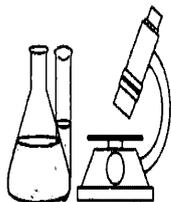


Alien



Harvard University

Just graduated with a PhD in Biochemistry.



# EOS/COS



POOF! New Biochemist in the United States CTU January 2014

# Nonimmigrant Review

- Q. What is the difference between a petition and an application?
- A. A petition is filed by a petitioner seeking an immigration benefit for someone else (the beneficiary), while an application is filed by an applicant seeking an immigration benefit for himself or herself.



# Nonimmigrant Review, *continued...*

- Q. What is the difference between a nonimmigrant visa (NIV) and nonimmigrant status?
- A. An NIV is a document placed in an alien's passport that allows him or her to apply for admission, while nonimmigrant status is the actual granting of admission to an alien for a period of time.



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# Nonimmigrant Review, *continued...*

Q. A visa exempt Canadian applies for admission as a nonimmigrant at:

- a. Consulate
- b. Embassy
- c. POE
- d. PFI

Choose all that apply

A. POE, PFI



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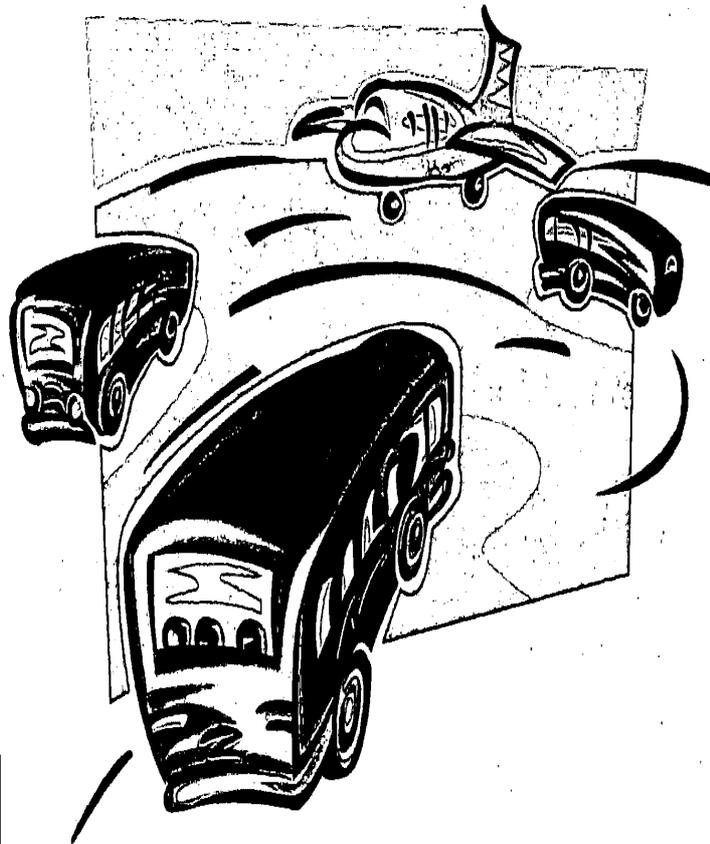
# Change of Status

We will now introduce you to some of the nonimmigrant classifications that you may see beneficiaries requesting a change of status from.



# Travel not Authorized

Per 8 CFR 248.1 - An applicant may not travel outside the U.S. while their request for a COS is pending.



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# B-1 vs. B-2

- B-1 is a temporary visitor for business.



- B-2 is a temporary visitor for pleasure.



# B-2 Visitor Issues

- May not work or attend school

Exception: Part-time incidental classes

- Medical Treatment



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# Dependent Classifications

Principal	Dependent
E-1	E-1
E-2	E-2
E-3	E-3
H1B, H2 or H3	H4
L1A or L1B	L2
O1A or O1B	O2
P1A, P1B, P2, P3	P4
Q2	Q3
R1	R2
TN	TD



# Not Eligible for COS

- J-1 physicians (exception: “Conrad Waiver”, Form I-612).
- J-1 students subject to the foreign residency requirement who have not received a waiver.
- Aliens admitted under the Visa Waiver Program (WT/WB).
- Aliens in transit: C-1, C-2, C-3
  - C-1 is an alien in transit
  - C-2 is an alien in transit to the UN
  - C-3 is a foreign government official in transit
  - Alien in transit without a visa (TWOV).



# Not Eligible for COS, *continued...*

- Crewman (D-1/D-2).
- Fiancé(e) and dependents, K-1/K-2.
- Spouse and dependents of a U.S. citizen, K-3 and K-4 (This is a visa created by the LIFE Act).
- Informants, admitted with visa type “S”.
- Refugees, asylees, and parolees.



# I – 539 Rider Applications



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# Who is eligible to file an EOS or COS on an I-539?

The spouse and unmarried  
minor children of the  
nonimmigrant worker with  
whom they are staying in the  
United States are eligible for  
an EOS or COS.



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# Documentary Requirements for I-539

- Application must be signed by the applicant.
- Evidence of lawful admission, passport pages, or other documentary evidence to verify a lawful entry and status.
- A copy of the principal alien's I-797 approval notice verifying his or her nonimmigrant status and validity dates.



# Documentary Requirements for I-539, *continued...*

- Evidence that the principal alien is maintaining status.
- Proof of Relationship
  - Birth certificate
  - Marriage certificate
  - Principal alien's name listed on visa
  - Principal alien's name listed on passport
  - Principal alien's name on the back of the I-94 card



# Validity Dates

- For EOS grant validity dates which mirror the dates granted to the principal alien (except for age-outs).
- For COS :
  - Grant from the date of adjudication or the start date granted to the principal alien, whichever is later.
  - The validity date's expiration should mirror the expiration date of the principal alien's status (except for age-outs).
  - Make appropriate notations on Form I-539 Remarks section if limited.



# Dependent Child Turning 21 (age-outs)

If an applicant is a dependent child, and he or she will turn 21 prior to the principal alien's status expiration, you must grant validity of all applicants to the day before the dependent child's 21st birthday.



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# Dependent Child Has Already Turned 21 (age-out split decision)

- If an applicant is a dependent child and he or she has already turned 21, his or her application will be denied.
- If there are riding co-applicants, then a split decision will be done approving the co-applicants and denying the 21 year old.



# Required System Checks

- TECS check for individuals over 14 years of age.
- ADIS/SQ94 query for all change of status requests and all denials.

NOTE: The ADIS/SQ94 query is valid for 15 days.

- SEVIS if COS from F, M or J status.
- NSEERS registration compliance check.



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# Approval Processing

- Correct notations on application
- Compute validity dates, length of stay, etc.
- Record of Proceeding
- Correct approval phrase and GUI update
- Complete adjudication worksheet, if applicable (i.e. return original documents)
- Proper routing



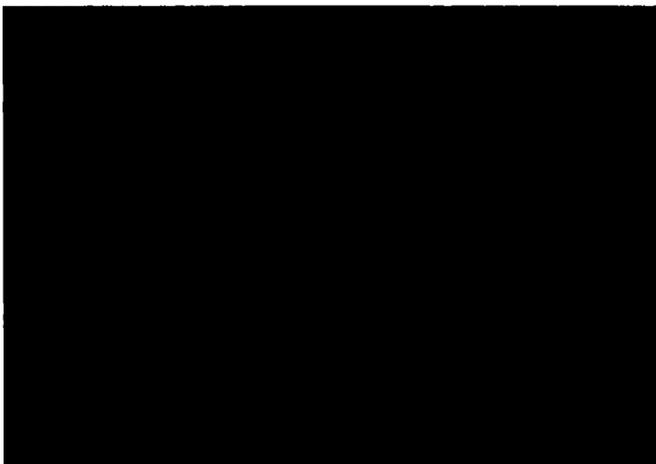
# Summary – General Information

- The status of the dependent is based on status of nonimmigrant spouse or parent.
- EOS and COS of dependents are adjudicated at the Service Center with jurisdiction over the applicants' address.
- The ending validity date typically mirrors the ending validity period given to the nonimmigrant spouse or parent on EOS cases.





# U.S. Citizenship and Immigration Services



# The History of the L Visa



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# Definition of Intracompany Transferee

According to 8 CFR 214.2 (l)(1)(ii)(A):

“Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge...”



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# Introduction

Prior to 1965, immigrants entered the United States based on their nationality, skills, and level of education. Nonimmigrant classifications did not exist for intra-company transferees.



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# Legislation

Congress enacted the following:

- Immigration and Nationality Act Amendments of 1965;
- Public Law 91-225 (April 7, 1970);
- Immigration Act of 1990;
- L-1 Visa Reform Act of 2004;
- Public Law 111-230



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# Immigration and Nationality Act Amendments of 1965

- Known as the Hart-Cellar Act.
- The Act abolished the national origins quota system that had structured immigration policy since the 1920s, replacing it with a preference system that focused on immigrants' skills and family relationships.



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# Immigration and Nationality Act Amendments of 1965, (continued)

Also:

- Limited the ability of multinational corporations to transfer top-level personnel to offices in the United States.
- Forced foreign workers to apply for immigrant visas if they were not eligible for E nonimmigrant visas.



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# Public Law 91-225 (1970)

- Created the L nonimmigrant visa classification at INA 101(a)(15)(L) for intracompany transferees.
- Permitted international companies to temporarily transfer top-level managers and executives or employees with specialized knowledge to the United States.
- Prior to this Law, those who did not qualify as E nonimmigrants were forced to apply for immigrant visas even if there was no intent to remain permanently in the United States.



# Public Law 91-225 (1970), (continued)

- Required that the employee worked for the foreign company for at least one year prior to coming to the United States.
- Law was not intended to alleviate or remedy a shortage of U.S. workers.
- Created the L2 visa for dependents.



# Immigration Act of 1990 (Public Law 101-649)

- Clarified the meaning of “specialized knowledge,” (knowledge of a company’s own product) by creating the following definition:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.



# Immigration Act of 1990 (Public Law 101-649), (continued)

- Placed a seven (7) year time limit for managers and executives.
- Placed a five (5) year time limit for specialized knowledge employees.



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# Immigration Act of 1990 (Public Law 101-649),(continued)

- Required employee to work one continuous year abroad with the foreign employer within the three years immediately preceding admission.
- Permitted L employees and their dependents “dual intent” to apply as lawful permanent residents.
- Permitted L-2 (dependents) to work while in the United States
- Established the L Blanket classification.



# L-1 Visa Reform Act of 2004

Applies only to L-1Bs.

- Established that employees can no longer work primarily at a worksite other than their petitioning employer if the work will be controlled or supervised by a different employer; or
- Can not work if the offsite arrangement is essentially to provide labor for hire, rather than service related to the specialized knowledge of the petitioning employer.

(Applies to petitions filed on or after June 6, 2005.)



# L-1 Visa Reform Act of 2004 (continued)

- Requires that all L-1 employees must have worked for a period of no less than one (1) year outside of the United States for an employer with a qualifying relationship to the petitioning employer.
- Created a new Fraud Prevention and Detection Fee of \$500 which must be paid by the petitioner.

(Applies for petitions filed on or after March 8, 2005).



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# Public Law 111-230

- Emergency Supplemental Appropriations for Border Security
  - Requires the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions. The fee applies to petitions postmarked on or after August 14, 2010. Public Law 111-230 will remain in effect through September 30, 2015.



# Public Law 111-230, (continued)

- The additional fee applied to petitions:
  - that are request for new employment or change of employer,
  - where the petitioners employ 50 or more employees in the United States,
  - the petitioners have more than 50% of their employees in the United States in H-1B or L-1A or L-1B nonimmigrant status.

Petitioners meeting these criteria must submit the additional fee when filing an H-1B or L-1 petition.



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# The History of the L-Visa

Questions?

Concerns?



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- Date of last revision:  1/14/2014
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.



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# U.S. Citizenship and Immigration Services



# Validation Instrument for Business Enterprise



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# Training Objectives

- Understand the purpose of VIBE
- Understand basic function of VIBE
- Understand VIBE scoring and how it relates to the viability of the petitioner
- Understand how to interpret data in VIBE
- Understand VIBE Score Override (b)(7)(e)



# VIBE Reference Material

The VIBE User Guide is located in MSWord under Add'l Resources / ADJ SOPs / General.



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# What is VIBE?

- A web-based system developed and built by USCIS.
- An adjudication tool to be used by ISOs on most employment-based petitions.
- Assists in the identification of valid, eligible petitioners.
- Identifies ineligible petitioners and potentially fraudulent filings.
- Uses commercially available information from an independent source, Dunn & Bradstreet.

Note that VIBE ONLY relates to the eligibility of the petitioner.



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# Classifications Utilizing VIBE

The following I-129 classifications require VIBE query:



(b)(7)(e)



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# Logging In



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[Rules of Behavior](#)

Securing America's Promise

## Login - VIBE

\*\*\*\*\* WARNING \*\*\*\*\*

You are accessing a U.S. Government information system, which includes (1) this computer, (2) this computer network, (3) all computers connected to this network, and (4) all devices and storage media attached to this network or to a computer on this network. This information system is provided for U.S. Government-authorized use only.

Unauthorized or improper use or access of this system may result in disciplinary action, as well as civil and criminal penalties.

By using this information system, you understand and consent to the following:

You have no reasonable expectation of privacy when you use this information system; this includes any communications or data transiting or stored on this information system. At any time, and for any lawful government purpose, the government may, without notice, monitor, intercept, search and seize any communication or data transiting or stored on this information system.

The government may disclose or use any communications or data transiting or stored on this information system for any lawful government purpose, including but not limited to law enforcement purposes.

You are NOT authorized to process classified information on this information system.

\*\*\*\*\* WARNING \*\*\*\*\*

By logging into this system you are accepting the USCIS Enterprise Service Bus Rules of Behavior. For documentation on how to use the VIBE Service, please review the [Users Guide](#) for this service. If you cannot view the document, please contact your local Computer Support Service Desk and request to have "Adobe Acrobat Reader" installed on your computer. If you have any difficulty accessing your account, please call the USCIS Service Desk at 888-220-5228 or email your request to: [uscis servicedesk@dhs.gov](mailto:uscis servicedesk@dhs.gov).

Username

Password

Version USCIS VIBE 1.1.1 Build 1

[Accessibility Statement](#)



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# Entering a Case in VIBE

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[Rules of Behavior](#)



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*Securing America's Promise*

## VIBE Status Report

[VIBE Red Report](#) [VIBE Unmatched Report](#)

Receipt Number:



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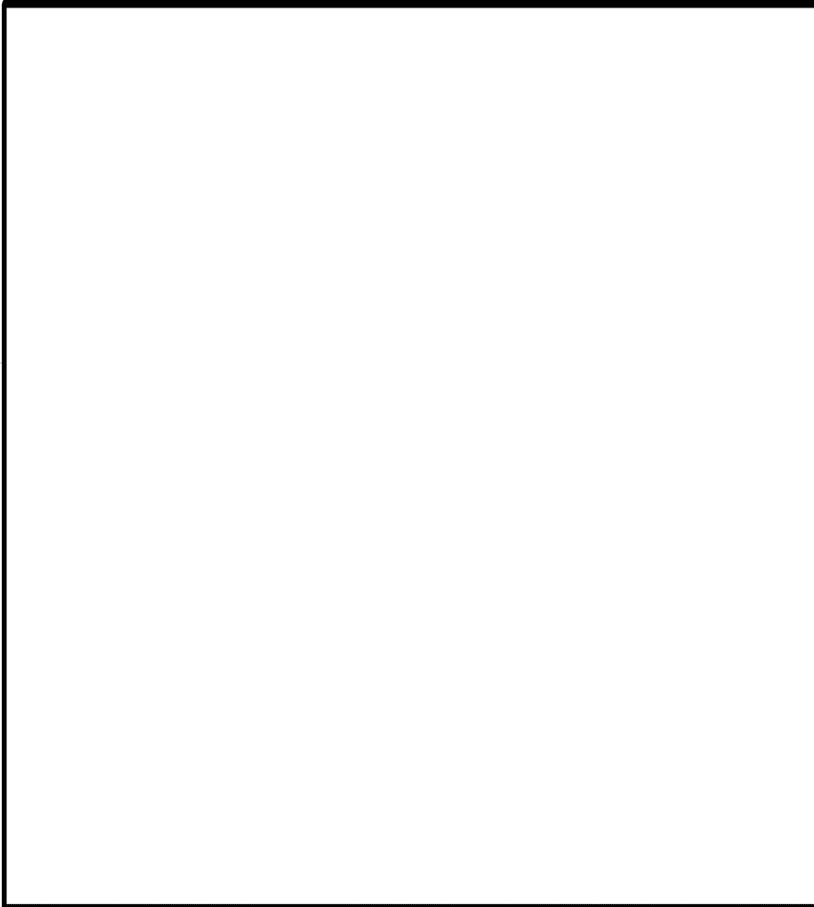
Presenter's Name: CTU Revised 2014

7

# VIBE Score Result -



(b)(7)(e)



(b)(7)(e)



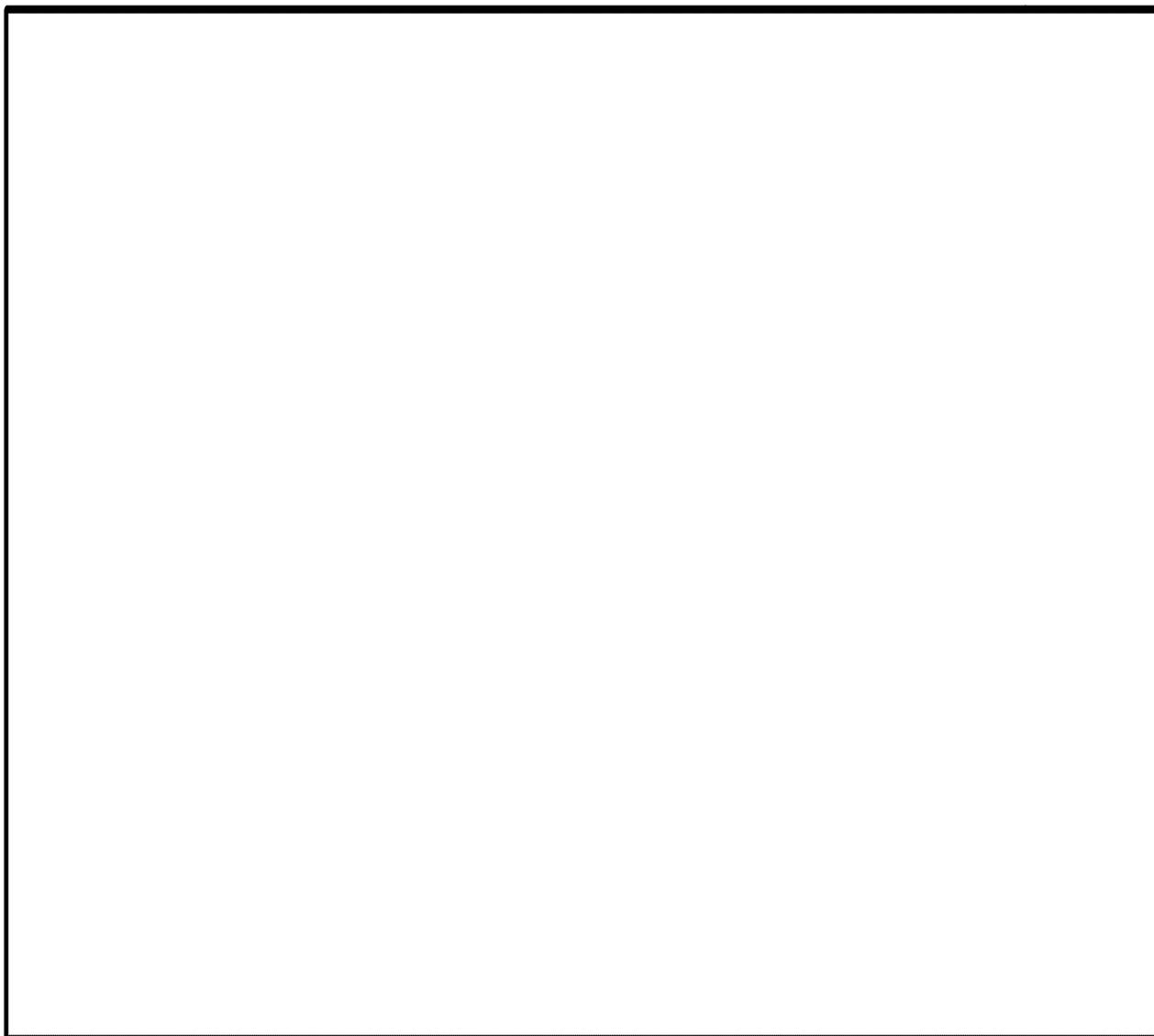
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# VIBE Score Result -



(b)(7)(e)



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# VIBE Score Result -

(b)(7)(e)

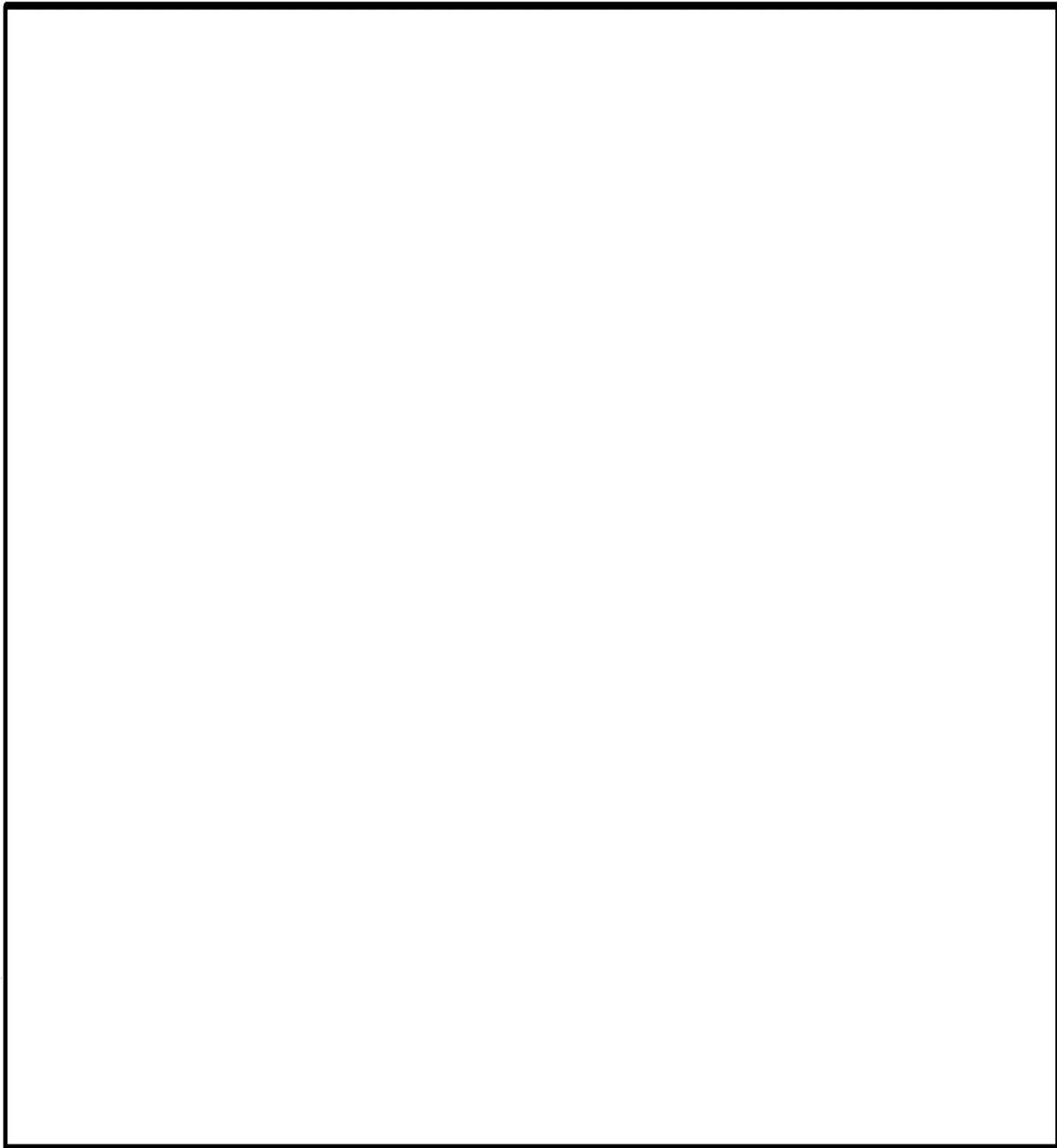
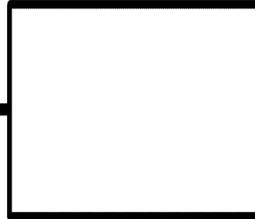


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# VIBE Score Result

(b)(7)(e)



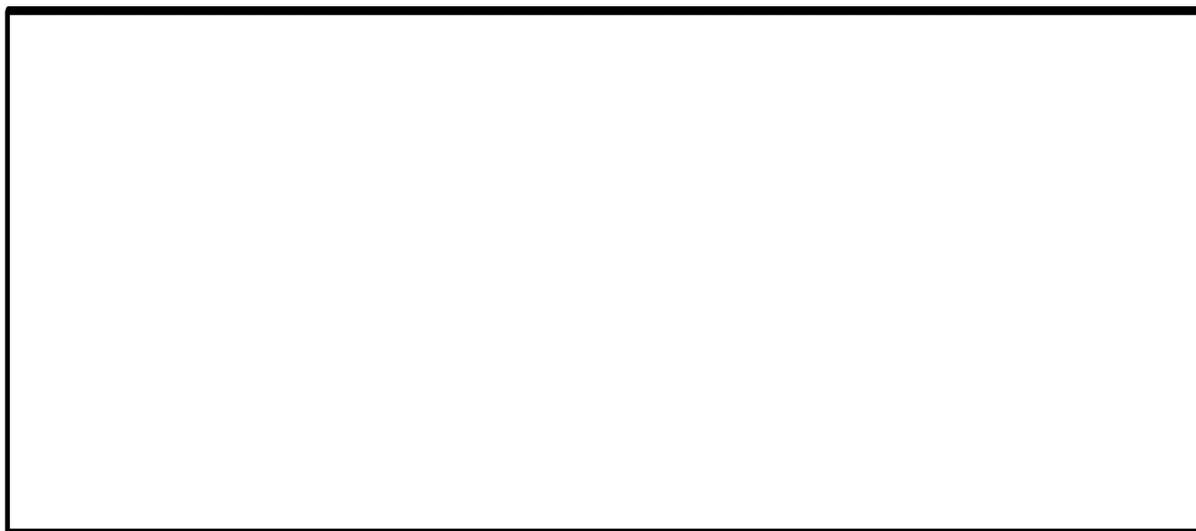
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# VIBE Score Result -



(b)(7)(e)



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# VIBE Score Card

(b)(7)(e)



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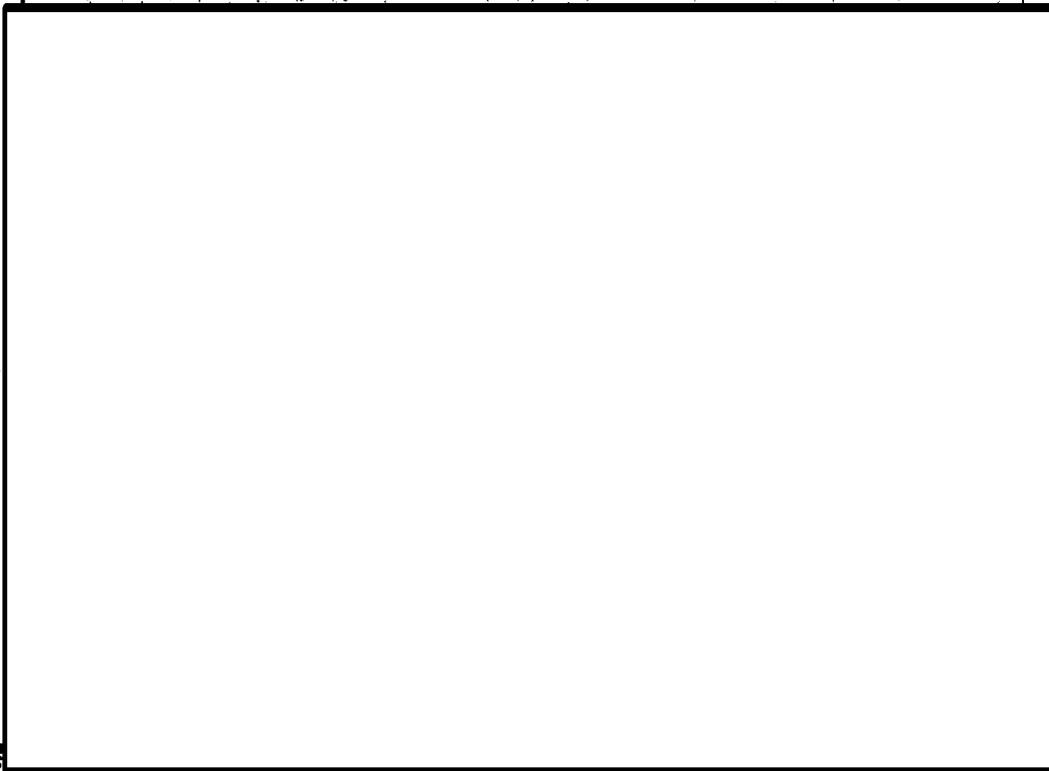
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# VIBE Pre-Defined Company Score



**VIBE Pre-Defined Company Score**

(b)(7)(e)

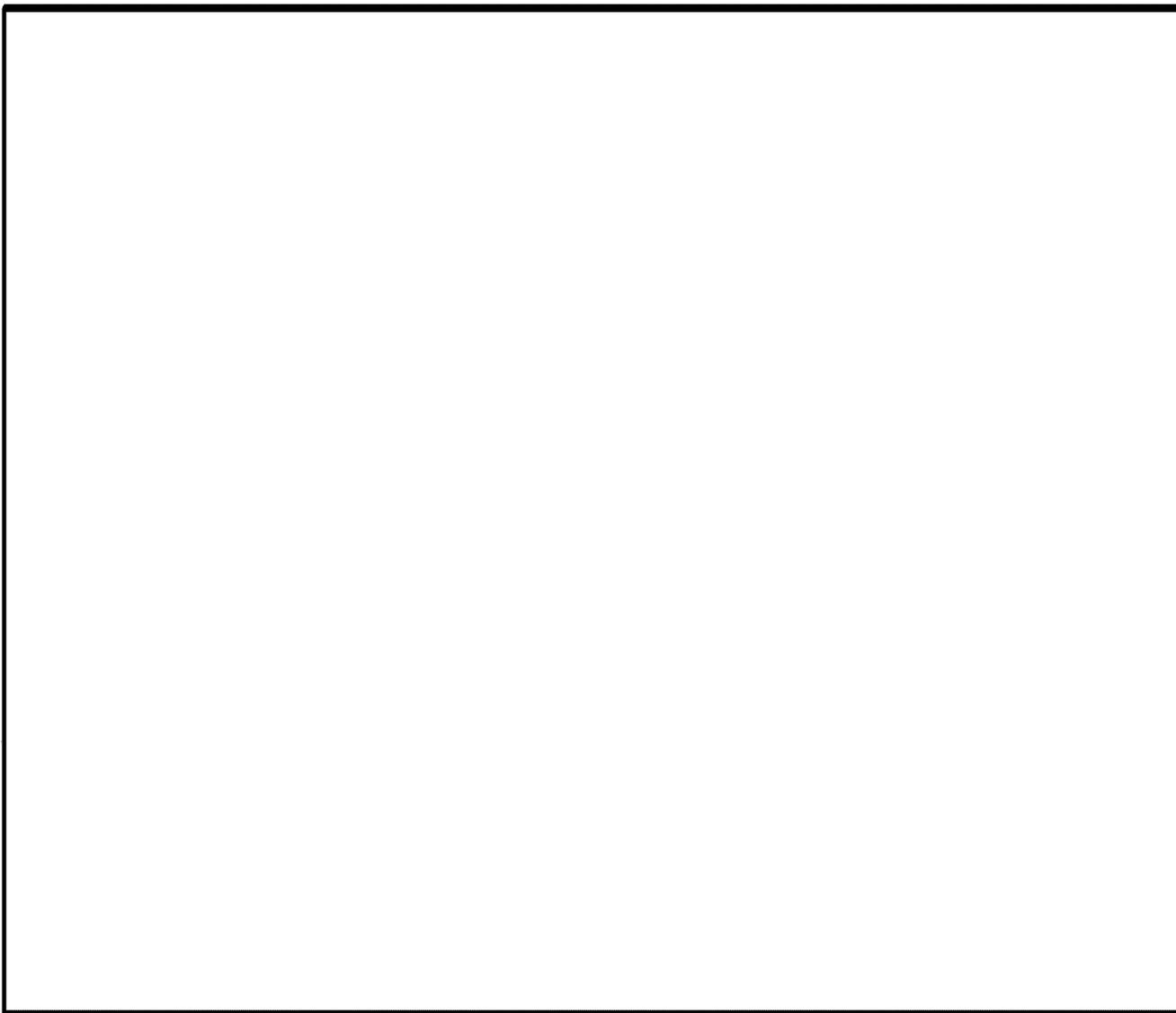


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# When to Query VIBE

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# When to Query VIBE (cont'd)

- Motions/Appeals being adjudicated at the VSC must have a VIBE query.
- Consular returns – refer to the VIBE User Guide.



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# VIBE Check Exceptions

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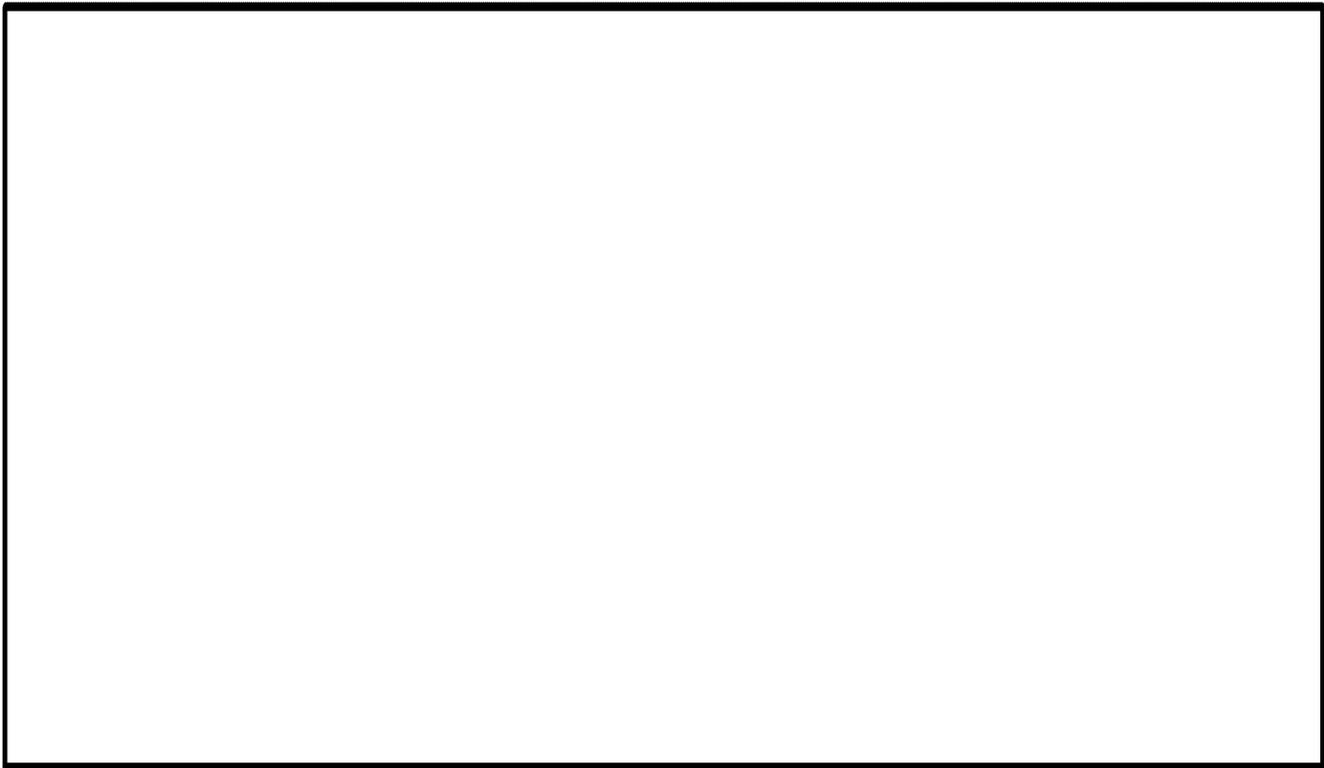
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# Validity of VIBE Checks

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# File Notations and Printouts

- A file notation or printout of VIBE is not required.
- If you print from VIBE, you are required to stamp with the “Unclassified for Official Use Only” stamp.



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# Manual Search – No Match (b)(7)(e)

- If no match is found, a limited status report will be returned with only info from CLAIMS
- Perform a Manual Search

Petition Information

Adjudicative Status: PENDING



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# Manual Search – Alternate address

--

(b)(7)(e)

Petition Information	Adjudicative Status: PENDING

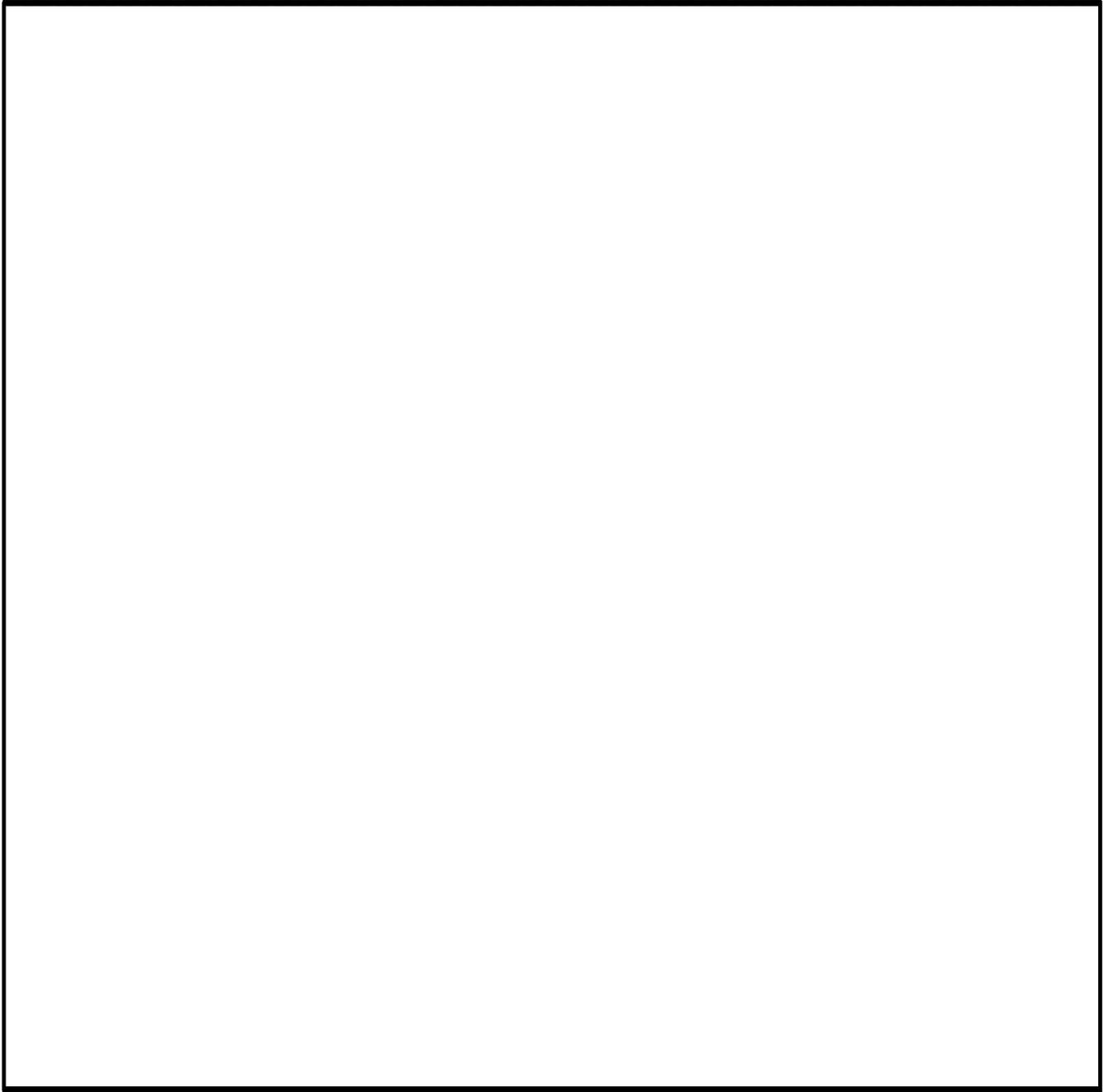


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# Manual Search

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# How to Perform a VIBE Query

Case Study



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VIBE

# Resolving VIBE Issues



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# System Outages

- Notification will be sent from the VSC VIBE Team when there are outages.
- Adjudicate your case based on the evidence in the record.
- If system is down for a few hours, hold file at your desk and check VIBE the next business day.
- If system is down longer than a day, notate file that VIBE is down and the date, route file to records/clerkical.

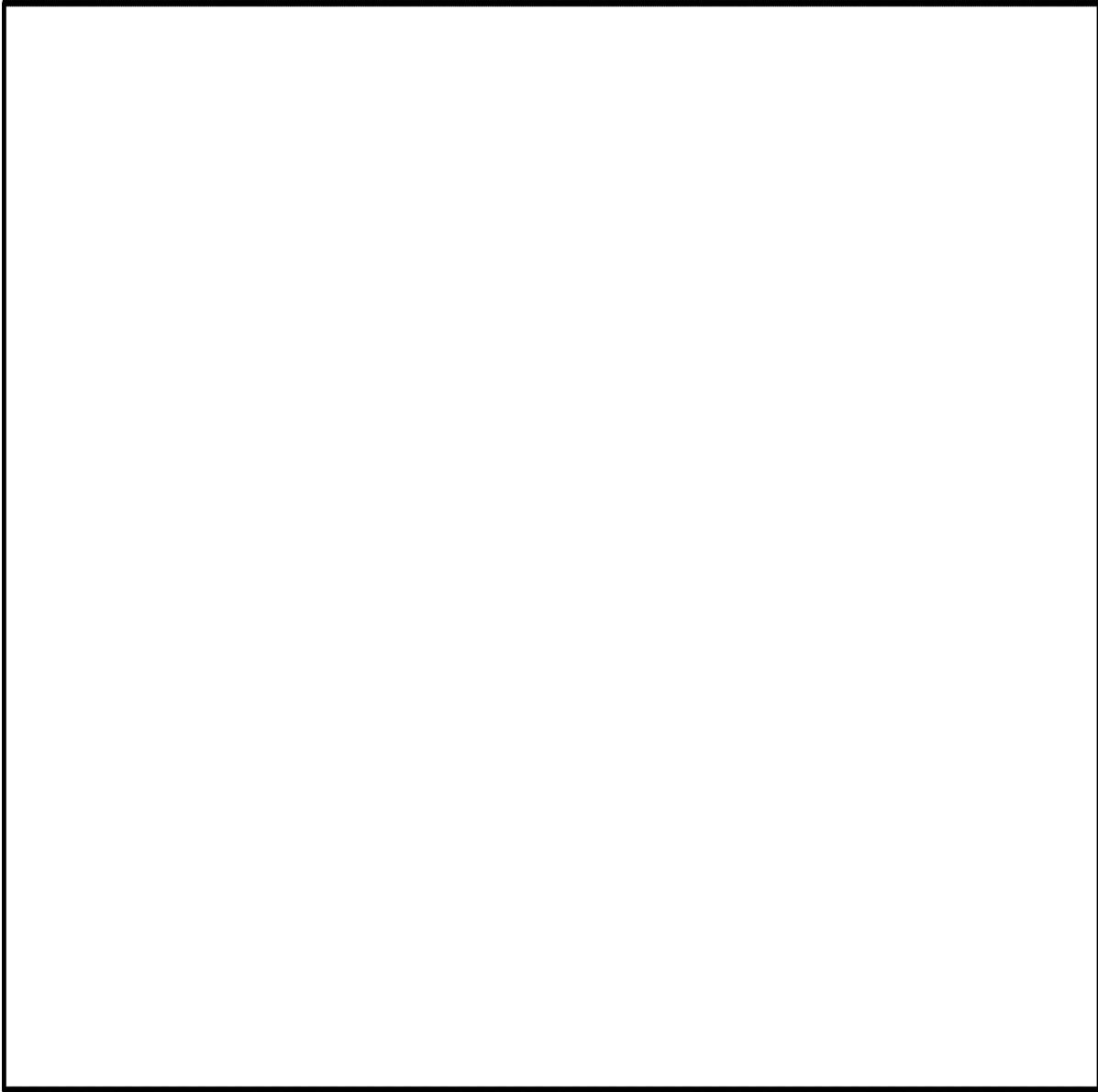


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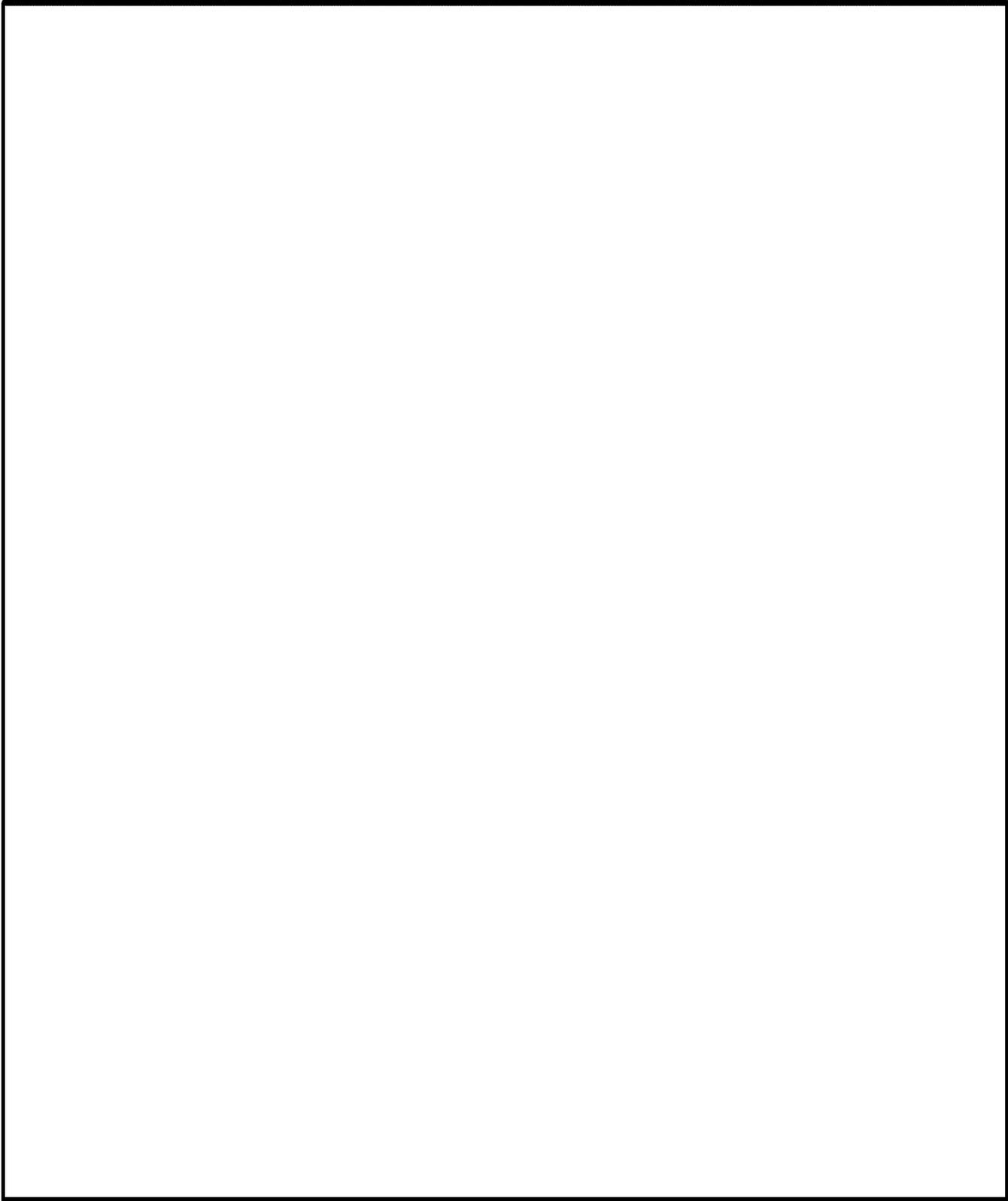
(b)(7)(e)



(b)(7)(e)



(b)(7)(e)



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# VSC Investigations Database



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# Accessing VIBE Database

The screenshot shows a Windows Explorer window titled 'Local Databases'. The address bar displays the path: C:\Documents and Settings\amboucha\Center Applications\Local Databases. The left sidebar shows a tree view with 'Center Applications' expanded, listing sub-folders like 'Citix Work-At-Home Applications', 'Claims', 'Essex Refresh', 'Local Databases', 'NFTS', 'Office', 'Refresh Desktop', and 'Supervisory Review'. The main pane displays a grid of shortcut files:

File Name	Icon	Size
Append NFTS Info	Shortcut icon	2 KB
ASC	Shortcut icon	2 KB
CardTrack	Shortcut icon	1 KB
Chinese Fraud Database	Shortcut icon	1 KB
GroupTrack	Shortcut icon	1 KB
I-20 Trading	Shortcut icon	2 KB
IBIS HRs Database	Shortcut icon	2 KB
Manifest	Shortcut icon	1 KB
Manual RA/ACS Database	Shortcut icon	1 KB
PPU Aging	Shortcut icon	2 KB
PPU Fed-Ex Database	Shortcut icon	2 KB
PPU Max Work	Shortcut icon	2 KB
PPU Work Distribution	Shortcut icon	2 KB
Senior Management Leave Schedule	Shortcut icon	Shortcut
SDO Correspondence Log	Shortcut icon	2 KB
STATS Reports	Shortcut icon	1 KB
Y800	Shortcut icon	1 KB
[Unreadable]	Shortcut icon	[Unreadable]

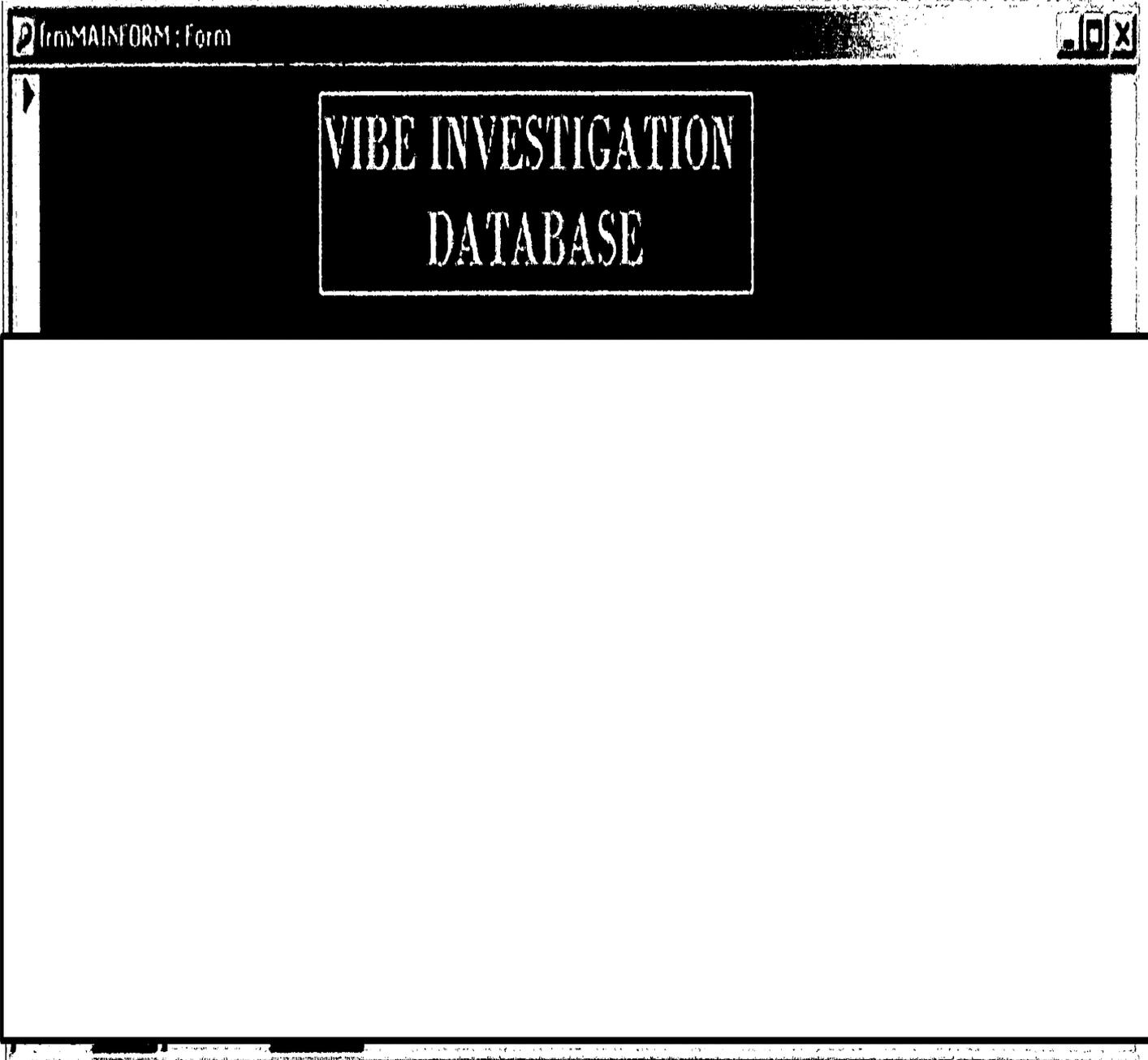


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# Click on Look Up Petitioner

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# Enter the First Four Characters

Immigration Form

VIBE INVESTIGATION  
DATABASE

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# VIBE Investigation Form



## VIBE INVESTIGATION FORM

[Redacted content]

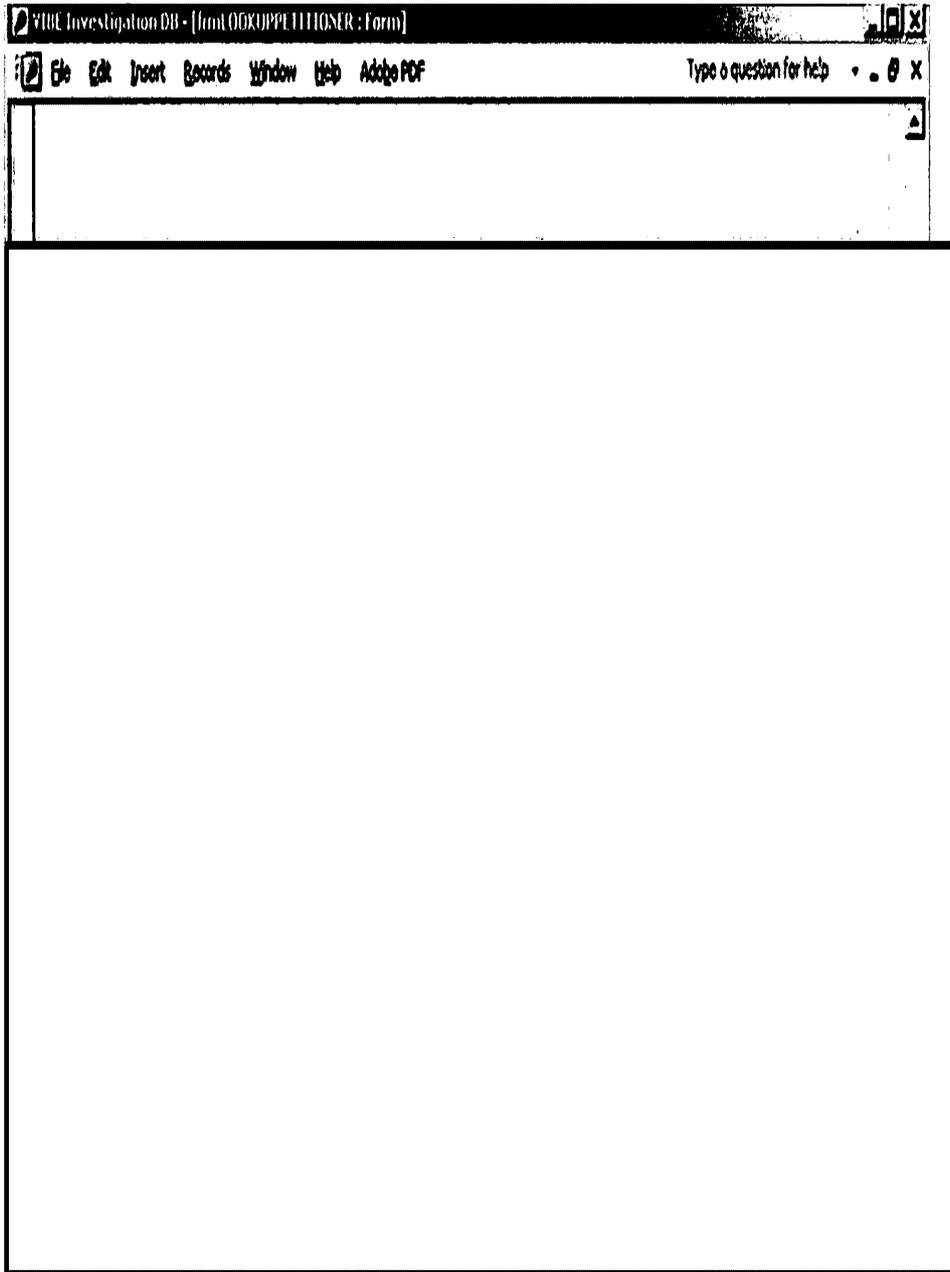
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# Results



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# Data Inquiry Request Form



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# Completing the Form

- Office 2003 in MSWord/Add'l Resources/ADJ Worksheets/I-129/VIBE Data Inquiry Request
- Office 2010 in MSWORD/Add-Ins/Add'l Resources/ADJ Worksheets/I-129/VIBE Data Inquiry Request
- Complete all fields on the document
- Explain in detail



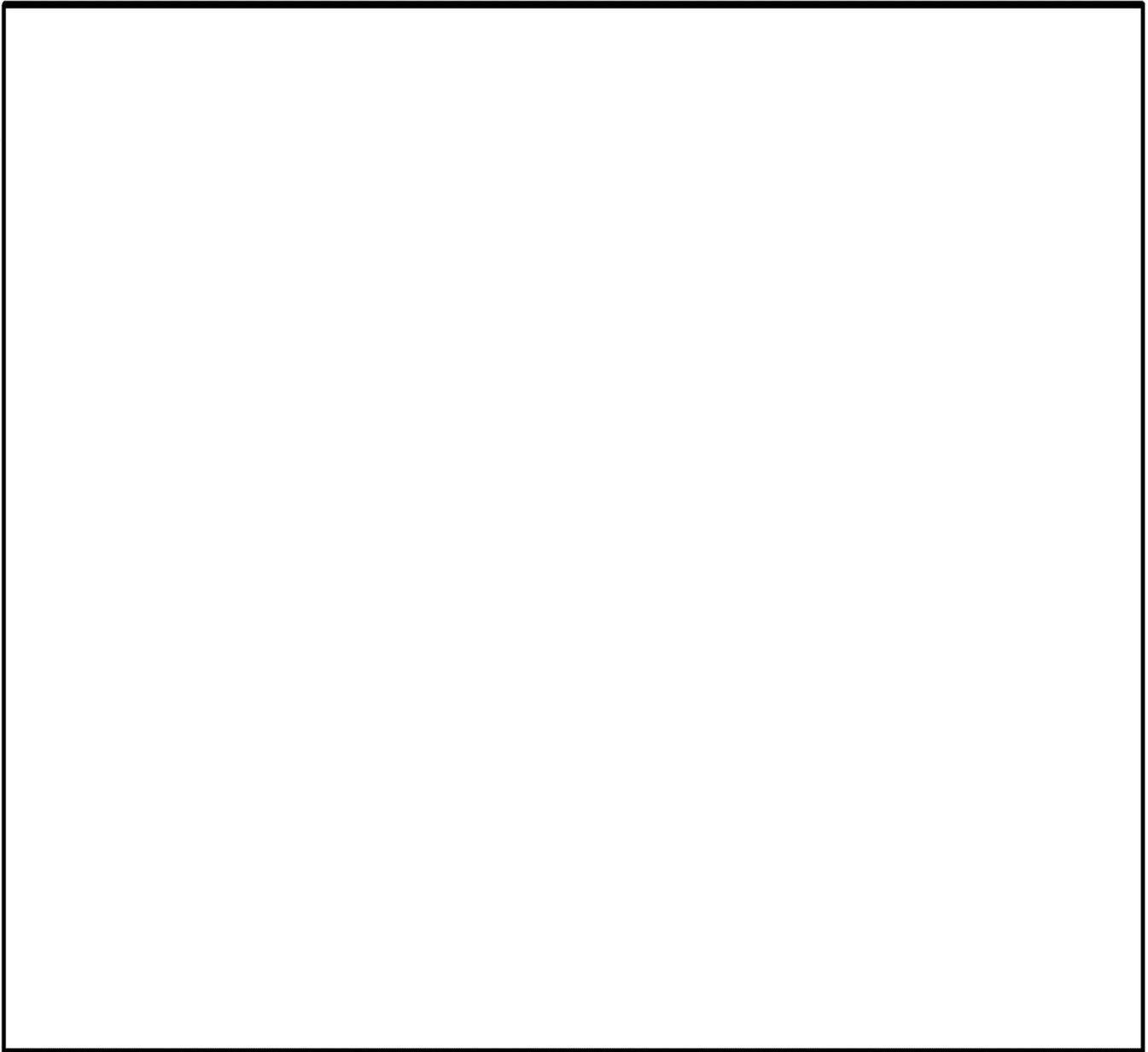
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# Completing the Form

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# VIBE RFEs

- Complete the VIBE Data Inquiry Request **prior** to sending a VIBE RFE if applicable.
- Located in CG under I-129/General/VIBE (call-ups 1881-1892).
- Do not use the VIBE RFE in regards to qualifying relationship Issues. Always use the RFE located in CG under the L qualifying relationship call-ups.



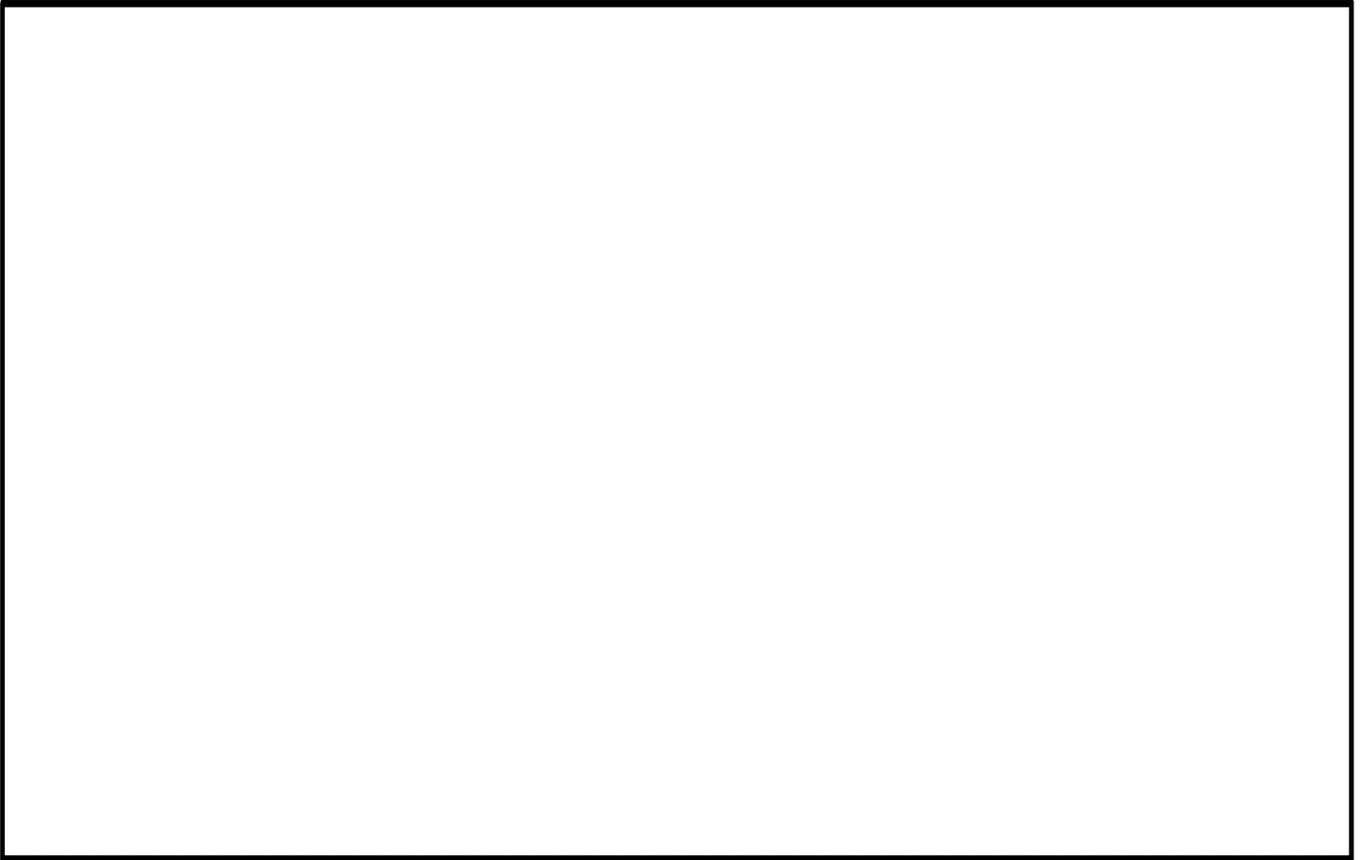
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# VIBE RFEs (cont'd)

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# U.S. Citizenship and Immigration Services



# VIBE for I-129 L Adjudication



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# Introduction

How VIBE differs for L-petitions?

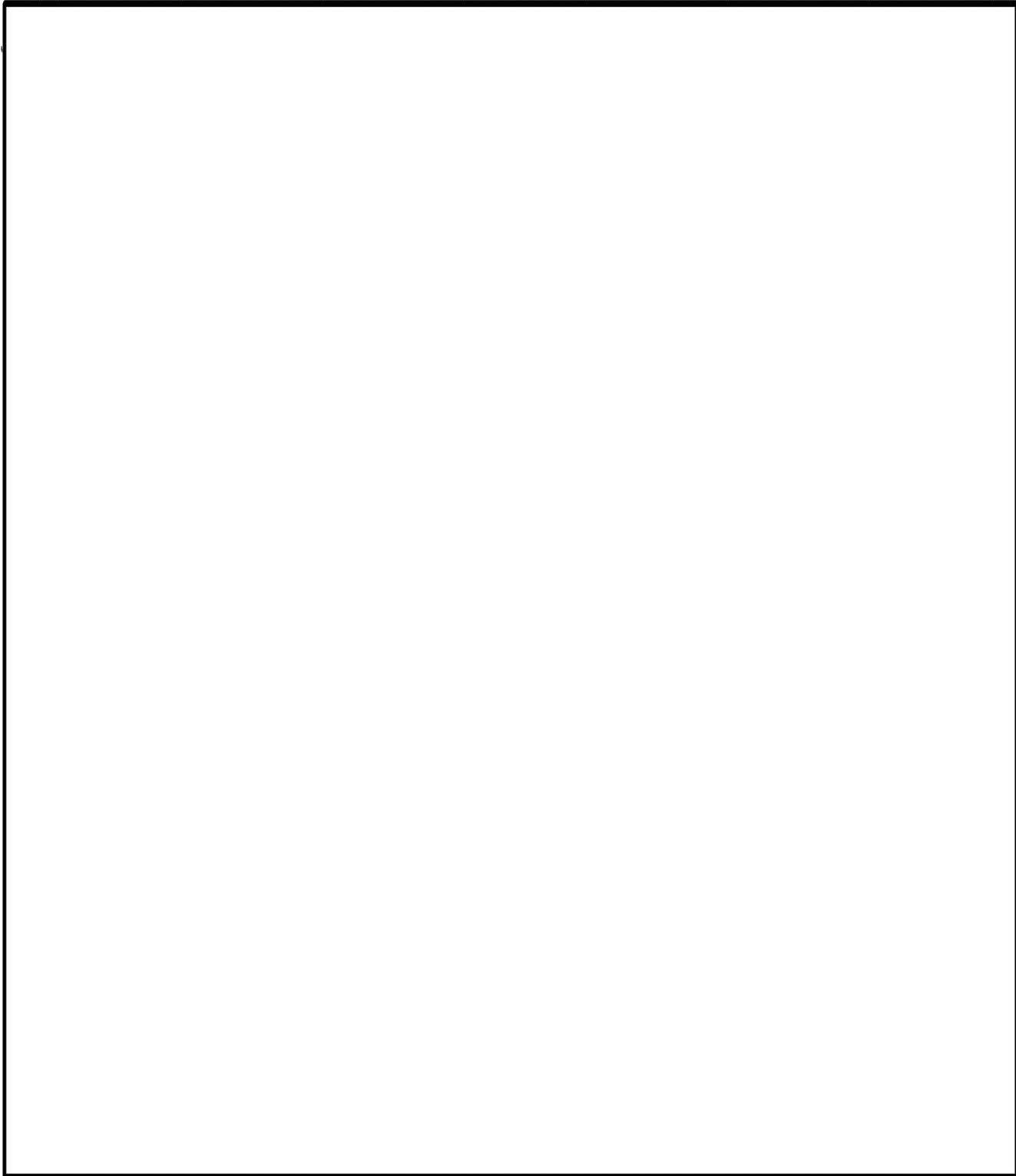
(b)(7)(e)



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(b)(7)(e)

# VIBE Processing



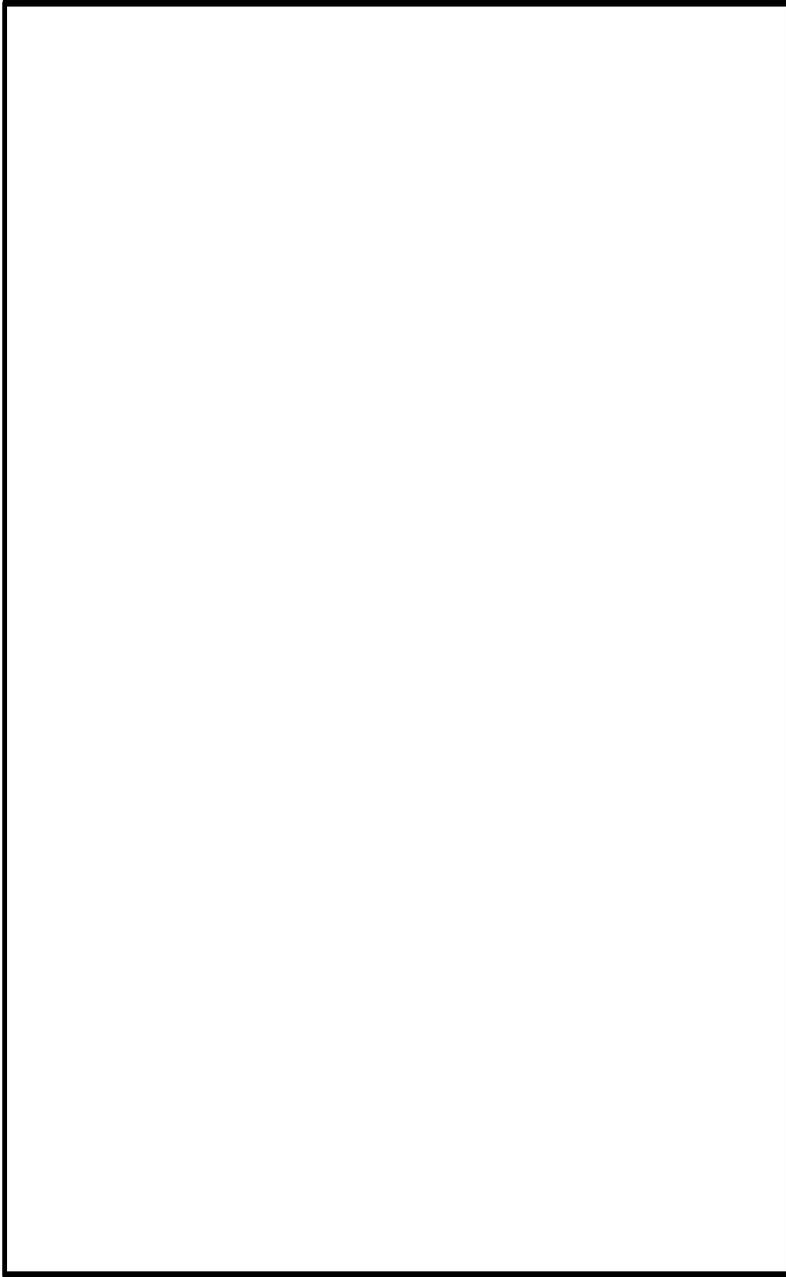
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# VIBE Exceptions

Adjudicative Action

Guidance



(b)(7)(e)

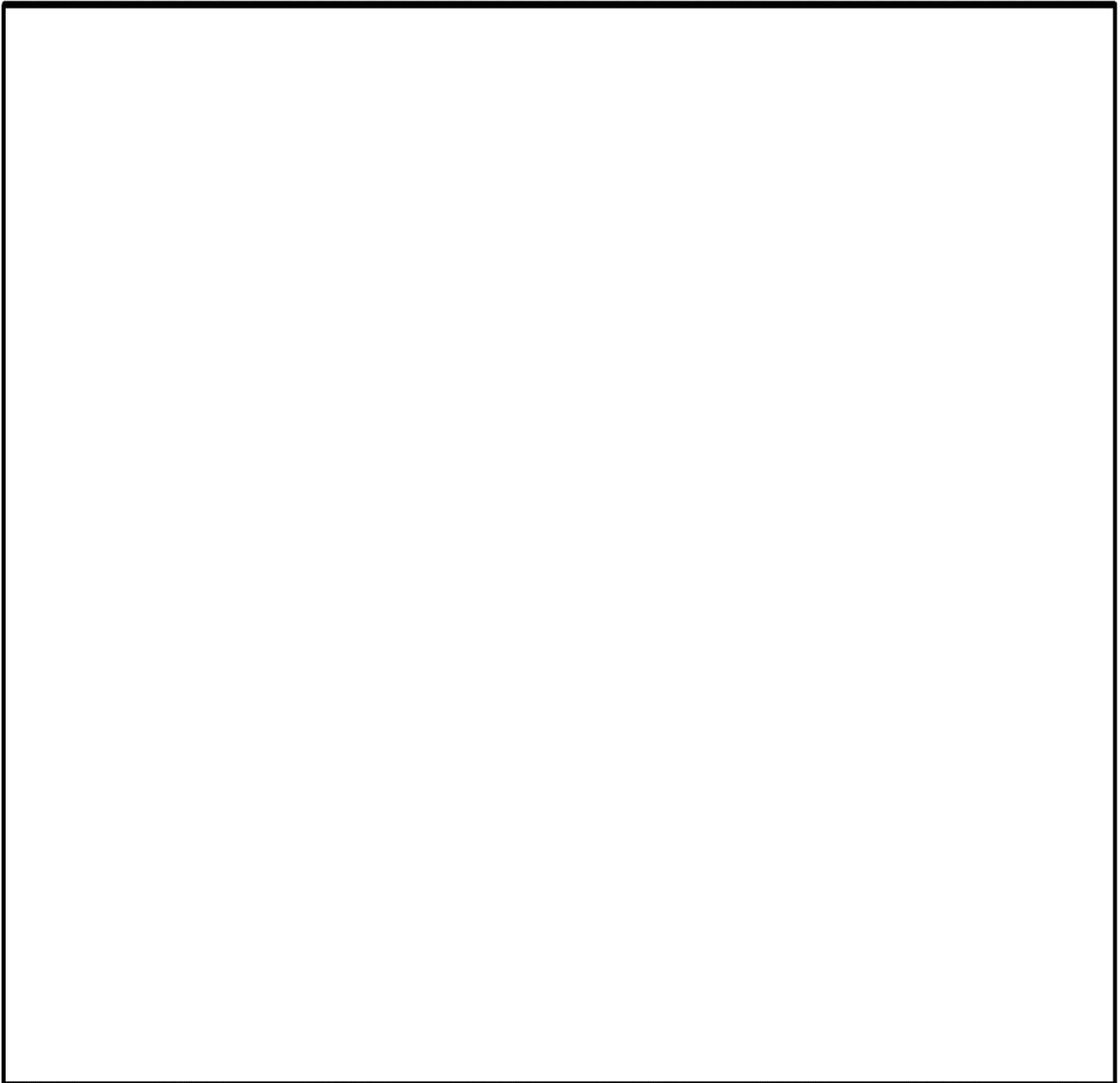


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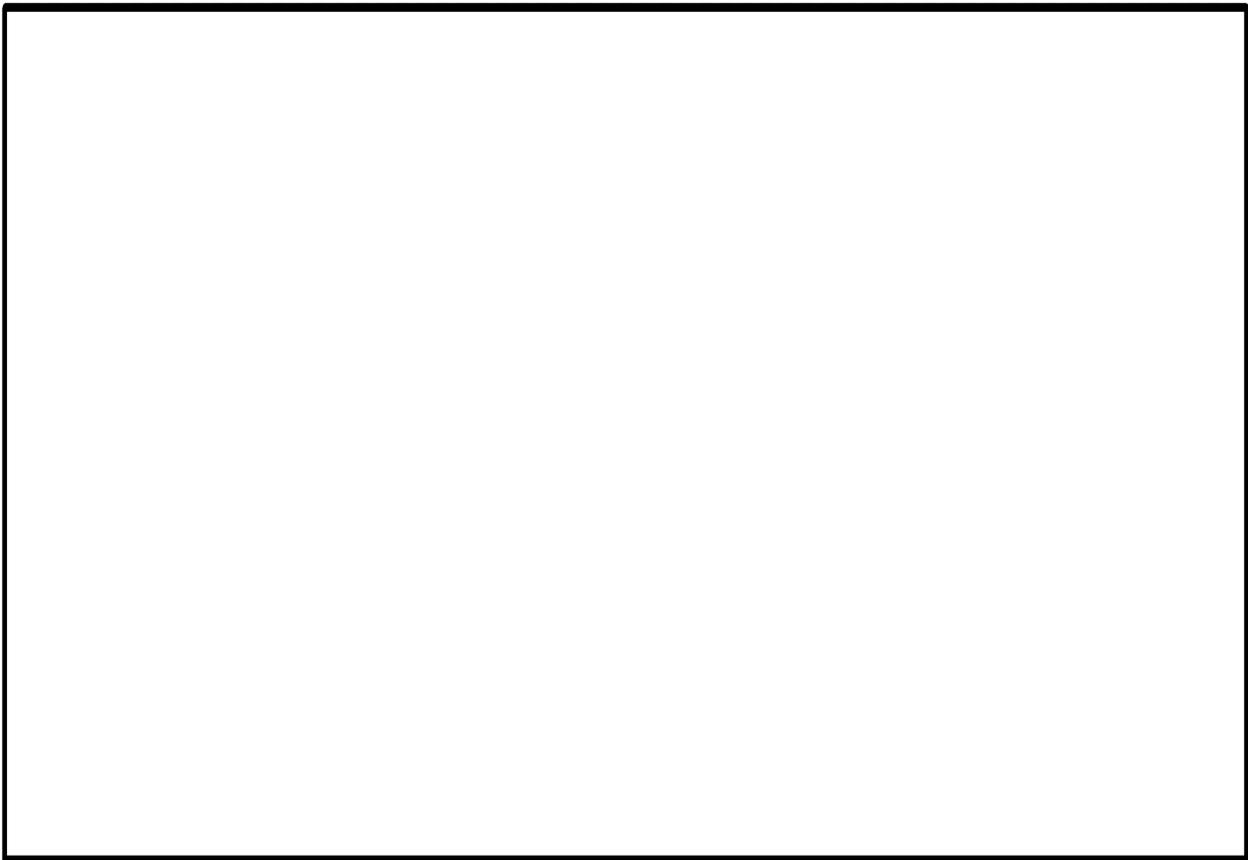
# VIBE and Foreign Relationships

(b)(7)(e)



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# VIBE and Foreign Relationships, (continued)



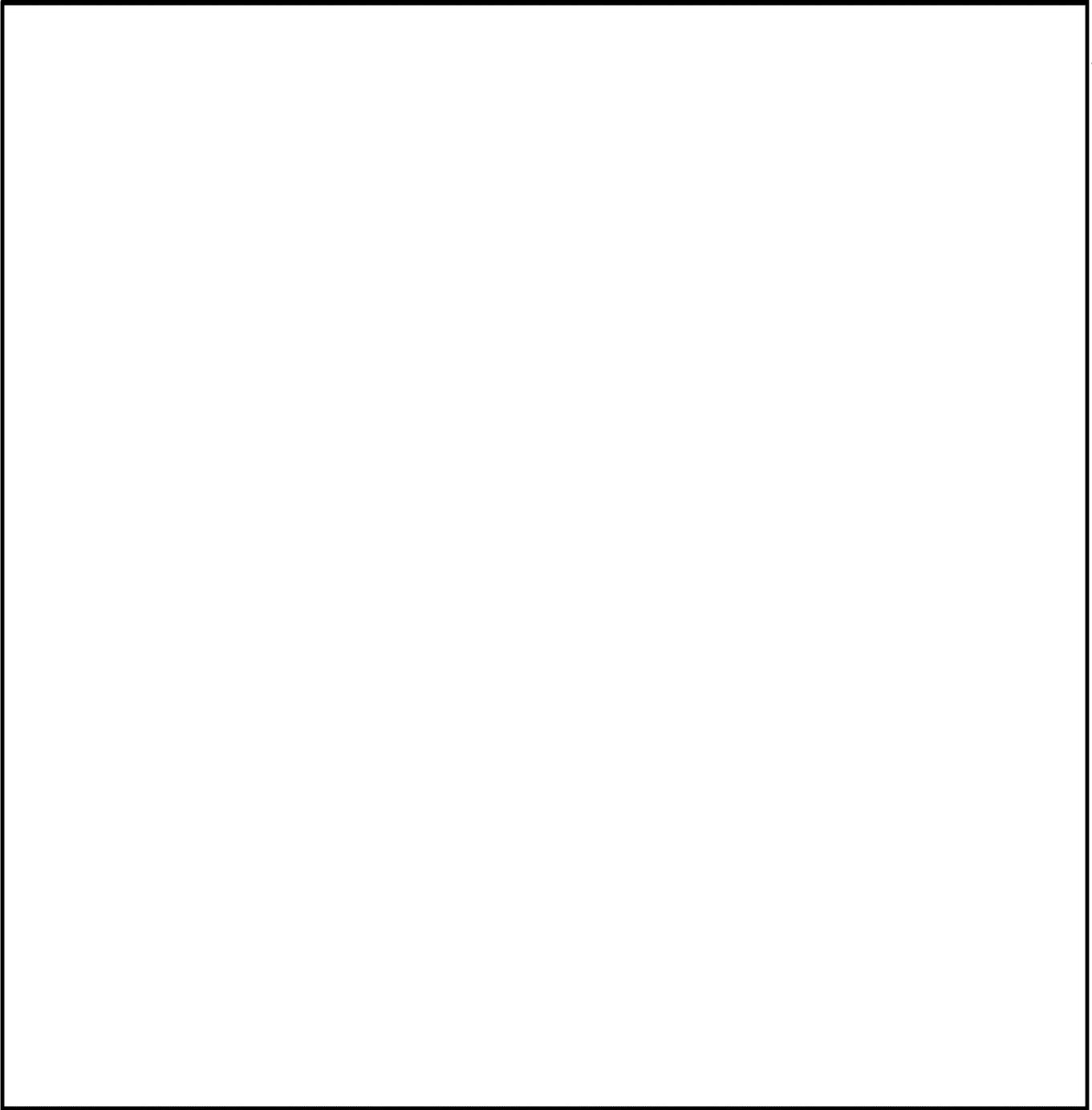
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# VIBE and Foreign Relationships, (continued)

(b)(7)(e)

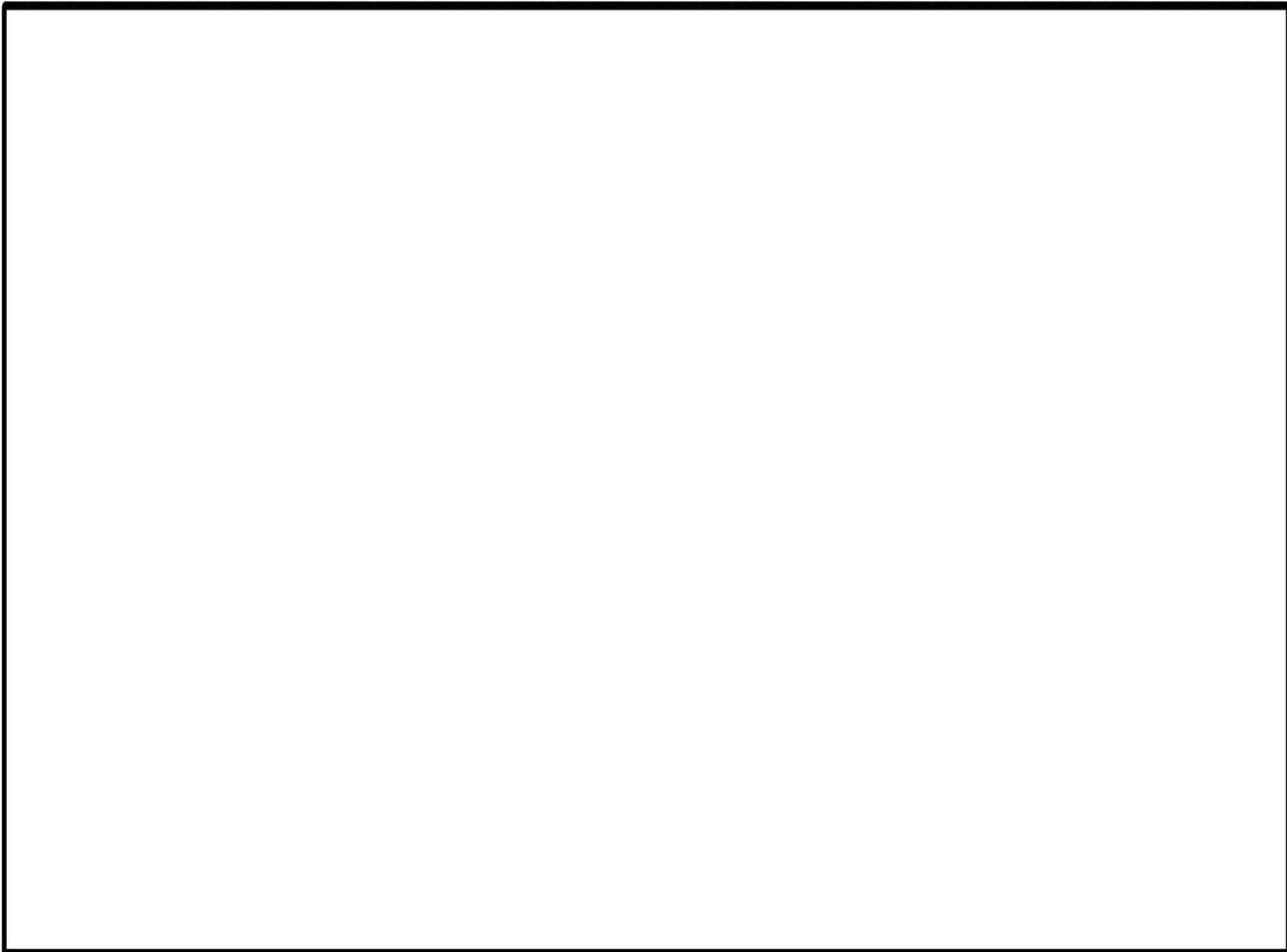


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# VIBE and L Adjudication as it Relates to Foreign Relationships

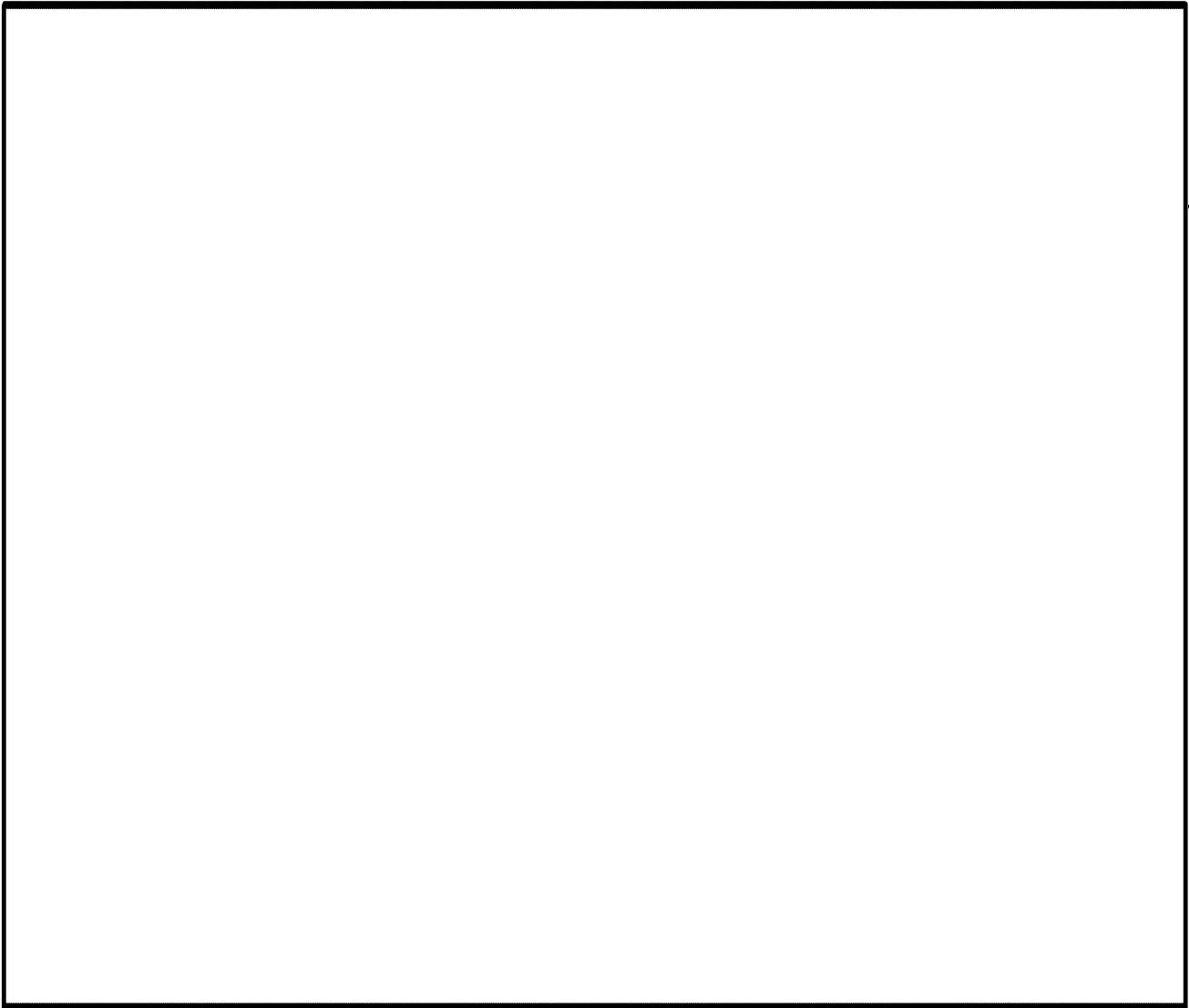
(b)(7)(e)



# Preparing a Comment

Example of a Good VIBE Comment:

(b)(7)(e)



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# Key Elements of a Comment

- Date the comment was prepared.
- Name of the petitioner.
- How the U.S. entity relates? Ex.: Parent, Subsidiary, Affiliate
- Name and address of the foreign entity.
- Receipt number of the case where the evidence was found. (b)(7)(e)



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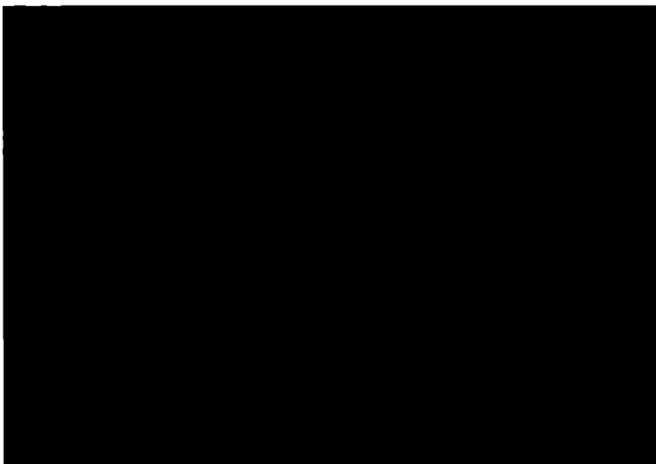
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# U.S. Citizenship and Immigration Services



# Maintenance of Status and Validity Periods



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# Validity Periods for Individual Petitions

- Petitions filed by established Petitioners may be approved for a period not to exceed three years initially.
- Petitions filed to establish a new business may be approved for a period not to exceed one year.
- Extensions (EOS) are granted in increments of up to two years.



# Limitations on Stay

- Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- Recapture time is permitted. Time spent by a beneficiary in H or L status, outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.



# Limitations on Stay, (continued)

- Time in H-1B status counts toward the maximum validity period of stay allowed as an L-1.
- Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.



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# Limitations on Stay, (continued)

- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before a new L-1 petition may be approved on his/her behalf. 8 CFR § 214.2(1)(12)(i)



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# Limitations of Stay, (continued)

- **Exceptions:** There is no limitation on period of stay for:
  - 1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and
  - 2) Aliens who reside abroad and commute to the United States to engage in part time employment.

8 CFR § 214.2(1)(12)(ii)



# Dependents

- Dependents of L-1 principal aliens are L-2s. Their periods of stay depend on the principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.



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# Requirements for Extension of Stay (EOS)

- Alien must be in the United States at the time of filing the petition.
- Alien does not have to be physically in the United States while the EOS is pending.
- Departure is not treated as abandonment.
- Must be maintaining status.



# Requirements for Extension of Stay (EOS), (continued)

- The petition must be filed prior to the expiration of the alien's stay.

Exception: failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 214.1(c)(4).

- If the I-129 requests consular processing, then the accompanying I-539 EOS or COS must be denied.



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# Part 6 of the I-129

- Petitioner must fill out the Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States section.
- If the section is not filled, RFE for the information. (call-up 1817)
- If the RFE response does not include the information deny the case.
- The denial to use is (I129CTECH).



# RFEs and Denials on EOS Petitions

A prior determination by an adjudicator that an alien is eligible for the classification should be given deference unless one of the following conditions can be established.

- “Material Error”
- “Substantial Change in Circumstances”
- “New Material Information”

See Memo dated April 23, 2004, titled “The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity”.



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# RFEs and Denials on EOS Petitions

A SISO must approve the issuance of an RFE or final decision for any case involving an extension of stay where the parties and facts involved have not changed, but where the current adjudicating Officer determines that it is necessary to issue an RFE or deny the request for extension

An exception is for an alien admitted under a Blanket petition (LZ). The alien's qualifications have not been examined by USCIS and SISO approval is not required for an RFE.



# Requirements for Change of Status (COS)

- Must be maintaining status.
- Unlike EOS, alien must be physically present in the United States.
- Departure is treated as abandonment.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 248.1(b).



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# General Things To Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf. **EXCEPTION:** In the case of an I-129S filed on behalf of a blanket beneficiary, the Petitioner must be a U.S. Petitioner.
- The beneficiary may not directly perform services for a foreign employer.



# General Things To Know, (continued)

- The beneficiary's wages may be paid by the foreign employer.
- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.



# Things to Know: Independent Contractors as Employees

- In determining whether an employee meets the criteria of a manager, the persons who the manager supervises abroad or will supervise in the United States may include independent contractors.
- There is no regulation requiring that the employees supervised must be individuals on the company's payroll.
- If the claim is made that the beneficiary qualifies based on managing or supervising independent contractors, request evidence of contracts.



see 9 FAM 41.54 N 7.2-1

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# Company Owner as Petition Beneficiary

- An owner or majority stockholder of the petitioning or affiliated company may be the beneficiary of a petition for L-1 status if the petition is accompanied by evidence that the beneficiary's services are to be temporary and that the beneficiary will be transferred abroad at the completion of the temporary services in the United States.

See 8 CFR § 214.2(1)(3)(vii) and also Matter of M,  
8 I&N Dec. 24 (BIA 1958; Ass't Comm'r, AG 1958)

- In these types of cases, the petitioner must establish that a foreign qualifying company will be doing business the entire time the owner or majority stockholder is in the United States in L-1 classification.



# Required Systems Checks

- TECS
- ADIS/SQ94
  - EOS Denial within 15 days before
  - COS Approval within 15 days before
  - COS Denial within 15 days before
- SEVIS for F, J, or M COS printout on non-record side of file



# Required Systems Checks, (continued)

- VIBE



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# No Appeal Rights

- Status denials – cases where the petition for classification as an L-1 is approved but the requested EOS or COS is denied (split decisions).
- Denial for failure to pay the Fraud Detection fee.
- Denial for failure to pay Border Protection fee.



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# Forms I-539 and I-824



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# Adjudication Process for H-4 Dependents of H-1Bs



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# Statutory & Regulatory References

- Section 101(a)(15)(L)(i)(b) of the INA
- 8 CFR 214.2(l)(7)(ii)
- 8 CFR 248.1(a)



# Dependent Classification

L-2: Dependent of an L-1



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# Who is eligible to file an L-2 EOS/COS?

The spouse and unmarried minor children of the nonimmigrant worker with whom they are staying in the United States.



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# Documentary Requirements

- Applicants must file for an EOS or COS using a Form I-539.
- Application must be signed by the applicant.
- An I-94 card, passport pages, or other documentary evidence to verify a lawful entry and status.
- A copy of the principal alien's I-797 approval notice verifying his or her nonimmigrant status and validity dates.
- Evidence that the principal alien is maintaining status.



# Proof of Relationship

- Birth certificate
- Marriage certificate
- Principal alien's name listed on visa
- Principal alien's name listed on passport
- Principal alien's name on the back of the I-94 card
- ADIS or SQ94 check misc field



# Validity Dates

- For EOS: grant validity dates which mirror the dates granted to the principal alien (except for age-outs).
  
- For COS to any one of the dependent classes:
  - Grant the initial validity date as the date of adjudication, or the start date granted to the principal alien, whichever is later.
  
  - The validity date's expiration should mirror the expiration date of the principal alien's status.
  
  - Make appropriate notations on Form I-539 Remarks section.



# Dependent Child Turning 21 (age-outs)

If an applicant is a dependent child, and he or she will turn 21 prior to the principal alien's status expiration, you must grant validity to the applicant and any other co-applicants to the day before the applicant's 21st birthday.



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# Processing a Request for Evidence

- Prepare a request for evidence if the applicant fails to enclose any of the required documentation.
- Subsequent failure to submit such materials warrants a denial.
- RFEs: standard call-ups in CG
- Routing
- NOVA stats (Others)



# Processing an Approval

- Notations on application
- Calculate validity dates, length of stay, etc.
- Correct approval phrase and updating CLAIMS
- Record of Proceeding
- Routing
- NOVA stats (Others)



# Processing a Denial

- Denial standards
- Record of Proceeding
- Updating CLAIMS
- Routing
- NOVA stats (Others)



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# Required System Checks

- All I-539s require TECS check (all individuals over 14 years of age).
- ADIS/SQ94 query is required for all change of status requests and all denials.

NOTE: The validity period for an ADIS/SQ94 query is 15 days.

- SEVIS if COS from F, M or J status.

- Casebook  (b)(7)(e)



# I-824 Application

Two reasons an I-824 would be attached:

- Duplicate notice
- Consulate notification.



# Employment Authorization

8 CFR 274a.12(a)(18) authorizes employment for an L-2 spouse of an L-1 non-immigrant.



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# Employment Authorization, (cont'd)

## Evidentiary Requirements of (a)(18):

- Evidence of the applicant's L-2 non-immigrant status.
- Evidence of the principal alien's L-1 non-immigrant status.
- Evidence of the principal and applicant's relationship



# Employment Authorization, (cont'd)

- The validity period will begin on the date of adjudication, and end on the validity date of the applicant's status or the principal alien's status or two years, whichever is less.



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Service Centers,

SCOPS received its first non-profit L petition (Compassion) to review for the forthcoming non-profit L policy guidance memo. OP&S and OCC have provided the below first part of interim policy guidance while we continue to review non-profit L petitions.

We will discuss this interim guidance during our next L roundtable, as it is applicable to all L non-profit petitions only.

Thank you

**Karla Moran**

Service Center Operations

202-272-1531 Desk (b)(6)

  
[Karla.Moran@uscis.dhs.gov](mailto:Karla.Moran@uscis.dhs.gov)

---

## **Determining whether a Non-Profit Entity has a Qualifying Relationship with another Non-Profit Entity for L-1 Purposes under Current Regulatory Authority and Relevant Case Law.**

The following is intended to assist Immigration Services Officers (ISOs) in adjudicating L-1 visa petitions involving non-profit entities and is not intended in any way to direct a decision. As in all cases, it is the ISO who is charged with making a decision as to eligibility based on all the facts presented. Specifically, the following is intended to provide guidance in determining whether a non-profit entity claiming to be a parent of another non-profit entity (its subsidiary) has established the claimed qualifying relationship.

### Preliminary considerations

As an initial consideration, note that a non-profit parent is not required to demonstrate that it possesses a traditional equity ownership interest, in whole or in part, of another non-profit entity, whether through ownership of stock, membership/partnership interests or other traditional means by which one entity or individual may show ownership of a for-profit entity. This is because, unlike in the case of a for-profit entity, no one, other than the public, "owns" a non-profit entity. For this reason, even if the non-profit entity petitioner has failed to provide shares of stock, membership/partnership interests, or similar evidence in support of its claim that it is the parent of another non-profit entity, this is not determinative as to whether the respective non-profit entities may be deemed to be in a parent/subsidiary relationship for purposes of 8 CFR 214.2(l)(ii)(I) or (K). Second, note that nothing in the statute, relevant legislative history, or regulations prohibits non-profit entities from using the L-1 nonimmigrant visa classification. See, for example, 9 FAM 41.54 N.6.3 (nonprofit organizations are eligible to file individual L-1 petitions).

## Discussion

The regulations at 8 CFR 214.2(l)(ii)(l) define the term "parent" for L-1 purposes as follows:

**(l) Parent means a firm, corporation, or other legal entity which has subsidiaries.**

The regulations at 8 CFR 214.2(l)(ii)(K) define the term "subsidiary" for L-1 purposes as follows:

**(K) Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.**

Since a non-profit entity cannot be "owned" in the same sense as a for-profit entity, it is necessary to reconcile the language of the regulation with the principle that non-profit entities may use the L-1 classification. To do so, a non-profit parent must demonstrate that, but for its inability to actually "own" an equity interest in another non-profit entity through share ownership, membership/partnership interests, etc., it possesses substantially the same rights and attributes traditionally associated with a parent in relation to its subsidiary. In other words, a non-profit parent must demonstrate that it is the constructive or *de facto* owner of the non-profit subsidiary by establishing that its relationship with the subsidiary encompasses such rights and attributes traditionally associated with ownership, such as providing for and controlling its capital needs.

The petitioner may do so by presenting evidence, such as, but not necessarily limited to:

- An agreement between the non-profit entities or similar governing document, together with other evidence, showing that:
  - the non-profit parent has in the past and will continue in the future to provide its own funds to the non-profit subsidiary;
  - the non-profit parent has the right to direct the use of the funds it has provided to the non-profit subsidiary;
  - the non-profit parent, by virtue of its providing funding to the non-profit subsidiary, has the right to direct its operations (To support this, the petitioner may submit evidence showing that the non-profit subsidiary does not have the general authority to act independently of the non-profit parent lest it lose funding from the parent that is necessary to carry out its operations);
  - the non-profit parent has the right to appoint the Chief Executive Officer of the non-profit subsidiary;
  - the non-profit parent has the right to possession of, or the right to direct the disposition of, the assets of the non-profit subsidiary; and
  - the non-profit parent has veto power over any actions the non-profit foreign subsidiary may wish to take.

One factor that would be relevant is whether the non-profit parent is providing all, or substantially all, of the funding necessary for the continued operations of the non-profit subsidiary, thereby rendering the non-profit subsidiary dependent on the non-profit parent's continued funding. In this regard, there is no requirement that the non-profit subsidiary receive *all* its operating funds from the non-profit parent; the relevant consideration is whether, in the absence of such funding, the non-profit subsidiary would be unable to carry out its stated purpose. See 8 CFR 214.2(l)(ii)(K) (percentage of ownership is not dispositive, provided the parent entity can show control in fact).

In adjudicating cases where a non-profit entity is claimed to be a parent of another non-profit entity, ISOs may reasonably consider whether the non-profit parent has other qualifying relationships abroad, and if so, the nature of such qualifying relationships. For instance, the non-profit parent may have branch offices abroad that perform substantially the same function as the claimed non-profit subsidiary and are similarly under its control, but for valid reasons, such as foreign legal requirements, the non-profit parent may not have been legally able to organize the non-profit subsidiary as a branch office in the latter's home country.

The factors discussed above are not intended to be exhaustive, nor are they intended to limit an ISO's responsibility to evaluate all the evidence presented in determining whether the petitioner has met its burden of showing the existence of the required qualifying relationship. Other factors may also be relevant in determining the corporate relationship between or among the non-profit entities.

#### Applicability of the Yates "readjudication" memorandum

ISOs are reminded that the guidelines set forth in the Yates "readjudication" memorandum (HQOPRD 72/11.3, dated April 23, 2004) continue to apply with respect to L-1 extension petitions. Specifically, in matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an ISO that the beneficiary is eligible for the particular nonimmigrant classification sought should be given deference. A case where a prior approval of the petition need not be given deference includes where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is new information that adversely impacts the petitioner's or beneficiary's eligibility. Material error, changed circumstances, or new materially adverse information must be clearly articulated in the resulting request for evidence, notice of intent to deny, or decision denying the benefit sought, as appropriate.

In the context of L-1 extension petitions involving non-profit entities, it is important to bear in mind that the regulatory interpretation of the term "subsidiary" does not address the distinction between for-profit and non-profit entities, and in particular, the question of what constitutes "ownership" for purposes of the L-1 classification. Any material error determination should therefore take into consideration the clarifications provided in this email.

## Summary

As noted above, this email is intended solely to clarify the definition of the regulatory terms "parent" and "subsidiary" for non-profits in the L-1 context. This email is in no way intended to relieve the petitioner of its burden to establish eligibility for the benefit sought by a preponderance of the evidence or to direct the outcome of any particular case. It is the responsibility of the ISO to determine, consistent with the clarifications discussed in this email, whether the facts presented are sufficient to warrant approval or denial of these types of L-1 petitions.

---

USCIS Office of Policy and Strategy, DHS

This email, along with any attachments, is intended solely for the use of the addressee(s) and may contain information that is sensitive or protected by applicable law. Unauthorized use or dissemination of this email and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender and delete or destroy all copies. Thank you.

**From:** Moran, Karla  
**To:** Brunner, Mark A  
**Subject:** FW: Project Manager Guidance  
**Date:** Thursday, February 19, 2015 4:46:34 PM  
**Attachments:** L1A IT projects are components.pdf  
**Importance:** High

---

FOIA request

*Karla Moran*

Special Assistant

Service Center Operations

202-272-1531 Desk

(b)(6)

[Karla.Moran@uscis.dhs.gov](mailto:Karla.Moran@uscis.dhs.gov)

---

**From:** Shuttle, Peter J  
**Sent:** Friday, September 26, 2014 3:07 PM  
**To:** Sweeney, Shelly A; Moran, Karla  
**Cc:** Larose, Ronald W; Canney, Keith J; Baltaretu, Cristina G  
**Subject:** FW: Project Manager Guidance  
**Importance:** High

FYI – below is the guidance memo we put out to our officers today, changing course on how we look at L-1A Project/Functional managers. I believe at this point we should now be in line with how CSC is handling these types of cases.

**Peter Shuttle**

**Section Chief – Vermont Service Center - USCIS/DHS**

(802) 871-3644 (desk [redacted]) (b)(6)

---

**From:** Shuttle, Peter J  
**Sent:** Friday, September 26, 2014 2:54 PM  
**To:** VSC Business Division  
**Cc:** Zervic, Christopher M; Schmalz, Peter N; Hummel, Stephanie; Gratton, Raymond R; Kirkpatrick, Scott M  
**Subject:** FW: Project Manager Guidance  
**Importance:** High

The following guidance is being distributed to officers that process I-129 L petitions. If you do not work I-129 L's please disregard.

This guidance relates to how we process I-129 L-1A Project Manager and Functional Manager petitions, and is in affect as of today's date.

Section 101(a)(44)(A) of the Act defines a manager as an employee who primarily:

- (1) Manages the organization, or a 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 and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised, **or**, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

I-129 L-1A Project Managers have been a topic of discussion for a number of years now between HQ, CSC, and the VSC. Until now our local guidance has stressed that many of these cases have been deniable. However, a recent AAO non-precedent decision found that specific individual client projects can be distinct components of a company that require independent management and a significant level of responsibility on the part of the managers assigned to lead them.

This AAO decision is in line with recent discussions the VSC has had with HQ SCOPS leadership, who have instructed officers to look at the managerial definition collectively as is suggested by the use of the word "and" in the definition, and not evaluate each piece of the managerial definition separately.

Going forward recognized specific client projects can be treated as components of an organization. In addition, recent AAO decisions have concluded that it is reasonable to consider employees (must be professionals, supervisory or managerial employees) the beneficiary manages abroad as part of his managerial duties in the United States.

As you adjudicate project manager filings, consider the evidence provided. If the evidence presented indicates the beneficiary manages a project, it is possible to consider the project a component or function of the organization and the petition may be approvable if the other three prongs of the managerial definition have been satisfied through the evidence of record

In addition, be open to considering the beneficiary's managerial staff in the U.S. and the beneficiary's staff abroad.

If you have questions regarding this guidance please see your supervisor. Also we plan to have this as a discussion item during upcoming I-129 L roundtables in October, stay tuned for more information regarding the roundtable plans.

Thanks,

**Peter Shuttle**

**Section Chief – Vermont Service Center - USCIS/DHS**

(802) 871-3644 (desk)  (b)(6)

**Vermont Service Center**  
**Standard Operating Procedure (SOP)**

**L1A AND L1B**  
**INTRACOMPANY**  
**TRANSFEREES**

Prepared by:  
Center Training Unit

Vermont Service Center

April 4, 2013

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## General

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**Purpose** This SOP prescribes procedures for the adjudication and processing of Form I-129, Petition for a Nonimmigrant Worker, filed under 8 CFR 214.2(l) at the Vermont Service Center (VSC).

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**Applicability/Scope** This SOP is applicable to all VSC SISOs, ISOs, and Clerical personnel performing I-129L adjudicative or clerical functions or review of those functions. Personnel performing other duties pertaining to I-129s will be similarly bound by the provisions of this SOP which apply to their specific task or duties.

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**Conflict Resolution** Any provision of the INA or 8 CFR that conflicts with this SOP will take precedence over the SOP. If you identify a conflict, report the matter immediately to your supervisor or to any SISO.

If any conflict is noted between this SOP and policy or guidance documents issued by HQSCOPS, report the matter through the supervisory chain for resolution.

This SOP supersedes all prior Vermont Service Center guidance documents, policy memoranda, training packets, or other material pertaining to I-129(L) cases; these documents should be discarded.

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## General, Continued

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**Revisions** The Center Training Unit will issue numbered revisions to this SOP. No other document will be considered a valid modification.

***Electronic and Print Copies***

All personnel who maintain a printed copy of the SOP will post the revisions upon receipt. Electronic copies of the SOP will be modified to reflect changes as they are issued. A listing of previous revisions will be linked to the SOP to serve as a summary of all applicable revisions.

***Proposed Changes***

Submit proposed changes with appropriate supporting documents through first-line supervisors to the Center Training Unit.

***Current Revisions***

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow.

***Prior Revisions***

A complete listing of all prior revisions to this document is located on the Adjudications toolbar under MSWord/Add'l Resources/ADJ SOPs/Revisions/I-129 SOP Revisions.

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<b>Revision #</b>	<b>Date</b>	<b>Subject</b>	<b>Pages</b>
25	3/29/13	Revised location of Revisions document.	5
		Revised <i>Required Evidence</i> block to indicate that evidence must show that beneficiary has been employed by a qualifying organization for one continuous year within the three years immediately preceding the filing of the petition.	10
		Added relative section of 8 CFR and clarified the use of "professional" in L1B Introduction.	48

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# L1A AND L1B INTRACOMPANY TRANSFEREES

## Overview

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**Introduction** A qualifying United States or foreign employer may file a Form I-129 petition on behalf of an alien beneficiary requesting classification as an Intracompany Transferee.

---

**Statutory Basis** Section 101(a)(15)(L) of the Act makes provision for temporary positions for:

- Certain managers and executives, and
- Specialized knowledge professionals.

The nonimmigrant classifications for this section of law are L1A and L1B, respectively.

---

**Regulatory Basis** USCIS has responsibility for determining whether the alien beneficiary is eligible for admission and whether the petitioner is a qualifying organization.

Title 8, Code of Federal Regulations, Part 214.2(l), sets forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions.

---

**Dual Intent for L-1s** 8 CFR 214.2(l)(1)(i) states that an intracompany transferee can be admitted temporarily to the United States to be employed by a qualifying organization. However, the approval of a permanent labor certification or the filing of a preference petition for the beneficiary shall not be the basis for denying an L1 petition or the beneficiary's application for admission.

The beneficiary may legitimately come to the U.S. as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States. [See 8 CFR 214.2(l)(16)]

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**Timely Adjudication** In general, Form I-129L petitions should be processed within thirty days of receipt. [Section 214(c)(2)(C) of the Act, 8 CFR 214.2(l)(7)(i)]

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## Overview, Continued

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### Record of Proceeding

The record of proceeding for the L1 petition from top to bottom:

- G-28
  - I-129
  - I-129L Supplement
  - Evidence of qualifying relationship between the United States and foreign organizations
  - Evidence of the beneficiary's qualifying foreign employment
  - Evidence that the foreign organization is doing business
  - Evidence of the beneficiary's proposed employment in the United States
  - Evidence that the United States organization is doing business, or evidence that meets the "new office" evidentiary requirements
  - RFE notices and Intent to Deny Notices (if applicable)
  - All evidence submitted in response to RFE and Intent to Deny Notices in the order dictated above.
- 

### Part 6 of Form I-129 is Not Completed

If Part 6 is not completed, you must provide the petitioner with the opportunity to submit the required response by issuing a Request for Evidence (RFE). Use standard 1817 which asks the petitioner to complete and submit Page 5, Part 6, of Form I-129 with a revision date of November 23, 2010 or later. You should not return the original signed petition to the petitioner.

**NOTE:** At this time, USCIS does not require a copy of the export control license as part of the nonimmigrant visa petition process. However, if the petitioner declines to respond to Part 6 in response to an RFE, deny the petition pursuant to 8 CFR 103.2(b)(1) for failure to properly complete and file the petition with any initial evidence required by applicable regulation and/or the form's instructions.

The standard denial to address this scenario is the I129CTECH letter.

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## Overview, Continued

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### **Banned Employers**

When DOL informs USCIS that certain organizations have violated the INA, DOL will provide USCIS with a list of these employers that are banned for a specific time period from having an immigrant and/or nonimmigrant petition approved. The ban does not affect petitions that were previously approved; however, new petitions may not be approved during the banned period for the listed employers.

**NOTE:** The Data Reporting Group (DRG) runs a scrape for banned employers. If you receive a petition filed by a banned employer, bring the petition to the appropriate form type ISO3.

---

### **List of Banned Employers**

The list of organizations ineligible for approval of immigrant and nonimmigrant petitions is found on the VSC ECN site under ADJ Resources/I-129/General Category. Press “control” and “Click” on this [Link](#) to get to the I-129 memos page.

**Important:** Be sure to view the most recent list of organizations ineligible for approval of immigrant and nonimmigrant petitions. There may be old lists still present on this page.

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## Fees Required for L Petitions

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### **Fraud Prevention and Detection Fee**

In addition to the base filing fee, a Fraud Prevention and Detection Fee of \$500 must be paid by:

- Petitioners seeking initial (H-1B) or L nonimmigrant classification,
- A change of status to (H-1B) or L nonimmigrant classification, or
- A change of employer in these classifications.

[INA § 214(c)(12)]

This new \$500 fee applies to petitions filed on or after March 8, 2005 and may be paid by any party.

### **EXCEPTIONS:**

- Amended petitions
  - Successor in interest
- 

### **Additional Fee for certain L-1 petitions**

This fee applies when the L-1 petitioner employs 50 or more employees in the U.S. with more than 50% of their employees in the United States in H-1B, L-1A, or L-1B nonimmigrant status. Petitioners meeting this criteria are required to pay the additional fee of \$2250.00 when:

- Filing to seek initial nonimmigrant status for an alien described in subparagraph (L) of section 101(a)(15); or
  - Filing to obtain authorization for an alien having such status to change employers.
-

## Eligibility Requirements

---

### Reviewing Evidence

This section identifies the initial evidence required in the adjudication of a Form I-129L petition. Review all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted.

Each piece of evidence must meet the standard of acceptability as noted. If for any reason the evidence submitted is deemed to be unacceptable or is missing, the officer must request the submission of acceptable evidence.

---

### Required Evidence

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations,
- U.S. organization and the organization abroad are both actively engaged in doing business,
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the I-129 L petition.
- Beneficiary will be employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization in the United States.

[See 8 CFR 214.2(1)(3)]

- If the beneficiary will be in a specialized knowledge capacity and working at a location other than the petitioner's, evidence is also required that the beneficiary will be under the primary control and supervision of the petitioner and will be providing a product or service for which specialized knowledge specific to the petitioner is necessary.

(See July 28, 2005, William R. Yates memo "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004)."

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## Eligibility Requirements, Continued

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**Exception: New Office** If the petitioning organization that is filing for an L1 beneficiary has been doing business for one year or less, it is not required to be actively engaged in doing business at the time of filing.

Instead, the petitioner must submit evidence that:

- Sufficient physical premises to house the new office have been secured, and
- The intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(1)(3)(v)]

---

**Date of Filing** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

---

## Determination of Proper Filing

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### Proper Filing

A petition is considered to be properly filed when it is:

- Completed and signed, in the original, by a designated representative of the qualifying employing organization, and
- Accepted for processing with the correct fee, by the USCIS office having jurisdiction over the area of the beneficiary's intended employment.

[See 8 CFR 103.2(a)(7)(i)]

---

### Who may File the Petition

Form I-129L petitions may be filed by either:

- The qualifying foreign organization or
- The qualifying U.S. organization that intends to employ the beneficiary.

[See 8 CFR 214.2(l)(2)(ii)]

---

### Representation

- A representative of the petitioner must complete and sign a Form G-28.
- The petitioner and the representative must sign the Form G-28 in the original.
- Facsimile stamped signatures for representatives are also acceptable.
- E-filed cases state "certified by the internet."
- Refer to the G-28 SOP for further information regarding G-28s and representatives/attorneys.

[See 8 CFR 103.2(a)(3), 292.1, and 292.2]

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## Determination of Proper Filing, Continued

**When to File** The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

In the event that a petition is accepted more than six months prior to the date of actual need (i.e. requested employment start date), the case must be administratively closed and the fee refunded to the petitioner.

Officers will prepare a **G19** letter (found in MSWord under Standards and Generic Letters/Memos and Letters) and administratively close the case when the case is filed too early. The case must be routed through a supervisor for sign-off prior to sending to clerical, and then to CRU after the **G19** notice is mailed.

Step	Action
1	Perform all necessary IBIS, NSEERS, and SQ94 checks.
2	Prepare the G19 letter and save to the LAN under "I129 Orders"
3	Access "GUI".
4	Wand or enter the receipt number of the case.
5	Press [F10] or click on the "Adjudicate" button. Select "Case Management". Select "Administratively Close".
6	Prepare a Customer Feedback Form (CFF) and route as indicated on the form.
7	Send the file to SISO for approval of fee refund. SISO will route the file to clerical to prepare the G19 letter.  <b>NOTE:</b> Clerical will notate the action block, insert the G19 letter, top with the coversheet and forward the case to CRU for fee refund.

# Jurisdiction

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## General

In general, I-129L petitions must be filed at the Service Center that has jurisdiction over the area where the beneficiary is to be employed.

VSC will serve as the filing location for all individual I-129 L petitions filed directly with a Service Center where the beneficiary is or will be employed in the following locations:

Alabama	Maryland	Puerto Rico
Arkansas	Massachusetts	Rhode Island
Connecticut	Mississippi	South Carolina
Delaware	New Hampshire	Tennessee
District of Columbia	New Jersey	Texas
Florida	New Mexico	Vermont
Georgia	New York	Virginia
Kentucky	North Carolina	U.S. Virgin Islands
Louisiana	Oklahoma	West Virginia
Maine	Pennsylvania	

The following link provides updates for filing locations that may not yet be captured in the I-129 filing instructions:

[USCIS - Direct Filing Addresses for Form I-129, Petition for Nonimmigrant Worker](#)

**IMPORTANT:** The petitioner shall advise USCIS whether they have filed a petition for the same beneficiary with another office, and certify that they will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed.

Failure to make a full disclosure of previous petitions filed may result in the denial of the petition. [See 8 CFR 214.2(l)(2)(i)]

---

## Blanket L Petitions

Jurisdiction for Blanket L petitions remains at the Service Center that approved the blanket petition regardless of the geographic location of the beneficiary's employment in the United States.

[See 8 CFR 214.2(l)(2)(ii)]

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## Jurisdiction, Continued

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**L1 Petitions for  
Citizens of  
Canada under  
NAFTA**

The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

---

**Amended  
Petitions**

The petitioner must file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in:

- Approved relationships,
- Additional qualifying organizations under a blanket petition,
- Change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or
- Any information which would affect the beneficiary's eligibility under Section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(7)(i)(C)]

---

# Qualifying Relationships

## Overview

---

**Introduction** When an employer wishes to transfer an employee of a foreign company to a U.S. company as an L1 nonimmigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer.

---

**Qualifying Organizations** A qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- Meets exactly one of the qualifying relationships specified in 8 CFR 214.2(l)(ii),
- Is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intracompany transferee, and
- Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(1)(ii)(G)]

---

**Outsourcing** An L1B nonimmigrant alien who has been employed by a firm with an affiliated entity in the United States, who comes to the United States to perform services for the international entity, can no longer work primarily at a worksite other than that of the petitioning employer.

**EXCEPTION:** The work is controlled and supervised by the L1-B petitioning employer. The petitioning employer must show they retain ultimate authority over the L1-B worker, and the L1-B worker must provide a product or service to the offsite employer for which specialized knowledge specific to the petitioner is necessary.

**Commercial Enterprises** The majority of L1 petitioners are commercial enterprises, organized as corporations, partnerships, or sole proprietorships. They are called commercial enterprises because they are trying to make a profit.

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**Non-Profit Enterprises** It is also possible for non-profit employers, such as religious or charitable organizations, to use the L1 classification. However, the petitioner must still demonstrate that all of the L1 eligibility requirements have been met.

[See *Matter of Church of Scientology*, 19 I&N Dec. 593]

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*Continued on next page*

## Overview, Continued

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### Ownership and Control

Regardless of whether a business is set up as a corporation, partnership, or sole proprietorship, somebody normally owns the business and somebody controls the business.

**Ownership and control** are the deciding factors used by the officer to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer and will be discussed thoroughly later.

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### Foreign Employer Must Continue to do Business

There must be an organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad but the relationship must continue to exist.

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### Example: Qualifying Relationship

An L1 beneficiary worked at *The Big Shoe Company* located in Ottawa, Ontario as an executive for four years. *PayMore Shoes*, a US based company, owned 100% of *The Big Shoe Company*, and filed an L1 petition in order to transfer the beneficiary to its office located in Boston, MA. The petition was approved for three years.

Two years later, *The Big Shoe* went bankrupt and stopped doing business. However, *PayMore Shoes* also owns 100% of *Buster Black*, located in Montreal, Quebec. *PayMore Shoes* is still a valid L1 employer for the L1 beneficiary as it has a qualifying relationship with an organization located abroad that is doing business.

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*Continued on next page*

## Overview, Continued

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**Example: No  
Qualifying  
Relationship**

An L1 beneficiary worked at *The Big Shoe company* located in Ottawa, Ontario as an executive for four years. *PayMore Shoes* is a US based company and owns 100% of *The Big Shoe*. *PayMore Shoes* filed an L1 petition in order to transfer the beneficiary to its office located in Boston, MA. The petition was approved for three years.

After the L1 nonimmigrant's entry into the United States, *The Big Shoe* company stopped doing business. While the corporation was still in existence, it was inactive.

- *PayMore Shoes* does not have a qualifying relationship with any other foreign organizations.
  - *PayMore Shoes* is NOT a valid L1 employer for the L1 beneficiary as it does NOT have a qualifying relationship with an organization located abroad that is doing business.
-

## Ownership & Control

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**Definitions**      **Ownership** for L1 purposes means the legal right to have possession of an organization.

**Control** for L1 purposes means to exercise authority or influence over an organization.

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**Deciding Factors for a Qualifying L1 Relationship**

**Ownership and control** are the deciding factors used to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer.

Both ownership and control must be present to have a qualifying relationship.

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**Beneficiary May be the Sole Owner**

In many instances the beneficiary of the L1 petition may own both the foreign employer and the U.S. employer in whole or in part. There is no problem with this arrangement as long as all of the L1 eligibility requirements are met.

**NOTE:** The company in the foreign country must continue to do business.

[See *Matter of M 8 I&N Dec. 618* and *Matter of Aphrodite Investments 17 I&N, Dec. 530*]

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**De Jure Control**

Ownership of more than 50% of an organization is considered to be evidence of control. Control on the basis of ownership of more than 50% is called de jure control.

De jure simply means “by law”, and it is a straightforward form of control.

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**Negative Control - Joint Ventures**

In many instances, two individuals or organizations will create an organization in which each individual or organization has 50% ownership. This arrangement is called a joint venture.

Each of the owners could be said to exert de jure control over the joint venture. As they can each “block” any decision made by the other owner by virtue of their 50% control over the organization, their control can be described as a “negative control”.

[See *Matter of Siemens Medical Systems 19 I&N Dec. 362*]

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## Ownership & Control, Continued

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### De Facto Control

It is possible for an owner of less than 50% of a company to exercise control over the organization.

De facto simply means “in fact”. [See *Matter of Hughes* 18 I&N Dec. 289]

**NOTE:** If a petitioner argues that de facto control exists on some other basis than discussed previously or in *Matter of Hughes*, consider the argument with an open mind, and see if the argument makes sense.

---

### Example: De Facto Control

*Bon Perrier* is located in Paris, France and *Juice Hut* is located in New York City. *Juice Hut* is 40% owned by *Bon Perrier*, 30% owned by *Fizzy Drink*, and 30% owned by *Happy Cola*.

As *Bon Perrier* does not own more than 50% of *Juice Hut*, it does not have de jure control over the organization. On the face of it, *Bon Perrier* does not appear to enjoy a qualifying L1 relationship with *Juice Hut*. However, let us suppose that *Bon Perrier* has the patent on an extremely valuable invention, and that invention is the only product that is sold by *Juice Hut*, which yields a great profit for *Juice Hut*.

If *Bon Perrier* holds the patent, one could argue that *Bon Perrier* exercises de facto control over *Juice Hut*, despite owning less than a controlling share of the stock of *Juice Hut*. The control exists in the fact that if *Bon Perrier* decides not to let *Juice Hut* sell the valuable invention, *Juice Hut* has nothing to sell. In that sense, *Bon Perrier* can be said to exercise de facto control over *Juice Hut*.

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### Example: NO De Facto Control

*Be Mine Flowers* is located in New York City and holds 5% ownership in *Le Fleur* located in Paris, France. The presidents of the two organizations are old friends and have a personal understanding between them regarding the operation of each organization.

While a personal understanding between the two corporate officers may influence the way business is conducted, neither officer can be said to exert de facto control over the other organization.

[See *Matter of Del Mar Ben Inc.* 15 I&N Dec. 5]

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## Ownership & Control, Continued

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### **Contractual Relationships**

A contractual relationship between the foreign employer and the U.S. employer is not sufficient. There must be both ownership and control. [See *Matter of Schick* 13 I&N Dec. 647]

An executed contract between organizations may allow one organization to exert influence over the other, but a solely contractual relationship is not qualifying for L1 purpose.

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# Definitions of Qualifying Relationships

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**Introduction** The following definitions describe the qualifying L1 relationships.

[See 8 CFR 214.2(l)(1)(ii)(H), (I), (J), (K), and (L)]

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**Substance Over Form** A petitioner may identify the qualifying relationship between the U.S. organization and the foreign organization in a manner that is not correct per USCIS' definition of that particular qualifying relationship. However, as long as the relationship conforms to one of the qualifying relationships defined in regulation, it is acceptable for L1 purposes.

There are times when the nature of the relationship between the two organizations is not clear based on the evidence in the record. In these instances, it is best to request an additional explanation from the petitioner, along with corroborative documentary evidence, if needed.

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**Parent** Parent means a firm, corporation, or other legal entity, which owns and controls at least one subsidiary. An organization is said to be a parent to a subsidiary when:

- It owns more than half of the subsidiary, and
- Controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(I)]

**NOTE:** The definition of subsidiary includes other qualifying forms of parent/subsidiary relationships.

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**Example: Parent** *The Book Hut* owns 100% of *Pretty Pages*.

*The Book Hut* is considered to be the parent of *Pretty Pages* because *The Book Hut* owns more than half of the subsidiary and controls the subsidiary.

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**Example: NOT a Parent** *The Book Hut* owns 30% of *Pretty Pages*.

*The Book Hut* is NOT considered to be the parent of *Pretty Pages*, because *The Book Hut* does not own more than half of the subsidiary and does not control *Pretty Pages*.

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## Definitions of Qualifying Relationships, Continued

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**Branch** Branch means an operating division or office of the same organization housed in a different location.

[See 8 CFR 214.2(l)(7)(ii)(J)]

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**Example:  
Branch Office** *Le Fleur* (a flower business) is located in Paris, France and opens an office in New York City.

The office in New York City is considered to be a branch office of *Le Fleur* because it is part of the same organization housed in a different location.

---

**Example: NOT  
a Branch Office** *Le Fleur* (a flower business) is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City.

The office in New York City is NOT a branch of *Le Fleur* because it has its own legal existence. It is not part of the same organization housed in a different location.

---

**Subsidiary** Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. As stated in the definition for a parent, the parent owns more than half of the subsidiary and controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(K)]

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**Example:  
Subsidiary** *Le Fleur* (a flower business) is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City, called Flowers R Us. *Le Fleur* owns 100% of Flowers R Us.

Flowers R Us is a subsidiary of *Le Fleur* because it has its own legal existence, is more than half owned by *Le Fleur*, and therefore is controlled by *Le Fleur*.

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## Definitions of Qualifying Relationships, Continued

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**Example: NOT  
a Subsidiary**

*Le Fleur* is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City, called *Flowers R Us*. *Le Fleur* owns 30% of *Flowers R Us*.

*Flowers R Us* is NOT a subsidiary of *Le Fleur* because even though it has its own legal existence, it is less than half owned by *Le Fleur*, and *Le Fleur* does NOT control it.

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# Affiliates

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## Introduction

There are three categories of qualifying affiliate relationships, to include:

- (1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual.
- (2) One of two legal entities owned and controlled by the same group of individuals, each owning and controlling approximate the same share or proportion of each entity.
- (3) A partnership that is:
  - Organized in the United States
  - To provide accounting, managerial, and/or consulting services
  - Under an agreement with a worldwide coordinating organization
  - That is owned and controlled by member accounting firms.

[See 8 CFR 214.2(l)(1)(ii)]

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## Partnership Organized Outside the US

A partnership (or similar organization) that is organized outside the United States to provide accounting services is considered an affiliate of the U.S. partnership if:

- It markets its accounting services under the same internationally recognized name;
  - Under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.
- 

## Example #1: Affiliates

*Le Grand Restaurant* is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City, called *The Big Eats I*. *Le Grand Restaurant* also incorporated a business under the laws of New Jersey, opening an office in Newark, called *The Big Eats II*. *Le Grand Restaurant* owns 100% of both *The Big Eats I* and *The Big Eats II*.

*The Big Eats I* and *The Big Eats II* are related to each other as affiliates because they are both owned and controlled by the same parent.

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## Affiliates, Continued

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**Example #1:  
NOT Affiliates**

*Le Grand Restaurant* is incorporated and located in Paris, France. *The Big Eats I* is incorporated and located in New York, New York. *The Big Eats II* is incorporated and located in Newark, New Jersey.

*Le Grand Restaurant* owns 100% of *The Big Eats I*. *Le Grand Restaurant* also owns 30% of *The Big Eats II*. *The Greasy Spoon* owns the other 70% of *The Big Eats II*.

*The Big Eats I* and *The Big Eats II* are NOT related to each other as affiliates because they are NOT both are owned and controlled by the same parent.

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**Example #2:  
Affiliates**

*Le Grand Restaurant* is incorporated and located in Paris, France. *The Greasy Spoon* is incorporated and located in Wichita, Kansas. *The Big Eats I* is incorporated and located in New York, New York. *The Big Eats II* is incorporated and located in New Jersey. *Le Petite Plate* is incorporated and located in Burlington, VT.

*Le Grand Restaurant* owns 40% of both *The Big Eats I* and *the Big Eats II*. *The Greasy Spoon* owns 40% of both *The Big Eats I* and *the Big Eats II*. *Le Petite Plate* owns 20% of both *The Big Eats I* and *the Big Eats II*.

*The Big Eats I* and *the Big Eats II* are related to each other as affiliates because both are owned and controlled by the same group of organizations, each owning and controlling approximate the same share or proportion of each entity.

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**Example #2:  
NOT Affiliates**

*Le Grande Restaurant* is incorporated and located in Paris, France. *The Greasy Spoon* is incorporated and located in Wichita, Kansas. *The Big Eats I* is incorporated and located in New York, New York. *The Big Eats II* is incorporated and located in Newark, New Jersey.

*Le Grand Restaurant* owns 60% of *the Big Eats I* and 40 % of *The Big Eats II*. *The Greasy Spoon* owns 40% of *The Big Eats I* and 60% of *The Big Eats II*.

*The Big Eats I* and *The Big Eats II* are NOT considered to be related to each other as affiliates because they are NOT owned and controlled by the same group of organizations, each owning and controlling approximate the same share or proportion of each entity.

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## Affiliates, Continued

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### Example #3: Affiliates

*Accounting Partners, NYC* is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.

*Accounting Partners, UK* is a partnership that is organized in Great Britain and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. It markets its accounting services under the same internationally recognized name as *Accounting Partners, NYC*, and is a member of the same worldwide coordinating organization.

*Accounting Partners, NYC* and *Accounting Partners, UK* are considered to be affiliates because:

- They both offer accounting services under the same internationally recognized name, and
  - Are members of the same worldwide coordinating organization.
- 

### Example #3: NOT Affiliates

*Accounting Partners, NYC* is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.

*UK Import & Export* is a partnership that is organized in Great Britain and engages in international trade. It has no membership in a worldwide coordinating organization.

*Accounting Partners, NYC* and *UK Import & Export* are NOT considered to be affiliates because *UK Import & Export*:

- Does not offer accounting services under the same internationally recognized name as *Accounting Partners, NYC*, and
  - Is not a member of the same worldwide coordinating organization as *Accounting Partners, NYC*.
-

# Types of Businesses

## Sole Proprietorships

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**Definition**

A sole proprietorship is a business that is owned by one individual.

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**Unlimited Liability**

A sole proprietorship is not legally separate from its owner. The owner is personally responsible for the debts of the business. Creditors can sue the owner to take his or her house, car, or other personal assets to pay off the sole proprietorship's debts.

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**How a Sole Proprietorship is Created**

A sole proprietorship is the easiest business to create. An individual merely establishes a business, and the sole proprietorship is automatically created.

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**Evidence of Ownership & Control**

Generally, no special documents are executed when a sole proprietorship is created and commences doing business.

In the United States, a sole proprietorship is not required to execute or file any documents of creation, and may use the owner's own social security number as its EIN (employer's identification number).

The most common document that is provided as evidence of the ownership and control of a sole proprietorship is the owner's individual federal tax return. In addition, contracts, such as leases or sales agreements that were executed by the owner on behalf of the sole proprietorship may be submitted.

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**Owner's Individual Federal Tax Return**

Sole proprietors located in the United States must report the income and expenses from their businesses in their individual Form 1040 federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return.

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# General and Limited Partnerships

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**Partnership  
Definition**

A partnership means the shared ownership of a business.

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**Limited  
Partnership  
Definition**

A limited partnership is the shared ownership of a business in which certain partners provide a capital investment without being held personally liable for the debts of the partnership above the level of their investment.

The trade off for having the limited liability is that the limited partner may not materially participate in the running of the business or attempt to control the business.

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**General  
Partnership:  
Unlimited  
Liability**

A partnership is not legally separate from its partners. The partners are personally responsible for the debts of the partnership. Creditors can sue the partners to take their houses, cars, or other personal assets to pay off the partnership's debts.

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**Limited  
Partnership:  
Both Unlimited  
and Limited  
Liability**

All general partners of a limited partnership are personally responsible for the debts of the partnership. Creditors can sue the owners to take their houses, cars, or other personal assets to pay off the partnership's debts.

Limited partners are only liable up to the amount of their capital investment in the partnership. The limited liability can be legally stripped from the limited partner if he or she is found to have materially participated in the business.

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**How a General  
Partnership is  
Created**

No formal, written partnership agreement is required to create a general partnership. However, many general partnerships do execute partnership agreements.

In the United States, partnerships must obtain an EIN (employer's identification number) for the partnership.

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## General and Limited Partnerships, Continued

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**How a Limited Partnership is Created**

A formal, written partnership agreement is required to create a limited partnership.

- Every limited partnership must have at least one general partner.
  - In the United States, limited partnerships must obtain an EIN (employer's identification number) for the partnership.
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**Only General Partners have BOTH Ownership & Control**

Only general partners can be considered to have both ownership and control over a limited partnership. When trying to establish qualifying affiliate relationships, only the percentage of ownership by each of the general partners should be considered.

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**Limited Partners have NO Control**

Limited partners may own a portion of a limited partnership, but they do not have any control over the partnership, as they cannot materially participate in the operation of the business.

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**Evidence of Ownership & Control**

The most common documents that are provided as evidence of the ownership and control of a general or limited partnership are partnership agreements and the partnership's Form 1065 federal tax return.

In addition, contracts, such as leases or sales agreements that were executed by the partners on behalf of the partnership may be submitted.

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**Partnership Agreements**

A partnership agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited partnership interest,
- Each partner's initial percentage of ownership,
- The type of business to be conducted by the partnership,
- How partnership interests can be transferred, and
- The conditions under which the partnership can be dissolved.

The partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.

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## General and Limited Partnerships, Continued

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### **Partnership Tax Returns**

In the U.S., partnerships (including limited partnerships) are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

The partnership's tax return provides certain information that is relevant to the ownership and control of the partnership to include the:

- Date of origination of the partnership,
  - The names and % of ownership for each of the partners at year end,
  - Whether the partnership has limited partners, and
  - Evidence of the partnership's business activities in the U.S.
- 

### **Ownership Percentage May Not Equal the Capital Investment**

A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

- The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.
  - Shared ownership of the business does not always mean shared ownership of the assets used in the business.
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# Corporations

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**Definition**

A corporation is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Corporations are a taxable entity and must pay taxes on the income generated by them prior to distributing the income to its shareholders.

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**Limited Liability**

The debts of the corporation are the responsibility of the corporation, not the individual shareholders. If a corporation goes bankrupt, the shareholders cannot lose any more money than they paid for their stock.

Normally, creditors cannot sue the shareholder to take his or her house, car, or other personal assets to pay off corporate debts. This limited liability is one of the big attractions of corporations.

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**Where a Business Incorporates**

In the United States each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of businesses.

Businesses may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

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**How a Business Incorporates**

In order to incorporate a business in the United States, articles of incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a certificate of incorporation.

After the business is incorporated, the corporation may sell and issue shares of stock, and commence doing business as a legal entity apart from its owners.

The shareholders of the corporation will elect a board of directors, who may or may not be shareholders. The board of directors may enact by-laws for the corporation.

In the United States, corporations must obtain an EIN (employer's identification number).

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## Corporations, Continued

### Federal Tax Returns

Generally, corporations doing business in the United States must file a federal tax return each year, Form 1120, U.S. Corporation Income Tax Returns. The federal tax return provides certain information that is relevant to the ownership and control of the corporation to include the:

- Date of incorporation,
- Evidence of the corporation's business activities in the U.S., and
- In some instances, the name of the individuals or organizations that own the corporation will be noted (usually on the second page or in the supporting statements).

### Annual Reports

Some corporations submit annual reports as evidence of the qualifying relationship. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements. (For more information see the discussion of financial statements in the Doing Business portion of the SOP.)

### Evidence of Ownership & Control

The following table describes the typical documents that are submitted as evidence of the existence, rules, ownership and control of a corporation.

Document	Existence	Rules	Ownership	Control
Petitioner's Letter	X		X	X
Certificate of Incorporation	X	Generally, number and type of stock shares only		
Articles of Incorporation	Yes, if stamped by the Gov. agency	X		
by-laws		X		
Common Stock Shares			X	X
Preferred Stock Shares			X	
Stock Ledger			X	X
Tax Returns	X		Sometimes	Sometimes
Annual Reports	X	Sometimes	Sometimes	Sometimes

# S-Corporations

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**Definition**

Sub-Chapter S corporations or “S Corps” as they are called, are a hybrid of the standard corporation.

The main difference between S Corps and regular corporations is that S Corps are not taxable entities and are limited to a certain type and number of shareholders.

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**S Corps are Not Taxable Entities**

S Corps are not taxable entities. They are required to file an informational tax return, called a Form 1120S, U.S. S Corporation Income Tax Return. Income and expenses flows through to the shareholders’ individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

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**Qualifying for S Corp Status**

To qualify for S Corp status under IRS rules, a corporation must meet a number of requirements. It must:

- Be a domestic corporation, i.e. organized in the U.S. under federal or state law.
  - Have only one class of stock, common.
  - Have no more than 35 shareholders.
  - Have as shareholders only individuals, estates, and certain trusts (partnerships and corporations cannot be shareholders).
  - Have shareholders that are U.S. citizens or residents of the U.S. (per the IRS definition of residents). Nonresident aliens cannot be shareholders.
- 

**Qualifying L1 Relationships for S Corps**

As noted above, corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp.

If such ownership is claimed on an L1 petition, additional evidence, such as a statement from an official of the IRS confirming the validity of the shareholders’ S Corp ownership should be requested.

However, S Corps may own businesses abroad. So, if the claimed qualifying relationship involves a U.S. S Corp’s ownership of a foreign employer, the relationship may be qualifying as long as it conforms to the defined L1 relationships.

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# Incorporation

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## **Certificate of Incorporation**

The certificate of incorporation is the birth certificate for the corporation. It shows that the corporation exists as a legal entity.

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## **Articles of Incorporation**

The articles of incorporation will identify the:

- Acceptable business activities that may be conducted by the corporation
- Type and number of stock shares that may be authorized and issued by the corporation
- Par value, if any of the stock shares

This document is the constitution of the corporation and cannot be changed or amended without a majority vote of the shareholders.

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## **Conformed Copy of the Articles of Incorporation**

A conformed copy of the articles of incorporation is a copy that agrees with the original and all amendments to it.

If the original document required a signature, the copy should be signed by a principal officer, or if not signed, be accompanied by a written declaration signed by an authorized officer of the corporation. With either option, the officer must certify that the document is a complete and accurate copy of the original.

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## **By-Laws**

The by-laws of a corporation are the lesser rules made by the board of directors that govern how the corporation will function. They may not conflict with any provision of the articles of incorporation.

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# Shares of Stock

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## Introduction

Stock shares are ownership certificates that are issued by a corporation when an individual or an organization makes an investment in the corporation. The number of shares of stock owned by an individual or organization relative to the number of shares issued determines their percentage of ownership in the corporation.

- The number of shares of stock issued by the corporation may not exceed the number of shares authorized by its articles of incorporation.
- Corporations can issue two classes of stock, common and preferred.

**EXAMPLE:** If one person owns 100 shares of stock in a corporation and the corporation has issued 200 shares of stock, that individual can be described as the owner of 50% of the corporation.

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## Stock Share Identification

Each stock share should identify the:

- Number of shares authorized
- Class of stock, either common or preferred
- Par value of the stock shares, if any
- Number of shares represented by the share certificate\*
- Name of the shareholder
- Date of stock issuance

\*NOTE: Number of shares authorized should be in article of incorporation.

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## Stock Certificates are Internally Generated

Stock share certificates can be purchased at any large office supply store. Stock certificates are issued by the corporation itself. The information provided on the stock certificates is internally generated by the issuing corporation and is not subject to scrutiny by any government agency, unless the corporation is publicly traded.

At a minimum, an acceptable stock certificate should include the:

- Name of the shareholder
  - Number of shares of ownership that the stock certificate represents
  - Date of issuance
  - Signature of an authorized official of the corporation
- 

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## Shares of Stock, Continued

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**Common Stock** Common stock gives its holder voting rights. The significance of voting rights is control.

**EXAMPLE:** If an individual owns 100 shares of common stock and 200 shares of common stock have been issued, that individual can be described as having ownership and control of 50% of the corporation.

---

**Preferred Stock** Preferred stock does not normally give its holder voting rights. While preferred stock may give its holder a percentage of ownership in a corporation, the holder does not have control over the corporation because the preferred stock does not give voting rights.

The articles of incorporation will identify whether the corporation is authorized to issue preferred stock.

**EXAMPLE:** If an individual owns 100 shares of preferred stock and 200 shares of both preferred and common stock have been issued, that individual can be described as having ownership of 50% of the corporation, but no control over the corporation.

---

**Par Value of Stock** Par value is the nominal or face value of a share of stock. A corporation cannot issue a share of stock for less than the stated face value of the share.

The par value of a share of stock does not generally bear any relation to the amount of investment made by the shareholder at the time the stock was purchased, nor does it represent the value of the stock after the time of issuance.

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**Stock Ledger** The stock ledger is a document that is used by the corporation to record various stock transactions, to include the:

- Initial issuance of stock
  - Transfer of stock from one shareholder to another
  - Repurchase of stock by its own corporation (treasury shares)
  - Retirement or "cancellation" of stock
-

## Non-Profit Organizations, Continued

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**How a Non-Profit Obtains Tax-exempt Status**

In the United States, tax-exempt status must be obtained by requesting that designation from the Internal Revenue Service.

In order to qualify for tax-exempt status, the non-profit must be organized and operated exclusively for one or more of the following purposes:

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for public safety
- Fostering national or international amateur sports competitions, or
- The prevention of cruelty to children or animals.

The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.

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**Assets of Non-Profit Organization**

The assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose or to the local, state, or federal government for a public purpose.

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**Evidence of Ownership & Control**

Generally, L1 petitioning non-profit organizations are incorporated and have “branch” organizations or “sister” corporations abroad. Evidence of ownership and control will include incorporation documents, audited or reviewed financial statements, or federal informational returns.

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## Non-Profit Organizations, Continued

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**Federal  
Informational  
Returns**

Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

Tax-exempt organizations are required to file a yearly Form 990 or 990EZ if the organization's gross receipts exceed \$25,000.00 from sources other than the exempt purpose.

Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return, and provides an abbreviated balance sheet as well as an analysis of excess revenue or (deficit) for the year.

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# Evaluating L1A and L1B Positions

## L1A: Managers and Executives

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### Introduction

The L1A classification is reserved for certain managers and executives. The definitions for L1 managers and executives can be found in section:

- 101(a)(44) of the Act,
- 8 CFR 214.2(l)(1)(ii)(B) and
- 8 CFR 214.2(l)(1)(ii)(C).

**NOTE:** The same managerial and executive capacity definitions apply to the nature of the beneficiary's position abroad and in the U.S.

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### Manager Capacity Defined

Managerial capacity means an assignment within an organization in which the employee **primarily**:

- Manages the organization, department, subdivision, function, or component of the organization;
- 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;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed, and;
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

**NOTE:** All four criteria listed above must be met to qualify as a manager.

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*Continued on next page*

## L1A: Managers and Executives, Continued

### Executive Capacity Defined

Executive capacity means an assignment within an organization in which the employee **primarily**:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making, and;
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

[See 8 CFR 214.2(l)]

### Evaluating Managerial or Executive Positions

When evaluating the nature of a claimed managerial or executive position, the petition and supporting evidence must be reviewed to establish that the beneficiary's employment qualifies for L1 purposes.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers and how the beneficiary's position fits into its organizational hierarchy.

Frequently, the petitioner will merely reiterate the definitions of manager and executive as defined in statute and regulation.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	<p>The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.</p> <p>In some instances, no individual position within the organization may involve duties that could be construed as being primarily managerial or executive in nature.</p>

## Factors in Determining Managerial or Executive Capacity

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### Staffing Levels as a Factor

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, take into account the reasonable needs of the:

- Organization,
- Component, or
- Function.

**NOTE:** An individual will not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual:

- Supervises or has supervised, or
  - Directs or has directed.
- 

### Doing Business as it Relates to Managerial or Executive Positions

The employing organization must be doing business in a manner that would require the beneficiary to perform duties that are primarily managerial or executive in nature.

The petitioner should provide a statement that clearly describes:

- The business activities that the employing organization engages in, and
- How the beneficiary's position is, or was, required to further the organization's strategic or operational goals.

The record may also contain various documents as evidence of the organizations' business activities. The documentary evidence that is submitted should corroborate the petitioner's statements.

In order to make an accurate determination of the eligibility of the beneficiary's position, either abroad or in the U.S., the description of his or her duties must be placed in the context of the:

- Personnel structure of the organization, and
  - Magnitude of the business that it conducts.
- 

*Continued on next page*

## Factors in Determining Managerial or Executive Capacity,

Continued

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### **Too Many Managers, not Enough Worker Bees**

It is not uncommon to encounter an organization that employs only a few people, yet claims that the majority of its employees are primarily engaged as managers or executives.

In these instances, it is often helpful to request complete position descriptions and hourly breakdowns for the duties performed by all of the individuals employed by the organization, including one for the beneficiary, as well as copies of corroborative payroll documentation.

The position descriptions and payroll documentation are used to determine who is performing the non-qualifying, operational duties of the business.

In addition, the entity may be substantial in size but the department or division where the beneficiary is, or will be, employed may be “top-heavy” with managers and executives.

If the employer is a large organization, detailed staffing inquiries should be limited to the department or division where the beneficiary has been or will be employed.

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### **Contract Employees**

The record may indicate that the business employs only one or two people, including the beneficiary. As mentioned previously, it may be helpful to try to determine who is performing the non-managerial operational duties of the business.

The business may not directly employ individuals to perform the non-managerial services of the business. Instead, the business may “contract out” some of its functions such as accounting, sales, warehousing, personnel, etc.

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*Continued on next page*

# Factors in Determining Managerial or Executive Capacity,

Continued

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**Unpublished  
Decision by the  
AAO**

Representatives and petitioners occasionally refer to an unpublished decision by the AAO, (Irish Dairy Board, Inc.), in which a pre-IMMACT 90, Schedule A, Group IV beneficiary was found to be primarily engaged in a managerial/executive position, even though he was the sole employee of the petitioning entity.

In this case, the petitioning entity imported over \$90 million worth of goods to the U.S. while exporting in excess of \$50 million worth of goods in the year of filing. The business used independent contractors to perform all of its sales and import/export functions. The beneficiary did not directly perform the duties of these functions himself. Rather, he directed the work of the contractors in the furtherance of the operational duties related to the primary function of the business.

The AAO decided in this unpublished decision that if these contractors had been employed "in-house", that the beneficiary would have been clearly classifiable as an executive.

Pursuant to 8 CFR 103.3(e), Service precedent decisions are binding on Service employees; unpublished decisions are not binding. However, this decision outlines how substantial business activity and contractors may add up to a qualifying L1A position that is primarily managerial or executive in nature.

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**Beneficiary  
may Own the  
Organization if  
the  
Employment =  
L1**

The beneficiary may own the foreign and U.S. organizations in whole or in part. However, maintaining a "figure head" title and position, such as "Director" or "President", without being primarily engaged in the management of the organization is not qualifying for L1 purposes.

[See *Matter of Aphrodite Investments*, 17 I&N, Dec. 530]

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*Continued on next page*

## Factors in Determining Managerial or Executive Capacity,

Continued

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### Managing a Function

L1 beneficiaries are commonly identified as the manager or executive of a “function” within the organization. Functional managers are included in the Service’s definitions for managers and executives.

However, it must be demonstrated that the organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the duties of the function. The petitioner’s evidence must persuasively demonstrate that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will remove him or her from performing the services or duties of the company.

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### Example: Qualifying Position

*AJ’s Accounting* employs an L1 beneficiary as the manager of the finance department. The beneficiary is responsible for the attainment of the operational goals of the department as defined by upper management. In addition, he has substantial discretionary authority to direct how his department will meet these goals.

He is the chief financial officer for the company and directly supervises two certified public accountants. The accountants perform the complex accounting tasks for the organization. The department also employs three accounting clerks who perform the simpler accounting tasks for the organization.

The beneficiary’s position would be qualifying for L1 purposes because the beneficiary:

- Supervises professionals,
- Directs how his department will conduct business, and
- Has sufficient staff to remove him from performing the mundane duties of his department.

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*Continued on next page*

## Factors in Determining Managerial or Executive Capacity,

Continued

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**Example: Non-  
Qualifying  
Position**

*AJ's Accounting* employs an L1 beneficiary as the manager of the finance department. The beneficiary is responsible for the attainment of the operational goals of the department as defined by upper management. In addition, he has substantial discretionary authority to direct how his department will meet these goals.

While he is the chief financial officer for the company, the only other person that is employed in the finance department is an accounts payable clerk. Though the beneficiary decides how the work will be performed in the finance department, he is also responsible for performing the day-to-day tasks that are part of the accounting function.

The beneficiary's position would NOT be qualifying for L1 purposes because the beneficiary:

- Does not supervise professionals,
  - Directs and performs the duties of his department, and
  - Does not have sufficient staff to remove him from primarily performing the mundane duties of his department.
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# L1B: Specialized Knowledge

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## Introduction

The L1B classification is reserved for certain specialized knowledge individuals and professionals. The definitions for L1 specialized knowledge professionals can be found in section 214(c)(2)(B) of the INA and 8 CFR 214.2(l)(1)(ii)(D) and (E). The requirement that the individual is a professional only applies when the person is being petitioned for under a blanket petition.

**NOTE:** The same specialized knowledge professional definitions apply to the nature of the beneficiary's position abroad and in the U.S.

---

## Specialized Knowledge Defined

Specialized knowledge means special knowledge possessed by an individual of the organization's:

- Product
  - Service
  - Research
  - Equipment
  - Techniques
  - Management, or other interests and its application in international markets, or
  - An individual's advanced level of knowledge or expertise in the organization's processes and procedures.
- 

## Specialized Knowledge Interpretation

Headquarters' memo CO 214L-P, dated March 9, 1994, provides additional guidance on the interpretation of "specialized knowledge" as defined by statute and regulation.

The memo notes that there are no statutory definitions or legislative history to provide guidance or insight as to the interpretation of the terms "special" or "advanced", and instructs adjudicators to rely on the common dictionary definitions. See the *Term "Special" Defined* section.

USCIS has several policy memorandums that provide guidance on how to interpret specialized knowledge for the L1B classification. See Appendix A for instruction on how to access the following memos:

- 10/27/1989: Interpretation of Specialized knowledge under the L Classification
  - 3/9/1994: Interpretation of Specialized Knowledge.
  - 9/9/04: Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L1B status.
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## L1B: Specialized Knowledge, Continued

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**Term “Special” Defined** Webster’s II New Riverside University Dictionary defines the term “special” as “surpassing the usual; distinct among others of a kind.” Also, Webster’s Third New International Dictionary defines the term “special” as “distinguished by some unusual quality; uncommon; noteworthy.”

Based on the above definition, a beneficiary would possess specialized knowledge if the record demonstrated that the beneficiary’s knowledge is different from that found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

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**Term “Advanced” Defined** Webster’s II New Riverside University Dictionary defines the term “advanced” as “highly developed or complex; at a higher level than others.” Also, Webster’s Third New International Dictionary defines the term “advanced” as “beyond the elementary or introductory; greatly developed beyond the initial stage.”

Again, based on the above definition, the beneficiary’s knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout an organization, only that the knowledge be advanced.

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**No Test of the U.S. Labor Market Required** The determination of whether a beneficiary possesses specialized knowledge does not involve a test of the U.S. labor market.

Whether or not there are U.S. workers available to perform the duties is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the beneficiary, not whether there are similarly employed U.S. workers.

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## L1B: Specialized Knowledge, Continued

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### L-1 Visa Reform Act of 2004

The L-1 Visa Reform Act of 2004 addresses L-1B workers stationed primarily outside the L organization. Beginning June 6, 2005, section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent if the alien is under the “control and supervision” of the unaffiliated employer, or if the placement at the non-affiliated worksite is “essentially an arrangement to provide labor for hire.”

For this ground of ineligibility to apply:

- The alien worker must be a specialized knowledge worker as defined at 8 CFR 214.2(l)(1)(D) and (E), and
- The worker must be stationed primarily (more than 50%) offsite.

**NOTE:** If more than 50% of the total work time is spent offsite, the petition must establish “control and supervision” of the alien. (Yates memo)

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## Factors in Determining Specialized Knowledge

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### General Knowledge Does Not Equal Specialized Knowledge

Though there is no required test of the U.S. labor market, the officer must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized knowledge.

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### Specialized Knowledge May Become General Knowledge

In this era of rapid technological advances, expertise in certain “cutting edge” technologies may become “general industry knowledge” in a rather short period of time. The true “advanced” nature of the beneficiary’s knowledge must be considered in relation to the current level of knowledge commonly held in the area of the beneficiary’s specialty.

**EXAMPLE:** In the early nineties, expertise in the creation and maintenance of internet websites was not commonly held in the computer industry. Today, many grade school children possess the ability to perform these tasks. Such knowledge is no longer thought of as “special” or “advanced”.

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### Characteristics That May Equal Specialized Knowledge

The following are some of the possible characteristics of a beneficiary who may possess specialized knowledge. They are not all inclusive. The beneficiary:

- Possesses knowledge that is valuable to the employer’s competitiveness in the market place;
  - Is qualified to contribute to the U.S. employer’s knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
  - Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position;
  - Has knowledge which, normally, can be gained only through prior experience with that employer, or;
  - Has knowledge of a product or process that cannot be easily transferred or taught to another individual;
  - Has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the U.S.
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*Continued on next page*

## Factors in Determining Specialized Knowledge, Continued

### Evaluating Specialized Knowledge Positions

When evaluating the nature of the beneficiary's claimed specialized knowledge position, the petition and supporting evidence must be reviewed to establish that:

- The beneficiary's prior and proposed employment qualifies for L1B purposes, and
- He or she truly possesses knowledge that is special or advanced in relation to knowledge commonly held in the beneficiary's field.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers, and how the beneficiary's position requires the services of an individual who possesses specialized knowledge.

### Petitioner's Allegations

The mere fact that a petitioner alleges that a beneficiary's knowledge is somehow different does not, in and of itself, establish that the beneficiary possesses specialized knowledge.

Frequently, the petitioner will merely reiterate the definitions of specialized knowledge professionals as defined in statute and regulation.

<b>If the employer is a...</b>	<b>Then...</b>
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.

*Continued on next page*

## Factors in Determining Specialized Knowledge, Continued

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**Petitioner  
Bears Burden  
of Proof**

The petitioner bears the burden of establishing through the submission of probative evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor.

Likewise, a petitioner's assertion that the beneficiary possesses an advanced knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.

It is the quality and caliber of the evidence that establishes whether or not the beneficiary possesses specialized knowledge.

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## Examples of Qualifying and Non-Qualifying L1B Positions

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**Example #1:  
Qualifying  
Position**

ABC, located in the United States, is a multinational corporation which produces computer hardware, software and operating systems.

The beneficiary founded and was employed by, Small Guy Inc. that produced a unique suite of programs, called All the Answers, which the beneficiary developed.

Eighteen months ago, ABC bought Small Guy Inc. (making them a wholly owned subsidiary) and continued to employ the beneficiary and the other five employees.

ABC now wants to directly employ the beneficiary as a trainer to come to the United States to train other ABC employees in All The Answers.

The beneficiary is eligible for classification as an L-1B nonimmigrant because:

- Both the beneficiary's position abroad and in the U.S. would qualify for L-1B purposes as they require the services of an individual who possesses specialized knowledge, and

The beneficiary possesses knowledge to the petitioner that is special, advanced and not commonly held in the industry or ABC.

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*Continued on next page*

## Examples of Qualifying and Non-Qualifying L1B Positions, Continued

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**Example #1:  
Non-Qualifying  
Position**

*The Software company*, located in Montreal, Quebec, manufactures software programs for business applications according to the specifications of its clients. In order to create these software programs, *the Software company* utilizes software applications and operating systems that are created and marketed by a number of different organizations and are commonly used in the industry.

For the last ten years, *the Software company* has employed the beneficiary abroad as a computer engineer. The beneficiary is part of a team of engineers that designs the software programs for various clients. The beneficiary is familiar with the various procedures involved in the manufacture, use, and service of the software products.

*The Software Company* has a wholly owned subsidiary, *Creative Computes*, located in Portland, ME. *Creative Computes* filed an I29L petition requesting the classification of the beneficiary as an L1B nonimmigrant. The Software Company wishes to employ the beneficiary in the United States in order for the beneficiary to perform software consulting services for *Creative Computes*. The beneficiary will be principally performing the duties of a programmer analyst and will perform systems analysis, software programming and product installation at various client sites.

The beneficiary is ineligible for classification as an L1B nonimmigrant because:

- Neither position requires the services of an individual who possesses specialized knowledge above that of any trained professional in the beneficiary's field, and
- The beneficiary has not been shown to possess knowledge that is advanced in relation to others similarly employed at *The Software Company* or in the computer software industry in general.

It should be noted that the beneficiary's position in the United States would also not be qualifying for the L1B classification as the beneficiary is not coming to the U.S. to be employed by a qualifying U.S. employer. Rather, she will be coming to perform services directly for her foreign employer at client sites in the United States. [See *Matter of Penner*, 18 I&N Dec. 49]

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*Continued on next page*

## Examples of Qualifying and Non-Qualifying L1B Positions, Continued

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**Example #2:** *Traders of the Orient*, located in Shanghai, China, is engaged in international trade. Specifically, the company buys and sells plastic trinkets and other novelty items.

**Non-Qualifying  
Position**

*Traders of the Orient* has employed the beneficiary as an international trade specialist for the last five years. In this capacity, he negotiates with the company's suppliers, arranges for the shipment of the goods for export, and initiates the required import/export documentation.

In order to perform the duties of his position, he must have knowledge of:

- International customs and tariff structures, and
- The negotiating methods of representatives of state-run manufacturing firms.

*Traders of the Orient* has a wholly owned subsidiary, *Gidget's Gadgets* that is located in Flushing, New York. *Gidget's Gadgets* filed a petition on behalf of the beneficiary in order to classify him as an L1B nonimmigrant. The beneficiary is to be directly employed by *Gidget's Gadgets* in a position comparable to his foreign position.

The beneficiary is not eligible for classification as an L1B nonimmigrant because:

- Neither position requires the services of an individual who possesses specialized knowledge above that of any trained professional in the beneficiary's field, and
  - The beneficiary's knowledge consists of general knowledge that is commonly held in the industry.
-

# Specialized Knowledge Language

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## Unacceptable Words and Phrases

Words and phrases to avoid in specialized knowledge denials and call-ups.

- Narrowly held
  - Key
  - Key Personnel
  - Proprietary
  - Essential
  - Essential Process
- 

## Acceptable Words and Phrases

Words and phrases to use in specialized knowledge denials and call-ups.

- Different
  - Uncommon
  - Material different
  - Noteworthy
  - Distinguished by some unusual quality
  - Highly developed
  - Complex
- 

## IMMACT'90 Changes to Specialized Knowledge Requirements

*Matter of Sandoz Crop Protection Corp., Colley and Penner* predate the 1990 statutory amendments which eliminated the requirement that specialized knowledge be either "proprietary" or "unique" and therefore, these decisions should be viewed in light of this. While the legislative history (from 1970) may have used these terms, they do not appear in the statute or in the regulations, and so, use of this kind of terminology in decisions is to be avoided.

In light of the changes brought about by IMMACT'90, do not use the following cites:

*Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982)

An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee.

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*Continued on next page*

## Specialized Knowledge Language, Continued

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**IMMACT'90  
Changes to  
Specialized  
Knowledge  
Requirements  
(continued)**

*Matter of Colley, et al* 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

Specialized knowledge involves proprietary knowledge and an advanced level of expertise not readily available in the United States job market. This knowledge and expertise must be clearly different from those held by others employed in the same or similar occupations. Different procedures are not a proprietary right within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.

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**Cites not  
impacted by  
IMMACT'90**

The following *Matter of Sandoz Crop Protection Corp.*, *Colley* and *Penner* cites can still be used in the below contexts as the 1990 statutory amendments did not address these areas.

*Matter of Sandoz Corp Protection Corp.* should be used only in those situations where the petitioner is referencing patented products or copyrighted works. See Below.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

A petitioner's ownership of patented products or copyrighted works, in and of itself, does not establish that a particular employee has specialized knowledge.

*Matter of Colley, et al* 18 I&N Dec. 117 (Comm. 1981)

Most employees today are specialists and have been trained and given specialized knowledge; however, it can not concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.

*Matter of Penner* 18 I&N Dec. 49 (Comm. 1982)

By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge."

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*Continued on next page*

## Specialized Knowledge Language, Continued

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### Using Cites

Where not specified above, officers may use any cite pertinent to case. However, it is the responsibility of the officer to ensure all cites are still valid. Check with a supervisor to use cites not specified in this document.

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# Qualifying Employment

## Qualifying Foreign Employment

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**Introduction** The beneficiary must have one year of continuous employment in a primarily managerial, executive or specialized knowledge capacity with a qualifying organization abroad within the three-year period immediately preceding the petition.

[See 8 CFR 214.2(l)(1)(i), 8 CFR 214.2(l)(1)(ii)(A), 8 CFR 214.2(l)(3)(iii), and (iv), and *Matter of Michelin Tire Corp.* 17 I&N Dec. 248]

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**Foreign  
Capacity Does  
Not Have to  
Equal U.S.  
Capacity**

Generally, there is no requirement that the beneficiary has been employed abroad in the same capacity as he or she will have in the United States.

[See 8 CFR 214.2(l)(3)(iv)]

EXCEPTION: If the beneficiary is coming to open or be employed in a **new office** in the U.S. he or she must have been employed in the same capacity abroad.

[See 8 CFR 214.2(l)(3)(v) and 8 CFR 214.2(l)(3)(vi)]

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**Employed  
Abroad**

Employed abroad means what it appears to mean. Experience acquired in the United States may not be counted as part of the required one year of experience, even if the U.S. experience was with a qualifying entity.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Kloeti* 18 I&N Dec. 295]

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*Continued on next page*

## Qualifying Foreign Employment, Continued

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**One Year of  
Continuous  
Employment  
Abroad**

Continuously generally means an unbroken and uninterrupted year of qualifying work experience abroad.

The intracompany transferee definition seems to assume that all L1 beneficiaries will be outside the United States when an initial L1 petition is filed.

If the beneficiary has been outside the U.S. during the three-year period immediately preceding the filing of the petition, it is very easy to determine the three-year period to examine.

However, in some instances the beneficiary has been present in the U.S. for quite some time prior to the filing of the petition. In addition, the beneficiary may have been employed in the United States for part of the three-year period immediately preceding the filing of the petition. In these instances, the officer must determine whether the beneficiary's stay in the United States has "interrupted" his or her qualifying foreign employment.

Periods of employment in the United States in a lawful status for a qualifying entity and brief trips to the U.S. for business or pleasure are not considered to be interruptive of the beneficiary's foreign employment.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Continental Grain Co.* 14 I&N Dec. 140]

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**Example #1:  
Qualifying  
Foreign  
Employment**

An alien was employed for five years in a primarily managerial capacity for Light Devine at its location in Oslo, Norway. In January of 1996, he entered the U.S., as an H1B nonimmigrant to commence employment at Light Devine's New York City branch office.

In June of 1999, Light Devine filed an L1 petition on his behalf. The beneficiary's period of H1B employment in the United States is not considered to be interruptive of his foreign employment because he was employed in the United States in a lawful status by a qualifying entity.

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## Qualifying Foreign Employment, Continued

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**Example #1:  
Non-Qualifying  
Foreign  
Employment**

An alien was employed for five years in a primarily managerial capacity for *Light Devine* at its location in Oslo, Norway. In January of 1996, he entered the U.S. as an H1B nonimmigrant to be employed by a U.S. company that had no qualifying relationship to *Light Devine*.

In June of 1999, *The Fourth Light* filed an L1 petition on his behalf. The beneficiary's period of H1B employment in the United States is considered to be interruptive of his foreign employment because he was employed in the United States in a lawful status by a company that had no qualifying relationship with *Light Devine*.

In this instance, the L1 petition may not be approved because the beneficiary did not have one year of continuous employment abroad within the three-year period immediately preceding the filing of the petition.

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**Example #2:  
Qualifying  
Foreign  
Employment**

An alien was employed for three years in a primarily managerial capacity for *Chow Ling's Glass Company* at its location in Beijing, China. In March of 1996, she entered the United States as an F1 student to pursue a baccalaureate degree in international business. *Chow Ling's Glass Company* continued to pay her salary and paid all of the educational expenses incurred while she was a student.

In July of 1999, *Chow Ling's Glass Company* filed an L1 petition on her behalf. The beneficiary's time in the United States as an F1 student is not considered to be interruptive of her foreign employment with *Chow Ling's Glass Company* because she remained employed by *Chow Ling's Glass Company* while she participated in a company sponsored educational program.

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## Qualifying Foreign Employment, Continued

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**Example #2:  
Non-Qualifying  
Foreign  
Employment**

An alien was employed for three years in a primarily managerial capacity for *Chow Ling's Glass Company* at its location in Beijing, China. In March of 1996, she entered the United States as an F1 student to pursue a baccalaureate degree in international business. Prior to departing China, she resigned from her position with *Chow Ling's Glass Company*. The alien paid for her program of study with funds given to her by her parents.

In July of 1999, *Chow Ling's Glass Company* filed an L1 petition on her behalf. The beneficiary's time in the United States as an F1 student is considered to be interruptive of her foreign employment with *Chow Ling's Glass Company* because she ceased to be employed by the company in March of 1996.

In this instance, the L1 petition may not be approved because the beneficiary did not have one year of continuous employment abroad within the three-year period immediately preceding the filing of the petition.

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**Successorship  
in Interest**

In some instances, the beneficiary's one year of continuous employment may be gained prior to there being a qualifying relationship between the foreign employer and the U.S. employer.

If all of the assets and liabilities of one entity are substantially acquired through sale, merger or reorganization by another entity such that a qualifying relationship is created between a U.S. employer and a foreign employer, then the beneficiary's foreign employment could have been gained prior to the creation of the qualifying relationship.

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# Qualifying U.S. Employment

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## **Introduction**

The qualifying U.S. employer must be offering the beneficiary a primarily managerial, executive, or specialized knowledge position in the United States.

[See section 101(a)(15)(L) of the ACT, 8 CFR 214.2(1)(l)(i), and 8 CFR 214.2(1)(l)(ii)(A), (B), (C), (D) and (E)]

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## **U.S. Organization Must Directly Employ the Beneficiary**

A qualifying U.S. organization must directly employ the beneficiary for the entire duration of his or her L1 nonimmigrant status. However, the qualifying foreign employer may file the petition on the beneficiary's behalf.

The beneficiary may not directly perform services for a foreign employer in the U.S. without maintaining a valid employment relationship with the U.S. organization. The test is which organization controls the beneficiary's employment.

[See *Matter of Penner*, 18 I&N Dec. 49]

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## **Beneficiary May be Paid by the Foreign Employer**

While a qualifying U.S. employer must directly employ the beneficiary, the beneficiary's wages may be paid by the foreign organization. Is this in-line with what we heard at the IRS training?

[See *Matter of Pozzoli*, 14 I&N, Dec. 569]

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## **Required Evidence**

At a minimum, the petitioner must provide:

- A detailed statement that describes the duties to be performed by the beneficiary in the U.S., and;
- Evidence that the beneficiary prior education, training and employment qualify him or her to perform the intended services in the U.S.

[See 8 CFR 214.2(1)(3)(ii) and 8 CFR 214.2(1)(3)(iv)]

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## **Evaluating the U.S. position**

For a thorough discussion of how to evaluate the offered position, refer to the manager and executive, or specialized knowledge professional sections of the SOP.

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# Doing Business

## Overview

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**Definition** Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

Doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

[See 8 CFR 214.2(l)(1)(ii)(H)]

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**Introduction** Both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an intracompany transferee

[See 8 CFR 214.2(l)(1)(ii)(G)]

**EXCEPTION:**

A petitioner filing for an L1 beneficiary coming to be employed for a U.S. organization that has been doing business for less than one year does not have to be actively engaged in doing business at the time of filing of the petition.

Instead, the petitioner must submit evidence that sufficient physical premises to house the new office has been secured, and the intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

**NOTE:** L1 "new office" petitions will be discussed thoroughly later.

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*Continued on next page*

## Overview, Continued

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**Foreign  
Employer Must  
Continue to do  
Business**

There must be an organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad.

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**Example: Valid  
Employer**

An L1 beneficiary worked at *McDonuts* located in Ottawa, Ontario as an executive for four years. *The Donut Hut* owned 100% of *McDonuts*, and filed an L1 petition in order to transfer her to its office located in Boston, MA. The petition was approved for three years.

Two years later, *McDonuts* went bankrupt and stopped doing business. However, *The Donut Hut* also owns 100% of *McBagels*, located in Montreal, Quebec. *The Donut Hut* is still a valid L1 employer for the L1 beneficiary as it has a qualifying relationship with an organization located abroad that is doing business.

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**Example: NOT  
a Valid  
Employer**

An L1 beneficiary worked at *McDonuts* located in Ottawa, Ontario as an executive for four years. *The Donut Hut* owned 100% of *McDonuts*, and filed an L1 petition in order to transfer her to its office located in Boston, MA. The petition was approved for three years.

After the L1 nonimmigrant's entry into the United States, *McDonuts* stopped doing business. While the corporation was still in existence, it was inactive. *The Donut Hut* does not have a qualifying relationship with any other foreign organizations. *The Donut Hut* is NOT a valid L1 employer for the L1 beneficiary as it does NOT have a qualifying relationship with an organization located abroad that is doing business.

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**Organization  
Must have  
Sufficient  
Resources**

In addition to conducting business, the organization must be shown to have sufficient resources in order to compensate the beneficiary and to continue to conduct business into the foreseeable future.

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# Determination of Doing Business

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## Introduction

While the organization must be shown to be involved in the continuous provision of goods or services, there is no statutory or regulatory minimum level of business activity that must be conducted in order for the U.S. and the Foreign organization to meet this eligibility requirement.

However, the organization must be conducting business in a manner that would require the services of an individual **primarily** engaged in a managerial, executive, or specialized knowledge capacity.

In order to make a determination that the organization is conducting sufficient business to require the services of the beneficiary, the organization's personnel structure and the beneficiary's stated duties must be placed in the context of the level of business that is being conducted by the organization.

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## Credible Evidence May Not Establish Eligibility

This section discusses the various categories of evidence that are routinely submitted to document an organization's business activities. It should be noted that the submission of what is considered to be "credible" evidence is not equivalent to meeting the eligibility criteria. The validity of the evidence must be evaluated. The evidence submitted may be negative as well as positive.

In other words, a tax return may be submitted by the petitioner and be considered credible evidence, but the information provided on the tax return may fail to establish that the eligibility requirement has been met.

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## Evidence of Doing Business

A variety of documents may be submitted in order to establish that the U.S. and the foreign organization are doing business.

Frequently, the petitioner will merely submit a letter that describes the nature and level of business activity conducted by the organization.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the organization's business activities.
Small and/or young, unknown or less substantial business,	The issue of whether the organization is doing business requires the submission of credible, documentary evidence in order to make a determination.

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## Determination of Doing Business, Continued

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**Calendar or Fiscal Year** Organizations publish annual reports and financial statements, and file tax returns based on either a calendar or a fiscal year.

<b>If the reporting year is a...</b>	<b>Then the year starts on...</b>	<b>And ends on...</b>
Calendar year	January 1 <sup>st</sup>	December 31 <sup>st</sup>
Fiscal year	The 1 <sup>st</sup> day of any month other than January	The last day of any month other than December

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**Change of Year for Tax Purposes** An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.

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# Primary Evidence of Doing Business

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**Primary  
Documentary  
Evidence**

Primary documentary evidence of an organization's business activities includes:

- Annual Reports, containing audited or reviewed financial statements,
  - Audited financial statements,
  - Reviewed financial statements, or;
  - Federal Tax Returns.
- 

**Evaluating  
Primary  
Evidence**

Primary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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**Annual Reports**

Annual Reports are published by all publicly traded corporations in the United States. Many foreign organizations also publish annual reports.

Annual reports provide information describing the organization's:

- Products and Services
- Management and personnel structure on the macro level
- Ownership & Control
- Subsidiaries, affiliates, joint ventures, and branch offices
- Current and long-term objectives

In addition, annual reports should include audited or reviewed financial statements for the past year.

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## Primary Evidence of Doing Business, Continued

### Federal Tax Returns

In general, organizations that are conducting business in the U.S. must file federal tax returns each year. Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format.

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a...	Then the Tax Return is Form...	And the tax returns provides a modified...	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

### Foreign Tax Documentation

- The petitioner may provide copies of foreign tax returns as evidence of the business activities of the foreign entity.
- Canada and most Western European countries require tax returns that are very similar to the United States' tax returns and are usually credible.
- Many other countries rely on hand-written tax returns and receipts that are less reliable.

# Financial Statements

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## Introduction

Financial statements are used to convey a picture of the profitability and the financial position of a business. The two most important are the income statement and the balance sheet.

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## Income Statement

The income statement shows whether or not the business earned a “profit” or net income during a specific time period. Net income is earned when revenues exceed expenses, but a net loss is incurred if the expenses exceed the revenues.

Income statements provide useful information for the adjudication of L1 petitions such as the organization’s:

- Gross sales/revenues (and sometimes the source of the revenue),
  - Cost of goods or services sold,
  - Wages, salaries, and commissions expense,
  - Rental or mortgage expense,
  - Utility expenses,
  - Brokerage, freight, travel, and contractor expenses, and
  - Net income or net loss.
- 

## Balance Sheet

The balance sheet can be likened to a snap shot of the organization’s financial position. Financial position is shown by listing the organization’s:

- Assets,
- Liabilities, and
- The equity of the owners.

The balance sheet provides useful information for the adjudication of L1 petitions such as the organization’s:

- Type and amount of assets held,
  - Type and amount of the liabilities owed, and
  - Level of investment in the organization by its owners.
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## Financial Statements, Continued

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### **Internally Generated Financial Statements**

Internally generated financial statements are created by and are based on the representations of the management of the organization. Employees of the petitioning organization prepare the financial statements and they are not subject to the scrutiny of anyone outside the organization.

Internally generated financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Compiled Financial Statements**

A compilation is the preparation of financial statements from the accounting records and other representations of the management of the organization. The accountant who prepares the financial statements is not required:

- To verify any information provided by management, or
- Have any degree of independence from the organization.

Compiled financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Reviewed Financial Statements**

A review of financial statements involves:

- Obtaining an understanding of the entity's accounting system
- Applying analytical procedures to financial data
- Making inquiries of persons responsible for the organization's financial and accounting matters

An accountant (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform a review.

The CPA will then either prepare the financial statements or review internally generated financial statements. The objective of a review is to express limited assurance that the information provided in the financial statements is in accordance with generally accepted accounting principles.

Reviewed financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Financial Statements, Continued

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### **Audited Financial Statements**

An audit is the examination of financial statements, the accounting records and other supporting evidence both within and outside the organization. It is more substantial in scope than a review, but involved many of the procedures that are performed during a review.

An auditor (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform an audit.

Auditors never express an opinion on the fairness of the financial statements without first performing an audit. The auditor's report will either contain an expression of opinion regarding the fairness of the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed.

Audited financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Secondary Evidence of Doing Business

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### Secondary Documentary Evidence

Secondary documentary evidence of an organization's business activities may include, but is not limited to:

- Commercial leases or title to commercial properties,
  - Form W-2s and Form 1099s,
  - Form 941, Employer's Quarterly Tax Return,
  - Internally generated payroll documentation,
  - Sales contracts and invoices,
  - Bills of lading, shipping receipts and brokerage bills,
  - Commercial loan agreements,
  - Bank Statements, or
  - Telephone and other utility bills.
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### Evaluating Secondary Evidence

Secondary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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### Example: Credible Evidence

*Electronic Imports*, has filed a petition for an L1A manager. The petitioner's letter states that the organization is involved in the importation and sale of electronic components, such as stereos and televisions, and that the organization currently employs twenty people in the United States.

As evidence of the organization's leased premises, the petitioner has submitted copies of its commercial leases. The leases are for a warehouse, two electronic showrooms, and for 1500 square feet of office space at a fourth location. The total monthly expense for the leases is \$12,000.00 a month.

In addition, the petitioner has submitted copies of its most recently filed Form 941, Employer's Quarterly Tax Returns. The Form 941s show that the beneficiary's quarterly payroll is approximately \$140,000.00 a quarter and lists twenty employees on the supporting schedules.

In this instance, the commercial leases and the Form 941s corroborate the statements made by the petitioner, and are credible evidence of the organization's business activities.

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## Secondary Evidence of Doing Business, Continued

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**Example: NOT Credible Evidence** *Electronic Imports* has filed a petition for an L1A manager. The petitioner's letter states that the organization is involved in the importation and sale of electronic components, such as stereos and televisions, and that the organization currently employs twenty people in the United States.

As evidence of the organization's leased premises, the petitioner has submitted a copy of its lease. The lease is for an apartment, and the lease states that the premise is to be used as a private residence only. The total monthly expense for the lease is \$600.00 a month.

In addition, the petitioner has submitted copies of its most recently filed Form 941, Employer's Quarterly Tax Returns. The Form 941s show that the beneficiary's quarterly payroll is approximately \$18,000.00 a quarter and lists the names of six employees.

In this instance, the lease and the Form 941s DO NOT corroborate the statements made by the petitioner, and are NOT credible evidence of the organization's business activities.

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# New Office

## Overview

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**Introduction** The L1 classifications have special eligibility requirements and approval limitations for L1 beneficiaries who are coming to open a new office in the United States.

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**New Office Defined** New office means an organization that has been doing business in the United States through a qualifying organization for less than one year. [See 8 CFR 214.2(l)(1)(ii)(F)]

Any organization that has been doing business in the U.S. for less than one year must be defined as a new office regardless of the existence of other qualifying organizations that have been doing business in the U.S. for more than one year.

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**Doing Business Does Not Equal Legal existence** An organization may have a legal existence in the United States for more than one year, but if it has not engaged in the continuous provision of goods and services for more than a year, it must be defined as a new office.

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**Example: New Office** *Burrito Barn* is located in Mexico City, Mexico. *Taco Shell*, a US based company, was incorporated in January of 1998. In June of 1998, *Burrito Barn* purchased all of the stock of *Taco Shell*. In January of 1999, *Taco Shell* acquired office space, hired employees and commenced doing business. In July of 1999 *Taco Shell* filed an L1 petition.

*Taco Shell* must be treated as a new office for L1 purposes because even though the organization has existed legally for more than one year, it has not been doing business for more than one year.

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## Overview, Continued

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### Example: NOT a New Office

*Burrito Barn* is located in Mexico City, Mexico. *Taco Shell*, a US based company, was incorporated in January of 1998. In March of 1998, *Burrito Barn* purchased all of the stock of *Taco Shell*. In April of 1998, *Taco Shell* acquired office space, hired employees and commenced doing business. In July of 1999 *Taco Shell* filed an L1 petition.

*Taco Shell* will not be treated as a new office for L1 purposes because it has been doing business for more than one year. The petitioner must meet all of the eligibility requirements for a regular initial L1 petition.

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### New Office Eligibility Requirements

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations;
- Organization abroad must be actively engaged in doing business;
- U.S. organization must be shown to have sufficient physical premises to house the new office;
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition, and;
- Intended U.S. organization, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position supported by information regarding the:
  - Proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - Size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the U.S., and;
  - Organizational structure of the foreign entity

[See 8 CFR 214.2(1)(3)]

**NOTE:** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Overview, Continued

**Beneficiary's Qualifying Employment Abroad** Use the table below for beneficiary's qualifications.

<b>If the petition indicates that the beneficiary is coming to the U.S. as a...</b>	<b>Then the beneficiary's qualifying employment abroad must have been in a primarily...</b>
Manager or an executive to open or to be employed in a new office in the U.S.,	Managerial or executive capacity. [See 8 CFR 214.2(1)(3)(v)]
Specialized knowledge capacity or to be employed in a new office in the U.S.,	Specialized knowledge capacity or managerial executive. [See 8 CFR 214.2(1)(3)(vi)]

**New Office Petitions May Only be Approved for One Year** New office petitions may be approved for a period that does not exceed one year.  
[See 8 CFR 214.2(1)(7)(i)(A)(3)]

**Advantages for the Petitioner** There are two main advantages of the new office designation for the petitioner.

1. The U.S. organization does not have to be actively engaged in the provision of goods and services as of the date of filing.
2. The beneficiary does not have to be engaged in a primarily managerial, executive, or specialized knowledge capacity at the time of his or her change of status or entry into the United States as an L1 nonimmigrant. Instead, the petitioner must demonstrate that the U.S. organization, within one year of the approval of the petition, will support the beneficiary in a primarily executive, managerial or specialized knowledge position by providing:
  - A coherent plan in order to commence doing business in the U.S.,
  - The financial ability to compensate the beneficiary and invest sufficient resources in the U.S. organization in order to realize its proposed business plan, and
  - Acquired sufficient physical premises in the U.S. in order to start doing business as described in the business plan.

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## Overview, Continued

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**Disadvantages  
for the  
Petitioner**

There are two main disadvantages of the new office designation for the petitioner.

1. The beneficiary must be coming to provide services in a capacity that is similar to the position abroad. Hence, managers and executives must be classified as L1As and specialized knowledge employees must be classified as L1Bs, which limits the staffing options of the new office petitioners.
  2. The petition may only be approved for one year, while regular L1 petitions may be given initial approvals for up to three years.
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## Business Plans and Foreign Investments

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- Business Plans** While the new office's business plan may be entirely prospective, the petitioner's statement and supporting documentation should provide a clear picture of how the U.S. organization will conduct business to include:
- A description of the products and/or services that will be provided to its customers;
  - The type and general location of the customers or clients to be targeted;
  - A description of its short-term and strategic goals and the general time-frame during which these goals will be achieved;
  - The amount of investment that will be required to fund the acquisition of sufficient plant, equipment and staffing in order to realize the goals, and;
  - Why the beneficiary's services are needed during the start-up phase of the organization.

In addition, the petitioner's plans for the U.S. organization must persuasively demonstrate that the nature of the beneficiary's business will be such that he or she will be employed in a primarily managerial, executive or specialized knowledge capacity within one year of the approval of the petition.

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**Statement that Business Plan Cannot be Provided** In general, statements by the petitioner that no business plan can be provided, or that the investment and/or acquisition of a physical premises cannot be made until the approval of the L1 petition are not persuasive for the purposes of establishing the beneficiary's eligibility for a new office approval.

The petitioner must establish eligibility at the time of filing of the petition.  
[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Business Plans and Foreign Investments, Continued

### Evidence of the Foreign Organization's Investment

While there is no statutory or regulatory minimum investment required, the investment must be commensurate with the activities to be conducted by the business during its start-up phase.

The petitioner must identify the size of its financial investment in the new office and show that it has sufficient resources to pay the beneficiary's salary and implement its business plan.

Where documentary evidence is required, the record should contain:

- Bank statements for the new office, as well as the bank wire transfers, cancelled checks, or letters of credit that were executed by the foreign organization to execute the transfer of funds, or
- Evidence of commercial loans, enforceable promissory notes, or other such documentation that would show that sufficient funds are at the new office's disposal.

If the new office is being opened by a...	Then...
Large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of its investment in the new office.
Small and/or young, unknown or less substantial business,	The issue of the level of its investment and financial capabilities requires the submission of credible, documentary evidence in order to make a determination.

### Foreign Organization's Investment "Hand-Carried"

Occasionally, the petitioner will claim that the foreign organization's investment was "hand-carried" into the United States by the beneficiary or by another individual. Such claims should be corroborated with the submission of a Customs Form 4790. This is the document that is required when an individual is entering the United States in possession of \$10,000.00 or more in currency.

This claim usually indicates that the foreign organization does not exist, or is not actually involved in the start-up of the new office.

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## Business Plans and Foreign Investments, Continued

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**Evidence of  
Sufficient  
Physical  
Premises in the  
U.S.**

There is no statutory or regulatory minimum for the size of the new office's physical premises. However, the size and nature of the physical premises must be of a sufficient size and type that would enable the new office to perform the initial activities outlined by the business plan during the start-up phase.

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**Example:  
Sufficient  
Physical  
Premises**

*Stitches & Borders* filed a new office petition. *Stitches & Borders* has not actually started doing business in the U.S. but has provided a detailed statement that describes how it will conduct business. The organization is to engage in the importation of textile products, primarily manufactured by its foreign parent, and will sell the products to textile wholesalers located in the metropolitan New York area.

The new office will initially hire ten people in its start-up phase and has signed lease agreements for the leasing of 1200 square feet of office space, as well as a warehouse facility to store the imported goods until they can be delivered to its customers.

The petitioner has demonstrated that is has acquired sufficient physical premises for the new office in the U.S. In general, 1200 square feet of office space would be sufficient to provide working space for its employees and it has acquired a facility to store its imported products.

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**Example: NO  
Sufficient  
Physical  
Premises**

*Stitches & Borders* filed a new office petition. *Stitches & Borders* has not actually started doing business in the U.S. but has provided a detailed statement that describes how it will conduct business. The organization is to engage in the importation of textile products, primarily manufactured by its foreign parent, and will sell the products to textile wholesalers located in the metropolitan New York area.

The new office will initially hire ten people in its start-up phase and has signed a lease agreement for the leasing of 200 square feet of office space.

The petitioner has NOT demonstrated that is has acquired sufficient physical premises for the new office in the U.S. In general, 200 square feet of office space would be NOT be sufficient to provide working space for its employees, nor has it acquired a facility to store its imported products.

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# New Office Extensions

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## Introduction

The petitioner can request an extension of the L1B or L1A's nonimmigrant status prior to the expiration of his or her L1 nonimmigrant status.

A new office petitioner can frequently establish an L1 beneficiary's eligibility for an initial one year approval by the submission of documentation that is almost entirely prospective in nature. However, at the end of the L1 beneficiary's one-year approval, the new office must be shown to have grown to a point where he or she is primarily engaged in a managerial, executive or specialized knowledge capacity.

The petitioner must meet all of the regular L1 eligibility requirements.

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## Validity Dates

The petition may be approved for a period of time not to exceed two years. [See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

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## Required Evidence

The petitioner must provide the following evidence in support of a new office extension petition:

- Evidence that the U.S. and foreign entities are still qualifying organizations;
- Evidence that the U.S. entity has been actively engaged in the provision of goods and services for the previous year;
- A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- A statement describing the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees when the beneficiary is to be employed in a managerial or executive capacity, and;
- Evidence of the financial status of the U.S. operation.

[See 8 CFR 214.2(l)(14)(ii)]

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## New Office Extensions, Continued

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### **Additional Evidence**

While the evidence described above is required by regulation, additional evidence may be requested in order to establish the beneficiary's eligibility for the extension.

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### **Renewed New Office Approvals**

In general, a new office extension petition should be denied if the U.S. organization is not doing business in a manner that would require and support the employment of the beneficiary in a primarily managerial, executive or specialized knowledge capacity.

However, there are instances in which the start-up of the new office is hampered by circumstances that are beyond the petitioner's control. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
  - A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
  - Litigation involving the new office which prevented the normal functioning of the business.
- 

### **Petitioner Cites Unanticipated Circumstances**

In the instance where the petitioner cites unanticipated circumstances that hampered the new office's ability to commence doing business, the new office petition may be classified as a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year.

A limited approval should only be granted where the petitioner has adequately corroborated the nature of the events that led to the new office's difficulties. The limited approval should not be granted where there is evidence of fraud or misrepresentation.

**NOTE:** The Service should not request evidence of unanticipated circumstances, unless the petitioner has first made this claim.

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## New Office Extensions, Continued

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**Example:  
Evidence of  
Unanticipated  
Circumstances**

*Pow Chun's Chinese Food*, located in Guangzhou, China incorporated a subsidiary in New York in January of 1998. In June of 1998 *Pow Chun's Chinese Food* filed a new office petition for an L1A beneficiary. The petition was approved for one year, from July 1, 1998 to July 1, 1999.

The beneficiary applied for an L1 visa at the U.S. consulate in Guangzhou during July of 1998. However, the consulate didn't issue a visa to the beneficiary until December of 1998. The beneficiary entered the U.S. in January of 1999 in order to open the new office.

The New York office did not commence doing business until February of 1999. The petitioner filed a new office extension petition in June of 1999 that provided a statement describing the delay in the L1 visa issuance and submitted copies of the beneficiary's passport pages. While the new office was "doing business", the evidence did not clearly establish that the operation could support the beneficiary in a primarily managerial or executive capacity.

The petition was classified by the ISO as a new office petition and was approved with validity dates from July 1, 1999 to January 31, 2000. The L1 was given his full year as a new office L1A.

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**Example: No  
Unanticipated  
Circumstances**

*Pow Chun's Chinese Food*, located in Guangzhou, China incorporated a subsidiary in New York in January of 1998. In June of 1998 *Pow Chun's Chinese food* filed a new office petition for an L1A beneficiary. At the time the petition was filed the beneficiary was in the U.S. as a B1 nonimmigrant. The petition was approved, granting a change of status for the beneficiary, for one year, from July 1, 1998 to July 1, 1999.

The petitioner filed a new office extension petition in June of 1999 that provided a vague description of various "set-backs" that had hampered the operation of the new office. While the new office was "doing business", the evidence did not clearly establish that the operation could support the beneficiary in a primarily managerial or executive capacity.

The petition was denied, as the record did not contain evidence that the new office had experienced unanticipated circumstances that had hampered the start-up of the new office.

---

## Miscellaneous

### Extensions

---

**Introduction** The petitioner may request an extension of an L1B or L1A's nonimmigrant status by filing a petition prior to the expiration of the beneficiary's L1B or L1A status. [See 8 CFR 214.2(l)(14)]

---

**Validity Dates** The petition may be approved for a period of time not to exceed two years. [See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

---

**Required Evidence** Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. [See 8 CFR 214.2(l)(14)]

<b>If the extension petition is being filed by...</b>	<b>Then...</b>
A large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of the beneficiary's eligibility.
A small and/or young, unknown organization,	The issue of the beneficiary's eligibility may require the submission of credible, documentary evidence in order to make a determination.

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*Continued on next page*

## Extensions, Continued

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### Previously Approved Petition

Information that is discovered at the time of an L1 extension petition might show that the beneficiary was never eligible for the benefit that was previously received. The Service is under no obligation to establish that the previously approved petition was approved in gross Service error.

Further, the Service is not obligated to approve applications or petitions where eligibility has not been demonstrated.

- *Matter of M--*, 4 I&N Dec. 532 (A.G.1952; BIA 1952)
  - Pearson V. Williams, 202 U.S. 281 (1906)
  - *Mannerfrid V. Brownell*, 145 Supp. 55 (D.D.C. 1956), affirmed 238 F. 2<sup>nd</sup>. 32 (D.C. Cir. 1956), Lazarescu V. United States, 199 F. 2<sup>nd</sup> 898 (4<sup>th</sup> Cir. 1952)
  - U.S. Ex. Rel. Vajta V. Watkins, 179 F. 2<sup>nd</sup> 137 (2<sup>nd</sup> Cir. 1950)
- 

### Same/Same RFEs

If an RFE will be issued on a petition that is requesting an extension with the same petitioner for the same beneficiary, the case must be signed off by an SISO prior to sending the RFE. The officer must clearly articulate the material error, changed circumstances, or new material information that prompted the RFE on the subsequent filing.

The following are examples where no SISO authorization is needed:

- New office extensions,
  - Where there has been a change in the corporate relationship, or
  - Where there has been a change in the nature of the beneficiary's employment, such as job duties, a change from L1B to L1A or vice versa, or a change in the organizational structure.
- L1B beneficiary (see William R. Yates memo dated July 28, 2005, regarding the L-1 Reform Act of 2004.)

[See William R. Yates memo of April 23, 2004, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity.*]

---

## L1 Limitations of Stay

---

**Introduction**

An alien who has spent five years in the U.S. in a specialized knowledge capacity, or seven years in the U.S. in a managerial or executive capacity under section 101(a)(H) and/or (L) of the Act may not be readmitted to the U.S. under section 101(a)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the U.S. for the immediate prior year.

- No new petitions may be approved where the alien has spent the maximum time period allowed in either the H or L classification.
- Brief trips to the U.S. for business or pleasure are not considered to interrupt the required one-year outside the U.S.

[See 8 CFR 214.2(l)(12)(I)]

---

**L2 Dependents**

Dependents are eligible for L-2 status extensions through the proper filing of a Form I-539 with fee, and whenever possible, filed concurrently with the principal's Form I-129.

Any time spent in L-2 status does not count against the maximum allowable periods of stay available to principals in L-1 status. [*See Aytes Memo of December 5, 2006, Guidance on Determining Periods of Admission for Aliens Previously in H-4 or O-2 Status; Aliens Applying for Additional Periods of Admission beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year*]

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*Continued on next page*

## L1 Limitations of Stay, Continued

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### General L1 Limitations of Stay

The following table describes the general L1 limitations of stay for L1 nonimmigrants. No further extensions may be granted.

[See 8 CFR 214.2(l)(15)(ii)]

If the Classification is...	Then the Maximum Period of stay is...
L1A, Manager or Executive	7 years
L1B, Specialized Knowledge	5 years

---

### Limitation of Stay: Exception

The limitations of 8 CFR 214.2(l)(12)(i) do not apply to aliens who:

- Do not reside continually in the U.S., and
- Whose employment in the U.S. is seasonal, intermittent, or consists of an aggregate of six months or less per year.

In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the U.S. to engage in part-time employment.

[See 8 CFR 214.2(l)(12)(ii)]

---

### Evidence that Beneficiary Qualifies for Exception

The petitioner must provide clear and convincing proof that the beneficiary qualifies for an exception, to include:

- Arrival and departure records,
  - Copies of tax returns, and
  - Records of employment abroad.
- 

### Memo Regarding Recapture of Time

Refer to the October 21, 2005, Michael Aytes memo, Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants, covering the recapture of time.

NOTE: To access the "Date calendar" online, type the following site into the address line of Internet Explorer:

<http://www.timeanddate.com/date/duration.html>.

Enter the start and end date and then click "Calculate duration"

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*Continued on next page*

## L1 Limitations of Stay, Continued

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**Example:  
Reached  
Limitation of  
Stay**

- *Burger Queen* petitioned for an H1B nonimmigrant and the petition was approved for a validity period from January 1, 1993 to January 1, 1996.
- *Burger Queen* filed an H1B extension petition in December of 1995, which was approved, for validity period from January 1, 1996 to January 1, 1999.
- In December of 1998 *Burger Queen* filed a petition to change the beneficiary's status from H1B to L1A.

The petition may not be approved because the beneficiary has already reached her six year limitation in H status, and is therefore ineligible for a change of status or an extension of stay until she remains outside the U.S. for at least one year.

---

**Example:  
Limitation of  
Stay not  
Reached**

- *Burger Queen* petitioned for an H1B nonimmigrant and the petition was approved for a validity period from January 1, 1993 to January 1, 1996.
- *Burger Queen* filed a petition in December of 1995, requesting a change of the beneficiary's status from H1B to L1A, for a validity period of January 1, 1996 to January 1, 1999. The petition was approved.
- In December of 1998 *Burger Queen* filed a petition to extend the beneficiary's L1A status from January 1, 1999 to January 1, 2000.

The petition may be approved because the beneficiary is currently in L status and has not yet reached the limitation of stay for L1As. However, no extensions or changes of status to H or L may be granted after January 1, 2000, until the beneficiary has remained outside the U.S. for at least one year.

---

**Limitation of  
Change of  
Status from  
L1B to L1A**

When a beneficiary is initially admitted to the U.S. in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years.

The Service in an amended, new, or extended petition must have approved the change to managerial or executive capacity at the time the change occurred.

[See 8 CFR 214.2(l)(15)(ii)]

**NOTE:** A change from L1A to L1B or L1B to L1A is not a change of status. A change from one to the other with the same employer will be a change in employment and possibly an extension.

---

## L1 Limitations of Stay, Continued

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**Example:  
Status May be  
Extended**

*Earth Wind and Water Electric Company* petitioned for an L1B beneficiary in March of 1994. The petition was approved for a validity period from April 1, 1994 to April 1, 1997.

*Earth Wind and Water Electric Company* filed an extension petition requesting a two-year extension of stay for the L1B beneficiary in March of 1997. The petition was approved for a validity period from April 1, 1997 to April 1, 1999.

In August of 1998 *Earth Wind and Water Electric Company* promoted the L1B beneficiary to a primarily executive position and immediately filed an amended petition requesting a change of the beneficiary's status to L1A. The petition also requested that the beneficiary's L1 status be extended from April 1, 1999 to August 1, 2000.

The petition may be approved as long as the beneficiary's new position qualifies for L1A purposes. In addition, his status may be extended beyond the five-year limitation for L1Bs, as he will have been promoted to an L1A position for at least six months prior to reaching the five-year limitation of stay for L1Bs.

---

**Example:  
Status May  
NOT be  
Extended**

*Earth Wind and Water Electric Company* petitioned for an L1B beneficiary in March of 1994. The petition was approved for a validity period from April 1, 1994 to April 1, 1997.

*Earth Wind and Water Electric Company* filed an extension petition requesting a two-year extension of stay for the L1B beneficiary in March of 1997. The petition was approved for a validity period from April 1, 1997 to April 1, 1999.

In March of 1999 *Earth Wind and Water Electric Company* promoted the L1B beneficiary to a primarily executive position and immediately filed an amended petition requesting a change of the beneficiary's status to L1A. The petition also requested that the beneficiary's L1 status be extended from April 1, 1999 to March 1, 2001.

The petition may be approved as long as the beneficiary's new position qualifies for L1A purposes for a validity period from March of 1999 to April 1, 1999. His status may NOT be extended beyond the five-year limitation for L1Bs, as he will NOT have been promoted to an L1A position for at least six months prior to reaching the five-year limitation of stay for L1Bs.

---

## Dependent(s)

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**Dependent(s) of the L-1** The spouse and unmarried dependent children (under the age of 21) of an L1 beneficiary may be granted the L2 classification and be given the same validity dates as the L1 principal.

L1 dependents are not included on the L1 petition. Rather, they must apply for an L2 visa at the consulate based on the L1 principal's petition, or they can file a Form I-539 in order to change or extend their nonimmigrant status.

Dependent minor children can be given the same validity dates as the L1 principal up until the day they marry or reach the age of 21.

The spouse and dependent minor children may not accept employment in the U.S. unless otherwise authorized under the Act. [See 8 CFR 214.2(l)(17)(v)]

---

**Dependents May Attend School** L-2 dependents may attend school without a COS to student status. This information is found in 8 CFR 248.3(e).

---

**L's Status Contingent upon Qualifying Employment** The continuation of the L1 principal's status and the L2 dependent's status hinges on the L1's qualifying employment with the petitioner. When the employer/employee relationship is terminated, or the nature of the employment no longer qualifies for L1 purposes, the L's status is no longer valid.

---

# Bundled Petitions

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## Introduction

Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”. All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.

The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.

---

## Petitioner Submissions

Petitioners can submit:

- more than one bundle of L-1B petitions if there is more than one specialized occupation related to a project.
  - L-1A petitions with the bundle if the L1A will be managing the L1B beneficiaries.
  - Form I-539 for any qualifying dependents.
- 

## Adjudicating Bundled Petitions

Once received, a bundle, or a group of connected bundles, will be banded together as one unit and be included as part of an officer’s work order.

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time. For example, if bundled petitions require RFEs, all of the RFEs will be issued the same day.

**NOTE:** A bundle of petitions must remain together and move throughout the VSC as one unit.

---

## Does not meet bundle criteria

If one or more of the petitions in a bundle do not meet the bundling criteria or do not require the same officer action as the rest of the bundle, remove those petitions from a bundle and adjudicate as single filings.

**Example:** If it does not appear that one of the beneficiaries included in the bundle will be working on the same project as the other beneficiaries, remove that petition from the bundle.

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*Continued on next page*

## **Bundled Petitions, Continued**

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**Timely  
Adjudication**

If a bundle or group of related bundles is so large that you will not be able to timely adjudicate the petitions, notify your supervisor.

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# NAFTA Petitions

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**Introduction** VSC routinely receives L1 NAFTA petitions from POEs and PFIs in order for them to be updated into CLAIMS. These petitions have already been adjudicated and all the information on the petitions (including approval stamp) has been completed AND the beneficiaries have already entered the country.

---

**Where to File** The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or;
- United States pre-flight station in Canada. [See 8 CFR 214.2(l)(17)(i)]

---

**Updating in CLAIMS/GUI** All approved NAFTA cases adjudicated at a Class A POE on the United States-Canada land border or PFI in Canada are forwarded to the Service Center within the same Service region for CLAIMS updating. Clerical is responsible for the approval updating of these cases in CLAIMS. These files are routed directly from Data Entry to clerical.

If an approved NAFTA filing bearing the approval stamp and a bar code is received by an ISO and GUI does not show the approval notice as being sent, then a CFF should be prepared and the file placed in the CFF slot in the clerical sort area.

The only time an ISO will need to take action on a NAFTA case is if the I-129L was not approved at the POE/PFI and was routed to the VSC with a memo recommending denial. The ISO would then prepare a letter of denial.

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# Detecting L1 Fraud or Misrepresentation

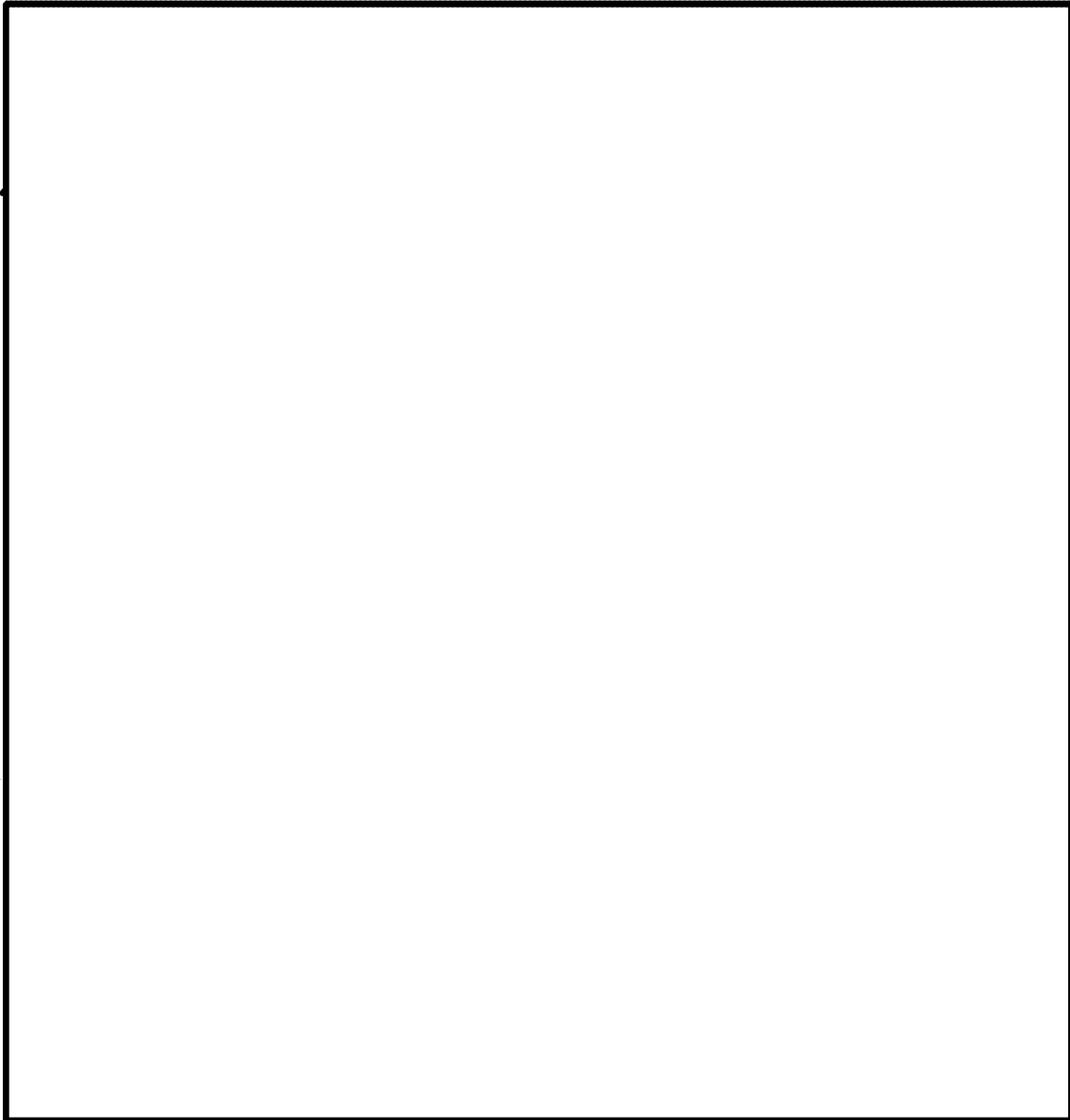
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**Introduction** This section describes some of the fraud and misrepresentation indicators and approaches for L-1 petitions that might help reveal the presence fraud or misrepresentation in the record. (b)(7)(e)

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**Why is the L1  
Classification  
an Attractive  
Vehicle for  
Benefits Fraud**

**Officer's  
Responsibility**



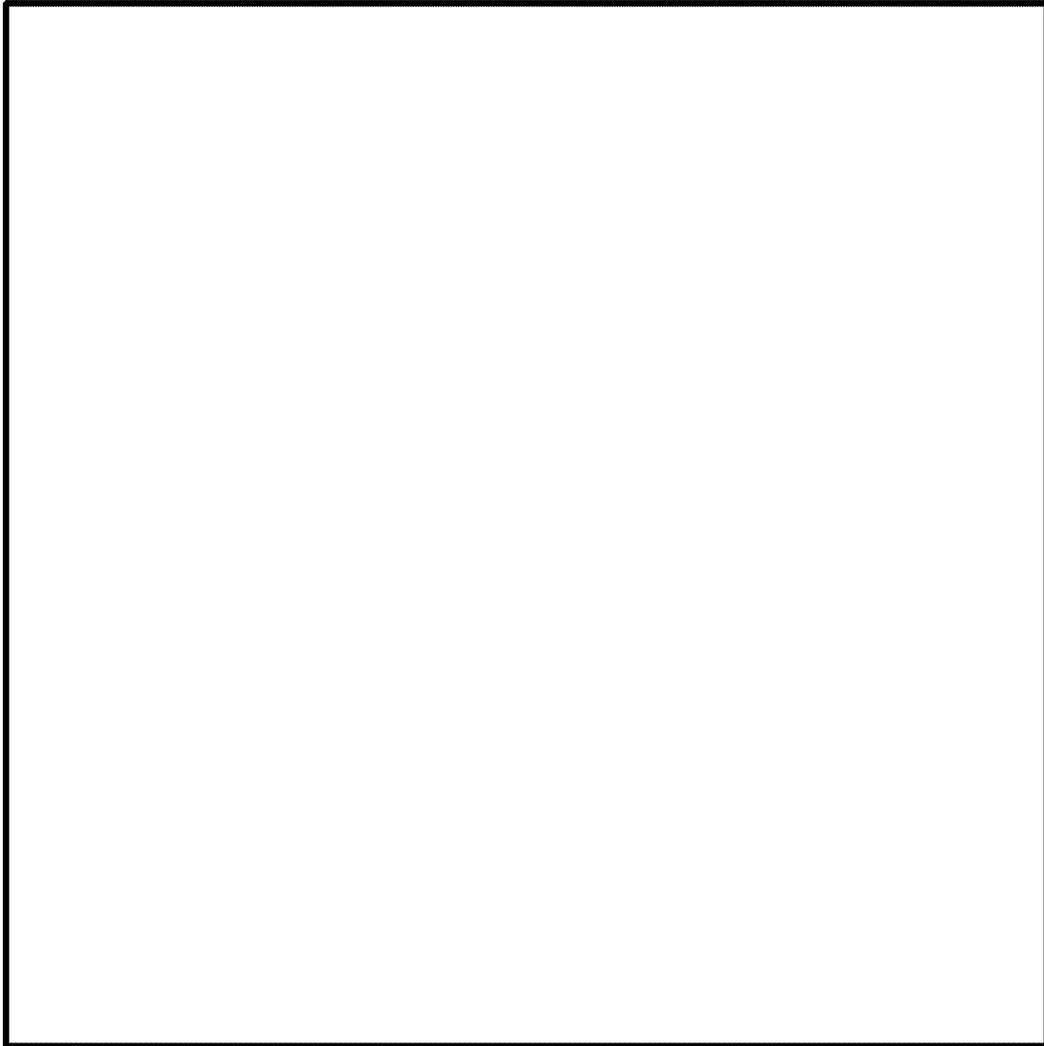
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## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Beneficiary**

Fraud and misrepresentation indicators relating to the beneficiary may include, but are not limited to:



(b)(7)(e)

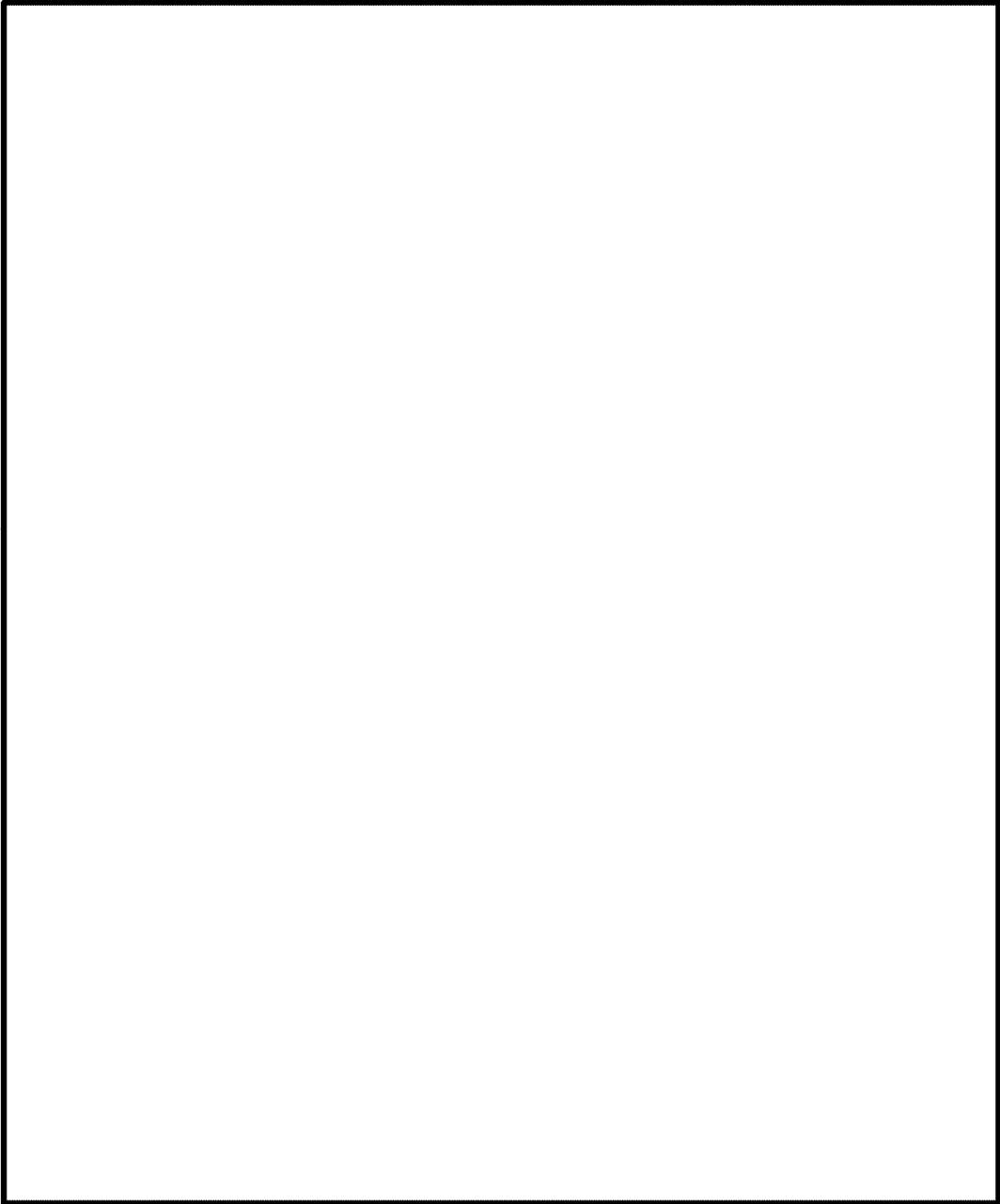
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# Detecting L1 Fraud or Misrepresentation, Continued

(b)(7)(e)

**Indicators  
Relating to the  
U.S or Foreign  
Business**

Fraud and Misrepresentation indicators relating to the U.S. or foreign business may include, but are not limited to:



*Continued on next page*

## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Petitioner's  
Immigration  
History**

Fraud and misrepresentation indicators relating to the petitioner's immigration history may include, but are not limited to:

(b)(7)(e)



**Adjudicative  
Approaches**

There are a number of adjudicative approaches to take when there is a question of fraud or misrepresentation in the record.

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**Systems Checks**

There are several of electronic systems available to aid in the detection of fraud or misrepresentation including the following:

- GUI
  - Mainframe CLAIMS
  - SQ94
  - CIS
-

## Name Conventions for GUI, SQ94, and CIS

---

**Petitioner's Name** The petitioner's name should be entered exactly as it appears on the petition with the exception of the words "Inc., Ltd., LLC, PLC, or Corp". In addition, the words "International and Group" are usually abbreviated to "Intl and Gr".

If the petitioners name does not even bring up the petition that is being adjudicated, it might be helpful to wand in the receipt file number and see what conventions were used by Data Entry to enter the petition into CLAIMS.

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**Beneficiary's Name** The beneficiary's name and date of birth should be entered exactly as it appears on the petition. However, keep in mind that some countries list the day of the month before the month, so June 8, 1999 may be listed either as 06/08/1999 or 08/06/1999. In some instances it may be wise to try it both ways.

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**Asian Names** Asian first names may be listed in reverse order or the first name may or may not have a space in it. For example. Li Yu Wen may be Li Yu Wen, Liyu Wen, Yu Wen Li, or Yuwen Li.

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**Hispanic Names** Hispanic names may or may not use the first or second last name. For example, Maria Lopez Garcia may be Maria Lopez Garcia, Maria Lopez or Maria Garcia.

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# Name Discrepancies

**Introduction** This section pertains to all I-129 petitions and I-539, I-765 and I-131 applications where there are discrepancies between the name the petitioner/applicant entered on the petition/application and the name shown on the applicant or beneficiary's passport and/or visa.

**Reconciling Name Discrepancies** Use the chart below to determine how to reconcile name discrepancies between the petition or application and a passport and/or visa.

**NOTES:**

- If a copy of the alien's passport or visa was not included with the filing, do not RFE for a copy of the passport or visa unless those documents are necessary to adjudicate the case.
- All name changes made in GUI and on an application or petition must be run in IBIS Manifest.

Scenario	Resolution
Visa and/or passport names are different than the Petition/Application name but it can be verified the individuals named are the same person.	Enter the visa and/or passport name in GUI and on the petition/application  <b>Example:</b> GUI and petition/application show the alien's name is Sanchez, Juan. Passport shows the alien's name as Sanchez Diaz, Juan. Enter the passport name in GUI and on the petition/application
<ul style="list-style-type: none"> <li>• visa and petition/application names are the same,</li> <li>• passport name different, and</li> <li>• visa was issued <u>after</u> the passport</li> </ul>	No changes necessary, visa was issued after the passport was issued.
<ul style="list-style-type: none"> <li>• visa and petition/application names are the same,</li> <li>• passport name is different, and</li> <li>• visa was issued <u>before</u> the passport</li> </ul>	Change the name on the petition/application and GUI to match the passport.

*Continued on next page*

## Name Discrepancies, Continued

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**Reconciling  
Name  
Discrepancies  
(continued)**

Scenario	Resolution
<ul style="list-style-type: none"><li>• passport and petition/application names are the same,</li><li>• visa name is different, and</li><li>• visa was issued <u>after</u> the passport</li></ul>	Change the name on the petition/application and GUI to match the visa.
<ul style="list-style-type: none"><li>• passport and petition/application names are the same,</li><li>• visa name is different, and</li><li>• the passport was issued <u>after</u> the visa</li></ul>	Change the name on the petition/application and GUI to reflect the name on the passport.

**Note:** If the passport and visa show the alien has only one name, regardless of whether it is a given name or a family name, then:

- The name should be entered in the Last Name field in GUI, and “No Name Given” should be entered in the First Name field in GUI
-

## National Systems

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### GUI

The GUI database can be searched by the name of the petitioner or by the beneficiary's name. In addition, it may be helpful to search by the name of the foreign entity as foreign petitioners may file L1 petitions.

GUI can identify the following information:

- The type and number of petitions and applications that have been filed,
  - Whether any other petitions or applications have been pending, and
  - Whether the petitioner or the beneficiary has had previous denials or revocations of petitions and applications.
- 

### Mainframe CLAIMS

Mainframe CLAIMS can be accessed through the National Systems and can provide the same information as GUI for all four Service Centers. In addition, it also provides information about petitions and applications filed at select district offices.

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## National Systems, Continued

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### SQ94

An SQ94 query is required for all change of status (COS) requests and for all EOS denials. A screen print of the SQ94 query must be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print. The date of the SQ94 query must be within 15 days of the final adjudicative action.

SQ94 can be accessed through the National Systems and can provide information about the beneficiary's:

- Entries and departures from the U.S.
- Method of entry, i.e. plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

There is usually a two to six month delay in entering records into SQ94. Also, be aware that SQ94 only enters departures from the U.S. in the instances where the alien surrenders his or her Form I-94 at the time of departure.

If a search by Form I-94 # or Name and DOB does not produce a record, it may be helpful to search by the beneficiary's passport number. In addition, dated information may be archived in SQ94, so a search in the archive portion of SQ94 may produce a better result.

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## National Systems, Continued

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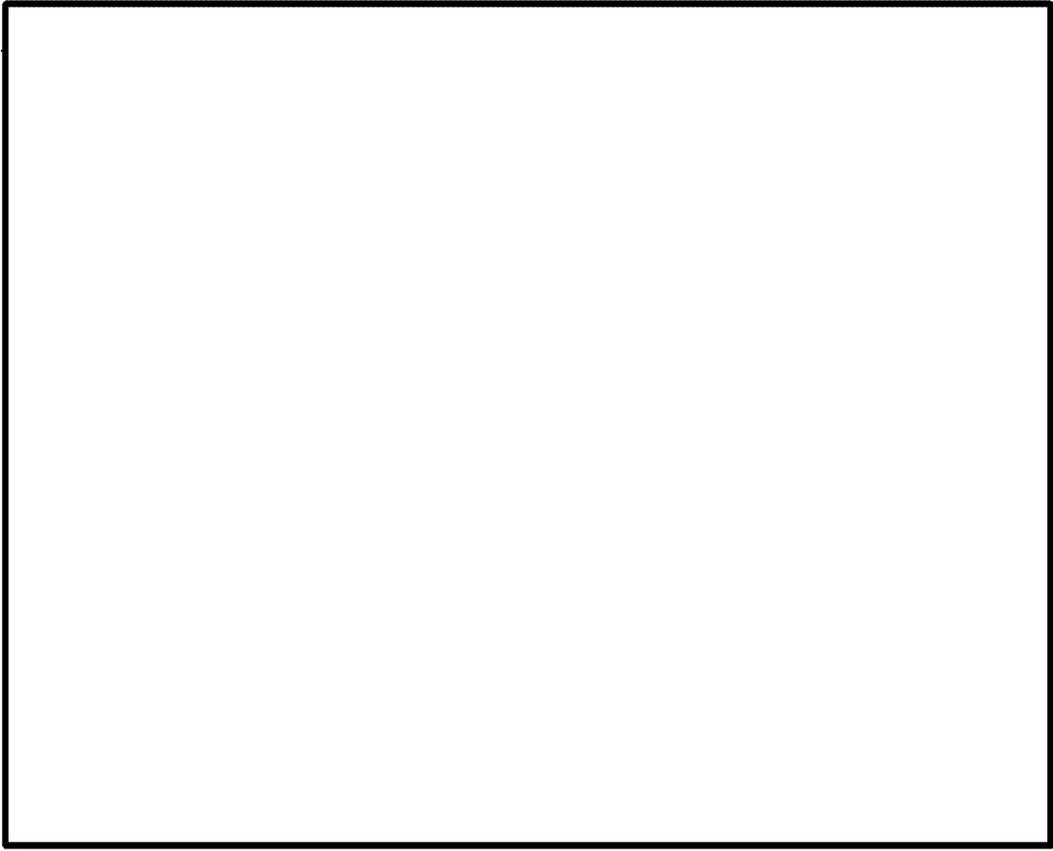
**CIS**

A CIS query is required if you discover that the beneficiary has an A-file number. CIS can be accessed through the National Systems and can provide information about the beneficiary's alien registration number and his or her pending or completed adjustment, asylum, or removal proceedings.

---

**VIBE**

(b)(7)(e)



*Continued on next page*

**VIBE**  
(continued)

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<b>If...</b>	<b>Then...</b>

# I-129 L-1 Blanket Petition

## Overview

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**Introduction** Blanket L petitions are adjudicated based upon the same general principles used in adjudicating the qualifying relationship of individual L petitions. However, there are some differences. The following is a brief summary of blanket L petitions.

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**Who May File the Blanket L-1** The blanket L-1 procedure is intended for larger international organizations. Only entities involved in commercial trade or services may use the blanket petition. This means that noncommercial organizations, like churches, may not use the blanket petition.

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**Blanket Regulation** 8 CFR 214.2(l)(5)

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**Appeal Rights** The denial of the Form I-129 Blanket petition is appealable to the AAO, just like the denial of any other L-1.

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# Qualifying Company Relationships

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## **Introduction**

A U.S. petitioner may file a blanket petition to receive continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations. The blanket petition is filed on Form I-129. When the Form I-129 is adjudicated to obtain approval of foreign and U.S. relationships, the adjudicator's only concern are the qualifying company relationships. No alien beneficiary is named on the Form I-129 blanket petition.

---

## **Petitioner Requirements**

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

## **Establish Ownership and Control of ALL Entities**

The petitioner lists all the foreign entities and all of the U.S. entities that they want to have approved. Establish who has ownership and control of all of the entities. Only those entities meeting the definition of a qualifying organization can be approved. See 8 CFR 214.2(l)(1)(ii)(G).

If there is question about ownership and/or control for any of the petitioned entities issue an RFE for necessary documentation to help make a determination.

All approvable entities will be named on a list to be included with the released approval notice of the petition.

---

## **Approvals**

If the petitioner meets the filing requirements and it is determined that there are qualifying entities, a list of all qualifying entities will be prepared. The lists will be sent with the released I-797 approval notice for the petition.

The approval notice means that it is permissible for any of the qualifying entities to petition to transfer an employee from any approved foreign entity to any approved U.S. entity.

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*Continued on next page*

## Qualifying Company Relationships, Continued

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### Extension of Blanket

A blanket extension may be filed three months prior to the expiration of the initial blanket on Form I-129.

**NOTE:** If the petitioner fails to file for the extension prior to the expiration of the initial blanket approval or if an extension request is denied, the petitioner and its qualifying organizations must wait three years to file another blanket. In the interim, individual petitions must be filed by these organizations for beneficiaries.

---

### Blanket Extension Requirements

The documentation required to support the blanket extension include:

- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
    - Positions held during that period
    - The employing entity
    - The dates of initial admission and final departure, if applicable, of each beneficiary
  - A statement from the petitioner indicating whether it still meets the blanket criteria.
  - Documentation to support any changes in approved relationships or additional qualifying organizations.
-

# Approvals of L-1 Blanket Petitions

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## Introduction

When approving a case, you **must**:

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**),
- Indicate the dates of approval/validity dates (which will either be **three years (initial filing)** or **"INDEFINITELY" (extension)**.
- Make a notation **"BLANKET PETITION"** in the block entitled **"PARTIAL APPROVAL (explain)"**.
- Stamp the petition with your approval stamp and sign it.

**NOTE:** Make a photocopy of the list of qualifying entities that the petitioner wishes to have on the blanket petition. This will be included with the approval notice mailing.

---

## Validity Dates Overview

An initial blanket petition is approvable for three years. If amended blanket petitions are approved during this validity period, the validity period end date will be the same as the end date of the original approval. Blanket extension petitions may be filed six months prior to the expiration of the initial three year validity period. If the blanket extension is approved, the validity period will begin the day after the expiration of the initial approval to **"INDEFINITELY"**.

---

## Validity Dates for Initial Admission

### FROM:

- 1) the date listed on the petition **or**
- 2) the date you approve the petition (if both the requested date **and** initial FROM date on the petition has passed)

### TO:

- 1) the date listed on the petition **or**
  - 2) the requested time (i.e., three years - from date of approval)
- 

## Validity Dates for Extension of Stay

**FROM - TO** - should be **"INDEFINITELY"**.

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*Continued on next page*

## Approvals of L-1 Blanket Petitions, Continued

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**Blanket  
Approval  
Notices**

ALL blanket approval notices will be a release so that the clerk can attach the list of qualifying entities to the blanket approval notice.

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**Routing  
Petition after  
Approval**

Following **APPROVAL**, the petition remains in the file and the file is placed on the shelf like any other approved nonimmigrant petition. Nothing needs to be sent to a consulate or embassy.

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# Beneficiaries of L-1 Blanket Petitions

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**Introduction** When one of the approved U.S. entities wants to employ a particular alien from an approved foreign entity, the U.S. entity completes a Form I-129S Nonimmigrant Petition Based on Blanket L Petition.

The information on the Form I-129S, and any supporting documents, must establish that the alien was employed abroad for the immediately prior year in a qualifying capacity, and must establish that the alien will be employed in a qualifying capacity in the United States.

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**Qualifying Capacity** For blanket L-1 purposes, a qualifying capacity is:

- 1) Managerial
- 2) Executive, or
- 3) Specialized knowledge professional

A specialized knowledge professional is what it appears to be, a specialized knowledge employee who is a professional.

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**Alien Abroad** The alien abroad uses the Form I-129S, with the Form I-797 approval notice for the approved Form I-129 blanket petition to apply for an L-1 visa at an **AMCON** or if **CANADIAN** at a **POE** or **PFI**.

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**L-1 Beneficiary is in the US** If a blanket L-1 beneficiary is in the United States applying for either a change of nonimmigrant status or an extension of stay, Form I-129 is required, **not** Form I-129S. However, a copy of the LZ Blanket approval is often submitted as proof that the relationship has already been established.

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**Extension of Stay** For beneficiaries requesting an L-1 extension of stay, it is very similar to H-1B extensions of stay. The Form I-129 is used.

Remember that the time spent in the U.S. in H status is taken into consideration when you are deciding whether or not an L-1 has reached his/her maximum total stay.

- The **maximum stay** for a beneficiary in **L-1A** classification is **seven years**.
- The **maximum stay** for a beneficiary in **L-1B** classification is **five years**.

# Approval Processing Procedures

## Validity Dates for Approval

**Introduction** This section will outline the various time periods that a petition may be approved for, as well as the limitations of stay for L1 nonimmigrants.

**Validity Dates** The following table describes the validity dates for L1 petitions.

<b>If the petition is an...</b>	<b>Then the petition may be approved for a period of time up to...</b>
Initial Filing	3 Years
* Initial Filing – New Office	1 Year
Extension Filing	2 Years

[See 8 CFR 214.2(l)(7)(i)(A)(2) and 8 CFR 214.2(l)(15)(ii)]

\* If the requested beginning date of employment has gone by, officers should grant a period of one full year from the date of approval for new office petitions, unless the period requested was for less than one year. In this scenario only the length of time requested would be granted from the date of approval.

*Continued on next page*

## Validity Dates for Approval, Continued

**Starting and Ending Dates** Use the below table to determine the starting and ending validity dates of the L1 petition.

<b>If...</b>	<b>Then starting validity date should be...</b>	<b>And ending validity date should be...</b>
<ul style="list-style-type: none"> <li>• New employment, or</li> <li>• Initial L1A or L1B request (Consular notification)</li> </ul>	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed three years.
New Office L1A or L1B	Date of approval or date requested, whichever is later.	Date requested or one full year from starting date.
Change of Status	Date of approval, date requested, which ever is later.	Date requested on petition.
Extension of Stay	Day after expiration of previously approved L1 for that company, or date requested, whichever is earlier.	Date requested on petition, not to exceed two years.
Extension of Stay where there has been a change in the employment conditions	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed two years.
Amended petitions where there was a USCIS error with the original notice	Same start date as initially approved petition.	Same expiration date as initially approved petition.
Amended petitions where there has been a change in the employment conditions	Date of approval, date requested, whichever is later.	Same expiration date as initially approved petition.

# Approval Processing

## Petition Annotations

Complete the following items when approving a Form I-129.

Item	Action
Passport name vs. Name on petition	The beneficiary's name on the petition should be exactly the same as the name appears on the beneficiary's passport. If it is not, you must change the name on the petition and in GUI to reflect the beneficiary's name as it appears on the passport. All names should be run in IBIS.
IBIS and NSEERS	Perform all necessary IBIS, NSEERS, and SQ94 checks.
Annotate Classification	<ul style="list-style-type: none"> <li>• "L1A" for executive or manager.</li> <li>• "L1B" for Specialized Knowledge.</li> </ul>
Number employees	Always "1"
Validity Dates	Enter the validity dates. <i>See Validity Dates for Approval section</i>
Class Approved	Check "Classification Approved" box for all approvals.
Consulate/POE/PFI Notified	If notifying a consulate/POE/PFI: <ul style="list-style-type: none"> <li>• Check "Consulate/POE/PFI Notified" box,</li> <li>• Circle or underline which is being notified, i.e., either the consulate, the POE, or the PFI, and</li> <li>• Write the name of the consulate/POE/PFI on the blank line.</li> </ul>
Extension Granted	Check box if granting an extension of stay.
COS/Extension Granted	Check box if granting a change in classification and an extension of the beneficiary's stay.
Partial Approval	Annotate the partial approval block when denying COS or EOS.
Action Block	Stamp and sign in the action block

*Continued on next page*

## Approval Processing, Continued

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**Petition  
Annotations  
(continued)**

**NOTE:** While it is recommended that the job code or approval phrase be annotated on the face of the petition to aid officers in updating, it is not required that the job code or approval phrase be written on the petition. Only GUI must reflect the correct job code and approval phrase. However, it is helpful to have such information on the petition for customer inquiries.

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# Consular/POE/PFI Notification

## General Instructions

All I-129 petitions requiring consular notification are now handled by the Kentucky Consular Center (KCC).

## Requesting Only Amcon Notification

Follow the steps below when the petitioner requests Amcon Notification:

Step	Action
1	Indicate the name of the Amcon(s) on the face of the petition.
2	Place duplicate petition on "I-129 Approved KCC" shelf in FCU- not the "Mailroom no envelopes" slot.

### NOTES:

- Do not make a duplicate copy of the I-129 for the KCC if one is not provided.
- Officers should include the duplicate RFE response with the KCC copy. If a duplicate RFE response is not provided, Officers should attach a copy of the RFE request to the KCC copy.

**For expedites and approved petitions with validity dates within 30 days:**  
Place the duplicate approved petition on the "I-129 Priority Overnight" shelf in FCU.

**Canadian AMCONs will no longer process I-129s at the AMCON for Canadian citizens. Send an RFE requesting the POE/PFI.**

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## Consular/POE/PFI Notification, Continued

**Requesting  
POE/PFI  
Notification**

Follow the steps below when the petitioner requests POE/PFI Notification:

Step	Action
1	Indicate the name of the POE/PFI on the face of the petition.
2	Place duplicate petition on "I-129 Approved KCC" shelf in FCU- <b>not</b> the "Mailroom no envelopes" slot.
3	For both premium and non-premium filings, use the PP worksheet to indicate to the PP clerical staff which POE/PFIs should be faxed.
4	Update the case as a release so clerical can fax a copy of the released approval notice to the POE/PFI.  <b>Result:</b> Clerical will fax a copy of the approval notice to the POE/PFI.

**NOTES:**

- **For expedites and approved petitions with validity dates within 30 days,** place the duplicate approved petition on the "I-129 Priority Overnight" shelf in FCU.
- Officers should include the duplicate RFE response with the KCC copy. If a duplicate RFE response is not provided, Officers should attach a copy of the RFE request to the KCC copy.

**Canadian PFIs**

The PFIs in Toronto, Ontario and Vancouver, British Columbia no longer want VSC to fax them regarding the approval of a petition.

# Processing Procedures (RFE/Denial/Intent)

## Request for Evidence

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### Introduction

There is no specific regulatory guidance for requests for evidence to support L1 petitions. Therefore, the guidance provided by 8 CFR 103 applies.

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### Officer's Responsibility

A request for evidence must be made when the initial review of the record does not establish that all of the eligibility requirements have been met. In addition, a request for additional evidence should be made when:

- The record contains evidence of material fraud or misrepresentation, or
  - The officer has knowledge of previous mala fide petitions from the same petitioner.
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### Contents of an Acceptable Request for Evidence

The request for evidence should:

- Identify each of the areas of eligibility that have not been met by the petitioner, and
  - Discuss what is deficient with any evidence already provided, and
  - Provide options as evidence that the petitioner could provide to meet the area of eligibility.
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### Adjudication Tip

By requesting evidence to meet each area of eligibility in the same order each time a request for evidence is written, the officer can immediately identify the areas of eligibility that must be reviewed upon the response from the petitioner.

Areas of eligibility that are not mentioned in the request for evidence need not be re-adjudicated at the time of the submission of additional evidence.

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## Request for Evidence, Continued

**Standard Call-Ups** The Request for Evidence (RFE) standards are contained within the 4000-4999 series of autotext. They are available in MSWord.

Adjudicators must use Correspondence Generator to prepare and send RFEs. The folders containing I-129L general call-ups and I-129L specific call-ups will appear for an RFE.

Follow the steps below to prepare and process an RFE in CG:

Step	Action
1	Access "Correspondence Generator."
2	Wand or enter the receipt number of the case.
3	Select "RFE"
4	Select initial, additional, or initial and additional.
5	Compose the RFE
6	Print a copy of the RFE and place on the record side
7	Place file on the shelf labeled "EB T/O Shelf" in FCU.

**NOTE:** Refer to the Correspondence Generator User Guide for more information.

## Specialized Knowledge Language in RFEs and Denials

### Unacceptable Words and Phrases not to use

Below is a list of words and phrases not to use in specialized knowledge denials and call-ups.

- Narrowly Held
- Key
- Key personnel
- Proprietary
- Essential
- Essential Process

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### Acceptable Words and Phrases to use

Below is a list of words and phrases to be used in specialized knowledge denials and call-ups.

- Different
- Uncommon
- Materially different
- Noteworthy
- Distinguished by some unusual quality
- Highly developed
- Complex

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*Continued on next page*

# Specialized Knowledge Language in RFEs and Denials,

Continued

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## **IMMACT'90 Changes to Specialized Knowledge Requirements**

Matter of Sandoz Crop Protection Corp., Colley and Penner predate the 1990 statutory amendments which eliminated the requirement that specialized knowledge be either "proprietary" or "unique" and therefore, these decisions should be viewed in light of this. While the legislative history (from 1970) may have used these terms, they do not appear in the statute nor in the regulations, and so, use of this kind of terminology in decisions is to be avoided.

In light of the changes brought about by IMMACT'90, do not use the following cites:

*Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982)

An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee.

*Matter of Colley, et al* 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

Specialized knowledge involves proprietary knowledge and an advanced level of expertise not readily available in the United States job market. This knowledge and expertise must be clearly different from those held by others employed in the same or similar occupations. Different procedures are not a proprietary right within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.

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*Continued on next page*

## Specialized Knowledge Language in RFEs and Denials,

Continued

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**Cites not  
impacted by  
IMMACT'90**

The following Matter of Sandoz Crop Protection Corp., Colley and Penner cites can still be used in the below contexts as the 1990 statutory amendments did not address these areas.

Matter of Sandoz Corp Protection Corp. should be used only in those situations where the petitioner is referencing patented products or copyrighted works. See Below.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)  
A petitioner's ownership of patented products or copyrighted works, in and of itself, does not establish that a particular employee has specialized knowledge.

*Matter of Colley, et al* 18 I&N Dec. 117 (Comm. 1981)  
Most employees today are specialists and have been trained and given specialized knowledge; however, it can not concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.

*Matter of Penner* 18 I&N Dec. 49 (Comm. 1982)  
By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge."

## Intent to Deny

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**Introduction** This section will discuss the regulatory guidance provided for adverse decisions on L1 petitions as specified by the 8 CFR 214.2(l) regulations.

Where there is no specific regulatory provision, 8 CFR 103 provisions apply.

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**Notice of Intent to Deny** When an adverse decision is proposed on the basis of the evidence submitted by the petitioner or other information available to the Service, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial.

The petitioner may inspect and rebut the evidence and will be granted 30 days from the date of the notice in which to do so (+ 3 days if by mail). All relevant rebuttal material will be considered in making a final decision.

[See 8 CFR 214.2(l)(8)(I)]

---

**Contents of Intent to Deny** The notice of intent to deny should contain a:

- Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met,
- Description of the specific reasons for the Service's determination that the areas of eligibility have not been met, and
- Discussion of the most persuasive evidence that could be submitted to overcome the reasons for denial.

# Denial

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## General

If the petition is denied, the Service will notify the petitioner of its decision within 30 days after the date a completed petition has been filed of:

- The denial,
- The reasons for the denial, and
- The right to appeal the denial. [See 8 CFR 214.2(l)(8)(ii)]

The denial order should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met.

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## Denial of EOS/COS

In addition to requesting the classification of the beneficiary as an L1 beneficiary, petitioners frequently request an extension of stay or a change of status on behalf of their L1 beneficiaries.

A petition may be approved, but the evidence of record may reveal that the beneficiary is ineligible to extend or change his or her nonimmigrant status. In addition, the petition itself may be denied. In these instances, a separate denial notice must be prepared that addresses the ineligibility of the beneficiary for the requested change or extension of stay.

However, if the petition is to be approved, but the change or extension of status is to be denied solely due to the prior expiration of the beneficiary's status, GUI contains several modified approval notices that inform the petitioner that the petition is approved, but the requested change or extension of stay is denied. In this instance, the modified approval phrase can be used and a separate denial order is not needed.

## Intent to Revoke and Revocation

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**Revocations** The director may revoke a petition at any time, even after the expiration of a petition. [See 8 CFR 214.2(l)(9)(i)]

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**Automatic Revocations** The approval of any petition is automatically revoked if the petitioner withdraws the petition. [See 8 CFR 214.2(l)(9)(ii)]

Automatic revocations may not be appealed. [See 8 CFR 214.2(l)(10)(ii)]

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**Revocation on Notice** The director shall send to the petitioner a notice of intent to revoke the petition if he or she finds that:

- One or more entities are no longer qualifying organizations;
- The beneficiary is no longer eligible under section 101(a)(L) of the Act;
- A qualifying organization(s) violated requirements of section 101(a)(L) of the act and 8 CFR 214.2(l);
- The statement of facts contained in the petition was not true and correct, or;
- Approval of the petition involved gross error.

[See 8 CFR 214.2(l)(9)(iii)(A)]

The director shall consider all relevant evidence in deciding whether the petition should be revoked. [See 8 CFR 214.2(l)(9)(iii)(B)]

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**Contents of Intent to Revoke** The notice of intent to revoke shall contain:

- A detailed statement of the grounds for the revocation, and;
- The time period allowed for the petitioner's rebuttal (30 days + 3 if by mail).

**NOTE:** As with intents to deny, an intent to revoke notice should identify the most persuasive evidence that could be submitted to overcome the reasons for revocation. Be sure to include the specific reason for the Intent to Revoke. [See 8 CFR 214.2(l)(9)(iii)]

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**Status of Beneficiaries** If a petition is revoked, the beneficiary is required to leave the U.S., unless the beneficiary has obtained other work authorization from the Service.

[See 8 CFR 214.2(l)(9)(iv)]

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## Updating Cases

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**GUI Updating** Refer to the GUI Adjudication Updating Guide for instructions on updating approvals, RFEs, intents, denials, relocates, etc. in GUI

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## Appendices

### Appendix A - References

**References  
Used to Create  
SOP**

This table lists the references that were used in the creation of this SOP

Reference	Issue
Section 101(a)(15)(L) of the Act	Manager/Executive Statutes
Section 214(c)(2)(B)	Specialized Knowledge Statute
8 CFR 214.2(l)	L1 Regulations
Interpretation of Specialized Knowledge Memorandum, Dated 3/9/94	HQ Guidance on Specialized Knowledge
<i>Matter of M--</i> 8 I&N Dec. 24	Beneficiary is sole owner. That's ok.
<i>Matter of Raulin</i> 13 I&N Dec. 618	Executive Secretary; Specialized Knowledge; Approved
<i>Matter of Schick</i> 13 I&N Dec. 647	Contractual relationship between companies does not qualify for L-1 purposes
<i>Matter of Leblanc</i> 13 I&N Dec. 816	New Office
<i>Matter of Continental Grain Co.</i> 14 I&N Dec. 140	Interruption in required year of continuous employment is ok sometimes.
<i>Matter of Pozzoli</i> 14 I&N Dec. 569	L-1 alien will be paid by the foreign company. No problem.
<i>Matter of Del Mar Ben, Inc.</i> 15 I&N Dec. 5	Personal understanding between presidents of the foreign and U.S. companies, plus U.S. company's ownership of a little stock in foreign company is not satisfactory for L-1 purposes.
<i>Matter of Chartier</i> 16 I&N Dec. 284	Requirement for existence of foreign entity while L-1 alien is in the U.S. (Partially out of date)
<i>Matter of Michelin Tire Corp.</i> 17 I&N Dec. 248	Beneficiary must have the full one year of continuous experience before the L-1 petition is filed; Specialized Knowledge
<i>Matter of Aphrodite Investments</i> 17 I&N Dec. 530	Owner of a corporation can be an L-1 beneficiary, as long as he is employed.

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## Appendix A - References, Continued

Reference	Issue
<i>Matter of Penner</i> 18 I&N Dec. 49	Specialized Knowledge; gas and oil drilling rig crews. Need for U.S. entity as employer.
<i>Matter of Colley, et al</i> 18 I&N Dec. 117	Specialized Knowledge; aerial survey pilot; aerial photographer.
<i>Matter of Hughes</i> 18 I&N Dec. 289	De facto control; de jure control; affiliates; subsidiaries; ownership & control
<i>Matter of Kloeti</i> 18 I&N Dec. 295	The one year of qualifying experience must be acquired entirely outside the U.S.
<i>Matter of Siemens Medical Systems</i> 19 I&N Dec. 362	50-50 joint venture reasoning; negative control, etc.
<i>Matter of Church of Scientology</i> 19 I&N Dec. 593	Churches may use L-1 class if they meet L-1 criteria
<i>Matter of Safetran</i> Interim Dec. #3108	Time in H status counts toward maximum stay in L status

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## Appendix B - Corporate Status Websites

### Websites to Check Corporate Status

The chart below lists websites that can be utilized to check into the corporate status of a petitioner.

State	Web Address
Alabama	<a href="http://www.sos.state.al.us/sosinfo/inquiry.cfm?area=Corporations">http://www.sos.state.al.us/sosinfo/inquiry.cfm?area=Corporations</a> or <a href="http://arc-sos.state.al.us/">http://arc-sos.state.al.us/</a>
Alaska	<a href="http://www.commerce.state.ak.us/occ/search1.htm">http://www.commerce.state.ak.us/occ/search1.htm</a>
Arizona	<a href="http://starpas.cc.state.az.us/scripts/cgiip.exe/WService=wsbroker1/connect.p?app=names-report.p">http://starpas.cc.state.az.us/scripts/cgiip.exe/WService=wsbroker1/connect.p?app=names-report.p</a>
Arkansas	<a href="http://www.sosweb.state.ar.us/corp_ucc.html">http://www.sosweb.state.ar.us/corp_ucc.html</a>
California	<a href="http://kepler.ss.ca.gov">http://kepler.ss.ca.gov</a>
Colorado	<a href="http://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do">http://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do</a>
Connecticut	<a href="http://www.concord-sots.ct.gov/CONCORD/online?eid=99&amp;sn-InquiryServlet">http://www.concord-sots.ct.gov/CONCORD/online?eid=99&amp;sn-InquiryServlet</a>
Delaware	<a href="https://sos-res.state.de.us/tin/GINameSearch.jsp">https://sos-res.state.de.us/tin/GINameSearch.jsp</a>
Florida	<a href="http://www.sunbiz.org/search.html">http://www.sunbiz.org/search.html</a>
Georgia	<a href="http://www.ganet.org/services/corp/individual.html">http://www.ganet.org/services/corp/individual.html</a>
Hawaii	<a href="http://hbe.ehawaii.gov/cogs/search.html;jsessionid=78A1DF12325F771853CA127FC1474021">http://hbe.ehawaii.gov/cogs/search.html;jsessionid=78A1DF12325F771853CA127FC1474021</a>
Idaho	<a href="http://www.accessidaho.org/public/sos/corp/search.html?SearchFormstep=crit">http://www.accessidaho.org/public/sos/corp/search.html?SearchFormstep=crit</a>
Illinois	<a href="http://www.cyberdriveillinois.com/departments/business_services/corp.html">http://www.cyberdriveillinois.com/departments/business_services/corp.html</a>
Indiana	<a href="https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx">https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx</a>
Iowa	<a href="http://www.sos.state.ia.us/corp/corp_search.asp">http://www.sos.state.ia.us/corp/corp_search.asp</a>
Kansas	<a href="http://www.accesskansas.org/srv-corporations/index.do">http://www.accesskansas.org/srv-corporations/index.do</a>

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## Appendix B - Corporate Status Websites, Continued

### Websites to Check Corporate Status (continued)

State	Web Address
Kentucky	<a href="http://apps.sos.ky.gov/business/obdb/(gyjomy55p0b2sni nilyc3v45)/default.aspx">http://apps.sos.ky.gov/business/obdb/(gyjomy55p0b2sni nilyc3v45)/default.aspx</a>
Louisiana	<a href="http://www.sos.louisiana.gov/app1/paygate/crping.jsp">http://www.sos.louisiana.gov/app1/paygate/crping.jsp</a>
Maine	<a href="http://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x">http://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x</a>
Maryland	<a href="http://sdatcert3.resiusa.org/ucc-charter/">http://sdatcert3.resiusa.org/ucc-charter/</a>
Massachusetts	<a href="http://corp.sec.state.ma.us/corp/corpsearch/corpsearchinp ut.asp">http://corp.sec.state.ma.us/corp/corpsearch/corpsearchinp ut.asp</a>
Michigan	<a href="http://www.cis.state.mi.us/bcs_corp/sr_corp.asp">http://www.cis.state.mi.us/bcs_corp/sr_corp.asp</a>
Minnesota	<a href="http://da.sos.state.mn.us/minnesota/corp_inquiry-find.asp?:Norder_item_type_id=10">http://da.sos.state.mn.us/minnesota/corp_inquiry-find.asp?:Norder_item_type_id=10</a>
Mississippi	<a href="http://www.sos.state.ms.us/busserv/corp/soskb/esearch.asp">http://www.sos.state.ms.us/busserv/corp/soskb/esearch.asp</a>
Missouri	<a href="https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp">https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp</a>
Montana	N/A
Ohio	<a href="http://www.sos.state.oh.us/sos/businessservices/corp.aspx?Section=104">http://www.sos.state.oh.us/sos/businessservices/corp.aspx?Section=104</a>
Oregon	<a href="http://egov.sos.state.or.us/br/pkg_web_name_srch_inq_login">http://egov.sos.state.or.us/br/pkg_web_name_srch_inq_login</a>
Nebraska	<a href="https://www.nebraska.gov/sos/corp/corpsearch.cgi?nav=search">https://www.nebraska.gov/sos/corp/corpsearch.cgi?nav=search</a>
Nevada	<a href="https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx">https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx</a>
New Hampshire	<a href="https://www.sos.nh.gov/corporate/soskb/csearch.asp">https://www.sos.nh.gov/corporate/soskb/csearch.asp</a>
New Jersey	<a href="http://www.state.nj.us/njbgs">http://www.state.nj.us/njbgs</a>
New Mexico	<a href="http://www.nmprc.state.nm.us/cii.htm">http://www.nmprc.state.nm.us/cii.htm</a>
New York	<a href="http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry">http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry</a>
North Carolina	<a href="http://www.secretary.state.nc.us/Corporations/Csearch.aspx">http://www.secretary.state.nc.us/Corporations/Csearch.aspx</a>

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## Appendix B - Corporate Status Websites, Continued

### Websites to Check Corporate Status (continued)

State	Web Address
North Dakota	N/A
Pennsylvania	<a href="http://www.corporations.state.pa.us/corp/soskb/csearch.asp?corpsNav=%7C">http://www.corporations.state.pa.us/corp/soskb/csearch.asp?corpsNav=%7C</a>
South Carolina	<a href="http://www.scsos.com/corp_search.htm">http://www.scsos.com/corp_search.htm</a>
South Dakota	<a href="http://www.state.sd.us/applications/st02corplook/ASPX/ST32Main.aspx">http://www.state.sd.us/applications/st02corplook/ASPX/ST32Main.aspx</a>
Rhode Island	<a href="http://ucc.state.ri.us/CorpSearch/CorpSearchInput.asp">http://ucc.state.ri.us/CorpSearch/CorpSearchInput.asp</a>
Tennessee	<a href="http://www.tennesseeanytime.org/soscorp/">http://www.tennesseeanytime.org/soscorp/</a>
Texas	<a href="http://ecpa.cpa.state.tx.us/coa/Index.html">http://ecpa.cpa.state.tx.us/coa/Index.html</a>
Utah	<a href="https://secure.utah.gov/bes/action/index">https://secure.utah.gov/bes/action/index</a>
Vermont	<a href="http://www.sec.state.vt.us/seek/corpbrow.htm">http://www.sec.state.vt.us/seek/corpbrow.htm</a>
Virginia	<a href="http://www.sec.virginia.gov/division/clk/diracc.htm">http://www.sec.virginia.gov/division/clk/diracc.htm</a> (Click on Clerk's Information System)
Washington	<a href="http://www.secstate.wa.gov/corps/search.aspx">http://www.secstate.wa.gov/corps/search.aspx</a>
Washington, DC	<a href="http://mblr.dc.gov/corp/lookup/index.asp">http://mblr.dc.gov/corp/lookup/index.asp</a>
West Virginia	<a href="http://www.wvsos.com/wvcorporations/">http://www.wvsos.com/wvcorporations/</a>
Wisconsin	<a href="http://www.wdfr.org/apps/cris">http://www.wdfr.org/apps/cris</a>
Wyoming	<a href="http://soswy.state.wy.us/corporat/corporat.htm">http://soswy.state.wy.us/corporat/corporat.htm</a>

## Appendix C: Memos

---

### Accessing Memos

Follow the steps below to access an I-129 L Memo:

Step	Action
1	Access the VSC Intranet by double clicking on the icon.
2	Access the VSC Homepage
3	Click on "Adjudications" under "Choose a Unit"
4	Click on "Select Memo Group" located in the center of the screen.
5	Select I-129 from the drop down menu.
6	Click on "Select an I-129 L Memo.
7	Click on the memo you need to review.

---

### Important Memos

The following is a list of important memos to refer to when adjudicating I-129 L petitions:

- Interpretation of Specialized Knowledge Under the L Classification.
  - Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L1B Status
-

**Vermont Service Center**  
**Standard Operating Procedure (SOP)**

**L1A AND L1B**  
**INTRACOMPANY**  
**TRANSFEREES**

Prepared by:  
Center Training Unit

Vermont Service Center

November 25, 2014

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## General

---

**Purpose** This SOP prescribes procedures for the adjudication and processing of Form I-129, Petition for a Nonimmigrant Worker, filed under 8 CFR 214.2(l) at the Vermont Service Center (VSC).

---

**Applicability/Scope** This SOP is applicable to all VSC SISOs, ISOs, and Adjudication Support Team (AST) personnel performing I-129L adjudicative or AST functions or review of those functions. Personnel performing other duties pertaining to I-129s will be similarly bound by the provisions of this SOP which apply to their specific tasks or duties.

---

**Conflict Resolution** Any provision of the INA or 8 CFR that conflicts with this SOP will take precedence over the SOP. If you identify a conflict, report the matter immediately to your supervisor or to any SISO.

If any conflict is noted between this SOP and policy or guidance documents issued by HQSCOPS, report the matter through the supervisory chain for resolution.

This SOP supersedes all prior Vermont Service Center guidance documents, policy memoranda, training packets, or other material pertaining to I-129(L) cases; these documents should be discarded.

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*Continued on next page*

## General, Continued

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**Revisions** The Center Training Unit will issue numbered revisions to this SOP. No other document will be considered a valid modification.

### ***Electronic and Print Copies***

All personnel who maintain a printed copy of the SOP will post the revisions upon receipt. Electronic copies of the SOP will be modified to reflect changes as they are issued. A listing of previous revisions will be linked to the SOP to serve as a summary of all applicable revisions.

### ***Proposed Changes***

Submit proposed changes with appropriate supporting documents through first-line supervisors to the Center Training Unit.

### ***Current Revisions***

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow.

### ***Prior Revisions***

A list of the most recent revisions made to this document is located after the Appendices. A complete list of previous revisions is located on the Add-Ins toolbar under Add'l Resources>ADJ SOPs>Revisions>I-129 SOP Revisions>I-129L SOP Revisions.

---

<b>Revision #</b>	<b>Date</b>	<b>Subject</b>	<b>Pages</b>	<b>KM#</b>
33	11/25/14	Changed number of S Corp shareholders from 35 to 100.	28	2035

---

# L1A AND L1B INTRACOMPANY TRANSFEREES

## Overview

---

**Introduction** A qualifying United States or foreign employer may file a Form I-129 petition on behalf of an alien beneficiary requesting classification as an Intracompany Transferee.

---

**Statutory Basis** Section 101(a)(15)(L) of the Act makes provision for temporary positions for:

- Certain managers and executives, and
- Specialized knowledge professionals.

The nonimmigrant classifications for this section of law are L1A and L1B, respectively.

---

**Regulatory Basis** USCIS has responsibility for determining whether the alien beneficiary is eligible for admission and whether the petitioner is a qualifying organization.

Title 8, Code of Federal Regulations, Part 214.2(l), sets forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions.

---

**Dual Intent for L-1s** 8 CFR 214.2(l)(1)(i) states that an intracompany transferee can be admitted temporarily to the United States to be employed by a qualifying organization. However, the approval of a permanent labor certification or the filing of a preference petition for the beneficiary shall not be the basis for denying an L1 petition or the beneficiary's application for admission.

The beneficiary may legitimately come to the U.S. as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States. [See 8 CFR 214.2(l)(16)]

---

**Timely Adjudication** In general, Form I-129L petitions should be processed within thirty days of receipt. [Section 214(c)(2)(C) of the Act, 8 CFR 214.2(l)(7)(i)]

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*Continued on next page*

## Overview, Continued

---

### Record of Proceeding

The record of proceeding for the L1 petition from top to bottom:

- G-28
  - I-129
  - I-129L Supplement
  - Evidence of qualifying relationship between the United States and foreign organizations
  - Evidence of the beneficiary's qualifying foreign employment
  - Evidence that the foreign organization is doing business
  - Evidence of the beneficiary's proposed employment in the United States
  - Evidence that the United States organization is doing business, or evidence that meets the "new office" evidentiary requirements
  - RFE notices and Intent to Deny Notices (if applicable)
  - All evidence submitted in response to RFE and Intent to Deny Notices in the order dictated above.
- 

### Part 6 of Form I-129 is Not Completed

If Part 6 is not completed, you must provide the petitioner with the opportunity to submit the required response by issuing a Request for Evidence (RFE). Use standard 1817 which asks the petitioner to complete and submit Page 5, Part 6, of Form I-129 with a revision date of November 23, 2010 or later. You should not return the original signed petition to the petitioner.

**NOTE:** At this time, USCIS does not require a copy of the export control license as part of the nonimmigrant visa petition process. However, if the petitioner declines to respond to Part 6 in response to an RFE, deny the petition pursuant to 8 CFR 103.2(b)(1) for failure to properly complete and file the petition with any initial evidence required by applicable regulation and/or the form's instructions.

The standard denial to address this scenario is the I129CTECH letter.

---

*Continued on next page*

## Overview, Continued

---

### **Banned Employers**

When DOL informs USCIS that certain organizations have violated the INA, DOL will provide USCIS with a list of these employers that are banned for a specific time period from having an immigrant and/or nonimmigrant petition approved. The ban does not affect petitions that were previously approved; however, new petitions may not be approved during the banned period for the listed employers.

**NOTE:** The Data Reporting Group (DRG) runs a scrape for banned employers. If you receive a petition filed by a banned employer, bring the petition to the appropriate form type ISO3.

---

### **List of Banned Employers**

The list of organizations ineligible for approval of immigrant and nonimmigrant petitions is found on the VSC ECN site under Adjudications/Policy Memos/Business.

**Important:** Be sure to view the most recent list of organizations ineligible for approval of immigrant and nonimmigrant petitions. There may be old lists still present on this page.

---

## Fees Required for L Petitions

---

### Fraud Prevention and Detection Fee

In addition to the base filing fee, a Fraud Prevention and Detection Fee of \$500 must be paid by:

- Petitioners seeking initial (H-1B) or L nonimmigrant classification,
  - A change of status to (H-1B) or L nonimmigrant classification, or
  - A change of employer in these classifications.
- [INA § 214(c)(12)]

This new \$500 fee applies to petitions filed on or after March 8, 2005 and may be paid by any party.

#### EXCEPTIONS:

- Amended petitions
  - Successor in interest
- 

### Border Security Fee

On August 12, 2010, President Obama signed Public Law 111-230, the Emergency Supplemental Appropriation for Border Security Act. The new fee is in addition to the Base Fee, Fraud Prevention and Detection Fee, as well as any Premium Processing Fee, if applicable.

Public Law 111-230 requires the submission of an additional fee of:

- \$2,000 for certain H-1B petitions and
- \$2,250 for certain L-1A and L-1B petitions.

An I-129 petition for H-1B or L status postmarked on or after August 14, 2010 through September 30, 2015 must pay the fee if the following criteria are met:

1) The petition is requesting:

- An initial grant of L-1A or L-1B status **OR**
- Authorization to change employers

#### **AND**

2) The petitioner meets both of the following conditions:

- Employs 50 or more U.S. employees **AND**
- More than 50% of those employees are in H1B or L1 status.

**NOTE:** The fee is required when the petitioner requests a change of status H1B to an "initial grant" L-1 for the same beneficiary to perform essentially the same job.

---

*Continued on next page*

## Fees Required for L Petitions, Continued

### Determining Number of U.S. Employees

All of the petitioner's U.S. Employees should be counted when determining whether it is subject to the Border Security Fee. If a petitioner claims exemption from the Border Security Fee based on a combination of employees within a controlled group of corporations, an RFE using AutoText 2036 should be issued to request clarification about the number of the petitioner's U.S. employees.

When determining the total number of employees in the United States for the purpose of the Border Security Fee, petitioners should **not** include:

- Employees from partnerships, proprietorships, etc., which are under common control;
- Employees from affiliated service groups; and
- Leased employees.

### Who Can Pay the Fees?

Refer to the table below to determine which party can pay the different fees associated with the filing of an I-129.

Type of Fee	Must be paid by...
Base Filing Fee	The petitioner, attorney, or beneficiary
Premium Processing Fee/I-907	The petitioner, attorney or beneficiary. **If paid by the beneficiary, the I-907 still needs to be signed by the petitioner or attorney. An I-907 may be signed by the attorney, if there is a properly executed G-28 for the attorney signed by both the attorney and petitioner.
Fraud Fee	The petitioner, attorney, or beneficiary
Border Security Fee	The petitioner or attorney. **Cannot be paid by the beneficiary.

### Requests for Fraud and/or Border Security Fees

Refer to the chart below to determine which notice should be issued to request Fraud and/or Border Security Fees when the file does not contain acceptable evidence of an exemption.

When the file is missing the...	Issue an...	Using...
Fraud Fee	ITD	B3EXEMPT FRAUD
Border Security Fee	RFE	AutoText 2034

# Eligibility Requirements

---

## Reviewing Evidence

This section identifies the initial evidence required in the adjudication of a Form I-129L petition. Review all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted.

Each piece of evidence must meet the standard of acceptability as noted. If for any reason the evidence submitted is deemed to be unacceptable or is missing, the officer must request the submission of acceptable evidence.

---

## Required Evidence

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations,
- U.S. organization and the organization abroad are both actively engaged in doing business,
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the I-129 L petition.
- Beneficiary will be employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization in the United States.

[See 8 CFR 214.2(1)(3)]

- If the beneficiary will be in a specialized knowledge capacity and working at a location other than the petitioner's, evidence is also required that the beneficiary will be under the primary control and supervision of the petitioner and will be providing a product or service for which specialized knowledge specific to the petitioner is necessary.

(See July 28, 2005, William R. Yates memo "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004)."

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*Continued on next page*

## Eligibility Requirements, Continued

---

**Exception: New Office** If the petitioning organization that is filing for an L1 beneficiary has been doing business for one year or less, it is not required to be actively engaged in doing business at the time of filing.

Instead, the petitioner must submit evidence that:

- Sufficient physical premises to house the new office have been secured, and
- The intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(1)(3)(v)]

---

**Date of Filing** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

---

## Determination of Proper Filing

---

**Proper Filing** A petition is considered to be properly filed when it is:

- Completed and signed, in the original, by a designated representative of the qualifying employing organization, and
- Accepted for processing with the correct fee, by the USCIS office having jurisdiction over the area of the beneficiary's intended employment.

[See 8 CFR 103.2(a)(7)(i)]

---

**Who may File the Petition** Form I-129L petitions may be filed by either:

- The qualifying foreign organization or
- The qualifying U.S. organization that intends to employ the beneficiary.

[See 8 CFR 214.2(l)(2)(ii)]

---

**Representation**

- A representative of the petitioner must complete and sign a Form G-28.
- The petitioner and the representative must sign the Form G-28 in the original.
- Facsimile stamped signatures for representatives are also acceptable.
- E-filed cases state "certified by the internet."
- Refer to the G-28 SOP for further information regarding G-28s and representatives/attorneys.

[See 8 CFR 103.2(a)(3), 292.1, and 292.2]

---

**When to File** The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

[I-129 Filing Instructions and See Federal Register at 70 FR 21983-01 (April 28, 2005)]

In the event that a petition is accepted more than six months prior to the date of actual need, (i.e. requested employment start date), route the case, and any accompanying I-539, to an IS03 L POC. The case will be sent to the Case Resolution Unit where an appropriate letter will be prepared and the fee refunded.

---

# Jurisdiction

---

## General

In general, I-29L petitions must be filed at the Service Center that has jurisdiction over the area where the beneficiary is to be employed.

VSC will serve as the filing location for all individual I-29 L petitions filed directly with a Service Center where the beneficiary is or will be employed in the following locations:

Alabama	Maryland	Puerto Rico
Arkansas	Massachusetts	Rhode Island
Connecticut	Mississippi	South Carolina
Delaware	New Hampshire	Tennessee
District of Columbia	New Jersey	Texas
Florida	New Mexico	Vermont
Georgia	New York	Virginia
Kentucky	North Carolina	U.S. Virgin Islands
Louisiana	Oklahoma	West Virginia
Maine	Pennsylvania	

The following link provides updates for filing locations that may not yet be captured in the I-29 filing instructions:

[USCIS - Direct Filing Addresses for Form I-29, Petition for Nonimmigrant Worker](#)

**IMPORTANT:** The petitioner shall advise USCIS whether they have filed a petition for the same beneficiary with another office, and certify that they will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed.

Failure to make a full disclosure of previous petitions filed may result in the denial of the petition.

[See 8 CFR 214.2(l)(2)(i)]

---

## Blanket L Petitions

Jurisdiction for Blanket L petitions remains at the Service Center that approved the blanket petition regardless of the geographic location of the beneficiary's employment in the United States.

[See 8 CFR 214.2(l)(2)(ii)]

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*Continued on next page*

## Jurisdiction, Continued

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**L1 Petitions for  
Citizens of  
Canada under  
NAFTA**

The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

---

**Amended  
Petitions**

The petitioner must file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in:

- Approved relationships,
- Additional qualifying organizations under a blanket petition,
- Change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or
- Any information which would affect the beneficiary's eligibility under Section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(7)(i)(C)]

---

# Qualifying Relationships

## Overview

---

**Introduction** When an employer wishes to transfer an employee of a foreign company to a U.S. company as an L1 nonimmigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer.

---

**Qualifying Organizations** A qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- Meets exactly one of the qualifying relationships specified in 8 CFR 214.2(l)(ii),
- Is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intracompany transferee, and
- Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(1)(ii)(G)]

---

**Outsourcing** An L1B nonimmigrant alien who has been employed by a firm with an affiliated entity in the United States, who comes to the United States to perform services for the international entity, can no longer work primarily at a worksite other than that of the petitioning employer.

**EXCEPTION:** The work is controlled and supervised by the L1-B petitioning employer. The petitioning employer must show they retain ultimate authority over the L1-B worker, and the L1-B worker must provide a product or service to the offsite employer for which specialized knowledge specific to the petitioner is necessary.

[See L-1 Visa Reform Act 2004]

---

**Commercial Enterprises** The majority of L1 petitioners are commercial enterprises, organized as corporations, partnerships, or sole proprietorships. They are called commercial enterprises because they are trying to make a profit.

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*Continued on next page*

## Overview, Continued

---

### Non-Profit Enterprises

It is also possible for non-profit employers, such as religious or charitable organizations, to use the L1 classification. However, the petitioner must still demonstrate that all of the L1 eligibility requirements have been met.

[See *Matter of Church of Scientology*, 19 I&N Dec. 593]

---

### Ownership and Control

Regardless of whether a business is set up as a corporation, partnership, or sole proprietorship, somebody normally owns the business and somebody controls the business.

**Ownership and control** are the deciding factors used by the officer to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer and will be discussed thoroughly later.

---

### Foreign Employer Must Continue to do Business

There must be an organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad but the relationship must continue to exist.

---

## Ownership & Control

---

**Definitions**      **Ownership** for L1 purposes means the legal right to have possession of an organization.

**Control** for L1 purposes means to exercise authority or influence over an organization.

---

**Deciding Factors for a Qualifying L1 Relationship**      **Ownership and control** are the deciding factors used to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer.

Both ownership and control must be present to have a qualifying relationship.

---

**Beneficiary May be the Sole Owner**      In many instances the beneficiary of the L1 petition may own both the foreign employer and the U.S. employer in whole or in part. There is no problem with this arrangement as long as all of the L1 eligibility requirements are met.

**NOTE:** The company in the foreign country must continue to do business.

[See *Matter of M 8 I&N Dec. 618* and *Matter of Aphrodite Investments 17 I&N, Dec. 530*]

---

**De Jure Control**      Ownership of more than 50% of an organization is considered to be evidence of control. Control on the basis of ownership of more than 50% is called de jure control.

De jure simply means “by law”, and it is a straightforward form of control.

---

**Negative Control - Joint Ventures**      In many instances, two individuals or organizations will create an organization in which each individual or organization has 50% ownership. This arrangement is called a joint venture.

Each of the owners could be said to exert de jure control over the joint venture. As they can each “block” any decision made by the other owner by virtue of their 50% control over the organization, their control can be described as a “negative control”.

[See *Matter of Siemens Medical Systems 19 I&N Dec. 362*]

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*Continued on next page*

## Ownership & Control, Continued

---

### **De Facto Control**

It is possible for an owner of less than 50% of a company to exercise control over the organization.

De facto simply means “in fact”. [See *Matter of Hughes* 18 I&N Dec. 289]

**NOTE:** If a petitioner argues that de facto control exists on some other basis than discussed previously or in *Matter of Hughes*, consider the argument with an open mind, and see if the argument makes sense.

---

### **Contractual Relationships**

A contractual relationship between the foreign employer and the U.S. employer is not sufficient. There must be both ownership and control.

[See *Matter of Schick* 13 I&N Dec. 647]

An executed contract between organizations may allow one organization to exert influence over the other, but a solely contractual relationship is not qualifying for L1 purposes.

---

# Definitions of Qualifying Relationships

---

**Introduction** The following definitions describe the qualifying L1 relationships.

[See 8 CFR 214.2(l)(1)(ii)(H), (I), (J), (K), and (L)]

---

**Substance Over Form** A petitioner may identify the qualifying relationship between the U.S. organization and the foreign organization in a manner that is not correct per USCIS' definition of that particular qualifying relationship. However, as long as the relationship conforms to one of the qualifying relationships defined in regulation, it is acceptable for L1 purposes.

There are times when the nature of the relationship between the two organizations is not clear based on the evidence in the record. In these instances, it is best to request an additional explanation from the petitioner, along with corroborative documentary evidence, if needed.

---

**Parent** Parent means a firm, corporation, or other legal entity, which owns and controls at least one subsidiary. An organization is said to be a parent to a subsidiary when:

- It owns more than half of the subsidiary, and
- Controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(I)]

**NOTE:** The definition of subsidiary includes other qualifying forms of parent/subsidiary relationships.

---

**Branch** Branch means an operating division or office of the same organization housed in a different location.

[See 8 CFR 214.2(l)(7)(ii)(J)]

---

**Subsidiary** Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. As stated in the definition for a parent, the parent owns more than half of the subsidiary and controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(K)]

---

# Affiliates

---

## Introduction

There are three categories of qualifying affiliate relationships, to include:

- (1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual.
- (2) One of two legal entities owned and controlled by the same group of individuals, each owning and controlling approximate the same share or proportion of each entity.
- (3) A partnership that is:
  - Organized in the United States
  - To provide accounting, managerial, and/or consulting services
  - Under an agreement with a worldwide coordinating organization
  - That is owned and controlled by member accounting firms.

[See 8 CFR 214.2(l)(1)(ii)]

---

## Partnership Organized Outside the US

A partnership (or similar organization) that is organized outside the United States to provide accounting services is considered an affiliate of the U.S. partnership if:

- It markets its accounting services under the same internationally recognized name;
  - Under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.
-

# Types of Businesses

## Sole Proprietorships

---

**Definition**

A sole proprietorship is a business that is owned by one individual.

---

**Unlimited Liability**

A sole proprietorship is not legally separate from its owner. The owner is personally responsible for the debts of the business. Creditors can sue the owner to take his or her house, car, or other personal assets to pay off the sole proprietorship's debts.

---

**How a Sole Proprietorship is Created**

A sole proprietorship is the easiest business to create. An individual merely establishes a business, and the sole proprietorship is automatically created.

---

**Evidence of Ownership & Control**

Generally, no special documents are executed when a sole proprietorship is created and commences doing business.

In the United States, a sole proprietorship is not required to execute or file any documents of creation, and may use the owner's own social security number as its EIN (employer's identification number).

The most common document that is provided as evidence of the ownership and control of a sole proprietorship is the owner's individual federal tax return. In addition, contracts, such as leases or sales agreements that were executed by the owner on behalf of the sole proprietorship may be submitted.

---

**Owner's Individual Federal Tax Return**

Sole proprietors located in the United States must report the income and expenses from their businesses in their individual Form 1040 federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return.

---

# General and Limited Partnerships

---

**Partnership  
Definition**

A partnership means the shared ownership of a business.

---

**Limited  
Partnership  
Definition**

A limited partnership is the shared ownership of a business in which certain partners provide a capital investment without being held personally liable for the debts of the partnership above the level of their investment.

The trade-off for having the limited liability is that the limited partner may not materially participate in the running of the business or attempt to control the business.

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**General  
Partnership:  
Unlimited  
Liability**

A partnership is not legally separate from its partners. The partners are personally responsible for the debts of the partnership. Creditors can sue the partners to take their houses, cars, or other personal assets to pay off the partnership's debts.

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**Limited  
Partnership:  
Both Unlimited  
and Limited  
Liability**

All general partners of a limited partnership are personally responsible for the debts of the partnership. Creditors can sue the owners to take their houses, cars, or other personal assets to pay off the partnership's debts.

Limited partners are only liable up to the amount of their capital investment in the partnership. The limited liability can be legally stripped from the limited partner if he or she is found to have materially participated in the business.

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**How a General  
Partnership is  
Created**

No formal, written partnership agreement is required to create a general partnership. However, many general partnerships do execute partnership agreements.

In the United States, partnerships must obtain an EIN (employer's identification number) for the partnership.

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## General and Limited Partnerships, Continued

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### **How a Limited Partnership is Created**

A formal, written partnership agreement is required to create a limited partnership.

- Every limited partnership must have at least one general partner.
  - In the United States, limited partnerships must obtain an EIN (employer's identification number) for the partnership.
- 

### **Only General Partners have BOTH Ownership & Control**

Only general partners can be considered to have both ownership and control over a limited partnership. When trying to establish qualifying affiliate relationships, only the percentage of ownership by each of the general partners should be considered.

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### **Limited Partners have NO Control**

Limited partners may own a portion of a limited partnership, but they do not have any control over the partnership, as they cannot materially participate in the operation of the business.

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### **Evidence of Ownership & Control**

The most common documents that are provided as evidence of the ownership and control of a general or limited partnership are partnership agreements and the partnership's Form 1065 federal tax return.

In addition, contracts, such as leases or sales agreements that were executed by the partners on behalf of the partnership may be submitted.

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### **Partnership Agreements**

A partnership agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited partnership interest,
- Each partner's initial percentage of ownership,
- The type of business to be conducted by the partnership,
- How partnership interests can be transferred, and
- The conditions under which the partnership can be dissolved.

The partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.

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## General and Limited Partnerships, Continued

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### **Partnership Tax Returns**

In the United States, partnerships (including limited partnerships) are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

The partnership's tax return provides certain information that is relevant to the ownership and control of the partnership to include the:

- Date of origination of the partnership,
  - The names and % of ownership for each of the partners at year end,
  - Whether the partnership has limited partners, and
  - Evidence of the partnership's business activities in the United States.
- 

### **Ownership Percentage May Not Equal the Capital Investment**

A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

- The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.
  - Shared ownership of the business does not always mean shared ownership of the assets used in the business.
-

# Corporations

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**Definition** A corporation is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Corporations are a taxable entity and must pay taxes on the income generated by them prior to distributing the income to its shareholders.

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**Limited Liability** The debts of the corporation are the responsibility of the corporation, not the individual shareholders. If a corporation goes bankrupt, the shareholders cannot lose any more money than they paid for their stock.

Normally, creditors cannot sue the shareholder to take his or her house, car, or other personal assets to pay off corporate debts. This limited liability is one of the big attractions of corporations.

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**Where a Business Incorporates** In the United States each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of businesses.

Businesses may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

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**How a Business Incorporates** In order to incorporate a business in the United States, articles of incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a certificate of incorporation.

After the business is incorporated, the corporation may sell and issue shares of stock, and commence doing business as a legal entity apart from its owners.

The shareholders of the corporation will elect a board of directors, who may or may not be shareholders. The board of directors may enact by-laws for the corporation.

In the United States, corporations must obtain an EIN (employer's identification number).

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## Corporations, Continued

### Federal Tax Returns

Generally, corporations doing business in the United States must file a federal tax return each year, Form 1120, U.S. Corporation Income Tax Returns. The federal tax return provides certain information that is relevant to the ownership and control of the corporation to include the:

- Date of incorporation,
- Evidence of the corporation's business activities in the U.S., and
- In some instances, the name of the individuals or organizations that own the corporation will be noted (usually on the second page or in the supporting statements).

### Annual Reports

Some corporations submit annual reports as evidence of the qualifying relationship. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements. (For more information see the discussion of financial statements in the Doing Business portion of the SOP.)

### Evidence of Ownership & Control

The following table describes the typical documents that are submitted as evidence of the existence, rules, ownership and control of a corporation.

Document	Existence	Rules	Ownership	Control
Petitioner's Letter	X		X	X
Certificate of Incorporation	X	Generally, number and type of stock shares only		
Articles of Incorporation	Yes, if stamped by the Gov. agency	X		
by-laws		X		
Common Stock Shares			X	X
Preferred Stock Shares			X	
Stock Ledger			X	X
Tax Returns	X		Sometimes	Sometimes
Annual Reports	X	Sometimes	Sometimes	Sometimes

# S-Corporations

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## Definition

Sub-Chapter S corporations or “S Corps” as they are called, are a hybrid of the standard corporation.

The main difference between S Corps and regular corporations is that S Corps are not taxable entities and are limited to a certain type and number of shareholders.

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## S Corps are Not Taxable Entities

S Corps are not taxable entities. They are required to file an informational tax return, called a Form 1120S, U.S. S Corporation Income Tax Return. Income and expenses flows through to the shareholders’ individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

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## Qualifying for S Corp Status

To qualify for S Corp status under IRS rules, a corporation must meet a number of requirements. It must:

- Be a domestic corporation, i.e. organized in the United States under federal or state law.
- Be an eligible corporation. Ineligible corporations may be certain financial institutions, insurance companies, and domestic international sales corporations.
- Have only one class of stock, common.
- Have no more than 100 shareholders.
- Have as shareholders only individuals, estates, and certain trusts (partnerships and corporations cannot be shareholders).
- Have shareholders that are U.S. citizens or residents of the United States (per the IRS definition of residents). Nonresident aliens cannot be shareholders.

The IRS defines a resident alien by establishing if the beneficiary has been physically present in the United States at least:

- 31 days during the current year, and
- 183 days during the 3 year period that includes the current year and the 2 years immediately before. To satisfy the 183 days requirement count:
  1. All of the days the beneficiary was present in the current year, **and**
  2. One-third of the days the beneficiary was present in the first year before the current year, **and**
  3. One-sixth of the days the beneficiary was present in the second year before the current year.

**NOTE:** If you believe the beneficiary is an unqualified shareholder, discuss with a SISO.

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## **S-Corporations, Continued**

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### **Qualifying L1 Relationships for S Corps**

As noted above, corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp.

If such ownership is claimed on an L1 petition, additional evidence, such as a statement from an official of the IRS confirming the validity of the shareholders' S Corp ownership should be requested.

However, S Corps may own businesses abroad. So, if the claimed qualifying relationship involves a U.S. S Corp's ownership of a foreign employer, the relationship may be qualifying as long as it conforms to the defined L1 relationships.

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# Incorporation

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## **Certificate of Incorporation**

The Certificate of Incorporation is the birth certificate for the corporation. It shows that the corporation exists as a legal entity.

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## **Articles of Incorporation**

The Articles of Incorporation will identify the:

- Acceptable business activities that may be conducted by the corporation
- Type and number of stock shares that may be authorized and issued by the corporation
- Par value, if any, of the stock shares

This document is the constitution of the corporation and cannot be changed or amended without a majority vote of the shareholders.

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## **Conformed Copy of the Articles of Incorporation**

A conformed copy of the Articles of Incorporation is a copy that agrees with the original and all amendments to it.

If the original document required a signature, the copy should be signed by a principal officer, or if not signed, be accompanied by a written declaration signed by an authorized officer of the corporation. With either option, the officer must certify that the document is a complete and accurate copy of the original.

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## **By-Laws**

The By-Laws of a corporation are the lesser rules made by the board of directors that govern how the corporation will function. They may not conflict with any provision of the Articles of Incorporation.

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# Shares of Stock

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## Introduction

Stock shares are ownership certificates that are issued by a corporation when an individual or an organization makes an investment in the corporation. The number of shares of stock owned by an individual or organization relative to the number of shares issued determines their percentage of ownership in the corporation.

- The number of shares of stock issued by the corporation may not exceed the number of shares authorized by its articles of incorporation.
- Corporations can issue two classes of stock, common and preferred.

**EXAMPLE:** If one person owns 100 shares of stock in a corporation and the corporation has issued 200 shares of stock, that individual can be described as the owner of 50% of the corporation.

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## Stock Share Identification

Each stock share should identify the:

- Number of shares authorized
- Class of stock, either common or preferred
- Par value of the stock shares, if any
- Number of shares represented by the share certificate\*
- Name of the shareholder
- Date of stock issuance

**\*NOTE:** Number of shares authorized should be in Articles of Incorporation and not all authorized shares need to have been issued.

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## Shares of Stock, Continued

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**Stock  
Certificates are  
Internally  
Generated**

Stock share certificates can be purchased at any large office supply store. Stock certificates are issued by the corporation itself. The information provided on the stock certificates is internally generated by the issuing corporation and is not subject to scrutiny by any government agency, unless the corporation is publicly traded.

At a minimum, an acceptable stock certificate should include the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

Stock certificates alone are not sufficient evidence to determine ownership and control of a corporate entity. The stock ledger, stock certificate, corporate By-Laws, and the minutes of relevant annual meetings must also be examined. Without full disclosure of relevant documents; ownership and control cannot be determined.

[See *Matter of Siemens Medical Systems, Inc., supra*]

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## Shares of Stock, Continued

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**Common Stock** Common stock gives its holder voting rights. The significance of voting rights is control.

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**Preferred Stock** Preferred stock does not normally give its holder voting rights. While preferred stock may give its holder a percentage of ownership in a corporation, the holder does not have control over the corporation because the preferred stock does not give voting rights.

The Articles of Incorporation will identify whether the corporation is authorized to issue preferred stock.

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**Par Value of Stock** Par value is the nominal or face value of a share of stock. A corporation cannot issue a share of stock for less than the stated face value of the share.

The par value of a share of stock does not generally bear any relation to the amount of investment made by the shareholder at the time the stock was purchased, nor does it represent the value of the stock after the time of issuance.

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**Stock Ledger** The stock ledger is a document that is used by the corporation to record various stock transactions, to include the:

- Initial issuance of stock
  - Transfer of stock from one shareholder to another
  - Repurchase of stock by its own corporation (treasury shares)
  - Retirement or “cancellation” of stock
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# Non-Profit Organizations

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**Definition**

A non-profit organization is one that is organized for a purpose other than generating a profit. They are also frequently referred to as “tax-exempt” organizations as many of them qualify for an exemption from federal and state taxation.

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**Limited Liability**

A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization. Though they may be personally sued if they did not deal with the organization “at an arm’s length” or as a disinterested third party would.

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**Where a Non-Profit Incorporates**

In the United States, each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of non-profits.

Non-profit may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

---

**How a Non-Profit Incorporates**

In order to incorporate a non-profit in the United States, Articles of Incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a Certificate of Incorporation.

After the non-profit is incorporated, the corporation may obtain tax-exempt status, and commence doing business as a legal entity.

In the United States, non-profit corporations must obtain an EIN (employer’s identification number).

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## Non-Profit Organizations, Continued

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### **How a Non-Profit Obtains Tax-exempt Status**

In the United States, tax-exempt status must be obtained by requesting that designation from the Internal Revenue Service.

In order to qualify for tax-exempt status, the non-profit must be organized and operated exclusively for one or more of the following purposes:

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for public safety
- Fostering national or international amateur sports competitions, or
- The prevention of cruelty to children or animals.

The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.

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### **Assets of Non-Profit Organization**

The assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose or to the local, state, or federal government for a public purpose.

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### **Evidence of Ownership & Control**

Generally, L-1 petitioning non-profit organizations are incorporated and have “branch” organizations or “sister” corporations abroad. Evidence of ownership and control will include incorporation documents, audited or reviewed financial statements, or federal informational returns.

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## Non-Profit Organizations, Continued

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**Federal  
Informational  
Returns**

Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

Tax-exempt organizations are required to file a yearly Form 990 or 990EZ if the organization's gross receipts exceed \$25,000.00 from sources other than the exempt purpose.

Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return, and provides an abbreviated balance sheet as well as an analysis of excess revenue or (deficit) for the year.

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# Evaluating L1A and L1B Positions

## L1A: Managers and Executives

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### Introduction

The L1A classification is reserved for certain managers and executives. The definitions for L1 managers and executives can be found in section:

- 101(a)(44) of the Act,
- 8 CFR 214.2(l)(1)(ii)(B) and
- 8 CFR 214.2(l)(1)(ii)(C).

**NOTE:** The same managerial and executive capacity definitions apply to the nature of the beneficiary's position abroad and in the United States.

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### Manager Capacity Defined

Managerial capacity means an assignment within an organization in which the employee **primarily**:

- Manages the organization, department, subdivision, function, or component of the organization;
- 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;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed, AND;
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

**NOTE:** All four criteria listed above must be met to qualify as a manager.

[See 8CFR 214.2(l)(ii)(B)]

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*Continued on next page*

## L1A: Managers and Executives, Continued

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### Executive Capacity Defined

Executive capacity means an assignment within an organization in which the employee **primarily**:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making, **AND**;
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

**NOTE:** All four criteria must be met to qualify as an executive.

[See 8 CFR 214.2(l)(ii)(C)]

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### Evaluating Managerial or Executive Positions

When evaluating the nature of a claimed managerial or executive position, the petition and supporting evidence must be reviewed to establish that the beneficiary's employment qualifies for L1 purposes.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers and how the beneficiary's position fits into its organizational hierarchy.

A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, they must establish that the beneficiary meets each of the four criteria set forth in both the statutory definitions for "executive" *and* for "manager."

Frequently, the petitioner will merely reiterate the definitions of manager and executive as defined in statute and regulation.

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## L1A: Managers and Executives, Continued

<b>If the employer is a...</b>	<b>Then...</b>
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been, or will, be employed in a qualifying capacity becomes more difficult to determine.  In some instances, no individual position within the organization may involve duties that could be construed as being primarily managerial or executive in nature.

# Factors in Determining Managerial or Executive Capacity

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## **Staffing Levels as a Factor**

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, take into account the reasonable needs of the:

- Organization,
- Component, or
- Function.

**NOTE:** An individual will not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual:

- Supervises or has supervised, or
  - Directs or has directed.
- 

## **Doing Business as it Relates to Managerial or Executive Positions**

The employing organization must be doing business in a manner that would require the beneficiary to perform duties that are primarily managerial or executive in nature.

The petitioner should provide a statement that clearly describes:

- The business activities that the employing organization engages in, and
- How the beneficiary's position is, or was, required to further the organization's strategic or operational goals.

The record may also contain various documents as evidence of the organizations' business activities. The documentary evidence that is submitted should corroborate the petitioner's statements.

In order to make an accurate determination of the eligibility of the beneficiary's position, either abroad or in the United States, the description of his or her duties must be placed in the context of the:

- Personnel structure of the organization, and
  - Magnitude of the business that it conducts.
- 

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## Factors in Determining Managerial or Executive Capacity,

Continued

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### **Too Many Managers, not Enough Worker Bees**

It is not uncommon to encounter an organization that employs only a few people, yet claims that the majority of its employees are primarily engaged as managers or executives.

In these instances, it is often helpful to request complete position descriptions and hourly breakdowns for the duties performed by all of the individuals employed by the organization, including one for the beneficiary, as well as copies of corroborative payroll documentation.

The position descriptions and payroll documentation are used to determine who is performing the non-qualifying, operational duties of the business.

In addition, the entity may be substantial in size but the department or division where the beneficiary is, or will be, employed may be “top-heavy” with managers and executives.

If the employer is a large organization, detailed staffing inquiries should be limited to the department or division where the beneficiary has been or will be employed.

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### **Contract Employees**

The record may indicate that the business employs only one or two people, including the beneficiary. As mentioned previously, it may be helpful to try to determine who is performing the non-managerial operational duties of the business.

The business may not directly employ individuals to perform the non-managerial services of the business. Instead, the business may “contract out” some of its functions such as accounting, sales, warehousing, personnel, etc.

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## Factors in Determining Managerial or Executive Capacity,

Continued

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### Unpublished Decision by the AAO

Representatives and petitioners occasionally refer to an unpublished decision by the AAO, (Irish Dairy Board, Inc.), in which a pre-IMMACT 90, Schedule A, Group IV beneficiary was found to be primarily engaged in a managerial/executive position, even though he was the sole employee of the petitioning entity.

In this case, the petitioning entity imported over \$90 million worth of goods to the United States while exporting in excess of \$50 million worth of goods in the year of filing. The business used independent contractors to perform all of its sales and import/export functions. The beneficiary did not directly perform the duties of these functions himself. Rather, he directed the work of the contractors in the furtherance of the operational duties related to the primary function of the business.

The AAO decided, in this unpublished decision, that if these contractors had been employed “in-house”, that the beneficiary would have been clearly classifiable as an executive.

Pursuant to 8 CFR 103.3(e), Service precedent decisions are binding on Service employees; unpublished decisions are not binding. However, this decision outlines how substantial business activity and contractors may add up to a qualifying L1A position that is primarily managerial or executive in nature.

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### Beneficiary may Own the Organization if the Employment = L1

The beneficiary may own the foreign and U.S. organizations in whole or in part. However, maintaining a “figure head” title and position, such as “Director” or “President”, without being primarily engaged in the management of the organization is not qualifying for L1 purposes.

[See *Matter of Aphrodite Investments*, 17 I&N, Dec. 530]

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## Factors in Determining Managerial or Executive Capacity, Continued

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### **Managing a Function**

L1 beneficiaries are commonly identified as the manager or executive of a “function” within the organization. Functional managers are included in the Service’s definitions for managers and executives.

However, it must be demonstrated that the organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the duties of the function. The petitioner’s evidence must demonstrate that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will remove him or her from performing the services or duties of the company.

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## L1B: Specialized Knowledge

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### Introduction

The L1B classification is reserved for certain specialized knowledge individuals and professionals. The definitions for L1 specialized knowledge professionals can be found in section 214(c)(2)(B) of the INA and 8 CFR 214.2(l)(1)(ii)(D) and (E). The requirement that the individual is a professional only applies when the person is being petitioned for under a blanket petition.

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### Specialized Knowledge Defined

Specialized knowledge means special knowledge possessed by an individual of the organization's:

- Product
  - Service
  - Research
  - Equipment
  - Techniques
  - Management, or other interests and its application in international markets, or
  - An individual's advanced level of knowledge or expertise in the organization's processes and procedures.
- 

### Specialized Knowledge Interpretation

Headquarters' memo CO 214L-P, dated March 9, 1994, provides additional guidance on the interpretation of "specialized knowledge" as defined by statute and regulation.

The memo notes that there are no statutory definitions or legislative history to provide guidance or insight as to the interpretation of the terms "special" or "advanced", and instructs adjudicators to rely on the common dictionary definitions. See the *Term "Special" Defined* section.

USCIS has several policy memorandums that provide guidance on how to interpret specialized knowledge for the L1B classification.

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## L1B: Specialized Knowledge, Continued

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**Term “Special” Defined** Webster’s II New Riverside University Dictionary defines the term “special” as “surpassing the usual; distinct among others of a kind.” Also, Webster’s Third New International Dictionary defines the term “special” as “distinguished by some unusual quality; uncommon; noteworthy.”

Based on the above definition, a beneficiary would possess specialized knowledge if the record demonstrated that the beneficiary’s knowledge is different from that found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

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**Term “Advanced” Defined** Webster’s II New Riverside University Dictionary defines the term “advanced” as “highly developed or complex; at a higher level than others.” Also, Webster’s Third New International Dictionary defines the term “advanced” as “beyond the elementary or introductory; greatly developed beyond the initial stage.”

Again, based on the above definition, the beneficiary’s knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout an organization, only that the knowledge be advanced.

---

**No Test of the U.S. Labor Market Required** The determination of whether a beneficiary possesses specialized knowledge does not involve a test of the U.S. labor market.

Whether or not there are U.S. workers available to perform the duties is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the beneficiary, not whether there are similarly employed U.S. workers.

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## L1B: Specialized Knowledge, Continued

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### L-1 Visa Reform Act of 2004

The L-1 Visa Reform Act of 2004 addresses L-1B workers stationed primarily outside the L organization. Beginning June 6, 2005, section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent if the alien is under the “control and supervision” of the unaffiliated employer, or if the placement at the non-affiliated worksite is “essentially an arrangement to provide labor for hire.”

For this ground of ineligibility to apply:

- The alien worker must be a specialized knowledge worker as defined at 8 CFR 214.2(l)(1)(D) and (E), and
- The worker must be stationed primarily (more than 50%) offsite.

**NOTE:** If more than 50% of the total work time is spent offsite, the petition must establish “control and supervision” of the alien. (Yates memo)

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# Factors in Determining Specialized Knowledge

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## General Knowledge Does Not Equal Specialized Knowledge

Though there is no required test of the U.S. labor market, the officer must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized knowledge.

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## Specialized Knowledge May Become General Knowledge

In this era of rapid technological advances, expertise in certain “cutting edge” technologies may become “general industry knowledge” in a rather short period of time. The true “advanced” nature of the beneficiary’s knowledge must be considered in relation to the current level of knowledge commonly held in the area of the beneficiary’s specialty.

**EXAMPLE:** In the early nineties, expertise in the creation and maintenance of internet websites was not commonly held in the computer industry. Today, many grade school children possess the ability to perform these tasks. Such knowledge is no longer thought of as “special” or “advanced”.

---

## Characteristics That May Equal Specialized Knowledge

The following are some of the possible characteristics of a beneficiary who may possess specialized knowledge. They are not all inclusive. The beneficiary:

- Possesses knowledge that is valuable to the employer’s competitiveness in the market place;
  - Is qualified to contribute to the U.S. employer’s knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
  - Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position;
  - Has knowledge which, normally, can be gained only through prior experience with that employer, or;
  - Has knowledge of a product or process that cannot be easily transferred or taught to another individual;
  - Has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States.
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## Factors in Determining Specialized Knowledge, Continued

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### Evaluating Specialized Knowledge Positions

When evaluating the nature of the beneficiary's claimed specialized knowledge position, the petition and supporting evidence must be reviewed to establish that:

- The beneficiary's prior and proposed employment qualifies for L1B purposes, and
- He or she truly possesses knowledge that is special or advanced in relation to knowledge commonly held in the beneficiary's field.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers, and how the beneficiary's position requires the services of an individual who possesses specialized knowledge.

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### Petitioner's Allegations

The mere fact that a petitioner alleges that a beneficiary's knowledge is somehow different does not, in and of itself, establish that the beneficiary possesses specialized knowledge.

Frequently, the petitioner will merely reiterate the definitions of specialized knowledge professionals as defined in statute and regulation.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.

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## Factors in Determining Specialized Knowledge, Continued

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**Petitioner  
Bears Burden  
of Proof**

The petitioner bears the burden of establishing, through the submission of probative evidence, that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor.

Likewise, a petitioner's assertion that the beneficiary possesses an advanced knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.

It is the quality and caliber of the evidence that establishes whether or not the beneficiary possesses specialized knowledge.

[See *Matter of Brantigan*]

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## Specialized Knowledge Language

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### Unacceptable Words and Phrases

Words and phrases to avoid in specialized knowledge denials and call-ups.

- Narrowly held
  - Key
  - Key Personnel
  - Proprietary
  - Essential
  - Essential Process
- 

### Acceptable Words and Phrases

Words and phrases to use in specialized knowledge denials and call-ups.

- Different
  - Uncommon
  - Material different
  - Noteworthy
  - Distinguished by some unusual quality
  - Highly developed
  - Complex
- 

### Pre-IMMACT'90 Precedent Decisions

*Matters of Colley, Penner, and Sandoz Crop Protection Corp.* should no longer be cited in decisions. While the overall premise in the decisions is sound and they are still considered good law, officers should avoid citing these decisions because they pre-date IMMACT'90. Citing these decisions may give the impression that USCIS is relying on the outdated aspects of the decisions.

In the fall of 2011, the Office of Policy and Strategy Service Center Operations and the Office of Chief Counsel provided an L-1B PowerPoint presentation/training. In this presentation, VSC was advised *Matters of Penner and Colley* predate the 1990 statutory amendments which eliminated this requirement that specialized be either "proprietary" or "unique" so use of this terminology should be viewed in this light. Based on this presentation/training it was expected that all citing of *Matters of Penner and Colley* would cease. *Matter of Sandoz Crop Protection Corp.* was later added as a decision not to cite.

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## Specialized Knowledge Language, Continued

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Pre-  
IMMACT'90  
Precedent  
Decisions  
(continued)

### History-

The term “key personnel” appears in the legislative history of the 1970 ACT that created the “specialized knowledge” subcategory and was used to generally describe all L-1 personnel (i.e., executives, managers, and specialized knowledge). The term “essential” in turn, appears in a published decision, *Matter of Penner*.

*Matters of Penner* and *Colley* are often cited for their background discussion of the 1970 legislative history. It is important to note, however, that these decisions imposed a requirement that “specialized knowledge” be either “proprietary” or “unique” in nature (see examples below). The requirement was effectively overruled by Congress when it enacted the definition of specialized knowledge in section 214(c)(2)(B) of the Act. By enacting section 214(c)(2)(B), Congress declined to adopt the then-existing regulatory requirement that a person possess “proprietary” or “unique” knowledge as reflected in *Penner* and *Colley*.

*Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982)

An employee of “crucial importance” or “key personnel” must rise above the level of the petitioner’s average employee.

*Matter of Colley, et al*, 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm’s operation.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

Specialized knowledge involves proprietary knowledge and an advanced level of expertise not readily available in the United States job market. This knowledge and expertise must be clearly different from those held by others employed in the same or similar occupations. Different procedures are not a proprietary right within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.

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*Continued on next page*

## Specialized Knowledge Language, Continued

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**Pre-  
IMMACT'90  
Precedent  
Decisions  
(continued)**

The 1970 legislative history may contain the term “key personnel,” this language does not appear in the statute, regulations, or in any post-1990 precedent decision. Further, this term, taken from the legislative history, was not specifically applied to the “specialized knowledge” category. Similarly, the term “essential” does not appear in the statute, regulations, or in any post-1990 precedent decision.

In adjudicative decisions there should be a strong focus on the facts and regulations rather than citing precedent decisions, unless the precedent decision is needed to clarify gaps in the Act or regulations. Officers may use the language in some precedent decisions without necessarily citing the precedent decisions, when the verbiage is repeating a generally accepted principle that has other sources in law beyond the precedent.

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**Using Cites**

Where not specified above, officers may use any cite pertinent to case. However, it is the responsibility of the officer to ensure all cites are still valid. Check with a supervisor to use cites not specified in this document.

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# Qualifying Employment

## Qualifying Foreign Employment

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**Introduction** The beneficiary must have one year of continuous employment in a primarily managerial, executive or specialized knowledge capacity with a qualifying organization abroad within the three-year period immediately preceding the filing of the petition.

[See 8 CFR 214.2(l)(1)(i), 8 CFR 214.2(l)(1)(ii)(A), 8 CFR 214.2(l)(3)(iii), and (iv), and *Matter of Michelin Tire Corp.* 17 I&N Dec. 248]

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**Foreign Capacity Does Not Have to Equal U.S. Capacity**

Generally, there is no requirement that the beneficiary has been employed abroad in the same capacity as he or she will have in the United States.

[See 8 CFR 214.2(l)(3)(iv)]

**EXCEPTION:** If the beneficiary is coming to open or be employed in a **new office** in the United States and will be employed in a managerial or executive capacity, he or she must have been employed in the same capacity abroad.

[See 8 CFR 214.2(l)(3)(v) and 8 CFR 214.2(l)(3)(vi)]

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**Employed Abroad**

Employed abroad means what it appears to mean. Experience acquired in the United States may not be counted as part of the required one year of experience, even if the U.S. experience was with a qualifying entity.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Kloeti* 18 I&N Dec. 295]

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*Continued on next page*

## Qualifying Foreign Employment, Continued

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### **One Year of Continuous Employment Abroad**

Continuously generally means an unbroken and uninterrupted year of qualifying work experience abroad.

The intracompany transferee definition seems to assume that all L1 beneficiaries will be outside the United States when an initial L1 petition is filed.

If the beneficiary has been outside the United States during the three-year period immediately preceding the filing of the petition, it is very easy to determine the three-year period to examine.

However, in some instances the beneficiary has been present in the United States for quite some time prior to the filing of the petition. In addition, the beneficiary may have been employed in the United States for part of the three-year period immediately preceding the filing of the petition. In these instances, the officer must determine whether the beneficiary's stay in the United States has "interrupted" his or her qualifying foreign employment.

Periods of employment in the United States in a lawful status for a qualifying entity and brief trips to the United States for business or pleasure are not considered to be interruptive of the beneficiary's foreign employment.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Continental Grain Co.* 14 I&N Dec. 140]

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### **Successorship in Interest**

In some instances, the beneficiary's one year of continuous employment may be gained prior to a qualifying relationship between the foreign employer and the U.S. employer being established.

If all of the assets and liabilities of one entity are substantially acquired through sale, merger or reorganization by another entity such that a qualifying relationship is created between a U.S. employer and a foreign employer, then the beneficiary's foreign employment could have been gained prior to the creation of the qualifying relationship.

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## Qualifying U.S. Employment

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**Introduction** The qualifying U.S. employer must be offering the beneficiary a primarily managerial, executive, or specialized knowledge position in the United States.

[See section 101(a)(15)(L) of the ACT, 8 CFR 214.2(1)(l)(i), and 8 CFR 214.2(1)(l)(ii)(A), (B), (C), (D) and (E)]

---

**U.S. Organization Must Directly Employ the Beneficiary**

A qualifying U.S. organization must directly employ the beneficiary for the entire duration of his or her L1 nonimmigrant status. However, the qualifying foreign employer may file the petition on the beneficiary's behalf.

The beneficiary may not directly perform services for a foreign employer in the United States without maintaining a valid employment relationship with the U.S. organization. The test is which organization controls the beneficiary's employment.

[See *Matter of Penner*, 18 I&N Dec. 49]

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**Beneficiary May be Paid by the Foreign Employer**

While a qualifying U.S. employer must directly employ the beneficiary, the beneficiary's wages may be paid by the foreign organization.

[See *Matter of Pozzoli*, 14 I&N, Dec. 569]

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**Required Evidence**

At a minimum, the petitioner must provide:

- A detailed statement that describes the duties to be performed by the beneficiary in the United States, and;
- Evidence that the beneficiary prior education, training and employment qualify him or her to perform the intended services in the United States.

[See 8 CFR 214.2(l)(3)(ii) and 8 CFR 214.2(l)(3)(iv)]

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**Evaluating the U.S. position**

For a thorough discussion of how to evaluate the offered position, refer to the manager and executive, or specialized knowledge professional sections of the SOP.

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# Doing Business

## Overview

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### Definition

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

Doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

[See 8 CFR 214.2(l)(1)(ii)(H)]

---

### Introduction

Both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an intracompany transferee

[See 8 CFR 214.2(l)(1)(ii)(G)]

#### **EXCEPTION:**

A petitioner filing for an L1 beneficiary coming to be employed for a U.S. organization that has been doing business for less than one year does not have to be actively engaged in doing business at the time of filing of the petition.

Instead, the petitioner must submit evidence that sufficient physical premises to house the new office has been secured, and the intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

**NOTE:** L1 "new office" petitions will be discussed thoroughly later.

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*Continued on next page*

## Overview, Continued

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**Foreign  
Employer Must  
Continue to do  
Business**

There must be a qualifying organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist.

[See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad.

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**Organization  
Must have  
Sufficient  
Resources**

In addition to conducting business, the organization must be shown to have sufficient resources in order to compensate the beneficiary and to continue to conduct business into the foreseeable future.

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# Determination of Doing Business

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## Introduction

While the organization must be shown to be involved in the continuous provision of goods or services, there is no statutory or regulatory minimum level of business activity that must be conducted in order for the U. S. and the Foreign organizations to meet this eligibility requirement.

However, the organization must be conducting business in a manner that would require the services of an individual **primarily** engaged in a managerial, executive, or specialized knowledge capacity.

In order to make a determination that the organization is conducting sufficient business to require the services of the beneficiary, the organization's personnel structure and the beneficiary's stated duties must be placed in the context of the level of business that is being conducted by the organization.

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## Credible Evidence May Not Establish Eligibility

This section discusses the various categories of evidence that are routinely submitted to document an organization's business activities. It should be noted that the submission of what is considered to be "credible" evidence is not equivalent to meeting the eligibility criteria. The validity of the evidence must be evaluated. The evidence submitted may be negative as well as positive.

In other words, a tax return may be submitted by the petitioner and be considered credible evidence, but the information provided on the tax return may fail to establish that the eligibility requirement has been met.

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## Evidence of Doing Business

A variety of documents may be submitted in order to establish that the U.S. and the foreign organizations are doing business.

Frequently, the petitioner will merely submit a letter that describes the nature and level of business activity conducted by the organization.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the organization's business activities.
Small and/or young, unknown or less substantial business,	The issue of whether the organization is doing business requires the submission of credible, documentary evidence in order to make a determination.

*Continued on next page*

## Determination of Doing Business, Continued

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**Calendar or  
Fiscal Year**

Organizations publish annual reports and financial statements, and file tax returns based on either a calendar or a fiscal year.

<b>If the reporting year is a...</b>	<b>Then the year starts on...</b>	<b>And ends on...</b>
Calendar year	January 1 <sup>st</sup>	December 31 <sup>st</sup>
Fiscal year	The 1 <sup>st</sup> day of any month other than January	The last day of any month other than December

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**Change of Year  
for Tax  
Purposes**

An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.

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## Primary Evidence of Doing Business

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### **Primary Documentary Evidence**

Primary documentary evidence of an organization's business activities includes:

- Annual Reports, containing audited or reviewed financial statements,
  - Audited financial statements,
  - Reviewed financial statements, or;
  - Federal Tax Returns.
- 

### **Evaluating Primary Evidence**

Primary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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### **Annual Reports**

Annual Reports are published by all publicly traded corporations in the United States. Many foreign organizations also publish annual reports.

Annual reports provide information describing the organization's:

- Products and Services
- Management and personnel structure on the macro level
- Ownership & Control
- Subsidiaries, affiliates, joint ventures, and branch offices
- Current and long-term objectives

In addition, annual reports should include audited or reviewed financial statements for the past year.

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## Primary Evidence of Doing Business, Continued

### Federal Tax Returns

In general, organizations that are conducting business in the United States must file federal tax returns each year. Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format.

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a...	Then the Tax Return is Form...	And the tax return provides a modified...	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

### Foreign Tax Documentation

- The petitioner may provide copies of foreign tax returns as evidence of the business activities of the foreign entity.
- Canada and most Western European countries require tax returns that are very similar to the United States' tax returns and are usually credible.
- Many other countries rely on hand-written tax returns and receipts that are less reliable.

# Financial Statements

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**Introduction** Financial statements are used to convey a picture of the profitability and the financial position of a business. The two most important are the income statement and the balance sheet.

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**Income Statement** The income statement shows whether or not the business earned a “profit” or net income during a specific time period. Net income is earned when revenues exceed expenses, but a net loss is incurred if the expenses exceed the revenues.

Income statements provide useful information for the adjudication of L1 petitions such as the organization’s:

- Gross sales/revenues (and sometimes the source of the revenue),
  - Cost of goods or services sold,
  - Wages, salaries, and commissions expense,
  - Rental or mortgage expense,
  - Utility expenses,
  - Brokerage, freight, travel, and contractor expenses, and
  - Net income or net loss.
- 

**Balance Sheet** The balance sheet can be likened to a snap shot of the organization’s financial position. Financial position is shown by listing the organization’s:

- Assets,
- Liabilities, and
- The equity of the owners.

The balance sheet provides useful information for the adjudication of L1 petitions such as the organization’s:

- Type and amount of assets held,
  - Type and amount of the liabilities owed, and
  - Level of investment in the organization by its owners.
- 

*Continued on next page*

## Financial Statements, Continued

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### **Internally Generated Financial Statements**

Internally generated financial statements are created by and are based on the representations of the management of the organization. Employees of the petitioning organization prepare the financial statements and they are not subject to the scrutiny of anyone outside the organization.

Internally generated financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Compiled Financial Statements**

A compilation is the preparation of financial statements from the accounting records and other representations of the management of the organization. The accountant who prepares the financial statements is not required:

- To verify any information provided by management, or
- Have any degree of independence from the organization.

Compiled financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Reviewed Financial Statements**

A review of financial statements involves:

- Obtaining an understanding of the entity's accounting system.
- Applying analytical procedures to financial data.
- Making inquiries of persons responsible for the organization's financial and accounting matters.

An accountant (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform a review.

The CPA will then either prepare the financial statements or review internally generated financial statements. The objective of a review is to express limited assurance that the information provided in the financial statements is in accordance with generally accepted accounting principles.

Reviewed financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Financial Statements, Continued

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### **Audited Financial Statements**

An audit is the examination of financial statements, the accounting records and other supporting evidence both within and outside the organization. It is more substantial in scope than a review, but involves many of the procedures that are performed during a review.

An auditor (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform an audit.

Auditors never express an opinion on the fairness of the financial statements without first performing an audit. The auditor's report will either contain an expression of opinion regarding the fairness of the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed.

Audited financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Secondary Evidence of Doing Business

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### **Secondary Documentary Evidence**

Secondary documentary evidence of an organization's business activities may include, but is not limited to:

- Commercial leases or title to commercial properties,
  - Form W-2s and Form 1099s,
  - Form 941, Employer's Quarterly Tax Return,
  - Internally generated payroll documentation,
  - Sales contracts and invoices,
  - Bills of lading, shipping receipts and brokerage bills,
  - Commercial loan agreements,
  - Bank Statements, or
  - Telephone and other utility bills.
- 

### **Evaluating Secondary Evidence**

Secondary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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# New Office

## Overview

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**Introduction** The L1 classifications have special eligibility requirements and approval limitations for L1 beneficiaries who are coming to open a new office in the United States.

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**New Office Defined** New office means an organization that has been doing business in the United States through a qualifying organization for less than one year.

[See 8 CFR 214.2(l)(1)(ii)(F)]

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**Doing Business Does Not Equal Legal existence** An organization may have a legal existence in the United States for more than one year, but if it has not engaged in the continuous provision of goods and services for more than a year, it must be defined as a new office.

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## Overview, Continued

### New Office Eligibility Requirements

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations;
- Organization abroad must be actively engaged in doing business;
- U.S. organization must be shown to have sufficient physical premises to house the new office;
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition, and;
- Intended U.S. organization, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position supported by information regarding the:
  - Proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - Size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, and;
  - Organizational structure of the foreign entity

[See 8 CFR 214.2(l)(3)]

**NOTE:** All of the eligibility requirements must be met as of the date of filing of the petition.

[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

### Beneficiary's Qualifying Employment Abroad

Use the table below for beneficiary's qualifications.

<b>If the petition indicates that the beneficiary is coming to the United States...</b>	<b>Then the beneficiary's qualifying employment abroad must have been in a primarily...</b>
As a manager or an executive to open or to be employed in a new office in the United States,	Managerial or executive capacity. [See 8 CFR 214.2(l)(3)(v)]
In a specialized knowledge capacity or to be employed in a new office in the United States,	Specialized knowledge, managerial or executive capacity. [See 8 CFR 214.2(l)(3)(vi)]

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## Overview, Continued

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**New Office  
Petitions May  
Only be  
Approved for  
One Year**

New office petitions may be approved for a period that does not exceed one year.

[See 8 CFR 214.2(l)(7)(i)(A)(3)]

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**Advantages for  
the Petitioner**

There are two main advantages of the new office designation for the petitioner.

1. The U.S. organization does not have to be actively engaged in the provision of goods and services as of the date of filing.
  2. The beneficiary does not have to be engaged in a primarily managerial, executive, or specialized knowledge capacity at the time of his or her change of status or entry into the United States as an L1 nonimmigrant. Instead, the petitioner must demonstrate that the U.S. organization, within one year of the approval of the petition, will support the beneficiary in a primarily executive, managerial or specialized knowledge position by providing:
    - A coherent plan in order to commence doing business in the United States,
    - The financial ability to compensate the beneficiary and invest sufficient resources in the U.S. organization in order to realize its proposed business plan, and
    - Acquired sufficient physical premises in the United States in order to start doing business as described in the business plan.
- 

**Disadvantages  
for the  
Petitioner**

There are two main disadvantages of the new office designation for the petitioner.

1. The beneficiary must be coming to provide services in a capacity that is similar to the position abroad. Hence, managers and executives must be classified as LIAs and specialized knowledge employees must be classified as L1Bs, which limits the staffing options of the new office petitioners.
  2. The petition may only be approved for one year, while regular L1 petitions may be given initial approvals for up to three years.
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## Business Plans and Foreign Investments

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**Business Plans** While the new office's business plan may be entirely prospective, the petitioner's statement and supporting documentation should provide a clear picture of how the U.S. organization will conduct business to include:

- A description of the products and/or services that will be provided to its customers;
- The type and general location of the customers or clients to be targeted;
- A description of its short-term and strategic goals and the general time-frame during which these goals will be achieved;
- The amount of investment that will be required to fund the acquisition of sufficient plant, equipment and staffing in order to realize the goals, and;
- Why the beneficiary's services are needed during the start-up phase of the organization.

In addition, the petitioner's plans for the U.S. organization must demonstrate that the nature of the beneficiary's business will be such that he or she will be employed in a primarily managerial, executive or specialized knowledge capacity within one year of the approval of the petition.

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**Statement that  
Business Plan  
Cannot be  
Provided**

In general, statements by the petitioner that no business plan can be provided, or that the investment and/or acquisition of a physical premises cannot be made until the approval of the L1 petition are not sufficient for the purposes of establishing the beneficiary's eligibility for a new office approval.

The petitioner must establish eligibility at the time of filing of the petition.

[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Business Plans and Foreign Investments, Continued

### Evidence of the Foreign Organization's Investment

While there is no statutory or regulatory minimum investment required, the investment must be commensurate with the activities to be conducted by the business during its start-up phase.

The petitioner must identify the size of its financial investment in the new office and show that it has sufficient resources to pay the beneficiary's salary and implement its business plan.

Where documentary evidence is required, the record should contain:

- Bank statements for the new office, as well as the bank wire transfers, cancelled checks, or letters of credit that were executed by the foreign organization to execute the transfer of funds, or
- Evidence of commercial loans, enforceable promissory notes, or other such documentation that would show that sufficient funds are at the new office's disposal.

If the new office is being opened by a...	Then...
Large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of its investment in the new office.
Small and/or young, unknown or less substantial business,	The issue of the level of its investment and financial capabilities requires the submission of credible, documentary evidence in order to make a determination.

### Foreign Organization's Investment "Hand-Carried"

Occasionally, the petitioner will claim that the foreign organization's investment was "hand-carried" into the United States by the beneficiary or by another individual. Such claims should be corroborated with the submission of a Customs Form 4790. This is the document that is required when an individual is entering the United States in possession of \$10,000.00 or more in currency.

This claim is an indicator that the foreign organization may not exist, or is not actually involved in the start-up of the new office.

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## **Business Plans and Foreign Investments, Continued**

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**Evidence of  
Sufficient  
Physical  
Premises in the  
United States.**

There is no statutory or regulatory minimum for the size of the new office's physical premises. However, the size and nature of the physical premises must be of a sufficient size and type that would enable the new office to perform the initial activities outlined by the business plan during the start-up phase.

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# New Office Extensions

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## Introduction

The petitioner can request an extension of the L1B or L1A's nonimmigrant status prior to the expiration of his or her L1 nonimmigrant status.

A new office petitioner can frequently establish an L1 beneficiary's eligibility for an initial one year approval by the submission of documentation that is almost entirely prospective in nature. However, at the end of the L1 beneficiary's one-year approval, the new office must be shown to have grown to a point where he or she is primarily engaged in a managerial, executive or specialized knowledge capacity.

The petitioner must still continue to meet all of the regular L1 eligibility requirements.

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## Validity Dates

The petition may be approved for a period of time not to exceed two years.

[See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

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## Required Evidence

The petitioner must provide the following evidence in support of a new office extension petition:

- Evidence that the U.S. and foreign entities are still qualifying organizations;
- Evidence that the U.S. entity has been actively engaged in the provision of goods and services for the previous year;
- A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- A statement describing the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees when the beneficiary is to be employed in a managerial or executive capacity, and;
- Evidence of the financial status of the U.S. operation.

[See 8 CFR 214.2(l)(14)(ii)]

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## New Office Extensions, Continued

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### Additional Evidence

While the evidence described above is required by regulation, additional evidence may be requested in order to establish the beneficiary's eligibility for the extension.

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### Renewed New Office Approvals

In general, a new office extension petition should be denied if the U.S. organization is not doing business in a manner that would require and support the employment of the beneficiary in a primarily managerial, executive or specialized knowledge capacity.

However, there are instances in which the start-up of the new office is hampered by circumstances that are beyond the petitioner's control. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
  - A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
  - Litigation involving the new office which prevented the normal functioning of the business.
- 

### Petitioner Cites Unanticipated Circumstances

Regulations allow for new office filings to be approved for up to one year to establish a new office and commence doing business. In instances where the petitioner cites unanticipated circumstances that hampered the new office's ability to commence doing business, the new office petition may be classified as a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year. This provides the petitioner with the full one year to establish the new office and commence doing business.

[See 8 CFR 214.2(l)(1)(ii)(F) and 8 CFR 214.2(l)(ii)(F)]

A limited approval should only be granted where the petitioner has adequately corroborated the nature of the events that led to the new office's difficulties. The limited approval should not be granted where there is evidence of fraud or misrepresentation.

**NOTE:** The Service should not request evidence of unanticipated circumstances, unless the petitioner has first made this claim.

---

# General Processing

## L-1 Process for LPRs

**L-1 Process for LPRs** Refer to the table below to determine the action to take on an L-1 petition when the beneficiary adjusts or has adjusted to Lawful Permanent Resident (LPR) status.

If the beneficiary...	Then ...						
Adjusts to LPR status after the requested start date on the petition,	Grant L-1 validity up to date of adjustment.						
Adjusted prior to the requested start date, and seeks consular notification,	Adjudicate on merit. Notate the KCC copy to indicate the alien is an LPR.						
Adjusted prior to requested date start date, and seeks EOS/COS,	Send an RFE questioning the alien's intent to be a nonimmigrant;						
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">If the response indicates...</th> <th style="text-align: left;">Then ...</th> </tr> </thead> <tbody> <tr> <td>Intent to abandon LPR status,</td> <td>Change the petition to consular notification and indicate on the KCC copy that alien will abandon LPR status at consulate.</td> </tr> <tr> <td>No intention to abandon LPR status,</td> <td>Deny the EOS portion of the petition.</td> </tr> </tbody> </table>	If the response indicates...	Then ...	Intent to abandon LPR status,	Change the petition to consular notification and indicate on the KCC copy that alien will abandon LPR status at consulate.	No intention to abandon LPR status,	Deny the EOS portion of the petition.
	If the response indicates...	Then ...					
Intent to abandon LPR status,	Change the petition to consular notification and indicate on the KCC copy that alien will abandon LPR status at consulate.						
No intention to abandon LPR status,	Deny the EOS portion of the petition.						

## Extensions

---

**Introduction** The petitioner may request an extension of an L1B or L1A's nonimmigrant status by filing a petition prior to the expiration of the beneficiary's L1B or L1A status.

[See 8 CFR 214.2(l)(14)]

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**Validity Dates** The petition may be approved for a period of time not to exceed two years.

[See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

---

**Required Evidence** Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director.

[See 8 CFR 214.2(l)(14)]

<b>If the extension petition is being filed by...</b>	<b>Then...</b>
A large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of the beneficiary's eligibility.
A small and/or young, unknown organization,	The issue of the beneficiary's eligibility may require the submission of credible, documentary evidence in order to make a determination.

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*Continued on next page*

## Extensions, Continued

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### Previously Approved Petition

Information that is discovered at the time of an L1 extension petition might show that the beneficiary was never eligible for the benefit that was previously received. The Service is under no obligation to establish that the previously approved petition was approved in gross Service error.

Further, the Service is not obligated to approve applications or petitions where eligibility has not been demonstrated.

- *Matter of M--*, 4 I&N Dec. 532 (A.G.1952; BIA 1952)
  - Pearson V. Williams, 202 U.S. 281 (1906)
  - *Mannerfrid V. Brownell*, 145 Supp. 55 (D.D.C. 1956), affirmed 238 F. 2<sup>nd</sup> 32 (D.C. Cir. 1956), Lazarescu V. United States, 199 F. 2<sup>nd</sup> 898 (4<sup>th</sup> Cir. 1952)
  - U.S. Ex. Rel. Vajta V. Watkins, 179 F. 2<sup>nd</sup> 137 (2<sup>nd</sup> Cir. 1950)
- 

### Same/Same RFEs

SISO authorization is needed if an RFE will be issued on a petition that is requesting an extension with the same petitioner for the same beneficiary. The officer must clearly articulate the reason the RFE is needed, such as; material error, changed circumstances or new material information.

SISO authorization is **not** needed in the following scenarios:

- New office extensions when there has been a change in the:
  - corporate relationship, or
  - nature of the beneficiary's employment, such as job duties, a change from L1B to L1A or vice versa, or a change in the organizational structure.
- L1B beneficiary stationed primarily at the worksite of an employer other than the petitioner (see William R. Yates memo dated July 28, 2005, regarding the L-1 Reform Act of 2004.)
- Beneficiary previously entered under a blanket petition. Although these extensions do not always require an RFE, these petitions may need closer scrutiny because USCIS has not previously examined the beneficiary's qualifications or the proposed U.S. position.

[See William R. Yates memo of April 23, 2004, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity.*]

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# L1 Limitations of Stay

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## **Introduction**

An alien who has spent five years in the United States in a specialized knowledge capacity, or seven years in the United States in a managerial or executive capacity under section 101(a)(H) and/or (L) of the Act may not be readmitted to the United States under section 101(a)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior year.

- No new petitions may be approved where the alien has spent the maximum time period allowed in either the H or L classification.
- Brief trips to the United States for business or pleasure are not considered to interrupt the required one-year outside the United States.

[See 8 CFR 214.2(l)(12)(I)]

---

## **L2 Dependents**

Dependents are eligible for L-2 status extensions through the proper filing of a Form I-539 with fee, and whenever possible, filed concurrently with the principal's Form I-129.

Any time spent in L-2 status does not count against the maximum allowable periods of stay available to principals in L-1 status.

*[See Aytes Memo of December 5, 2006, Guidance on Determining Periods of Admission for Aliens Previously in H-4 or O-2 Status; Aliens Applying for Additional Periods of Admission beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year]*

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*Continued on next page*

## L1 Limitations of Stay, Continued

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### General L1 Limitations of Stay

The following table describes the general L1 limitations of stay for L1 nonimmigrants. No further extensions may be granted.

[See 8 CFR 214.2(l)(15)(ii)]

If the Classification is...	Then the Maximum Period of stay is...
L1A, Manager or Executive	7 years
L1B, Specialized Knowledge	5 years

---

### Limitation of Stay: Exception

The limitations of 8 CFR 214.2(l)(12)(i) do not apply to aliens who:

- Do not reside continually in the United States, and
- Whose employment in the United States is seasonal, intermittent, or consists of an aggregate of six months or less per year.

In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment.

[See 8 CFR 214.2(l)(12)(ii)]

---

### Evidence that Beneficiary Qualifies for Exception

The petitioner must provide clear and convincing proof that the beneficiary qualifies for an exception, to include:

- Arrival and departure records,
  - Copies of tax returns, and
  - Records of employment abroad.
- 

### Memo Regarding Recapture of Time

Refer to the October 21, 2005, Michael Aytes memo, Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants, covering the recapture of time.

**NOTE:** To access the "Date calendar" online, type the following site into the address line of Internet Explorer:

<http://www.timeanddate.com/date/duration.html>.

Enter the start and end date and then click "Calculate duration"

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*Continued on next page*

## L1 Limitations of Stay, Continued

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**Limitation of  
Change of  
Status from  
L1B to L1A**

When a beneficiary is initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years.

The beneficiary must qualify for the L-1A classification at the time of filing.

If the six month rule applies, and the beneficiary qualifies as an L-1A, then approve the classification but deny the EOS request and send the case for consular processing. As long as the beneficiary is functioning as an L-1A, the petition should be approved for consular processing.

If the petition is filed outside the six month window, but is now inside the window at the time of adjudication, despite how the regulation reads, approve the petition and EOS, if otherwise approvable.

There may be times the petitioner will request recapture of time to put themselves outside the six month window. This is permitted.

Beware of L-1A extensions where the prior approval was limited to a short period-this could be an indicator that they were not eligible to extend beyond the five year mark due to regulatory requirement.

The Service must have approved the change to managerial or executive capacity in an amended, new, or extended petition at the time the change occurred.

[See 8 CFR 214.2(l)(15)(ii)]

**NOTE:** A change from L1A to L1B or L1B to L1A is not a change of status. A change from one to the other with the same employer will be a change in employment and possibly an extension.

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## Dependent(s)

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**Dependent(s) of the L-1** The spouse and unmarried dependent children (under the age of 21) of an L1 beneficiary may be granted the L2 classification and be given the same validity dates as the L1 principal.

L1 dependents are not included on the L1 petition. Rather, they must apply for an L2 visa at the consulate based on the L1 principal's petition, or they can file a Form I-539 in order to change or extend their nonimmigrant status.

Dependent minor children can be given the same validity dates as the L1 principal up until the day they marry or reach the age of 21.

The spouse and dependent minor children may not accept employment in the United States unless otherwise authorized under the Act.

[See 8 CFR 214.2(l)(17)(v)]

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**Dependents May Attend School**

L-2 dependents may attend school without a COS to student status. This information is found in 8 CFR 248.3(e).

---

**L's Status Contingent upon Qualifying Employment**

The continuation of the L1 principal's status and the L2 dependent's status hinges on the L1's qualifying employment with the petitioner. When the employer/employee relationship is terminated, or the nature of the employment no longer qualifies for L1 purposes, the L's status is no longer valid.

---

# Bundled Petitions

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## Introduction

Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”. All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.

The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.

---

## Petitioner Submissions

Petitioners can submit:

- More than one bundle of L-1B petitions if there is more than one specialized occupation related to a project.
  - L-1A petitions with the bundle if the L1A will be managing the L1B beneficiaries.
  - Form I-539 for any qualifying dependents.
- 

## Adjudicating Bundled Petitions

Once received, a bundle, or a group of connected bundles, will be banded together as one unit and be included as part of an officer’s work order.

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time. For example, if bundled petitions require RFEs, all of the RFEs will be issued the same day.

**NOTE:** A bundle of petitions must remain together and move throughout the VSC as one unit.

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## Does not meet bundle criteria

If one or more of the petitions in a bundle do not meet the bundling criteria or do not require the same officer action as the rest of the bundle, remove those petitions from the bundle and adjudicate as single filings.

**Example:** If it does not appear that one of the beneficiaries included in the bundle will be working on the same project as the other beneficiaries, remove that petition from the bundle.

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*Continued on next page*

## **Bundled Petitions, Continued**

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**Timely  
Adjudication**

If a bundle or group of related bundles is so large that you will not be able to timely adjudicate the petitions, notify your supervisor.

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# Iranian Sanctions

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## Iranian Sanctions

On May 6, 1995, the President of the United States promulgated Executive Order 12,959, entitled "*Prohibiting Certain Transactions With Respect to Iran*" [EO 12,959, 60 Fed. Reg. 27, 797 (1995)]. The Executive Order imposed economic sanctions against Iran that prohibit, among other things, the importation of Iranian services where the alien is performing such service as an agent, employee, or contractor of the Iranian government or a business or other organization in Iran. The Office of Foreign Assets Control (OFAC) published regulations in 1999, which clarified the sanctions, whereby an I-129 petition for an Iranian citizen may be approved as long as the Iranian is:

- Not normally a resident of Iran, **AND**
- Not working in a way that is connected to:
  - The Iranian government (excluding diplomatic and consular services),
  - An Iranian business,
  - An Iranian organization, or
  - Any person located in Iran.

[31 CFR 560.306(d)]

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# NAFTA Petitions

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**Introduction** VSC routinely receives L1 NAFTA petitions from POEs and PFIs in order for them to be updated into CLAIMS. These petitions have already been adjudicated and all the information on the petitions (including approval stamp) has been completed AND the beneficiaries have already entered the country.

---

**Where to File** The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or;
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

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**Updating in CLAIMS/GUI** All approved NAFTA cases adjudicated at a Class A POE on the United States-Canada land border or PFI in Canada are forwarded to the Service Center within the same Service region for CLAIMS updating. The AST is responsible for the approval updating of these cases in CLAIMS. These files are routed directly from Data Entry to the AST.

If an approved NAFTA filing bearing the approval stamp and a bar code is received by an ISO and GUI does not show the approval notice as being sent, then a CFF should be prepared and the file placed in the CFF slot in the AST sort area.

The only time an ISO will need to take action on a NAFTA case is if the I-129L was not approved at the POE/PFI and was routed to the VSC with a memo recommending denial. The ISO would then prepare an Intent to Deny.

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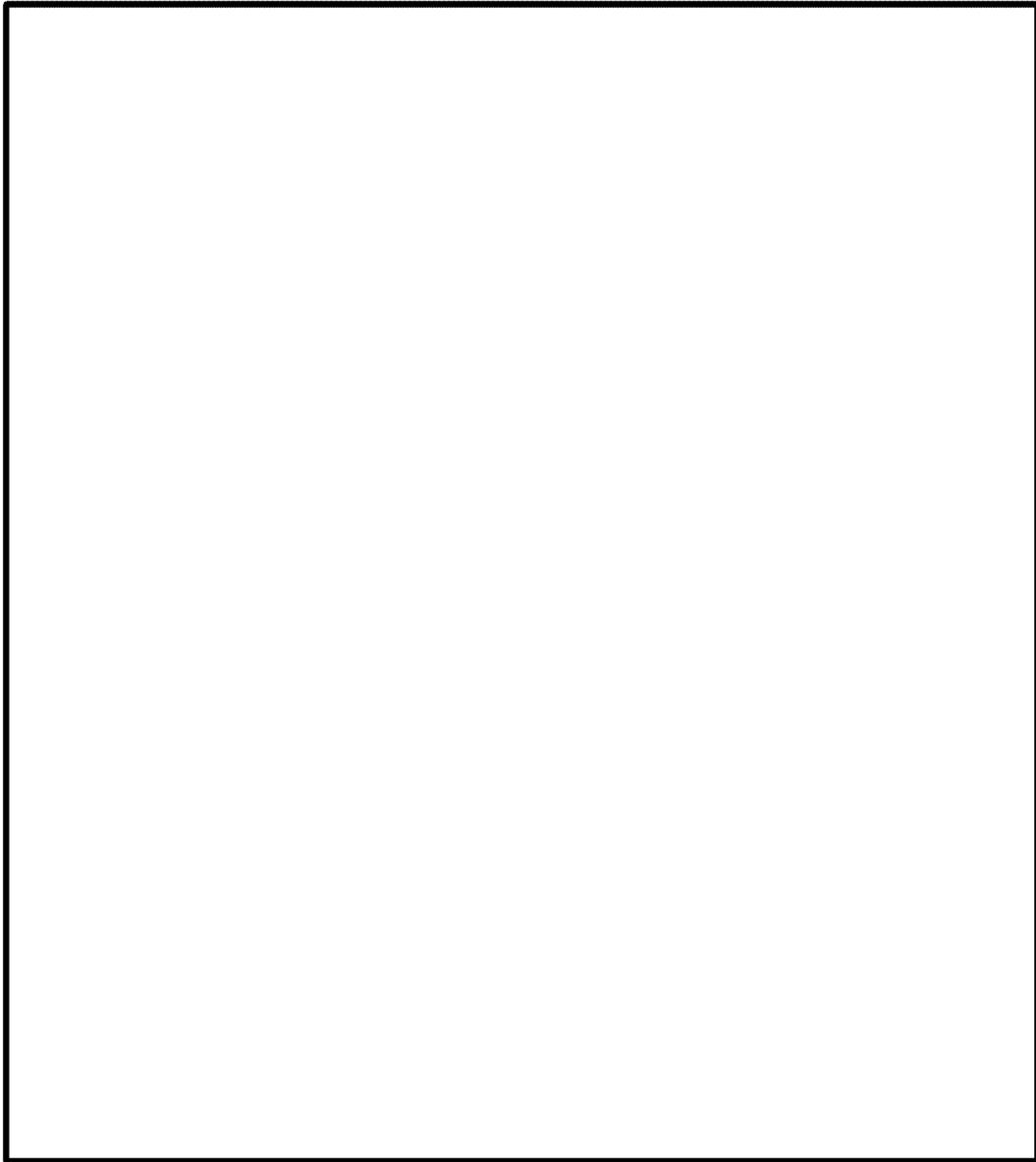
# Detecting L1 Fraud or Misrepresentation

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## **Introduction**

This section describes some of the fraud and misrepresentation indicators and approaches for L-1 petitions that might help reveal the presence fraud or misrepresentation in the record.

## **Why is the L1 Classification an Attractive Vehicle for Benefits Fraud?**



(b)(7)(e)

## **Officer's Responsibility**

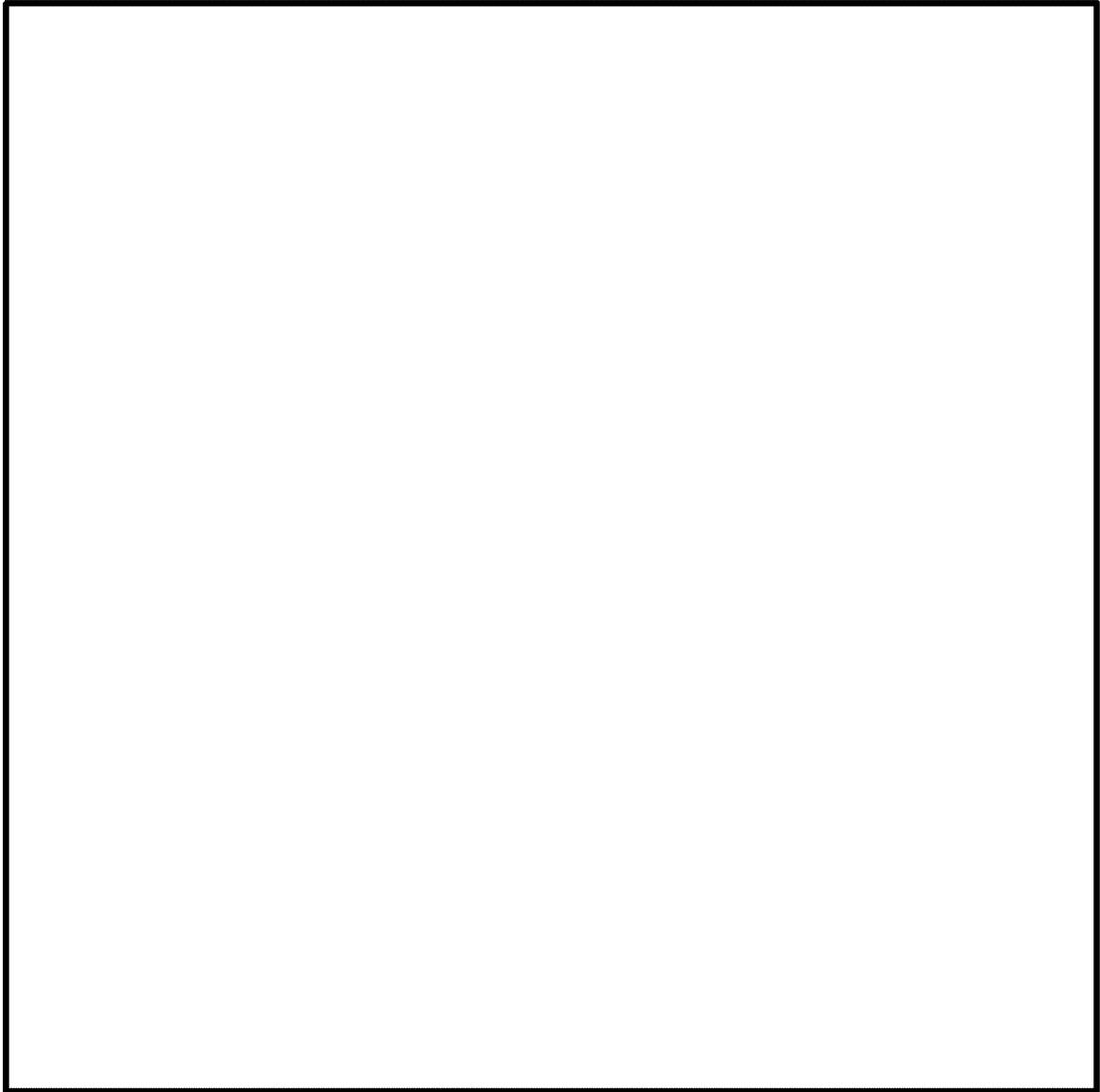
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## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Beneficiary**

Fraud and misrepresentation indicators relating to the beneficiary may include, but are not limited to:



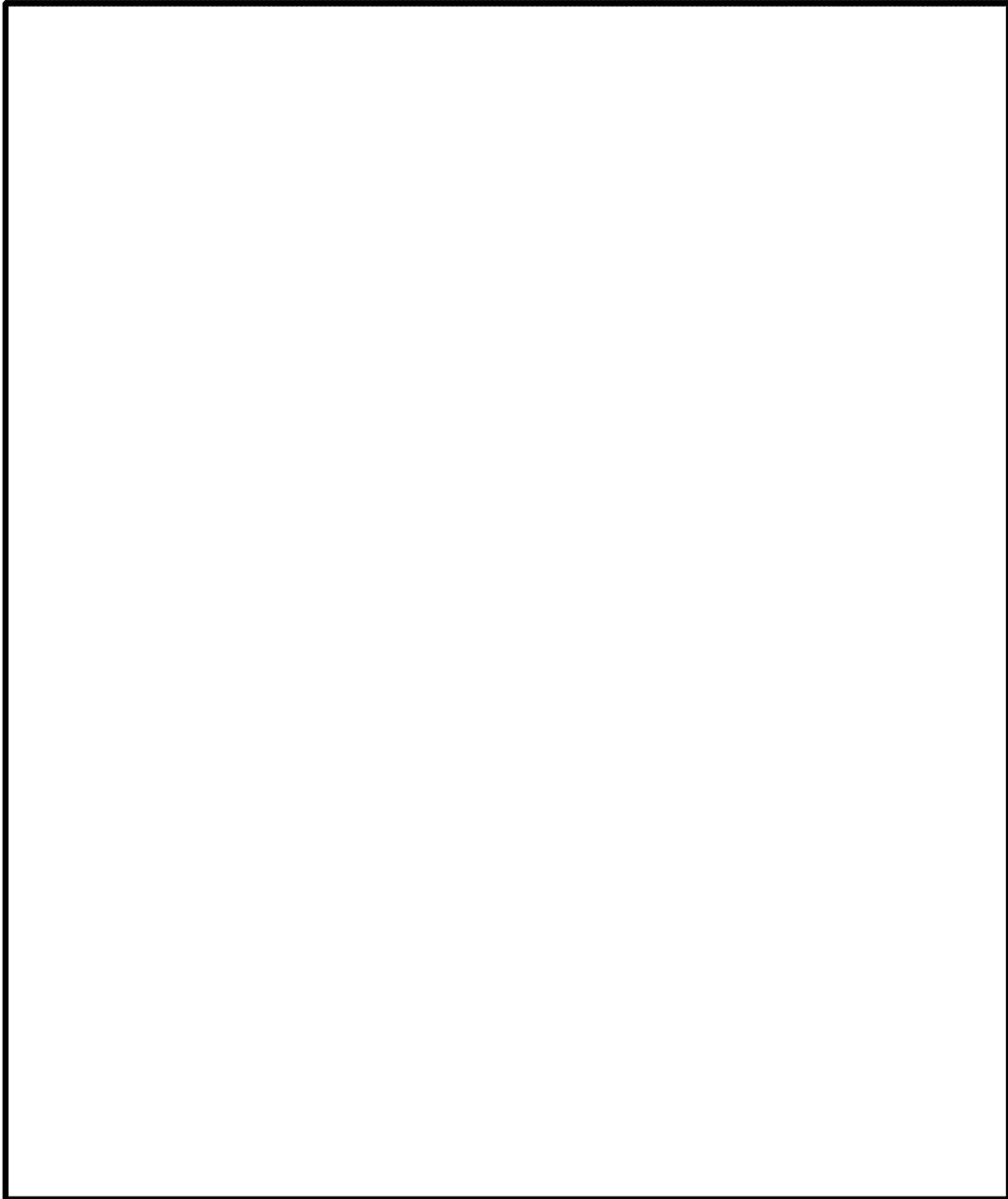
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## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
U.S or Foreign  
Business**

Fraud and Misrepresentation indicators relating to the U.S. or foreign business may include, but are not limited to:



*Continued on next page*

# Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Petitioner's  
Immigration  
History**

Fraud and misrepresentation indicators relating to the petitioner's immigration history may include, but are not limited to:



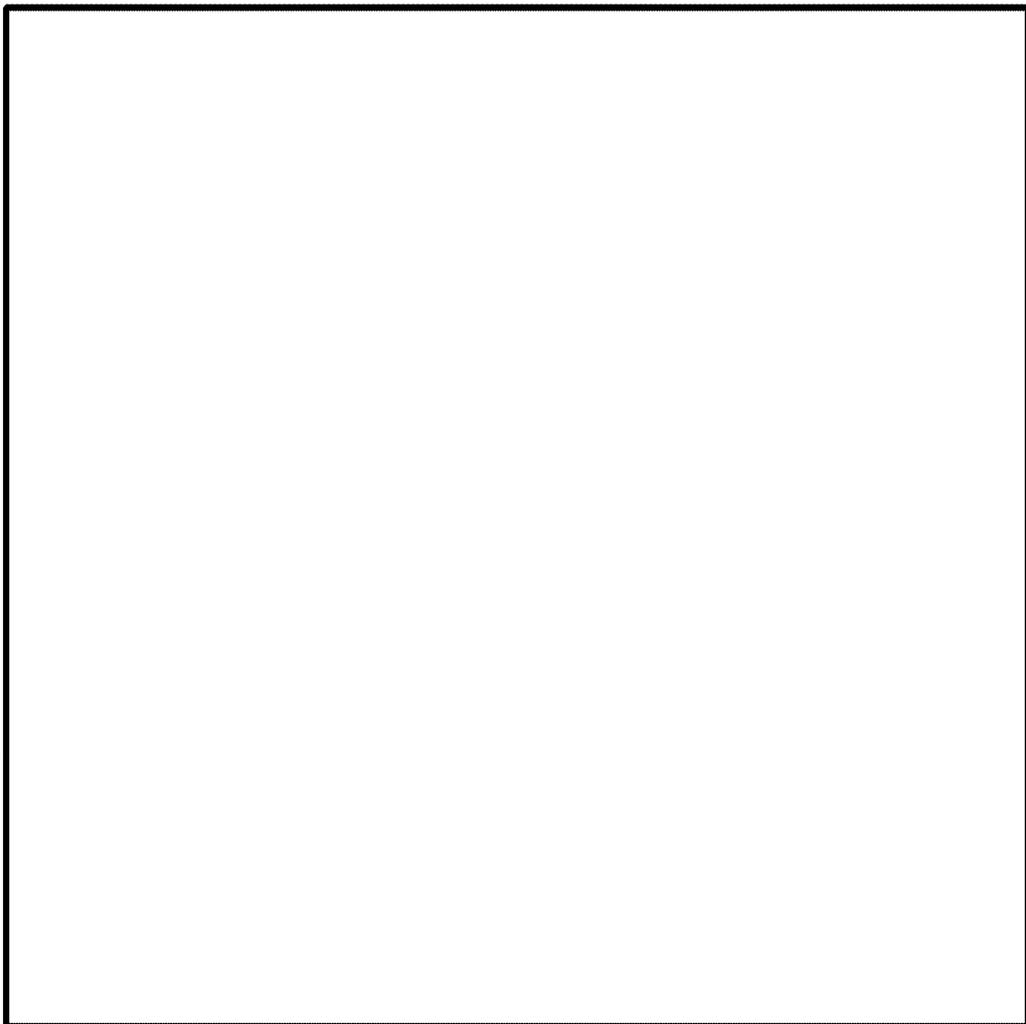
(b)(7)(e)

**Adjudicative  
Approaches**

There are a number of adjudicative approaches to take when there is a question of fraud or misrepresentation in the record.

**Casebook**

**Fraud Database  
(Casebook)  
Definition**



(b)(7)(e)

**Casebook  
Query  
Requirements**

*Continued on next page*

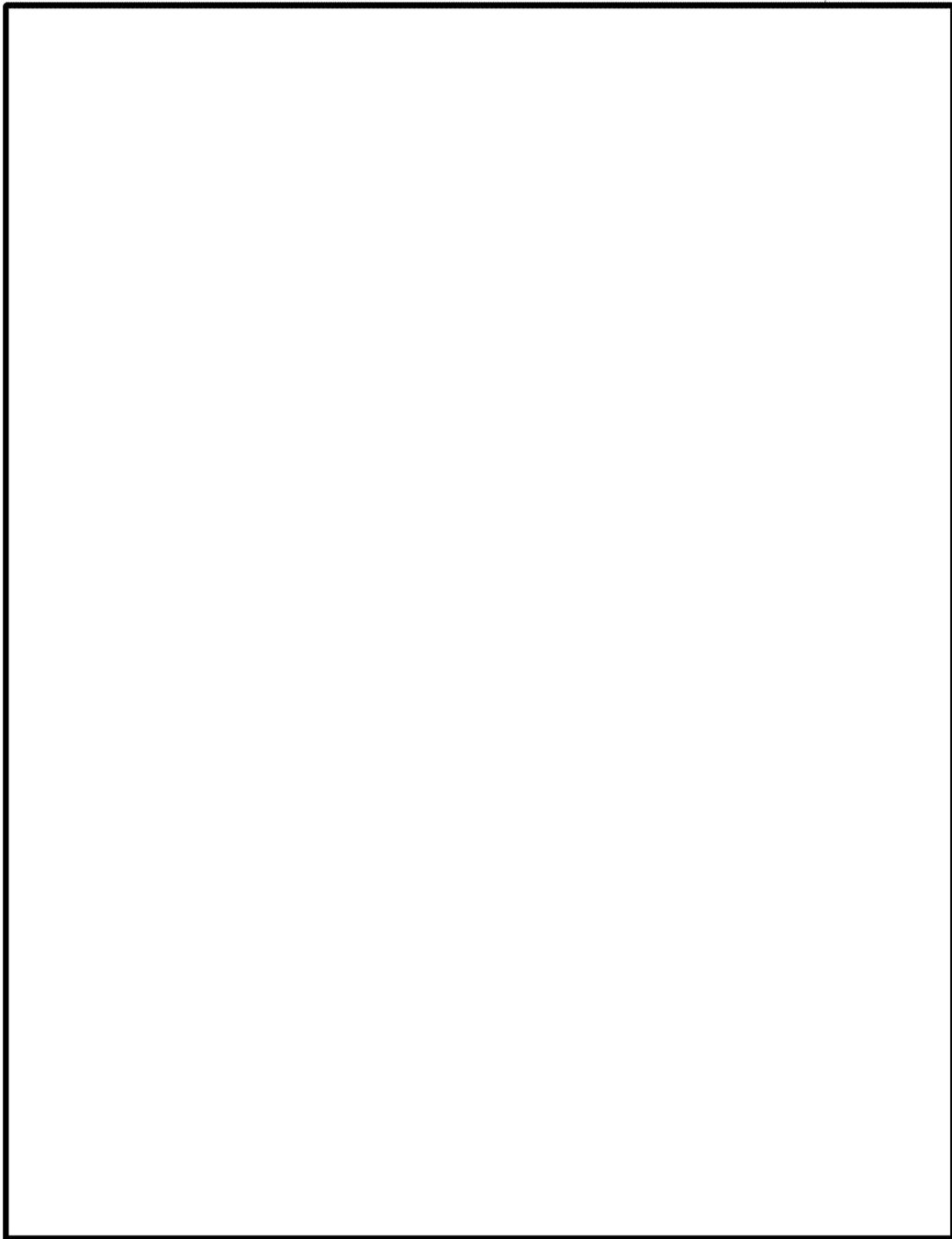
## Detecting L1 Fraud or Misrepresentation, Continued

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**How to Access  
Casebook**

(b)(7)(e)

**How to Run a  
Query in  
Casebook**



**Systems Checks** There are several of electronic systems available to aid in the detection of fraud or misrepresentation including the following:

- GUI
  - Mainframe CLAIMS
  - SQ94/ADIS
  - CIS
-

## Name Conventions for GUI, SQ94, ADIS and CIS

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**Petitioner's  
Name**

The petitioner's name should be entered exactly as it appears on the petition with the exception of the words "Inc., Ltd., LLC, PLC, or Corp". In addition, the words "International and Group" are usually abbreviated to "Intl and Gr".

If the petitioners name does not even bring up the petition that is being adjudicated, it might be helpful to wand in the receipt file number and see what conventions were used by Data Entry to enter the petition into GUI/CLAIMS.

---

**Beneficiary's  
Name**

The beneficiary's name and date of birth should be entered exactly as it appears on the petition. However, keep in mind that some countries list the day of the month before the month, so June 8, 1999 may be listed either as 06/08/1999 or 08/06/1999. In some instances it may be wise to try it both ways.

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**Asian Names**

Asian first names may be listed in reverse order or the first name may or may not have a space in it. For example. Li Yu Wen may be Li Yu Wen, Liyu Wen, Yu Wen Li, or Yuwen Li.

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**Hispanic  
Names**

Hispanic names may or may not use the first or second last name. For example, Maria Lopez Garcia may be Maria Lopez Garcia, Maria Lopez or Maria Garcia.

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# Name Discrepancies

**Introduction** This section pertains to all I-129 petitions and I-539, I-765 and I-131 applications where there are discrepancies between the name the petitioner/applicant entered on the petition/application and the name shown on the applicant or beneficiary's passport and/or visa.

**Reconciling Name Discrepancies** Use the chart below to determine how to reconcile name discrepancies between the petition or application and a passport and/or visa.

**NOTES:**

- If a copy of the alien's passport or visa was not included with the filing, do not RFE for a copy of the passport or visa unless those documents are necessary to adjudicate the case.
- All name changes made in GUI and on an application or petition must be run in TECS Manifest.

Scenario	Resolution
Visa and/or passport names are different than the Petition/Application name but it can be verified the individuals named are the same person.	Enter the visa and/or passport name in GUI and on the petition/application  <b>Example:</b> GUI and petition/application show the alien's name is Sanchez, Juan. Passport shows the alien's name as Sanchez Diaz, Juan. Enter the passport name in GUI and on the petition/application
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name different, and</li> <li>• Visa was issued <u>after</u> the passport</li> </ul>	No changes necessary, visa was issued after the passport was issued.
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name is different, and</li> <li>• Visa was issued <u>before</u> the passport</li> </ul>	Change the name on the petition/application and GUI to match the passport.

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## Name Discrepancies, Continued

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**Reconciling  
Name  
Discrepancies  
(continued)**

Scenario	Resolution
<ul style="list-style-type: none"><li>• Passport and petition/application names are the same,</li><li>• Visa name is different, and</li><li>• Visa was issued <u>after</u> the passport</li></ul>	Change the name on the petition/application and GUI to match the visa.
<ul style="list-style-type: none"><li>• Passport and petition/application names are the same,</li><li>• Visa name is different, and</li><li>• The passport was issued <u>after</u> the visa</li></ul>	Change the name on the petition/application and GUI to reflect the name on the passport.

**NOTE:** If the passport and visa show the alien has only one name, regardless of whether it is a given name or a family name, then:

- The name should be entered in the Last Name field in GUI, and
  - “No Name Given” should be entered in the First Name field in GUI
-

## National Systems

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### GUI

The GUI database can be searched by the name of the petitioner or by the beneficiary's name. In addition, it may be helpful to search by the name of the foreign entity as foreign petitioners may file L1 petitions.

GUI can identify the following information:

- The type and number of petitions and applications that have been filed,
  - Whether any other petitions or applications have been pending, and
  - Whether the petitioner or the beneficiary has had previous denials or revocations of petitions and applications.
- 

### Mainframe CLAIMS

Mainframe CLAIMS can be accessed through the National Systems and can provide the same information as GUI for all four Service Centers. In addition, it also provides information about petitions and applications filed at select district offices.

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### ADIS

Effective April 1, 2013, Officers are required to check the **Arrival Departure Information System (ADIS)** to confirm arrival and departure information. Officers are no longer required to check the TECS SQ94 system to confirm arrival and departure information.

Officers shall review Arrival/Departure information for all applicants/beneficiaries not more than 15 days prior to rendering a final decision on the following:

- Approvals and denials of a change of nonimmigrant status (i.e., Forms I-539 and Form I-129) and
- Denials only for extension of stay.

The file must include either a copy of the system printout or a notation indicating the date of the check or that there is no record of the applicant/beneficiary in the system. Screen prints should be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print.

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*Continued on next page*

## National Systems, Continued

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### ADIS Access

ADIS can be accessed through the ECN Adjudications Home page on the right hand side of the page and provide the following information about the beneficiary's:

- Entries and departures from the United States
- Methods of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If a search by I-94 #, Passport # or Name/DOB does not produce a record, officer may still check SQ94 for a record.

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### SQ94

SQ94 can be accessed through the National Systems and can provide information about the beneficiary's:

- Entries and departures from the U.S.
- Method of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If SQ94 is used, a screen print of the query must be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print. The date of the SQ94 query must be within 15 days of the final adjudicative action.

If a search by I-94 # or Name and DOB does not produce a record, it may be helpful to search by the beneficiary's passport number. In addition, dated information may be archived in SQ94, so a search in the archive portion of SQ94 may produce a better result.

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## National Systems, Continued

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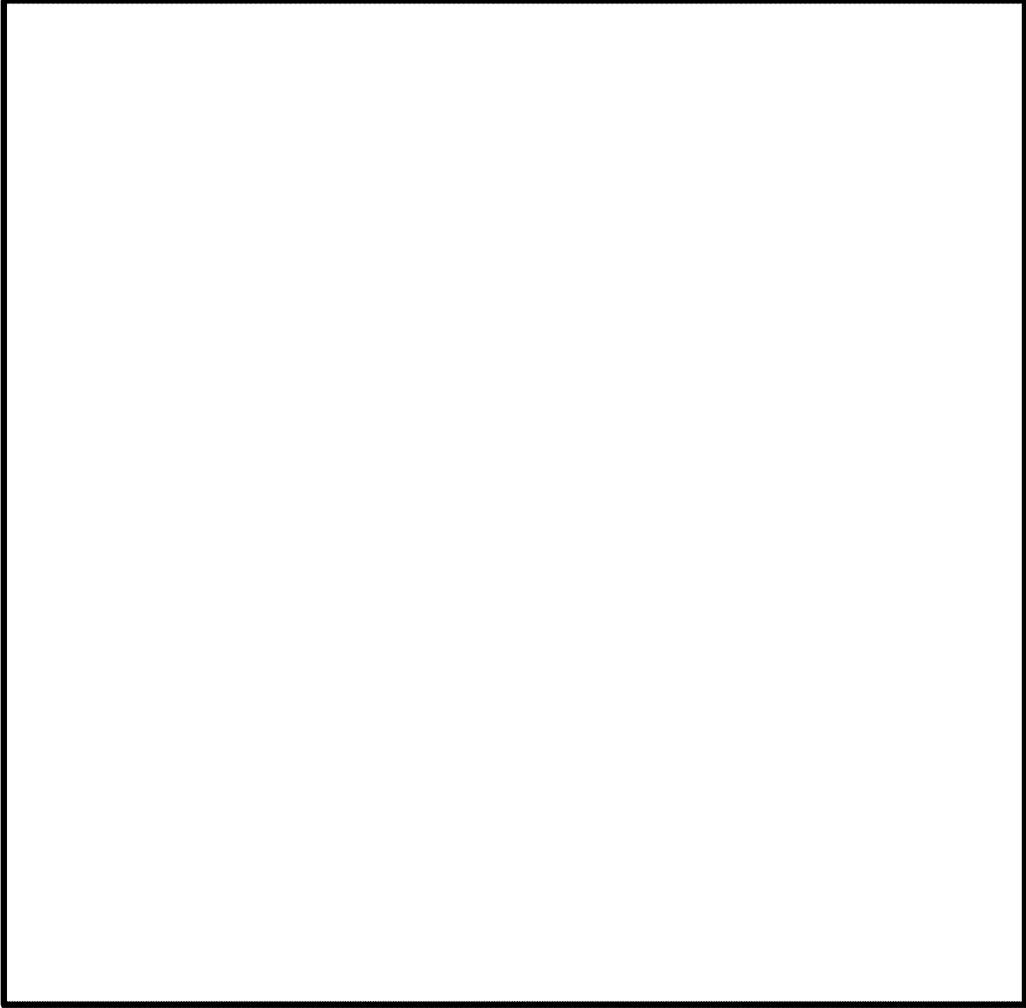
### CIS

A CIS query is required if you discover that the beneficiary has an A-file number. CIS can be accessed through the National Systems and can provide information about the beneficiary's alien registration number and his or her pending or completed adjustment, asylum, or removal proceedings.

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### VIBE

(b)(7)(e)



*Continued on next page*

# National Systems, Continued

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**VIBE**  
(continued)

<b>If VIBE shows...</b>	<b>And Evidence in the Record...</b>	<b>Then...</b>  (b)(7)(e)
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# I-129 L-1 Blanket Petition

## Overview

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**Introduction** Blanket L petitions are adjudicated based upon the same general principles used in adjudicating the qualifying relationship of individual L petitions. However, there are some differences. The following is a brief summary of blanket L petitions.

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**Who May File the Blanket L-1** The blanket L-1 procedure is intended for larger international organizations. Only entities involved in commercial trade or services may use the blanket petition. This means that noncommercial organizations, like churches, may not use the blanket petition.

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**Blanket Regulation** 8 CFR 214.2(l)(4)  
INA 214(c)(2)(A)

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**Appeal Rights** The denial of the Form I-129 Blanket petition is appealable to the AAO, just like the denial of any other L-1.

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# Qualifying Company Relationships

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**Introduction** A U.S. petitioner may file a blanket petition to receive continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations. The blanket petition is filed on Form I-129. When the Form I-129 is adjudicated to obtain approval of foreign and U.S. relationships, the adjudicator's only concern are the qualifying company relationships. No alien beneficiary is named on the Form I-129 blanket petition.

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**Petitioner Requirements**

- The petitioner and each of the entities included are engaged in commercial trade or services,
- The petitioner has an office in the United States that has been doing business for one year or more,
- The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates, **and**
- The petitioner and the other qualifying organizations have obtained approval of petitions for at least 10 "L" managers, executives, or specialized knowledge workers during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a U.S. work force of at least 1,000 employees.

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**Establish Ownership and Control of ALL Entities**

The petitioner lists all the foreign entities and all of the U.S. entities that they want to have approved and establishes who has ownership and control of all of the entities. Only those entities meeting the definition of a qualifying organization can be approved.  
[See 8 CFR 214.2(l)(1)(ii)(G)]

If there is question about ownership and/or control for any of the petitioned entities issue an RFE for necessary documentation to help make a determination.

All approvable entities will be named on a list to be included with the released approval notice of the petition.

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**Approvals**

If the petitioner meets the filing requirements and it is determined that there are qualifying entities, a list of all qualifying entities will be prepared. The lists will be sent with the released I-797 approval notice for the petition.

The approval notice means that it is permissible for any of the qualifying entities to petition to transfer an employee from any approved foreign entity to any approved U.S. entity.

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*Continued on next page*

## Qualifying Company Relationships, Continued

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### Extension of Blanket

A blanket extension may be filed six months prior to the expiration of the initial blanket on Form I-129.

**NOTE:** If the petitioner fails to file for the extension prior to the expiration of the initial blanket approval or if an extension request is denied, the petitioner and its qualifying organizations must wait three years to file another blanket. In the interim, individual petitions must be filed by these organizations for beneficiaries.

[I-129 Filing Instructions]

---

### Blanket Extension Requirements

The documentation required to support the blanket extension include:

- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
    - Positions held during that period
    - The employing entity
    - The dates of initial admission and final departure, if applicable, of each beneficiary
  - A statement from the petitioner indicating whether it still meets the blanket criteria.
  - Documentation to support any changes in approved relationships or additional qualifying organizations.
-

# Approvals of L-1 Blanket Petitions

## Updating

When ...	Then ...
When approving a case, you must:	1. Complete the approval information blocks on the petition.
	2. Indicate on the petition the classification, LZ.
	3. Indicate the dates of approval/validity dates (either <b>three years (initial filing)</b> or <b>"INDEFINITELY" (extension)</b> ).
	4. Make a notation <b>"BLANKET PETITION"</b> in the block entitled <b>"PARTIAL APPROVAL."</b>
	5. Stamp the petition with your approval stamp and sign it.
	6. Forward the second copy of the LZ petition to the KCC along with a copy of the list of qualifying entities.

**NOTE:** Make a photocopy of the list of qualifying entities that the petitioner wishes to have on the blanket petition. This will be included with the approval notice mailing. Keep original copy of qualifying entities list in the file under the original petition.

If denying any of the qualifying entities on the list; place white out tape over the entities and photocopy the list. Notate in the **PARTIAL APPROVAL** block that some entities were deleted from the list.

## Validity Dates Overview

An initial blanket petition is approvable for three years. If amended blanket petitions are approved during this validity period, the validity period end date will be the same as the end date of the original approval. Blanket extension petitions may be filed six months prior to the expiration of the initial three year validity period. If the blanket extension is approved, the validity period will begin the day after the expiration of the initial approval to **"INDEFINITELY"**.

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## Approvals of L-1 Blanket Petitions, Continued

---

**Validity Dates  
for Initial  
Admission**

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (if both the requested date **and** initial FROM date on the petition has passed)

**TO:**

- 1) the date listed on the petition or
  - 2) the requested time (i.e., three years-from date of approval)
- 

**Validity Dates  
for Extension of  
Stay with no  
Changes/Amen  
dments**

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (whichever is later)

**TO:**

- 1) the date listed on the prior approval notice if the prior approval is still within 3 year initial time period.
  - 2) "INDEFINITELY"
- 

**Validity Dates  
for Extension of  
Stay with  
Changes/Amen  
dments**

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (whichever is later)

**TO:**

- 1) the date listed on the prior approval notice if prior approval is still within 3 year initial time period or
  - 2) "INDEFINITELY" if prior approval was "INDEF"
- 

**Blanket  
Approval  
Notices**

**ALL** blanket approval notices will be a release so that the AST member can attach the list of qualifying entities to the blanket approval notice.

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**Routing  
Petition after  
Approval**

Following **APPROVAL**, the petition remains in the file and the file is placed on the shelf like any other approved nonimmigrant petition.

---

## Beneficiaries of L-1 Blanket Petitions

---

**Introduction** When one of the approved U.S. entities wants to employ a particular alien from an approved foreign entity, the U.S. entity completes a Form I-129S Nonimmigrant Petition Based on Blanket L Petition.

The information on the Form I-129S, and any supporting documents, must establish that the alien was employed abroad for the immediately prior year in a qualifying capacity, and must establish that the alien will be employed in a qualifying capacity in the United States.

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**Qualifying Capacity** For blanket L-1 purposes, a qualifying capacity is:

- 1) Managerial
- 2) Executive, or
- 3) Specialized knowledge professional

A specialized knowledge professional is what it appears to be, a specialized knowledge employee who is a professional.

---

**Alien Abroad** The alien abroad uses the Form I-129S, with the Form I-797 approval notice for the approved Form I-129 blanket petition to apply for an L-1 visa at an **AMCON** or if **CANADIAN** at a **POE or PFI**.

---

**L-1 Beneficiary is in the US** If a blanket L-1 beneficiary is in the United States applying for an extension of stay, Form I-129 is required, **not** Form I-129S.

---

**Extension of Stay** For beneficiaries requesting an L-1 extension of stay, it is very similar to H-1B extensions of stay. The Form I-129 is used.

Remember that the time spent in the United States in H status is taken into consideration when you are deciding whether or not an L-1 has reached his/her maximum total stay.

- The **maximum stay** for a beneficiary in **L-1A** classification is **seven years**.
  - The **maximum stay** for a beneficiary in **L-1B** classification is **five years**.
- 

*Continued on next page*

## Beneficiaries of L-1 Blanket Petitions, Continued

**Processing I-129S Petitions** Though not common, the petitioner may file an individual I-129 petition for EOS and include an I-129S in the filing. The I-129S filing is to allow the beneficiary to move among the qualifying entities included in an approved Blanket petition.

Process the I-129S as follows:

<b>If ...</b>	<b>Then ...</b>
The individual I-129 petition is approved,	Remove the I-129S from the file.
	Stamp and annotate like the I-129.
	Place I-129S, loose, on non-record side of file with a note to mail with the approval.
	Place copy of approved I-129S on record side under the I-129 petition (may need to photocopy I-129S).
	Update CLAIMS/GUI as "Y" to AST.
	Complete appropriate ADJ worksheet indicating the AST: <ul style="list-style-type: none"> <li>• To release Approval Notice, and</li> <li>• That "Form I-129S must be mailed with the approval notice."</li> </ul>
The individual I-129 petition is denied,	No action required on I-129S.
	Leave I-129S on record side.

## Creating New Arrival-Departure Record (Form I-94)

**I-94 Not Issued** There will be times when the beneficiary of an I-129 seeking a change of status to L-1 was not issued an Arrival-Departure Record (Form I-94) upon his or her admission to the United States; e.g., a Canadian citizen admitted as a B-2 visitor. When granting a change of status to a beneficiary who was not issued an I-94 upon admission, you must issue a new I-94 to the beneficiary before an approval notice can be generated.

Follow the steps in the table below to create a new I-94. If you are unable to locate any information in ADIS, but there is evidence that the beneficiary made a lawful entry, such as:

- an admission stamp in the beneficiary's passport,
- an airline ticket,
- a boarding pass, or
- a check of crossing field in SQ11 in TECS.

Step	Action
1	Obtain a new I-94 card from Supply.
2	Discard the top and bottom sections of the new I-94 card.
3	Complete as much information in the middle section of the new I-94 card as possible. At the very minimum, indicate the beneficiary's full name, date of birth, and country of citizenship.
4	Stamp the new I-94 with a replacement I-94 stamp, using security ink, and filling in the following fields on the stamp: <ul style="list-style-type: none"> <li>• "Admitted at:" Write the place of admission,</li> <li>• "On:" Write the date of admission,</li> <li>• "Until:" Write the date admitted to,</li> <li>• "Class:" Write the class of admission,</li> <li>• "This document prepared on" and "At:" Write the date you prepared the replacement I-94/VSC and your NFTS #.</li> <li>• "Last C/S Granted to Class" and "On:" Write new classification granted and date of COS was granted.</li> <li>• "Last E/S Granted to" and "On:" Write new ending date you granted the beneficiary and the date you approved the petition.</li> </ul>

*Continued on next page*

## Creating New Arrival-Departure Record (Form I-94), Continued

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### I-94 Not Issued (continued)

Step	Action
5	Notate the new I-94 number on the petition in Part 3, Item 2.
6	Forward the completed and stamped I-94 for entering into the TEC/NIIS System by: <ul style="list-style-type: none"><li>• Attaching the I-94 to an Adjudications Worksheet,</li><li>• Checking the "Other" block on the Worksheet,</li><li>• Writing "To NIIS" on the line next to "Other", and</li><li>• Placing on the "Mailroom-No Envelopes" shelf in FCU.</li></ul>
7	Enter the new I-94 number into the beneficiary screen in CLAIMS/GUI.

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# Approval Processing Procedures

## Validity Dates for Approval

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**Introduction** This section will outline the various time periods that a petition may be approved for, as well as the limitations of stay for L1 nonimmigrants.

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**Validity Dates** The following table describes the validity dates for L1 petitions.

<b>If the petition is an...</b>	<b>Then the petition may be approved for a period of time up to...</b>
Initial Filing	3 Years
* Initial Filing – New Office	1 Year
Extension Filing	2 Years

[See 8 CFR 214.2(l)(7)(i)(A)(2) and 8 CFR 214.2(l)(15)(ii)]

\* If the requested beginning date of employment has gone by, officers should grant a period of one full year from the date of approval for new office petitions, unless the period requested was for less than one year. In this scenario only the length of time requested would be granted from the date of approval.

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**Expired Dates** Guidance can be found for petitions with expired dates on the Business Division ECN page/Reference Materials/General/Expired Petitions Guidance 07022013. The guidance relates to pending cases that have never had a final decision, consular returns and appeals that have been affirmed by the AAO.

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## Validity Dates for Approval, Continued

### Starting and Ending Dates

Use the below table to determine the starting and ending validity dates of the L1 petition.

If...	Then starting validity date should be...	And ending validity date should be...
<ul style="list-style-type: none"> <li>• New employment, or</li> <li>• Initial L1A or L1B request (Consular notification)</li> </ul>	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed three years.
New Office L1A or L1B	Date of approval or date requested, whichever is later.	Date requested or one full year from starting date.
Change of Status	Date of approval or date requested, whichever is later.	Date requested on petition.
Extension of Stay	Day after expiration of previously approved L1 for that company, or date requested, whichever is earlier.	Date requested on petition, not to exceed two years.
Extension of Stay where there has been a change in the employment conditions	Date of approval or date requested, whichever is later.*	Date requested on petition, not to exceed two years.
Amended petitions where there was a USCIS error with the original notice	Same start date as initially approved petition.	Same expiration date as initially approved petition.
Amended petitions where there has been a change in the employment conditions	Date of approval, date requested, whichever is later.*	Same expiration date as initially approved petition, if no additional time is requested. Date requested on petition, not to exceed two years, if additional time is requested.

\*If the beneficiary's status has expired or will expire prior to the date that you selected as the "from" date, **AND** the petition was filed by the same employer, and then backdate the validity date to the day after the beneficiary's status expires to eliminate gaps. The petition must be timely filed.

# Approval Processing

## Approval Phrases

Use the chart below to determine the appropriate phrase to use when approving an L petition.

CLAIMS #	Approval Phrase	Purpose
1	Send to selected consulate	Petitioner has requested consulate to be notified of the approval.
2	Send to selected consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
3	Workers Visa Exempt-to POE	<ul style="list-style-type: none"> <li>• Beneficiary is not required to have a visa per [8CFR Section 212.1], and</li> <li>• Petitioner has requested POE or PFI be notified of the approval.</li> </ul>
4	Send to different consulate	The consulate requested by the petitioner does not issue the requested visa.
5	To different consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
9	Class and COS approved-Other	<ul style="list-style-type: none"> <li>• Petitioner has requested a change of status for the beneficiary and</li> <li>• Both the classification and change of status are approved.</li> </ul>
12	Class approved; COS denied; consulate/sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the change of status.</p>
13	Class approved; COS denied; POE notified; sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval may be sent together with the notice denying the change of status.</p>

*Continued on next page*

## Approval Processing, Continued

### Approval Phrases (continued)

CLAIMS #	Approval Phrase	Purpose
16	Class and EOS approved-Other	<ul style="list-style-type: none"> <li>• Has requested an extension of stay for the beneficiary (same/same and change of employer requests), and</li> <li>• Both the classification and EOS are approved.</li> </ul>
17	Class approved- Extension denied; Send to consulate	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the extension of stay.</p>
18	Class approved; EOS denied; send to POE	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the extension of stay.</p>
19	Concurrent employment approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is in the United States in valid nonimmigrant status, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>

*Continued on next page*

## Approval Processing, Continued

Approval  
Phrases  
(continued)  
(continued)

CLAIMS #	Approval Phrase	Purpose
20	Change in employment conditions approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is physically present in the United States at the time of filing in a valid nonimmigrant status, <u>and</u></li> <li>• Petition is granting approval for work that has changed with the same employer since prior authorization; or</li> </ul> <p>Amended petitions when:</p> <ul style="list-style-type: none"> <li>• there is no request for additional time, but</li> <li>• there are changes in the employment, such as location, title, etc.</li> </ul> <p><b>NOTE:</b> Do not use this approval phrase when beneficiary will seek consular processing or when petitioner is filing to correct a service error.</p>
22	Concurrent employment approved (abroad)	<ul style="list-style-type: none"> <li>• Beneficiary is outside the United States, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>
24	Workers Visa Exempt-POE notified by Fax/Phone	<p>Beneficiary is not required to have a Visa per [8 CFR Section 212.1]</p> <p><b>NOTE:</b> We no longer fax to the POE. Duplicates are forwarded to the KCC priority overnight.</p>

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## Approval Processing, Continued

### Petition Annotations

Refer to the table below for proper annotations to be made on the Form I-129 petition and on any duplicate copy provided.

Item	Action
Passport name/visa name vs. Name on petition	The beneficiary's name on the petition should be exactly the same as the name appears on the beneficiary's passport/visa depending which was issued more recently. If it is not, you must change the name on the petition and in GUI to reflect the beneficiary's name as it appears on the passport/visa. All names should be run in TECS.
TECS and NSEERS	Perform all necessary TECS, NSEERS, and ADIS/SQ94 checks.
Annotate Classification	<ul style="list-style-type: none"> <li>• "L1A" for executive or manager.</li> <li>• "L1B" for Specialized Knowledge.</li> </ul>
Number employees	Always "1"
Validity Dates	Enter the validity dates. If the validity dates must be limited for any reasons, annotate the reasons in the "Remarks" block on the face of the petition. See <i>Validity Dates for Approval</i> section
Class Approved	Check "Classification Approved" box for all approvals.
Consulate/POE/PFI Notified	If notifying a consulate/POE/PFI: <ul style="list-style-type: none"> <li>• Check "Consulate/POE/PFI Notified" box,</li> <li>• Circle or underline which is being notified, i.e., either the consulate, the POE, or the PFI, and</li> <li>• Write the name of the consulate/POE/PFI on the blank line.</li> </ul>
Extension Granted	Check box if granting an extension of stay.
COS/Extension Granted	Check box if granting a change in classification and an extension of the beneficiary's stay.
Partial Approval	Annotate the partial approval block when denying COS or EOS.
Action Block	Stamp and sign in the action block

Continued on next page

## Approval Processing, Continued

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### Petition Annotations (continued)

**NOTE:** While it is recommended that the job code or approval phrase be annotated on the face of the petition to aid officers in updating, it is not required that the job code or approval phrase be written on the petition. Only GUI must reflect the correct job code and approval phrase. However, it is helpful to have such information on the petition for customer inquiries.

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### Duplicate Petition Copies

All duplicate copies of the I-129 petition and RFE responses, provided by the petitioner, must be sent to the Kentucky Consular Center (KCC) for entry into PIMS.

**NOTE:** You are not required to make a second copy for the KCC if the petitioner has not provided one.

Follow the steps below when forwarding duplicate petitions to the KCC.

Step	Action
1	Attach duplicate RFE response to duplicate petition. If a duplicate RFE response is not provided, attach a copy of the sent RFE to the duplicate petition.
2	Ensure that the EAC# is also on the face of the duplicate being sent to the KCC. Preferably, the EAC barcode should be placed in the lower, right-hand corner. If not, write the number on the duplicate copy.
3	Ensure that any required annotations are included on the duplicate copy, as directed in the <i>Petition Annotations Block</i> above.
4	Stamp and sign the duplicate copy.
5	Place the duplicate petition on the “ <b>I-129 Approved KCC</b> ” shelf in FCU.

### Expedite Requests

To forward duplicate petitions to the KCC for expedite requests, place the duplicate approved petition on the “**I-129 Priority Overnight**” shelf in FCU. The petition will be sent to the KCC via overnight delivery.

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# Processing Procedures (RFE/Denial/Intent)

## Request for Evidence

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**Introduction** There is no specific regulatory guidance for requests for evidence to support L1 petitions. Therefore, the guidance provided by 8 CFR 103 applies.

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**Officer's Responsibility** A request for evidence must be made when the initial review of the record does not establish that all of the eligibility requirements have been met. In addition, a request for additional evidence should be made when:

- The record contains evidence of material fraud or misrepresentation, or
- The officer has knowledge of previous mala fide petitions from the same petitioner.

---

**Contents of an Acceptable Request for Evidence** The request for evidence should:

- Identify each of the areas of eligibility that have not been met by the petitioner, and
- Discuss what is deficient with any evidence already provided, and
- Provide options as evidence that the petitioner could provide to meet the area of eligibility.

---

**Adjudication Tip** By requesting evidence to meet each area of eligibility in the same order each time a request for evidence is written, the officer can immediately identify the areas of eligibility that must be reviewed upon the response from the petitioner.

Areas of eligibility that are not mentioned in the request for evidence need not be re-adjudicated at the time of the submission of additional evidence.

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*Continued on next page*

## Request for Evidence, Continued

**Standard Call-Ups** The Request for Evidence (RFE) standards are contained within the 4000-4999 series of AutoText. They are available in MSWord.

Officers must use Correspondence Generator to prepare and send RFEs. The folders containing I-129L general call-ups and I-129L specific call-ups will appear for an RFE.

As of March 1, 2013, Officers must use the National RFE templates.

Follow the steps below to prepare and process an RFE in CG:

Step	Action
1	Access "Correspondence Generator."
2	Wand or enter the receipt number of the case.
3	Select "RFE"
4	Select initial, additional, or initial and additional.
5	Compose the RFE
6	Print a copy of the RFE and place on the record side
7	Place file on the shelf labeled "EB T/O Shelf" in FCU.

NOTE: Refer to the Correspondence Generator User Guide for more information.

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# Intent to Deny

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## **Introduction**

This section will discuss the regulatory guidance provided for adverse decisions on L1 petitions as specified by the 8 CFR 214.2(l) regulations.

Where there is no specific regulatory provision, 8 CFR 103 provisions apply.

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## **Notice of Intent to Deny**

When an adverse decision is proposed on the basis of the evidence submitted by the petitioner or other information available to the Service, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial.

The petitioner may inspect and rebut the evidence and will be granted 30 days from the date of the notice in which to do so (+ 3 days if by mail). All relevant rebuttal material will be considered in making a final decision.

[See 8 CFR 214.2(l)(8)(I)]

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## **Contents of Intent to Deny**

The notice of intent to deny should contain a:

- Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met,
  - Description of the specific reasons for the Service's determination that the areas of eligibility have not been met, and
  - Discussion of the most persuasive evidence that could be submitted to overcome the reasons for denial.
-

# Denial

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## General

If the petition is denied, the Service will notify the petitioner of its decision within 30 days after the date a completed petition has been filed of:

- The denial,
- The reasons for the denial, and
- The right to appeal the denial.

[See 8 CFR 214.2(1)(8)(ii)]

The denial order should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met.

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## Denial of EOS/COS

In addition to requesting the classification of the beneficiary as an L1 beneficiary, petitioners frequently request an extension of stay or a change of status on behalf of their L1 beneficiaries.

A petition may be approved, but the evidence of record may reveal that the beneficiary is ineligible to extend or change his or her nonimmigrant status. In addition, the petition itself may be denied. In these instances, a separate denial notice must be prepared that addresses the ineligibility of the beneficiary for the requested change or extension of stay.

However, if the petition is to be approved, but the change or extension of status is to be denied solely due to the prior expiration of the beneficiary's status, GUI contains several modified approval notices that inform the petitioner that the petition is approved, but the requested change or extension of stay is denied. In this instance, the modified approval phrase can be used and a separate denial order is not needed.

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## Intent to Revoke and Revocation

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**Revocations** The director may revoke a petition at any time, even after the expiration of a petition. [See 8 CFR 214.2(l)(9)(i)]

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**Automatic Revocations** The approval of any petition is automatically revoked if the petitioner withdraws the petition.  
[See 8 214.2(1)(9)(ii)]

Automatic revocations may not be appealed. [See 8 CFR 214.2(l)(10)(ii)]

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**Revocation on Notice** The director shall send to the petitioner a notice of intent to revoke the petition if he or she finds that:

- One or more entities are no longer qualifying organizations;
  - The beneficiary is no longer eligible under section 101(a)(L) of the Act;
  - A qualifying organization(s) violated requirements of section 101(a)(L) of the act and 8 CFR 214.2(l);
  - The statement of facts contained in the petition was not true and correct, or;
  - Approval of the petition involved gross error.
- [See 8 CFR 214.2(l)(9)(iii)(A)]

The director shall consider all relevant evidence in deciding whether the petition should be revoked. [See 8 CFR 214.2(l)(9)(iii)(B)]

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**Contents of Intent to Revoke** The notice of intent to revoke shall contain:

- A detailed statement of the grounds for the revocation, and;
- The time period allowed for the petitioner's rebuttal (30 days + 3 if by mail).

**NOTE:** As with intents to deny, an intent to revoke notice should identify the most persuasive evidence that could be submitted to overcome the reasons for revocation. Be sure to include the specific reason for the Intent to Revoke.  
[See 8 CFR 214.2(l)(9)(iii)]

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**Status of Beneficiaries** If a petition is revoked, the beneficiary is required to leave the United States, unless the beneficiary has obtained other work authorization from the Service.

[See 8 CFR 214.2(l)(9)(iv)]

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## Updating Cases

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**GUI Updating** Refer to the GUI Adjudication Updating Guide for instructions on updating approvals, RFEs, intents, denials, relocates, etc., in GUI

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## Appendices

### Appendix A - References

**References  
Used to Create  
SOP**

This table lists the references that were used in the creation of this SOP

Reference	Issue
Section 101(a)(15)(L) of the Act	Manager/Executive Statutes
Section 214(c)(2)(B)	Specialized Knowledge Statute
8 CFR 214.2(l)	L1 Regulations
Interpretation of Specialized Knowledge Memorandum, Dated 3/9/94	HQ Guidance on Specialized Knowledge
<i>Matter of M--</i> 8 I&N Dec. 24	Beneficiary is sole owner.
<i>Matter of Raulin</i> 13 I&N Dec. 618	Executive Secretary; Specialized Knowledge; Approved
<i>Matter of Schick</i> 13 I&N Dec. 647	Contractual relationship between companies does not qualify for L-1 purposes
<i>Matter of Leblanc</i> 13 I&N Dec. 816	New Office
<i>Matter of Continental Grain Co.</i> 14 I&N Dec. 140	Interruption in required year of continuous employment is ok sometimes.
<i>Matter of Pozzoli</i> 14 I&N Dec. 569	L-1 alien will be paid by the foreign company.
<i>Matter of Del Mar Ben, Inc.</i> 15 I&N Dec. 5	Personal understanding between presidents of the foreign and U.S. companies, plus U.S. company's ownership of a little stock in foreign company is not satisfactory for L-1 purposes.
<i>Matter of Chartier</i> 16 I&N Dec. 284	Requirement for existence of foreign entity while L-1 alien is in the United States.
<i>Matter of Michelin Tire Corp.</i> 17 I&N Dec. 248	Beneficiary must have the full one year of continuous experience before the L-1 petition is filed; Specialized Knowledge
<i>Matter of Aphrodite Investments</i> 17 I&N Dec. 530	Owner of a corporation can be an L-1 beneficiary, as long as he is employed.

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## Appendix A - References, Continued

Reference	Issue
<i>Matter of Penner</i> 18 I&N Dec. 49	Specialized Knowledge; gas and oil drilling rig crews. Need for U.S. entity as employer.
<i>Matter of Colley, et al</i> 18 I&N Dec. 117	Specialized Knowledge; aerial survey pilot; aerial photographer.
<i>Matter of Hughes</i> 18 I&N Dec. 289	De facto control; de jure control; affiliates; subsidiaries; ownership & control.
<i>Matter of Kloeti</i> 18 I&N Dec. 295	The one year of qualifying experience must be acquired entirely outside the United States.
<i>Matter of Siemens Medical Systems</i> 19 I&N Dec. 362	50-50 joint venture reasoning; negative control, etc.
<i>Matter of Church of Scientology</i> 19 I&N Dec. 593	Churches may use L-1 class if they meet L-1 criteria
<i>Matter of Safetran</i> Interim Dec. #3108	Time in H status counts toward maximum stay in L status

## Previous Revisions

### Revision History

Revision #	Date	Subject	Pages
25	3/29/13	Revised location of Revisions document.	5
		Revised <i>Required Evidence</i> block to indicate that evidence must show that beneficiary has been employed by a qualifying organization for one continuous year within the three years immediately preceding the filing of the petition.	10
		Added relative section of 8 CFR and clarified the use of "professional" in L1B Introduction.	48
26	7/16/13	Clarified location of prior revisions.	5
		Deleted link to list of banned employers and updated location description for this information on the ECN.	10
		Deleted "Additional Fee for Certain L-1 Petitions" section.	11
		Added "Border Security Fee" section.	
		Added "Determining Number of U.S. Employees" and "Who Can Pay the Fees" sections.	12
		Revised "Requests for Fraud and/or Border Security Fees" section.	
		Clarified that the 1 in 3 years of qualifying foreign employment must have been achieved before the petition filing date.	13
		Added reference source to Direction for I-129 Petition.	15
		Added location of Outsourcing information.	18
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		Added description of ineligible corporations.	
		Added IRS definition of U.S. resident.	
		Added "that not all authorized shares need to have been issued."	33
		Clarified that stock certificates alone do not establish ownership and control.	34
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		Clarified definition of "Executive Capacity."	40
		Added that "hybrid executive/managers" do not qualify.	
		Deleted "persuasively."	45

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## Previous Revisions, Continued

Revision #	Date	Subject	Pages
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		Deleted reference to Appendix to access Memos.	
		Added "may be" to sufficient evidence statement.	50
		Added <i>Matter of Brantigan</i>	51
		Clarified that there are sections of certain cites that are not to be used regarding L-1B correspondence.	52
		Clarified that the 1 in 3 years qualifying foreign employment must have been achieved before the filing date of the petition.	55
		Clarified when the foreign employment must be in the same capacity as the proposed U.S. employment.	
		Added "qualifying" to the organization abroad.	59
		Deleted "persuasive" and added "sufficient."	71
		Clarified that "hand carried" investments may be an indicator that the foreign entity may not exist.	72
		Clarified that petitioners must continue to meet all L1 eligibility requirements for New Office extensions.	74
		Added that no SISO authorization is needed for extension RFEs for beneficiaries who had entered the United States under a Blanket petition.	77
		Clarified limitations for changing from L-1B to L-1A.	80
		Replaced "a letter of denial" with "an Intent to Deny."	84
		Deleted "convincing" from Officer's Responsibility.	85
		Added "ADIS" in Systems Checks.	88
		Added "ADIS" in Name Conventions.	89
		Added requirements for using ADIS.	92-93
		Clarified when and how SQ94 is used.	93
		Added reference to "VIBE Qualifying Relationship Worksheet" and clarified VIBE drop-off location.	94-95
		Added reference to "VIBE Qualifying Relationship Worksheet" and clarified VIBE drop-off location.	95
		Clarified when to issue an RFE for VIBE concerns.	
		Added reference source to I-129 Filing Instructions.	98-99
		Changed "three" months to "six" months.	98

Continued on next page

## Previous Revisions, Continued

Revision #	Date	Subject	Pages
		Deleted reference to COS (Change of Status) and Added Expired Dates block.	102
		List Approval Phrases and when they should be used.	104-106
		Clarified which name should appear when passport/visa/petition names conflict.	107
		Deleted obsolete instructions for Consular/POE/PFI notifications and added current directions.	108
		Added that Officers must use National RFE templates.	110
		Deleted APPENDIX B: Corporate Status Websites.	117
		Deleted APPENDIX C: Memos.	
		Deleted examples and scenarios.	Various locations throughout SOP
		Made Plain Language changes	Various locations throughout SOP
27	1/9/14	Added section concerning not using Pre-IMMACT'90 Precedent Decisions.	51-52
		Revised definition of "New Office."	67
		Added Iranian Sanctions section.	83
		Added Casebook guidance.	88-89
		Revised VIBE directions.	95-96
		Added directions for second KCC copy for Blanket L approvals.	100
		Added requirement to annotate validity date limitations in "Remarks" block.	109
		Replaced "IBIS" with "TECS."	Various locations

*Continued on next page*

## Previous Revisions, Continued

Revision #	Date	Subject	Pages	
28	5/12/2014	Clarified New Office definition.	66	
		Clarified unanticipated circumstances for New Office extensions.	73	
		Added "General Processing" header and "L-1 Process for LPRs" section.	74	
		Added "Creating New Arrival-Departure Record (Form I-94) section.	103-104	
		Added clarification regarding the "Starting and Ending dates" for approved petitions.	106	
		Changed "Clerical" to "Adjudication Support Team (AST)."	Various locations	
Revision #	Date	Subject	Pages	KM #
29	7/1/14	Expansion and clarification on Blanket LZ description and processing.	97, 100-101	1813
30	9/17/14	Revised "Same/Same" RFE section.	76	1820
31	10/29/14	Revised VIBE instructions.	95	2244, 2245
		Clarified <i>Validity Dates for Extension of Stay With No changes/Amendments</i> section.	101	
		Revised CLAIMS numbers for Approval Phrases to reflect GUI changes.		
32	11/14/14	Added <i>Processing I-129S Petitions</i> section.	103	2291

# **Vermont Service Center**

## **Standard Operating Procedure (SOP)**

# **L1A AND L1B INTRACOMPANY TRANSFEREES**

**Prepared by:  
Center Training Unit**

**Vermont Service Center**

**July 16, 2013**

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## General

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**Purpose** This SOP prescribes procedures for the adjudication and processing of Form I-129, Petition for a Nonimmigrant Worker, filed under 8 CFR 214.2(l) at the Vermont Service Center (VSC).

---

**Applicability/Scope** This SOP is applicable to all VSC SISOs, ISOs, and Clerical personnel performing I-129L adjudicative or clerical functions or review of those functions. Personnel performing other duties pertaining to I-129s will be similarly bound by the provisions of this SOP which apply to their specific task or duties.

---

**Conflict Resolution** Any provision of the INA or 8 CFR that conflicts with this SOP will take precedence over the SOP. If you identify a conflict, report the matter immediately to your supervisor or to any SISO.

If any conflict is noted between this SOP and policy or guidance documents issued by HQSCOPS, report the matter through the supervisory chain for resolution.

This SOP supersedes all prior Vermont Service Center guidance documents, policy memoranda, training packets, or other material pertaining to I-129(L) cases; these documents should be discarded.

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## General, Continued

**Revisions** The Center Training Unit will issue numbered revisions to this SOP. No other document will be considered a valid modification.

### ***Electronic and Print Copies***

All personnel who maintain a printed copy of the SOP will post the revisions upon receipt. Electronic copies of the SOP will be modified to reflect changes as they are issued. A listing of previous revisions will be linked to the SOP to serve as a summary of all applicable revisions.

### ***Proposed Changes***

Submit proposed changes with appropriate supporting documents through first-line supervisors to the Center Training Unit.

### ***Current Revisions***

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow.

### ***Prior Revisions***

A list of the most recent revisions made to this document is located after the Appendices. A complete list of previous revisions is located on the Add-Ins toolbar under Add'l Resources/ADJ SOPs/Revisions/I-129 SOP Revisions/I-129L SOP Revisions.

<b>Revision #</b>	<b>Date</b>	<b>Subject</b>	<b>Pages</b>
26	7/16/13	Clarified location of prior revisions.	5
		Deleted link to list of banned employers and updated location description for this information on the ECN.	10
		Deleted "Additional Fee for Certain L-1 Petitions" section.	11
		Added "Border Security Fee" section.	11
		Added "Determining Number of U.S. Employees" and "Who Can Pay the Fees" sections.	12
		Revised "Requests for Fraud and/or Border Security Fees" section.	12
		Clarified that the 1 in 3 years of qualifying foreign employment must have been achieved before the petition filing date.	13
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	Deleted examples and scenarios.	Various locations throughout SOP
	Made Plain Language changes	Various locations throughout SOP

# L1A AND L1B INTRACOMPANY TRANSFEREES

## Overview

---

**Introduction** A qualifying United States or foreign employer may file a Form I-129 petition on behalf of an alien beneficiary requesting classification as an Intracompany Transferee.

---

**Statutory Basis** Section 101(a)(15)(L) of the Act makes provision for temporary positions for:

- Certain managers and executives, and
- Specialized knowledge professionals.

The nonimmigrant classifications for this section of law are L1A and L1B, respectively.

---

**Regulatory Basis** USCIS has responsibility for determining whether the alien beneficiary is eligible for admission and whether the petitioner is a qualifying organization.

Title 8, Code of Federal Regulations, Part 214.2(l), sets forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions.

---

**Dual Intent for L-1s** 8 CFR 214.2(l)(1)(i) states that an intracompany transferee can be admitted temporarily to the United States to be employed by a qualifying organization. However, the approval of a permanent labor certification or the filing of a preference petition for the beneficiary shall not be the basis for denying an L1 petition or the beneficiary's application for admission.

The beneficiary may legitimately come to the U.S. as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States. [See 8 CFR 214.2(l)(16)]

---

**Timely Adjudication** In general, Form I-129L petitions should be processed within thirty days of receipt. [Section 214(c)(2)(C) of the Act, 8 CFR 214.2(l)(7)(i)]

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## Overview, Continued

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### Record of Proceeding

The record of proceeding for the L1 petition from top to bottom:

- G-28
  - I-129
  - I-129L Supplement
  - Evidence of qualifying relationship between the United States and foreign organizations
  - Evidence of the beneficiary's qualifying foreign employment
  - Evidence that the foreign organization is doing business
  - Evidence of the beneficiary's proposed employment in the United States
  - Evidence that the United States organization is doing business, or evidence that meets the "new office" evidentiary requirements
  - RFE notices and Intent to Deny Notices (if applicable)
  - All evidence submitted in response to RFE and Intent to Deny Notices in the order dictated above.
- 

### Part 6 of Form I-129 is Not Completed

If Part 6 is not completed, you must provide the petitioner with the opportunity to submit the required response by issuing a Request for Evidence (RFE). Use standard 1817 which asks the petitioner to complete and submit Page 5, Part 6, of Form I-129 with a revision date of November 23, 2010 or later. You should not return the original signed petition to the petitioner.

**NOTE:** At this time, USCIS does not require a copy of the export control license as part of the nonimmigrant visa petition process. However, if the petitioner declines to respond to Part 6 in response to an RFE, deny the petition pursuant to 8 CFR 103.2(b)(1) for failure to properly complete and file the petition with any initial evidence required by applicable regulation and/or the form's instructions.

The standard denial to address this scenario is the I129CTECH letter.

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*Continued on next page*

## Overview, Continued

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### **Banned Employers**

When DOL informs USCIS that certain organizations have violated the INA, DOL will provide USCIS with a list of these employers that are banned for a specific time period from having an immigrant and/or nonimmigrant petition approved. The ban does not affect petitions that were previously approved; however, new petitions may not be approved during the banned period for the listed employers.

**NOTE:** The Data Reporting Group (DRG) runs a scrape for banned employers. If you receive a petition filed by a banned employer, bring the petition to the appropriate form type ISO3.

---

### **List of Banned Employers**

The list of organizations ineligible for approval of immigrant and nonimmigrant petitions is found on the VSC ECN site under Adjudications/Policy Memos/Business.

**Important:** Be sure to view the most recent list of organizations ineligible for approval of immigrant and nonimmigrant petitions. There may be old lists still present on this page.

---

## Fees Required for L Petitions

---

### Fraud Prevention and Detection Fee

In addition to the base filing fee, a Fraud Prevention and Detection Fee of \$500 must be paid by:

- Petitioners seeking initial (H-1B) or L nonimmigrant classification,
- A change of status to (H-1B) or L nonimmigrant classification, or
- A change of employer in these classifications.

[INA § 214(c)(12)]

This new \$500 fee applies to petitions filed on or after March 8, 2005 and may be paid by any party.

### EXCEPTIONS:

- Amended petitions
  - Successor in interest
- 

### Border Security Fee

On August 12, 2010, President Obama signed Public Law 111-230, the Emergency Supplemental Appropriation for Border Security Act. The new fee is in addition to the Base Fee, Fraud Prevention and Detection Fee, as well as any Premium Processing Fee, if applicable.

Public Law 111-230 requires the submission of an additional fee of:

- \$2,000 for certain H-1B petitions and
- \$2,250 for certain L-1A and L-1B petitions.

An I-129 petition for H-1B or L status postmarked on or after August 14, 2010 through September 30, 2015 must pay the fee if the following criteria are met:

1) The petition is requesting:

- An initial grant of L-1A or L-1B status **OR**
- Authorization to change employers

**AND**

2) The petitioner meets both of the following conditions:

- Employs 50 or more U.S. employees **AND**
- More than 50% of those employees are in H1B or L1 status.

**NOTE:** The fee is required when the petitioner requests a change of status H1B to an "initial grant" L-1 for the same beneficiary to perform essentially the same job.

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## Fees Required for L Petitions, Continued

### Determining Number of U.S. Employees

All of the petitioner's U.S. Employees should be counted when determining whether it is subject to the Border Security Fee. If a petitioner claims exemption from the Border Security Fee based on a combination of employees within a controlled group of corporations, an RFE using AutoText 2036 should be issued to request clarification about the number of the petitioner's U.S. employees.

When determining the total number of employees in the United States for the purpose of the Border Security Fee, petitioners should **not** include:

- Employees from partnerships, proprietorships, etc., which are under common control;
- Employees from affiliated service groups; and
- Leased employees.

### Who Can Pay the Fees?

Refer to the table below to determine which party can pay the different fees associated with the filing of an I-129.

Type of Fee	Must be paid by...
Base Filing Fee	The petitioner, attorney, or beneficiary.
Premium Processing Fee/I-907	The petitioner, attorney or beneficiary. **If paid by the beneficiary, the I-907 still needs to be signed by the petitioner or attorney. An I-907 may be signed by the attorney, if there is a properly executed G-28 for the attorney signed by both the attorney and petitioner.
Fraud Fee	The petitioner, attorney, or beneficiary.
Border Security Fee	The petitioner or attorney. **Cannot be paid by the beneficiary.

### Requests for Fraud and/or Border Security Fees

Refer to the chart below to determine which notice should be issued to request Fraud and/or Border Security Fees when the file does not contain acceptable evidence of an exemption.

When the file is missing the...	Issue an...	Using...
Fraud Fee	ITD	B3EXEMPT FRAUD
Border Security Fee	RFE	AutoText 2034

## Eligibility Requirements

---

### Reviewing Evidence

This section identifies the initial evidence required in the adjudication of a Form I-129L petition. Review all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted.

Each piece of evidence must meet the standard of acceptability as noted. If for any reason the evidence submitted is deemed to be unacceptable or is missing, the officer must request the submission of acceptable evidence.

---

### Required Evidence

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations,
- U.S. organization and the organization abroad are both actively engaged in doing business,
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the I-129 L petition.
- Beneficiary will be employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization in the United States.

[See 8 CFR 214.2(i)(3)]

- If the beneficiary will be in a specialized knowledge capacity and working at a location other than the petitioner's, evidence is also required that the beneficiary will be under the primary control and supervision of the petitioner and will be providing a product or service for which specialized knowledge specific to the petitioner is necessary.

(See July 28, 2005, William R. Yates memo "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004).

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## Eligibility Requirements, Continued

---

**Exception: New Office** If the petitioning organization that is filing for an L1 beneficiary has been doing business for one year or less, it is not required to be actively engaged in doing business at the time of filing.

Instead, the petitioner must submit evidence that:

- Sufficient physical premises to house the new office have been secured, and
- The intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

---

**Date of Filing** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

---

## Determination of Proper Filing

---

### Proper Filing

A petition is considered to be properly filed when it is:

- Completed and signed, in the original, by a designated representative of the qualifying employing organization, and
- Accepted for processing with the correct fee, by the USCIS office having jurisdiction over the area of the beneficiary's intended employment.

[See 8 CFR 103.2(a)(7)(i)]

---

### Who may File the Petition

Form I-129L petitions may be filed by either:

- The qualifying foreign organization or
- The qualifying U.S. organization that intends to employ the beneficiary.

[See 8 CFR 214.2(l)(2)(ii)]

---

### Representation

- A representative of the petitioner must complete and sign a Form G-28.
- The petitioner and the representative must sign the Form G-28 in the original.
- Facsimile stamped signatures for representatives are also acceptable.
- E-filed cases state "certified by the internet."
- Refer to the G-28 SOP for further information regarding G-28s and representatives/attorneys.

[See 8 CFR 103.2(a)(3), 292.1, and 292.2]

---

### When to File

The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

[I-129 Filing Instructions and See Federal Register at 70 FR 21983-01 (April 28, 2005)]

In the event that a petition is accepted more than six months prior to the date of actual need, (i.e. requested employment start date), route the case, and any accompanying I-539, to an IS03 L POC. The case will be sent to the Case Resolution Unit where an appropriate letter will be prepared and the fee refunded.

---

# Jurisdiction

---

## General

In general, I-129L petitions must be filed at the Service Center that has jurisdiction over the area where the beneficiary is to be employed.

VSC will serve as the filing location for all individual I-129 L petitions filed directly with a Service Center where the beneficiary is or will be employed in the following locations:

Alabama	Maryland	Puerto Rico
Arkansas	Massachusetts	Rhode Island
Connecticut	Mississippi	South Carolina
Delaware	New Hampshire	Tennessee
District of Columbia	New Jersey	Texas
Florida	New Mexico	Vermont
Georgia	New York	Virginia
Kentucky	North Carolina	U.S. Virgin Islands
Louisiana	Oklahoma	West Virginia
Maine	Pennsylvania	

The following link provides updates for filing locations that may not yet be captured in the I-129 filing instructions:

[USCIS - Direct Filing Addresses for Form I-129, Petition for Nonimmigrant Worker](#)

**IMPORTANT:** The petitioner shall advise USCIS whether they have filed a petition for the same beneficiary with another office, and certify that they will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed.

Failure to make a full disclosure of previous petitions filed may result in the denial of the petition. [See 8 CFR 214.2(l)(2)(i)]

---

## Blanket L Petitions

Jurisdiction for Blanket L petitions remains at the Service Center that approved the blanket petition regardless of the geographic location of the beneficiary's employment in the United States.

[See 8 CFR 214.2(l)(2)(ii)]

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*Continued on next page*

## Jurisdiction, Continued

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**L1 Petitions for  
Citizens of  
Canada under  
NAFTA**

The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

---

**Amended  
Petitions**

The petitioner must file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in:

- Approved relationships,
- Additional qualifying organizations under a blanket petition,
- Change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or
- Any information which would affect the beneficiary's eligibility under Section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(7)(i)(C)]

---

# Qualifying Relationships

## Overview

---

**Introduction** When an employer wishes to transfer an employee of a foreign company to a U.S. company as an L1 nonimmigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer.

---

**Qualifying Organizations** A qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- Meets exactly one of the qualifying relationships specified in 8 CFR 214.2(l)(ii),
- Is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intracompany transferee, and
- Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(1)(ii)(G)]

---

**Outsourcing** An L1B nonimmigrant alien who has been employed by a firm with an affiliated entity in the United States, who comes to the United States to perform services for the international entity, can no longer work primarily at a worksite other than that of the petitioning employer.

**EXCEPTION:** The work is controlled and supervised by the L1-B petitioning employer. The petitioning employer must show they retain ultimate authority over the L1-B worker, and the L1-B worker must provide a product or service to the offsite employer for which specialized knowledge specific to the petitioner is necessary.

[See L-1 Visa Reform Act 2004]

---

**Commercial Enterprises** The majority of L1 petitioners are commercial enterprises, organized as corporations, partnerships, or sole proprietorships. They are called commercial enterprises because they are trying to make a profit.

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*Continued on next page*

## Overview, Continued

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### Non-Profit Enterprises

It is also possible for non-profit employers, such as religious or charitable organizations, to use the L1 classification. However, the petitioner must still demonstrate that all of the L1 eligibility requirements have been met.

[See *Matter of Church of Scientology*, 19 I&N Dec. 593]

---

### Ownership and Control

Regardless of whether a business is set up as a corporation, partnership, or sole proprietorship, somebody normally owns the business and somebody controls the business.

**Ownership and control** are the deciding factors used by the officer to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer and will be discussed thoroughly later.

---

### Foreign Employer Must Continue to do Business

There must be an organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad but the relationship must continue to exist.

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## Ownership & Control

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**Definitions**      **Ownership** for L1 purposes means the legal right to have possession of an organization.

**Control** for L1 purposes means to exercise authority or influence over an organization.

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**Deciding Factors for a Qualifying L1 Relationship**      **Ownership and control** are the deciding factors used to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer.

Both ownership and control must be present to have a qualifying relationship.

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**Beneficiary May be the Sole Owner**      In many instances the beneficiary of the L1 petition may own both the foreign employer and the U.S. employer in whole or in part. There is no problem with this arrangement as long as all of the L1 eligibility requirements are met.

**NOTE:** The company in the foreign country must continue to do business.

[See *Matter of M 8 I&N Dec. 618* and *Matter of Aphrodite Investments 17 I&N, Dec. 530*]

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**De Jure Control**      Ownership of more than 50% of an organization is considered to be evidence of control. Control on the basis of ownership of more than 50% is called de jure control.

De jure simply means “by law”, and it is a straightforward form of control.

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**Negative Control - Joint Ventures**      In many instances, two individuals or organizations will create an organization in which each individual or organization has 50% ownership. This arrangement is called a joint venture.

Each of the owners could be said to exert de jure control over the joint venture. As they can each “block” any decision made by the other owner by virtue of their 50% control over the organization, their control can be described as a “negative control”.

[See *Matter of Siemens Medical Systems 19 I&N Dec. 362*]

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## Ownership & Control, Continued

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### De Facto Control

It is possible for an owner of less than 50% of a company to exercise control over the organization.

De facto simply means "in fact". [See *Matter of Hughes* 18 I&N Dec. 289]

**NOTE:** If a petitioner argues that de facto control exists on some other basis than discussed previously or in *Matter of Hughes*, consider the argument with an open mind, and see if the argument makes sense.

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### Contractual Relationships

A contractual relationship between the foreign employer and the U.S. employer is not sufficient. There must be both ownership and control. [See *Matter of Schick* 13 I&N Dec. 647]

An executed contract between organizations may allow one organization to exert influence over the other, but a solely contractual relationship is not qualifying for L1 purposes.

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## Definitions of Qualifying Relationships

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**Introduction** The following definitions describe the qualifying L1 relationships.

[See 8 CFR 214.2(l)(1)(ii)(H), (I), (J), (K), and (L)]

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**Substance Over Form** A petitioner may identify the qualifying relationship between the U.S. organization and the foreign organization in a manner that is not correct per USCIS' definition of that particular qualifying relationship. However, as long as the relationship conforms to one of the qualifying relationships defined in regulation, it is acceptable for L1 purposes.

There are times when the nature of the relationship between the two organizations is not clear based on the evidence in the record. In these instances, it is best to request an additional explanation from the petitioner, along with corroborative documentary evidence, if needed.

---

**Parent** Parent means a firm, corporation, or other legal entity, which owns and controls at least one subsidiary. An organization is said to be a parent to a subsidiary when:

- It owns more than half of the subsidiary, and
- Controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(I)]

**NOTE:** The definition of subsidiary includes other qualifying forms of parent/subsidiary relationships.

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**Branch** Branch means an operating division or office of the same organization housed in a different location.

[See 8 CFR 214.2(l)(7)(ii)(J)]

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**Subsidiary** Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. As stated in the definition for a parent, the parent owns more than half of the subsidiary and controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(K)]

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## Affiliates

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### Introduction

There are three categories of qualifying affiliate relationships, to include:

- (1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual.
- (2) One of two legal entities owned and controlled by the same group of individuals, each owning and controlling approximate the same share or proportion of each entity.
- (3) A partnership that is:
  - Organized in the United States
  - To provide accounting, managerial, and/or consulting services
  - Under an agreement with a worldwide coordinating organization
  - That is owned and controlled by member accounting firms.

[See 8 CFR 214.2(l)(1)(ii)]

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### Partnership Organized Outside the US

A partnership (or similar organization) that is organized outside the United States to provide accounting services is considered an affiliate of the U.S. partnership if:

- It markets its accounting services under the same internationally recognized name;
  - Under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.
-

# Types of Businesses

## Sole Proprietorships

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**Definition** A sole proprietorship is a business that is owned by one individual.

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**Unlimited Liability** A sole proprietorship is not legally separate from its owner. The owner is personally responsible for the debts of the business. Creditors can sue the owner to take his or her house, car, or other personal assets to pay off the sole proprietorship's debts.

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**How a Sole Proprietorship is Created** A sole proprietorship is the easiest business to create. An individual merely establishes a business, and the sole proprietorship is automatically created.

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**Evidence of Ownership & Control** Generally, no special documents are executed when a sole proprietorship is created and commences doing business.

In the United States, a sole proprietorship is not required to execute or file any documents of creation, and may use the owner's own social security number as its EIN (employer's identification number).

The most common document that is provided as evidence of the ownership and control of a sole proprietorship is the owner's individual federal tax return. In addition, contracts, such as leases or sales agreements that were executed by the owner on behalf of the sole proprietorship may be submitted.

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**Owner's Individual Federal Tax Return** Sole proprietors located in the United States must report the income and expenses from their businesses in their individual Form 1040 federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return.

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# General and Limited Partnerships

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**Partnership  
Definition**

A partnership means the shared ownership of a business.

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**Limited  
Partnership  
Definition**

A limited partnership is the shared ownership of a business in which certain partners provide a capital investment without being held personally liable for the debts of the partnership above the level of their investment.

The trade-off for having the limited liability is that the limited partner may not materially participate in the running of the business or attempt to control the business.

---

**General  
Partnership:  
Unlimited  
Liability**

A partnership is not legally separate from its partners. The partners are personally responsible for the debts of the partnership. Creditors can sue the partners to take their houses, cars, or other personal assets to pay off the partnership's debts.

---

**Limited  
Partnership:  
Both Unlimited  
and Limited  
Liability**

All general partners of a limited partnership are personally responsible for the debts of the partnership. Creditors can sue the owners to take their houses, cars, or other personal assets to pay off the partnership's debts.

Limited partners are only liable up to the amount of their capital investment in the partnership. The limited liability can be legally stripped from the limited partner if he or she is found to have materially participated in the business.

---

**How a General  
Partnership is  
Created**

No formal, written partnership agreement is required to create a general partnership. However, many general partnerships do execute partnership agreements.

In the United States, partnerships must obtain an EIN (employer's identification number) for the partnership.

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## General and Limited Partnerships, Continued

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**How a Limited Partnership is Created**

A formal, written partnership agreement is required to create a limited partnership.

- Every limited partnership must have at least one general partner.
  - In the United States, limited partnerships must obtain an EIN (employer's identification number) for the partnership.
- 

**Only General Partners have BOTH Ownership & Control**

Only general partners can be considered to have both ownership and control over a limited partnership. When trying to establish qualifying affiliate relationships, only the percentage of ownership by each of the general partners should be considered.

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**Limited Partners have NO Control**

Limited partners may own a portion of a limited partnership, but they do not have any control over the partnership, as they cannot materially participate in the operation of the business.

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**Evidence of Ownership & Control**

The most common documents that are provided as evidence of the ownership and control of a general or limited partnership are partnership agreements and the partnership's Form 1065 federal tax return.

In addition, contracts, such as leases or sales agreements that were executed by the partners on behalf of the partnership may be submitted.

---

**Partnership Agreements**

A partnership agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited partnership interest,
- Each partner's initial percentage of ownership,
- The type of business to be conducted by the partnership,
- How partnership interests can be transferred, and
- The conditions under which the partnership can be dissolved.

The partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.

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## General and Limited Partnerships, Continued

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### **Partnership Tax Returns**

In the United States, partnerships (including limited partnerships) are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

The partnership's tax return provides certain information that is relevant to the ownership and control of the partnership to include the:

- Date of origination of the partnership,
  - The names and % of ownership for each of the partners at year end,
  - Whether the partnership has limited partners, and
  - Evidence of the partnership's business activities in the U.S.
- 

### **Ownership Percentage May Not Equal the Capital Investment**

A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

- The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.
  - Shared ownership of the business does not always mean shared ownership of the assets used in the business.
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# Corporations

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**Definition**

A corporation is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Corporations are a taxable entity and must pay taxes on the income generated by them prior to distributing the income to its shareholders.

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**Limited Liability**

The debts of the corporation are the responsibility of the corporation, not the individual shareholders. If a corporation goes bankrupt, the shareholders cannot lose any more money than they paid for their stock.

Normally, creditors cannot sue the shareholder to take his or her house, car, or other personal assets to pay off corporate debts. This limited liability is one of the big attractions of corporations.

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**Where a Business Incorporates**

In the United States each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of businesses.

Businesses may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

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**How a Business Incorporates**

In order to incorporate a business in the United States, articles of incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a certificate of incorporation.

After the business is incorporated, the corporation may sell and issue shares of stock, and commence doing business as a legal entity apart from its owners.

The shareholders of the corporation will elect a board of directors, who may or may not be shareholders. The board of directors may enact by-laws for the corporation.

In the United States, corporations must obtain an EIN (employer's identification number).

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## Corporations, Continued

### Federal Tax Returns

Generally, corporations doing business in the United States must file a federal tax return each year, Form 1120, U.S. Corporation Income Tax Returns. The federal tax return provides certain information that is relevant to the ownership and control of the corporation to include the:

- Date of incorporation,
- Evidence of the corporation's business activities in the U.S., and
- In some instances, the name of the individuals or organizations that own the corporation will be noted (usually on the second page or in the supporting statements).

### Annual Reports

Some corporations submit annual reports as evidence of the qualifying relationship. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements. (For more information see the discussion of financial statements in the Doing Business portion of the SOP.)

### Evidence of Ownership & Control

The following table describes the typical documents that are submitted as evidence of the existence, rules, ownership and control of a corporation.

Document	Existence	Rules	Ownership	Control
Petitioner's Letter	X		X	X
Certificate of Incorporation	X	Generally, number and type of stock shares only		
Articles of Incorporation	Yes, if stamped by the Gov. agency	X		
by-laws		X		
Common Stock Shares			X	X
Preferred Stock Shares			X	
Stock Ledger			X	X
Tax Returns	X		Sometimes	Sometimes
Annual Reports	X	Sometimes	Sometimes	Sometimes

# S-Corporations

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## Definition

Sub-Chapter S corporations or "S Corps" as they are called, are a hybrid of the standard corporation.

The main difference between S Corps and regular corporations is that S Corps are not taxable entities and are limited to a certain type and number of shareholders.

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## S Corps are Not Taxable Entities

S Corps are not taxable entities. They are required to file an informational tax return, called a Form 1120S, U.S. S Corporation Income Tax Return. Income and expenses flows through to the shareholders' individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

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## Qualifying for S Corp Status

To qualify for S Corp status under IRS rules, a corporation must meet a number of requirements. It must:

- Be a domestic corporation, i.e. organized in the U.S. under federal or state law.
- Be an eligible corporation. Ineligible corporations may be certain financial institutions, insurance companies, and domestic international sales corporations.
- Have only one class of stock, common.
- Have no more than 35 shareholders.
- Have as shareholders only individuals, estates, and certain trusts (partnerships and corporations cannot be shareholders).
- Have shareholders that are U.S. citizens or residents of the U.S. (per the IRS definition of residents). Nonresident aliens cannot be shareholders.

The IRS defines a resident alien by establishing if the beneficiary has been physically present in the United States at least:

- 31 days during the current year, and
- 183 days during the 3 year period that includes the current year and the 2 years immediately before. To satisfy the 183 days requirement count:
  1. All of the days the beneficiary was present in the current year, and
  2. One-third of the days the beneficiary was present in the first year before the current year, and
  3. One-sixth of the days the beneficiary was present in the second year before the current year.

**NOTE:** If you believe the beneficiary is an unqualified shareholder, discuss with a SISO.

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## **S-Corporations, Continued**

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### **Qualifying L1 Relationships for S Corps**

As noted above, corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp.

If such ownership is claimed on an L1 petition, additional evidence, such as a statement from an official of the IRS confirming the validity of the shareholders' S Corp ownership should be requested.

However, S Corps may own businesses abroad. So, if the claimed qualifying relationship involves a U.S. S Corp's ownership of a foreign employer, the relationship may be qualifying as long as it conforms to the defined L1 relationships.

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# Incorporation

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## Certificate of Incorporation

The Certificate of Incorporation is the birth certificate for the corporation. It shows that the corporation exists as a legal entity.

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## Articles of Incorporation

The Articles of Incorporation will identify the:

- Acceptable business activities that may be conducted by the corporation
- Type and number of stock shares that may be authorized and issued by the corporation
- Par value, if any, of the stock shares

This document is the constitution of the corporation and cannot be changed or amended without a majority vote of the shareholders.

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## Conformed Copy of the Articles of Incorporation

A conformed copy of the Articles of Incorporation is a copy that agrees with the original and all amendments to it.

If the original document required a signature, the copy should be signed by a principal officer, or if not signed, be accompanied by a written declaration signed by an authorized officer of the corporation. With either option, the officer must certify that the document is a complete and accurate copy of the original.

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## By-Laws

The By-Laws of a corporation are the lesser rules made by the board of directors that govern how the corporation will function. They may not conflict with any provision of the Articles of Incorporation.

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# Shares of Stock

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## Introduction

Stock shares are ownership certificates that are issued by a corporation when an individual or an organization makes an investment in the corporation. The number of shares of stock owned by an individual or organization relative to the number of shares issued determines their percentage of ownership in the corporation.

- The number of shares of stock issued by the corporation may not exceed the number of shares authorized by its articles of incorporation.
- Corporations can issue two classes of stock, common and preferred.

**EXAMPLE:** If one person owns 100 shares of stock in a corporation and the corporation has issued 200 shares of stock, that individual can be described as the owner of 50% of the corporation.

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## Stock Share Identification

Each stock share should identify the:

- Number of shares authorized
- Class of stock, either common or preferred
- Par value of the stock shares, if any
- Number of shares represented by the share certificate\*
- Name of the shareholder
- Date of stock issuance

**\*NOTE:** Number of shares authorized should be in Articles of Incorporation and not all authorized shares need to have been issued.

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## Shares of Stock, Continued

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**Stock  
Certificates are  
Internally  
Generated**

Stock share certificates can be purchased at any large office supply store. Stock certificates are issued by the corporation itself. The information provided on the stock certificates is internally generated by the issuing corporation and is not subject to scrutiny by any government agency, unless the corporation is publicly traded.

At a minimum, an acceptable stock certificate should include the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

Stock certificates alone are not sufficient evidence to determine ownership and control of a corporate entity. The stock ledger, stock certificate, corporate By-Laws, and the minutes of relevant annual meetings must also be examined. Without full disclosure of relevant documents, ownership and control cannot be determined.

[See *Matter of Siemens Medical Systems, Inc., supra*]

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## Shares of Stock, Continued

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**Common Stock** Common stock gives its holder voting rights. The significance of voting rights is control.

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**Preferred Stock** Preferred stock does not normally give its holder voting rights. While preferred stock may give its holder a percentage of ownership in a corporation, the holder does not have control over the corporation because the preferred stock does not give voting rights.

The articles of incorporation will identify whether the corporation is authorized to issue preferred stock.

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**Par Value of Stock** Par value is the nominal or face value of a share of stock. A corporation cannot issue a share of stock for less than the stated face value of the share.

The par value of a share of stock does not generally bear any relation to the amount of investment made by the shareholder at the time the stock was purchased, nor does it represent the value of the stock after the time of issuance.

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**Stock Ledger** The stock ledger is a document that is used by the corporation to record various stock transactions, to include the:

- Initial issuance of stock
  - Transfer of stock from one shareholder to another
  - Repurchase of stock by its own corporation (treasury shares)
  - Retirement or “cancellation” of stock
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# Non-Profit Organizations

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**Definition**

A non-profit organization is one that is organized for a purpose other than generating a profit. They are also frequently referred to as “tax-exempt” organizations as many of them qualify for an exemption from federal and state taxation.

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**Limited Liability**

A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization. Though they may be personally sued if they did not deal with the organization “at an arm’s length” or as a disinterested third party would.

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**Where a Non-Profit Incorporates**

In the United States, each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of non-profits.

Non-profit may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

---

**How a Non-Profit Incorporates**

In order to incorporate a non-profit in the United States, Articles of Incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a Certificate of Incorporation.

After the non-profit is incorporated, the corporation may obtain tax-exempt status, and commence doing business as a legal entity.

In the United States, non-profit corporations must obtain an EIN (employer’s identification number).

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## Non-Profit Organizations, Continued

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### **How a Non-Profit Obtains Tax-exempt Status**

In the United States, tax-exempt status must be obtained by requesting that designation from the Internal Revenue Service.

In order to qualify for tax-exempt status, the non-profit must be organized and operated exclusively for one or more of the following purposes:

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for public safety
- Fostering national or international amateur sports competitions, or
- The prevention of cruelty to children or animals.

The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.

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### **Assets of Non-Profit Organization**

The assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose or to the local, state, or federal government for a public purpose.

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### **Evidence of Ownership & Control**

Generally, L1 petitioning non-profit organizations are incorporated and have “branch” organizations or “sister” corporations abroad. Evidence of ownership and control will include incorporation documents, audited or reviewed financial statements, or federal informational returns.

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## Non-Profit Organizations, Continued

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**Federal  
Informational  
Returns**

Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

Tax-exempt organizations are required to file a yearly Form 990 or 990EZ if the organization's gross receipts exceed \$25,000.00 from sources other than the exempt purpose.

Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return, and provides an abbreviated balance sheet as well as an analysis of excess revenue or (deficit) for the year.

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# Evaluating L1A and L1B Positions

## L1A: Managers and Executives

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**Introduction** The L1A classification is reserved for certain managers and executives. The definitions for L1 managers and executives can be found in section:

- 101(a)(44) of the Act,
- 8 CFR 214.2(l)(1)(ii)(B) and
- 8 CFR 214.2(l)(1)(ii)(C).

**NOTE:** The same managerial and executive capacity definitions apply to the nature of the beneficiary's position abroad and in the United States.

---

### **Manager Capacity Defined**

Managerial capacity means an assignment within an organization in which the employee **primarily**:

- Manages the organization, department, subdivision, function, or component of the organization;
- 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;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed, AND;
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

**NOTE:** All four criteria listed above must be met to qualify as a manager.

[See 8CFR 214.2(l)(ii)(B)]

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*Continued on next page*

## L1A: Managers and Executives, Continued

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### Executive Capacity Defined

Executive capacity means an assignment within an organization in which the employee **primarily**:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making, **AND**;
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

**NOTE: All four criteria must be met to qualify as an executive.**

[See 8 CFR 214.2(l)(ii)(C)]

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### Evaluating Managerial or Executive Positions

When evaluating the nature of a claimed managerial or executive position, the petition and supporting evidence must be reviewed to establish that the beneficiary's employment qualifies for L1 purposes.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers and how the beneficiary's position fits into its organizational hierarchy.

A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, they must establish that the beneficiary meets each of the four criteria set forth in both the statutory definitions for "executive" *and* for "manager."

Frequently, the petitioner will merely reiterate the definitions of manager and executive as defined in statute and regulation.

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## L1A: Managers and Executives, Continued

<b>If the employer is a...</b>	<b>Then...</b>
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	<p>The issue of whether the beneficiary has been<sup>  </sup> or will<sup>  </sup> be employed in a qualifying capacity becomes more difficult to determine.</p> <p>In some instances, no individual position within the organization may involve duties that could be construed as being primarily managerial or executive in nature.</p>

## Factors in Determining Managerial or Executive Capacity

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### Staffing Levels as a Factor

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, take into account the reasonable needs of the:

- Organization,
- Component, or
- Function.

**NOTE:** An individual will not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual:

- Supervises or has supervised, or
  - Directs or has directed.
- 

### Doing Business as it Relates to Managerial or Executive Positions

The employing organization must be doing business in a manner that would require the beneficiary to perform duties that are primarily managerial or executive in nature.

The petitioner should provide a statement that clearly describes:

- The business activities that the employing organization engages in, and
- How the beneficiary's position is, or was, required to further the organization's strategic or operational goals.

The record may also contain various documents as evidence of the organizations' business activities. The documentary evidence that is submitted should corroborate the petitioner's statements.

In order to make an accurate determination of the eligibility of the beneficiary's position, either abroad or in the U.S., the description of his or her duties must be placed in the context of the:

- Personnel structure of the organization, and
  - Magnitude of the business that it conducts.
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## Factors in Determining Managerial or Executive Capacity,

Continued

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### **Too Many Managers, not Enough Worker Bees**

It is not uncommon to encounter an organization that employs only a few people, yet claims that the majority of its employees are primarily engaged as managers or executives.

In these instances, it is often helpful to request complete position descriptions and hourly breakdowns for the duties performed by all of the individuals employed by the organization, including one for the beneficiary, as well as copies of corroborative payroll documentation.

The position descriptions and payroll documentation are used to determine who is performing the non-qualifying, operational duties of the business.

In addition, the entity may be substantial in size but the department or division where the beneficiary is, or will be, employed may be “top-heavy” with managers and executives.

If the employer is a large organization, detailed staffing inquiries should be limited to the department or division where the beneficiary has been or will be employed.

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### **Contract Employees**

The record may indicate that the business employs only one or two people, including the beneficiary. As mentioned previously, it may be helpful to try to determine who is performing the non-managerial operational duties of the business.

The business may not directly employ individuals to perform the non-managerial services of the business. Instead, the business may “contract out” some of its functions such as accounting, sales, warehousing, personnel, etc.

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# Factors in Determining Managerial or Executive Capacity,

Continued

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**Unpublished  
Decision by the  
AAO**

Representatives and petitioners occasionally refer to an unpublished decision by the AAO, (Irish Dairy Board, Inc.), in which a pre-IMMACT 90, Schedule A, Group IV beneficiary was found to be primarily engaged in a managerial/executive position, even though he was the sole employee of the petitioning entity.

In this case, the petitioning entity imported over \$90 million worth of goods to the U.S. while exporting in excess of \$50 million worth of goods in the year of filing. The business used independent contractors to perform all of its sales and import/export functions. The beneficiary did not directly perform the duties of these functions himself. Rather, he directed the work of the contractors in the furtherance of the operational duties related to the primary function of the business.

The AAO decided<sup>1</sup> in this unpublished decision<sup>2</sup> that if these contractors had been employed “in-house”, that the beneficiary would have been clearly classifiable as an executive.

Pursuant to 8 CFR 103.3(e), Service precedent decisions are binding on Service employees; unpublished decisions are not binding. However, this decision outlines how substantial business activity and contractors may add up to a qualifying L1A position that is primarily managerial or executive in nature.

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**Beneficiary  
may Own the  
Organization if  
the  
Employment =  
L1**

The beneficiary may own the foreign and U.S. organizations in whole or in part. However, maintaining a “figure head” title and position, such as “Director” or “President”, without being primarily engaged in the management of the organization is not qualifying for L1 purposes.

[See *Matter of Aphrodite Investments*, 17 I&N, Dec. 530]

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*Continued on next page*

# Factors in Determining Managerial or Executive Capacity,

Continued

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## Managing a Function

L1 beneficiaries are commonly identified as the manager or executive of a “function” within the organization. Functional managers are included in the Service’s definitions for managers and executives.

However, it must be demonstrated that the organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the duties of the function. The petitioner’s evidence must demonstrate that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will remove him or her from performing the services or duties of the company.

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## L1B: Specialized Knowledge

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### Introduction

The L1B classification is reserved for certain specialized knowledge individuals and professionals. The definitions for L1 specialized knowledge professionals can be found in section 214(c)(2)(B) of the INA and 8 CFR 214.2(l)(1)(ii)(D) and (E). The requirement that the individual is a professional only applies when the person is being petitioned for under a blanket petition.

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### Specialized Knowledge Defined

Specialized knowledge means special knowledge possessed by an individual of the organization's:

- Product
  - Service
  - Research
  - Equipment
  - Techniques
  - Management, or other interests and its application in international markets, or
  - An individual's advanced level of knowledge or expertise in the organization's processes and procedures.
- 

### Specialized Knowledge Interpretation

Headquarters' memo CO 214L-P, dated March 9, 1994, provides additional guidance on the interpretation of "specialized knowledge" as defined by statute and regulation.

The memo notes that there are no statutory definitions or legislative history to provide guidance or insight as to the interpretation of the terms "special" or "advanced", and instructs adjudicators to rely on the common dictionary definitions. See the *Term "Special" Defined* section.

USCIS has several policy memorandums that provide guidance on how to interpret specialized knowledge for the L1B classification.

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*Continued on next page*

## L1B: Specialized Knowledge, Continued

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**Term “Special” Defined** Webster’s II New Riverside University Dictionary defines the term “special” as “surpassing the usual; distinct among others of a kind.” Also, Webster’s Third New International Dictionary defines the term “special” as “distinguished by some unusual quality; uncommon; noteworthy.”

Based on the above definition, a beneficiary would possess specialized knowledge if the record demonstrated that the beneficiary’s knowledge is different from that found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

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**Term “Advanced” Defined** Webster’s II New Riverside University Dictionary defines the term “advanced” as “highly developed or complex; at a higher level than others.” Also, Webster’s Third New International Dictionary defines the term “advanced” as “beyond the elementary or introductory; greatly developed beyond the initial stage.”

Again, based on the above definition, the beneficiary’s knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout an organization, only that the knowledge be advanced.

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**No Test of the U.S. Labor Market Required** The determination of whether a beneficiary possesses specialized knowledge does not involve a test of the U.S. labor market.

Whether or not there are U.S. workers available to perform the duties is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the beneficiary, not whether there are similarly employed U.S. workers.

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*Continued on next page*

## L1B: Specialized Knowledge, Continued

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### L-1 Visa Reform Act of 2004

The L-1 Visa Reform Act of 2004 addresses L-1B workers stationed primarily outside the L organization. Beginning June 6, 2005, section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent if the alien is under the “control and supervision” of the unaffiliated employer, or if the placement at the non-affiliated worksite is “essentially an arrangement to provide labor for hire.”

For this ground of ineligibility to apply:

- The alien worker must be a specialized knowledge worker as defined at 8 CFR 214.2(l)(1)(D) and (E), and
- The worker must be stationed primarily (more than 50%) offsite.

**NOTE:** If more than 50% of the total work time is spent offsite, the petition must establish “control and supervision” of the alien. (Yates memo)

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## Factors in Determining Specialized Knowledge

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### General Knowledge Does Not Equal Specialized Knowledge

Though there is no required test of the U.S. labor market, the officer must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized knowledge.

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### Specialized Knowledge May Become General Knowledge

In this era of rapid technological advances, expertise in certain “cutting edge” technologies may become “general industry knowledge” in a rather short period of time. The true “advanced” nature of the beneficiary’s knowledge must be considered in relation to the current level of knowledge commonly held in the area of the beneficiary’s specialty.

**EXAMPLE:** In the early nineties, expertise in the creation and maintenance of internet websites was not commonly held in the computer industry. Today, many grade school children possess the ability to perform these tasks. Such knowledge is no longer thought of as “special” or “advanced”.

---

### Characteristics That May Equal Specialized Knowledge

The following are some of the possible characteristics of a beneficiary who may possess specialized knowledge. They are not all inclusive. The beneficiary:

- Possesses knowledge that is valuable to the employer’s competitiveness in the market place;
  - Is qualified to contribute to the U.S. employer’s knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
  - Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position;
  - Has knowledge which, normally, can be gained only through prior experience with that employer, or;
  - Has knowledge of a product or process that cannot be easily transferred or taught to another individual;
  - Has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the U.S.
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*Continued on next page*

## Factors in Determining Specialized Knowledge, Continued

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### Evaluating Specialized Knowledge Positions

When evaluating the nature of the beneficiary's claimed specialized knowledge position, the petition and supporting evidence must be reviewed to establish that:

- The beneficiary's prior and proposed employment qualifies for L1B purposes, and
- He or she truly possesses knowledge that is special or advanced in relation to knowledge commonly held in the beneficiary's field.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers, and how the beneficiary's position requires the services of an individual who possesses specialized knowledge.

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### Petitioner's Allegations

The mere fact that a petitioner alleges that a beneficiary's knowledge is somehow different does not, in and of itself, establish that the beneficiary possesses specialized knowledge.

Frequently, the petitioner will merely reiterate the definitions of specialized knowledge professionals as defined in statute and regulation.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.

*Continued on next page*

## Factors in Determining Specialized Knowledge, Continued

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**Petitioner  
Bears Burden  
of Proof**

The petitioner bears the burden of establishing, through the submission of probative evidence, that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor.

Likewise, a petitioner's assertion that the beneficiary possesses an advanced knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.

It is the quality and caliber of the evidence that establishes whether or not the beneficiary possesses specialized knowledge.

**[See *Matter of Brantigan*]**

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## Specialized Knowledge Language

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### Unacceptable Words and Phrases

Words and phrases to avoid in specialized knowledge denials and call-ups.

- Narrowly held
  - Key
  - Key Personnel
  - Proprietary
  - Essential
  - Essential Process
- 

### Acceptable Words and Phrases

Words and phrases to use in specialized knowledge denials and call-ups.

- Different
  - Uncommon
  - Material different
  - Noteworthy
  - Distinguished by some unusual quality
  - Highly developed
  - Complex
- 

### IMMACT'90 Changes to Specialized Knowledge Requirements

*Matter of Sandoz Crop Protection Corp., Colley and Penner* predate the 1990 statutory amendments which eliminated the requirement that specialized knowledge be either "proprietary" or "unique" and therefore, these decisions should be viewed in light of this. While the legislative history (from 1970) may have used these terms, they do not appear in the statute or in the regulations, and so, use of this kind of terminology in decisions is to be avoided.

In light of the changes brought about by IMMACT'90, do not use the following sections of these cites: )

*Matter of Penner* 18 I&N Dec. 49 (Comm. 1982)

An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee.

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*Continued on next page*

## Specialized Knowledge Language, Continued

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**IMMACT'90  
Changes to  
Specialized  
Knowledge  
Requirements  
(continued)**

*Matter of Colley, et al* 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

Specialized knowledge involves proprietary knowledge and an advanced level of expertise not readily available in the United States job market. This knowledge and expertise must be clearly different from those held by others employed in the same or similar occupations. Different procedures are not a proprietary right within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.

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**Cites not  
impacted by  
IMMACT'90**

The following *Matter of Sandoz Crop Protection Corp.*, *Colley* and *Penner* cites can still be used in the below contexts as the 1990 statutory amendments did not address these areas.

*Matter of Sandoz Corp Protection Corp.* should be used only in those situations where the petitioner is referencing patented products or copyrighted works. See Below.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

A petitioner's ownership of patented products or copyrighted works, in and of itself, does not establish that a particular employee has specialized knowledge.

*Matter of Colley, et al* 18 I&N Dec. 117 (Comm. 1981)

Most employees today are specialists and have been trained and given specialized knowledge; however, it can not concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.

*Matter of Penner* 18 I&N Dec. 49 (Comm. 1982)

By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge."

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*Continued on next page*

## Specialized Knowledge Language, Continued

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### Using Cites

Where not specified above, officers may use any cite pertinent to case. However, it is the responsibility of the officer to ensure all cites are still valid. Check with a supervisor to use cites not specified in this document.

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# Qualifying Employment

## Qualifying Foreign Employment

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**Introduction** The beneficiary must have one year of continuous employment in a primarily managerial, executive or specialized knowledge capacity with a qualifying organization abroad within the three-year period immediately preceding the filing of the petition.

[See 8 CFR 214.2(l)(1)(i), 8 CFR 214.2(l)(1)(ii)(A), 8 CFR 214.2(l)(3)(iii), and (iv), and *Matter of Michelin Tire Corp.* 17 I&N Dec. 248]

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**Foreign  
Capacity Does  
Not Have to  
Equal U.S.  
Capacity**

Generally, there is no requirement that the beneficiary has been employed abroad in the same capacity as he or she will have in the United States.

[See 8 CFR 214.2(l)(3)(iv)]

**EXCEPTION:** If the beneficiary is coming to open or be employed in a new office in the U.S. and will be employed in a managerial or executive capacity, he or she must have been employed in the same capacity abroad.

[See 8 CFR 214.2(l)(3)(v) and 8 CFR 214.2(l)(3)(vi)]

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**Employed  
Abroad**

Employed abroad means what it appears to mean. Experience acquired in the United States may not be counted as part of the required one year of experience, even if the U.S. experience was with a qualifying entity.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Kloeti* 18 I&N Dec. 295]

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*Continued on next page*

## Qualifying Foreign Employment, Continued

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### One Year of Continuous Employment Abroad

Continuously generally means an unbroken and uninterrupted year of qualifying work experience abroad.

The intracompany transferee definition seems to assume that all L1 beneficiaries will be outside the United States when an initial L1 petition is filed.

If the beneficiary has been outside the U.S. during the three-year period immediately preceding the filing of the petition, it is very easy to determine the three-year period to examine.

However, in some instances the beneficiary has been present in the U.S. for quite some time prior to the filing of the petition. In addition, the beneficiary may have been employed in the United States for part of the three-year period immediately preceding the filing of the petition. In these instances, the officer must determine whether the beneficiary's stay in the United States has "interrupted" his or her qualifying foreign employment.

Periods of employment in the United States in a lawful status for a qualifying entity and brief trips to the U.S. for business or pleasure are not considered to be interruptive of the beneficiary's foreign employment.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Continental Grain Co.* 14 I&N Dec. 140]

---

### Successorship in Interest

In some instances, the beneficiary's one year of continuous employment may be gained prior to a qualifying relationship between the foreign employer and the U.S. employer being established.

If all of the assets and liabilities of one entity are substantially acquired through sale, merger or reorganization by another entity such that a qualifying relationship is created between a U.S. employer and a foreign employer, then the beneficiary's foreign employment could have been gained prior to the creation of the qualifying relationship.

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# Qualifying U.S. Employment

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**Introduction** The qualifying U.S. employer must be offering the beneficiary a primarily managerial, executive, or specialized knowledge position in the United States.

[See section 101(a)(15)(L) of the ACT, 8 CFR 214.2(1)(l)(i), and 8 CFR 214.2(1)(l)(ii)(A), (B), (C), (D) and (E)]

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**U.S. Organization Must Directly Employ the Beneficiary**

A qualifying U.S. organization must directly employ the beneficiary for the entire duration of his or her L1 nonimmigrant status. However, the qualifying foreign employer may file the petition on the beneficiary's behalf.

The beneficiary may not directly perform services for a foreign employer in the U.S. without maintaining a valid employment relationship with the U.S. organization. The test is which organization controls the beneficiary's employment.

[See *Matter of Penner*, 18 I&N Dec. 49]

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**Beneficiary May be Paid by the Foreign Employer**

While a qualifying U.S. employer must directly employ the beneficiary, the beneficiary's wages may be paid by the foreign organization.

[See *Matter of Pozzoli*, 14 I&N, Dec. 569]

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**Required Evidence**

At a minimum, the petitioner must provide:

- A detailed statement that describes the duties to be performed by the beneficiary in the U.S., and;
- Evidence that the beneficiary prior education, training and employment qualify him or her to perform the intended services in the U.S.

[See 8 CFR 214.2(1)(3)(ii) and 8 CFR 214.2(1)(3)(iv)]

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**Evaluating the U.S. position**

For a thorough discussion of how to evaluate the offered position, refer to the manager and executive, or specialized knowledge professional sections of the SOP.

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# Doing Business

## Overview

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### Definition

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

Doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

[See 8 CFR 214.2(l)(1)(ii)(H)]

---

### Introduction

Both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an intracompany transferee

[See 8 CFR 214.2(l)(1)(ii)(G)]

#### **EXCEPTION:**

A petitioner filing for an L1 beneficiary coming to be employed for a U.S. organization that has been doing business for less than one year does not have to be actively engaged in doing business at the time of filing of the petition.

Instead, the petitioner must submit evidence that sufficient physical premises to house the new office has been secured, and the intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

**NOTE:** L1 "new office" petitions will be discussed thoroughly later.

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*Continued on next page*

## Overview, Continued

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**Foreign  
Employer Must  
Continue to do  
Business**

There must be a qualifying organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad.

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**Organization  
Must have  
Sufficient  
Resources**

In addition to conducting business, the organization must be shown to have sufficient resources in order to compensate the beneficiary and to continue to conduct business into the foreseeable future.

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# Determination of Doing Business

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## Introduction

While the organization must be shown to be involved in the continuous provision of goods or services, there is no statutory or regulatory minimum level of business activity that must be conducted in order for the U.S. and the Foreign organization to meet this eligibility requirement.

However, the organization must be conducting business in a manner that would require the services of an individual **primarily** engaged in a managerial, executive, or specialized knowledge capacity.

In order to make a determination that the organization is conducting sufficient business to require the services of the beneficiary, the organization's personnel structure and the beneficiary's stated duties must be placed in the context of the level of business that is being conducted by the organization.

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## Credible Evidence May Not Establish Eligibility

This section discusses the various categories of evidence that are routinely submitted to document an organization's business activities. It should be noted that the submission of what is considered to be "credible" evidence is not equivalent to meeting the eligibility criteria. The validity of the evidence must be evaluated. The evidence submitted may be negative as well as positive.

In other words, a tax return may be submitted by the petitioner and be considered credible evidence, but the information provided on the tax return may fail to establish that the eligibility requirement has been met.

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## Evidence of Doing Business

A variety of documents may be submitted in order to establish that the U.S. and the foreign organization are doing business.

Frequently, the petitioner will merely submit a letter that describes the nature and level of business activity conducted by the organization.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the organization's business activities.
Small and/or young, unknown or less substantial business,	The issue of whether the organization is doing business requires the submission of credible, documentary evidence in order to make a determination.

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*Continued on next page*

## Determination of Doing Business, Continued

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**Calendar or Fiscal Year** Organizations publish annual reports and financial statements, and file tax returns based on either a calendar or a fiscal year.

<b>If the reporting year is a...</b>	<b>Then the year starts on...</b>	<b>And ends on...</b>
Calendar year	January 1 <sup>st</sup>	December 31 <sup>st</sup>
Fiscal year	The 1 <sup>st</sup> day of any month other than January	The last day of any month other than December

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**Change of Year for Tax Purposes** An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.

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## Primary Evidence of Doing Business

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### **Primary Documentary Evidence**

Primary documentary evidence of an organization's business activities includes:

- Annual Reports, containing audited or reviewed financial statements,
  - Audited financial statements,
  - Reviewed financial statements, or;
  - Federal Tax Returns.
- 

### **Evaluating Primary Evidence**

Primary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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### **Annual Reports**

Annual Reports are published by all publicly traded corporations in the United States. Many foreign organizations also publish annual reports.

Annual reports provide information describing the organization's:

- Products and Services
- Management and personnel structure on the macro level
- Ownership & Control
- Subsidiaries, affiliates, joint ventures, and branch offices
- Current and long-term objectives

In addition, annual reports should include audited or reviewed financial statements for the past year.

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## Primary Evidence of Doing Business, Continued

### Federal Tax Returns

In general, organizations that are conducting business in the U.S. must file federal tax returns each year. Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format.

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a...	Then the Tax Return is Form...	And the tax return provides a modified...	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

### Foreign Tax Documentation

- The petitioner may provide copies of foreign tax returns as evidence of the business activities of the foreign entity.
- Canada and most Western European countries require tax returns that are very similar to the United States' tax returns and are usually credible.
- Many other countries rely on hand-written tax returns and receipts that are less reliable.

# Financial Statements

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**Introduction** Financial statements are used to convey a picture of the profitability and the financial position of a business. The two most important are the income statement and the balance sheet.

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**Income Statement** The income statement shows whether or not the business earned a “profit” or net income during a specific time period. Net income is earned when revenues exceed expenses, but a net loss is incurred if the expenses exceed the revenues.

Income statements provide useful information for the adjudication of L1 petitions such as the organization’s:

- Gross sales/revenues (and sometimes the source of the revenue),
  - Cost of goods or services sold,
  - Wages, salaries, and commissions expense,
  - Rental or mortgage expense,
  - Utility expenses,
  - Brokerage, freight, travel, and contractor expenses, and
  - Net income or net loss.
- 

**Balance Sheet** The balance sheet can be likened to a snap shot of the organization’s financial position. Financial position is shown by listing the organization’s:

- Assets,
- Liabilities, and
- The equity of the owners.

The balance sheet provides useful information for the adjudication of L1 petitions such as the organization’s:

- Type and amount of assets held,
  - Type and amount of the liabilities owed, and
  - Level of investment in the organization by its owners.
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## Financial Statements, Continued

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### **Internally Generated Financial Statements**

Internally generated financial statements are created by and are based on the representations of the management of the organization. Employees of the petitioning organization prepare the financial statements and they are not subject to the scrutiny of anyone outside the organization.

Internally generated financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Compiled Financial Statements**

A compilation is the preparation of financial statements from the accounting records and other representations of the management of the organization. The accountant who prepares the financial statements is not required:

- To verify any information provided by management, or
- Have any degree of independence from the organization.

Compiled financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Reviewed Financial Statements**

A review of financial statements involves:

- Obtaining an understanding of the entity's accounting system
- Applying analytical procedures to financial data
- Making inquiries of persons responsible for the organization's financial and accounting matters

An accountant (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform a review.

The CPA will then either prepare the financial statements or review internally generated financial statements. The objective of a review is to express limited assurance that the information provided in the financial statements is in accordance with generally accepted accounting principles.

Reviewed financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Financial Statements, Continued

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### **Audited Financial Statements**

An audit is the examination of financial statements, the accounting records and other supporting evidence both within and outside the organization. It is more substantial in scope than a review, but involves many of the procedures that are performed during a review.

An auditor (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform an audit.

Auditors never express an opinion on the fairness of the financial statements without first performing an audit. The auditor's report will either contain an expression of opinion regarding the fairness of the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed.

Audited financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Secondary Evidence of Doing Business

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### **Secondary Documentary Evidence**

Secondary documentary evidence of an organization's business activities may include, but is not limited to:

- Commercial leases or title to commercial properties,
  - Form W-2s and Form 1099s,
  - Form 941, Employer's Quarterly Tax Return,
  - Internally generated payroll documentation,
  - Sales contracts and invoices,
  - Bills of lading, shipping receipts and brokerage bills,
  - Commercial loan agreements,
  - Bank Statements, or
  - Telephone and other utility bills.
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### **Evaluating Secondary Evidence**

Secondary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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## New Office

### Overview

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**Introduction** The L1 classifications have special eligibility requirements and approval limitations for L1 beneficiaries who are coming to open a new office in the United States.

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**New Office Defined** New office means an organization that has been doing business in the United States through a qualifying organization for less than one year. [See 8 CFR 214.2(l)(1)(ii)(F)]

Any organization that has been doing business in the U.S. for less than one year must be defined as a new office regardless of the existence of other qualifying organizations that have been doing business in the U.S. for more than one year.

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**Doing Business Does Not Equal Legal existence** An organization may have a legal existence in the United States for more than one year, but if it has not engaged in the continuous provision of goods and services for more than a year, it must be defined as a new office.

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## Overview, Continued

### New Office Eligibility Requirements

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations;
- Organization abroad must be actively engaged in doing business;
- U.S. organization must be shown to have sufficient physical premises to house the new office;
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition, and;
- Intended U.S. organization, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position supported by information regarding the:
  - Proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - Size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the U.S., and;
  - Organizational structure of the foreign entity

[See 8 CFR 214.2(l)(3)]

**NOTE:** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

### Beneficiary's Qualifying Employment Abroad

Use the table below for beneficiary's qualifications.

<b>If the petition indicates that the beneficiary is coming to the United States...</b>	<b>Then the beneficiary's qualifying employment abroad must have been in a primarily...</b>
As a manager or an executive to open or to be employed in a new office in the U.S.,	Managerial or executive capacity. [See 8 CFR 214.2(l)(3)(v)]
In a specialized knowledge capacity or to be employed in a new office in the U.S.,	Specialized knowledge, <u>managerial or executive capacity</u> . [See 8 CFR 214.2(l)(3)(vi)]

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## Overview, Continued

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**New Office  
Petitions May  
Only be  
Approved for  
One Year**

New office petitions may be approved for a period that does not exceed one year.

[See 8 CFR 214.2(l)(7)(i)(A)(3)]

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**Advantages for  
the Petitioner**

There are two main advantages of the new office designation for the petitioner.

1. The U.S. organization does not have to be actively engaged in the provision of goods and services as of the date of filing.
  2. The beneficiary does not have to be engaged in a primarily managerial, executive, or specialized knowledge capacity at the time of his or her change of status or entry into the United States as an L1 nonimmigrant. Instead, the petitioner must demonstrate that the U.S. organization, within one year of the approval of the petition, will support the beneficiary in a primarily executive, managerial or specialized knowledge position by providing:
    - A coherent plan in order to commence doing business in the U.S.,
    - The financial ability to compensate the beneficiary and invest sufficient resources in the U.S. organization in order to realize its proposed business plan, and
    - Acquired sufficient physical premises in the U.S. in order to start doing business as described in the business plan.
- 

**Disadvantages  
for the  
Petitioner**

There are two main disadvantages of the new office designation for the petitioner.

1. The beneficiary must be coming to provide services in a capacity that is similar to the position abroad. Hence, managers and executives must be classified as L1As and specialized knowledge employees must be classified as L1Bs, which limits the staffing options of the new office petitioners.
  2. The petition may only be approved for one year, while regular L1 petitions may be given initial approvals for up to three years.
-

## Business Plans and Foreign Investments

---

### **Business Plans**

While the new office's business plan may be entirely prospective, the petitioner's statement and supporting documentation should provide a clear picture of how the U.S. organization will conduct business to include:

- A description of the products and/or services that will be provided to its customers;
- The type and general location of the customers or clients to be targeted;
- A description of its short-term and strategic goals and the general time-frame during which these goals will be achieved;
- The amount of investment that will be required to fund the acquisition of sufficient plant, equipment and staffing in order to realize the goals, and;
- Why the beneficiary's services are needed during the start-up phase of the organization.

In addition, the petitioner's plans for the U.S. organization must demonstrate that the nature of the beneficiary's business will be such that he or she will be employed in a primarily managerial, executive or specialized knowledge capacity within one year of the approval of the petition.

---

### **Statement that Business Plan Cannot be Provided**

In general, statements by the petitioner that no business plan can be provided, or that the investment and/or acquisition of a physical premises cannot be made until the approval of the L1 petition are not sufficient for the purposes of establishing the beneficiary's eligibility for a new office approval.

The petitioner must establish eligibility at the time of filing of the petition.  
[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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*Continued on next page*

## Business Plans and Foreign Investments, Continued

### Evidence of the Foreign Organization's Investment

While there is no statutory or regulatory minimum investment required, the investment must be commensurate with the activities to be conducted by the business during its start-up phase.

The petitioner must identify the size of its financial investment in the new office and show that it has sufficient resources to pay the beneficiary's salary and implement its business plan.

Where documentary evidence is required, the record should contain:

- Bank statements for the new office, as well as the bank wire transfers, cancelled checks, or letters of credit that were executed by the foreign organization to execute the transfer of funds, or
- Evidence of commercial loans, enforceable promissory notes, or other such documentation that would show that sufficient funds are at the new office's disposal.

If the new office is being opened by a...	Then...
Large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of its investment in the new office.
Small and/or young, unknown or less substantial business,	The issue of the level of its investment and financial capabilities requires the submission of credible, documentary evidence in order to make a determination.

### Foreign Organization's Investment "Hand-Carried"

Occasionally, the petitioner will claim that the foreign organization's investment was "hand-carried" into the United States by the beneficiary or by another individual. Such claims should be corroborated with the submission of a Customs Form 4790. This is the document that is required when an individual is entering the United States in possession of \$10,000.00 or more in currency.

This claim is an indicator that the foreign organization may not exist, or is not actually involved in the start-up of the new office.

*Continued on next page*

## **Business Plans and Foreign Investments, Continued**

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**Evidence of  
Sufficient  
Physical  
Premises in the  
United States.**

There is no statutory or regulatory minimum for the size of the new office's physical premises. However, the size and nature of the physical premises must be of a sufficient size and type that would enable the new office to perform the initial activities outlined by the business plan during the start-up phase.

---

# New Office Extensions

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## Introduction

The petitioner can request an extension of the L1B or L1A's nonimmigrant status prior to the expiration of his or her L1 nonimmigrant status.

A new office petitioner can frequently establish an L1 beneficiary's eligibility for an initial one year approval by the submission of documentation that is almost entirely prospective in nature. However, at the end of the L1 beneficiary's one-year approval, the new office must be shown to have grown to a point where he or she is primarily engaged in a managerial, executive or specialized knowledge capacity.

The petitioner must still continue to meet all of the regular L1 eligibility requirements.

---

## Validity Dates

The petition may be approved for a period of time not to exceed two years. [See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

---

## Required Evidence

The petitioner must provide the following evidence in support of a new office extension petition:

- Evidence that the U.S. and foreign entities are still qualifying organizations;
- Evidence that the U.S. entity has been actively engaged in the provision of goods and services for the previous year;
- A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- A statement describing the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees when the beneficiary is to be employed in a managerial or executive capacity, and;
- Evidence of the financial status of the U.S. operation.

[See 8 CFR 214.2(l)(14)(ii)]

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*Continued on next page*

## New Office Extensions, Continued

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### **Additional Evidence**

While the evidence described above is required by regulation, additional evidence may be requested in order to establish the beneficiary's eligibility for the extension.

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### **Renewed New Office Approvals**

In general, a new office extension petition should be denied if the U.S. organization is not doing business in a manner that would require and support the employment of the beneficiary in a primarily managerial, executive or specialized knowledge capacity.

However, there are instances in which the start-up of the new office is hampered by circumstances that are beyond the petitioner's control. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
  - A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
  - Litigation involving the new office which prevented the normal functioning of the business.
- 

### **Petitioner Cites Unanticipated Circumstances**

In the instance where the petitioner cites unanticipated circumstances that hampered the new office's ability to commence doing business, the new office petition may be classified as a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year.

A limited approval should only be granted where the petitioner has adequately corroborated the nature of the events that led to the new office's difficulties. The limited approval should not be granted where there is evidence of fraud or misrepresentation.

**NOTE:** The Service should not request evidence of unanticipated circumstances, unless the petitioner has first made this claim.

---

## Miscellaneous

### Extensions

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**Introduction** The petitioner may request an extension of an L1B or L1A's nonimmigrant status by filing a petition prior to the expiration of the beneficiary's L1B or L1A status. [See 8 CFR 214.2(I)(14)]

---

**Validity Dates** The petition may be approved for a period of time not to exceed two years. [See 8 CFR 214.2(I)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

---

**Required Evidence** Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. [See 8 CFR 214.2(I)(14)]

<b>If the extension petition is being filed by...</b>	<b>Then...</b>
A large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of the beneficiary's eligibility.
A small and/or young, unknown organization,	The issue of the beneficiary's eligibility may require the submission of credible, documentary evidence in order to make a determination.

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*Continued on next page*

## Extensions, Continued

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### Previously Approved Petition

Information that is discovered at the time of an L1 extension petition might show that the beneficiary was never eligible for the benefit that was previously received. The Service is under no obligation to establish that the previously approved petition was approved in gross Service error.

Further, the Service is not obligated to approve applications or petitions where eligibility has not been demonstrated.

- *Matter of M--*, 4 I&N Dec. 532 (A.G.1952; BIA 1952)
  - Pearson V. Williams, 202 U.S. 281 (1906)
  - *Mannerfrid V. Brownell*, 145 Supp. 55 (D.D.C. 1956), affirmed 238 F. 2<sup>nd</sup> 32 (D.C. Cir. 1956), Lazarescu V. United States, 199 F. 2<sup>nd</sup> 898 (4<sup>th</sup> Cir. 1952)
  - U.S. Ex. Rel. Vajta V. Watkins, 179 F. 2<sup>nd</sup> 137 (2<sup>nd</sup> Cir. 1950)
- 

### Same/Same RFEs

SISO authorization is needed if an RFE will be issued on a petition that is requesting an extension with the same petitioner for the same beneficiary. The officer must clearly articulate the reason the RFE is needed, such as; material error, changed circumstances or new material information.

SISO authorization is **not** needed in the following scenarios:

- New office extensions when there has been a change in the
  - corporate relationship, or
  - nature of the beneficiary's employment, such as job duties, a change from L1B to L1A or vice versa, or a change in the organizational structure.
- L1B beneficiary (see William R. Yates memo dated July 28, 2005, regarding the L-1 Reform Act of 2004.)
- Beneficiary previously entered under a blanket petition. Although these extensions do not always require an RFE, these petitions may need closer scrutiny because USCIS has not previously examined the beneficiary's qualifications or the proposed U.S. position.

[See William R. Yates memo of April 23, 2004, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity.*]

---

# L1 Limitations of Stay

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## Introduction

An alien who has spent five years in the U.S. in a specialized knowledge capacity, or seven years in the U.S. in a managerial or executive capacity under section 101(a)(H) and/or (L) of the Act may not be readmitted to the U.S. under section 101(a)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the U.S. for the immediate prior year.

- No new petitions may be approved where the alien has spent the maximum time period allowed in either the H or L classification.
- Brief trips to the U.S. for business or pleasure are not considered to interrupt the required one-year outside the U.S.

[See 8 CFR 214.2(l)(12)(I)]

---

## L2 Dependents

Dependents are eligible for L-2 status extensions through the proper filing of a Form I-539 with fee, and whenever possible, filed concurrently with the principal's Form I-129.

Any time spent in L-2 status does not count against the maximum allowable periods of stay available to principals in L-1 status. [See *Aytes Memo of December 5, 2006, Guidance on Determining Periods of Admission for Aliens Previously in H-4 or O-2 Status; Aliens Applying for Additional Periods of Admission beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year*]

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*Continued on next page*

## L1 Limitations of Stay, Continued

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### General L1 Limitations of Stay

The following table describes the general L1 limitations of stay for L1 nonimmigrants. No further extensions may be granted.

[See 8 CFR 214.2(l)(15)(ii)]

If the Classification is...	Then the Maximum Period of stay is...
L1A, Manager or Executive	7 years
L1B, Specialized Knowledge	5 years

---

### Limitation of Stay: Exception

The limitations of 8 CFR 214.2(l)(12)(i) do not apply to aliens who:

- Do not reside continually in the U.S., and
- Whose employment in the U.S. is seasonal, intermittent, or consists of an aggregate of six months or less per year.

In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the U.S. to engage in part-time employment.

[See 8 CFR 214.2(l)(12)(ii)]

---

### Evidence that Beneficiary Qualifies for Exception

The petitioner must provide clear and convincing proof that the beneficiary qualifies for an exception, to include:

- Arrival and departure records,
  - Copies of tax returns, and
  - Records of employment abroad.
- 

### Memo Regarding Recapture of Time

Refer to the October 21, 2005, Michael Aytes memo, Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants, covering the recapture of time.

**NOTE:** To access the "Date calendar" online, type the following site into the address line of Internet Explorer:

<http://www.timeanddate.com/date/duration.html>.

Enter the start and end date and then click "Calculate duration"

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*Continued on next page*

## L1 Limitations of Stay, Continued

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### Limitation of Change of Status from L1B to L1A

When a beneficiary is initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years.

The beneficiary must qualify for the L-1A classification at the time of filing.

If the six month rule applies, and the beneficiary qualifies as an L-1A, then approve the classification but deny the EOS request and send the case for consular processing. As long as the beneficiary is functioning as an L-1A, the petition should be approved for consular processing.

If the petition is filed outside the six month window, but is now inside the window at the time of adjudication, despite how the regulation reads, approve the petition and EOS, if otherwise approvable.

There may be times the petitioner will request recapture of time to put themselves outside the six month window. This is permitted.

Beware of L-1A extensions where the prior approval was limited to a short period-this could be an indicator that they were not eligible to extend beyond the five year mark due to regulatory requirement.

The Service must have approved the change to managerial or executive capacity in an amended, new, or extended petition at the time the change occurred.

[See 8 CFR 214.2(l)(15)(ii)]

**NOTE:** A change from L1A to L1B or L1B to L1A is not a change of status. A change from one to the other with the same employer will be a change in employment and possibly an extension.

---

## Dependent(s)

---

**Dependent(s) of the L-1** The spouse and unmarried dependent children (under the age of 21) of an L1 beneficiary may be granted the L2 classification and be given the same validity dates as the L1 principal.

L1 dependents are not included on the L1 petition. Rather, they must apply for an L2 visa at the consulate based on the L1 principal's petition, or they can file a Form I-539 in order to change or extend their nonimmigrant status.

Dependent minor children can be given the same validity dates as the L1 principal up until the day they marry or reach the age of 21.

The spouse and dependent minor children may not accept employment in the U.S. unless otherwise authorized under the Act. [See 8 CFR 214.2(l)(17)(v)]

---

**Dependents May Attend School** L-2 dependents may attend school without a COS to student status. This information is found in 8 CFR 248.3(e).

---

**L's Status Contingent upon Qualifying Employment** The continuation of the L1 principal's status and the L2 dependent's status hinges on the L1's qualifying employment with the petitioner. When the employer/employee relationship is terminated, or the nature of the employment no longer qualifies for L1 purposes, the L's status is no longer valid.

---

# Bundled Petitions

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## Introduction

Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”. All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.

The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.

---

## Petitioner Submissions

Petitioners can submit:

- More than one bundle of L-1B petitions if there is more than one specialized occupation related to a project.
  - L-1A petitions with the bundle if the L1A will be managing the L1B beneficiaries.
  - Form I-539 for any qualifying dependents.
- 

## Adjudicating Bundled Petitions

Once received, a bundle, or a group of connected bundles, will be banded together as one unit and be included as part of an officer’s work order.

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time. For example, if bundled petitions require RFEs, all of the RFEs will be issued the same day.

**NOTE:** A bundle of petitions must remain together and move throughout the VSC as one unit.

---

## Does not meet bundle criteria

If one or more of the petitions in a bundle do not meet the bundling criteria or do not require the same officer action as the rest of the bundle, remove those petitions from the bundle and adjudicate as single filings.

**Example:** If it does not appear that one of the beneficiaries included in the bundle will be working on the same project as the other beneficiaries, remove that petition from the bundle.

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*Continued on next page*

## **Bundled Petitions, Continued**

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**Timely  
Adjudication**

If a bundle or group of related bundles is so large that you will not be able to timely adjudicate the petitions, notify your supervisor.

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# NAFTA Petitions

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**Introduction** VSC routinely receives L1 NAFTA petitions from POEs and PFIs in order for them to be updated into CLAIMS. These petitions have already been adjudicated and all the information on the petitions (including approval stamp) has been completed AND the beneficiaries have already entered the country.

---

**Where to File** The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or;
- United States pre-flight station in Canada. [See 8 CFR 214.2(l)(17)(i)]

---

**Updating in CLAIMS/GUI** All approved NAFTA cases adjudicated at a Class A POE on the United States-Canada land border or PFI in Canada are forwarded to the Service Center within the same Service region for CLAIMS updating. Clerical is responsible for the approval updating of these cases in CLAIMS. These files are routed directly from Data Entry to clerical.

If an approved NAFTA filing bearing the approval stamp and a bar code is received by an ISO and GUI does not show the approval notice as being sent, then a CFF should be prepared and the file placed in the CFF slot in the clerical sort area.

The only time an ISO will need to take action on a NAFTA case is if the I-129L was not approved at the POE/PFI and was routed to the VSC with a memo recommending denial. The ISO would then prepare an Intent to Deny.

---

# Detecting L1 Fraud or Misrepresentation

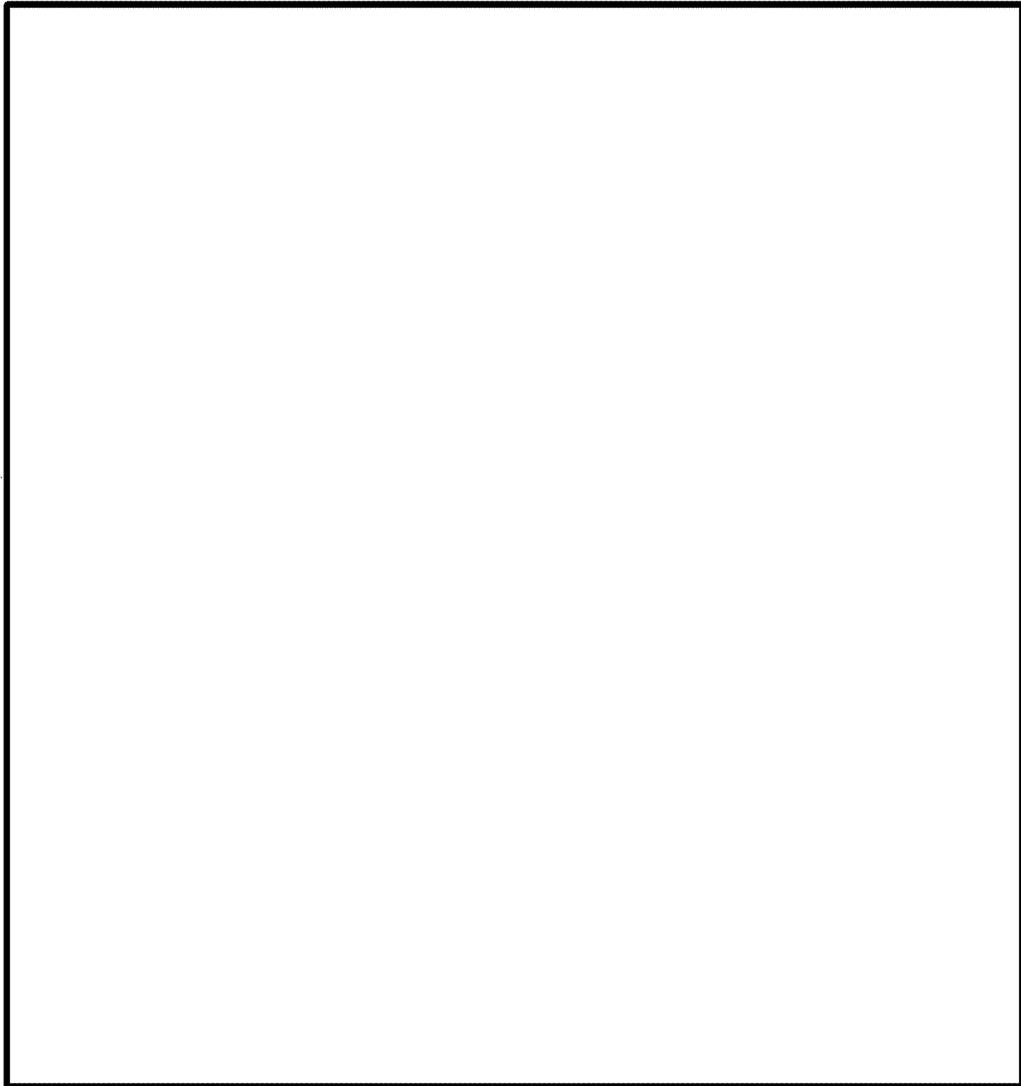
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## **Introduction**

This section describes some of the fraud and misrepresentation indicators and approaches for L-1 petitions that might help reveal the presence fraud or misrepresentation in the record.

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## **Why is the L1 Classification an Attractive Vehicle for Benefits Fraud?**



(b)(7)(e)

## **Officer's Responsibility**

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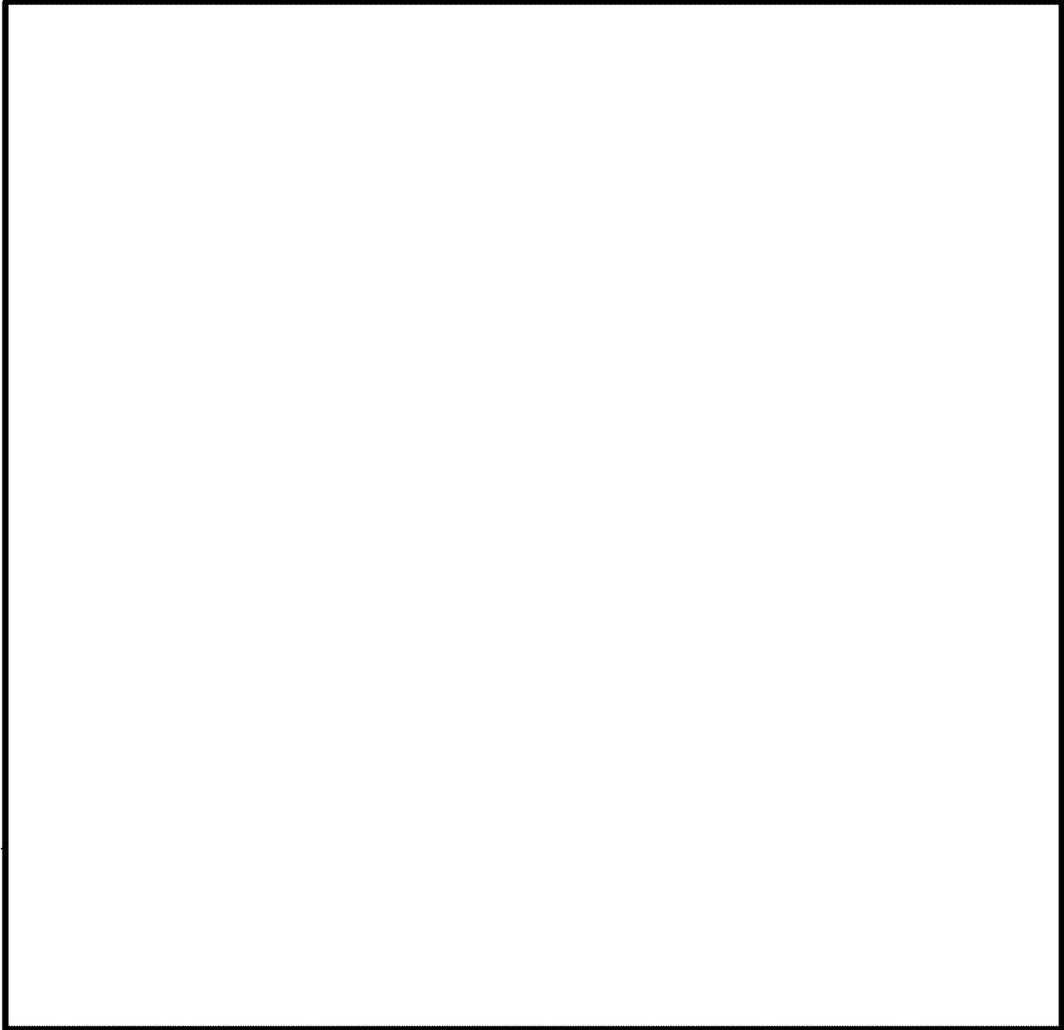
# Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Beneficiary**

Fraud and misrepresentation indicators relating to the beneficiary may include, but are not limited to:

(b)(7)(e)



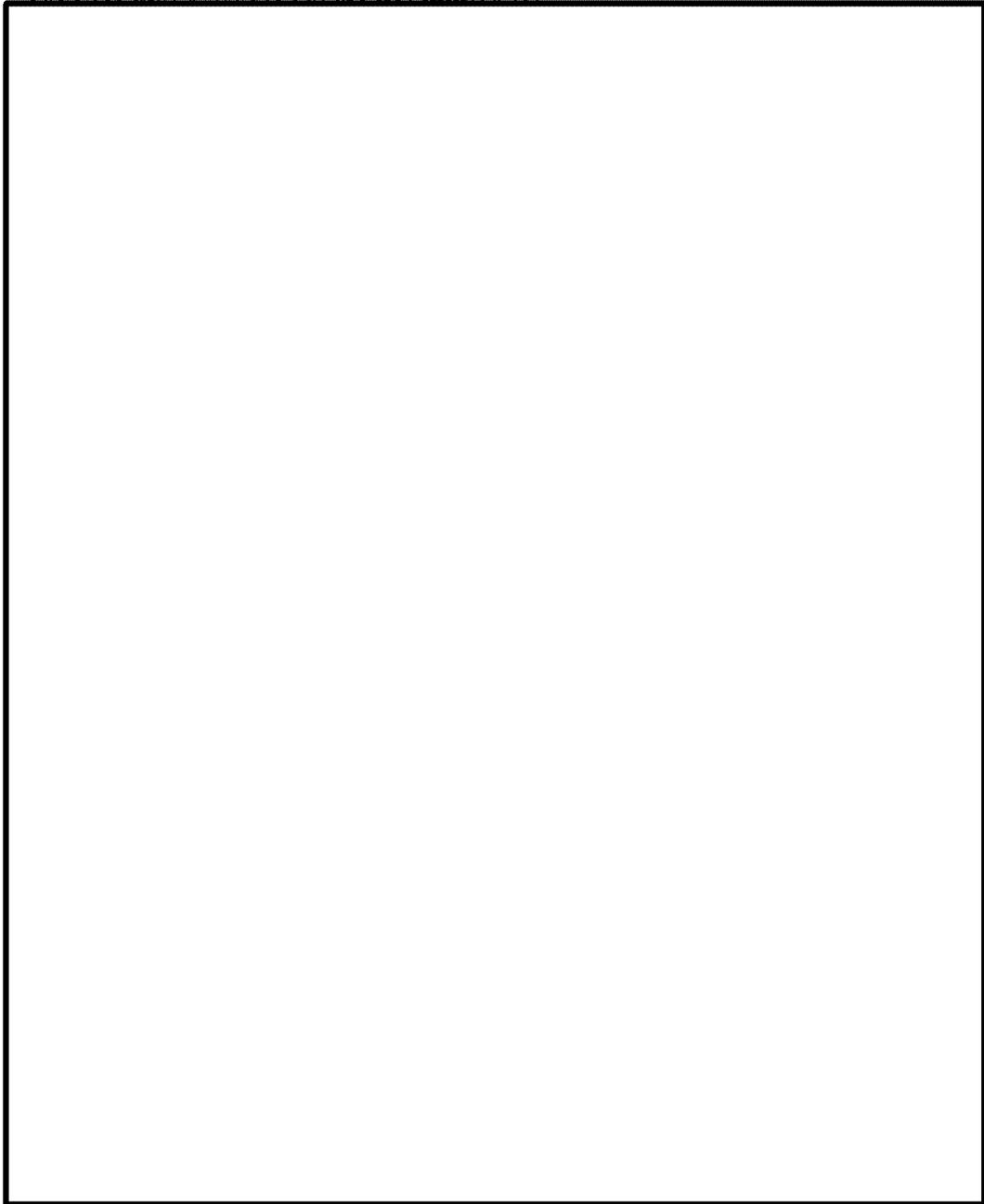
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# Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
U.S or Foreign  
Business**

Fraud and Misrepresentation indicators relating to the U.S. or foreign business may include, but are not limited to:



*Continued on next page*

## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Petitioner's  
Immigration  
History**

Fraud and misrepresentation indicators relating to the petitioner's immigration history may include, but are not limited to:

(b)(7)(e)

**Adjudicative  
Approaches**

There are a number of adjudicative approaches to take when there is a question of fraud or misrepresentation in the record.

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**Systems Checks**

There are several of electronic systems available to aid in the detection of fraud or misrepresentation including the following:

- GUI
  - Mainframe CLAIMS
  - SQ94/ADIS
  - CIS
-

## Name Conventions for GUI, SQ94, ADIS and CIS

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### **Petitioner's Name**

The petitioner's name should be entered exactly as it appears on the petition with the exception of the words "Inc., Ltd., LLC, PLC, or Corp". In addition, the words "International and Group" are usually abbreviated to "Intl and Gr".

If the petitioners name does not even bring up the petition that is being adjudicated, it might be helpful to wand in the receipt file number and see what conventions were used by Data Entry to enter the petition into CLAIMS.

---

### **Beneficiary's Name**

The beneficiary's name and date of birth should be entered exactly as it appears on the petition. However, keep in mind that some countries list the day of the month before the month, so June 8, 1999 may be listed either as 06/08/1999 or 08/06/1999. In some instances it may be wise to try it both ways.

---

### **Asian Names**

Asian first names may be listed in reverse order or the first name may or may not have a space in it. For example. Li Yu Wen may be Li Yu Wen, Liyu Wen, Yu Wen Li, or Yuwen Li.

---

### **Hispanic Names**

Hispanic names may or may not use the first or second last name. For example, Maria Lopez Garcia may be Maria Lopez Garcia, Maria Lopez or Maria Garcia.

---

# Name Discrepancies

**Introduction** This section pertains to all I-129 petitions and I-539, I-765 and I-131 applications where there are discrepancies between the name the petitioner/applicant entered on the petition/application and the name shown on the applicant or beneficiary's passport and/or visa.

**Reconciling Name Discrepancies** Use the chart below to determine how to reconcile name discrepancies between the petition or application and a passport and/or visa.

**NOTES:**

- If a copy of the alien's passport or visa was not included with the filing, do not RFE for a copy of the passport or visa unless those documents are necessary to adjudicate the case.
- All name changes made in GUI and on an application or petition must be run in IBIS Manifest.

Scenario	Resolution
<p>Visa and/or passport names are different than the Petition/Application name but it can be verified the individuals named are the same person.</p>	<p>Enter the visa and/or passport name in GUI and on the petition/application</p> <p><b>Example:</b>            GUI and petition/application show the alien's name is Sanchez, Juan. Passport shows the alien's name as Sanchez Diaz, Juan.            Enter the passport name in GUI and on the petition/application</p>
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name different, and</li> <li>• Visa was issued <u>after</u> the passport</li> </ul>	<p>No changes necessary, visa was issued after the passport was issued.</p>
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name is different, and</li> <li>• Visa was issued <u>before</u> the passport</li> </ul>	<p>Change the name on the petition/application and GUI to match the passport.</p>

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## Name Discrepancies, Continued

**Reconciling  
Name  
Discrepancies  
(continued)**

Scenario	Resolution
<ul style="list-style-type: none"><li>• Passport and petition/application names are the same,</li><li>• Visa name is different, and</li><li>• Visa was issued <u>after</u> the passport</li></ul>	Change the name on the petition/application and GUI to match the visa.
<ul style="list-style-type: none"><li>• Passport and petition/application names are the same,</li><li>• Visa name is different, and</li><li>• The passport was issued <u>after</u> the visa</li></ul>	Change the name on the petition/application and GUI to reflect the name on the passport.

**NOTE:** If the passport and visa show the alien has only one name, regardless of whether it is a given name or a family name, then:

- The name should be entered in the Last Name field in GUI, and
- “No Name Given” should be entered in the First Name field in GUI

# National Systems

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## GUI

The GUI database can be searched by the name of the petitioner or by the beneficiary's name. In addition, it may be helpful to search by the name of the foreign entity as foreign petitioners may file L1 petitions.

GUI can identify the following information:

- The type and number of petitions and applications that have been filed,
  - Whether any other petitions or applications have been pending, and
  - Whether the petitioner or the beneficiary has had previous denials or revocations of petitions and applications.
- 

## Mainframe CLAIMS

Mainframe CLAIMS can be accessed through the National Systems and can provide the same information as GUI for all four Service Centers. In addition, it also provides information about petitions and applications filed at select district offices.

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## ADIS

Effective April 1, 2013, Officers are required to check the **Arrival Departure Information System (ADIS)** to confirm arrival and departure information. Officers are no longer required to check the TECS SQ94 system to confirm arrival and departure information.

Officers shall review Arrival/Departure information for all applicants/beneficiaries not more than 15 days prior to rendering a final decision on the following:

- Approvals and denials of a change of nonimmigrant status (i.e., Forms I-539 and Form I-129) and
- Denials only for extension of stay.

The file must include either a copy of the system printout or a notation indicating the date of the check or that there is no record of the applicant/beneficiary in the system. Screen prints should be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print.

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## National Systems, Continued

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### ADIS Access

ADIS can be accessed through the ECN Adjudications Home page on the right hand side of the page and provide the following information about the beneficiary's:

- Entries and departures from the United States
- Methods of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If a search by I-94 #, Passport # or Name/DOB does not produce a record, officer may still check SQ94 for a record.

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### SQ94

SQ94 can be accessed through the National Systems and can provide information about the beneficiary's:

- Entries and departures from the U.S.
- Method of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If SQ94 is used, a screen print of the query must be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print. The date of the SQ94 query must be within 15 days of the final adjudicative action.

If a search by I-94 # or Name and DOB does not produce a record, it may be helpful to search by the beneficiary's passport number. In addition, dated information may be archived in SQ94, so a search in the archive portion of SQ94 may produce a better result.

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## National Systems, Continued

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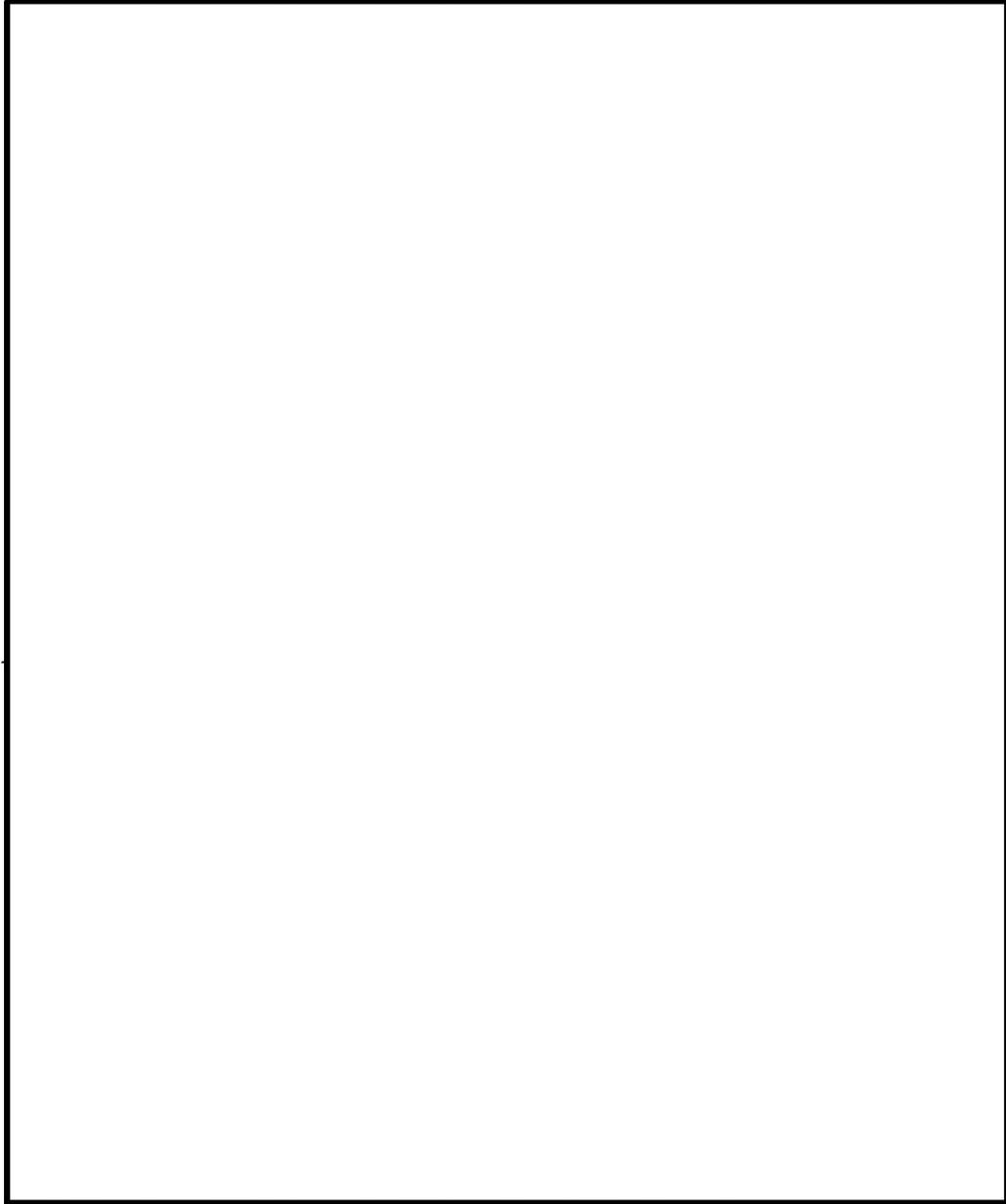
### CIS

A CIS query is required if you discover that the beneficiary has an A-file number. CIS can be accessed through the National Systems and can provide information about the beneficiary's alien registration number and his or her pending or completed adjustment, asylum, or removal proceedings.

(b)(7)(e)

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### **VIBE**

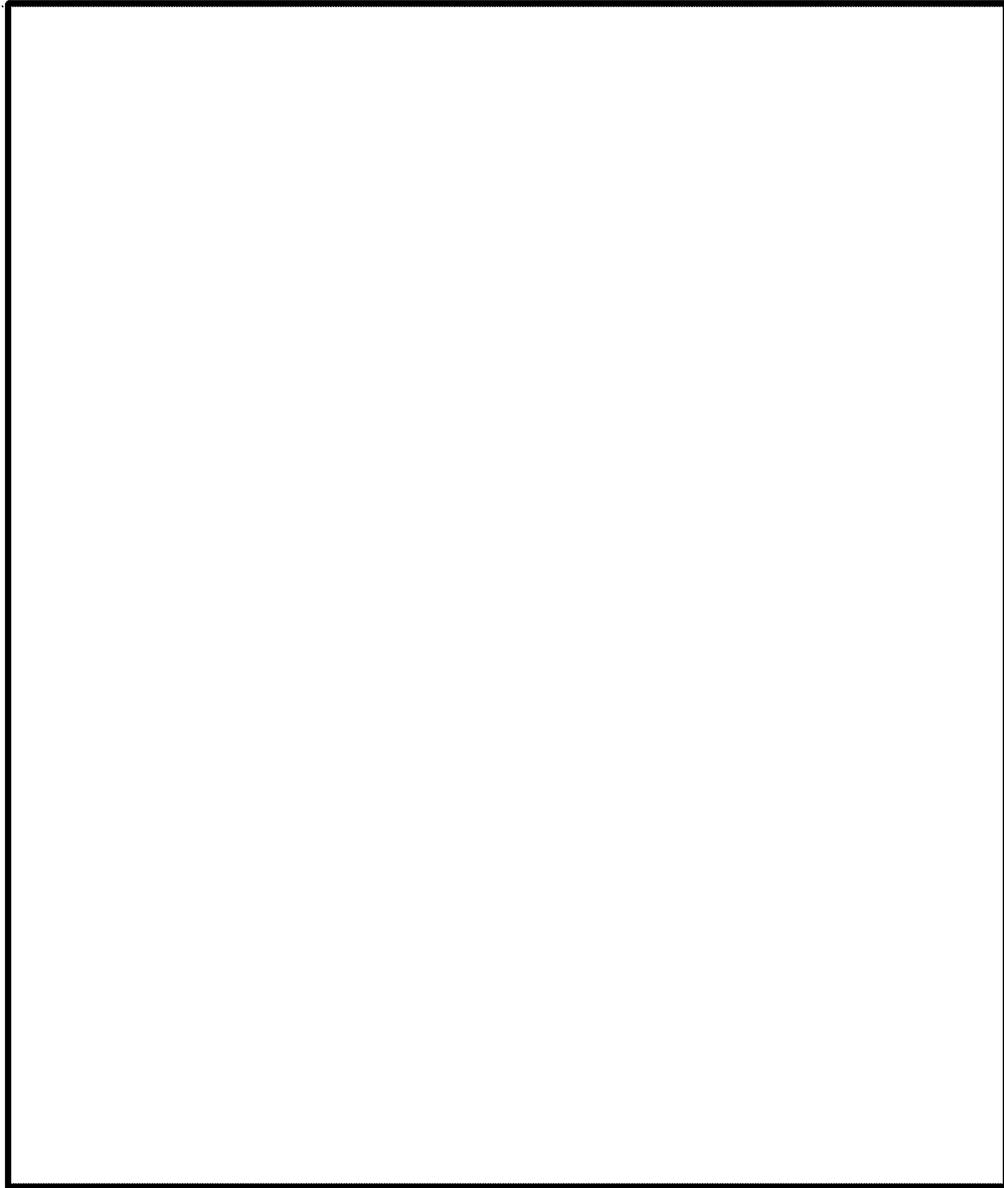


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**National Systems, Continued**

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**VIBE**  
(continued)



(b)(7)(e)

# I-129 L-1 Blanket Petition

## Overview

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**Introduction** Blanket L petitions are adjudicated based upon the same general principles used in adjudicating the qualifying relationship of individual L petitions. However, there are some differences. The following is a brief summary of blanket L petitions.

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**Who May File the Blanket L-1** The blanket L-1 procedure is intended for larger international organizations. Only entities involved in commercial trade or services may use the blanket petition. This means that noncommercial organizations, like churches, may not use the blanket petition.

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**Blanket Regulation** 8 CFR 214.2(l)(5)

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**Appeal Rights** The denial of the Form I-129 Blanket petition is appealable to the AAO, just like the denial of any other L-1.

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# Qualifying Company Relationships

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## Introduction

A U.S. petitioner may file a blanket petition to receive continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations. The blanket petition is filed on Form I-129. When the Form I-129 is adjudicated to obtain approval of foreign and U.S. relationships, the adjudicator's only concern are the qualifying company relationships. No alien beneficiary is named on the Form I-129 blanket petition.

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## Petitioner Requirements

- The petitioner and each of the entities included are engaged in commercial trade or services,
  - The petitioner has an office in the United States that has been doing business for one year or more,
  - The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates, **and**
  - The petitioner and the other qualifying organizations have obtained approval of petitions for at least 10 "L" managers, executives, or specialized knowledge workers during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a U.S. work force of at least 1,000 employees.
- 

## Establish Ownership and Control of ALL Entities

The petitioner lists all the foreign entities and all of the U.S. entities that they want to have approved **and** establishes who has ownership and control of all of the entities. Only those entities meeting the definition of a qualifying organization can be approved. See 8 CFR 214.2(l)(1)(ii)(G).

If there is question about ownership and/or control for any of the petitioned entities issue an RFE for necessary documentation to help make a determination.

All approvable entities will be named on a list to be included with the released approval notice of the petition.

---

## Approvals

If the petitioner meets the filing requirements and it is determined that there are qualifying entities, a list of all qualifying entities will be prepared. The lists will be sent with the released I-797 approval notice for the petition.

The approval notice means that it is permissible for any of the qualifying entities to petition to transfer an employee from any approved foreign entity to any approved U.S. entity.

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*Continued on next page*

## Qualifying Company Relationships, Continued

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### Extension of Blanket

A blanket extension may be filed six months prior to the expiration of the initial blanket on Form I-129.

**NOTE:** If the petitioner fails to file for the extension prior to the expiration of the initial blanket approval or if an extension request is denied, the petitioner and its qualifying organizations must wait three years to file another blanket. In the interim, individual petitions must be filed by these organizations for beneficiaries.

### [I-129 Filing Instructions]

---

### Blanket Extension Requirements

The documentation required to support the blanket extension include:

- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
    - Positions held during that period
    - The employing entity
    - The dates of initial admission and final departure, if applicable, of each beneficiary
  - A statement from the petitioner indicating whether it still meets the blanket criteria.
  - Documentation to support any changes in approved relationships or additional qualifying organizations.
-

# Approvals of L-1 Blanket Petitions

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## Introduction

When approving a case, you **must**:

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**),
- Indicate the dates of approval/validity dates (which will either be **three years (initial filing)** or **"INDEFINITELY" (extension)**).
- Make a notation **"BLANKET PETITION"** in the block entitled **"PARTIAL APPROVAL (explain)"**.
- Stamp the petition with your approval stamp and sign it.

**NOTE:** Make a photocopy of the list of qualifying entities that the petitioner wishes to have on the blanket petition. This will be included with the approval notice mailing.

---

## Validity Dates Overview

An initial blanket petition is approvable for three years. If amended blanket petitions are approved during this validity period, the validity period end date will be the same as the end date of the original approval. Blanket extension petitions may be filed six months prior to the expiration of the initial three year validity period. If the blanket extension is approved, the validity period will begin the day after the expiration of the initial approval to **"INDEFINITELY"**.

[I-129 Filing Instructions]

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## Validity Dates for Initial Admission

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (if both the requested date and initial FROM date on the petition has passed)

**TO:**

- 1) the date listed on the petition or
  - 2) the requested time (i.e., three years - from date of approval)
- 

## Validity Dates for Extension of Stay

**FROM - TO** - should be **"INDEFINITELY"**.

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*Continued on next page*

## Approvals of L-1 Blanket Petitions, Continued

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**Blanket  
Approval  
Notices**

**ALL** blanket approval notices will be a release so that the clerk can attach the list of qualifying entities to the blanket approval notice.

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**Routing  
Petition after  
Approval**

Following **APPROVAL**, the petition remains in the file and the file is placed on the shelf like any other approved nonimmigrant petition. Nothing needs to be sent to a consulate or embassy.

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# Beneficiaries of L-1 Blanket Petitions

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**Introduction** When one of the approved U.S. entities wants to employ a particular alien from an approved foreign entity, the U.S. entity completes a Form I-129S Nonimmigrant Petition Based on Blanket L Petition.

The information on the Form I-129S, and any supporting documents, must establish that the alien was employed abroad for the immediately prior year in a qualifying capacity, and must establish that the alien will be employed in a qualifying capacity in the United States.

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**Qualifying Capacity** For blanket L-1 purposes, a qualifying capacity is:

- 1) Managerial
- 2) Executive, or
- 3) Specialized knowledge professional

A specialized knowledge professional is what it appears to be, a specialized knowledge employee who is a professional.

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**Alien Abroad** The alien abroad uses the Form I-129S, with the Form I-797 approval notice for the approved Form I-129 blanket petition to apply for an L-1 visa at an AMCON or if CANADIAN at a POE or PFI.

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**L-1 Beneficiary is in the US** If a blanket L-1 beneficiary is in the United States applying for an extension of stay, Form I-129 is required, **not** Form I-129S.

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**Extension of Stay** For beneficiaries requesting an L-1 extension of stay, it is very similar to H-1B extensions of stay. The Form I-129 is used.

Remember that the time spent in the U.S. in H status is taken into consideration when you are deciding whether or not an L-1 has reached his/her maximum total stay.

- The **maximum stay** for a beneficiary in **L-1A** classification is **seven years**.
  - The **maximum stay** for a beneficiary in **L-1B** classification is **five years**.
-

# Approval Processing Procedures

## Validity Dates for Approval

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**Introduction** This section will outline the various time periods that a petition may be approved for, as well as the limitations of stay for L1 nonimmigrants.

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**Validity Dates** The following table describes the validity dates for L1 petitions.

If the petition is an...	Then the petition may be approved for a period of time up to...
Initial Filing	3 Years
* Initial Filing – New Office	1 Year
Extension Filing	2 Years

[See 8 CFR 214.2(l)(7)(i)(A)(2) and 8 CFR 214.2(l)(15)(ii)]

\* If the requested beginning date of employment has gone by, officers should grant a period of one full year from the date of approval for new office petitions, unless the period requested was for less than one year. In this scenario only the length of time requested would be granted from the date of approval.

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**Expired Dates** Guidance can be found for petitions with expired dates on the Business Division ECN page/Reference Materials/General/Expired Petitions Guidance 07022013. The guidance relates to pending cases that have never had a final decision, consular returns and appeals that have been affirmed by the AAO.

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## Validity Dates for Approval, Continued

### Starting and Ending Dates

Use the below table to determine the starting and ending validity dates of the L1 petition.

If...	Then starting validity date should be...	And ending validity date should be...
<ul style="list-style-type: none"> <li>• New employment, or</li> <li>• Initial L1A or L1B request (Consular notification)</li> </ul>	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed three years.
New Office L1A or L1B	Date of approval or date requested, whichever is later.	Date requested or one full year from starting date.
Change of Status	Date of approval or date requested, whichever is later.	Date requested on petition.
Extension of Stay	Day after expiration of previously approved L1 for that company, or date requested, whichever is earlier.	Date requested on petition, not to exceed two years.
Extension of Stay where there has been a change in the employment conditions	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed two years.
Amended petitions where there was a USCIS error with the original notice	Same start date as initially approved petition.	Same expiration date as initially approved petition.
Amended petitions where there has been a change in the employment conditions	Date of approval, date requested, whichever is later.	Same expiration date as initially approved petition.

# Approval Processing

## Approval Phrases

Use the chart below to determine the appropriate phrase to use when approving an L petition.

CLAIMS #	Approval Phrase	Purpose
1	Send to selected consulate	Petitioner has requested consulate to be notified of the approval.
2	Send to selected consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
3	Workers Visa Exempt-to POE	<ul style="list-style-type: none"> <li>Beneficiary is not required to have a visa per [8CFR Section 212.1], and</li> <li>Petitioner has requested POE or PFI be notified of the approval.</li> </ul>
4	Send to different consulate	The consulate requested by the petitioner does not issue the requested visa.
5	To different consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
7	Class and COS approved-Other	<ul style="list-style-type: none"> <li>Petitioner has requested a change of status for the beneficiary and</li> <li>Both the classification and change of status are approved.</li> </ul>
10	Class approved; COS denied; consulate/sep notice	<ul style="list-style-type: none"> <li>Classification is approved,</li> <li>Notifying consulate abroad, and</li> <li>A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to Clerical so approval notice may be sent together with the notice denying the change of status.</p>
11	Class approved; COS denied; POE notified; sep notice	<ul style="list-style-type: none"> <li>Classification is approved,</li> <li>A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to Clerical so approval may be sent together with the notice denying the change of status.</p>

Continued on next page

## Approval Processing, Continued

**Approval Phrases (continued)**

CLAIMS #	Approval Phrase	Purpose
12	Class and EOS approved-Other	<ul style="list-style-type: none"> <li>• Has requested an extension of stay for the beneficiary (same/same and change of employer requests), and</li> <li>• Both the classification and EOS are approved.</li> </ul>
13	Class approved; Extension denied; Send to consulate	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to Clerical so approval notice may be sent together with the notice denying the extension of stay.</p>
14	Class approved; EOS denied; send to POE	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to Clerical so approval notice may be sent together with the notice denying the extension of stay.</p>
15	Concurrent employment approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is in the United States in valid nonimmigrant status, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>

*Continued on next page*

## Approval Processing, Continued

Approval  
Phrases  
(continued)  
(continued)

CLAIMS #	Approval Phrase	Purpose
16	Change in employment conditions approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is physically present in the United States in valid nonimmigrant status, and</li> <li>• Petition is granting approval for work that has changed with the same employer since prior authorization;</li> </ul> or Amended petitions when: <ul style="list-style-type: none"> <li>• there is no request for additional time, but</li> <li>• there are changes in the employment, such as location, title, etc.</li> </ul> <p><b>NOTE:</b> Do not use this approval phrase when beneficiary will seek consular processing or when petitioner is filing to correct a service error.</p>
26	Concurrent employment approved (abroad)	<ul style="list-style-type: none"> <li>• Beneficiary is outside the United States, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>
28	Workers Visa Exempt-POE notified by Fax/Phone	Beneficiary is not required to have a Visa per [8 CFR Section 212.1] <p><b>NOTE:</b> We no longer fax to the POE. Duplicates are forwarded to the KCC priority overnight.</p>

*Continued on next page*

## Approval Processing, Continued

### Petition Annotations

Complete the following items when approving a Form I-129.

Item	Action
Passport name/ <u>visa name</u> vs. Name on petition	The beneficiary's name on the petition should be exactly the same as the name appears on the beneficiary's passport/ <u>visa depending which was issued more recently</u> . If it is not, you must change the name on the petition and in GUI to reflect the beneficiary's name as it appears on the passport/ <u>visa</u> . All names should be run in IBIS.
IBIS and NSEERS	Perform all necessary IBIS, NSEERS, and SQ94 checks.
Annotate Classification	<ul style="list-style-type: none"> <li>• "L1A" for executive or manager.</li> <li>• "L1B" for Specialized Knowledge.</li> </ul>
Number employees	Always "1"
Validity Dates	Enter the validity dates. <i>See Validity Dates for Approval section</i>
Class Approved	Check "Classification Approved" box for all approvals.
Consulate/POE/PFI Notified	If notifying a consulate/POE/PFI: <ul style="list-style-type: none"> <li>• Check "Consulate/POE/PFI Notified" box,</li> <li>• Circle or underline which is being notified, i.e., either the consulate, the POE, or the PFI, and</li> <li>• Write the name of the consulate/POE/PFI on the blank line.</li> </ul>
Extension Granted	Check box if granting an extension of stay.
COS/Extension Granted	Check box if granting a change in classification and an extension of the beneficiary's stay.
Partial Approval	Annotate the partial approval block when denying COS or EOS.
Action Block	Stamp and sign in the action block

*Continued on next page*

## Approval Processing, Continued

### Petition Annotations (continued)

**NOTE:** While it is recommended that the job code or approval phrase be annotated on the face of the petition to aid officers in updating, it is not required that the job code or approval phrase be written on the petition. Only GUI must reflect the correct job code and approval phrase. However, it is helpful to have such information on the petition for customer inquiries.

### Duplicate Petition Copies

All duplicate copies of the I-129 petition and RFE responses, provided by the petitioner, must be sent to the Kentucky Consular Center (KCC) for entry into PIMS.

**NOTE:** You are not required to make a second copy for the KCC if the petitioner has not provided one.

Follow the steps below when forwarding duplicate petitions to the KCC.

Step	Action
1	Attach duplicate RFE response to duplicate petition. If a duplicate RFE response is not provided, attach a copy of the sent RFE to the duplicate petition.
2	Ensure that the EAC# is also on the face of the duplicate being sent to the KCC. Preferably, the EAC barcode should be placed in the lower, right-hand corner. If not, write the number on the duplicate copy.
3	Ensure that any required annotations are included on the duplicate copy, as directed in the <i>Petition Annotations Block</i> above.
4	Stamp and sign the duplicate copy.
5	Place the duplicate petition on the "I-129 Approved KCC" shelf in FCU.

### Expedite Requests

To forward duplicate petitions to the KCC for expedite requests, place the duplicate approved petition on the "I-129 Priority Overnight" shelf in FCU. The petition will be sent to the KCC via overnight delivery.

# Processing Procedures (RFE/Denial/Intent)

## Request for Evidence

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**Introduction** There is no specific regulatory guidance for requests for evidence to support L1 petitions. Therefore, the guidance provided by 8 CFR 103 applies.

---

**Officer's Responsibility** A request for evidence must be made when the initial review of the record does not establish that all of the eligibility requirements have been met. In addition, a request for additional evidence should be made when:

- The record contains evidence of material fraud or misrepresentation, or
- The officer has knowledge of previous mala fide petitions from the same petitioner.

---

**Contents of an Acceptable Request for Evidence** The request for evidence should:

- Identify each of the areas of eligibility that have not been met by the petitioner, and
- Discuss what is deficient with any evidence already provided, and
- Provide options as evidence that the petitioner could provide to meet the area of eligibility.

---

**Adjudication Tip** By requesting evidence to meet each area of eligibility in the same order each time a request for evidence is written, the officer can immediately identify the areas of eligibility that must be reviewed upon the response from the petitioner.

Areas of eligibility that are not mentioned in the request for evidence need not be re-adjudicated at the time of the submission of additional evidence.

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*Continued on next page*

## Request for Evidence, Continued

**Standard Call-Ups** The Request for Evidence (RFE) standards are contained within the 4000-4999 series of AutoText. They are available in MSWord.

Officers must use Correspondence Generator to prepare and send RFEs. The folders containing I-129L general call-ups and I-129L specific call-ups will appear for an RFE.

As of March 1, 2013, Officers must use the National RFE templates.

Follow the steps below to prepare and process an RFE in CG:

Step	Action
1	Access "Correspondence Generator."
2	Wand or enter the receipt number of the case.
3	Select "RFE"
4	Select initial, additional, or initial and additional.
5	Compose the RFE
6	Print a copy of the RFE and place on the record side
7	Place file on the shelf labeled "EB T/O Shelf" in FCU.

NOTE: Refer to the Correspondence Generator User Guide for more information.

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## Intent to Deny

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### Introduction

This section will discuss the regulatory guidance provided for adverse decisions on L1 petitions as specified by the 8 CFR 214.2(l) regulations.

Where there is no specific regulatory provision, 8 CFR 103 provisions apply.

---

### Notice of Intent to Deny

When an adverse decision is proposed on the basis of the evidence submitted by the petitioner or other information available to the Service, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial.

The petitioner may inspect and rebut the evidence and will be granted 30 days from the date of the notice in which to do so (+ 3 days if by mail). All relevant rebuttal material will be considered in making a final decision.

[See 8 CFR 214.2(l)(8)(I)]

---

### Contents of Intent to Deny

The notice of intent to deny should contain a:

- Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met,
  - Description of the specific reasons for the Service's determination that the areas of eligibility have not been met, and
  - Discussion of the most persuasive evidence that could be submitted to overcome the reasons for denial.
-

# Denial

---

## General

If the petition is denied, the Service will notify the petitioner of its decision within 30 days after the date a completed petition has been filed of:

- The denial,
- The reasons for the denial, and
- The right to appeal the denial. [See 8 CFR 214.2(l)(8)(ii)]

The denial order should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met.

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## Denial of EOS/COS

In addition to requesting the classification of the beneficiary as an L1 beneficiary, petitioners frequently request an extension of stay or a change of status on behalf of their L1 beneficiaries.

A petition may be approved, but the evidence of record may reveal that the beneficiary is ineligible to extend or change his or her nonimmigrant status. In addition, the petition itself may be denied. In these instances, a separate denial notice must be prepared that addresses the ineligibility of the beneficiary for the requested change or extension of stay.

However, if the petition is to be approved, but the change or extension of status is to be denied solely due to the prior expiration of the beneficiary's status, GUI contains several modified approval notices that inform the petitioner that the petition is approved, but the requested change or extension of stay is denied. In this instance, the modified approval phrase can be used and a separate denial order is not needed.

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## Intent to Revoke and Revocation

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**Revocations** The director may revoke a petition at any time, even after the expiration of a petition. [See 8 CFR 214.2(l)(9)(i)]

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**Automatic Revocations** The approval of any petition is automatically revoked if the petitioner withdraws the petition. [See 8 CFR 214.2(l)(9)(ii)]

Automatic revocations may not be appealed. [See 8 CFR 214.2(l)(10)(ii)]

---

**Revocation on Notice** The director shall send to the petitioner a notice of intent to revoke the petition if he or she finds that:

- One or more entities are no longer qualifying organizations;
- The beneficiary is no longer eligible under section 101(a)(L) of the Act;
- A qualifying organization(s) violated requirements of section 101(a)(L) of the act and 8 CFR 214.2(l);
- The statement of facts contained in the petition was not true and correct, or;
- Approval of the petition involved gross error.

[See 8 CFR 214.2(l)(9)(iii)(A)]

The director shall consider all relevant evidence in deciding whether the petition should be revoked. [See 8 CFR 214.2(l)(9)(iii)(B)]

---

**Contents of Intent to Revoke** The notice of intent to revoke shall contain:

- A detailed statement of the grounds for the revocation, and;
- The time period allowed for the petitioner's rebuttal (30 days + 3 if by mail).

**NOTE:** As with intents to deny, an intent to revoke notice should identify the most persuasive evidence that could be submitted to overcome the reasons for revocation. Be sure to include the specific reason for the Intent to Revoke.

[See 8 CFR 214.2(l)(9)(iii)]

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**Status of Beneficiaries** If a petition is revoked, the beneficiary is required to leave the United States, unless the beneficiary has obtained other work authorization from the Service.

[See 8 CFR 214.2(l)(9)(iv)]

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## Updating Cases

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**GUI Updating** Refer to the GUI Adjudication Updating Guide for instructions on updating approvals, RFEs, intents, denials, relocates, etc. in GUI

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## Appendices

### Appendix A - References

**References  
Used to Create  
SOP**

This table lists the references that were used in the creation of this SOP

Reference	Issue
Section 101(a)(15)(L) of the Act	Manager/Executive Statutes
Section 214(c)(2)(B)	Specialized Knowledge Statute
8 CFR 214.2(l)	L1 Regulations
Interpretation of Specialized Knowledge Memorandum, Dated 3/9/94	HQ Guidance on Specialized Knowledge
<i>Matter of M--</i> 8 I&N Dec. 24	Beneficiary is sole owner.
<i>Matter of Raulin</i> 13 I&N Dec. 618	Executive Secretary; Specialized Knowledge; Approved
<i>Matter of Schick</i> 13 I&N Dec. 647	Contractual relationship between companies does not qualify for L-1 purposes
<i>Matter of Leblanc</i> 13 I&N Dec. 816	New Office
<i>Matter of Continental Grain Co.</i> 14 I&N Dec. 140	Interruption in required year of continuous employment is ok sometimes.
<i>Matter of Pozzoli</i> 14 I&N Dec. 569	L-1 alien will be paid by the foreign company.
<i>Matter of Del Mar Ben, Inc.</i> 15 I&N Dec. 5	Personal understanding between presidents of the foreign and U.S. companies, plus U.S. company's ownership of a little stock in foreign company is not satisfactory for L-1 purposes.
<i>Matter of Chartier</i> 16 I&N Dec. 284	Requirement for existence of foreign entity while L-1 alien is in the U.S.
<i>Matter of Michelin Tire Corp.</i> 17 I&N Dec. 248	Beneficiary must have the full one year of continuous experience before the L-1 petition is filed; Specialized Knowledge
<i>Matter of Aphrodite Investments</i> 17 I&N Dec. 530	Owner of a corporation can be an L-1 beneficiary, as long as he is employed.

*Continued on next page*

## Appendix A - References, Continued

Reference	Issue
<i>Matter of Penner</i> 18 I&N Dec. 49	Specialized Knowledge; gas and oil drilling rig crews. Need for U.S. entity as employer.
<i>Matter of Colley, et al</i> 18 I&N Dec. 117	Specialized Knowledge; aerial survey pilot; aerial photographer.
<i>Matter of Hughes</i> 18 I&N Dec. 289	De facto control; de jure control; affiliates; subsidiaries; ownership & control
<i>Matter of Kloeti</i> 18 I&N Dec. 295	The one year of qualifying experience must be acquired entirely outside the U.S.
<i>Matter of Siemens Medical Systems</i> 19 I&N Dec. 362	50-50 joint venture reasoning; negative control, etc.
<i>Matter of Church of Scientology</i> 19 I&N Dec. 593	Churches may use L-1 class if they meet L-1 criteria
<i>Matter of Safetran</i> Interim Dec. #3108	Time in H status counts toward maximum stay in L status

**Previous Revisions**

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25	3/29/13	Revised location of Revisions document.	5
		Revised <i>Required Evidence</i> block to indicate that evidence must show that beneficiary has been employed by a qualifying organization for one continuous year within the three years immediately preceding the filing of the petition.	10
		Added relative section of 8 CFR and clarified the use of "professional" in L1B Introduction.	48

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**From:** Sun, Catherina C  
**To:** #CSC Division II  
**Cc:** Fierro, Joseph  
**Subject:** FW: I-129S Form Revision Guidance  
**Date:** Tuesday, October 01, 2013 2:59:18 PM  
**Attachments:** SCOPS Guidance Regarding Changes to Form I-129S Final Cleared.docx

---

The I-129S was recently revised for conformance/consistency with I-129. Attached please find guidance regarding changes to I-129S. If you have any questions, please see your supervisor. Thanks.

---

**From:** Bazaire, Kevin J  
**Sent:** Tuesday, October 01, 2013 11:31 AM  
**To:** Skerrett, William S; Sun, Catherina C  
**Cc:** Sweeney, Shelly A; Canney, Keith J; Tamanaha, Emisa T  
**Subject:** I-129S Form Revision Guidance

Will and Catherina,

Please find attached OCC cleared guidance for I-129S Form revisions. We will be providing a copy of this to CBP and DOS. Also, we will not be capturing the offsite information in C3 at this time.

Kevin Bazaire  
Adjudications Officer  
Business Employment Services Team (BEST)  
HQ - Service Center Operations  
U.S. Citizenship and Immigration Services

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The following information is meant to clarify the significant changes made to Form I-129S (Rev. 06/12/13).

I. Newly Added Part 4, Section H

If you are seeking L-1B specialized knowledge professional status for the alien, will the beneficiary be stationed primarily offsite (at the worksite of an employer other than the petitioner or its affiliate, subsidiary, or parent)?

Yes  No

If you answered "Yes" to the preceding question, describe how and by whom the beneficiary's work will be controlled and supervised. Include a description of the amount of time each supervisor is expected to control and supervise the work. Use an attachment if needed.

[Text box]

If you answered "Yes" to the preceding question, also describe the reasons why placement at another worksite outside the petitioner, subsidiary, or parent is needed. Include a description of how the beneficiary's duties at another worksite relate to the need for the specialized knowledge he or she possesses. Use an attachment if needed.

[Text box]

**GUIDANCE:** This section was added for form consistency with I-129 and to help ISOs determine eligibility under INA section 214(c)(2)(F) which prohibits control and supervision of an L employee by an unaffiliated employer as part of labor for hire arrangement. Officers are to handle this question similarly to how they currently handle the same question on the Form I-129. Please note that section H does not need to be completed if the petition is for an L-1A. In addition, the petitioner does not need to complete the two text boxes if he or she checks "No".

II. Newly added Part 5

Part 5. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States.

Check Box 1 or Box 2 as appropriate:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

- 1. A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
- 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the alien beneficiary and the petitioner will prevent access to the controlled technology or technical data by the alien beneficiary until and unless the petitioner has received the required license or other authorization to release it to the alien beneficiary.

**GUIDANCE:** This section was added for form consistency with I-129. The petition will not be rejected if Part 5 is not completed. Officers are to handle this question similarly to how they currently handle the same question on the Form I-129. If the I-129S is filed concurrently with an I-129 and the export control section is completed on only one form, the officer will not need to issue an RFE and should mark with red ink the response on the form where the deemed export section was left blank. If there are different responses on the I-129 and the I-129S, the officer will need to issue an RFE to obtain clarification as to which response is accurate.

**From:** Moran, Karla  
**To:** DeLosSantos, Marisol C; Howrigan, Tanya L  
**Cc:** Tamanaha, Emisa T; Canney, Keith J; Sweeney, Shelly A; Cox, Sophia; Bazaire, Kevin J  
**Subject:** Interim Guidance for Non-Profit Organizations  
**Date:** Thursday, April 17, 2014 5:16:55 PM

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Service Centers,

SCOPS received its first non-profit L petition (Compassion) to review for the forthcoming non-profit L policy guidance memo. OP&S and OCC have provided the below first part of interim policy guidance while we continue to review non-profit L petitions.

We will discuss this interim guidance during our next L roundtable, as it is applicable to all L non-profit petitions only.

Thank you

**Karla Moran**

Service Center Operations  
202-272-1531 Desk (b)(6)

[Karla.Moran@uscis.dhs.gov](mailto:Karla.Moran@uscis.dhs.gov)

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## **Determining whether a Non-Profit Entity has a Qualifying Relationship with another Non-Profit Entity for L-1 Purposes under Current Regulatory Authority and Relevant Case Law.**

The following is intended to assist Immigration Services Officers (ISOs) in adjudicating L-1 visa petitions involving non-profit entities and is not intended in any way to direct a decision. As in all cases, it is the ISO who is charged with making a decision as to eligibility based on all the facts presented. Specifically, the following is intended to provide guidance in determining whether a non-profit entity claiming to be a parent of another non-profit entity (its subsidiary) has established the claimed qualifying relationship.

### Preliminary considerations

As an initial consideration, note that a non-profit parent is not required to demonstrate that it possesses a traditional equity ownership interest, in whole or in part, of another non-profit entity, whether through ownership of stock, membership/partnership interests or other traditional means by which one entity or individual may show ownership of a for-profit entity. This is because, unlike in the case of a for-profit entity, no one, other than the public, "owns" a non-profit entity. For this reason, even if the non-profit entity petitioner has failed to provide shares of stock, membership/partnership interests, or similar evidence in support of its claim that it is the parent of

another non-profit entity, this is not determinative as to whether the respective non-profit entities may be deemed to be in a parent/subsidiary relationship for purposes of 8 CFR 214.2(l)(ii)(l) or (K). Second, note that nothing in the statute, relevant legislative history, or regulations prohibits non-profit entities from using the L-1 nonimmigrant visa classification. See, for example, 9 FAM 41.54 N.6.3 (nonprofit organizations are eligible to file individual L-1 petitions).

#### Discussion

The regulations at 8 CFR 214.2(l)(ii)(l) define the term "parent" for L-1 purposes as follows:

**(l) Parent means a firm, corporation, or other legal entity which has subsidiaries.**

The regulations at 8 CFR 214.2(l)(ii)(K) define the term "subsidiary" for L-1 purposes as follows:

**(K) Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.**

Since a non-profit entity cannot be "owned" in the same sense as a for-profit entity, it is necessary to reconcile the language of the regulation with the principle that non-profit entities may use the L-1 classification. To do so, a non-profit parent must demonstrate that, but for its inability to actually "own" an equity interest in another non-profit entity through share ownership, membership/partnership interests, etc., it possesses substantially the same rights and attributes traditionally associated with a parent in relation to its subsidiary. In other words, a non-profit parent must demonstrate that it is the constructive or *de facto* owner of the non-profit subsidiary by establishing that its relationship with the subsidiary encompasses such rights and attributes traditionally associated with ownership, such as providing for and controlling its capital needs.

The petitioner may do so by presenting evidence, such as, but not necessarily limited to:

- An agreement between the non-profit entities or similar governing document, together with other evidence, showing that:
  - the non-profit parent has in the past and will continue in the future to provide its own funds to the non-profit subsidiary;
  - the non-profit parent has the right to direct the use of the funds it has provided to the non-profit subsidiary;
  - the non-profit parent, by virtue of its providing funding to the non-profit subsidiary, has the right to direct its operations (To support this, the petitioner may submit evidence showing that the non-profit subsidiary does not have the general authority to act independently of the non-profit parent lest it lose funding from the parent that is necessary to carry out its operations);
  - the non-profit parent has the right to appoint the Chief Executive Officer of the non-

- profit subsidiary;
- o the non-profit parent has the right to possession of, or the right to direct the disposition of, the assets of the non-profit subsidiary; and
- o the non-profit parent has veto power over any actions the non-profit foreign subsidiary may wish to take.

One factor that would be relevant is whether the non-profit parent is providing all, or substantially all, of the funding necessary for the continued operations of the non-profit subsidiary, thereby rendering the non-profit subsidiary dependent on the non-profit parent's continued funding. In this regard, there is no requirement that the non-profit subsidiary receive *all* its operating funds from the non-profit parent; the relevant consideration is whether, in the absence of such funding, the non-profit subsidiary would be unable to carry out its stated purpose. See 8 CFR 214.2(l)(ii)(K) (percentage of ownership is not dispositive, provided the parent entity can show control in fact).

In adjudicating cases where a non-profit entity is claimed to be a parent of another non-profit entity, ISOs may reasonably consider whether the non-profit parent has other qualifying relationships abroad, and if so, the nature of such qualifying relationships. For instance, the non-profit parent may have branch offices abroad that perform substantially the same function as the claimed non-profit subsidiary and are similarly under its control, but for valid reasons, such as foreign legal requirements, the non-profit parent may not have been legally able to organize the non-profit subsidiary as a branch office in the latter's home country.

The factors discussed above are not intended to be exhaustive; nor are they intended to limit an ISO's responsibility to evaluate all the evidence presented in determining whether the petitioner has met its burden of showing the existence of the required qualifying relationship. Other factors may also be relevant in determining the corporate relationship between or among the non-profit entities.

#### Applicability of the Yates "readjudication" memorandum

ISOs are reminded that the guidelines set forth in the Yates "readjudication" memorandum (HQOPRD 72/11.3, dated April 23, 2004) continue to apply with respect to L-1 extension petitions. Specifically, in matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an ISO that the beneficiary is eligible for the particular nonimmigrant classification sought should be given deference. A case where a prior approval of the petition need not be given deference includes where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is new information that adversely impacts the petitioner's or beneficiary's eligibility. Material error, changed circumstances, or new materially adverse information must be clearly articulated in the resulting request for evidence, notice of intent to deny, or decision denying the benefit sought, as appropriate.

In the context of L-1 extension petitions involving non-profit entities, it is important to bear in mind

that the regulatory interpretation of the term "subsidiary" does not address the distinction between for-profit and non-profit entities, and in particular, the question of what constitutes "ownership" for purposes of the L-1 classification. Any material error determination should therefore take into consideration the clarifications provided in this email.

### Summary

As noted above, this email is intended solely to clarify the definition of the regulatory terms "parent" and "subsidiary" for non-profits in the L-1 context. This email is in no way intended to relieve the petitioner of its burden to establish eligibility for the benefit sought by a preponderance of the evidence or to direct the outcome of any particular case. It is the responsibility of the ISO to determine, consistent with the clarifications discussed in this email, whether the facts presented are sufficient to warrant approval or denial of these types of L-1 petitions.

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USCIS Office of Policy and Strategy, DHS

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I-129 L-1

# Adjudication

September 2011

# Training Matters Today

- General Information
- Individual L-1 Petition
- Qualifying Relationships
- Managerial and Executive Capacity
- Specialized Knowledge
- Blanket L-1 Petition
- New Offices
- Limitations on Stay
- Things to know

# General Information

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# Sources of Information

- INA §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- 8 CFR §§ 214.1, 214.2(l), & 248
- *Interpretation of Specialized Knowledge*, Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS (March 9, 1994)
- Form I-129 with L Supplement and Form I-129S



# Definition of L-1

...an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge...

INA § 101(a)(15)(L); see also 8 CFR § 214.2(l)(1)(i)

# L Classification

- L-1A classification is for managers and executives.
- L-1B classification is for specialized knowledge aliens.
- L-2 classification is for dependents (dependents use Form I-539).
- LZ is the designation given to an approved blanket petition. The Petitioner is referred to as a Blanket Petitioner, there is no individual beneficiary of an approved LZ.

# L Classification

L-1A and L-1B are merely CLAIMS designations. When an intra-company transferee is admitted to the United States, the alien is admitted by CBP as an L-1, or, in the case of an extension of stay or change of status, is granted L-1 classification. Therefore, you will only see the classification "L-1" on the Forms I-94 issued to the alien.

# 30 day Processing Time

INA § 214(c)(2)(C) of the Act states that USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a completed petition has been filed.

8 CFR § 214.2(l)(7) indicates that a Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS. If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.

# Fees

1. I-129 (L-1 and LZ) Petition filing fee: **\$325.00**. Note that there is no filing fee for an I-129S, *Nonimmigrant Petition Based on Blanket L Petition*.
2. Fraud Prevention and Detection Fee: **\$500.00**. This fee is required to be paid by Petitioners seeking the initial approval of an I-129 L-1 petition (including a change of status to L-1, or a petition for new concurrent L-1 employment). There are no exceptions or waivers available to the Fraud Prevention and Detection Fee. The Fraud Fee does not need be paid when a petition seeking blanket LZ approval is filed.  
See INA § 214(c)(12).
3. P.L. 111-230 fee: **\$2,250.00**. Effective 8/13/2010, this law requires employers filing an L-1 petition prior to October 1, 2015, who are required to pay the \$500 Fraud Prevention and Detection fee as detailed above, to pay an additional \$2,250 if: (1) they employ 50 or more employees in the United States; and (2) more than 50% of those employees are in H-1B or L-1 status.

# L-1 Processing Options

- Petitioners may file an I-129 L-1 petition (Individual L-1 Petition) through the normal procedure of filing with either the California Service Center (CSC) or Vermont Service Center (VSC). This process is known as an *individual petition*.
- Certain L-1 Petitioners may file using a Blanket L processing option. The blanket L processing option involves filing a Blanket LZ petition on Form I-129 with USCIS in order to qualify the Petitioner and filing a subsequent Form I-129S with either USCIS, DOS, or CBP in order to qualify the beneficiary.
- When a Petitioner is filing for Canadian Citizens under either of the above options, the Form I-129 or I-129S may be filed with CBP at a Port Of Entry (POE) on the Canadian-U.S. Land Border or a Pre-Clearance/Pre-Flight Inspection facilities (PFI) in Canada.
- Visa Exempt aliens (Canadian and certain aliens residing in the Caribbean) may file the I-129 or I-129S with the Service Center. If approved, they may seek admission to the United States without a visa by use of the approval notice.

# Individual L-1 Petition

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# Where to File the I-129

- I-129 L-1 petitions are primarily filed at the CSC and VSC.

# Where to File the I-129 (Continued)

- I-129 L-1 petitions filed on behalf of Canadian citizens may be filed with CBP at certain POEs on the U.S.-Canadian Land Border or at certain PFIs inside Canada in conjunction with an application for admission to the United States as an L-1 nonimmigrant. The petition will be adjudicated by a CBP Officer. If approved or denied, a copy will be forwarded to the USCIS Service Center for keying into CLAIMS and subsequent interfiling into the Blanket LZ petition. Additionally, if CBP cannot issue a formal denial notice to the alien, they may forward the petition to the CSC for final action. *Note that some USCIS Officers may be required to work petitions that were initially filed with CBP and others may be required to adjudicate EOS petitions for aliens initially approved by CBP.*

See 8 CFR § 214.2(l)(17)

# Basic Requirements for an Individual L-1 Petition

1. A qualifying organization is filing the petition.
2. Beneficiary was employed abroad for one continuous year within prior three years in a managerial or executive capacity, or a position that involves specialized knowledge.
3. Proposed employment in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.
  - Note that in the case of a *New Office*, an office that has been open for less than one year, there are different requirements. New office petitions are discussed below

8 CFR § 214.2(l)(3)

# Qualifying Organization Defined

See 8 CFR § 214.2(l)(1)(ii)(G)

- Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Has a qualifying relationship between the U.S. entity and a foreign entity.

(2) Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

# Qualifying Organization

- does a qualifying relationship exist?

- The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:

- Parent. 8 CFR § 214.2(l)(1)(ii)(I)
- Branch. 8 CFR § 214.2(l)(1)(ii)(J)
- Subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)
- Affiliate. 8 CFR § 214.2(l)(1)(ii)(L)

# Employment Abroad

- The regulation indicates that a qualifying employee must have at least one continuous year of full-time employment abroad in a capacity that was managerial, executive, or involved specialized knowledge with a qualifying organization within the three years preceding the filing of the petition.

See 8 CFR § 214.2(l)(3)(iii) and (iv)

- This is referred to as the “1 in 3” rule.

# Employment Abroad (Continued)

It is important to note that the 1 in 3 rule is a combination of two separate regulatory requirements which require two different but related analyses.

The Petitioner must submit sufficient documentation establishing that:

- The beneficiary was employed abroad for one continuous year out of the three years prior to admission. See 8 CFR § 214.2(l)(3)(iii).
- For the entire one year of continuous employment abroad, the beneficiary was performing in a capacity that was managerial, executive, or required specialized knowledge. See 8 CFR § 214.2(l)(3)(iv).

This is an important distinction to make as an employee who may have worked abroad for a continuous year (or more) fulfilling the first requirement, may still fail to qualify for the L-1 because the employee may have worked in a qualifying position for less than one year.

# Employment Abroad (Continued)

- Both previous foreign employment and the prospective U.S. employment must be in one of the qualifying capacities.
- The prior foreign employment and proposed U.S. employment capacity do not have to be the same. For example, the one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for an L-1A position in the United States. See 8 CFR § 214.2(l)(3)(iv).

**Exception:** A beneficiary coming to open or work at a new office in a managerial or executive capacity must have previous foreign employment experience in a managerial or executive capacity.

See 8 CFR § 214.2(l)(3)(v)(B).

- Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

See 8 CFR § 214.2(l)(1)(ii)(A).

# Position in the United States

The Petitioner must submit sufficient documentation establishing that:

- The position in the United States is a capacity that is managerial, executive, or requires specialized knowledge.
- Generally, if the petitioner establishes that the beneficiary was performing qualifying employment abroad and the beneficiary will be transferring laterally to *the same position* in the United States, the Officer's review may not need to be as extensive as a situation where the beneficiary is transferring to the United States to occupy a different position, involving a different set of job duties. (This happens frequently as the regulation indicates that the employment in the United States need not be the same as the employment performed abroad.)

# Is the Beneficiary Qualified to Fill the Position in the United States?

The regulation states that the employee need not be filling the same position in the United States that he/she occupied abroad. However, the regulation indicates that the employee must be qualified for the position in the United States.

Therefore, if the position in the United States appears to be substantially different than the one that the beneficiary occupied abroad, Officers should review the petition to ensure that the beneficiary's prior education, training and employment qualify him/her for the position in the United States.

See 8 CFR § 214.2(l)(3)(iv).

# Validity Periods for Individual Petitions

- Petitions filed by established Petitioners may be approved for a period not to exceed three years initially.
- Petitions filed to establish a new business may be approved for a period not to exceed one year. (*New offices discussed below.*)
- Extensions (EOS) are granted in increments of up to two years.

# Limitations on Stay

- Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- Recapture time is permitted. Time spent by an L-1 outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.
- L-1's are **not eligible** for extensions beyond the maximum period of stay when a labor certification or I-140 is filed on their behalf or remains pending for a specific period of time (unlike certain H-1B aliens under AC21).

# Limitations on Stay (Continued)

- Time in H-1B status counts toward the maximum validity period of stay allowed as an L-1.
- Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.
- Example – An alien is admitted as an H-4 (dependent of an H-1B). After 2 years the alien finds a job and a petition is filed changing his status to H-1B. The alien remains an H-1B for five years. The employer then files a petition to COS the employee to L-1A. If approved, the alien can be granted a 2 year validity period in L-1A status as the maximum amount of time allowed in L-1A status is 7 years. (5 years as H-1B + 2 years as L-1A = 7 years.)

# Limitations on Stay (Continued)

- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before an L-1 petition may be approved on his/her behalf.

8 CFR § 214.2(i)(12)(i)

- **Exceptions:** There is no limitation on period of stay for: (1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and (2) Aliens who reside abroad and commute to the United States to engage in part time employment.

8 CFR § 214.2(i)(12)(ii)

# Qualifying Relationships

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# Qualifying Organization

- Does a qualifying relationship exist?

- The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:

- Parent. 8 CFR § 214.2(l)(1)(ii)(I)
- Branch. 8 CFR § 214.2(l)(1)(ii)(J)
- Subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)
- Affiliate. 8 CFR § 214.2(l)(1)(ii)(L)

# Parent

- Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 CFR § 214.2(l)(1)(ii)(I)

- For a broader explanation of what constitutes a 'parent,' the definition of subsidiary at 8 CFR § 214.2(l)(1)(ii)(K) indicates that a parent company is an entity which owns and controls the operations of a subsidiary by:

(1) Owning either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.

(2) Owns either directly or indirectly half of the subsidiary and controls the subsidiary.

(3) Owns either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary.

(4) Owns either directly or indirectly less than 50% of the entity but in fact controls the entity.

# Branch

Branch means an operating division or office of the same organization housed in a different location. 8 CFR § 214.2(l)(1)(ii)(I)



- An “arm” of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign corporation operating in the United States.

# Subsidiary

- Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. 8 CFR § 214.2(l)(1)(ii)(K)

It must be established that the parent:

- (1) Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.
- (2) Owns either directly or indirectly half the subsidiary and controls the subsidiary.
- (3) Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary.
- (4) Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary.

# *Example*

Subsidiary – More than 50%

**Company A**  
**Parent**

**Company B**  
**Subsidiary**  
**100% Owned**

# *Example*

Subsidiary – Exactly 50% and parent has control of the subsidiary

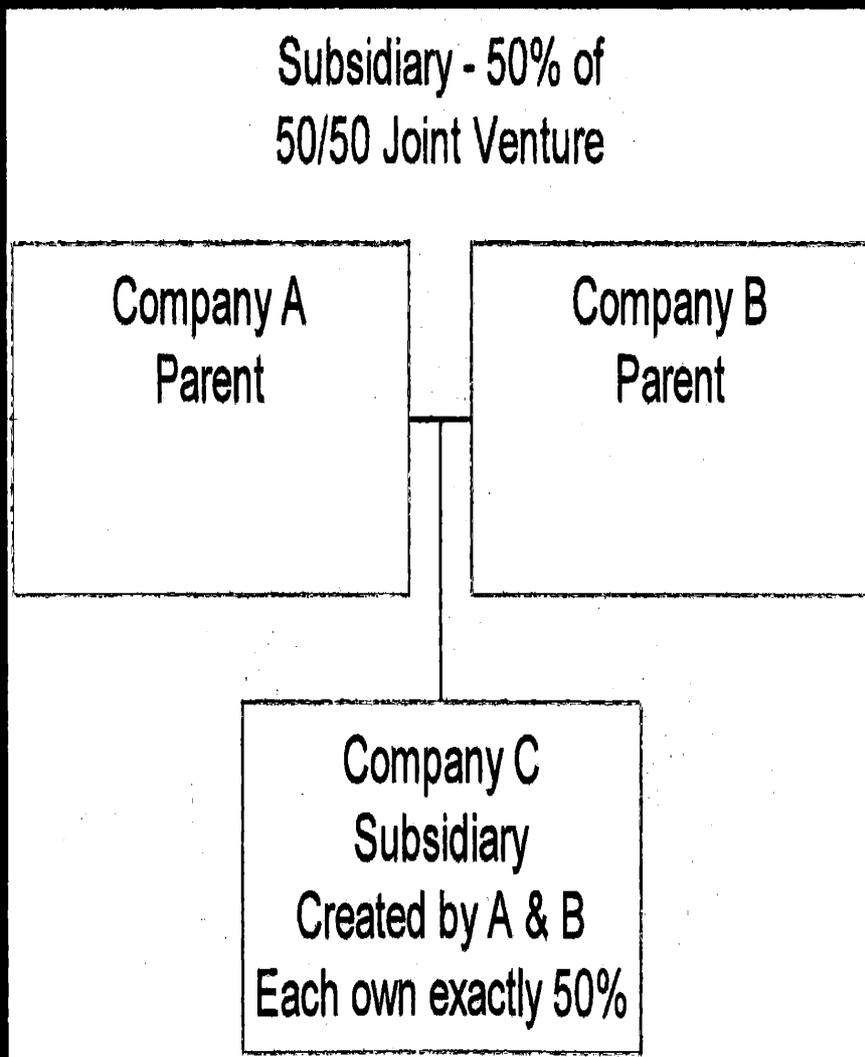
**Company A  
Parent**

**Company B  
Subsidiary  
50% Owned**

# Joint Venture as Subsidiary

- Joint venture: Parent owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity.
- Neither parent has sole control. They must agree to all controlled aspects. Thus, both have control. This is called “negative control”.

*Joint Venture – Two Parent  
Companies own 50% of a  
subsidiary*



# Joint Ventures – Two Parent Companies Own a Subsidiary

- An alien L-1 cannot be transferred through the joint venture.
- In the above chart:
  - An alien can be transferred from A to C or C to A.
  - An alien can be transferred from B to C or C to B.
  - But, an alien cannot be transferred from A to B or B to A.

# *Example – Parent Owns Less Than 50%*

Subsidiary - Less than 50%  
yet still controls the entity

Company A  
Parent

Company B  
Subsidiary  
but parent owns less  
than 50% yet still controls

# Affiliate

■ Affiliate means:

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

8 CFR § 214.2(l)(1)(ii)(L)

# A Note About Subsidiaries and Affiliates

Parent Co.  
Usually owns at least 50% of subsidiary

Subsidiary A

Subsidiary B

Subsidiary C

*Example – How two separate subsidiaries can be affiliates of each other*

Parent Company A owns 100% of both subsidiaries B and C. Company A controls B and C. Companies B and C are affiliates.

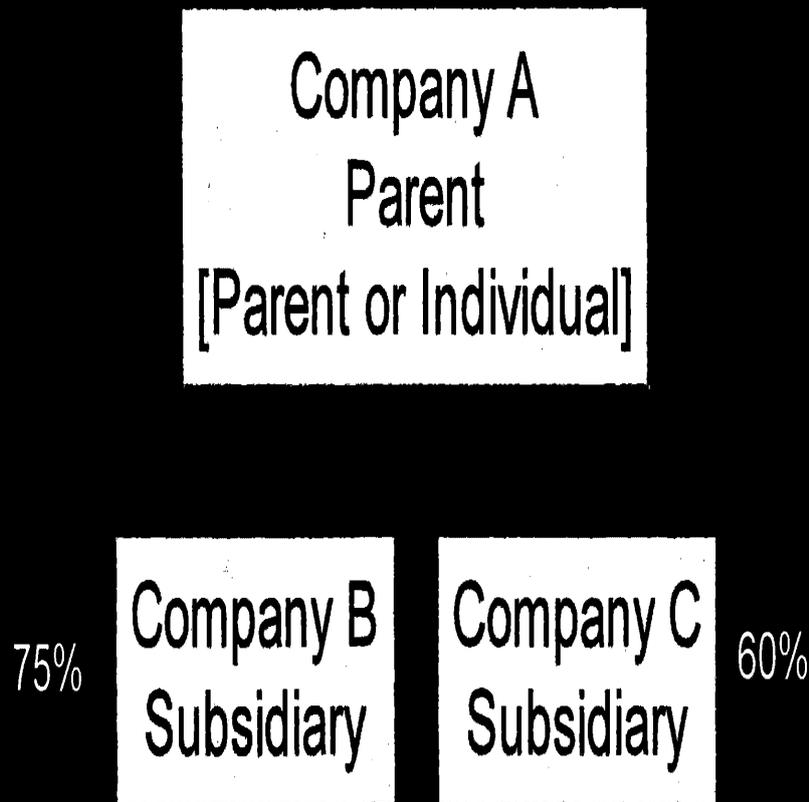
Company A  
Parent  
[Parent or Individual]

Company B  
Subsidiary

Company C  
Subsidiary

*Example 2 – How two separate subsidiaries can be affiliates of each other*

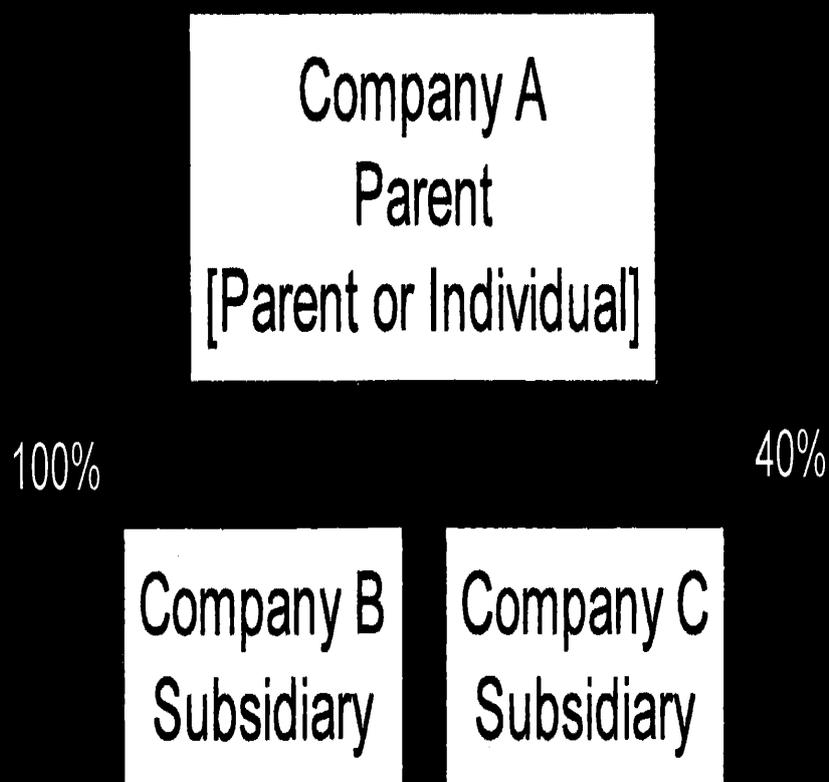
Parent Company A owns 75% of subsidiary B and 60% of subsidiary C. Company A controls B and C. Companies B and C are affiliates.



# *Example 3— How two separate subsidiaries will not be affiliates of each other*

Parent Company A owns 100% of subsidiary B and 40% of subsidiary C. Company A controls B but not C. Companies B and C are not affiliates. Company A's employee may qualify to work at B but not C.

A - Affiliate



# Affiliates – Multiple Owners

One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

## *Example – Multiple Owners of Qualified Affiliates*

The two entities below are owned by individuals A, B, C, and D in the percentages indicated

These entities are affiliates as they are both owned by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity

*X - Affiliates*

A	B	C	D
25%	25%	24%	26%

A	B	C	D
26%	24%	25%	25%

# Franchise Agreements

- Franchises are companies operating under franchise agreements. Franchise agreements are entered into to allow one independently owned company to license the name and/or product of another independently owned company. There is usually no qualifying relationship between a foreign entity and a U.S. entity associated by a franchise agreement or contract.

Example: *Cheap TV's* located in the United States enters into a franchise agreement with *BONY Corp* in Japan. Under the agreement, *Cheap TV's* will be the sole distributor of *BONY* flat screen televisions in the United States and will be able to open and operate stores under the name *BONY Corp* but still wholly owned by *Cheap TV's*. In return, *BONY* will receive 10% of the profit from each flat screen television sold.

Note: No ownership or control exists in this franchise agreement as neither company owns a portion of the other company. As such, there is no qualifying relationship between *Cheap TV's* and *BONY Corp*.

- Franchises and those relationships based on contractual or licensing agreements usually are not qualifying relationships for L-1 purposes.

*See Matter of Schick, 13 I&N Dec. 647 (Reg. Comm. 1970)*

# Affiliate – Partnership Accounting

- A partnership that is organized in the United States to provide accounting services along with managerial, and/or consulting services will be considered an affiliate of a foreign partnership (or similar organization) that provides accounting services in another country if:
  - (1) They both market their services under the same internationally recognized name,
  - (2) Under the agreement with a worldwide coordinating organization that is owned by member accounting firms,
  - (3) Both the U.S. accounting partnership and the foreign accounting partnership are members of the worldwide coordinating organization.

8 CFR 214.2(l)(1)(ii)(L)(3)

# Affiliate – Partnership Accounting

- **Explanation:** Accounting firms such as *Deloitte Touche Tohmatsu Limited (Deloitte)* are large internationally branded accounting firms. However, the individual Deloitte firms in each respective country are single entity partnerships that do not normally own any part of the Deloitte firms in the other countries. [Deloitte-U.S. is an accounting firm set up as a partnership that is owned by the U.S. partners that in most instances do not own any part of Deloitte- Spain.] However, these firms are all part of an agreement to provide services under the same name and coordinated through a organization that is set up and owned by the member organizations with no actual control exerted by one member firm. This set-up has significant business benefits as it allows the individual member firms to refer their clients to other foreign member organizations and/or receive new clients through the same referral process. It also allows these firms to meet the different accounting regulations that are set up in each country and to cut ties with offending accounting firms without suffering financial losses. Example: Arthur Anderson/Enron Scandal
- These accounting partnerships are considered affiliates even though they do not exert control on each other or actually own any significant portion of each other.

# Example of Accounting Service Affiliates

- *Accounting Partners, NYC* is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.
- *Accounting Partners, UK* is a partnership that is organized in Great Britain and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. It markets its accounting services under the same internationally recognized name as Accounting Partners, NYC, and is a member of the same worldwide coordinating organization.
- *Accounting Partners, NYC* and *Accounting Partners, UK* are considered to be affiliates because:
  - They both offer accounting services under the same internationally recognized name, and
  - Are members of the same worldwide coordinating organization.

# Well Known Examples

not an exhaustive list

- Pricewaterhouse Coopers L.L.P.
- Ernest & Young L.L.P.
- KPMG Peat Marwick L.L.P.
- Deloitte & Touche, Tohmatsu Limited (Deloitte) L.L.P.
- Schneider Downs & Co. Inc.
- Alpern, Rosenthal & Co.
- Sisterson & Company L.L.P.

# Issues Regarding Ownership and Control

- Ownership and control can be two ways:

1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.

2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of an entity yet still controls the entity.

# Evidence of Ownership and Control

- Evidence of Ownership and Control must be submitted to establish the qualifying relationship.
- The petitioner may submit any evidence that it feels is appropriate; USCIS must weigh the evidence submitted appropriately. The best evidence would be financial documentation showing that the foreign entity and the U.S. entity are financially linked. However, the submission of Stock Certificates is a common way that Petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated on the stock.

# Reviewing Stock

## Preferred Stock vs. Common Stock

Companies generally issue two types of stock; common stock and preferred stock.

- Preferred stock usually gives holders certain privileges regarding the assets of the corporation in the event of a bankruptcy, but usually does not give preferred stockholders any voting rights. For L-1 purposes, if control is an issue in determining ownership, the stockholders with preferred stock would not qualify if they lack “control in fact” of the corporation/entity. For this reason, preferred stock certificates are rarely submitted as evidence.
- While common stock holders typically do not receive such privileges, they are, generally, the shareholders who have certain voting rights with respect to how the corporation may be managed. Common Stock holders generally do have various degrees of control over the corporation.

# Reviewing Stock Certificates

- When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the entity seeking to establish control. (The total number of stock issued cannot exceed the amount authorized in the company's articles of incorporation.)

Example: Brown-India indicates that they have a qualifying relationship with Brown-U.S. Brown-U.S. has issued 2 million shares of common stock. Brown-India submits a stock certificate indicating that they own 1.1 million shares of Brown-U.S. stock. Because Brown-India owns more than 50% of the voting stock issued by Brown-U.S., they have a qualifying relationship of parent-subsiidiary.

# Are the Stock Certificates Genuine?

Caveat: There exists a possibility in some cases that the submitted stock certificates may have been altered in order to make a qualifying relationship appear to exist and/or the possibility that the stock certificates were not issued in the normal course of business.

If submitted, an Officer should review stock certificates to determine if they (and the information contained on them) are genuine and were produced in the normal course of the company's business. Generally, an acceptable stock certificate includes the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

# Are the Stock Certificates Genuine?

If the stock certificate does not appear genuine, comparison to a stock ledger may validate the certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or “cancellation” of stock.

# Are the Stock Certificates Genuine?

- In those *limited* instances where the officer has *reason to question* the validity or authenticity of the stock certificate(s), it may also be appropriate to ask for evidence of the transfer of payment for the stock certificate(s) in question. Such evidence may include but is not limited to copies of cashed checks or documentation of wire transfers.

# When to Ask for Financial Evidence of Ownership and Control

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1. As indicated above - the officer has reason to question the validity or authenticity of submitted stock certificates.
2. In the case of a new office, if the submitted evidence is insufficient to determine whether the size of the U.S. investment is sufficient to conduct business.
3. If the entity is a type that does not issue stock certificates, such as a partnership or limited liability corporation.
4. If the Officer can articulate a justifiable reason that necessitates asking for the evidence. Examples: suspected fraud, investments suspected to originate in countries not free to invest in the U.S., the size of the entity in relation to the number of petitions filed.

# Examples of Financial Evidence

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1. Evidence of the stock purchase or Capital Contribution (if stock has no par value or company is anything other than a corporation, i.e. partnership or LLC).
  - Wire transfer receipts
  - Copies of cancelled checks
  - Deposit receipts
  - Bank statements

This list is not all-inclusive.

2. Larger well-known companies may submit Annual Report/10-K or Federal Income Tax returns.

# Issues Regarding Ownership and Control

- Ownership of a subsidiary need not be majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982).
- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on behalf of a stockholder of a corporation.

Example: Company A owns 49% of the voting stock of Company B and has proxy power over an additional 2% of Company B's voting stock. Company A has control of Company B by having the majority voting power of Company B (51%).

# Non-Profit Organizations

- Non-profit organizations may, under certain circumstances, be considered qualifying organizations for L-1 purposes.
- Also frequently referred to as “tax-exempt” organizations or “501(c)(4) tax exempt” organizations, although there are other types of tax exempt organizations.
- Non-profit organizations may also become incorporated.
- Generally, L-1 petitioning non-profit organizations are incorporated and have branch organizations or affiliated corporations abroad. Examples include the Red Cross and Boy Scouts.
- Evidence of ownership and control can include incorporation documents, audited or reviewed financial statements, stocks or federal informational returns.

# Qualifying Organization (Continued)

## - Is the company Doing Business?

- Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. See 8 CFR § 214.2(l)(1)(ii)(H)
- *International trade is not required in order to establish that the entity is doing business.*

# Doing Business (Continued)

- Generally, both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee. Exceptions for new offices apply.
- The U.S. entity cannot be one created solely for the purpose of establishing an L-1 qualifying intra-company relationship.

**MANAGERIAL  
and EXECUTIVE  
CAPACITY**

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# Managerial Capacity Defined

8 CFR § 214.2(l)(1)(ii)(B)

An assignment within an organization in which the employee *primarily*:

(1) Manages the organization, or a department, subdivision, function or a 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;

## Managerial Capacity Defined (Continued)

(3) Has the authority to hire and fire or recommend those actions as well as other personnel actions, such as promotion and leave authorization if employees are supervised. If no employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

# Executive Capacity Defined

8 CFR § 214.2(l)(1)(ii)(C)

An assignment within an organization in which the employee primarily:

- (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, the board of directors or stockholders of the organization.

# Managers/Executives

- A job description that uses partial definitions of both manager and executive (some of the criteria from the definition of manager and some criteria from the definition of executive) does not qualify for an L-1A.
- An employee's job description must fulfill all four criteria of the definition of either manager or all four criteria of the definition of executive.

# Distinguishing Between Executives and Managers

- Generally, an executive may sign a company document, legally binding a corporation. Generally, a manager cannot, by signature, legally bind the corporation.
- An executive may direct multiple plants, sometimes in several different nations. A manager may oversee only one office or plant.
- Generally, executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc.

# Evaluating Managerial or Executive Positions

Large, well-known and well-established business entity:

- A description of the position written by a high level executive of the company may be submitted as evidence. Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title. You must always look at the job duties.

Small and/or young, unknown or less substantial business:

- The qualifications of the beneficiary and/or the eligibility of the proposed employment in the United States are more difficult to determine.
- Do not determine eligibility solely by size of company; rather, examine all the facts presented, including the nature of the duties to be performed, the nature of the petitioner's business, and the developmental stage of the company.

# Staffing Levels as a Factor

INA § 101(a)(44)(C)

“If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity... take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity...merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.”

# Staffing Levels (Continued)

Officers should take into account the reasonable needs of the organization.

In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not just at the number of employees to be managed, but at their duties (e.g., are these professionals, etc.).

Evidence can include an organizational chart and State quarterly wage reports upon request.

The employees managed, as opposed to the beneficiary, perform the majority of the everyday duties.

# Too Many Queen Bees Not Enough Worker Bees

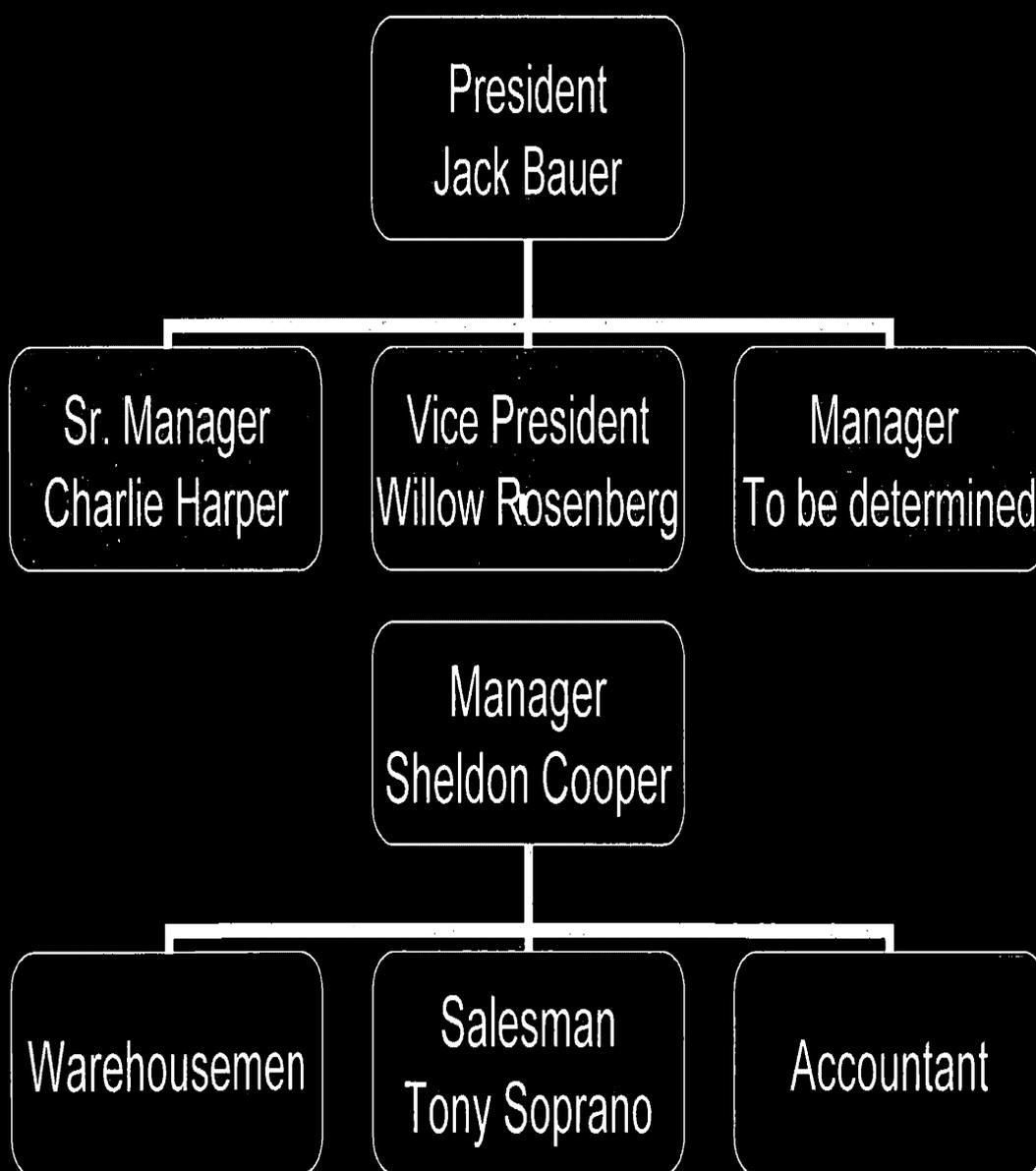
- Claims that the majority of its employees are primarily engaged as managers or executives that are inconsistent with the nature of the business in the United States or abroad may or may not require an RFE, depending on the facts presented.
- Request more detailed position descriptions and payroll documentation to determine who is performing the non-qualifying, everyday operational duties of the business.
- Even though a beneficiary has a job title of a manager, he or she may or may not be performing primarily non-managerial duties. This is a fact question which you must determine on a case-by-case basis.

# L-1A Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The U.S. organizational chart for the U.S. office.
- Quarterly wage reports for the employees in the U.S. office.

**Example Organizational Chart**  
**Petition Shows Eight Employees**  
**Does this conform with the other documents**  
**submitted with the petition?**



# Managing a Function

- The organization is structured in such a way that the beneficiary is primarily *managing* the function, not primarily performing the duties of the function.
- Normally does not directly manage workers (NOTE: the person may still qualify as an L-1A *manager of personnel* if the beneficiary meets the requirements of 8 CFR § 214.2(l)(1)(ii)(B)).
- Directs or manages an essential function.

# Specialized Knowledge

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(SK)

# Specialized Knowledge

See 8 CFR § 214.2(l)(ii)(D)

Specialized knowledge means:

- special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, *or*
- an advanced level of knowledge or expertise in the organization's processes and procedures.

# Specialized Knowledge Terminology

Specialized knowledge means special knowledge possessed by an individual of the petitioning organization's:

- Product
- Service
- Research
- Equipment
- Techniques
- Management, or
- Other interests, and its application in international markets, or
- An individual's advanced level of knowledge or expertise in the organization's processes and procedures.

# Policy Regarding the Interpretation of Specialized Knowledge

Puleo Memo – March 9, 1994

The *Puleo* memo is one of the agency's policy memos regarding the interpretation of specialized knowledge. Officers must follow this interpretation when adjudicating SK petitions. The memo instructs that Officers are to utilize common dictionary definitions of the terms "special" and "advanced;" the definitions cited in the *Puleo* memo are:

- **Special:** (1) "surpassing the usual, distinct among others of a kind," OR;  
(2) "distinguished by some unusual quality; uncommon; noteworthy."
- **Advanced:** (1) "highly developed or complex; at a higher level than others," OR  
(2) "beyond elementary or introductory; greatly developed beyond the initial stage."

# Puleo Memo – The Special Knowledge Definition

**Special:** (1) “surpassing the usual, distinct among others of a kind,” OR; (2) “distinguished by some unusual quality; uncommon; noteworthy.”

Based on the above definition, an alien would possess specialized knowledge if it was shown that the knowledge is different from that generally found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

# Puleo Memo – The Advanced Level of Knowledge or Expertise definition

**Advanced:** (1) “highly developed or complex; at a higher level than others,” OR (2) “beyond the elementary or introductory; greatly developed beyond the initial stage.”

Based on the above definition, an alien would possess specialized knowledge if it was shown that the knowledge is advanced. There is no requirement that the knowledge be proprietary or unique, or narrowly held throughout the company, the knowledge must only be advanced.

# Puleo Memo (Continued)

- The determination of whether the alien possesses SK does not involve a test of the U.S. labor market. Officers should not consider whether there are U.S. workers available to perform the duties in the United States when determining whether the alien has SK.
- Officers adjudicating petitions involving SK must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized. Examples of general knowledge may include: CPR training, First Aid training, and Safety training. These could be regarded as general knowledge in any industry. However, general knowledge will differ from case to case depending on the specific industry.

# Possible Characteristics of SK

Puleo Memo

- The alien possesses knowledge that is valuable to the employer's competitiveness in the market place; or
- The alien is qualified to contribute to the U.S. employer's knowledge of foreign operating conditions as a result of knowledge not generally found in the industry (CAVEAT: There may be some industries that are so sophisticated or specialized in nature that even such generalized knowledge may rise to the level of specialized knowledge for L-1B purposes); or
- The alien has been employed abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position; or

# Possible Characteristics of SK (Continued)

Puleo Memo

- The alien possesses knowledge which, normally, can be gained only through prior experience with that employer, (NOTE, there is no requirement that the SK must be gained through prior experience with the Petitioner. It may have been obtained through prior employment, education, or experience.); or
- The alien possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; or
- The alien has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States (although in some *limited* cases it may be generally known within a particular industry)

# What to Look for in Reviewing SK

- How did the beneficiary obtain specialized knowledge?
- What evidence is there to show that the beneficiary's knowledge is specialized knowledge?
- How can it be shown that the job position in the United States is one of specialized knowledge?

# *Note on Specialized Knowledge*

There is no rule of thumb in every case as to what constitutes specialized knowledge. Such knowledge is highly fact-dependent, and therefore, each case must be adjudicated on its own merits based on the facts presented.

# Petitioner's Statements L-1B

- The weight and probative value Officers should give to statements by a Petitioner that a beneficiary possesses specialized knowledge will vary from case to case, and will depend on, among other things, its degree of detail and whether the statement is supported by other evidence (documentary or other) in the file.
- You should be alert to the fact that some Petitioners may base their claim that a beneficiary has specialized knowledge by merely reiterating the definition of specialized knowledge provided in the regulations, without providing evidentiary support to back up such an assertion.
- It is important for the Petitioner to fully explain and describe the beneficiary's position of specialized knowledge.

# L-1B Evidence

- The petition should be accompanied by a description detailing how the beneficiary's knowledge of the Petitioner's equipment, system, product, technique, or service is "special" and/or "advanced."
- However, it is just as important for the Petitioner to include documented evidence to prove those assertions.
- Some common types of documentary evidence submitted are:
  - Training Records;
  - Descriptions of Proprietary Knowledge held by beneficiary;
  - Patents held by the company obtained as a result of the beneficiary's work;
  - Organizational Charts showing the beneficiary's current position in the organization;
  - Published Material by or about the beneficiary;
  - High level of Remuneration compared to others;
  - Human Resources Records;
  - A description of the impact on Petitioner's Business if L-1B not granted.

# L-1B Evidence (Continued)

- No specific type of evidence is required under the regulations, but remember, as always, the burden of proof remains with the Petitioner.

Example: If the Petitioner claims that the SK was obtained after the beneficiary underwent training, the Petitioner should be able to submit evidence of that training. Note that certificates of training are not the only way to establish training has occurred. Suppose a Petitioner indicates that the beneficiary underwent a one year training program at the cost of \$250,000 paid for by the Petitioner, provided by a third party, in order for the beneficiary to become one of 20 individuals in the world that are qualified to fly a specific type of helicopter.

As evidence of the claimed training, the Petitioner could submit one of the following (or something completely different):

- (1) A training certificate;
- (2) Records of the \$250,000 in tuition payments to the third party;
- (3) The beneficiary's flight log that shows he/she underwent the specified training.

# L-1 Visa Reform Act of 2004

see INA § 214(c)(2)(F)

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for L-1 classification if –

(i) the alien will be controlled and supervised principally by such unaffiliated employer; OR

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

The L-1 Visa Reform Act applies to L-1B petitions filed on or after June 06, 2005, whether for initial, extended, or amended classification.

# L-1B Off-Site Employment – What the Law Means

If an L-1B alien is stationed primarily at the worksite of an employer other than the Petitioner:

- Control and supervision must be with the Petitioner.
- Cannot be “labor for hire.”
- The beneficiary’s work (the specialized knowledge) must be specific to the Petitioner’s product or service.
- The off-site work must require specialized knowledge.

# L-1B Extension Adjudication

- When adjudicating L-1B extensions, Officers are required to give deference to the prior Officer's approval; however, Officers should review the claimed SK to determine if in the intervening time, the knowledge has become general knowledge.

- Be cognizant of the fact that:

“Cutting edge” technologies may become “general industry knowledge” in a rather short period of time.

The “advanced” nature of the beneficiary's knowledge must be considered in relation to the current level of knowledge.

# Specialized Knowledge Becoming General Knowledge

- Note that knowledge that is or was once considered SK, may become common knowledge through the passage of time and technological advances.

Example: In the early nineties, expertise in the creation and maintenance of certain internet websites was not commonly held in the computer industry. Such knowledge was considered truly specialized.

Today, many grade school children possess the knowledge and ability to perform some, many or all of these tasks. Such commonly possessed knowledge is no longer thought of as "special" or "advanced".

# BLANKET L-1 PETITION PROCESS

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# Blanket Petition Authority

INA § 214(c)(2)(A) requires that USCIS provide a blanket L-1 petition process in order to expedite the importation of L-1 aliens.

# Blanket Petitions

- In order to bring a qualified L-1 alien into the United States under the Blanket L Petition process, two-steps must occur:

(1) The Petitioner must file the Form I-129 and L Supplement requesting Blanket Petition (LZ) Approval.

(2) With a currently valid approved LZ petition, the Petitioner may file Form I-129S on behalf of an employee in order to transfer him/her to the United States as an L-1 nonimmigrant. Note that there is no limit to the number of I-129S petitions that can be filed based on an approved LZ petition.

# Filing an LZ Petition

A U.S. or foreign organization may file an I-129 requesting approval of an LZ petition on behalf of itself and its parent, branches, subsidiaries, and affiliated companies.

Officers should review Question 3 on Page 20 of the Form I-129 (the first page of the L Supplement) to determine if the Petitioner is requesting a LZ petition approval.

# Filing an LZ Petition (Continued)

With the filing of the LZ petition, the Petitioner needs only to establish that the organizations listed in the petition qualify (that a qualifying relationship exists between them and that they are doing business as required by regulation). The LZ petition must include a list of all the organizations eligible to transfer L-1 workers under the blanket petition as well as documentation of qualifying relationships of the organizations and establishing that they are doing business.

The Petitioner will not submit evidence pertaining to a specific beneficiary as they will not be seeking classification of an employee as an L-1 nonimmigrant with the filing of an LZ petition.

# Who May Use the Blanket Process

8 CFR § 214.2(l)(4)

- A Petitioner which meets the following requirements may file an LZ petition:
  - (A) The Petitioner and each of those entities are engaged in commercial trade or services; AND
  - (B) The Petitioner has an office in the United States that has been doing business for one year or more; AND
  - (C) The Petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; AND
  - (D) The Petitioner and the other qualifying organizations have:
    - (1) obtained approval of at least ten L-1 petitions during the previous 12 months; OR
    - (2) have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; OR
    - (3) have a United States work force of at least 1,000 employees.

# LZ Petition Validity

An LZ petition to qualify a company as a blanket Petitioner (with no beneficiary listed) may be approved for an initial period of three years. A subsequent petition for extension may be approved indefinitely if all other requirements are met.

See 8 CFR §§ 214.2(l)(7)(i)(B) and 214.2(l)(14)(iii)(A).

The LZ petition may be approved in part or in whole.

See 8 CFR 214.2(l)(7)(i)(B)(3).

The extension must be filed in timely fashion or the company's LZ petition status will become invalid, and the Petitioner must then wait three years to file a new initial LZ petition.

See 8 CFR § 214.2(l)(14)(iii)(B).

# LZ Petition Validity (Continued)

- Petitioner must file an amended petition with fee if:
  - There are changes in approved relationships.
  - There are additional qualifying organizations.

See 8 CFR § 214.2(l)(7)(i)(C).

# LZ Petition Validity (Continued)

- An amended petition may only be approved for the validity period of the petition it amends.
- A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely.

# Approving an LZ Petition (For the Petitioner)

When approving a case, you **must**:

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**).
- Indicate the dates of approval/validity dates (which will either be **three years** (for an initial) or **“INDEFINITELY”** (for an extension)).
- Make a notation **“BLANKET PETITION”** in the block entitled **“PARTIAL APPROVAL (explain).”**
- Stamp the petition with your approval stamp and sign it.

# Filing an I-129S for the Beneficiary

See 8 CFR § 214.2(l)(4)(ii).

- A U.S. Petitioner listed on an LZ petition approval notice may file a Form I-129S on behalf of an employee. (Note that the I-129S Petitioner must be a U.S. Petitioner unlike an I-129 Petitioner.)
  
- The Petitioner bears the burden of establishing:
  - (1) that the beneficiary meets the 1 in 3 rule and,
  - (2) that the beneficiary will be employed in the United States in a managerial or executive capacity or as a specialized knowledge *Professional*. (Note that if filing the I-129S on behalf of a specialized knowledge employee, the position in the United States must be a 'profession' as defined by INA § 101(a)(32) and the beneficiary must be a professional. However, there is no requirement that the beneficiary have been employed abroad in a position as a specialized knowledge *Professional*.)

# Specialized Knowledge *Professional*

- INA § 101(a)(32) provides that the term "profession" includes but is not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."
- "Profession," as defined by section 101(a)(32) of the Act, contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor.     see Matter of Sea, 18 I&N Dec. 817.
- In order to be considered a professional, the alien must hold a U.S. bachelor's degree or equivalent (may include a work experience evaluation) and be working in a position that normally requires a minimum of a bachelor's degree.

# Notes about the Form I-129S

- There is no filing fee required. However, the Petitioner must submit the \$500 fraud fee and the \$2,250 P.L. 111-230 fee if required.
- The Petitioner does not need to establish that they are a qualifying organization as this has already been established with the approval of the LZ petition. The Petitioner only needs to submit a copy of the LZ approval notice with the I-129S filing documenting that the Petitioner is listed on the LZ approval notice.

# I-129S Filing Options

The U.S. Petitioner may file the I-129S with:

- (a) DOS – If the beneficiary is abroad and requires a visa to seek admission to the United States, the I-129S should be submitted directly to the Consulate or Embassy with the beneficiary's L-1 visa application. If approved, the beneficiary may use the L-1 visa and apply for admission to the United States. See 8 CFR § 214.2(l)(5)

# I-129S Filing Options (Continued)

(b) USCIS – If the beneficiary is a visa exempt alien (Canadian citizens and certain aliens resident in the Caribbean) who is outside the United States, the I-129S may be filed with the appropriate USCIS Service Center. If approved, the alien may apply for admission to the United States with the approval notice. [Aliens currently present in the United States may not use Form I-129S to COS or EOS or amend a previously approved I-129S.]

See 8 CFR § 214.2(l)(5)(C)

(c) CBP at a Port Of Entry (POE) on the Canadian-U.S. land border or a pre-clearance/pre-flight station (PFI) in Canada – If the beneficiary is a citizen of Canada, the Form I-129S may be filed with CBP at the POE or PFI in conjunction with the alien's application for admission to the United States as an L-1.

See 8 CFR § 214.2(l)(17)(ii)

- It is the responsibility of the agency with whom the I-129S is filed to collect all required fees and adjudicate the I-129S properly.

# Reassignment Benefits of an I-129S

- An employee admitted under the blanket petition process may be reassigned to any organization on the blanket without filing a petition with USCIS if the employee will be performing virtually the same job duties. Such a reassignment will not be considered a violation of status.

Therefore, when adjudicating EOS petitions for L-1 aliens who were previously admitted by means of an approved I-129S, the Officer may not deny the petition if the employee has moved to a different organization *listed on the blanket LZ petition* without filing a new petition.

Example: Bony-Japan has an approved LZ petition which includes Bony-US, Bony-CA, and Bony-VT. An I-129S completed by Bony-US is filed with the Japanese Consulate and Mr. Bones is issued an L-1 visa and is admitted to the United States as a Blanket L beneficiary for 3 years. After two years, Mr. Bones is reassigned to Bony-CA to perform the same work without requesting an amendment of the petition. One month prior to the expiration of the beneficiary's status, a Form I-129 requesting an EOS is filed on Mr. Bones' behalf. During adjudication, the Officer notes that Mr. Bones has switched employers without notifying USCIS. However, because the new employer was listed on the LZ petition for Bony-Japan, this is not a violation of status and the EOS can be approved if the beneficiary is otherwise eligible.

# Notes About I-129S Filed with CBP

- I-129S petitions filed with CBP at a POE/PFI on behalf of a Canadian citizen will be adjudicated by a CBP Officer. If approved or denied, a copy will be forwarded to the USCIS Service Center for data entry into CLAIMS and interfiling into the LZ petition. Additionally, if CBP cannot issue a formal denial notice to the alien, they may forward the I-129S to the USCIS Service Center for final action. Some USCIS Officers may be required to work I-129S petitions filed with CBP or EOS petitions for L-1 employees whose petitions were initially adjudicated by CBP.
- L-1 aliens admitted pursuant to I-129S petition adjudicated by CBP may, instead of filing an EOS petition with USCIS, return to a POE on the U.S.-Canadian land border or a PFI inside Canada and file a new Form I-129S and seek readmission as an L-1 nonimmigrant.

# Filing For An L-1 Beneficiary Who is in the United States

- If an approved L-1 blanket employer wants to file a petition on behalf of an employee who is in the United States applying for either a change of nonimmigrant status (COS) or an extension of stay (EOS), **Form I-129 must be used, not the Form I-129S**. The petition must be adjudicated as an individual L-1 petition and all the requirements of an individual petition must be met.
- Normally, when a Petitioner files an I-129 Individual L-1 petition, they must submit documentation establishing the fact that they are a qualifying organization (including evidence that they have a qualifying relationship and are doing business). However, in the above instance, where a blanket L-1 Petitioner is filing an I-129 on behalf of an alien who is already inside the United States seeking an EOS or COS, a copy of the LZ Blanket approval notice is often submitted as proof that the qualifying relationship has already been established (this may be acceptable, though the approval notice still should be reviewed by the adjudicating officer).

# I-129S Validity Period

- An I-129S filed for a beneficiary under an initial LZ petition of three years or an indefinite blanket petition may be approved initially for a period of up to three years, even if the LZ petition will expire before the three-year validity period granted the beneficiary.

See 8 CFR 214.2(l)(11)

- Extensions may be granted in up to two year increments.

See 8 CFR 214.2(l)(15)(ii)

- It is the burden of the Petitioner to file a LZ petition extension in timely fashion and to timely file extensions for individual L-1 aliens approved under a blanket petition.

# Blanket Petitions (Continued)

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A blanket Petitioner can file an I-129S for an alien under the blanket petition or can file a normal individual petition for an alien, but cannot file both for the same alien.

If an I-129S is filed for an alien at the consulate and is denied, the Petitioner may subsequently file an I-129 individual L-1 petition for that alien at the appropriate Service Center. The petition must contain evidence of the consulate denial including the date of denial, the office where it was denied and the reasons for denial.

# NEW OFFICES

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# New Offices

- A 'new office' is an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. See 8 CFR § 214.2(l)(1)(ii)(F)

# New Offices

- An organization seeking to establish a new business entity in the United States must meet different requirements than a petition for an established company.



# Requirements for an L-1A New Office petition

see 8 CFR § 214.2(1)(3)(v)

- The Petitioner is not required to establish that the U.S. entity is doing business.
  
- However the Petitioner must submit evidence establishing that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted);      AND

# New Office L-1A (Continued)

(C) The intended United States operation will within one year of the approval of the petition support an executive or managerial position by submitting:

- (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND
- (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND
- (3) The organizational structure of the foreign entity.

# Requirements for an L-1B New Office Petition

See 8 CFR § 214.2(l)(3)(vi)

- With the filing of the initial new office petition, the Petitioner does not have to establish that the U.S. entity has a qualifying relationship with the foreign entity or that the U.S. entity is doing business.
  
- However, the Petitioner must submit evidence that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The business entity in the United States is or will be a qualifying organization; and
  - (C) The Petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

# Examples of New Office Evidence

- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.
- Evidence of the amount of the U.S. investment, source of funds and ability of the foreign entity to pay the bills related to operating the U.S. office.

# More Examples of New Office Evidence

- Evidence that the foreign entity owns the U.S. office (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business.

# Note: Purchase and Takeover of an Established Business

- If the Petitioner purchases and takes over the management of an established business that is already staffed and capable of supporting an executive or managerial employee, the petition should not be treated as that for a “new office” and a “new employee.”
- Such petition, as any other *non-new* office L-1 petition, if approvable, should be granted for an initial period of up to three years or the period requested by the petitioner, if less.

# Dormant Business

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a 'new office.' There is no rule of thumb as to whether to treat such a company as a 'new office;' this is a fact-based question.
- The Petitioner must establish the requirements of a new office.
- The petition may only be granted up to one year initially.

# New Office Extensions

see 8 CFR § 214.2(l)(14)(ii)

To extend after the first year, the Petitioner must submit:

- (A) Evidence that the United States and foreign entities are still qualifying organizations (that a qualifying relationship exists);
- (B) Evidence that the United States entity has been *doing business* for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);
- (D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees (such evidence may include organizational chart and quarterly tax returns); and
- (E) Evidence of the financial status of the United States operation.

# New Office Extensions

## Remember:

- In the initial petition for a new office, the Petitioner must meet different standards to qualify the petition. The L-1A was given one year to set up the new office, hire a staff and initiate doing business. An L-1B was given one year for the Petitioner to set up the business and commence doing business. Upon extension, the Petitioner must establish that the new office has commenced doing business.  
8 CFR 214.2(l)(14)(ii)
- In new office extensions, adjudicators should be aware that an extension may be granted in situations where the office is in fact progressing, but may not have completely reached the goal stated in the initial new office petition. Where the adjudicator determines that the office is doing business and is well on track to meet its goal, then the petition, if otherwise approvable, may be granted.
- If you have an extension petition and the previous approval was for one year, you *may* have a new office extension, but you must review the petition and the facts presented in the EOS to make that determination.
- Note: After one year, the "new office" will be treated as an existing company; there are no extensions of "new office" status beyond one year

# Things to Know

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# Conversion from L-1B to L-1A

- Aliens who were *initially admitted* as specialized knowledge aliens may change to a manager or executive and stay for seven years, BUT, the alien must have been employed as a manager/executive for at least six months (of the five-year stay) before applying to EOS from L-1B to L-1A, and the change must have been approved by USCIS. [8 CFR § 214.2(l)(15)(ii)]
- This means the change from L-1B to L-1A must have taken place and been approved at least six months before the expiration of the alien's five-year stay. If not, if the alien is otherwise qualified, approve the change for only the balance of the five years. [8 CFR § 214.2 (l)(15)(ii)]
- If the L-1B was initially admitted as an L-1A manager or executive, for example, as an IT manager, then the six month rule noted above does not apply, and the L-1B can file a request to change back to L-1A status at any time (*provided that* he or she has not been in L-1B status for more than five years, and *further provided that* his or her maximum period of stay as an L-1 nonimmigrant does not exceed seven years).
- If an amended petition was filed notifying USCIS of the L-1B being promoted to a managerial position before the 4½-year mark, then this also satisfies the requirement.

# Dependents

- Dependents of L-1 principal aliens are L-2s. Their periods of stay depend on the principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.

# Requirements for Extension of Stay (EOS)

- Alien must be in the United States at the time of filing the petition.
- Alien does not have to be physically in the United States while the EOS is pending.
- Departure is not treated as abandonment.
- Must be maintaining status.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 214.1(c)(4).

# RFEs and Denials on EOS Petitions

A prior determination by an adjudicator that an alien is eligible for the classification should be given deference unless one of the following conditions can be established.

- “Material Error”
- “Substantial Change in Circumstances”
- “New Material Information”

See Memo dated April 23, 2004, titled “The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity”.

# Requirements for Change of Status (COS)

- Unlike EOS, alien must be physically in the United States.
- Departure is treated as abandonment.
- Must be maintaining status.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 248.1(b).

# General Things To Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf. EXCEPTION: In the case of an I-129S filed on behalf of a blanket beneficiary, the Petitioner must be a U.S. Petitioner.
- The beneficiary may not directly perform services for a foreign employer.
- The beneficiary's wages may be paid by the foreign organization.

# General Things To Know

- The presence of a dormant corporation, an agent or a holding company (not active) abroad is not sufficient for establishing a qualifying relationship for L-1 purposes.
- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.
- Example: L-1A was a manager for Company A in Italy. L-1A transfers to the United States to work for affiliated Company B. After L-1A transfers, Company A ceases to do business and becomes a dormant company. Company B still has foreign affiliate, Company C, that is doing business in Japan. Therefore, the petition remains valid.

# Things to Know

- A general manager can, depending on the facts, be an executive position within a company. Therefore, for petitions filed on behalf of “general managers,” it is important to look at the company’s organization chart to discover where the beneficiary’s position falls within the company. In such cases, officers should determine whether the beneficiary can qualify either as a manager or executive
- A denial of a petition filed on behalf of a general manager should include denial language for both executive and manager.

# Things to Know Independent Contractors as Employees

- In determining whether an employee meets the criteria of a manager, the persons who the manager supervises abroad or will supervise in the United States may include independent contractors.
- There is no regulation requiring that the employees supervised must be individuals on the company's payroll.

see 9 FAM 41.54 N 7.2-1

# Company Owner as Petition Beneficiary

- An owner or majority stockholder of the petitioning or affiliated company may be the beneficiary of a petition for L-1 status if the petition is accompanied by evidence that the beneficiary's services are to be temporary and that the beneficiary will be transferred abroad at the completion of the temporary services in the United States. See 8 CFR § 214.2(l)(3)(vii)

and also Matter of M, 8 I&N Dec. 24 (BIA 1958; Ass't Comm'r, AG 1958)

- The petitioner must establish, however, that a foreign qualifying company will be doing business the entire time the owner or majority stockholder is in the United States in L-1 classification.

# Things to Know

- Companies may use different corporate titles/forms depending on where the company was set up. Example: In Great Britain, a “Limited” Company is a common form of business, where registration under the Companies Act is comparable to incorporation under state law in the United States. It is abbreviated Ltd.

Limited = Incorporated; Ltd. = Inc.

- Do not get confused by the type of company that is involved in the petition or the way in which it was formed. The criteria regarding qualifying organizations and establishing the qualifying relationship are the same regardless of the country where the company is set up and the form of company used.

## **Note on 1 in 3 Rule for Certain Blanket Beneficiaries Adjudicated Prior to June 6, 2005**

Prior to June 6, 2005, blanket L-1 beneficiaries were only required to have worked abroad in qualifying employment for 6 continuous months of the prior 3 years.

In reviewing EOS petitions, you may see petitions that were initially filed prior to June 6, 2005 that were approved based on the beneficiary having worked abroad for 6 continuous months in the prior three years. You may not deny these EOS petitions based on the fact that the regulation now requires 1 year of continuous employment abroad.

# Required Systems Checks

- IBIS
  
- SQ94
  - EOS Approval within 15 days before adjudication
  - EOS Denial within 15 days before
  - COS Approval within 15 days before
  - COS Denial within 15 days before
  
- SEVIS for F, J, or M COS printout on right side of file

# No Appeal Rights

There are generally no appeal rights for:

- Status denials – cases where the petition for classification as an L-1 is approved but the requested EOS or COS is denied (split decisions).
- Denial for failure to pay the Fraud Detection fee.
- Abandonment denials (in most cases).

# Summary – Three Basic Requirements

In general, when adjudicating an L-1, look for:

- Qualifying Organization (*relationship and doing business requirements*).
- Beneficiary was employed abroad for one continuous year within the prior three years as a manager, executive or in specialized knowledge capacity.
- Proposed employment in United States as a manager, executive or in specialized knowledge capacity (if filing under blanket petition, specialized knowledge professional).

# Summary

**New office** - Beneficiary is allowed one year to set up the office. At the conclusion of one year, evidence should be submitted showing that the “new office” has been and is continuing to be “doing business” since the original petition was approved, and that the beneficiary is now and will be performing tasks of a managerial/executive or specialized knowledge nature.

# Summary

- L-1A Manager/executive is allowed a total of seven years stay.
- L-1B specialized knowledge alien is allowed a total of five years stay.

Thank You,

The End



# Policy Guidance on the Interpretation of the L-1B Specialized Knowledge Classification

Office of Policy and Strategy

Service Center Operations

Office of Chief Counsel



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and Immigration  
Services

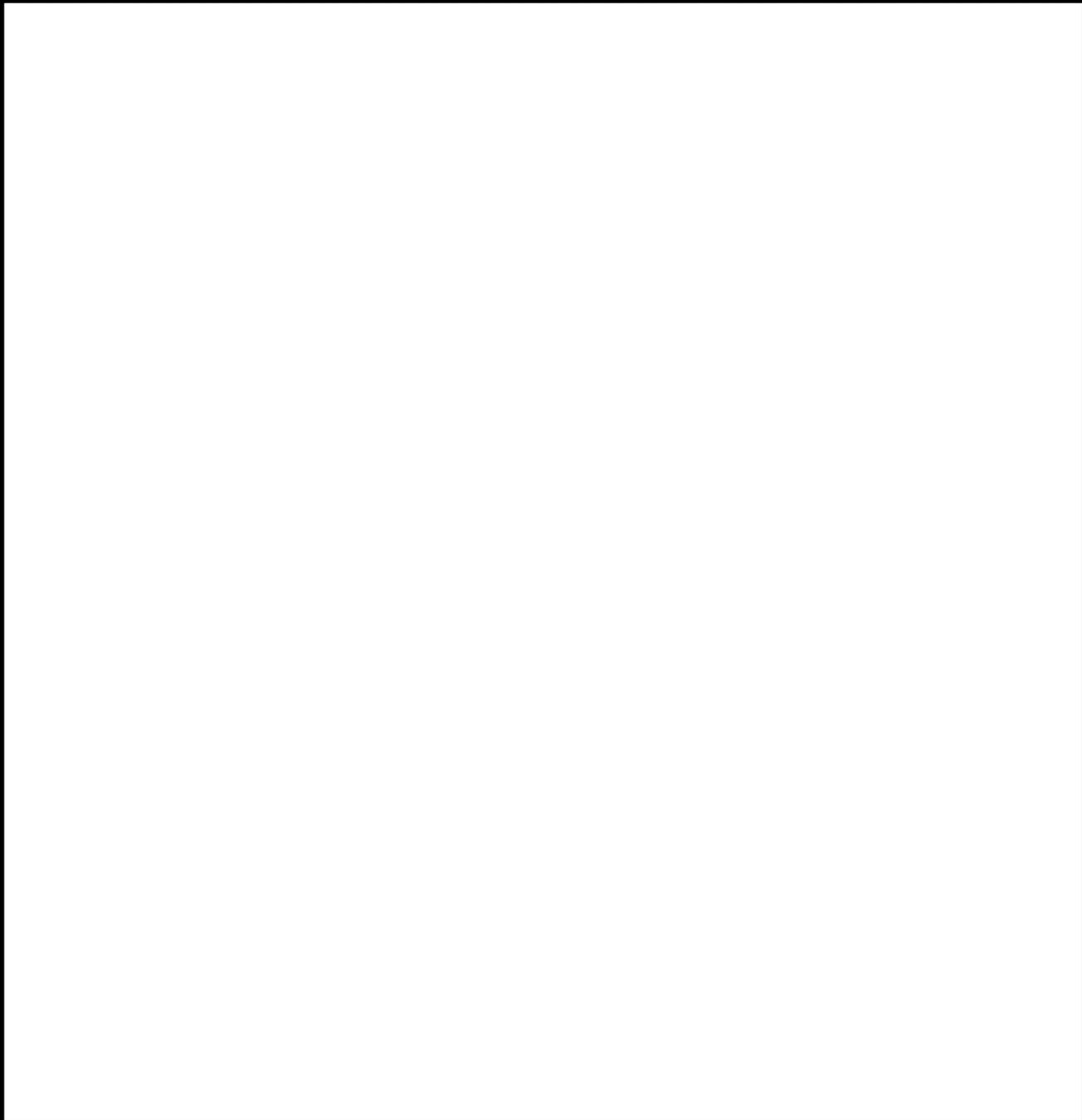
# Topics to be Covered

- Reason for “refresher” L-1B specialized knowledge training
- L-1B statutory and regulatory definitions of specialized knowledge
- L-1B visa classification and characteristics and evaluation
- Distinction between advanced and special knowledge
- Current USCIS policy on L-1B interpretation with case examples:
- Distinguished from O-1/EB-1 and EB-2 aliens
- Factors for Consideration
- “Key” personnel/process and “Essential Process”
- Standard and burden of proof with case examples and RFE/Denial reminders



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# Reasons for Refresher Training



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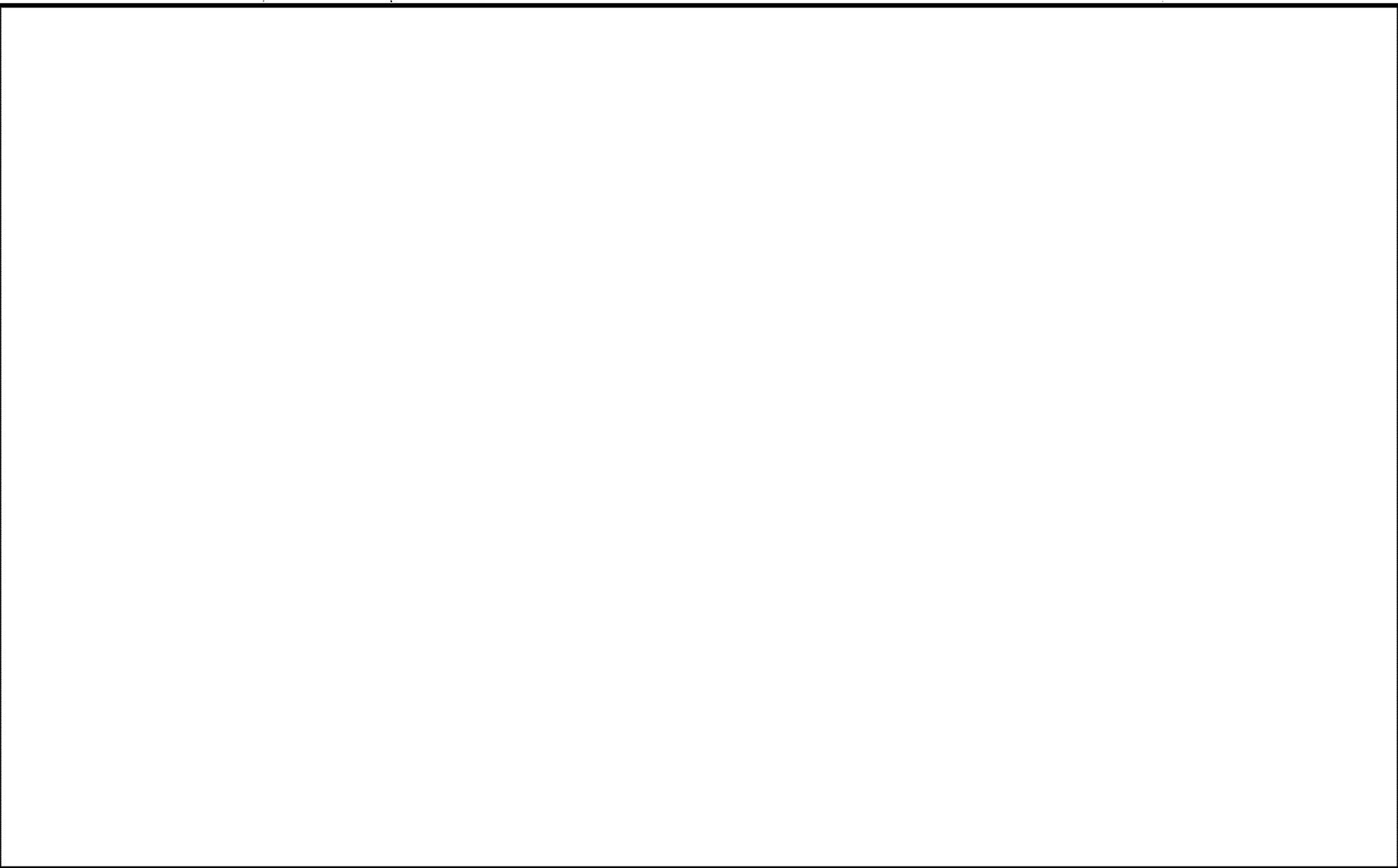
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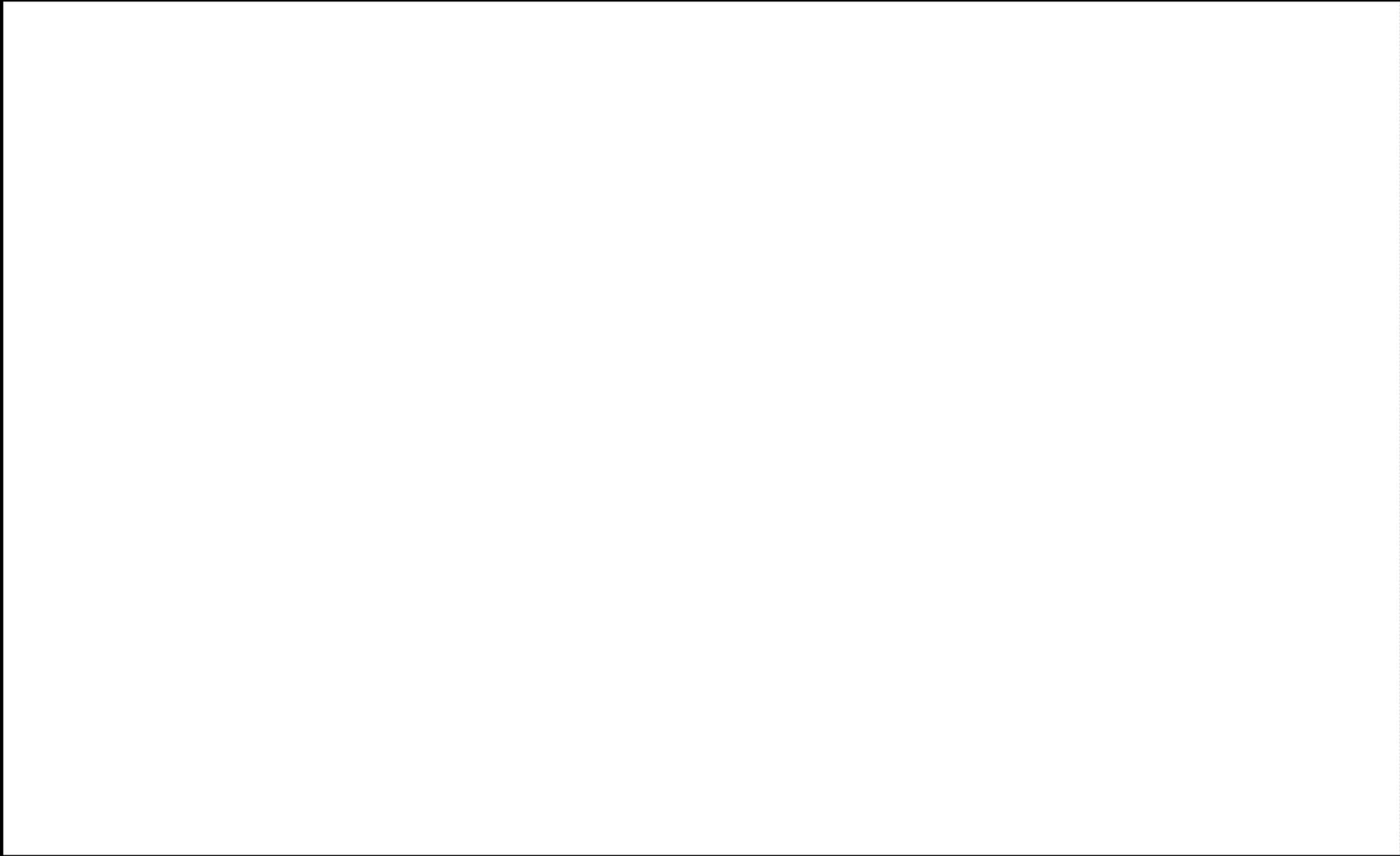
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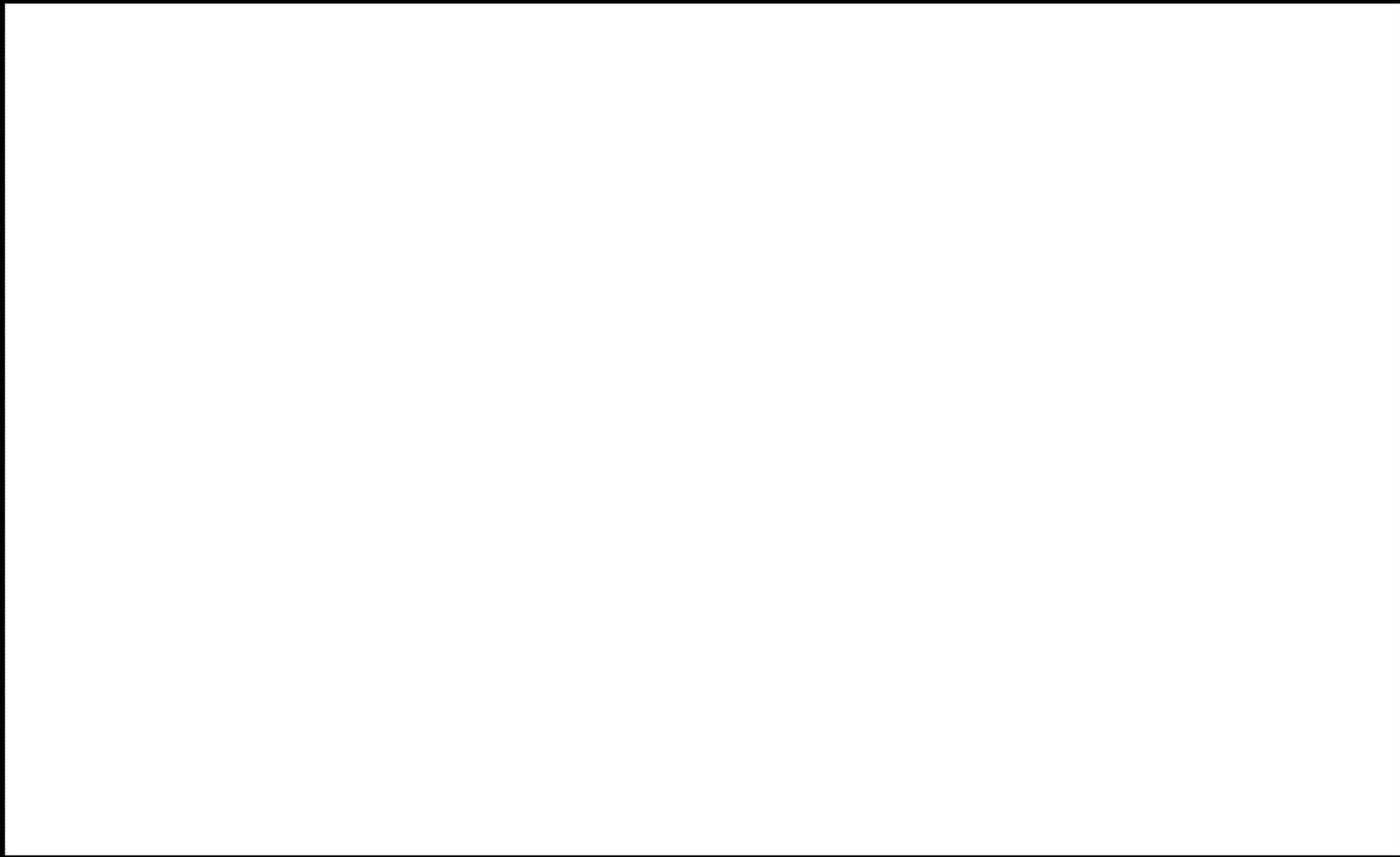
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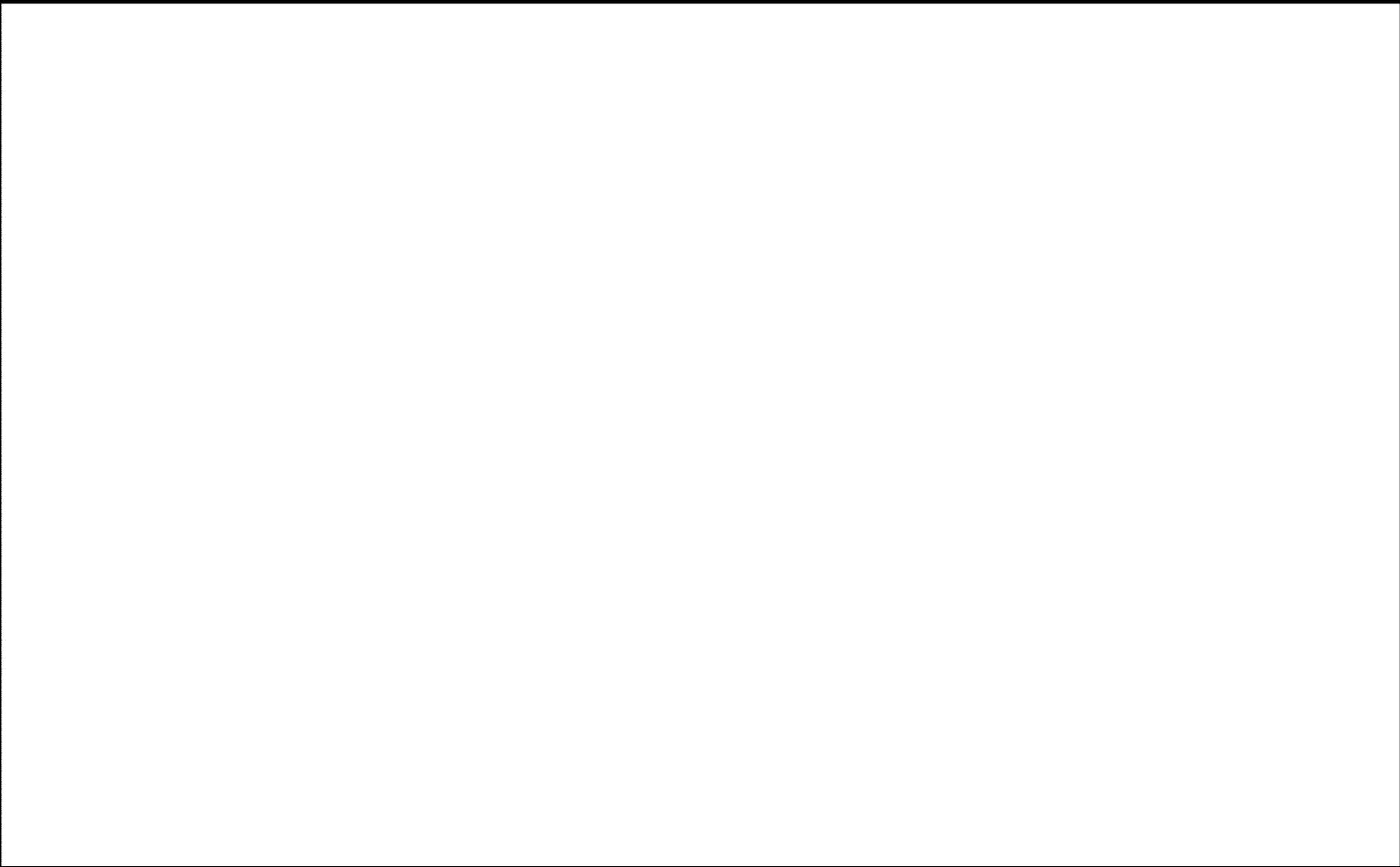
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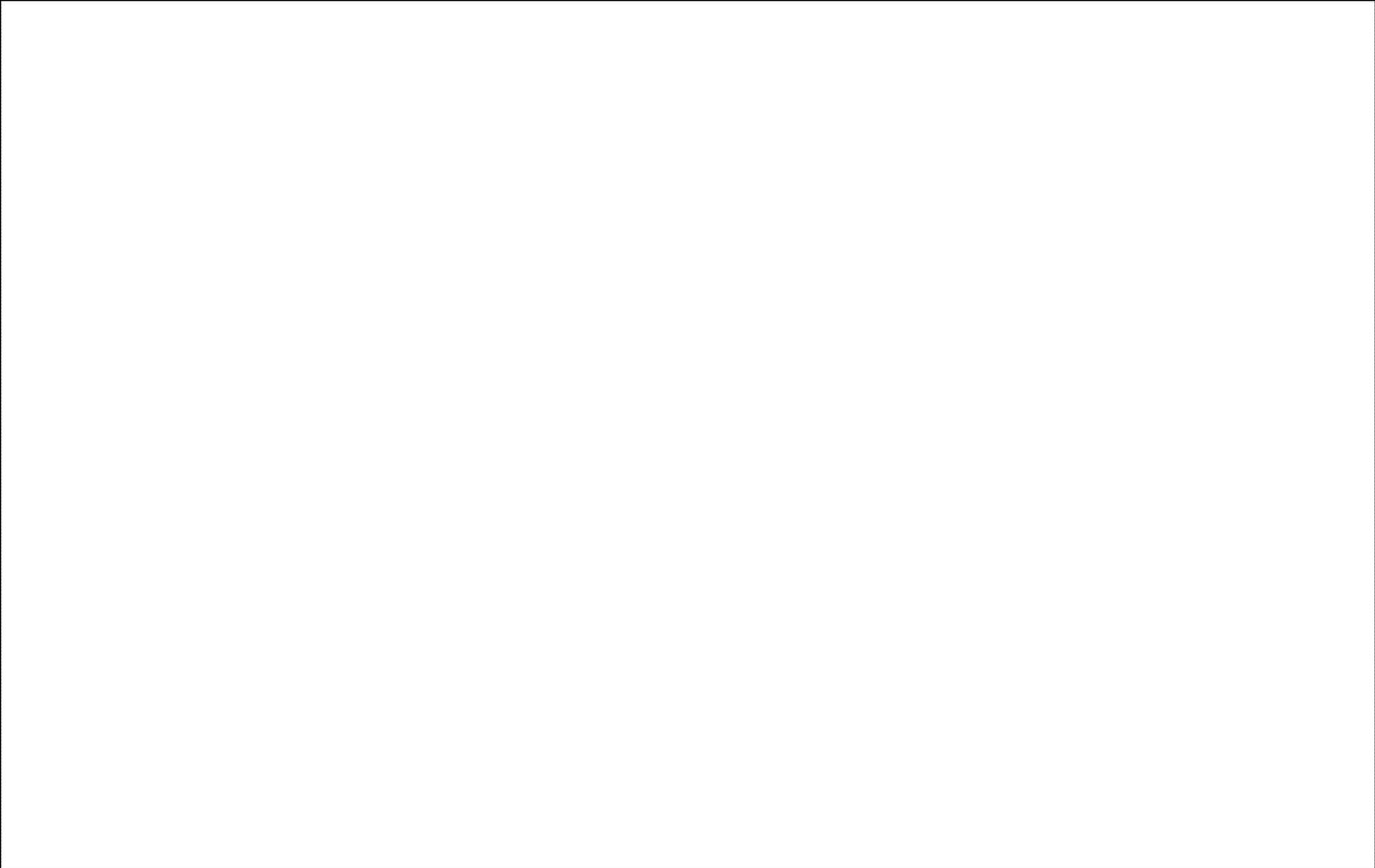
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# QUESTIONS?



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# **Standard Operating Procedure (SOP)**

## **L1A AND L1B INTRA- COMPANY TRANSFEREES**

September 2010

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## General

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**Purpose** This National SOP prescribes procedures for the adjudication and processing of Form I-129, Petition for a Nonimmigrant Worker, filed under 8 CFR 214.2(l)

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**Applicability/Scope** This National SOP is applicable to all Service Center SAOs, AOs, and Clerical personnel performing I-129L adjudicative or clerical functions or review of those functions. Personnel performing other duties pertaining to I-129s will be similarly bound by the provisions of this National SOP which apply to their specific task or duties.

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**Conflict Resolution** Any provision of the INA or 8 CFR found to be in conflict with this National SOP will take precedence over the National SOP. Any individual who identifies such an apparent conflict will report the matter immediately to his/her supervisor or to any SISO.

If any apparent conflict is noted between this National SOP and policy or guidance document issued by HQSCOPS, the matter should be reported through the supervisory chain for resolution.

This National SOP supersedes all prior CSC and VSC SOP, guidance documents, policy memoranda, training packets, or other material pertaining to I-129(L) cases; these documents should be discarded.

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## General, Continued

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**Revisions**      Numbered revisions of this document will be issued as required; no other document will be considered a valid modification.

***Electronic and Hard Copies***

All personnel who maintain a "hard copy" of the document will post the revisions upon receipt. Electronic copies of the document will be modified to reflect changes as they are issued. A listing of revisions so posted will be included in the electronic document to serve as a summary of all applicable revisions.

***Proposed Changes***

Proposed changes should be submitted with appropriate supporting documents through appropriate chain of command.

***Location of Revisions***

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow. A complete listing of all prior revisions can be found at the end of this document in the Previous Revisions section.

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<b>Revision #</b>	<b>Date</b>	<b>Subject</b>	<b>Pages</b>

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*Continued on next page*

**General, Continued**

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<b>Revision #</b>	<b>Date</b>	<b>Subject</b>	<b>Pages</b>

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# L1A AND L1B INTRA-COMPANY TRANSFEREES

## Overview

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**Introduction** A qualifying United States or foreign employer may file a Form I-129 petition on behalf of an alien beneficiary requesting classification as an Intra-company Transferee.

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**Statutory Basis** Section 101(a)(15)(L) of the Act makes provision for temporary positions for:

- Certain managers and executives, and
- Specialized knowledge professionals.

The nonimmigrant classifications for this section of law are L1A and L1B, respectively.

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**Regulatory Basis** USCIS has responsibility for determining whether the alien beneficiary is eligible for admission and whether the petitioner is a qualifying organization.

Title 8, Code of Federal Regulations, Part 214.2(l), sets forth the standards applicable to these classifications. They also set forth procedures for admission of intra-company transferees and appeal of adverse decisions.

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**Dual Intent for L-1s** 8 CFR 214.2(l)(1)(i) states that an intra-company transferee can be admitted temporarily to the United States to be employed by a qualifying organization. However, the approval of a permanent labor certification or the filing of a preference petition for the beneficiary shall not be the basis for denying an L1 petition or the beneficiary's application for admission.

The beneficiary may legitimately come to the U.S. as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States. [See 8 CFR 214.2(l)(16)]

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**Timely Adjudication** In general, Form I-129L petitions should be processed within thirty days of receipt. [Section 214(c)(2)(C) of the Act, 8 CFR 214.2(l)(7)(i)]

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*Continued on next page*

## Overview, Continued

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### **Record of Proceeding**

The record of proceeding for the L1 petition from top to bottom:

- G-28
  - I-129
  - I-129L Supplement
  - Evidence of qualifying relationship between the United States and foreign organizations
  - Evidence of the beneficiary's qualifying foreign employment
  - Evidence that the foreign organization is doing business
  - Evidence of the beneficiary's proposed employment in the United States
  - Evidence that the United States organization is doing business, or evidence that meets the "new office" evidentiary requirements
  - RFE notices and Intent to Deny Notices (if applicable)
  - All evidence submitted in response to RFE and Intent to Deny Notices in the order dictated above
-

## Fees Required for L Petitions

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### **Fraud Prevention and Detection Fee**

In addition to the base filing fee, a Fraud Prevention and Detection Fee of \$500 must be paid by:

- Petitioners seeking initial (H-1B) or L nonimmigrant classification,
  - A change of status to (H-1B) or L nonimmigrant classification, or
  - A change of employer in these classifications.
- [INA § 214(c)(12)]

This new \$500 fee applies to petitions filed on or after March 8, 2005 and may be paid by any party.

### **EXCEPTIONS:**

- Amended petitions
  - Successor in interest
-

## Eligibility Requirements

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### Reviewing Evidence

This section identifies the initial evidence required in the adjudication of a Form I-129L petition. Review all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted.

Each piece of evidence must meet the standard of acceptability as noted. If for any reason the evidence submitted is deemed to be unacceptable or is missing, the officer must request the submission of acceptable evidence.

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### Required Evidence

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations,
- U.S. and the organization abroad are both actively engaged in doing business,
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition, and
- Beneficiary will be employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization in the United States.

[See 8 CFR 214.2(l)(3)]

- If the beneficiary will be in a specialized knowledge capacity and working at a location other than the petitioner's, evidence is also required that the beneficiary will be under the primary control and supervision of the petitioner and will be providing a product or service for which specialized knowledge specific to the petitioner is necessary.

(See July 28, 2005, William R. Yates memo "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004")

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*Continued on next page*

## Eligibility Requirements, Continued

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**Exception: New Office** If the petitioning organization that is filing for an L1 beneficiary has been doing business for one year or less, it is not required to be actively engaged in doing business at the time of filing.

Instead, the petitioner must submit evidence that:

- Sufficient physical premises to house the new office have been secured, and
- The intended United States operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

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**Date of Filing** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Determination of Proper Filing

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### Proper Filing

A petition is considered to be properly filed when the petition is:

- Completed and signed, in the original, by a designated representative of the qualifying employing organization, and
- Accepted for processing with the correct fee, by the USCIS office having jurisdiction over the area of the beneficiary's intended employment.

[See 8 CFR 103.2(a)(7)(i)]

---

### Who may File the Petition

Form I-129L petitions may be filed by either:

- The qualifying foreign organization or
- The qualifying U.S. organization that intends to employ the beneficiary.

[See 8 CFR 214.2(l)(2)(ii)]

---

### Representation

- A representative of the petitioner must complete and sign a Form G-28;
- The petitioner and the representative must sign the Form G-28 in the original.
- Facsimile stamped signatures for representatives are also acceptable
- E-filed cases state "certified by the internet."
- Refer to the G-28 SOP for further information regarding G-28s and representatives/attorneys.

[See 8 CFR 103.2(a)(3), 292.1, and 292.2]

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# Qualifying Relationships

## Overview

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**Introduction** When an employer wishes to transfer an employee of a foreign company to a U.S. company as an L1 nonimmigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer.

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**Qualifying Organizations** A qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- Meets exactly one of the qualifying relationships specified in 8 CFR 214.2(l)(ii),
- Is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intra-company transferee, and
- Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(1)(ii)(G)]

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**Outsourcing** An L1B nonimmigrant alien who has been employed by a firm with an affiliated entity in the United States, who comes to the United States to perform services for the international entity can no longer work primarily at a worksite other than that of the petitioning employer.

**EXCEPTION:** The work is controlled and supervised by the L1-B petitioning employer. The petitioning employer must show they retain ultimate authority over the L1-B worker, and the L1-B worker must provide a product or service to the offsite employer for which specialized knowledge specific to the petitioner is necessary.

**Commercial Enterprises** The majority of L1 petitioners are commercial enterprises, organized as corporations, partnerships, or sole proprietorships. They are called commercial enterprises because they are trying to make a profit.

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**Non-Profit Enterprises** It is also possible for non-profit employers, such as religious or charitable organizations, to use the L1 classification. However, the petitioner must still demonstrate that all of the L1 eligibility requirements have been met.

[See Matter of Church of Scientology 19 I&N Dec. 593]

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*Continued on next page*

## Overview, Continued

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**Ownership and Control** Regardless of whether a business is set up as a corporation, partnership, or sole proprietorship, somebody normally owns the business and somebody controls the business.

Ownership and control are the deciding factors used by the officer to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer and will be discussed thoroughly later.

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**Foreign Employer Must Continue to do Business**

There must be an organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and Matter of Chartier 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad but the relationship must continue to exist.

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**Example:  
Qualifying  
Relationship**

An L1 beneficiary worked at *The Big Shoe Company* located in Ottawa, Ontario as an executive for four years. *PayMore Shoes*, a US based company, owned 100% of *The Big Shoe Company*, and filed an L1 petition in order to transfer the beneficiary to its office located in Boston, MA. The petition was approved for three years.

Two years later, *The Big Shoe* went bankrupt and stopped doing business. However, *PayMore Shoes* also owns 100% of *Buster Black*, located in Montreal, Quebec. *PayMore Shoes* is still a valid L1 employer for the L1 beneficiary as it has a qualifying relationship with an organization located abroad that is doing business.

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*Continued on next page*

## Overview, Continued

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**Example: No  
Qualifying  
Relationship**

An L1 beneficiary worked at *The Big Shoe company* located in Ottawa, Ontario as an executive for four years. *PayMore Shoes* is a US based company and owns 100% of *The Big Shoe*. *PayMore Shoes* filed an L1 petition in order to transfer the beneficiary to its office located in Boston, MA. The petition was approved for three years.

After the L1 nonimmigrant's entry into the United States, *The Big Shoe* company stopped doing business. While the corporation was still in existence, it was inactive.

- *PayMore Shoes* does not have a qualifying relationship with any other foreign organizations.
  - *PayMore Shoes* is NOT a valid L1 employer for the L1 beneficiary as it does NOT have a qualifying relationship with an organization located abroad that is doing business.
-

## Ownership & Control

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**Definitions**      **Ownership** for L1 purposes means the legal right to have possession of an organization.

**Control** for L1 purposes means to exercise authority or influence over an organization.

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**Deciding Factors for a Qualifying L1 Relationship**      **Ownership and control** are the deciding factors used to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer.

Both ownership and control must be present to have a qualifying relationship.

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**Beneficiary May be the Sole Owner**      In many instances the beneficiary of the L1 petition may own both the foreign employer and the U.S. employer in whole or in part. There is no problem with this arrangement as long as all of the L1 eligibility requirements are met.

**NOTE:** The company in the foreign country must continue to do business.

[See Matter of M 8 I&N Dec. 618 and Matter of Aphrodite Investments 17 I&N, Dec. 530]

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**De Jure Control**      Ownership of more than 50% of an organization is considered to be evidence of control. Control on the basis of ownership of more than 50% is called de jure control.

De jure simply means “by law”, and it is a straightforward form of control.

---

**Negative Control - Joint Ventures**      In many instances, two individuals or organizations will create an organization in which each individual or organization has 50% ownership. This arrangement is called a joint venture.

Each of the owners could be said to exert de jure control over the joint venture. As they can each “block” any decision made by the other owner by virtue of their 50% control over the organization, their control can be described as a “negative control”.

[See Matter of Siemens Medical Systems 19 I&N Dec. 362]

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## Ownership & Control, Continued

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### De Facto Control

It is possible for an owner of less than 50% of a company to exercise control over the organization.

De facto simply means “in fact”. [See Matter of Hughes 18 I&N Dec. 289]

**NOTE:** If a petitioner argues that de facto control exists on some other basis than discussed previously or in Matter of Hughes, consider the argument with an open mind, and see if the argument makes sense.

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### Example: De Facto Control

*Bon Perrier* is located in Paris, France and *Juice Hut* is located in New York City. *Juice Hut* is 40% owned by *Bon Perrier*, 30% owned by *Fizzy Drink*, and 30% owned by *Happy Cola*.

As *Bon Perrier* does not own more than 50% of *Juice Hut*, it does not have de jure control over the organization. On the face of it, *Bon Perrier* does not appear to enjoy a qualifying L1 relationship with *Juice Hut*. However, let us suppose that *Bon Perrier* has the patent on an extremely valuable invention, and that invention is the only product that is sold by *Juice Hut*, which yields a great profit for *Juice Hut*.

If *Bon Perrier* holds the patent, one could argue that *Bon Perrier* exercises de facto control over *Juice Hut*, despite owning less than a controlling share of the stock of *Juice Hut*. The control exists in the fact that if *Bon Perrier* decides not to let *Juice Hut* sell the valuable invention, *Juice Hut* has nothing to sell. In that sense, *Bon Perrier* can be said to exercise de facto control over *Juice Hut*.

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### Example: NO De Facto Control

*Be Mine Flowers* is located in New York City and holds 5% ownership in *Le Fleur* located in Paris, France. The presidents of the two organizations are old friends and have a personal understanding between them regarding the operation of each organization.

While a personal understanding between the two corporate officers may influence the way business is conducted, neither officer can be said to exert de facto control over the other organization.

[See Matter of Del Mar Ben Inc. 15 I&N Dec. 5]

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## Ownership & Control, Continued

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### **Contractual Relationships**

A contractual relationship between the foreign employer and the U.S. employer is not sufficient. There must be both ownership and control. [See Matter of Schick 13 I&N Dec. 647]

An executed contract between organizations may allow one organization to exert influence over the other, but a solely contractual relationship is not qualifying for L1 purpose.

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## Definitions of Qualifying Relationships

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**Introduction** The following definitions describe the qualifying L1 relationships.

[See 8 CFR 214.2(l)(1)(ii)(H), (I), (J), (K), and (L)]

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**Substance Over Form** A petitioner may identify the qualifying relationship between the United States organization and the foreign organization in a manner that is not correct per USCIS' definition of that particular qualifying relationship. However, as long as the relationship conforms to one of the qualifying relationships defined in regulation, it is acceptable for L1 purposes.

There are times when the nature of the relationship between the two organizations is not clear based on the evidence in the record. In these instances, it is best to request an additional explanation from the petitioner, along with corroborative documentary evidence, if needed.

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**Parent** Parent means a firm, corporation, or other legal entity, which owns and controls at least one subsidiary. An organization is said to be a parent to a subsidiary when:

- It owns more than half of the subsidiary, and
- Controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(I)]

**NOTE:** The definition of subsidiary includes other qualifying forms of parent/subsidiary relationships.

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**Example: Parent** *The Book Hut* owns 100% of *Pretty Pages*.

*The Book Hut* is considered to be the parent of *Pretty Pages* because *The Book Hut* owns more than half of the subsidiary and controls the subsidiary.

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**Example: NOT a Parent** *The Book Hut* owns 30% of *Pretty Pages*.

*The Book Hut* is NOT considered to be the parent of *Pretty Pages*, because *The Book Hut* does not own more than half of the subsidiary and does not control *Pretty Pages*.

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## Definitions of Qualifying Relationships, Continued

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**Branch** Branch means an operating division or office of the same organization housed in a different location.

[See 8 CFR 214.2(l)(7)(ii)(J)]

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**Example:  
Branch Office** *Le Fleur* (a flower business) is located in Paris, France and opens an office in New York City.

The office in New York City is considered to be a branch office of *Le Fleur* because it is part of the same organization housed in a different location.

---

**Example: NOT  
a Branch Office** *Le Fleur* (a flower business) is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City.

The office in New York City is NOT a branch of *Le Fleur* because it has its own legal existence. It is not part of the same organization housed in a different location.

---

**Subsidiary** Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. As stated in the definition for a parent, the parent owns more than half of the subsidiary and controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(K)]

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**Example:  
Subsidiary** *Le Fleur* (a flower business) is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City, called Flowers R Us. *Le Fleur* owns 100% of Flowers R Us.

Flowers R Us is a subsidiary of *Le Fleur* because it has its own legal existence, is more than half owned by *Le Fleur*, and therefore is controlled by *Le Fleur*.

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## Definitions of Qualifying Relationships, Continued

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**Example: NOT  
a Subsidiary**

*Le Fleur* is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City, called *Flowers R Us*. *Le Fleur* owns 30% of *Flowers R Us*.

*Flowers R Us* is NOT a subsidiary of *Le Fleur* because even though it has its own legal existence, it is less than half owned by *Le Fleur*, and *Le Fleur* does NOT control it.

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## Affiliates

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### Introduction

There are three categories of qualifying affiliate relationships, to include:

- (1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual.
- (2) One of two legal entities owned and controlled by the same group of individuals, each owning and controlling approximate the same share or proportion of each entity.
- (3) A partnership that is:
  - Organized in the United States
  - To provide accounting, managerial, and/or consulting services
  - Under an agreement with a worldwide coordinating organization
  - That is owned and controlled by member accounting firms.

[See 8 CFR 214.2(l)(1)(ii)]

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### Partnership Organized Outside the US

A partnership (or similar organization) that is organized outside the United States to provide accounting services is considered an affiliate of the United States partnership if:

- It markets its accounting services under the same internationally recognized name;
  - Under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.
- 

### Example #1: Affiliates

*Le Grand Restaurant* is incorporated and located in Paris, France and incorporates a business under the laws of New York State, opening an office in New York City, called *The Big Eats I*. *Le Grand Restaurant* also incorporated a business under the laws of New Jersey, opening an office in Newark, called *The Big Eats II*. *Le Grand Restaurant* owns 100% of both *The Big Eats I* and *The Big Eats II*.

*The Big Eats I* and *The Big Eats II* are related to each other as affiliates because they are both owned and controlled by the same parent.

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## Affiliates, Continued

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**Example #1:  
NOT Affiliates**

*Le Grand Restaurant* is incorporated and located in Paris, France. *The Big Eats I* is incorporated and located in New York, New York. *The Big Eats II* is incorporated and located in Newark, New Jersey.

*Le Grand Restaurant* owns 100% of *The Big Eats I*. *Le Grand Restaurant* also owns 30% of *The Big Eats II*. *The Greasy Spoon* owns the other 70% of *The Big Eats II*.

*The Big Eats I* and *The Big Eats II* are NOT related to each other as affiliates because they are NOT both are owned and controlled by the same parent.

---

**Example #2:  
Affiliates**

*Le Grand Restaurant* is incorporated and located in Paris, France. *The Greasy Spoon* is incorporated and located in Wichita, Kansas. *The Big Eats I* is incorporated and located in New York, New York. *The Big Eats II* is incorporated and located in New Jersey. *Le Petite Plate* is incorporated and located in Burlington, VT.

*Le Grand Restaurant* owns 40% of both *The Big Eats I* and *the Big Eats II*. *The Greasy Spoon* owns 40% of both *The Big Eats I* and *the Big Eats II*. *Le Petite Plate* owns 20% of both *The Big Eats I* and *the Big Eats II*.

*The Big Eats I* and *the Big Eats II* are related to each other as affiliates because both are owned and controlled by the same group of organizations, each owning and controlling approximate the same share or proportion of each entity.

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**Example #2:  
NOT Affiliates**

*Le Grande Restaurant* is incorporated and located in Paris, France. *The Greasy Spoon* is incorporated and located in Wichita, Kansas. *The Big Eats I* is incorporated and located in New York, New York. *The Big Eats II* is incorporated and located in Newark, New Jersey.

*Le Grand Restaurant* owns 60% of *the Big Eats I* and 40 % of *The Big Eats II*. *The Greasy Spoon* owns 40% of *The Big Eats I* and 60% of *The Big Eats II*.

*The Big Eats I* and *The Big Eats II* are NOT considered to be related to each other as affiliates because they are NOT owned and controlled by the same group of organizations, each owning and controlling approximate the same share or proportion of each entity.

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## Affiliates, Continued

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**Example #3:  
Affiliates**

*Accounting Partners, NYC* is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.

*Accounting Partners, UK* is a partnership that is organized in Great Britain and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. It markets its accounting services under the same internationally recognized name as *Accounting Partners, NYC*, and is a member of the same worldwide coordinating organization.

*Accounting Partners, NYC* and *Accounting Partners, UK* are considered to be affiliates because:

- They both offer accounting services under the same internationally recognized name, and
  - Are members of the same worldwide coordinating organization.
- 

**Example #3:  
NOT Affiliates**

*Accounting Partners, NYC* is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.

*UK Import & Export* is a partnership that is organized in Great Britain and engages in international trade. It has no membership in a worldwide coordinating organization.

*Accounting Partners, NYC* and *UK Import & Export* are NOT considered to be affiliates because *UK Import & Export*:

- Does not offer accounting services under the same internationally recognized name as *Accounting Partners, NYC*, and
  - Is not a member of the same worldwide coordinating organization as *Accounting Partners, NYC*.
-

# Types of Businesses

## Sole Proprietorships

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**Definition** A sole proprietorship is a business that is owned by one individual.

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**Unlimited Liability** A sole proprietorship is not legally separate from its owner. The owner is personally responsible for the debts of the business. Creditors can sue the owner to take his or her house, car, or other personal assets to pay off the sole proprietorship's debts.

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**How a Sole Proprietorship is Created** A sole proprietorship is the easiest business to create. An individual merely establishes a business, and the sole proprietorship is automatically created.

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**Evidence of Ownership & Control** Generally, no special documents are executed when a sole proprietorship is created and commences doing business.

In the United States, a sole proprietorship is not required to execute or file any documents of creation, and may use the owner's own social security number as its EIN (employer's identification number).

The most common document that is provided as evidence of the ownership and control of a sole proprietorship is the owner's individual federal tax return. In addition, contracts, such as leases or sales agreements that were executed by the owner on behalf of the sole proprietorship may be submitted.

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**Owner's Individual Federal Tax Return** Sole proprietors located in the United States must report the income and expenses from their businesses in their individual Form 1040 federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return.

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## General and Limited Partnerships

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**Partnership  
Definition**

A partnership means the shared ownership of a business.

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**Limited  
Partnership  
Definition**

A limited partnership is the shared ownership of a business in which certain partners provide a capital investment without being held personally liable for the debts of the partnership above the level of their investment.

The trade off for having the limited liability is that the limited partner may not materially participate in the running of the business or attempt to control the business.

---

**General  
Partnership:  
Unlimited  
Liability**

A partnership is not legally separate from its partners. The partners are personally responsible for the debts of the partnership. Creditors can sue the partners to take their houses, cars, or other personal assets to pay off the partnership's debts.

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**Limited  
Partnership:  
Both Unlimited  
and Limited  
Liability**

All general partners of a limited partnership are personally responsible for the debts of the partnership. Creditors can sue the owners to take their houses, cars, or other personal assets to pay off the partnership's debts.

Limited partners are only liable up to the amount of their capital investment in the partnership. The limited liability can be legally stripped from the limited partner if he or she is found to have materially participated in the business.

---

**How a General  
Partnership is  
Created**

No formal, written partnership agreement is required to create a general partnership. However, many general partnerships do execute partnership agreements.

In the United States, partnerships must obtain an EIN (employer's identification number) for the partnership.

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## General and Limited Partnerships, Continued

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### **How a Limited Partnership is Created**

A formal, written partnership agreement is required to create a limited partnership.

- Every limited partnership must have at least one general partner.
  - In the United States, limited partnerships must obtain an EIN (employer's identification number) for the partnership.
- 

### **Only General Partners have BOTH Ownership & Control**

Only general partners can be considered to have both ownership and control over a limited partnership. When trying to establish qualifying affiliate relationships, only the percentage of ownership by each of the general partners should be considered.

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### **Limited Partners have NO Control**

Limited partners may own a portion of a limited partnership, but they do not have any control over the partnership, as they cannot materially participate in the operation of the business.

---

### **Evidence of Ownership & Control**

The most common documents that are provided as evidence of the ownership and control of a general or limited partnership are partnership agreements and the partnership's Form 1065 federal tax return.

In addition, contracts, such as leases or sales agreements that were executed by the partners on behalf of the partnership may be submitted.

---

### **Partnership Agreements**

A partnership agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited partnership interest,
- Each partner's initial percentage of ownership,
- The type of business to be conducted by the partnership,
- How partnership interests can be transferred, and
- The conditions under which the partnership can be dissolved.

The partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.

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## General and Limited Partnerships, Continued

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### **Partnership Tax Returns**

In the U.S., partnerships (including limited partnerships) are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

The partnership's tax return provides certain information that is relevant to the ownership and control of the partnership to include the:

- Date of origination of the partnership,
  - The names and % of ownership for each of the partners at year end,
  - Whether the partnership has limited partners, and
  - Evidence of the partnership's business activities in the U.S.
- 

### **Ownership Percentage May Not Equal the Capital Investment**

A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

- The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.
  - Shared ownership of the business does not always mean shared ownership of the assets used in the business.
-

# Corporations

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**Definition**

A corporation is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Corporations are a taxable entity and must pay taxes on the income generated by them prior to distributing the income to its shareholders.

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**Limited Liability**

The debts of the corporation are the responsibility of the corporation, not the individual shareholders. If a corporation goes bankrupt, the shareholders cannot lose any more money than they paid for their stock.

Normally, creditors cannot sue the shareholder to take his or her house, car, or other personal assets to pay off corporate debts. This limited liability is one of the big attractions of corporations.

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**Where a Business Incorporates**

In the United States each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of businesses.

Businesses may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

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**How a Business Incorporates**

In order to incorporate a business in the United States, articles of incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a certificate of incorporation.

After the business is incorporated, the corporation may sell and issue shares of stock, and commence doing business as a legal entity apart from its owners.

The shareholders of the corporation will elect a board of directors, who may or may not be shareholders. The board of directors may enact by-laws for the corporation.

In the United States, corporations must obtain an EIN (employer's identification number).

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## Corporations, Continued

### Federal Tax Returns

Generally, corporations doing business in the United States must file a federal tax return each year, Form 1120, U.S. Corporation Income Tax Returns. The federal tax return provides certain information that is relevant to the ownership and control of the corporation to include the:

- Date of incorporation,
- Evidence of the corporation's business activities in the U.S., and
- In some instances, the name of the individuals or organizations that own the corporation will be noted (usually on the second page or in the supporting statements).

### Annual Reports

Some corporations submit annual reports as evidence of the qualifying relationship. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements. (For more information see the discussion of financial statements in the Doing Business portion of the SOP.)

### Evidence of Ownership & Control

The following table describes the typical documents that are submitted as evidence of the existence, rules, ownership and control of a corporation.

Document	Existence	Rules	Ownership	Control
Petitioner's Letter	X		X	X
Certificate of Incorporation	X	Generally, number and type of stock shares only		
Articles of Incorporation	Yes, if stamped by the Gov. agency	X		
by-laws		X		
Common Stock Shares			X	X
Preferred Stock Shares			X	
Stock Ledger			X	X
Tax Returns	X		Sometimes	Sometimes
Annual Reports	X	Sometimes	Sometimes	Sometimes

# S-Corporations

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**Definition** Sub-Chapter S corporations or "S Corps" as they are called, are a hybrid of the standard corporation.

The main difference between S Corps and regular corporations is that S Corps are not taxable entities and are limited to a certain type and number of shareholders.

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**S Corps are Not Taxable Entities** S Corps are not taxable entities. They are required to file an informational tax return, called a Form 1120S, U.S. S Corporation Income Tax Return. Income and expenses flows through to the shareholders' individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

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**Qualifying for S Corp Status** To qualify for S Corp status under IRS rules, a corporation must meet a number of requirements. It must:

- Be a domestic corporation, i.e. organized in the U.S. under federal or state law.
- Have only one class of stock, common.
- Have no more than 35 shareholders.
- Have as shareholders only individuals, estates, and certain trusts (partnerships and corporations cannot be shareholders).
- Have shareholders that are U.S. citizens or residents of the U.S. (per the IRS definition of residents). Nonresident aliens cannot be shareholders.

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**Qualifying L1 Relationships for S Corps** As noted above, corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp.

If such ownership is claimed on an L1 petition, additional evidence, such as a statement from an official of the IRS confirming the validity of the shareholders' S Corp ownership should be requested.

However, S Corps may own businesses abroad. So, if the claimed qualifying relationship involves a U.S. S Corp's ownership of a foreign employer, the relationship may be qualifying as long as it conforms to the defined L1 relationships.

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## **Incorporation**

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### **Certificate of Incorporation**

The certificate of incorporation is the birth certificate for the corporation. It shows that the corporation exists as a legal entity.

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### **Articles of Incorporation**

The articles of incorporation will identify the:

- Acceptable business activities that may be conducted by the corporation
- Type and number of stock shares that may be authorized and issued by the corporation
- Par value, if any of the stock shares

This document is the constitution of the corporation and cannot be changed or amended without a majority vote of the shareholders.

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### **Conformed Copy of the Articles of Incorporation**

A conformed copy of the articles of incorporation is a copy that agrees with the original and all amendments to it.

If the original document required a signature, the copy should be signed by a principal officer, or if not signed, be accompanied by a written declaration signed by an authorized officer of the corporation. With either option, the officer must certify that the document is a complete and accurate copy of the original.

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### **By-Laws**

The by-laws of a corporation are the lesser rules made by the board of directors that govern how the corporation will function. They may not conflict with any provision of the articles of incorporation.

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# Shares of Stock

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**Introduction** Stock shares are ownership certificates that are issued by a corporation when an individual or an organization makes an investment in the corporation. The number of shares of stock owned by an individual or organization relative to the number of shares issued determines their percentage of ownership in the corporation.

- The number of shares of stock issued by the corporation may not exceed the number of shares authorized by its articles of incorporation.
- Corporations can issue two classes of stock, common and preferred.

**EXAMPLE:** If one person owns 100 shares of stock in a corporation and the corporation has issued 200 shares of stock, that individual can be described as the owner of 50% of the corporation.

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**Stock Share Identification**

Each stock share should identify the:

- Number of shares authorized
- Class of stock, either common or preferred
- Par value of the stock shares, if any
- Number of shares represented by the share certificate\*
- Name of the shareholder
- Date of stock issuance

**\*NOTE:** Number of shares authorized should be in article of incorporation.

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**Stock Certificates are Internally Generated**

Stock share certificates can be purchased at any large office supply store. Stock certificates are issued by the corporation itself. The information provided on the stock certificates is internally generated by the issuing corporation and is not subject to scrutiny by any government agency, unless the corporation is publicly traded.

At a minimum, an acceptable stock certificate should include the:

- Name of the shareholder
  - Number of shares of ownership that the stock certificate represents
  - Date of issuance
  - Signature of an authorized official of the corporation
- 

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## Shares of Stock, Continued

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**Common Stock** Common stock gives its holder voting rights. The significance of voting rights is control.

**EXAMPLE:** If an individual owns 100 shares of common stock and 200 shares of common stock have been issued, that individual can be described as having ownership and control of 50% of the corporation.

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**Preferred Stock** Preferred stock does not normally give its holder voting rights. While preferred stock may give its holder a percentage of ownership in a corporation, the holder does not have control over the corporation because the preferred stock does not give voting rights.

The articles of incorporation will identify whether the corporation is authorized to issue preferred stock.

**EXAMPLE:** If an individual owns 100 shares of preferred stock and 200 shares of both preferred and common stock have been issued, that individual can be described as having ownership of 50% of the corporation, but no control over the corporation.

---

**Par Value of Stock** Par value is the nominal or face value of a share of stock. A corporation cannot issue a share of stock for less than the stated face value of the share.

The par value of a share of stock does not generally bear any relation to the amount of investment made by the shareholder at the time the stock was purchased, nor does it represent the value of the stock after the time of issuance.

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**Stock Ledger** The stock ledger is a document that is used by the corporation to record various stock transactions, to include the:

- Initial issuance of stock
  - Transfer of stock from one shareholder to another
  - Repurchase of stock by its own corporation (treasury shares)
  - Retirement or "cancellation" of stock
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## Non-Profit Organizations

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**Definition** A non-profit organization is one that is organized for a purpose other than generating a profit. They are also frequently referred to as "tax-exempt" organizations as many of them qualify for an exemption from federal and state taxation.

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**Limited Liability** A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization. Though they may be personally sued if they did not deal with the organization "at an arms length" or as a disinterested third party would.

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**Where a Non-Profit Incorporates** In the United States, each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of non-profits.

Non-profit may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

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**How a Non-Profit Incorporates** In order to incorporate a non-profit in the United States, articles of incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a certificate of incorporation.

After the non-profit is incorporated, the corporation may obtain tax-exempt status, and commence doing business as a legal entity.

In the United States, non-profit corporations must obtain an EIN (employer's identification number).

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## Non-Profit Organizations, Continued

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### **How a Non-Profit Obtains Tax-exempt Status**

In the United States, tax-exempt status must be obtained by requesting that designation from the Internal Revenue Service.

In order to qualify for tax-exempt status, the non-profit must be organized and operated exclusively for one or more of the following purposes:

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for public safety
- Fostering national or international amateur sports competitions, or
- The prevention of cruelty to children or animals.

The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.

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### **Assets of Non-Profit Organization**

The assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose or to the local, state, or federal government for a public purpose.

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### **Evidence of Ownership & Control**

Generally, L1 petitioning non-profit organizations are incorporated and have "branch" organizations or "sister" corporations abroad. Evidence of ownership and control will include incorporation documents, audited or reviewed financial statements, or federal informational returns.

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*Continued on next page*

## Non-Profit Organizations, Continued

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### **Federal Informational Returns**

Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

Tax-exempt organizations are required to file a yearly Form 990 or 990EZ if the organization's gross receipts exceed \$25,000.00 from sources other than the exempt purpose.

Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return, and provides an abbreviated balance sheet as well as an analysis of excess revenue or (deficit) for the year.

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# Evaluating L1A and L1B Positions

## L1A: Managers and Executives

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### Introduction

The L1A classification is reserved for certain managers and executives. The definitions for L1 managers and executives can be found in section:

- 101(a)(44) of the Act,
- 8 CFR 214.2(l)(1)(ii)(B) and
- 8 CFR 214.2(l)(1)(ii)(C).

**NOTE:** The same managerial and executive capacity definitions apply to the nature of the beneficiary's position abroad and in the U.S.

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### Manager Capacity Defined

Managerial capacity means an assignment within an organization in which the employee **primarily**:

- Manages the organization, department, subdivision, function, or component of the organization;
- 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;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed, and;
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

**NOTE:** All four criteria listed above must be met to qualify as a manager.

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*Continued on next page*

## L1A: Managers and Executives, Continued

### Executive Capacity Defined

Executive capacity means an assignment within an organization in which the employee **primarily**:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making, and;
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

[See 8 CFR 214.2(l)]

### Evaluating Managerial or Executive Positions

When evaluating the nature of a claimed managerial or executive position, the petition and supporting evidence must be reviewed to establish that the beneficiary's employment qualifies for L1 purposes.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers and how the beneficiary's position fits into its organizational hierarchy.

Frequently, the petitioner will merely reiterate the definitions of manager and executive as defined in statute and regulation.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	<p>The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.</p> <p>In some instances, no individual position within the organization may involve duties that could be construed as being primarily managerial or executive in nature.</p>

## Factors in Determining Managerial or Executive Capacity

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### Staffing Levels as a Factor

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, take into account the reasonable needs of the:

- Organization,
- Component, or
- Function.

**NOTE:** An individual will not be considered to be acting in a managerial or executive capacity(as previously defined) merely on the basis of the number of employees that the individual:

- Supervises or has supervised, or
  - Directs or has directed.
- 

### Doing Business as it Relates to Managerial or Executive Positions

The employing organization must be doing business in a manner that would require the beneficiary to perform duties that are primarily managerial or executive in nature.

The petitioner should provide a statement that clearly describes:

- The business activities that the employing organization engages in, and
- How the beneficiary's position is, or was, required to further the organization's strategic or operational goals.

The record may also contain various documents as evidence of the organizations' business activities. The documentary evidence that is submitted should corroborate the petitioner's statements.

In order to make an accurate determination of the eligibility of the beneficiary's position, either abroad or in the U.S., the description of his or her duties must be placed in the context of the:

- Personnel structure of the organization, and
  - Magnitude of the business that it conducts.
- 

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## Factors in Determining Managerial or Executive Capacity,

Continued

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### **Too Many Managers, not Enough Worker Bees**

It is not uncommon to encounter an organization that employs only a few people, yet claims that the majority of its employees are primarily engaged as managers or executives.

In these instances, it is often helpful to request complete position descriptions and hourly breakdowns for the duties performed by all of the individuals employed by the organization, including one for the beneficiary, as well as copies of corroborative payroll documentation.

The position descriptions and payroll documentation are used to determine who is performing the non-qualifying, operational duties of the business.

In addition, the entity may be substantial in size but the department or division where the beneficiary is, or will be, employed may be "top-heavy" with managers and executives.

If the employer is a large organization, detailed staffing inquiries should be limited to the department or division where the beneficiary has been or will be employed.

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### **Contract Employees**

The record may indicate that the business employs only one or two people, including the beneficiary. As mentioned previously, it may be helpful to try to determine who is performing the non-managerial operational duties of the business.

The business may not directly employ individuals to perform the non-managerial services of the business. Instead, the business may "contract out" some of its functions such as accounting, sales, warehousing, personnel, etc.

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*Continued on next page*

## Factors in Determining Managerial or Executive Capacity, Continued

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### Unpublished Decision by the AAO

Representatives and petitioners occasionally refer to an unpublished decision by the AAO, (Irish Dairy Board, Inc.), in which a pre-IMMACT 90, Schedule A, Group IV beneficiary was found to be primarily engaged in a managerial/executive position, even though he was the sole employee of the petitioning entity.

In this case, the petitioning entity imported over \$90 million worth of goods to the U.S. while exporting in excess of \$50 million worth of goods in the year of filing. The business used independent contractors to perform all of its sales and import/export functions. The beneficiary did not directly perform the duties of these functions himself. Rather, he directed the work of the contractors in the furtherance of the operational duties related to the primary function of the business.

The AAO decided in this unpublished decision that if these contractors had been employed "in-house", that the beneficiary would have been clearly classifiable as an executive.

Pursuant to 8 CFR 103.3(e), Service precedent decisions are binding on Service employees; unpublished decisions are not binding. However, this decision outlines how substantial business activity and contractors may add up to a qualifying L1A position that is primarily managerial or executive in nature.

---

### Beneficiary may Own the Organization if the Employment = L1

The beneficiary may own the foreign and U.S. organizations in whole or in part. However, maintaining a "figure head" title and position, such as "Director" or "President", without being primarily engaged in the management of the organization is not qualifying for L1 purposes.

[See Matter of Aphrodite Investments, 17 I&N, Dec. 530]

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*Continued on next page*

## Factors in Determining Managerial or Executive Capacity,

Continued

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### Managing a Function

L1 beneficiaries are commonly identified as the manager or executive of a "function" within the organization. Functional managers are included in the Service's definitions for managers and executives.

However, it must be demonstrated that the organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the duties of the function. The petitioner's evidence must persuasively demonstrate that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will remove him or her from performing the services or duties of the company.

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### Example: Qualifying Position

*AJ's Accounting* employs an L1 beneficiary as the manager of the finance department. The beneficiary is responsible for the attainment of the operational goals of the department as defined by upper management. In addition, he has substantial discretionary authority to direct how his department will meet these goals.

He is the chief financial officer for the company and directly supervises two certified public accountants. The accountants perform the complex accounting tasks for the organization. The department also employs three accounting clerks who perform the simpler accounting tasks for the organization.

The beneficiary's position would be qualifying for L1 purposes because the beneficiary:

- Supervises professionals,
- Directs how his department will conduct business, and
- Has sufficient staff to remove him from performing the mundane duties of his department.

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*Continued on next page*

## Factors in Determining Managerial or Executive Capacity,

Continued

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**Example: Non-  
Qualifying  
Position**

*AJ's Accounting* employs an L1 beneficiary as the manager of the finance department. The beneficiary is responsible for the attainment of the operational goals of the department as defined by upper management. In addition, he has substantial discretionary authority to direct how his department will meet these goals.

While he is the chief financial officer for the company, the only other person that is employed in the finance department is an accounts payable clerk. Though the beneficiary decides how the work will be performed in the finance department, he is also responsible for performing the day-to-day tasks that are part of the accounting function.

The beneficiary's position would NOT be qualifying for L1 purposes because the beneficiary:

- Does not supervise professionals,
  - Directs and performs the duties of his department, and
  - Does not have sufficient staff to remove him from primarily performing the mundane duties of his department.
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## L1B: Specialized Knowledge

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**Introduction** The L1B classification is reserved for certain specialized knowledge professionals. The definitions for L1 specialized knowledge professionals can be found in section 214(c)(2)(B) of the ACT and 8 CFR 214.2(l)(1)(ii)(D).

**NOTE:** The same specialized knowledge professional definitions apply to the nature of the beneficiary's position abroad and in the U.S.

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**Specialized Knowledge Defined**

Specialized knowledge means special knowledge possessed by an individual of the organization's:

- Product
  - Service
  - Research
  - Equipment
  - Techniques
  - Management, or other interests and its application in international markets, or
  - An individual's advanced level of knowledge or expertise in the organization's processes and procedures.
- 

**Specialized Knowledge Interpretation**

Headquarters' memo CO 214L-P, dated March 9, 1994, provides additional guidance on the interpretation of "specialized knowledge" as defined by statute and regulation.

The memo notes that there are no statutory definitions or legislative history to provide guidance or insight as to the interpretation of the terms "special" or "advanced", and instructs adjudicators to rely on the common dictionary definitions. See the *Term "Special" Defined* section.

USCIS has several policy memorandums that provide guidance on how to interpret specialized knowledge for the L1B classification. See Appendix A for instruction on how to access the following memos:

- 10/27/1989: Interpretation of Specialized knowledge under the L Classification
  - 3/9/1994: Interpretation of Specialized Knowledge.
  - 9/9/04: Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L1B status
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## L1B: Specialized Knowledge, Continued

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**Term "Special" Defined** Webster's II New Riverside University Dictionary defines the term "special" as "surpassing the usual; distinct among others of a kind." Also, Webster's Third New International Dictionary defines the term "special" as "distinguished by some unusual quality; uncommon; noteworthy."

Based on the above definition, a beneficiary would possess specialized knowledge if the record demonstrated that the beneficiary's knowledge is different from that found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

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**Term "Advanced" Defined** Webster's II New Riverside University Dictionary defines the term "advanced" as "highly developed or complex; at a higher level than others." Also, Webster's Third New International Dictionary defines the term "advanced" as "beyond the elementary or introductory; greatly developed beyond the initial stage."

Again, based on the above definition, the beneficiary's knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout an organization, only that the knowledge be advanced.

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**No Test of the U.S. Labor Market Required** The determination of whether a beneficiary possesses specialized knowledge does not involve a test of the U.S. labor market.

Whether or not there are U.S. workers available to perform the duties is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the beneficiary, not whether there are similarly employed U.S. workers.

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## L1B: Specialized Knowledge, Continued

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### L-1 Visa Reform Act of 2004

The L-1 Visa Reform Act of 2004 addresses L-1B workers stationed primarily outside the L organization. Beginning June 6, 2005, section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent if the alien is under the “control and supervision” of the unaffiliated employer, or if the placement at the non-affiliated worksite is “essentially an arrangement to provide labor for hire.”

For this ground of ineligibility to apply:

- The alien worker must be a specialized knowledge worker as defined at 8 CFR 214.2(1)(1)(D) and (E), and
- The worker must be stationed primarily (more than 50%) offsite.

**NOTE:** If more than 50% of the total work time is spent offsite, the petition must establish “control and supervision” of the alien. (Yates memo)

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## Factors in Determining Specialized Knowledge

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### General Knowledge Does Not Equal Specialized Knowledge

Though there is no required test of the U.S. labor market, the officer must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized knowledge.

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### Specialized Knowledge May Become General Knowledge

In this era of rapid technological advances, expertise in certain “cutting edge” technologies may become “general industry knowledge” in a rather short period of time. The true “advanced” nature of the beneficiary’s knowledge must be considered in relation to the current level of knowledge commonly held in the area of the beneficiary’s specialty.

**EXAMPLE:** In the early nineties, expertise in the creation and maintenance of internet websites was not commonly held in the computer industry. Today, many grade school children possess the ability to perform these tasks. Such knowledge is no longer thought of as “special” or “advanced”.

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### Characteristics That May Equal Specialized Knowledge

The following are some of the possible characteristics of a beneficiary who may possess specialized knowledge. They are not all inclusive. The beneficiary:

- Possesses knowledge that is valuable to the employer’s competitiveness in the market place;
  - Is qualified to contribute to the U.S. employer’s knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
  - Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position;
  - Has knowledge which, normally, can be gained only through prior experience with that employer, or;
  - Has knowledge of a product or process that cannot be easily transferred or taught to another individual;
  - Has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the U.S.
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## Factors in Determining Specialized Knowledge, Continued

### Evaluating Specialized Knowledge Positions

When evaluating the nature of the beneficiary's claimed specialized knowledge position, the petition and supporting evidence must be reviewed to establish that:

- The beneficiary's prior and proposed employment qualifies for L1B purposes, and
- He or she truly possesses knowledge that is special or advanced in relation to knowledge commonly held in the beneficiary's field.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers, and how the beneficiary's position requires the services of an individual who possesses specialized knowledge.

### Petitioner's Allegations

The mere fact that a petitioner alleges that a beneficiary's knowledge is somehow different does not, in and of itself, establish that the beneficiary possesses specialized knowledge.

Frequently, the petitioner will merely reiterate the definitions of specialized knowledge professionals as defined in statute and regulation.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.

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## Factors in Determining Specialized Knowledge, Continued

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**Petitioner  
Bears Burden  
of Proof**

The petitioner bears the burden of establishing through the submission of probative evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor.

Likewise, a petitioner's assertion that the beneficiary possesses an advanced knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.

It is the quality and caliber of the evidence that establishes whether or not the beneficiary possesses specialized knowledge.

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## Examples of Qualifying and Non-Qualifying L1B Positions

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**Example #1:  
Qualifying  
Position**

*Major Bytes*, located in Montreal, Quebec, manufactures a computer operating system that no other firm manufactures. For the last ten years, *Major Bytes* has employed the beneficiary abroad as a computer engineer. The beneficiary managed the team of engineers that initially created this product. The beneficiary is familiar with the various procedures involved in the manufacture, use, and service of the product.

*Major Bytes* has a wholly owned subsidiary, *The Computer Shop*, located in Portland, ME. *The Computer Shop* filed an 129L petition requesting the classification of the beneficiary as an L1B nonimmigrant. *The Computer Shop* wishes to directly employ the beneficiary as a project manager for a team of engineers who are involved in the modification and installation of the product at various client sites.

The beneficiary is eligible for classification as an L1B nonimmigrant because:

- Both the beneficiary's position abroad and in the U.S. would qualify for L1B purposes as they require the services of an individual who possesses specialized knowledge, and
- The beneficiary possesses knowledge that is special, advanced, and not commonly held in the industry.

It should be noted that the beneficiary's position in the United States would also qualify for the L1A classification as the beneficiary will be supervising the work of professionals, and will not be directly performing the mundane duties of the projects that she will manage.

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*Continued on next page*

## Examples of Qualifying and Non-Qualifying L1B Positions, Continued

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**Example #1:  
Non-Qualifying  
Position**

*The Software company*, located in Montreal, Quebec, manufactures software programs for business applications according to the specifications of its clients. In order to create these software programs, *the Software company* utilizes software applications and operating systems that are created and marketed by a number of different organizations and are commonly used in the industry.

For the last ten years, *the Software company* has employed the beneficiary abroad as a computer engineer. The beneficiary is part of a team of engineers that designs the software programs for various clients. The beneficiary is familiar with the various procedures involved in the manufacture, use, and service of the software products.

*The Software Company* has a wholly owned subsidiary, *Creative Computes*, located in Portland, ME. *Creative Computes* filed an I29L petition requesting the classification of the beneficiary as an L1B nonimmigrant. The Software Company wishes to employ the beneficiary in the United States in order for the beneficiary to perform software consulting services for *Creative Computes*. The beneficiary will be principally performing the duties of a programmer analyst and will perform systems analysis, software programming and product installation at various client sites.

The beneficiary is ineligible for classification as an L1B nonimmigrant because:

- Neither position requires the services of an individual who possesses specialized knowledge above that of any trained professional in the beneficiary's field, and
- The beneficiary has not been shown to possess knowledge that is advanced in relation to others similarly employed at *The Software Company* or in the computer software industry in general.

It should be noted that the beneficiary's position in the United States would also not be qualifying for the L1B classification as the beneficiary is not coming to the U.S. to be employed by a qualifying U.S. employer. Rather, she will be coming to perform services directly for her foreign employer at client sites in the United States. [See Matter of Penner, 18 I&N Dec. 49]

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## Examples of Qualifying and Non-Qualifying L1B Positions, Continued

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**Example #2:  
Qualifying  
Position**

*Petroleum City*, located in Shanghai, China, is engaged in international trade. Specifically, the company buys and sells petroleum products and their derivatives.

*Petroleum City* has employed the beneficiary as an international trade specialist for the last five years. In this capacity, he analyzes market trends as they relate to petroleum products and negotiates with the company's suppliers regarding the purchase of petroleum products.

In order to perform the duties of his position, he must have knowledge of:

- Complex, product grading methods and standards,
- International customs and tariff structures, and
- The intricate, politically charged art of negotiating with representatives of petroleum producing nations.

*Petroleum City* has a wholly owned subsidiary, *Mobile South* that is located in Flushing, New York. *Mobile South* filed a petition on behalf of the beneficiary in order to classify him as an L1B nonimmigrant. The beneficiary is to be directly employed by *Mobile South* in a position comparable to his foreign position.

The beneficiary is eligible for classification as an L1B nonimmigrant because:

- Both the beneficiary's position abroad and in the U.S. would qualify for L1B purposes as they require the services of an individual who possesses specialized knowledge, and
- The beneficiary possesses specialized knowledge.

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## Examples of Qualifying and Non-Qualifying L1B Positions, Continued

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**Example #2:  
Non-Qualifying  
Position**     *Traders of the Orient*, located in Shanghai, China, is engaged in international trade. Specifically, the company buys and sells plastic trinkets and other novelty items.

*Traders of the Orient* has employed the beneficiary as an international trade specialist for the last five years. In this capacity, he negotiates with the company's suppliers, arranges for the shipment of the goods for export, and initiates the required import/export documentation.

In order to perform the duties of his position, he must have knowledge of:

- International customs and tariff structures, and
- The negotiating methods of representatives of state-run manufacturing firms.

*Traders of the Orient* has a wholly owned subsidiary, *Gidget's Gadgets* that is located in Flushing, New York. *Gidget's Gadgets* filed a petition on behalf of the beneficiary in order to classify him as an L1B nonimmigrant. The beneficiary is to be directly employed by *Gidget's Gadgets* in a position comparable to his foreign position.

The beneficiary is not eligible for classification as an L1B nonimmigrant because:

- Neither position requires the services of an individual who possesses specialized knowledge above that of any trained professional in the beneficiary's field, and
  - The beneficiary's knowledge consists of general knowledge that is commonly held in the industry.
-

# Qualifying Employment

## Qualifying Foreign Employment

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**Introduction** The beneficiary must have one year of continuous employment in a primarily managerial, executive or specialized knowledge capacity with a qualifying organization abroad within the three-year period immediately preceding the petition.

[See 8 CFR 214.2(l)(1)(i), 8 CFR 214.2(l)(1)(ii)(A), 8 CFR 214.2(l)(3)(iii), and (iv), and Matter of Michelin Tire Corp. 17 I&N Dec. 248]

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**Foreign Capacity Does Not Have to Equal U.S. Capacity**

Generally, there is no requirement that the beneficiary has been employed abroad in the same capacity as he or she will have in the United States.

[See 8 CFR 214.2(l)(3)(iv)]

**EXCEPTION:** If the beneficiary is coming to open or be employed in a **new office** in the U.S. he or she must have been employed in the same capacity abroad.

[See 8 CFR 214.2(l)(3)(v) and 8 CFR 214.2(l)(3)(vi)]

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**Employed Abroad**

Employed abroad means what it appears to mean. Experience acquired in the United States may not be counted as part of the required one year of experience, even if the U.S. experience was with a qualifying entity.

[See 8 CFR 214.2(l)(1)(ii)(A) and Matter of Kloeti 18 I&N Dec. 295]

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*Continued on next page*

## Qualifying Foreign Employment, Continued

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### One Year of Continuous Employment Abroad

Continuously generally means an unbroken and uninterrupted year of qualifying work experience abroad.

The intra-company transferee definition seems to assume that all L1 beneficiaries will be outside the United States when an initial L1 petition is filed.

If the beneficiary has been outside the U.S. during the three-year period immediately preceding the filing of the petition, it is very easy to determine the three-year period to examine.

However, in some instances the beneficiary has been present in the U.S. for quite some time prior to the filing of the petition. In addition, the beneficiary may have been employed in the United States for part of the three-year period immediately preceding the filing of the petition. In these instances, the officer must determine whether the beneficiary's stay in the United States has "interrupted" his or her qualifying foreign employment.

Periods of employment in the United States in a lawful status for a qualifying entity and brief trips to the U.S. for business or pleasure are not considered to be interruptive of the beneficiary's foreign employment.

[See 8 CFR 214.2(l)(1)(ii)(A) and Matter of Continental Grain Co. 14 I&N Dec. 140]

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### Example #1: Qualifying Foreign Employment

An alien was employed for five years in a primarily managerial capacity for Light Devine at its location in Oslo, Norway. In January of 1996, he entered the U.S., as an H1B nonimmigrant to commence employment at Light Devine's New York City branch office.

In June of 1999, Light Devine filed an L1 petition on his behalf. The beneficiary's period of H1B employment in the United States is not considered to be interruptive of his foreign employment because he was employed in the United States in a lawful status by a qualifying entity.

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*Continued on next page*

## Qualifying Foreign Employment, Continued

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**Example #1:  
Non-Qualifying  
Foreign  
Employment**

An alien was employed for five years in a primarily managerial capacity for *Light Devine* at its location in Oslo, Norway. In January of 1996, he entered the U.S. as an H1B nonimmigrant to be employed by a U.S. company that had no qualifying relationship to *Light Devine*.

In June of 1999, *The Fourth Light* filed an L1 petition on his behalf. The beneficiary's period of H1B employment in the United States is considered to be interruptive of his foreign employment because he was employed in the United States in a lawful status by a company that had no qualifying relationship with *Light Devine*.

In this instance, the L1 petition may not be approved because the beneficiary did not have one year of continuous employment abroad within the three-year period immediately preceding the filing of the petition.

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**Example #2:  
Qualifying  
Foreign  
Employment**

An alien was employed for three years in a primarily managerial capacity for *Chow Ling's Glass Company* at its location in Beijing, China. In March of 1996, she entered the United States as an F1 student to pursue a baccalaureate degree in international business. *Chow Ling's Glass Company* continued to pay her salary and paid all of the educational expenses incurred while she was a student.

In July of 1999, *Chow Ling's Glass Company* filed an L1 petition on her behalf. The beneficiary's time in the United States as an F1 student is not considered to be interruptive of her foreign employment with *Chow Ling's Glass Company* because she remained employed by *Chow Ling's Glass Company* while she participated in a company sponsored educational program.

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## Qualifying Foreign Employment, Continued

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**Example #2:  
Non-Qualifying  
Foreign  
Employment**

An alien was employed for three years in a primarily managerial capacity for *Chow Ling's Glass Company* at its location in Beijing, China. In March of 1996, she entered the United States as an F1 student to pursue a baccalaureate degree in international business. Prior to departing China, she resigned from her position with *Chow Ling's Glass Company*. The alien paid for her program of study with funds given to her by her parents.

In July of 1999, *Chow Ling's Glass Company* filed an L1 petition on her behalf. The beneficiary's time in the United States as an F1 student is considered to be interruptive of her foreign employment with *Chow Ling's Glass Company* because she ceased to be employed by the company in March of 1996.

In this instance, the L1 petition may not be approved because the beneficiary did not have one year of continuous employment abroad within the three-year period immediately preceding the filing of the petition.

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**Successorship  
in Interest**

In some instances, the beneficiary's one year of continuous employment may be gained prior to there being a qualifying relationship between the foreign employer and the United States employer.

If all of the assets and liabilities of one entity are substantially acquired through sale, merger or reorganization by another entity such that a qualifying relationship is created between a U.S. employer and a foreign employer, then the beneficiary's foreign employment could have been gained prior to the creation of the qualifying relationship.

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## Qualifying U.S. Employment

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**Introduction** The qualifying U.S. employer must be offering the beneficiary a primarily managerial, executive, or specialized knowledge position in the United States.

[See section 101(a)(15)(L) of the ACT, 8 CFR 214.2(1)(l)(i), and 8 CFR 214.2(1)(l)(ii)(A), (B), (C), (D) and (E)]

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**U.S. Organization Must Directly Employ the Beneficiary**

A qualifying U.S. organization must directly employ the beneficiary for the entire duration of his or her L1 nonimmigrant status. However, the qualifying foreign employer may file the petition on the beneficiary's behalf.

The beneficiary may not directly perform services for a foreign employer in the U.S. without maintaining a valid employment relationship with the U.S. organization. The test is which organization controls the beneficiary's employment.

[See Matter of Penner, 18 I&N Dec. 49]

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**Beneficiary May be Paid by the Foreign Employer**

While a qualifying U.S. employer must directly employ the beneficiary, the beneficiary's wages may be paid by the foreign organization.

[See Matter of Pozzoli, 14 I&N, Dec. 569]

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**Required Evidence**

At a minimum, the petitioner must provide:

- A detailed statement that describes the duties to be performed by the beneficiary in the U.S., and;
- Evidence that the beneficiary prior education, training and employment qualify him or her to perform the intended services in the U.S.

[See 8 CFR 214.2(l)(3)(ii) and 8 CFR 214.2(l)(3)(iv)]

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**Evaluating the U.S. position**

For a thorough discussion of how to evaluate the offered position, refer to the manager and executive, or specialized knowledge professional sections of the SOP.

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# Doing Business

## Overview

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**Definition** Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

Doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

[See 8 CFR 214.2(l)(1)(ii)(H)]

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**Introduction** Both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an intra-company transferee.

[See 8 CFR 214.2(l)(1)(ii)(G)]

**EXCEPTION:**

A petitioner filing for an L1 beneficiary coming to be employed for a U.S. organization that has been doing business for less than one year does not have to be actively engaged in doing business at the time of filing of the petition.

Instead, the petitioner must submit evidence that sufficient physical premises to house the new office has been secured, and the intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

**NOTE:** L1 "new office" petitions will be discussed thoroughly later.

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# Determination of Doing Business

**Introduction**

While the organization must be shown to be involved in the continuous provision of goods or services, there is no statutory or regulatory minimum level of business activity that must be conducted in order for the U.S. and the Foreign organization to meet this eligibility requirement.

However, the organization must be conducting business in a manner that would require the services of an individual **primarily** engaged in a managerial, executive, or specialized knowledge capacity.

In order to make a determination that the organization is conducting sufficient business to require the services of the beneficiary, the organization's personnel structure and the beneficiary's stated duties must be placed in the context of the level of business that is being conducted by the organization.

**Credible Evidence May Not Establish Eligibility**

This section discusses the various categories of evidence that are routinely submitted to document an organization's business activities. It should be noted that the submission of what is considered to be "credible" evidence is not equivalent to meeting the eligibility criteria. The validity of the evidence must be evaluated. The evidence submitted may be negative as well as positive.

In other words, a tax return may be submitted by the petitioner and be considered credible evidence, but the information provided on the tax return may fail to establish that the eligibility requirement has been met.

**Evidence of Doing Business**

A variety of documents may be submitted in order to establish that the U.S. and the foreign organization are doing business.

Frequently, the petitioner will merely submit a letter that describes the nature and level of business activity conducted by the organization.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the organization's business activities.
Small and/or young, unknown or less substantial business,	The issue of whether the organization is doing business requires the submission of credible, documentary evidence in order to make a determination.

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## Determination of Doing Business, Continued

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**Calendar or Fiscal Year** Organizations publish annual reports and financial statements, and file tax returns based on either a calendar or a fiscal year.

<b>If the reporting year is a...</b>	<b>Then the year starts on...</b>	<b>And ends on...</b>
Calendar year	January 1 <sup>st</sup>	December 31 <sup>st</sup>
Fiscal year	The 1 <sup>st</sup> day of any month other than January	The last day of any month other than December

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**Change of Year for Tax Purposes** An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.

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## Primary Evidence of Doing Business

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### **Primary Documentary Evidence**

Primary documentary evidence of an organization's business activities includes:

- Annual Reports, containing audited or reviewed financial statements,
  - Audited financial statements,
  - Reviewed financial statements, or;
  - Federal Tax Returns.
- 

### **Evaluating Primary Evidence**

Primary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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### **Annual Reports**

Annual Reports are published by all publicly traded corporations in the United States. Many foreign organizations also publish annual reports.

Annual reports provide information describing the organization's:

- Products and Services
- Management and personnel structure on the macro level
- Ownership & Control
- Subsidiaries, affiliates, joint ventures, and branch offices
- Current and long-term objectives

In addition, annual reports should include audited or reviewed financial statements for the past year.

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## Primary Evidence of Doing Business, Continued

### Federal Tax Returns

In general, organizations that are conducting business in the U.S. must file federal tax returns each year. Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format.

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a...	Then the Tax Return is Form...	And the tax returns provides a modified...	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

### Foreign Tax Documentation

- The petitioner may provide copies of foreign tax returns as evidence of the business activities of the foreign entity.
- Canada and most Western European countries require tax returns that are very similar to the United States' tax returns and are usually credible.
- Many other countries rely on hand-written tax returns and receipts that are less reliable.

# Financial Statements

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**Introduction** Financial statements are used to convey a picture of the profitability and the financial position of a business. The two most important are the income statement and the balance sheet.

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**Income Statement** The income statement shows whether or not the business earned a “profit” or net income during a specific time period. Net income is earned when revenues exceed expenses, but a net loss is incurred if the expenses exceed the revenues.

Income statements provide useful information for the adjudication of L1 petitions such as the organization’s:

- Gross sales/revenues (and sometimes the source of the revenue),
  - Cost of goods or services sold,
  - Wages, salaries, and commissions expense,
  - Rental or mortgage expense,
  - Utility expenses,
  - Brokerage, freight, travel, and contractor expenses, and
  - Net income or net loss.
- 

**Balance Sheet** The balance sheet can be likened to a snap shot of the organization’s financial position. Financial position is shown by listing the organization’s:

- Assets,
- Liabilities, and
- The equity of the owners.

The balance sheet provides useful information for the adjudication of L1 petitions such as the organization’s:

- Type and amount of assets held,
  - Type and amount of the liabilities owed, and
  - Level of investment in the organization by its owners.
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## Financial Statements, Continued

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### **Internally Generated Financial Statements**

Internally generated financial statements are created by and are based on the representations of the management of the organization. Employees of the petitioning organization prepare the financial statements and they are not subject to the scrutiny of anyone outside the organization.

Internally generated financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Compiled Financial Statements**

A compilation is the preparation of financial statements from the accounting records and other representations of the management of the organization. The accountant who prepares the financial statements is not required:

- To verify any information provided by management, or
- Have any degree of independence from the organization.

Compiled financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Reviewed Financial Statements**

A review of financial statements involves:

- Obtaining an understanding of the entity's accounting system
- Applying analytical procedures to financial data
- Making inquiries of persons responsible for the organization's financial and accounting matters

An accountant (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform a review.

The CPA will then either prepare the financial statements or review internally generated financial statements. The objective of a review is to express limited assurance that the information provided in the financial statements is in accordance with generally accepted accounting principles.

Reviewed financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Financial Statements, Continued

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### **Audited Financial Statements**

An audit is the examination of financial statements, the accounting records and other supporting evidence both within and outside the organization. It is more substantial in scope than a review, but involved many of the procedures that are performed during a review.

An auditor (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform an audit.

Auditors never express an opinion on the fairness of the financial statements without first performing an audit. The auditor's report will either contain an expression of opinion regarding the fairness of the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed.

Audited financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Secondary Evidence of Doing Business

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### Secondary Documentary Evidence

Secondary documentary evidence of an organization's business activities may include, but is not limited to:

- Commercial leases or title to commercial properties,
  - Form W-2s and Form 1099s,
  - Form 941, Employer's Quarterly Tax Return,
  - Internally generated payroll documentation,
  - Sales contracts and invoices,
  - Bills of lading, shipping receipts and brokerage bills,
  - Commercial loan agreements,
  - Bank Statements, or
  - Telephone and other utility bills.
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### Evaluating Secondary Evidence

Secondary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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### Example: Credible Evidence

*Electronic Imports*, has filed a petition for an L1A manager. The petitioner's letter states that the organization is involved in the importation and sale of electronic components, such as stereos and televisions, and that the organization currently employs twenty people in the United States.

As evidence of the organization's leased premises, the petitioner has submitted copies of its commercial leases. The leases are for a warehouse, two electronic showrooms, and for 1500 square feet of office space at a fourth location. The total monthly expense for the leases is \$12,000.00 a month.

In addition, the petitioner has submitted copies of its most recently filed Form 941, Employer's Quarterly Tax Returns. The Form 941s show that the beneficiary's quarterly payroll is approximately \$140,000.00 a quarter and lists twenty employees on the supporting schedules.

In this instance, the commercial leases and the Form 941s corroborate the statements made by the petitioner, and are credible evidence of the organization's business activities.

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## Secondary Evidence of Doing Business, Continued

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**Example: NOT  
Credible  
Evidence**

*Electronic Imports* has filed a petition for an LIA manager. The petitioner's letter states that the organization is involved in the importation and sale of electronic components, such as stereos and televisions, and that the organization currently employs twenty people in the United States.

As evidence of the organization's leased premises, the petitioner has submitted a copy of its lease. The lease is for an apartment, and the lease states that the premise is to be used as a private residence only. The total monthly expense for the lease is \$600.00 a month.

In addition, the petitioner has submitted copies of its most recently filed Form 941, Employer's Quarterly Tax Returns. The Form 941s show that the beneficiary's quarterly payroll is approximately \$18,000.00 a quarter and lists the names of six employees.

In this instance, the lease and the Form 941s DO NOT corroborate the statements made by the petitioner, and are NOT credible evidence of the organization's business activities.

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# New Office

## Overview

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**Introduction** The L1 classifications have special eligibility requirements and approval limitations for L1 beneficiaries who are coming to open a new office in the United States.

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**New Office Defined** New office means an organization that has been doing business in the United States through a qualifying organization for less than one year. [See 8 CFR 214.2(l)(1)(ii)(F)]

Any organization that has been doing business in the U.S. for less than one year must be defined as a new office regardless of the existence of other qualifying organizations that have been doing business in the U.S. for more than one year.

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**Doing Business Does Not Equal Legal existence** An organization may have a legal existence in the United States for more than one year, but if it has not engaged in the continuous provision of goods and services for more than a year, it must be defined as a new office.

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**Example: New Office** *Burrito Barn* is located in Mexico City, Mexico. *Taco Shell*, a US based company, was incorporated in January of 1998. In June of 1998, *Burrito Barn* purchased all of the stock of *Taco Shell*. In January of 1999, *Taco Shell* acquired office space, hired employees and commenced doing business. In July of 1999 *Taco Shell* filed an L1 petition.

*Taco Shell* must be treated as a new office for L1 purposes because even though the organization has existed legally for more than one year, it has not been doing business for more than one year.

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## Overview, Continued

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### Example: NOT a New Office

*Burrito Barn* is located in Mexico City, Mexico. *Taco Shell*, a US based company, was incorporated in January of 1998. In March of 1998, *Burrito Barn* purchased all of the stock of *Taco Shell*. In April of 1998, *Taco Shell* acquired office space, hired employees and commenced doing business. In July of 1999 *Taco Shell* filed an L1 petition.

*Taco Shell* will not be treated as a new office for L1 purposes because it has been doing business for more than one year. The petitioner must meet all of the eligibility requirements for a regular initial L1 petition.

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### New Office Eligibility Requirements

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations;
- Organization abroad must be actively engaged in doing business;
- U.S. organization must be shown to have sufficient physical premises to house the new office;
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition, and;
- Intended U.S. organization, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position supported by information regarding the:
  - Proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - Size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the U.S., and;
  - Organizational structure of the foreign entity

[See 8 CFR 214.2(l)(3)]

**NOTE:** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Overview, Continued

**Beneficiary's Qualifying Employment Abroad** Use the table below for beneficiary's qualifications.

<b>If the petition indicates that the beneficiary is coming to the U.S. as a...</b>	<b>Then the beneficiary's qualifying employment abroad must have been in a primarily...</b>
Manager or an executive to open or to be employed in a new office in the U.S.,	Managerial or executive capacity. [See 8 CFR 214.2(l)(3)(v)]
Specialized knowledge capacity or to be employed in a new office in the U.S.,	Specialized knowledge capacity or managerial executive. [See 8 CFR 214.2(l)(3)(vi)]

**New Office Petitions May Only be Approved for One Year** New office petitions may be approved for a period that does not exceed one year.  
[See 8 CFR 214.2(l)(7)(i)(A)(3)]

**Advantages for the Petitioner** There are two main advantages of the new office designation for the petitioner.

1. The U.S. organization does not have to be actively engaged in the provision of goods and services as of the date of filing.
2. The beneficiary does not have to be engaged in a primarily managerial, executive, or specialized knowledge capacity at the time of his or her change of status or entry into the United States as an L1 nonimmigrant. Instead, the petitioner must demonstrate that the U.S. organization, within one year of the approval of the petition, will support the beneficiary in a primarily executive, managerial or specialized knowledge position by providing:
  - A coherent plan in order to commence doing business in the U.S.,
  - The financial ability to compensate the beneficiary and invest sufficient resources in the U.S. organization in order to realize its proposed business plan, and
  - Acquired sufficient physical premises in the U.S. in order to start doing business as described in the business plan.

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## Overview, Continued

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**Disadvantages  
for the  
Petitioner**

There are two main disadvantages of the new office designation for the petitioner.

1. The beneficiary must be coming to provide services in a capacity that is similar to the position abroad. Hence, managers and executives must be classified as L1As and specialized knowledge employees must be classified as L1Bs, which limits the staffing options of the new office petitioners.
  2. The petition may only be approved for one year, while regular L1 petitions may be given initial approvals for up to three years.
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## Business Plans and Foreign Investments

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### **Business Plans**

While the new office's business plan may be entirely prospective, the petitioner's statement and supporting documentation should provide a clear picture of how the U.S. organization will conduct business to include:

- A description of the products and/or services that will be provided to its customers;
- The type and general location of the customers or clients to be targeted;
- A description of its short-term and strategic goals and the general time-frame during which these goals will be achieved;
- The amount of investment that will be required to fund the acquisition of sufficient plant, equipment and staffing in order to realize the goals, and;
- Why the beneficiary's services are needed during the start-up phase of the organization.

In addition, the petitioner's plans for the U.S. organization must persuasively demonstrate that the nature of the beneficiary's business will be such that he or she will be employed in a primarily managerial, executive or specialized knowledge capacity within one year of the approval of the petition.

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### **Statement that Business Plan Cannot be Provided**

In general, statements by the petitioner that no business plan can be provided, or that the investment and/or acquisition of a physical premises cannot be made until the approval of the L1 petition are not persuasive for the purposes of establishing the beneficiary's eligibility for a new office approval.

The petitioner must establish eligibility at the time of filing of the petition.  
[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Business Plans and Foreign Investments, Continued

### Evidence of the Foreign Organization's Investment

While there is no statutory or regulatory minimum investment required, the investment must be commensurate with the activities to be conducted by the business during its start-up phase.

The petitioner must identify the size of its financial investment in the new office and show that it has sufficient resources to pay the beneficiary's salary and implement its business plan.

Where documentary evidence is required, the record should contain:

- Bank statements for the new office, as well as the bank wire transfers, cancelled checks, or letters of credit that were executed by the foreign organization to execute the transfer of funds, or
- Evidence of commercial loans, enforceable promissory notes, or other such documentation that would show that sufficient funds are at the new office's disposal.

If the new office is being opened by a...	Then...
Large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of its investment in the new office.
Small and/or young, unknown or less substantial business,	The issue of the level of its investment and financial capabilities requires the submission of credible, documentary evidence in order to make a determination.

### Foreign Organization's Investment "Hand-Carried"

Occasionally, the petitioner will claim that the foreign organization's investment was "hand-carried" into the United States by the beneficiary or by another individual. Such claims should be corroborated with the submission of a Customs Form 4790. This is the document that is required when an individual is entering the United States in possession of \$10,000.00 or more in currency.

This claim usually indicates that the foreign organization does not exist, or is not actually involved in the start-up of the new office.

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## Business Plans and Foreign Investments, Continued

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**Evidence of  
Sufficient  
Physical  
Premises in the  
U.S.**

There is no statutory or regulatory minimum for the size of the new office's physical premises. However, the size and nature of the physical premises must be of a sufficient size and type that would enable the new office to perform the initial activities outlined by the business plan during the start-up phase.

---

**Example:  
Sufficient  
Physical  
Premises**

*Stitches & Borders* filed a new office petition. *Stitches & Borders* has not actually started doing business in the U.S. but has provided a detailed statement that describes how it will conduct business. The organization is to engage in the importation of textile products, primarily manufactured by its foreign parent, and will sell the products to textile wholesalers located in the metropolitan New York area.

The new office will initially hire ten people in its start-up phase and has signed lease agreements for the leasing of 1200 square feet of office space, as well as a warehouse facility to store the imported goods until they can be delivered to its customers.

The petitioner has demonstrated that is has acquired sufficient physical premises for the new office in the U.S. In general, 1200 square feet of office space would be sufficient to provide working space for its employees and it has acquired a facility to store its imported products.

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**Example: NO  
Sufficient  
Physical  
Premises**

*Stitches & Borders* filed a new office petition. *Stitches & Borders* has not actually started doing business in the U.S. but has provided a detailed statement that describes how it will conduct business. The organization is to engage in the importation of textile products, primarily manufactured by its foreign parent, and will sell the products to textile wholesalers located in the metropolitan New York area.

The new office will initially hire ten people in its start-up phase and has signed a lease agreement for the leasing of 200 square feet of office space..

The petitioner has NOT demonstrated that is has acquired sufficient physical premises for the new office in the U.S. In general, 200 square feet of office space would be NOT be sufficient to provide working space for its employees, nor has it acquired a facility to store its imported products.

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## New Office Extensions

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**Introduction** The petitioner can request an extension of the L1B or L1A's nonimmigrant status prior to the expiration of his or her L1 nonimmigrant status.

A new office petitioner can frequently establish an L1 beneficiary's eligibility for an initial one year approval by the submission of documentation that is almost entirely prospective in nature. However, at the end of the L1 beneficiary's one-year approval, the new office must be shown to have grown to a point where he or she is primarily engaged in a managerial, executive or specialized knowledge capacity.

The petitioner must meet all of the regular L1 eligibility requirements.

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**Validity Dates** The petition may be approved for a period of time not to exceed two years. [See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

---

**Required Evidence** The petitioner must provide the following evidence in support of a new office extension petition:

- Evidence that the U.S. and foreign entities are still qualifying organizations;
- Evidence that the U.S. entity has been actively engaged in the provision of goods and services for the previous year;
- A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- A statement describing the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees when the beneficiary is to be employed in a managerial or executive capacity, and;
- Evidence of the financial status of the U.S. operation.

[See 8 CFR 214.2(l)(14)(ii)]

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*Continued on next page*

## New Office Extensions, Continued

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### **Additional Evidence**

While the evidence described above is required by regulation, additional evidence may be requested in order to establish the beneficiary's eligibility for the extension.

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### **Renewed New Office Approvals**

In general, a new office extension petition should be denied if the U.S. organization is not doing business in a manner that would require and support the employment of the beneficiary in a primarily managerial, executive or specialized knowledge capacity.

However, there are instances in which the start-up of the new office is hampered by circumstances that are beyond the petitioner's control. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
  - A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
  - Litigation involving the new office which prevented the normal functioning of the business.
- 

### **Petitioner Cites Unanticipated Circumstances**

In the instance where the petitioner cites unanticipated circumstances that hampered the new office's ability to commence doing business, the new office petition may be classified as a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year.

A limited approval should only be granted where the petitioner has adequately corroborated the nature of the events that led to the new office's difficulties. The limited approval should not be granted where there is evidence of fraud or misrepresentation.

**NOTE:** The Service should not request evidence of unanticipated circumstances, unless the petitioner has first made this claim.

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*Continued on next page*

## New Office Extensions, Continued

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**Example:  
Evidence of  
Unanticipated  
Circumstances**

*Pow Chun's Chinese Food*, located in Guangzhou, China incorporated a subsidiary in New York in January of 1998. In June of 1998 *Pow Chun's Chinese Food* filed a new office petition for an L1A beneficiary. The petition was approved for one year, from July 1, 1998 to July 1, 1999.

The beneficiary applied for an L1 visa at the U.S. consulate in Guangzhou during July of 1998. However, the consulate didn't issue a visa to the beneficiary until December of 1998. The beneficiary entered the U.S. in January of 1999 in order to open the new office.

The New York office did not commence doing business until February of 1999. The petitioner filed a new office extension petition in June of 1999 that provided a statement describing the delay in the L1 visa issuance and submitted copies of the beneficiary's passport pages. While the new office was "doing business", the evidence did not clearly establish that the operation could support the beneficiary in a primarily managerial or executive capacity.

The petition was classified by the CAO as a new office petition and was approved with validity dates from July 1, 1999 to January 31, 2000. The L1 was given his full year as a new office L1A.

---

**Example: No  
Unanticipated  
Circumstances**

*Pow Chun's Chinese Food*, located in Guangzhou, China incorporated a subsidiary in New York in January of 1998. In June of 1998 *Pow Chun's Chinese food* filed a new office petition for an L1A beneficiary. At the time the petition was filed the beneficiary was in the U.S. as a B1 nonimmigrant. The petition was approved, granting a change of status for the beneficiary, for one year, from July 1, 1998 to July 1, 1999.

The petitioner filed a new office extension petition in June of 1999 that provided a vague description of various "set-backs" that had hampered the operation of the new office. While the new office was "doing business", the evidence did not clearly establish that the operation could support the beneficiary in a primarily managerial or executive capacity.

The petition was denied, as the record did not contain evidence that the new office had experienced unanticipated circumstances that had hampered the start-up of the new office.

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## Miscellaneous

### Extensions

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**Introduction** The petitioner may request an extension of an L1B or L1A's nonimmigrant status by filing a petition prior to the expiration of the beneficiary's L1B or L1A status. [See 8 CFR 214.2(l)(14)]

---

**Validity Dates** The petition may be approved for a period of time not to exceed two years. [See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

---

**Required Evidence** Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. [See 8 CFR 214.2(l)(14)]

<b>If the extension petition is being filed by...</b>	<b>Then...</b>
A large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of the beneficiary's eligibility.
A small and/or young, unknown organization,	The issue of the beneficiary's eligibility may require the submission of credible, documentary evidence in order to make a determination.

*Continued on next page*

## Extensions, Continued

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### Previously Approved Petition

Information that is discovered at the time of an L1 extension petition might show that the beneficiary was never eligible for the benefit that was previously received. The Service is under no obligation to establish that the previously approved petition was approved in gross Service error.

Further, the Service is not obligated to approve applications or petitions where eligibility has not been demonstrated.

- Matter of M--, 4 I&N Dec. 532 (A.G.1952; BIA 1952)
  - Pearson V. Williams, 202 U.S. 281 (1906)
  - Mannerfrid V. Brownell, 145 Supp. 55 (D.D.C. 1956), affirmed 238 F. 2<sup>nd</sup> 32 (D.C. Cir. 1956), Lazarescu V. United States, 199 F. 2<sup>nd</sup> 898 (4<sup>th</sup> Cir. 1952)
  - U.S. Ex. Rel. Vajta V. Watkins, 179 F. 2<sup>nd</sup> 137 (2<sup>nd</sup> Cir. 1950)
- 

### Same/Same RFEs

If an RFE will be issued on a petition that is requesting an extension with the same petitioner for the same beneficiary, the case must be signed off by an SISO prior to sending the RFE. The officer must clearly articulate the material error, changed circumstances, or new material information that prompted the RFE on the subsequent filing.

The following are examples where no SISO authorization is needed:

- New office extensions,
  - Where there has been a change in the corporate relationship, or
  - Where there has been a change in the nature of the beneficiary's employment, such as job duties, a change from L1B to L1A or vice versa, or a change in the organizational structure.
- L1B beneficiary primarily at site of different unaffiliated client (see William R. Yates memo dated July 28, 2005, regarding the L-1 Reform Act of 2004.)

[See William R. Yates memo of April 23, 2004, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity.*]

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## L1 Limitations of Stay

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### Introduction

An alien who has spent five years in the U.S. in a specialized knowledge capacity, or seven years in the U.S. in a managerial or executive capacity under section 101(a)(H) and/or (L) of the Act may not be readmitted to the U.S. under section 101(a)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the U.S. for the immediate prior year.

- No new petitions may be approved where the alien has spent the maximum time period allowed in either the H or L classification.
- Brief trips to the U.S. for business or pleasure are not considered to interrupt the required one-year outside the U.S.

[See 8 CFR 214.2(I)(12)(I)]

---

### L2 Dependents

Dependents are eligible for L-2 status extensions through the proper filing of a Form I-539 with fee, and whenever possible, filed concurrently with the principal's Form I-129.

Any time spent in L-2 status does not count against the maximum allowable periods of stay available to principals in L-1 status. [See *Aytes Memo of December 5, 2006, Guidance on Determining Periods of Admission for Aliens Previously in H-4 or O-2 Status; Aliens Applying for Additional Periods of Admission beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year*]

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*Continued on next page*

## L1 Limitations of Stay, Continued

### General L1 Limitations of Stay

The following table describes the general L1 limitations of stay for L1 nonimmigrants. No further extensions may be granted.

[See 8 CFR 214.2(l)(15)(ii)]

If the Classification is...	Then the Maximum Period of stay is...
L1A, Manager or Executive	7 years
L1B, Specialized Knowledge	5 years

### Limitation of Stay: Exception

The limitations of 8 CFR 214.2(l)(12)(i) do not apply to aliens who:

- Do not reside continually in the U.S., and
- Whose employment in the U.S. is seasonal, intermittent, or consists of an aggregate of six months or less per year.

In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the U.S. to engage in part-time employment.

[See 8 CFR 214.2(l)(12)(ii)]

### Evidence that Beneficiary Qualifies for Exception

The petitioner must provide clear and convincing proof that the beneficiary qualifies for an exception, to include:

- Arrival and departure records,
- Copies of tax returns, and
- Records of employment abroad.

### Memo Regarding Recapture of Time

Refer to the October 21, 2005, Michael Aytes memo, Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants, covering the recapture of time.

NOTE: To access the "Date calendar" online, type the following site into the address line of Internet Explorer:

<http://www.timeanddate.com/date/duration.html>.

Enter the start and end date and then click "Calculate duration"

*Continued on next page*

## L1 Limitations of Stay, Continued

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**Example:  
Reached  
Limitation of  
Stay**

- *Burger Queen* petitioned for an H1B nonimmigrant and the petition was approved for a validity period from January 1, 1993 to January 1, 1996.
- *Burger Queen* filed an H1B extension petition in December of 1995, which was approved, for validity period from January 1, 1996 to January 1, 1999.
- In December of 1998 *Burger Queen* filed a petition to change the beneficiary's status from H1B to L1A.

The petition may not be approved because the beneficiary has already reached her six year limitation in H status, and is therefore ineligible for a change of status or an extension of stay until she remains outside the U.S. for at least one year.

---

**Example:  
Limitation of  
Stay not  
Reached**

- *Burger Queen* petitioned for an H1B nonimmigrant and the petition was approved for a validity period from January 1, 1993 to January 1, 1996.
- *Burger Queen* filed a petition in December of 1995, requesting a change of the beneficiary's status from H1B to L1A, for a validity period of January 1, 1996 to January 1, 1999. The petition was approved.
- In December of 1998 *Burger Queen* filed a petition to extend the beneficiary's L1A status from January 1, 1999 to January 1, 2000.

The petition may be approved because the beneficiary is currently in L status and has not yet reached the limitation of stay for L1As. However, no extensions or changes of status to H or L may be granted after January 1, 2000, until the beneficiary has remained outside the U.S. for at least one year.

---

**Limitation of  
Change of  
Status from  
L1B to L1A**

When a beneficiary is initially admitted to the U.S. in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years.

The Service in an amended, new, or extended petition must have approved the change to managerial or executive capacity at the time the change occurred.

[See 8 CFR 214.2(l)(15)(ii)]

**NOTE:** A change from L1A to L1B or L1B to L1A is not a change of status. A change from one to the other with the same employer will be a change in employment and possibly an extension.

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## L1 Limitations of Stay, Continued

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**Example:  
Status May be  
Extended**

*Earth Wind and Water Electric Company* petitioned for an L1B beneficiary in March of 1994. The petition was approved for a validity period from April 1, 1994 to April 1, 1997.

*Earth Wind and Water Electric Company* filed an extension petition requesting a two-year extension of stay for the L1B beneficiary in March of 1997. The petition was approved for a validity period from April 1, 1997 to April 1, 1999.

In August of 1998 *Earth Wind and Water Electric Company* promoted the L1B beneficiary to a primarily executive position and immediately filed an amended petition requesting a change of the beneficiary's status to L1A. The petition also requested that the beneficiary's L1 status be extended from April 1, 1999 to August 1, 2000.

The petition may be approved as long as the beneficiary's new position qualifies for L1A purposes. In addition, his status may be extended beyond the five-year limitation for L1Bs, as he will have been promoted to an L1A position for at least six months prior to reaching the five-year limitation of stay for L1Bs.

---

**Example:  
Status May  
NOT be  
Extended**

*Earth Wind and Water Electric Company* petitioned for an L1B beneficiary in March of 1994. The petition was approved for a validity period from April 1, 1994 to April 1, 1997.

*Earth Wind and Water Electric Company* filed an extension petition requesting a two-year extension of stay for the L1B beneficiary in March of 1997. The petition was approved for a validity period from April 1, 1997 to April 1, 1999.

In March of 1999 *Earth Wind and Water Electric Company* promoted the L1B beneficiary to a primarily executive position and immediately filed an amended petition requesting a change of the beneficiary's status to L1A. The petition also requested that the beneficiary's L1 status be extended from April 1, 1999 to March 1, 2001.

The petition may be approved as long as the beneficiary's new position qualifies for L1A purposes for a validity period from March of 1999 to April 1, 1999. His status may NOT be extended beyond the five-year limitation for L1Bs, as he will NOT have been promoted to an L1A position for at least six months prior to reaching the five-year limitation of stay for L1Bs.

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## Dependent(s)

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**Dependent(s) of the L-1** The spouse and unmarried dependent children (under the age of 21) of an L1 beneficiary may be granted the L2 classification and be given the same validity dates as the L1 principal.

L1 dependents are not included on the L1 petition. Rather, they must apply for an L2 visa at the consulate based on the L1 principal's petition, or they can file a Form I-539 in order to change or extend their nonimmigrant status.

Dependent minor children can be given the same validity dates as the L1 principal up until the day they marry or reach the age of 21.

The spouse and dependent minor children may not accept employment in the U.S. unless otherwise authorized under the Act. [See 8 CFR 214.2(l)(17)(v)]

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**Dependents May Attend School**

L-2 dependents may attend school without a COS to student status. This information is found in 8 CFR 248.3(e).

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**L's Status Contingent upon Qualifying Employment**

The continuation of the L1 principal's status and the L2 dependent's status hinges on the L1's qualifying employment with the petitioner. When the employer/employee relationship is terminated, or the nature of the employment no longer qualifies for L1 purposes, the L's status is no longer valid.

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## NAFTA Petitions

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**Introduction** VSC routinely receives L1 NAFTA petitions from POEs and PFIs in order for them to be updated into CLAIMS. These petitions have already been adjudicated and all the information on the petitions (including approval stamp) has been completed AND the beneficiaries have already entered the country.

---

**Where to File** The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or;
- United States pre-flight station in Canada. [See 8 CFR 214.2(I)(17)(i)]

---

**Updating in CLAIMS** All approved NAFTA cases adjudicated at a Class A POE on the United States-Canada land border or PFI in Canada are forwarded to the Service Center within the same Service region for CLAIMS 3 updating. Clerical is responsible for the approval updating of these cases in CLAIMS 3. These files are routed directly from Data Entry to clerical.

If an approved NAFTA filing bearing the approval stamp and a bar code is received by an ISO and CLAIMS 3 does not show the approval notice as being sent, then a CFF should be prepared and the file placed in the CFF slot in the clerical sort area.

The only time an ISO will need to take action on a NAFTA case is if the I-129L was not approved at the POE/PFI and was routed to the VSC with a memo recommending denial. The ISO would then prepare a letter of denial.

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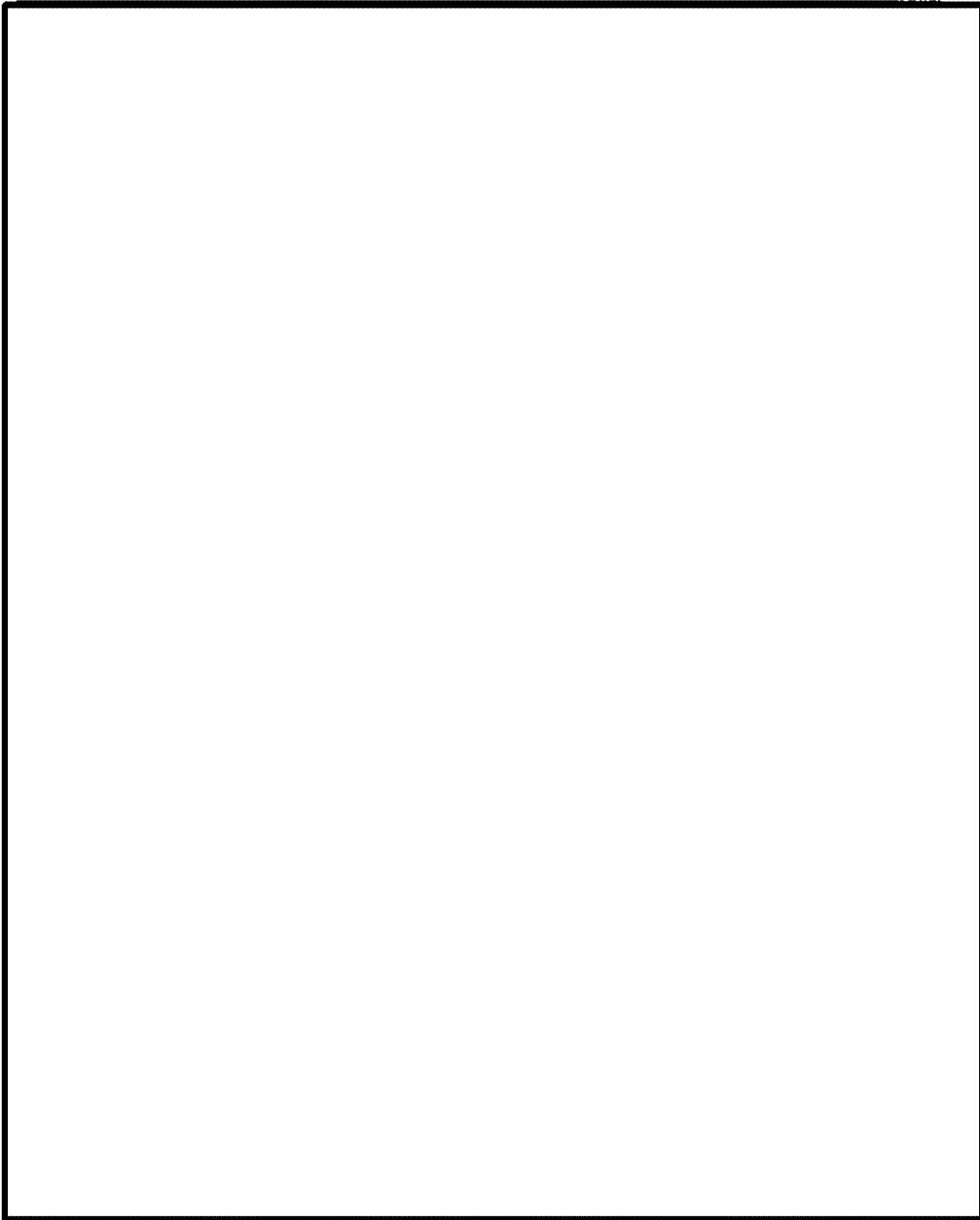
# Detecting L1 Fraud or Misrepresentation

(b)(7)(e)

**Introduction**

**Why is the L1  
Classification  
an Attractive  
Vehicle for  
Benefits Fraud?**

**Officer's  
Responsibility**

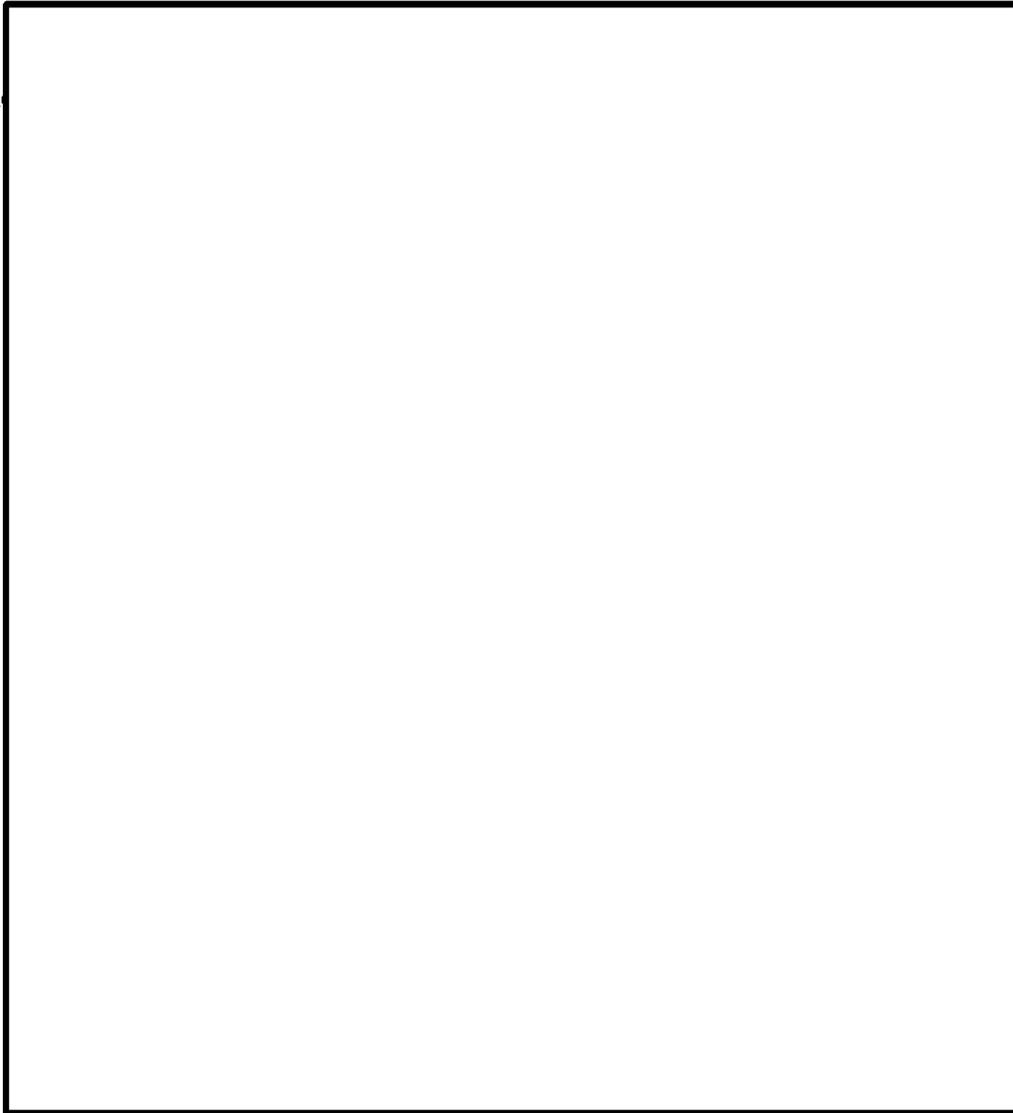


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**Detecting L1 Fraud or Misrepresentation, Continued**

(b)(7)(e)

**Indicators  
Relating to the  
Beneficiary**

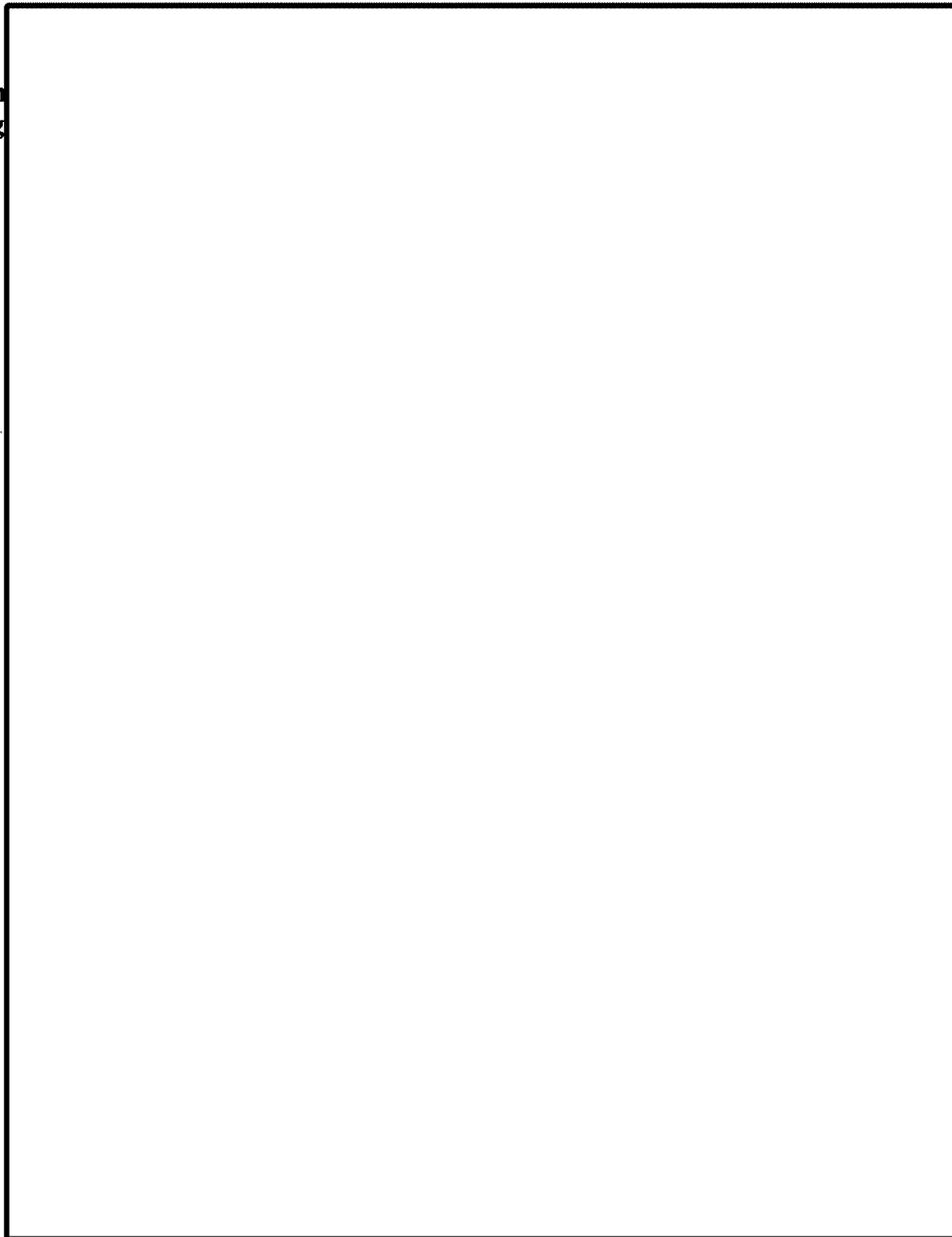


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**Detecting L1 Fraud or Misrepresentation, Continued**

(b)(7)(e)

**Indicators  
Relating to th  
U.S or Foreign  
Business**



*Continued on next page*

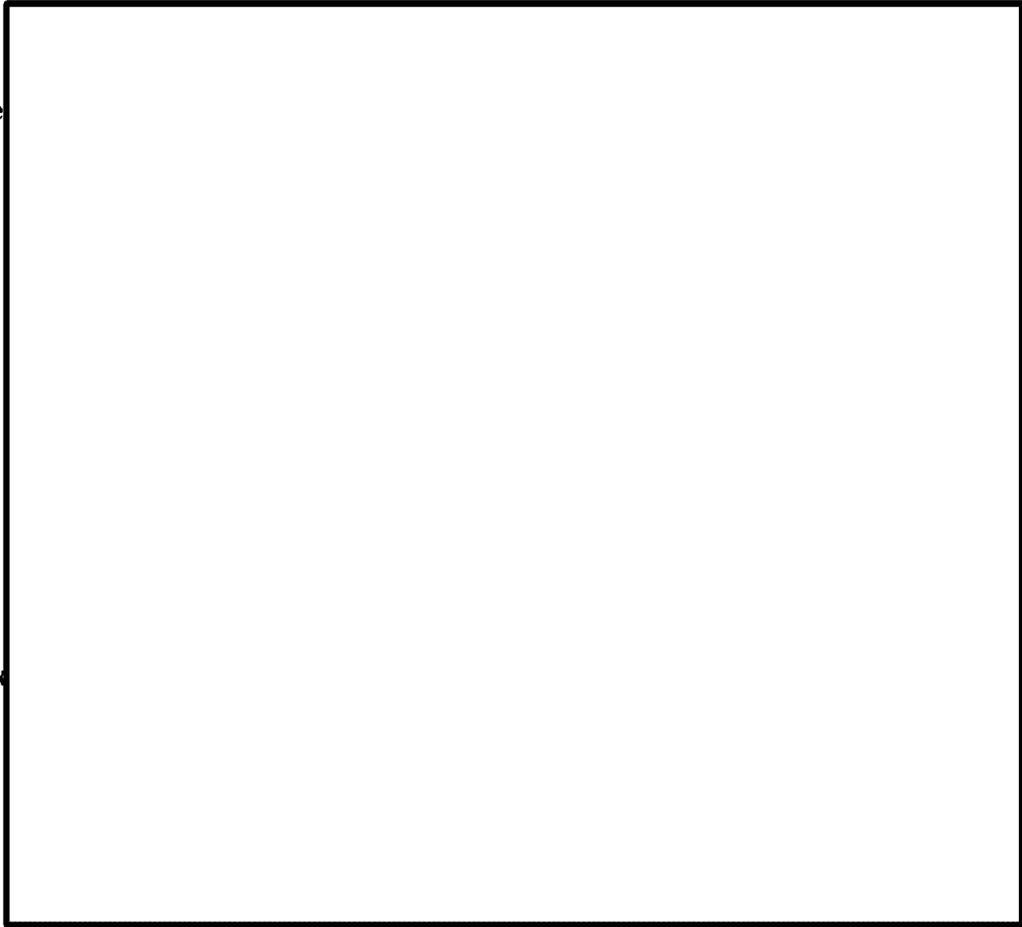
**Detecting L1 Fraud or Misrepresentation, Continued**

(b)(7)(e)

**Indicators  
Relating to the  
Petitioner's  
Immigration  
History**

**Adjudicative  
Approaches**

**Systems Check**



## **Name Conventions for CLAIMS, SQ94, and CIS**

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**Petitioner's  
Name**

The petitioner's name should be entered exactly as it appears on the petition with the exception of the words "Inc., Ltd., LLC, PLC, or Corp". In addition, the words "International and Group" are usually abbreviated to "Intl and Gr".

If the petitioner's name does not even bring up the petition that is being adjudicated, it might be helpful to wand in the receipt file number and see what conventions were used by Data Entry to enter the petition into CLAIMS.

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**Beneficiary's  
Name**

The beneficiary's name and date of birth should be entered exactly as it appears on the petition. However, keep in mind that some countries list the day of the month before the month, so June 8, 1999 may be listed either as 06/08/1999 or 08/06/1999. In some instances it may be wise to try it both ways.

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**Asian Names**

Asian first names may be listed in reverse order or the first name may or may not have a space in it. For example. Li Yu Wen may be Li Yu Wen, Liyu Wen, Yu Wen Li, or Yuwen Li.

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**Hispanic  
Names**

Hispanic names may or may not use the first or second last name. For example, Maria Lopez Garcia may be Maria Lopez Garcia, Maria Lopez or Maria Garcia.

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## National Systems

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**Local CLAIMS** Local CLAIMS can be accessed through the Status Inquiry screen. The database can be searched by the name of the petitioner or by the beneficiary's name. In addition, it may be helpful to search by the name of the foreign entity as foreign petitioners may file L1 petitions.

Local CLAIMS can identify the following information:

- The type and number of petitions and applications that have been filed,
  - Whether any other petitions or applications have been pending, and
  - Whether the petitioner or the beneficiary has had previous denials or revocations of petitions and applications.
- 

**Mainframe CLAIMS**

Mainframe CLAIMS can be accessed through the National Systems and can provide the same information as local CLAIMS for all four Service Centers. In addition, it also provides information about petitions and applications filed at select district offices.

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**SQ94**

An SQ94 query is required for all change of status (COS) requests and for all denials. A screen print of the SQ94 query must be placed on the non-record side of the file. The date of the SQ94 query must be within 15 days of the final adjudicative action.

SQ94 can be accessed through the National Systems and can provide information about the beneficiary's:

- Entries and departures from the U.S.
  - Method of entry, i.e. plane, car, etc.
  - POE or PFI used at the time of entry
  - Date of entry and validity of stay
  - Nonimmigrant class at the time of entry, and
  - Intended destination
- 

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## National Systems, Continued

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### SQ94 (continued)

There is usually a two to six month delay in entering records into SQ94. Also, be aware that SQ94 only enters departures from the U.S. in the instances where the alien surrenders his or her Form I-94 at the time of departure.

If a search by Form I-94 # or Name and DOB does not produce a record, it may be helpful to search by the beneficiary's passport number. In addition, dated information may be archived in SQ94, so a search in the archive portion of SQ94 may produce a better result.

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### CIS

A CIS query is required if you discover that the beneficiary has an A-file number. CIS can be accessed through the National Systems and can provide information about the beneficiary's alien registration number and his or her pending or completed adjustment, asylum, or removal proceedings.

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# I-129 L-1 Blanket Petition

## Overview

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**Introduction**      **Blanket L-1** petitions are based upon most of the same general principles used in adjudicating **individual L-1** petitions. However, there are some differences. The following is a brief summary of **blanket L-1** petitions.

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**Who May File the Blanket L-1**      The blanket L-1 procedure is intended for larger international organizations, and only entities involved in commercial trade or services may use the blanket petition. This means that noncommercial organizations, like churches, may not use the blanket petition.

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**Policy Memos/ Correspondence**      \* FORM I-129S  
• Memorandum dated 8-13-92  
• OTHER MEMOS TO BE ADDED

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**Appeal Rights**      The denial of the Form I-129 Blanket petition is appealable to the AAO, just like the denial of any other L-1.

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## Qualifying Company Relationships

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### Introduction

A blanket petition is filed on Form I-129. When the Form I-129 is adjudicated to obtain approval of Foreign and U.S. relationships, the adjudicator's **only** concern is qualifying company relationships.

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### Establish Ownership and Control of ALL Entities

Thoroughly establish exactly who has ownership and control of all of the entities. No aliens are listed on the Form I-129 blanket petition. The petitioner lists all the **foreign** entities and all of the **U.S.** entities that the petitioner wants to have approved.

---

### Determine if Entities are Approvable

Determine whether all of those foreign and U.S. entities are qualifying entities for L-1 purposes. If **all** of the entities are **APPROVABLE**, send an I-797 approval notice showing that the petition is approved and valid for three years initially.

Attached to the I-797 is a list of all of the approved foreign and U.S. entities. The approval notice means that it is permissible to transfer a qualifying employee from any approved foreign entity to any approved U.S. entity.

---

### Qualifying Capacity

For blanket L-1 purposes, a qualifying capacity is:

- 1) Managerial
- 2) Executive, or
- 3) Specialized knowledge professional

A specialized knowledge professional is what it appears to be, a specialized knowledge employee who is a professional.

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## Beneficiaries of L-1 Blanket Petitions

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**Introduction** When one of the approved U.S. entities on the approval notice wants to employ a particular alien from an approved foreign entity on the approval notice, the U.S. entity completes a Form I-129S Nonimmigrant Petition Based on Blanket L Petition.

The information on the Form I-129S, and any supporting documents, must establish that the alien was employed abroad for the immediately prior year in a qualifying capacity, and must establish that the alien will be employed in a qualifying capacity in the U.S.

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**Alien Abroad** The alien abroad uses the Form I-129S, with the Form I-797 approval notice for the approved Form I-129 blanket petition to apply for an L-1 visa at an **AMCON** or (if **CANADIAN**) at a **POE** or **PFI**.

---

**L-1 Beneficiary is in the US** If a blanket L-1 beneficiary is in the U.S. applying for either a change of nonimmigrant status or an extension of stay, Form I-129 is required, **not** Form I-129S. However, a copy of the LZ Blanket approval is often submitted as proof that the relationship has already been established.

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**Extension of Stay** For beneficiaries requesting an L-1 extension of stay, it is very similar to H-1B extensions of stay. The Form I-129 is used.

Remember that the time spent in the U.S. in H status is taken into consideration when you are deciding whether or not an L-1 has reached his/her maximum total stay.

- The **maximum stay** for a beneficiary in **L-1A** classification is **seven years**.
  - The **maximum stay** for a beneficiary in **L-1B** classification is **five years**.
-

## Approvals of L-1 Blanket Petitions

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### Introduction

When approving a case, you **must**:

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**),
- Indicate the dates of approval/validity dates (which will either be **three years (initial filing)** or **"INDEFINITELY" (extension)**).
- Make a notation **"BLANKET PETITION"** in the block entitled **"PARTIAL APPROVAL (explain)"**.
- Stamp the petition with your approval stamp and sign it.

**NOTE:** Make a photocopy of the list of qualifying entities that the petitioner wishes to have on the blanket petition. This will be included with the approval notice mailing.

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### Validity Dates Overview

A **new blanket petition** is approvable for **three years**. However, on a request for an extension of stay, the petition is approved (the first time and all subsequent times) **"INDEFINITELY"**.

---

### Validity Dates for Initial Admission

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (if both the requested date **and** initial FROM date on the petition has passed)

**TO:**

- 1) the date listed on the petition or
  - 2) the requested time (i.e., three years - from date of approval)
- 

### Validity Dates for Extension of Stay

**FROM - TO** - should be **"INDEFINITELY"**.

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*Continued on next page*

## Approvals of L-1 Blanket Petitions, Continued

**CLAIMS  
Update:  
Blanket  
Approval**

Follow the steps below to update an approved blanket petition in CLAIMS.

Step	Action
1	Access Adjudicate a Case and wand in or enter the receipt number of the petition.
2	Press [F10].
3	<ul style="list-style-type: none"> <li>• Select "APPROVE THE CASE"</li> <li>• Select "APPROVE - ORDER NOTICE"</li> <li>• Select the most appropriate phrase for the action you are taking on the case (<b>as outlined below</b>).</li> </ul>
4	Type in: <ul style="list-style-type: none"> <li>• The classification as LZ and</li> <li>• The validity dates (if initial blanket approval) or "INDEFINITELY."</li> </ul>
5	Select "Y" for a <b>RELEASE</b> .  By selecting "Y" for a <b>RELEASE</b> , this instructs the computer to "hold" the approval notice in the batch que and thus, no notice will be generated until a clerk releases the notice.
6	<ul style="list-style-type: none"> <li>• Complete an Adjudication Worksheet and indicate that you have a <b>RELEASE</b>.</li> <li>• State on the worksheet exactly why you have "<b>RELEASED</b>" the case. In this particular case, notate "<b>BLANKET PETITION - PLEASE SEND ATTACHED DOCUMENTS WITH APPROVAL NOTICE</b>".</li> </ul> <p>Other reasons for a <b>RELEASE</b> may include the use of DHL mailers or Amended Notice, etc.</p>

**IMPORTANT:** ALL blanket approval notices will be a release so that the clerk can attach the list of qualifying entities to the blanket approval notice.

**Routing  
Petition after  
Approval**

Following **APPROVAL**, the petition remains in the file and the file is placed on the shelf like any other approved nonimmigrant petition. Nothing needs to be sent to a consulate or embassy.

## Validity Dates for Approval; Continued

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### Starting and Ending Dates (continued)

<b>If...</b>	<b>Then starting validity date should be...</b>	<b>And ending validity date should be...</b>
Amended petitions where there was a USCIS error with the original notice	Same start date as initially approved petition.	Same expiration date as initially approved petition.
Amended petitions where there has been a change in the employment conditions	Date of approval, date requested, whichever is later.	Same expiration date as initially approved petition.

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# Approval Phrases

## CLAIMS Approval Phrases

Use the chart below to determine the appropriate phrase to use when approving an L petition.

CLAIMS #	Approval Phrase	Purpose
1	Send to selected consulate	<ul style="list-style-type: none"> <li>• Petitioner has requested consulate be notified of the approval.</li> </ul>
3	Workers Visa Exempt – to POE	<ul style="list-style-type: none"> <li>• Beneficiary is not required to have a visa [per 8 CFR Section 212.1], and</li> <li>• Petitioner has requested POE or PFI be notified of the approval.</li> </ul>
7	Class and COS approved – Other	<ul style="list-style-type: none"> <li>• Petitioner has requested a change of status for the beneficiary and</li> <li>• Both the classification and change of status are approved.</li> </ul>
10	Class approved; COS denied; consulate/sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status</li> </ul> <p><b>NOTE:</b> Update as “Y” for Release to Clerical so approval notice may be sent together with the notice denying the change of status.</p>

*Continued on next page*

## Approval Phrases, Continued

**CLAIMS  
CLAIMS  
Approval  
Phrases  
(continued)**

CLAIMS #	Approval Phrase	Purpose
11	Class approved; COS denied; POE notified; sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying POE or PFI, and</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to Clerical so approval notice may be sent together with the notice denying the change of status.</p>
12	Class and EOS approved – Other	<ul style="list-style-type: none"> <li>• Petitioner has requested an extension of stay for the beneficiary (same/same and change of employer requests), and</li> <li>• Both the classification and extension of stay are approved.</li> </ul>
13	Class approved – extension denied; send to consul	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to Clerical so approval notice may be sent together with the notice denying the extension of stay.</p>

*Continued on next page*

## Approval Phrases, Continued

**CLAIMS  
CLAIMS  
Approval  
Phrases  
(continued)**

CLAIMS #	Approval Phrase	Purpose
14	Class approved; EOS denied; send to POE	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying POE or PFI, and</li> <li>• A separate notice is prepared outlining the reasons for denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to Clerical so approval notice may be sent together with the notice denying the extension of stay.</p>
15	Concurrent employment approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is in the United States and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>
16	Change in employment conditions approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is in the United States and</li> <li>• Petition is granting approval to work that has changed with the same employer since prior authorization.</li> </ul> <p>Also for:</p> <ul style="list-style-type: none"> <li>• Amended petitions where there are changes in the employment such as location, title, etc, not where there was a service error.</li> </ul>
26	Concurrent employment approved (abroad)	<ul style="list-style-type: none"> <li>• Beneficiary is outside the United States and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>
28	Workers Visa Exempt – POE notified by Fax/Phone	<ul style="list-style-type: none"> <li>• Only used for faxing expedites to the POE or PFI, and</li> <li>• Beneficiary is not required to have a visa [per 8 CFR Section 212.1].</li> </ul>

# Approval Processing

**Petition  
Annotations**

Complete the following items when approving a Form I-129.

Item	Action
Passport name vs. Name on petition	The beneficiary's name on the petition should be exactly the same as the name appears on the beneficiary's passport. If it is not, you must change the name on the petition and in CLAIMS to reflect the beneficiary's name as it appears on the passport. All names should be run in IBIS.
IBIS and NSEERS	Perform all necessary IBIS, NSEERS, and SQ94 checks.
Annotate Classification	<ul style="list-style-type: none"> <li>• "L1A" for executive or manager.</li> <li>• "L1B" for Specialized Knowledge.</li> </ul>
Number employees	Always "1"
Validity Dates	Enter the validity dates. <i>See Validity Dates for Approval section</i>
Class Approved	Check "Classification Approved" box for all approvals.
Consulate/POE/PFI Notified	If notifying a consulate/POE/PFI: <ul style="list-style-type: none"> <li>• Check "Consulate/POE/PFI Notified" box,</li> <li>• Circle or underline which is being notified, i.e., either the consulate, the POE, or the PFI, and</li> <li>• Write the name of the consulate/POE/PFI on the blank line.</li> </ul>
Extension Granted	Check box if granting an extension of stay.
COS/Extension Granted	Check box if granting a change in classification and an extension of the beneficiary's stay.
Partial Approval	Annotate the partial approval block when denying COS or EOS.
Action Block	Stamp and sign in the action block

*Continued on next page*

## Approval Processing, Continued

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**Petition  
Annotations**  
(continued)

**NOTE:** While it is recommended that the job code or approval phrase be annotated on the face of the petition to aid officers in updating, it is not required that the job code or approval phrase be written on the petition. Only CLAIMS must reflect the correct job code and approval phrase. However, it is helpful to have such information on the petition for customer inquiries.

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*Continued on next page*

## Approval Processing, Continued

**CLAIMS  
Update:  
Approval**

Follow the steps below to update an approved blanket petition in CLAIMS.

Step	Action
1	Access Adjudicate a Case and wand in or enter the receipt number of the petition.
2	Verify information in the beneficiary screen is complete and accurate. The following information must be entered in the beneficiary screen of CLAIMS: <ul style="list-style-type: none"> <li>• I-94 number for all EOS or COS requests.</li> <li>• Country of Citizenship (COC) must be entered in Country of Birth (COB) field if petition is requesting EOS or COS.</li> </ul>
3	Press [F10].
4	<ul style="list-style-type: none"> <li>• Select "APPROVE THE CASE"</li> <li>• Select "APPROVE - ORDER NOTICE"</li> </ul>
5	Insert: <ul style="list-style-type: none"> <li>• Proper approval phrase (see <i>Approval Phrase</i> section)</li> <li>• Type of classification (L1A or L1B)</li> <li>• Validity dates</li> <li>• Consulate, POE, or PFI, if applicable</li> <li>• Job code.</li> </ul>
6	Select "N" for a PRINT or "Y" for a RELEASE.  By selecting "N" for a PRINT, the approval notice will be batch printed by IT and go out for mailing.  By selecting "Y" for a RELEASE, this instructs the computer to "hold" the approval notice in the batch queue and thus, no notice will be generated until the Clerk releases the notice.  For a RELEASE, instruct the Clerk to release the notice by annotating the Adjudications Worksheet. State on the worksheet exactly why the case has to be "RELEASED" (i.e., DHL envelope, Amended Notice, etc.).
7	Press [F4] to save changes.
8	Select "Yes" to confirm "Change Case Status".
9	Press [Esc] to return to the main screen.

# Consular/POE/PFI Notification

**General Instructions**

- All I-129 petitions requiring consular notification are now handled by the Kentucky Consular Center (KCC).
- Officers should send a duplicate copy of the I-129 petition to the KCC for **COS/EOS and consular notification** requests **only** when the petitioner has provided the second copy. Any second copy supporting documents should also be forwarded to the KCC along with the I-129 petition. Officers are not required to make a second copy for the KCC when one has not been provided.
- For I-129 petitions requiring POE or PFI notification, a duplicate copy is sent to each POE and PFI requiring notification. For POE or PFI notification, officers should make the second copy of the I-129 if one has not been provided. It is not necessary to provide copies of the supporting documents.

**Requesting Amcon Notification**

Follow the steps below when a duplicate copy has been provided requesting Amcon notification or EOS/COS, and the alien is not visa exempt:

Step	Action
1	Ensure that the EAC# is on the face of the duplicate petition going to KCC. Preferably, the EAC barcode should be placed in the lower, right-hand corner on the front of the duplicate petition
2	Indicate the name of the American consulate or embassy (Amcon) on the face of the petition and on the duplicate requesting consular notification. For EOS/COS notate the duplicate the same as the original.
3	The adjudicator's approval stamp may be photocopied on the duplicate petition being sent to the KCC.
4	Place the duplicate petition on the "I-129 Approved KCC" shelf in FCU- NOT the "Mailroom no envelopes" slot.

**FOR EXPEDITE REQUESTS TO THE KCC ONLY:**

- Place the duplicate approved petition on the "I-129 Priority Overnight" shelf in FCU.
- We will no longer fax the KCC when expediting approved I-129 petitions. Instead, the duplicate petition placed on the "I-129 Priority Overnight" shelf will be sent to the KCC via overnight delivery.

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## Consular/POE/PFI Notification, Continued

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**Requesting  
POE/PFI  
Notification**

Follow the steps below when the petitioner requests Amcon notification or EOS/COS, and the alien is not visa exempt:

Step	Action
1	Indicate the name of the POE/PFI on the face of the original and duplicate petition.
2	Put duplicate petition containing an original, signed adjudicator's approval stamp, in the appropriate box in FCU- <b>"Mailroom no envelopes."</b>

**FAX EXPEDITE REQUESTS TO POE/PFI:**

- Clerical will fax a copy of the approval notice to the POE/PFI.
- Update case as a release so clerical can fax a copy of the released approval notice to the POE/PFI.
- The duplicate petition should still be placed on the **"Mailroom no envelopes"** shelf in FCU.

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**Canadian PFIs**

The PFIs in Toronto, Ontario and Vancouver, British Columbia no longer want VSC to fax them regarding the approval of a petition.

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## Processing Procedures (RFE/Denial/Intent)

### Request for Evidence

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**Introduction** There is no specific regulatory guidance for requests for evidence to support L1 petitions. Therefore, the guidance provided by 8 CFR 103 applies.

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**Officer's Responsibility** A request for evidence must be made when the initial review of the record does not establish that all of the eligibility requirements have been met. In addition, a request for additional evidence should be made when:

- The record contains evidence of material fraud or misrepresentation, or
- The officer has knowledge of previous malafide petitions from the same petitioner.

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**Contents of an Acceptable Request for Evidence** The request for evidence should:

- Identify each of the areas of eligibility that have not been met by the petitioner, and
- Discuss what is deficient with any evidence already provided, and
- Provide options as evidence that the petitioner could provide to meet the area of eligibility.

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**Adjudication Tip** By requesting evidence to meet each area of eligibility in the same order each time a request for evidence is written, the officer can immediately identify the areas of eligibility that must be reviewed upon the response from the petitioner.

Areas of eligibility that are not mentioned in the request for evidence need not be re-adjudicated at the time of the submission of additional evidence.

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## Request for Evidence, Continued

**Standard Call-Ups** The Request for Evidence (RFE) standards are contained within the 4000-4999 series of autotext. They are available in MSWord.

Adjudicators must use Correspondence Generator to prepare and send RFEs. The folders containing I-129L general call-ups and I-129L specific call-ups will appear for an RFE.

Follow the steps below to prepare and process an RFE in CG:

Step	Action
1	Access "Correspondence Generator."
2	Wand or enter the receipt number of the case.
3	Select "RFE"
4	Select initial, additional, or initial and additional.
5	Compose the RFE
6	Print a copy of the RFE and place on the record side
7	Place file on the shelf labeled "EB T/O Shelf" in FCU.

**NOTE:** Refer to the Correspondence Generator User Guide for more information.

### CLAIMS Updating: RFE

Follow the steps below to update an RFE in CLAIMS:

Step	Action
1	Access "Adjudicate a Case".
2	Wand or enter the receipt number of the case.
3	Press [F10].
4	<ul style="list-style-type: none"><li>• Select "CASE REVIEW"</li><li>• Select "PLACE IN SUSPENSE"</li></ul>
5	Select either: <ul style="list-style-type: none"><li>• "ORDER INITIAL EVIDENCE REQUESTED NOTICE", or</li><li>• "ORDER ADDITIONAL EVIDENCE REQUESTED NOTICE", or</li><li>• "ORDER INITIAL AND ADDITIONAL EVIDENCE REQUESTED NOTICE"</li></ul>
6	Press [F4] to save changes.
7	Select "Yes" to confirm "Change Case Status".
8	Press [Esc] to return to the main screen.

## Intent to Deny

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### Introduction

This section will discuss the regulatory guidance provided for adverse decisions on L1 petitions as specified by the 8 CFR 214.2(l) regulations.

Where there is no specific regulatory provision, 8 CFR 103 provisions apply.

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### Notice of Intent to Deny

When an adverse decision is proposed on the basis of the evidence submitted by the petitioner or other information available to the Service, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial.

The petitioner may inspect and rebut the evidence and will be granted 30 days from the date of the notice in which to do so (+ 3 days if by mail). All relevant rebuttal material will be considered in making a final decision.

[See 8 CFR 214.2(l)(8)(I)]

---

### Contents of Intent to Deny

The notice of intent to deny should contain a:

- Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met,
  - Description of the specific reasons for the Service's determination that the areas of eligibility have not been met, and
  - Discussion of the most persuasive evidence that could be submitted to overcome the reasons for denial.
-

## Denial

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### General

If the petition is denied, the Service will notify the petitioner of its decision within 30 days after the date a completed petition has been filed of:

- The denial,
- The reasons for the denial, and
- The right to appeal the denial. [See 8 CFR 214.2(l)(8)(ii)]

The denial order should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met.

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### Denial of EOS/COS

In addition to requesting the classification of the beneficiary as an L1 beneficiary, petitioners frequently request an extension of stay or a change of status on behalf of their L1 beneficiaries.

A petition may be approved, but the evidence of record may reveal that the beneficiary is ineligible to extend or change his or her nonimmigrant status. In addition, the petition itself may be denied. In these instances, a separate denial notice must be prepared that addresses the ineligibility of the beneficiary for the requested change or extension of stay.

However, if the petition is to be approved, but the change or extension of status is to be denied solely due to the prior expiration of the beneficiary's status, CLAIMS contains several modified approval notices that inform the petitioner that the petition is approved, but the requested change or extension of stay is denied. In this instance, the modified approval phrase can be used and a separate denial order is not needed.

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*Continued on next page*

## Denial, Continued

**CLAIMS  
Updating:  
Denial**

Follow the steps below to update a denial in CLAIMS.

Step	Action
1	Perform all necessary IBIS, NSEERS, and SQ94 checks.
2	Access "Adjudicate a Case".
3	Wand or enter the receipt number of the case.
4	Press [F10].
5	<ul style="list-style-type: none"><li>• Select "DENY THE CASE".</li><li>• Select the most appropriate denial phrase (i.e., "ORDER DENIAL NOTICE").</li></ul>
6	Release the "SUPERVISORY HOLD" on all denial orders: <ul style="list-style-type: none"><li>• Press [ALT] and [F8] simultaneously.</li><li>• Type in your user ID number along with your four-digit password.</li></ul>
7	Press [F4] to save changes.
8	Select "Yes" to confirm "Change Case Status".
9	Press [Esc] to return to the main screen.

## I129L1B2 Denial

**Purpose**

The I129L1B2 denial is used for computer programmers, software engineers, or similar positions and is structured to address three primary deficiencies:

1. Beneficiary does not qualify in a specialized knowledge capacity.
2. U.S. position does not require a beneficiary with specialized knowledge.
3. Beneficiary is not eligible for employment at an unaffiliated employer's worksite.

**Officers must be careful to remove any of the three sections and subsections with options that are not pertinent.**

**Beneficiary Not Qualified in a Specialized Knowledge Capacity**

The first issue covered in the denial deals with beneficiary's qualifications to work in a specialized knowledge capacity. In the denial, the adjudicator will summarize the RFE, acknowledge the evidence submitted, and address the deficiencies using one or more of the 3 options below:

If beneficiary's...	And...	Then...
total employment with foreign entity is less than one year.	deficiency based solely on the amount of time the beneficiary worked for the foreign entity	address the deficiency by stating the record is insufficient to establish that the beneficiary has been employed abroad for one year in a capacity that involves specialized knowledge. Use Option 1 and delete Options 2 and 3.

*Continued on next page*

## I129L1B2 Denial, Continued

### Beneficiary Not Qualified in a Specialized Knowledge Capacity (continued)

If beneficiary's...	And...	Then...
employment abroad included training time (which does not count towards the one year in specialized knowledge capacity)	there is otherwise not one full year in a capacity that is at a high level of knowledge such as functioning as the actual designer or developer of a particular program (look for evidence as statements alone are insufficient)	<p>address the training that appears to be, for the most part, generalized and primarily on-the-job training to acquire knowledge of tools, procedures, and methodologies – especially if it was training over a long period of time as this would not be specialized. Use Option 2, and delete Options 1 and 3.</p> <p>If there is no time period given for each training program, state that no training time period was provided; and therefore, it is difficult to determine the actual time spent in a specialized knowledge capacity.</p>
employment abroad is not at the highest level.	pertinent parts of the beneficiary's experience abroad supports your analysis that the experience was less than specialized	address the duties that appear to be, for the most part, generalized and primarily of on-the-job training or experience to acquire a general knowledge of tools, procedures, and methodologies. Use Option 3 and delete Options 1 and 2.

*Continued on next page*

## I129L1B2 Denial, Continued

**U.S. Position Does Not Require Specialized Knowledge**

The **second issue** covered in the denial deals with whether or not the U.S. position requires the beneficiary to have specialized knowledge. The adjudicator will summarize the RFE and address the deficiencies using one or both of the two options below (be sure to delete that which is not applicable):

<b>If the petitioner claims...</b>	<b>And...</b>	<b>Then...</b>
the beneficiary in overseas position was responsible for developing a product unique to the petitioner	The knowledge gained is required for the proposed US duties	address whether or not: <ul style="list-style-type: none"> <li>• The petitioner provided no further information in response to the request.</li> <li>• The petitioner merely responded with the following statement:</li> <li>• The petitioner indicated that approximately ENTER AMOUNT other CHOOSE: SOFTWARE ENGINEERS, COMPUTER ANALYSTS, COMPUTER CONSULTANTS</li> </ul>
the software is proprietary	An internet search (Google) of similar jobs shows the software belongs to another company.	The officer will choose option #2 to discuss the contradictory evidence found based on the internet search.

**Unaffiliated Employer's Worksite**

The **last issue** covered in the denial is the affiliation of the employer's worksite where the beneficiary will be working. The adjudicator will summarize the RFE and address the deficiencies using the options below (be sure to delete that which is not applicable):

<b>If the petitioner claims...</b>	<b>And...</b>	<b>Then...</b>
control and supervision by the unaffiliated employer	we will not dispute the claim that the alien will be controlled and supervised by the petitioner	choose optional statement #1
control and supervision by the unaffiliated employer	record is insufficient to support the petitioner's claim regarding control and supervision	choose optional statement #2.
position is labor for hire for an unaffiliated employer	is offered by the petitioner.	choose optional statement #2.

*Continued on next page*

**I129L1B2 Denial, Continued**

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**Examples of  
Labor for Hire  
for Unaffiliated  
Employer**

Option 2 addresses labor for hire being offered to the unaffiliated employer by the petitioner. The adjudicator may describe the work to be done as stated by the petitioner or taken from the contract.

**EXAMPLE 1:**

*Satyam has been contracted by the client, Borg Warner, to provide IT services (as described in the attached support letter of May 10, 2007).*

*Borg Warner has designed an electronically controlled torque transmission unit Controller Area Network (CAN) is used for serial data transmission to and fro the ECU. The project is to implement the Diagnostic on CAN and Network layer for the diagnostic protocol as per the specifications provided. The Diagnostic on CAN is used for examining the various faulty vehicle parameters. All the diagnostic request and response to and from electronic unit are on CAN protocol and are passed through the network layer where it segmented an un-segmented. The network layer involves various timing parameters and state transition technique. CANalyzer with CAPL scripts were used to test the functionality of the above modules.*

**EXAMPLE 2:**

*The copy of the supplier agreement between the petitioner and client, Borg Warner, states the following with regards to the petitioner's authorship under the provisions of the United States Copyright Act:*

*4. Should the work performed by SUPPLIER [Satyam Computer Services Limited] for BW under this Agreement or any purchase order or the like issued by BW result in any invention or work of authorship, whether patentable, copyrightable or not, regarding any automotive component or assembly, or the manufacture or use thereof, including any software, control logic, algorithm or the like, SUPPLIER hereby assigns and shall assign to BW all right, title and interest to such invention or work of authorship and to any patents, copyrights or other intellectual property which SUPPLIER may obtain thereon. SUPPLIER will assist BW, at the request and expense of BW, in the completion and execution of all documents necessary to obtain such patents, copyrights or other intellectual property and perfect and record BW's ownership thereof. SUPPLIER agrees that any such work of authorship which can be construed to be "work for hire" under the provision of the United States Copyright Act shall be considered a "work for hire." (Underlining added)*

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**Conclusion**

The final conclusion should summarize each of the three sections of the denial that were addressed:

- Beneficiary does not qualify in a specialty knowledge capacity.
- U.S. position does not require a beneficiary with specialty knowledge.
- Beneficiary is not eligible for employment at an unaffiliated employer's worksite.

## Intent to Revoke and Revocation

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**Revocations** The director may revoke a petition at any time, even after the expiration of a petition. [See 8 CFR 214.2(l)(9)(i)]

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**Automatic Revocations** The approval of any petition is automatically revoked if the petitioner withdraws the petition. [See 8 CFR 214.2(l)(9)(ii)]

Automatic revocations may not be appealed. [See 8 CFR 214.2(l)(10)(ii)]

---

**Revocation on Notice** The director shall send to the petitioner a notice of intent to revoke the petition if he or she finds that:

- One or more entities are no longer qualifying organizations;
- The beneficiary is no longer eligible under section 101(a)(L) of the Act;
- A qualifying organization(s) violated requirements of section 101(a)(L) of the act and 8 CFR 214.2(l);
- The statement of facts contained in the petition was not true and correct, or;
- Approval of the petition involved gross error.

[See 8 CFR 214.2(l)(9)(iii)(A)]

The director shall consider all relevant evidence in deciding whether the petition should be revoked. [See 8 CFR 214.2(l)(9)(iii)(B)]

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**Contents of Intent to Revoke** The notice of intent to revoke shall contain:

- A detailed statement of the grounds for the revocation, and;
- The time period allowed for the petitioner's rebuttal (30 days + 3 if by mail).

**NOTE:** As with intents to deny, an intent to revoke notice should identify the most persuasive evidence that could be submitted to overcome the reasons for revocation. Be sure to include the specific reason for the Intent to Revoke.

[See 8 CFR 214.2(l)(9)(iii)]

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**Status of Beneficiaries** If a petition is revoked, the beneficiary is required to leave the U.S., unless the beneficiary has obtained other work authorization from the Service.

[See 8 CFR 214.2(l)(9)(iv)]

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## Appendices

### Appendix A - References

**References  
Used to Create  
SOP**

This table lists the references that were used in the creation of this SOP

Reference	Issue
Section 101(a)(15)(L) of the Act	Manager/Executive Statutes
Section 214(c)(2)(B)	Specialized Knowledge Statute
8 CFR 214.2(l)	L1 Regulations
Interpretation of Specialized Knowledge Memorandum, Dated 3/9/94	HQ Guidance on Specialized Knowledge
<u>Matter of M--</u> 8 I&N Dec. 24	Beneficiary is sole owner. That's ok.
<u>Matter of Raulin</u> 13 I&N Dec. 618	Executive Secretary; Specialized Knowledge; Approved
<u>Matter of Schick</u> 13 I&N Dec. 647	Contractual relationship between companies does not qualify for L-1 purposes
<u>Matter of Leblanc</u> 13 I&N Dec. 816	New Office
<u>Matter of Continental Grain Co.</u> 14 I&N Dec. 140	Interruption in required year of continuous employment is ok sometimes.
<u>Matter of Pozzoli</u> 14 I&N Dec. 569	L-1 alien will be paid by the foreign company. No problem.
<u>Matter of Del Mar Ben, Inc.</u> 15 I&N Dec. 5	Personal understanding between presidents of the foreign and U.S. companies, plus U.S. company's ownership of a little stock in foreign company is not satisfactory for L-1 purposes.
<u>Matter of Chartier</u> 16 I&N Dec. 284	Requirement for existence of foreign entity while L-1 alien is in the U.S. (Partially out of date)
<u>Matter of Michelin Tire Corp.</u> 17 I&N Dec. 248	Beneficiary must have the full one year of continuous experience before the L-1 petition is filed; Specialized Knowledge
<u>Matter of Aphrodite Investments</u> 17 I&N Dec. 530	Owner of a corporation can be an L-1 beneficiary, as long as he is employed.

*Continued on next page*

## Appendix A - References, Continued

<u>Matter of Penner</u> 18 I&N Dec. 49	Specialized Knowledge; gas and oil drilling rig crews. Need for U.S. entity as employer.
<u>Matter of Colley, et al</u> 18 I&N Dec. 117	Specialized Knowledge; aerial survey pilot; aerial photographer.
<u>Matter of Hughes</u> 18 I&N Dec. 289	De facto control; de jure control; affiliates; subsidiaries; ownership & control
<u>Matter of Kloeti</u> 18 I&N Dec. 295	The one year of qualifying experience must be acquired entirely outside the U.S.
<u>Matter of Siemens Medical Systems</u> 19 I&N Dec. 362	50-50 joint venture reasoning; negative control, etc.
<u>Matter of Church of Scientology</u> 19 I&N Dec. 593	Churches may use L-1 class if they meet L-1 criteria
<u>Matter of Safetran</u> Interim Dec. #3108	Time in H status counts toward maximum stay in L status

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## Appendix B - Corporate Status Websites

**Websites to  
Check  
Corporate  
Status**

The chart below lists websites that can be utilized to check into the corporate status of a petitioner.

State	Web Address
Alabama	<a href="http://www.sos.state.al.us/sosinfo/inquiry.cfm?area=Corporations">http://www.sos.state.al.us/sosinfo/inquiry.cfm?area=Corporations</a> or <a href="http://arc-sos.state.al.us/">http://arc-sos.state.al.us/</a>
Alaska	<a href="http://www.commerce.state.ak.us/occ/search1.htm">http://www.commerce.state.ak.us/occ/search1.htm</a>
Arizona	<a href="http://starpas.cc.state.az.us/scripts/cgiip.exe/WService=wsbroker1/connect.p?app=names-report.p">http://starpas.cc.state.az.us/scripts/cgiip.exe/WService=wsbroker1/connect.p?app=names-report.p</a>
Arkansas	<a href="http://www.sosweb.state.ar.us/corp_ucc.html">http://www.sosweb.state.ar.us/corp_ucc.html</a>
California	<a href="http://kepler.ss.ca.gov">http://kepler.ss.ca.gov</a>
Colorado	<a href="http://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do">http://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do</a>
Connecticut	<a href="http://www.concord-sots.ct.gov/CONCORD/online?eid=99&amp;sn-InquiryServlet">http://www.concord-sots.ct.gov/CONCORD/online?eid=99&amp;sn-InquiryServlet</a>
Delaware	<a href="https://sos-res.state.de.us/tin/GINameSearch.jsp">https://sos-res.state.de.us/tin/GINameSearch.jsp</a>
Florida	<a href="http://www.sunbiz.org/search.html">http://www.sunbiz.org/search.html</a>
Georgia	<a href="http://www.ganet.org/services/corp/individual.html">http://www.ganet.org/services/corp/individual.html</a>
Hawaii	<a href="http://hbe.ehawaii.gov/cogs/search.html;jsessionid=78A1DF12325F771853CA127FC1474021">http://hbe.ehawaii.gov/cogs/search.html;jsessionid=78A1DF12325F771853CA127FC1474021</a>
Idaho	<a href="http://www.accessidaho.org/public/sos/corp/search.html?SearchFormstep=crit">http://www.accessidaho.org/public/sos/corp/search.html?SearchFormstep=crit</a>
Illinois	<a href="http://www.cyberdriveillinois.com/departments/business_services/corp.html">http://www.cyberdriveillinois.com/departments/business_services/corp.html</a>
Indiana	<a href="https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx">https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx</a>
Iowa	<a href="http://www.sos.state.ia.us/corp/corp_search.asp">http://www.sos.state.ia.us/corp/corp_search.asp</a>
Kansas	<a href="http://www.accesskansas.org/srv-corporations/index.do">http://www.accesskansas.org/srv-corporations/index.do</a>

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## Appendix B - Corporate Status Websites, Continued

### Websites to Check Corporate Status (continued)

State	Web Address
Kentucky	<a href="http://apps.sos.ky.gov/business/obdb/(gyjomy55p0b2sni nil yc3v45)/default.aspx">http://apps.sos.ky.gov/business/obdb/(gyjomy55p0b2sni nil yc3v45)/default.aspx</a>
Louisiana	<a href="http://www.sos.louisiana.gov/app1/paygate/crping.jsp">http://www.sos.louisiana.gov/app1/paygate/crping.jsp</a>
Maine	<a href="http://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x">http://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x</a>
Maryland	<a href="http://sdatcert3.resiusa.org/ucc-charter/">http://sdatcert3.resiusa.org/ucc-charter/</a>
Massachusetts	<a href="http://corp.sec.state.ma.us/corp/corptest/corptest.asp">http://corp.sec.state.ma.us/corp/corptest/corptest.asp</a>
Michigan	<a href="http://www.cis.state.mi.us/bcs_corp/sr_corp.asp">http://www.cis.state.mi.us/bcs_corp/sr_corp.asp</a>
Minnesota	<a href="http://da.sos.state.mn.us/minnesota/corp_inquiry-find.asp?:Norder_item_type_id=10">http://da.sos.state.mn.us/minnesota/corp_inquiry-find.asp?:Norder_item_type_id=10</a>
Mississippi	<a href="http://www.sos.state.ms.us/busserv/corp/soskb/eseach.asp">http://www.sos.state.ms.us/busserv/corp/soskb/eseach.asp</a>
Missouri	<a href="https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp">https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp</a>
Montana	N/A
Ohio	<a href="http://www.sos.state.oh.us/sos/businessservices/corp.aspx?Section=104">http://www.sos.state.oh.us/sos/businessservices/corp.aspx?Section=104</a>
Oregon	<a href="http://egov.sos.state.or.us/br/pkg_web_name_srch_inq_login">http://egov.sos.state.or.us/br/pkg_web_name_srch_inq_login</a>
Nebraska	<a href="https://www.nebraska.gov/sos/corp/corptest.cgi?nav=search">https://www.nebraska.gov/sos/corp/corptest.cgi?nav=search</a>
Nevada	<a href="https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx">https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx</a>
New Hampshire	<a href="https://www.sos.nh.gov/corporate/soskb/csearch.asp">https://www.sos.nh.gov/corporate/soskb/csearch.asp</a>
New Jersey	<a href="http://www.state.nj.us/njbgs">http://www.state.nj.us/njbgs</a>
New Mexico	<a href="http://www.nmprc.state.nm.us/cii.htm">http://www.nmprc.state.nm.us/cii.htm</a>
New York	<a href="http://appsext8.dos.state.ny.us/corp_public/corptest/entity_search_entry">http://appsext8.dos.state.ny.us/corp_public/corptest/entity_search_entry</a>
North Carolina	<a href="http://www.secretary.state.nc.us/Corporations/Csearch.aspx">http://www.secretary.state.nc.us/Corporations/Csearch.aspx</a>

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## Appendix B - Corporate Status Websites, Continued

### Websites to Check Corporate Status (continued)

State	Web Address
North Dakota	N/A
Pennsylvania	<a href="http://www.corporations.state.pa.us/corp/soskb/csearch.asp?corpsNav=%7C">http://www.corporations.state.pa.us/corp/soskb/csearch.asp?corpsNav=%7C</a>
South Carolina	<a href="http://www.scsos.com/corp_search.htm">http://www.scsos.com/corp_search.htm</a>
South Dakota	<a href="http://www.state.sd.us/applications/st02corplook/ASPX/ST32Main.aspx">http://www.state.sd.us/applications/st02corplook/ASPX/ST32Main.aspx</a>
Rhode Island	<a href="http://ucc.state.ri.us/CorpSearch/CorpSearchInput.asp">http://ucc.state.ri.us/CorpSearch/CorpSearchInput.asp</a>
Tennessee	<a href="http://www.tennesseeanytime.org/soscorp/">http://www.tennesseeanytime.org/soscorp/</a>
Texas	<a href="http://ecpa.cpa.state.tx.us/coa/Index.html">http://ecpa.cpa.state.tx.us/coa/Index.html</a>
Utah	<a href="https://secure.utah.gov/bes/action/index">https://secure.utah.gov/bes/action/index</a>
Vermont	<a href="http://www.sec.state.vt.us/seek/corpbrow.htm">http://www.sec.state.vt.us/seek/corpbrow.htm</a>
Virginia	<a href="http://www.scc.virginia.gov/division/clk/diracc.htm">http://www.scc.virginia.gov/division/clk/diracc.htm</a> (Click on Clerk's Information System)
Washington	<a href="http://www.secstate.wa.gov/corps/search.aspx">http://www.secstate.wa.gov/corps/search.aspx</a>
Washington, DC	<a href="http://mblr.dc.gov/corp/lookup/index.asp">http://mblr.dc.gov/corp/lookup/index.asp</a>
West Virginia	<a href="http://www.wvsos.com/wvcorporations/">http://www.wvsos.com/wvcorporations/</a>
Wisconsin	<a href="http://www.wdfr.org/apps/cris">http://www.wdfr.org/apps/cris</a>
Wyoming	<a href="http://soswy.state.wy.us/corporat/corporat.htm">http://soswy.state.wy.us/corporat/corporat.htm</a>

## Appendix C: Memos

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### Accessing Memos

Follow the steps below to access an I-129 L Memo:

Step	Action
1	Access the VSC Intranet by double clicking on the icon.
2	Access the VSC Homepage
3.	Click on "Adjudications" under "Choose a Unit"
4	Click on "Select Memo Group" located in the center of the screen.
5	Select I-129 from the drop down menu.
6	Click on "Select an I-129 L Memo.
7	Click on the memo you need to review.

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### Important Memos

The following is a list of important memos to refer to when adjudicating I-129 L petitions:

- Interpretation of Specialized Knowledge Under the L Classification.
  - Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L1B Status
-

## Previous Revisions

**Changes Prior to Current Revision Date**

The revisions listed below represent changes that were made to this document prior to the current revision date.

Revision #	Date	Subject	Pages
1	5/29/03	Updated cover page, general, and table of contents	1-2
2	10/14/05	Reformatted/repaginated.	Throughout
3	5/16/06	<ul style="list-style-type: none"> <li>• Added E-file and G-28 information</li> <li>• Included Cite reference.</li> <li>• Clarifications added</li> <li>• Added NOTE: foreign company must continue to do business</li> <li>• Added NOTE: number of shares authorized should be in article of incorporation</li> <li>• Memo reference added</li> <li>• Clarification of validity of evidence</li> <li>• Added "or managerial executive"</li> <li>• Instruction for accessing the "Date Calendar"</li> <li>• IBIS instruction added</li> <li>• Added section pertaining to L-1 Blanket Petitions.</li> <li>• L-2 dependents may attend school without changing status.</li> </ul>	9 9, 18, 37, 101 13 14  31  43 60 71  80 83 90-94  99
4	12/27/06	Added fraud fee information.	7
5	8/10/07	Replaced FEDEX with DHL	96
6	11/8/07	Added links to websites to verify corporate status.	107-109
7	3/5/08	All prior revisions to this document have been moved to the back of this document under the "Previous Revisions" block.	110
8	3/13/08	Added a block titled, L2 Dependents. This block explains that the time spent in L2 dependent status does not count against the maximum allowable periods of stay available to the L1.	80

*Continued on next page*

## Previous Revisions, Continued

### Changes Prior to Current Revision Date (continued)

Revision #	Date	Subject	Pages
9	09/04/08	Added a block titled, Same/Same RFE. This block explains the procedure for an RFE for a petition filed for an extension of stay for the same beneficiary employed by the same petitioner.	98
10	10/31/08	Changes were made in the Updating CLAIMS section for routing POE/PFI NAFTA cases to clerical for approval and denials to be prepared by an officer.	86
		Changes were made to the validity dates for Initial Filing- New Office and a new table was added for Starting and Ending Dates for L1 Petitions.	100
		Under Requests for Evidence added a section for Standard Call-Ups and a section and table on CLAIMS Updating for RFEs.	102, 103
11	12/12/08	New Section added to Processing Procedures for Consular/POE/PFI "Cable" Notification for clarification.	98
		Statement added to "Same/Same RFEs" block pertaining to SAO sign off not being required for same/same extension for an L-1B who will be stationed primarily at a work location other than that of the petitioner.	101
		New guidance section added for the I129L1B2 denial	106-109
12	04/08/09	Added a section titled "When to File" with information and steps for G19 letter for petitions filed or approved earlier than six months before the actual need for the beneficiary's services.	12

Continued on next page

## Previous Revisions, Continued

### Changes Prior to Current Revision Date (continued)

Revision #	Date	Subject	Pages
13	06/25/10	Revised the <i>General</i> section to indicate that if the beneficiary will be in a specialized knowledge capacity and working at a location other than the petitioner's, evidence is also required that the beneficiary will be under the primary control and supervision of the petitioner and will be providing a product or service for which specialized knowledge specific to the petitioner is necessary.	10
		Revised the EXCEPTION in the <i>Outsourcing</i> section by adding the following: The L1-B worker must provide a product or service to the offsite employer for which specialized knowledge specific to the petitioner is necessary.	16
		Revised the <i>Petitioner Cites Unanticipated Circumstances</i> section to indicate that if approved, the case will be treated a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year.	82
		Added the following to the <i>Limitation of COS</i> From L1B to L1A: NOTE: A change from L1A to L1B or L1B to L1A is not a change of status. A change from one to the other with the same employer will be a change in employment and possibly an extension.	86
		Added a new section titled <i>Updating in CLAIMS</i> in the <i>NAFTA</i> chapter	88

Continued on next page

## Previous Revisions, Continued

### Changes Prior to Current Revision Date (continued)

Revision #	Date	Subject	Pages
13	06/25/10	Revised the <i>Introduction</i> section of the <i>Approval of L1 Blanket Petitions</i> chapter to indicate that the end validity date will either be 3 years (initial filing) or indefinitely (extension).	98
		Revised the <i>Same/Same RFE</i> section to include additional examples of new office extension requests where no SISO authorization is needed.	103
		Revised the <i>Validity Dates</i> section to indicate the following: If the requested beginning date of employment has gone by, officers should grant a period of one <u>full</u> year from the date of approval for new office petitions, unless the period requested was for less than one year. In this scenario only the length of time requested would be granted from the date of approval.	104
		Revised the <i>L-1 Dependents May Attend School</i> section to indicate that L-2 dependents may attend school without a COS to student status. This information is found in 8 CFR 248.3(e).	105
		Revised the <i>Contents of an Acceptable Request for Evidence</i> section to indicate that you must discuss what is deficient with any evidence already provided.	106
		Revised the <i>Standard Call-Ups</i> section to include instructions on how to prepare and process the RFE in Correspondence Generator.	107

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**L-1 Adjudications Checklist**

**L-1A / L-1B / Consulate**

**New / COS / EOS / Amend / Change**

- Petitioner \_\_\_\_\_
- G-28? Yes/No. Petitioner/attorney names/addresses \_\_\_\_\_
- VIBE: G / Y / O / R. Foreign affiliation \_\_\_\_\_, match \_\_\_\_\_
- Number of employees \_\_\_\_\_. Year established \_\_\_\_\_
- Type of business \_\_\_\_\_
- Overseas employer \_\_\_\_\_
- Employment period \_\_\_\_\_
- LIB to LIA? Yes/No. Filed 6 months prior 5 years? Yes/No.
- New office? Yes/No. New office extension? Yes/No.
- New employer. Fraud fee Yes/No/NA, public law Yes/No/NA. Signatures: \_\_\_\_\_
- Petitioner's claimed relationship to foreign co.: parent / branch / subsidiary (joint venture) / affiliate \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Articles of incorp / Meeting minutes \_\_\_\_\_  
\_\_\_\_\_  
Stocks / Stock ledger / Wire transfers \_\_\_\_\_  
\_\_\_\_\_  
Bank statements / CA notice \_\_\_\_\_  
\_\_\_\_\_  
Tax return 1120 \_\_\_\_\_  
common stock schedule (line 22b) \_\_\_\_\_  
schedule E/G \_\_\_\_\_  
Doing business \_\_\_\_\_  
\_\_\_\_\_
- Blanket petition approval \_\_\_\_\_
- Affiliates \_\_\_\_\_  
\_\_\_\_\_
- Beneficiary: F \_\_\_\_\_  
M \_\_\_\_\_  
L \_\_\_\_\_
- DOB of beneficiary \_\_\_\_\_, on passport \_\_\_\_\_  
COB/COC \_\_\_\_\_
- Passport page? Yes/No. Valid at time of filing? Yes/No.  
Same names on the petition and passport? Yes/No. Other DOBs  
\_\_\_\_\_, other names found: \_\_\_\_\_
- Part 6 export control? Yes/No. **CYBIS/TECS** \_\_\_\_\_
- ADIS alias names & other DOBs added to ROIT \_\_\_\_\_
- Beneficiary's info same in GUI? Yes/No.
- COS. Current status \_\_\_\_\_, expiration \_\_\_\_\_
- COS. In the U.S. at filing and while petition is pending \_\_\_\_\_
- Prior H/L stays? Yes/No. Previous L-1 periods(s)? Yes/No.  
Recapture? Yes/No. H/L start date \_\_\_\_\_

- Status expiration \_\_\_\_\_, petition timely filed  
(before exp.)? Yes/No. Beyond 5 / 7 -year limit? Yes/No.
- EOS/COS. Date of arrival \_\_\_\_\_, **Most recent I-94** \_\_\_\_\_, I-94 provided \_\_\_\_\_, expiration date \_\_\_\_\_
- L-1 status. Intermittent/seasonal \_\_\_\_\_, outside U.S. for 1+ year \_\_\_\_\_
- Most recent petition? Blanket / individual. Revoked? Yes/No.  
Validity period \_\_\_\_\_, First H/L petition: \_\_\_\_\_, consul notif? Yes/No.
- Job title \_\_\_\_\_
- Salary \_\_\_\_\_. On payroll? Yes/No.  
F/T \_\_\_\_\_ or P/T \_\_\_\_\_
- Org chart? Yes/No. Beneficiary on org chart? Yes/No. Job descriptions for subordinates? Yes/No. Job description for beneficiary \_\_\_\_\_  
(vague / general paraphrasing / non-qualifying duties).
- L-1A subordinates \_\_\_\_\_
- L-1B specialized knowledge \_\_\_\_\_
- Offsite work? Yes/No / Part 1 same.  
Location \_\_\_\_\_  
Vendor(s)/end-client \_\_\_\_\_  
\_\_\_\_\_
- One-year overseas employment \_\_\_\_\_
- L-2. Spouse: F/M \_\_\_\_\_  
L \_\_\_\_\_, DOB \_\_\_\_\_  
Children \_\_\_\_\_  
\_\_\_\_\_  
Child(ren) turning 21 before requested extension date? Yes/No.  
Spouse: I-94 \_\_\_\_\_, PP \_\_\_\_\_, TECS \_\_\_\_\_, marriage cert \_\_\_\_\_.  
Child: I-94 \_\_\_\_\_, PP \_\_\_\_\_, TECS \_\_\_\_\_, birth cert \_\_\_\_\_.  
Child: I-94 \_\_\_\_\_, PP \_\_\_\_\_, TECS \_\_\_\_\_, birth cert \_\_\_\_\_.  
Child: I-94 \_\_\_\_\_, PP \_\_\_\_\_, TECS \_\_\_\_\_, birth cert \_\_\_\_\_.  
I-94s/ADIS: \_\_\_\_\_
- Requested dates \_\_\_\_\_
- Approved validity dates \_\_\_\_\_
- RFE? \_\_\_\_\_. Approved \_\_\_\_\_ or denied \_\_\_\_\_.
- I-129 duplicate? Yes/No. Filing date? \_\_\_\_\_
- Final decision: VIBE 30 days \_\_\_\_\_ (O/R: 2 days \_\_\_\_\_), ADIS 15 days \_\_\_\_\_ (EOS denial, COS), SEVIS \_\_\_\_\_

L1B New/Consulate

Cont / Ext: 797 is BLANKET APPROVAL  Yes  No

Date Filed: \_\_\_\_\_ Established: \_\_\_\_\_ #of employees \_\_\_\_\_ Conducted Business?  Yes  No NEW

US Employer: \_\_\_\_\_  Parent  Subsidiary  Affiliate   
 Branch  
 Foreign Employer: \_\_\_\_\_  Parent  Subsidiary  Affiliate   
 Branch  
 Global Ultimate: \_\_\_\_\_

Taxes:  Yes  No Form: \_\_\_\_\_ Year: \_\_\_\_\_ Sched E: \_\_\_\_\_ Sched K: \_\_\_\_\_ Sched L: \_\_\_\_\_

Annual Report:  Yes  No Year: \_\_\_\_\_ Lists US Employer?  Yes  No Lists Foreign Employer?  Yes  No  
 10-K:  Yes  No Year: \_\_\_\_\_ Lists US Employer?  Yes  No Lists Foreign Employer?  Yes  No

Date: \_\_\_\_\_ Articles \_\_\_\_\_  
 Date: \_\_\_\_\_ Minutes \_\_\_\_\_  
 Date: \_\_\_\_\_ CA Notice \_\_\_\_\_  
 Date: \_\_\_\_\_ Stock # \_\_\_\_\_

OFFICE:  Yes  No

Type of Business: \_\_\_\_\_  
 Bene: \_\_\_\_\_

Other Companies in same Type of Business?  Yes  No  
 Number of years working with Company: \_\_\_\_\_

**Does Bene have Specialized Knowledge:** Claims S.K. of proprietary product, process, procedure?  Yes  No  
 Product, Process, Procedure: \_\_\_\_\_ Bene Developed?  Yes  No, who developed  
 it? \_\_\_\_\_  
 Used by others?  Yes  No Installed or In-Place at other companies?  Yes  No  
**Experience/Employment:** Number of years working on or with product, process, procedure? \_\_\_\_\_  
 Have others worked or work with same product, process, procedure?  Yes  No  
**Training:** Duration of each course? \_\_\_\_\_ # of employees in each course: \_\_\_\_\_  
 Who conducted training? \_\_\_\_\_ Do all employees receive same or similar training?  
 \_\_\_\_\_  
 Can employees receive same training?  Yes  No

**Foreign position:** \_\_\_\_\_ **Salary:** \_\_\_\_\_ **Occupation(OOH):** \_\_\_\_\_

**Duties** (list verbs: oversee, develop, support, customize, market, coordinate, create, ensure, facilitate, assist):  
\_\_\_\_\_

**Common to occupation?**  Yes  No **Surpassing the usual or exceptional?**  Yes  No **Highly developed or complex?**  Yes  No

**Foreign Org Chart:** Higher level?  Yes  No Alongside mngrs/excs?  Yes  No **Similar positions listed?**  Yes  No  
No Duties of others submitted?  Yes  No **Duties similar to Bene?**  Yes  No

**U.S. position:** \_\_\_\_\_ **Salary:** \_\_\_\_\_ **Occupation(OOH):** \_\_\_\_\_

**Duties** (list verbs: oversee, develop, support, customize, market, coordinate, create, ensure, facilitate, assist):  
\_\_\_\_\_

**Common to occupation?**  Yes  No **Surpassing the usual or exceptional?**  Yes  No **Highly developed or complex?**  Yes  No

**U.S. Org Chart:** Higher level?  Yes  No **Alongside mngrs/excs?**  Yes  No **Similar positions listed?**  Yes  No

Date Filed: \_\_\_\_\_

Number of employees: \_\_\_\_\_

Combined Annual U.S. Sales: \_\_\_\_\_

U.S. Company: \_\_\_\_\_

Global Ultimate Company: \_\_\_\_\_

Foreign Company: \_\_\_\_\_

## **LZ**

1) Must meet all of the following;

- a. Are the petitioner and each of its parents, branches, subsidiaries, and affiliates engaged in commercial trade or services?
- b. Does the petitioner have an office in the US that has been doing business for 1 year or more?
- c. Does the petitioner have 3 or more domestic and foreign branches, subsidiaries, or affiliates?

2) Must meet 1 of the following;

- a. Has the petitioner obtained approvals for at least 10 "L" managers, executives, or specialized knowledge Petitions during the previous 12 months?
- b. Does the petitioner have US subsidiaries or affiliates with combined annual sales of at least \$25 million?
- c. Does the petitioner have a US work force of at least 1,000 employees?

- **Classification "L"** - Approved I-129 "L" petitions will be received from the Ports of Entry (POE) and Pre-Flight Inspections (PFI) for processing. These cases will be received through government mail and **will not** have fees attached, as it will have been fee receipted at the POE/PFI. Please follow below matrix to determine how to proceed.

Please contact SCOPS **before** rejecting any petitions forwarded from a POE or PFI.

**Step 1:**

If...	Then...
An admission stamp (with or without a signature) and no approval stamp is present	<ul style="list-style-type: none"> <li>• Check TECS (IO-95) or ATS-p for secondary inspection results. If results are current, this is evidence of admittance from POE/PFI. In addition, an officer may check ADIS for admission on that day.</li> <li>• Place a copy of the TECS secondary inspection screenshot on the non-record side of the file.</li> <li>• If no current results, route to adjudications Attn: I-129L Senior.</li> </ul>
A denial stamp (with or without a signature) and no approval stamp is present	<ul style="list-style-type: none"> <li>• Check TECS (IO-95) or ATS-p for secondary inspection results. Signature is not required if TECS IO-95 recommendation to deny.</li> <li>• These should not have live checks on them, should you receive one, route to CRU instead of ADJ.</li> </ul>
No validity dates or incorrect validity dates on petition	<ul style="list-style-type: none"> <li>• Check ADIS for validity period entered by POE/PFI upon admittance. Enter these dates on petition.</li> <li>• Place a copy of the TECS secondary inspection screenshot on the non-record side of the file.</li> </ul>
If fees collected were insufficient	<ul style="list-style-type: none"> <li>• Update as approved in CLAIMS.</li> <li>• Adjudications will issue a Notice of Intent to Revoke (NOIR).</li> </ul>
If fees collected were in excess	<ul style="list-style-type: none"> <li>• Update as approved in CLAIMS.</li> <li>• Initiate fee refund as per normal procedure as these funds were collected at POE/PFI on behalf of USCIS.</li> </ul>
Any other scenario is encountered	<ul style="list-style-type: none"> <li>• Route to adjudications Attn: I-129L Senior.</li> </ul>

**Step 2:**

Verify that all applicable fees were collected by POE/PFI. All NAFTA Form I-129 petitions cases require the base fee.

# Employment Abroad (Cont.)

This is an important distinction to make as an employee may:

- have worked abroad for a continuous year (or more) fulfilling the first requirement, but
- still fail to qualify for the L-1.

Because the employee may have worked in a qualifying position (managerial, executive or involving specialized knowledge) for less than one year.



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# Employment Abroad (Cont.)

Both previous foreign employment and the prospective U.S. employment:

- must be in one of the qualifying capacities, but
- capacity does not have to be the same.

Example:

- The one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for a manager or executive position in the United States.

Exception:

- A beneficiary coming to open or work at a new office in a managerial or executive capacity must have previous foreign employment experience in a managerial or executive capacity.



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# Employment Abroad (Cont.)

Periods spent in the United States during the requisite period of the alien's employment with a foreign qualifying entity;

- in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof, and
- brief trips to the United States for business or pleasure,

Shall not be interruptive of the one year of continuous employment abroad.

However, such periods shall not be counted toward fulfillment of the "1 in 3" requirement.



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# QUESTIONS?



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# U.S. Citizenship and Immigration Services

L-1

Intracompany Transferee

August 2014

# Resources

- Immigration and Nationality Act (INA) §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- Title 8, Code of Federal Regulations (8 CFR) §§ 214.1, 214.2(l), and 248
- Multiple Policy Memos
- Form I-129 with L Supplement and Form I-129S



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# Definition

An L-1 Intracompany Transferee is an alien who,

- Within three years preceding the time of his/her application for admission, or in certain cases, preceding the time of filing the L-1 petition, into the United States,
- Has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof, and
- Seeks to enter the United States temporarily in order to continue to render his/her services to the same employer or a subsidiary or affiliate thereof
- In a capacity that is managerial, executive, or involves specialized knowledge.



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# L Classifications

- LZ is the designation given to a blanket petition.
- L-1A classification is for managers and executives.
- L-1B classification is for specialized knowledge aliens.
- L-2 classification is for dependents (dependents use Form I-539).



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# L Classifications (Cont.)

- Normally, when a beneficiary is admitted to the United States he/she is granted “L-1” classification on his/her Form I-94.
- L-1A and L-1B are merely CLAIMS designations used by USCIS for tracking whether the beneficiary was approved as a manager/executive or specialized knowledge employee.
- Seeing the L-1A or L-1B designation on an I-94 or visa helps USCIS determine the type of position the beneficiary was admitted for.



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# Filing Options

- File a Form I-129 petition at a designated Service Center (SC).
- Currently the California Service Center (CSC) and Vermont Service Center (VSC) are the two service centers that process Individual and Blanket Form I-129 petitions.
- Certain L-1 Petitioners may file using a Blanket L (LZ) processing option.
- The blanket L processing option involves filing a Blanket LZ petition on a Form I-129 with USCIS in order to qualify the Petitioner and filing a subsequent Form I-129S with either USCIS, DOS, or CBP in order to qualify the beneficiary.



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# Filing Options (Cont.)

- Canadian Citizens:
  - When a petitioner is filing for a Canadian citizen seeking to classify that individual as an L-1 nonimmigrant, the Form I-129 or I-129S may be filed with CBP at a Port Of Entry (POE) on the Canadian-U.S. Land Border or a Pre-Clearance/Pre-Flight Inspection (PFI) facility in Canada.
- Visa Exempt beneficiaries:
  - In the case of Canadian, and certain beneficiaries residing in the Caribbean, the Form I-129 or I-129S may be filed with a Service Center.
  - If approved, they may seek admission to the United States without a visa by use of the approval notice.



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# Form I-129 Fees

## Fees for a Form I-129 are:

- \$325.00. - Filing Fee
- \$500.00. - Fraud Prevention and Detection Fee
- \$2,250.00. - Public Law 111-230 Fee

## Fee for a Form I-129S:

- No filing fee for a Form I-129S, Nonimmigrant Petition Based on Blanket L Petition.



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# Fraud Prevention and Detection Fee

This fee is required from Petitioners seeking:

- Initial approval of a Form I-129 or Form I-129S L-1 petition
- Change of status to L-1
- New concurrent L-1 employment
- No exceptions or waivers available to the Fraud Prevention and Detection Fee for any individual filings.
- Not required for a Blanket (LZ) petition.



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# Public Law 111-230 Fee

- Effective 8/13/2010
- Employers are required to pay \$2,250 if:
  - L-1 petition was filed prior to October 1, 2015,
  - The employer is required to pay the \$500 Fraud Prevention and Detection fee,
  - They employ 50 or more employees in the United States, and
  - More than 50% of these employees are in H-1B or L-1 status.



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# 30 DAY Processing Time

- USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a petition has been accepted as properly filed.
- Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS.
- If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.



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# Individual L-1 Petition Requirements

- A qualifying organization is filing the petition.
- Beneficiary was employed abroad for one continuous year within prior three years in a managerial or executive capacity, or in a position that involves specialized knowledge.
- Proposed employment in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.
- Note that in the case of a *New Office*, an office that has been doing business for less than one year, there are different requirements.



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# Dependents

- Dependents of L-1 principal aliens, if otherwise admissible, and are coming for the purpose of accompanying or following to join the L-1 principal, may be granted L-2 status. Their periods of stay depend on the period granted to the L-1 principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.



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# Extension of Stay Requirements

- Alien must be in the United States at the time of filing the petition and extension of stay (EOS) request.
- Alien does not have to be physically in the United States while the EOS application is pending.
- Departure while the EOS application is pending is not treated as abandonment of the application.
- Must be maintaining status.
- Must be admissible.
- The petition must be filed prior to the expiration of the alien's stay unless the failure to file before the previously authorized period of stay expired has been excused per 8 CFR § 214.1(c)(4).



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# Change of Status Requirements

- Unlike EOS, alien must be physically in the United States.
- Departure is treated as abandonment of the change of status application.
- Must be maintaining status.
- The petition must be filed prior to the expiration of the alien's stay unless the failure to file before the previously authorized period of stay expired has been excused per 8 C.F.R. § 248.1(b).



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# Validity Periods

- Initial Approval – Three Years
- Extension Of Stay (EOS) – Two Years
- New Office – One Year



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# Limitations on Stay

- 7 YEARS – Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- 5 YEARS - Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.

Recapture time is permitted. Time spent by an L-1 outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.

- L-1s are not eligible for extensions beyond the maximum period of stay when a labor certification or I-140 is filed on their behalf or remains pending for a specific period of time (unlike certain H-1B aliens under AC21).



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# Limitations on Stay (Cont.)

- Time in an H status other than H-4 (i.e., admission under INA § 101(a)(15)(H)) is counted toward the maximum validity period of stay allowed as an L-1. Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.
- Example – An alien is admitted as an H-4 (dependent of an H-1B). After 2 years, the alien finds a job and a petition is filed changing his status to H-1B. The alien remains an H-1B for five years. The employer then files a petition for COS of the employee to L-1A. If approved, the alien can be granted a 2 year validity period in L-1A status, as the maximum amount of time allowed in L-1A status is 7 years. (5 years as H-1B + 2 years as L-1A = 7 years. The period as an H-4 does not count toward the 7 year limitation on stay.)



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# Limitations on Stay (Cont.)

- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before another L-1 petition may be approved on his/her behalf.
- **Exceptions:** There is no limitation on period of stay for:  
(1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and (2) Aliens who reside abroad and commute to the United States to engage in part time employment.



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**QUESTIONS?**

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# U.S. Citizenship and Immigration Services

## L-1 New Office

August 2014

# New Office

A 'new office' is an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

An organization seeking to establish a new business entity in the United States must meet different requirements than an established organization.



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# L-1A New Office Requirements

The petitioner is not required to establish that the U.S. entity is doing business.

However the petitioner must submit evidence establishing that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted in the case of L-1A new office petitions) and the proposed employment will involve executive or managerial authority over the new operation; AND

(C) The intended U.S. operation will within one year of the approval of the petition support an executive or managerial position.



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# L-1A New Office Requirements (cont.)

The petitioner must show it will support an executive or managerial position within one year by submitting:

- The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND
- The size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND
- The organizational structure of the foreign entity.



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# L-1B New Office Requirements

- With the filing of the initial new office petition, the petitioner does not have to establish that the U.S. entity is doing business.
- However, the petitioner must submit evidence that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The business entity in the United States is or will be a qualifying organization; and
  - (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.



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# Examples of New Office Evidence

- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.
- Evidence of the amount of the U.S. investment and ability of the foreign entity to pay the start-up expenses of the U.S. office including the beneficiary's salary.



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# More Examples of New Office Evidence

- Evidence of a qualifying relationship (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business (business plan).



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# Dormant Business

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a 'new office.' There is no rule of thumb as to whether to treat such a company as a 'new office;' this is a fact-based question.
- The petitioner must establish the requirements of a new office.
- The petition may only be granted up to one year initially.



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# New Office Extension Evidence

To extend after the first year, the petitioner must submit:

- (A) Evidence that the U.S. and foreign entities are still qualifying organizations (that a qualifying relationship exists);
- (B) Evidence that the U.S. entity has been *doing business* for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);



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# New Office Extension Evidence (cont.)

(D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees (such evidence may include organizational chart and quarterly tax returns); and

(E) Evidence of the financial status of the U.S. operation.



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# Reminders

In adjudicating a request for extension of a petition initially granted for a new office, remember:

- The petitioner established eligibility under different standards
- An L-1A would have been granted the initial year to set up the new office, hire a staff, and commence doing business.
- An L-1B would have been granted one year to set up the business and commence doing business.



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# Reminders (cont.)

- An officer in his/her discretion may approve a petition where the new office is in fact progressing and close to reaching the goals stated in the initial new office petition.
- If you have an extension petition and the previous approval was for one year, you *may* have a new office extension, but you must review the petition and the facts presented in the extension of stay (EOS) to make that determination.

Note: After one year, the "new office" will be treated as an existing company; there are no extensions of "new office" status beyond the initial one year.



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# Reminders (cont.)

- At the conclusion of one year, evidence should be submitted showing that the “new office” has been and is continuing to be “doing business” since the original petition was approved, and
- For an L-1A, that the beneficiary is now and will be performing tasks of a primarily managerial or executive nature.



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# U.S. Citizenship and Immigration Services

L-1

Qualifying Organization

August 2014

# Qualifying Organization Defined

- Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
  1. Has a qualifying relationship between the U.S. entity and a foreign entity.
  2. Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.
  3. Otherwise meets the requirements of INA § 101(a)(15)(L).



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# Qualifying Organization

- The petitioner can be either a foreign entity or a U.S. entity.
- However, the petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country.
- The qualifying relationships are:
  - Parent. 8 CFR § 214.2(l)(1)(ii)(I)
  - Branch. 8 CFR § 214.2(l)(1)(ii)(J)
  - Subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)
  - Affiliate. 8 CFR § 214.2(l)(1)(ii)(L)



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# Parent

Parent - means a firm, corporation, or other legal entity which has subsidiaries.

A parent is an entity which owns and controls the operations of a subsidiary by any of the following:

1. Owning either directly or indirectly more than 50% of the subsidiary and controlling the subsidiary;
2. Owning either directly or indirectly half of the subsidiary and controlling the subsidiary;
3. Owning either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary; OR
4. Owning either directly or indirectly less than 50% of the entity but in fact controlling the entity.



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# Branch

Branch - means an operating division or office of the same organization housed in a different location.

- An “arm” of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign entity operating in the United States.



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# Subsidiary

Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent.

It must be established that the parent:

1. Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary;
2. Owns either directly or indirectly half the subsidiary and controls the subsidiary;
3. Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary; OR
4. Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary.



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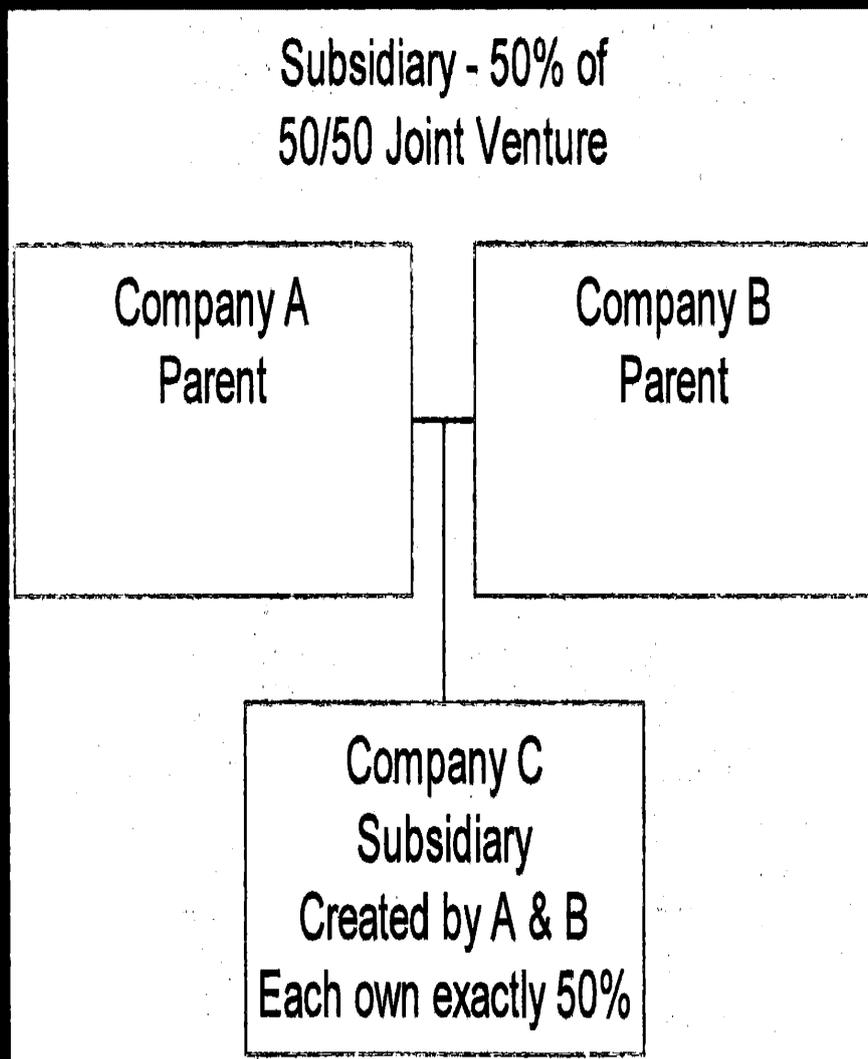
# Joint Venture as Subsidiary

- Joint venture: Parent owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity.
- Neither parent has sole control. They must agree to all controlled aspects. Thus, both have control. This is called “negative control.”



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# *Joint Venture – Two Parent Companies own and control 50% of a subsidiary*



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# Joint Ventures – Two Parent Companies Own a Subsidiary

- An alien L-1 cannot be transferred through the joint venture.
- In the above chart:
  - An alien can be transferred from A to C or C to A.
  - An alien can be transferred from B to C or C to B.
  - But, an alien cannot be transferred from A to B or B to A.



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# Affiliate

There are three types of affiliate relationships described in the regulations.

Affiliate means:

1. One of two subsidiaries both of which are owned and controlled by the same parent or individual, OR
2. One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, OR



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# Affiliate

3. In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.



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# A Note About Subsidiaries and Affiliates

Think of this as a word for a company that is owned by another company. An affiliate might be a company that is owned by a parent company. For example, if a parent company owns 50% of Subsidiary A and 25% of Subsidiary B, Subsidiary A would be an affiliate.

Parent Co.

Usually owns at least 50% of subsidiary

Subsidiary A

Subsidiary B

Subsidiary C



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# Affiliates – Multiple Owners

One of two legal entities owned and controlled by the:

- Same group of individuals.
- Each individual owning and controlling approximately the same share or proportion of each entity.



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## *Example – Multiple Owners of Qualified Affiliates*

The two entities below are owned by individuals A, B, C, and D in the percentages indicated.

These entities are affiliates as they are both owned by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity.

Example 1

A	B	C	D
---	---	---	---

25%	25%	24%	26%
-----	-----	-----	-----

A	B	C	D
---	---	---	---

26%	24%	25%	25%
-----	-----	-----	-----



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# Affiliate – Partnership Accounting

A partnership that is organized in the United States to provide accounting services along with managerial, and/or consulting services will be considered an affiliate of a foreign partnership (or similar organization) that provides accounting services in another country if:

1. They both market their services under the same internationally recognized name,
2. Under the agreement with a worldwide coordinating organization that is owned by member accounting firms,
3. Both the U.S. accounting partnership and the foreign accounting partnership are members of the worldwide coordinating organization.



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# Example of Accounting Service Affiliates

- *Accounting Partners, NYC* is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.
- *Accounting Partners, UK* is a partnership that is organized in Great Britain and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. It markets its accounting services under the same internationally recognized name as Accounting Partners, NYC, and is a member of the same worldwide coordinating organization.



# Example of Accounting Service Affiliates

- *Accounting Partners, NYC* and *Accounting Partners, UK* are considered to be affiliates even though they do not exert control on each other or actually own any significant portion of each other because:
  - They both offer accounting services under the same internationally recognized name, and
  - Are members of the same worldwide coordinating organization.



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# Well Known Examples

(not an exhaustive list)

- Pricewaterhouse Coopers L.L.P.
- Ernest & Young L.L.P.
- KPMG L.L.P.
- Deloitte & Touche L.L.P.



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# Franchise Agreements

- Franchise agreements are entered into to allow one independently owned company to license the name and/or product of another independently owned company.
- Franchise agreements generally do not create a qualifying relationship between the franchisor and the franchisee.
- Franchise agreements must be read carefully to determine whether or not they establish ownership and control.



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# Issues Regarding Ownership and Control

- Ownership and control can be two ways:

1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.

2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of another entity yet still controls the other entity through some other mechanism.



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# Evidence of Ownership

- Evidence of ownership must be submitted to establish the qualifying relationship.
- The petitioner may submit evidence that it feels is appropriate. The best evidence would be financial documentation showing that the foreign entity and the U.S. entity are financially linked. The submission of stock certificates with evidence of payment for that stock or shares is a common way that petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated on the stock.



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# Preferred Stock vs. Common Stock

Companies generally issue two types of stock; common stock and preferred stock.

- Preferred stock is highly customizable and varied—for example, preferred equity may have no voting rights at all or it may have super voting rights (100:1) depending on how the owners of an entity want to tailor their capital structure. For L-1 purposes, preferred stockholders may not be able to show control.
- Common stockholders usually have the right to vote on most matters related to management and control of an entity.



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# Stock Certificates

Generally, a stock certificate includes the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the individual or entity seeking to establish control. (The total number of stock issued cannot exceed the amount authorized in the company's articles of incorporation.)



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# Stock Ledger

Comparison to a stock ledger may help to determine the validity of a stock certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or “cancellation” of stock.
- Purchase amount of stock (capital contribution).



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# Examples of Financial Evidence

Evidence of the stock purchase or capital contribution (if stock has no par value or company is anything other than a corporation, i.e. partnership or LLC) may include:

- Wire transfer receipts
- Copies of cancelled checks
- Deposit receipts
- Bank statements

This list is not all-inclusive.

- Established companies may submit an annual report, Form 10-K, or federal income tax returns.



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# Issues Regarding Ownership and Control

- Ownership of a subsidiary need not be majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982).
- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on behalf of a stockholder of a corporation.



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# Non-Profit Organizations

- Non-profit organizations may, under certain circumstances, be considered qualifying organizations for L-1 purposes.
- Also frequently referred to as “tax-exempt” organizations or “501(c)(4) tax exempt” organizations, although there are other types of tax exempt organizations.
- Non-profit organizations may also become incorporated.
- Generally, L-1 petitioning non-profit organizations are incorporated and have a branch or affiliate abroad.



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# Non-Profit Organizations (cont.)

To establish a qualifying relationship, a non-profit organization may submit the following:

- A copy of the bylaws of the entity.
- A list of the entity's board of directors.
- Documentation showing who or what entity has the right to possession of, or the right to direct the disposition of, the assets of the entity.
- Documentation showing who or what entity provides the full or primary source of funding to the entity.
- Any documentation regarding the right to appoint a director or board member of the entity.

This list is not all-inclusive.



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# Doing Business

- Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.
  
- *International trade is not required in order to establish that the entity is doing business.*



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# Doing Business (cont.)

- Generally, both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee. Exceptions for new offices apply.



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# Doing Business (cont.)

- The presence of a dormant corporation, an agent or a holding company (not active) abroad is not sufficient for establishing a qualifying relationship for L-1 purposes.
- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.



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# Doing Business (cont.)

- Example:
  - Beneficiary was a manager for Company A in Italy.
  - Beneficiary transfers to the United States to work for affiliated Company B.
  - After beneficiary transfers, Company A ceases to do business and becomes a dormant company.
  - Company B still has foreign affiliate, Company C, that is doing business in Japan.
- Therefore, the petition remains valid.



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# U.S. Citizenship and Immigration Services

**L-1**

**MANAGERIAL and**

**EXECUTIVE CAPACITY**

August 2014

1

# General Things To Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf.
- The beneficiary's wages may be paid by the foreign qualifying organization.



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# Managerial Capacity Defined

An assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function or a component of the organization;
- 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;
- Has the authority to hire and fire, or recommend those actions as well as other personnel actions, such as promotion and leave authorization if employees are supervised. If no employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and



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# Managerial Capacity Defined (cont.)

- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The beneficiary may qualify as a "personnel manager" or a "function manager."



# Executive Capacity Defined

An assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher level executives, the board of directors or stockholders of the organization.



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# A Combination of Criteria

A job description that uses partial definitions of both manager and executive does not qualify for an L-1A.

An employee's job description must fulfill:

- all four (4) criteria of the definition of manager

OR

- all four (4) criteria of the definition of executive



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# Executives vs. Managers

In general:

- An executive may sign a company document, legally binding a corporation. A manager cannot, by signature, legally bind the corporation.
- Executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc. A manager is likely to make decisions more narrowly applicable to the department, division, component or function under his/her supervision.



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# L-1 Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The organizational chart for the U.S. office.
- Quarterly wage reports or pay records for the employees in the U.S. office.
- Copies of performance appraisals or periodic reviews completed by the beneficiary for any subordinate employees.



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# Staffing Levels as a Factor

Officers should take into account the reasonable needs of the organization.

In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not only at the number of employees to be managed, but at the duties of such employees (e.g., are these professionals, supervisors, etc.).

The employees managed or supervised, as opposed to the beneficiary, must perform the majority of the everyday, non-qualifying duties.



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# Top Heavy Organizations

- If the organizational structure of a company indicates the majority of its employees are listed with managerial or executives titles that appear inconsistent with the nature of the business in the United States or abroad, the petition may require an explanation or additional documentation to establish eligibility.
- The supporting documentation should show who is performing the non-qualifying, operational duties of the business.
- Although the beneficiary has a managerial job title, he or she may be performing primarily non-managerial duties.



# Managing a Function

- The organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the day-to-day duties of the function.
- Normally does not directly manage workers (NOTE: Even if the position does not meet the criteria for being a “functional manager,” the position may still qualify as an L-1A personnel manager)
- The petitioner must demonstrate that the function is essential.



# Questions?



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# L-1B Specialized Knowledge Classification



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# Topics to be Covered

- Definitions of specialized knowledge L-1B (statutory and regulatory)
- L-1B visa classification and characteristics and evaluation
- Distinction between advanced and special knowledge
- Current USCIS policy on L-1B interpretation
- Factors for Consideration



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# Definitions

INA 214(c)(2)(B): An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien:

- has a special knowledge
  - of the company's product and its application in international markets or
- has an advanced level of knowledge
  - of the processes and procedures of the company.



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# Definitions (Cont.)

8 C.F.R. § 214.2(l)(1)(ii)(D): Specialized knowledge means:

- special knowledge possessed by an individual
  - of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, OR
- an advanced level of knowledge or expertise
  - in the organization's processes and procedures.



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# L-1B Visa Classification (Cont.)

- The plain language of the statute and regulations pertinent to L-1B is broad.
- USCIS has considerable discretion in determining who possesses specialized knowledge.
- The statutory and regulatory definition of specialized knowledge is interpreted broadly to account for
  - different and evolving business practices, and
  - to further the primary goal of facilitating the reliable transfer for employees of multi-national companies.
  - At the same time, the L-1B classification is neither intended to be a “catch-all” category, nor is it intended to have a negative impact on U.S. workers.



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# Possible Characteristics of Specialized Knowledge (Cont.)

- The following list of possible characteristics is not intended to be all-inclusive; a petitioner may be able to demonstrate eligibility as an L-1B in other ways as well.
- Knowledge that contributes to U.S. employer's knowledge of foreign operating conditions
- Knowledge gained from working abroad in a capacity that has enhanced U.S. employer's productivity or competitiveness
- Knowledge that normally can only be gained through prior experience with the employer



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# Possible Characteristics of Specialized Knowledge (Cont.)

- Knowledge of a product or process which cannot easily be transferred to another individual
- Knowledge of a product or process not generally known in the United States
- No requirement for a labor market test, i.e., a test whether there are similarly situated U.S. workers available to fill the position



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# Evaluation

- Even if the beneficiary meets the requirements to establish a bona fide prospective employer in the United States

# Evaluation of Specialized Knowledge

Criteria that should be evaluated:

1. Employment abroad was in a position that was managerial, executive, or involved specialized knowledge for the requisite one continuous year;
2. Whether the beneficiary possesses specialized knowledge; and
3. Whether the beneficiary's position in the United States involves specialized knowledge.



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# Distinction Between Advanced and Special Knowledge

USCIS policy memos on specialized knowledge make a distinction between these two standards.

## Advanced Knowledge

- Beneficiary has an advanced level of knowledge or expertise in the petitioner's processes and procedures.
- Advanced knowledge of the petitioner's processes or procedures does not have to be narrowly held within the petitioning company. Such knowledge, however, must be of such a nature that it could not be imparted to others, if hired for the same position as that of the beneficiary, without resulting in significant economic disruption to the operations of the petitioning entity.



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# Distinction Between Advanced and Special Knowledge (Cont.)

- "Advanced knowledge" can have been obtained while also working for a company or person other than the petitioner or foreign qualifying entity. For example, more than one company may be involved in the development of highly sophisticated medical equipment. The expertise gained while working for another company, if sufficiently sophisticated, could also be needed by the petitioning company, and hiring that person might not result in any significant disruption of the petitioning company's operations.



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# Distinction Between Advanced and Special Knowledge (Cont.)

## Special Knowledge

- Beneficiary has special knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests and its application in the international markets.
- Special knowledge of the petitioner's product, service, equipment, etc. can be obtained outside the petitioning company if the product is sufficiently specialized.



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# Distinction Between Advanced and Special Knowledge (Cont.)

## Special Knowledge

- Special knowledge would be that which relates to the petitioning company's product, etc. and its application in international markets, but need not be "proprietary" or "unique" insofar as such knowledge could have been gained by the beneficiary while working elsewhere. Such knowledge could have been obtained, for example, by virtue of having worked with the product in question while employed for a client of the petitioning company.
- An L-1B petition may never be denied simply because the beneficiary's knowledge is neither "proprietary" nor "unique."



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# Policy Memoranda on Specialized Knowledge

The following legacy INS and USCIS memoranda provide guidance as to the proper interpretation of the term specialized knowledge:

- James A. Puleo, Acting Exec. Assoc. Comm., INS, "Interpretation of Specialized Knowledge," (March 9, 1994)
- Fujie Ohata, Assoc. Comm., INS, "Interpretation of Specialized Knowledge" (Dec. 20, 2002)
- Fujie Ohata, Director, Service Center Operations, USCIS, "Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L-1B Status," (Sept. 9, 2004)
- William R. Yates, "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004 (July 28, 2005)

➔ While these memoranda do not have the force of law (e.g., statute or regulations), *they represent USCIS policy and are binding, until further notice, on officers.*



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# 1994 Puleo Memo on L-1B SK

- Use common dictionary definitions of the terms “advanced” or “special”
- Different from that generally found in the particular industry
- Uncommon compared to that generally found in the particular industry
- Highly developed or complex
- Need not be proprietary or unique
- Need not be narrowly held within the company
- No U.S. labor market test



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# Puleo Memo – The Common Definitions

The common dictionary definitions of the terms “special” and “advanced;” the definitions cited in the Puleo memo are:

- **Advanced:** (1) “highly developed or complex; at a higher level than others,” OR

(2) “beyond elementary or introductory; greatly developed beyond the initial stage.”

- **Special:** (1) “surpassing the usual, distinct among others of a kind,” OR;

(2) “distinguished by some unusual quality; uncommon; noteworthy.”



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# Puleo Memo (Cont.)

- Officers adjudicating petitions involving SK must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized. [Note: Although not specifically addressed in the Puleo Memo, an adjudicator may find that a beneficiary possesses 'specialized knowledge,' depending on the facts presented, in a case where the entire industry is so highly 'specialized' that all or most of the persons employed within the industry possess knowledge similar to that possessed by the beneficiary.]
- Examples of general knowledge may include:
  - CPR training
  - First Aid training
- These could be regarded as general knowledge in any industry. However, general knowledge will differ from case to case depending on the specific industry.



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# 2002 Ohata Memo on L-1B SK

Reminds adjudicators to follow the 1994 Puleo Memo:

- Knowledge that is different from that generally found in the particular industry [NOTE: Although not specifically addressed in the 2002 Ohata Memo, in limited cases, some industries may be so sophisticated in nature that most if not all persons employed in that industry can be found to have SK]
- Knowledge need not be proprietary or unique
- Knowledge of company product must be noteworthy or uncommon
- Knowledge of company processes and procedures must be advanced, but need not be narrowly held throughout the company or, depending on the industry, the industry itself.
- Examination of the alien's knowledge only, no comparison to other company employees
- No U.S. labor market test



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# 2004 Ohata Memo on Chefs and Specialty Cooks

- Provides guidance on adjudication of L-1B petitions specific to chefs and specialty cooks
- Clarifies that chefs and specialty cooks are generally not specialized knowledge positions
- Reiterates that the degree to which an alien's knowledge contributes to the uninterrupted operation of the U.S. business is an important factor
- Reiterates that the knowledge would be difficult to impart to another individual without significant economic inconvenience
- Knowledge that is complex and not generally found in that particular industry



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# 2004 Ohata Memo (cont.)

- The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge of a product or process is:
  - (i) uncommon or not generally shared by practitioners in the alien's field of endeavor;
  - (ii) not easily or rapidly acquired, but is gained from significant experience or in-house training, and
  - (iii) is necessary and relevant to the successful conduct of the employer's operations.



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# Factors for Consideration

Depending upon the particular petition, the following factors may have some relevance in determining if the beneficiary possesses specialized knowledge:

- The impact on the petitioning company's operations if the company is not able to transfer the beneficiary and is required to hire and train another person to perform the duties.
- Depending upon the nature of a company and the product or service in question, a company may have an entire division or department in which all the employees possess special knowledge. This would not preclude a beneficiary from demonstrating eligibility for L-1B classification.
- There may be a limited number of individuals who have advanced knowledge of a specific process that is used in an industry in which a very limited number of companies are engaged, and the beneficiary may have acquired the knowledge while employed at one of these companies.



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# Factors for Consideration (Cont.)

- Neither the statute nor the regulations require that the beneficiary have invented, owned the rights to, or developed the petitioning company's product.
- Specialized knowledge is not limited only to knowledge obtained through training, but it can also be gained by experience. Many jobs involve on-the-job training or education, and it is the nature of the work performed, and the level of expertise and knowledge required in performing that work, that is relevant. The fact that the beneficiary received some training or took coursework while employed, without more, generally will not suffice to establish that the beneficiary possesses the requisite specialized knowledge.
- Even if such specialized knowledge may be gained on the job, the petitioner must still show that the beneficiary had the requisite one continuous year of experience abroad as a manager, executive, or specialized knowledge employee. For this reason, time spent during the "learning curve" before the worker reached the requisite level of special or advanced knowledge would not count towards meeting the one-year requirement.



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# Petitioner's Statements L-1B

- The weight and probative value officers should give to statements by a petitioner that a beneficiary possesses specialized knowledge will vary from case to case, and will depend on, among other things, their degree of detail and whether the statement is supported by other evidence in the file.
- You should be alert to the fact that some petitioners may base their claim that a beneficiary has specialized knowledge by merely reiterating the definition of specialized knowledge provided in the regulations, without providing evidentiary support to back up such an assertion.
- It is important for the petitioner to fully explain and describe the beneficiary's position of specialized knowledge.



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# L-1B Evidence

- The petition should be accompanied by a description detailing how the beneficiary's knowledge of the petitioner's equipment, system, product, technique, or service is "special" and/or "advanced."
- It is just as important, however, for the petitioner to include evidence to support those assertions.
- No specific type of evidence is required under the regulations, but remember, as always, the burden of proof to demonstrate eligibility by a preponderance of the evidence remains with the petitioner.



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# L-1B Evidence (Cont.)

- Some common types of documentary evidence that may be submitted at the petitioner's option to demonstrate the requisite specialized knowledge might include:
  - Training records
  - Detailed descriptions of knowledge held by beneficiary
  - Patents held by the company obtained as a result of the beneficiary's work
  - Organizational charts showing the beneficiary's current position in the organization
  - Published material by or about the beneficiary
  - High level of remuneration compared to others
  - Human resources records
  - A description of the impact on petitioner's business if L-1B not granted



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# L-1 Visa Reform Act of 2004

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for L-1 classification if –



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# L-1 Visa Reform Act of 2004 (Cont.)

(i) the alien will be controlled and supervised principally by such unaffiliated employer; OR

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.



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# L-1B Off-Site Employment – What the Law Means

If an L-1B alien is stationed primarily at the worksite of an employer other than the petitioner:

- Control and supervision must be with the petitioner.

- Cannot be “labor for hire.”

- The beneficiary’s work (the specialized knowledge) must be specific to the petitioner’s product or service.

- The off-site work must require specialized knowledge of the petitioner’s product or service.



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# 2005 Yates Memo on L-1 Visa Reform Act of 2004

- L-1 Visa Reform Act of 2004 applies to all petitions filed on or after June 6, 2005 and makes an alien ineligible for an L-1B specialized knowledge visa classification, even if he or she has specialize knowledge, when:
  - The beneficiary will be stationed primarily at the worksite of an employer other than the petitioner or an affiliate, branch, subsidiary, or parent and either of the following occurs:
    - (a) the beneficiary will be principally under the control and supervision of the unaffiliated employer, or
    - (b) the placement at the non-affiliated worksite is essentially an arrangement to provide labor for hire for the unaffiliated employer



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# Conversion from L-1B to L-1A

- Aliens who were *initially admitted* as specialized knowledge aliens may change to a manager or executive and stay for seven years, BUT, the alien must have been employed as a manager/executive for at least six months (of the five-year stay) before applying to change from L-1B to L-1A and extend his/her stay, and the change must have been approved by USCIS.
- This means the change from L-1B to L-1A must have taken place and been approved at least six months before the expiration of the alien's five-year stay. If not, and if the alien is otherwise qualified, approve the change to L-1A status for only the balance of the five years.
- If an amended petition was filed notifying USCIS of the L-1B being promoted to a managerial position before the 4½-year mark, then this also satisfies the requirement.



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# Specialized Knowledge Professionals

- 8 C.F.R. § 214.2(l)(4)(ii) indicates that only managers, executive and specialized knowledge *professionals* may be admitted as L-1 under a *blanket petition* process.
- A specialized knowledge professional is an alien with specialized knowledge and who is a member of the professions as defined in INA § 101(a)(32).



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# QUESTIONS?



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# U.S. Citizenship and Immigration Services

Blanket (LZ)  
Petitions

# Blanket Petition Authority

INA § 214(c)(2)(A) requires that USCIS provide a blanket L-1 petition procedure in order to expedite the processing of L-1 beneficiaries.



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# Blanket Petition Process

In order to bring a qualified L-1 beneficiary into the United States under the blanket petition process, two-steps must occur:

- Petitioner must file Form I-129 and L Supplement requesting Blanket Petition Approval.
- Petitioner will file Form I-129 OR Form I-129S on behalf of a beneficiary with a copy of the petitioner's valid blanket petition approval notice.

Note: There is no limit to the number of Form I-129S petitions that can be filed based on an approved blanket petition.



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# Filing a Blanket Petition

Only a U.S. petitioner may file Form I-129 requesting blanket petition approval on behalf of:

- Itself
- Parent
- Branches
- Subsidiaries
- Affiliates

NOTE: The U.S. petitioner will be the single representative for all the qualifying organizations requested on the petition.



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# Requirements

The blanket petition must include:

- A list of all the organizations the petitioner indicates are eligible to transfer L-1 beneficiaries under the blanket petition
- Documentation regarding the qualifying relationships between the organizations
- Documentation establishing that the listed organizations are doing business



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# Requirements (cont.)

The petitioner only needs to establish that the organizations listed:

- Have a qualifying relationship with each other
- Are doing business as required by regulation



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# Blanket L Petitions VS. Individual L Petitions

Unlike in the case of the filing of an individual L petition, in filing a blanket petition:

- NO evidence pertaining to a specific beneficiary will be submitted.
- Petitioner is NOT seeking classification of a beneficiary as an L-1 nonimmigrant with the filing of a blanket petition.



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# Eligibility Requirements

In order to establish eligibility, the U.S. petitioner must show that it:

- And each of listed organizations are engaged in commercial trade or services; AND
- Has an office in the United States that has been doing business for one year or more; AND
- Has three or more domestic and foreign branches, subsidiaries, or affiliates; AND



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# Eligibility Requirements (cont.)

The petitioner and the other qualifying organizations have:

- Obtained approval of at least ten L-1 petitions during the previous 12 months; OR
- Have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; OR
- Have a U.S. work force of at least 1,000 employees.



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# Blanket Validity Period

- Three years – Initial approval period.
- Indefinitely – On extension requests organization may be approved indefinitely if all other requirements are met.
- The extension must be filed timely or the company's blanket petition status will become invalid, and the petitioner must then wait three years to file a new blanket petition. See 8 C.F.R. § 214.2(l)(13)(iii)(A).
- A blanket petition may be approved in part or in whole.



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# Blanket Validity Period (cont.)

Petitioner must file an amended petition with fee if:

- There are changes in approved relationships.
- There are additional qualifying organizations.
- An amended petition may only be approved for the validity period of the petition it amends.
- A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely.



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# Form I-129S

The Form I-129S petition is for an employer to classify an employee as an L-1 nonimmigrant intracompany transferee under a blanket L petition (LZ) approval.

A qualifying organization listed on a blanket petition approval notice may file a Form I-129S on behalf of an employee.

The Petitioner bears the burden of establishing:

- The beneficiary meets the 1 in 3 rule;
- The beneficiary was employed in a qualifying position; and
- The beneficiary will be employed in the United States in a managerial or executive capacity or as a specialized knowledge *professional*.

If filing the I-129S on behalf of a specialized knowledge employee, the position in the United States must be a 'profession' as defined by INA § 101(a)(32) and the beneficiary must be a professional.

- However, there is no requirement that the beneficiary have been employed abroad in a position as a specialized knowledge professional.



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# Form I-129S (cont.)

The petitioner does not need to establish that it is a qualifying organization as this has already been established with the approval of the blanket petition.

The petitioner only needs to submit a copy of the blanket petition approval notice with the Form I-129S filing documenting that the petitioner and the beneficiary's foreign employer are listed on the blanket petition approval notice.



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# Benefits of a Blanket Petition

A beneficiary admitted under a blanket petition may:

- Be reassigned to any organization listed on the blanket petition approval notice if the beneficiary will be performing virtually the same job duties.
- A new petition with USCIS is not required.
- Such a reassignment will not be considered a violation of status.



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# Form I-129S Fees

- No filing fee required.
- However, the petitioner must submit the \$500 fraud fee and the \$2,250 P.L. 111-230 fee if required.
- It is the responsibility of the agency (i.e., CBP, the U.S. Department of State, or USCIS) with which the Form I-129S is filed to collect all required fees and properly adjudicate the I-129S.



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# Form I-129S Validity Period

Initial Approval – three years

Extension Approval – two year increments

- Petition may be approved even if the blanket petition will expire before the three year validity period.
- Petitioner may use the initial approved blanket petition of three years or an indefinite approved blanket petition to file Form I-129S for the beneficiary.



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# Where to File

U.S. Petitioner may file Form I-129S with:

- 1) U.S. Department of State (DOS)
- 2) USCIS service center
- 3) CBP - Port Of Entry (POE) on the Canadian-U.S. land border
- 4) CBP - Pre-clearance/Pre-flight station (PFI) in Canada



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# Beneficiary Outside the U.S.

Form I-129S should be submitted directly to the U.S. Embassy or Consulate with the beneficiary's L-1 visa application;

- If the beneficiary is abroad, and
- Requires a visa to seek admission to the United States.

If approved, the beneficiary may use the L-1 visa and apply to CBP for admission to the United States. CBP will not 'readjudicate' the Form I-129S petition, but may verify that the facts stated therein are true and accurate.



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# Beneficiary in the U.S.

If the beneficiary is in the United States and chooses to request change of nonimmigrant status (COS) or an extension of stay (EOS), the petitioner will:

- File Form I-129S along with a Form I-129, Petition for a Nonimmigrant Worker, at the USCIS service center that approved the blanket L petition.



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# Beneficiary is a Citizen of Canada

Petitioners seeking L-1 classification for citizens of Canada under the North American Free Trade Agreement (NAFTA) may have the beneficiary present Form I-129S to an officer of U.S. Customs and Border Protection (CBP) in conjunction with an application for admission.

This may be done at either:

- A “Class A” port of entry located on the U.S.-Canada land border; or
- A U.S. pre-clearance/pre-flight inspection station in Canada.



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# Form I-129S Filed with DOS

Form I-129S filed with DOS:

- Are not tracked in CLAIMS and there will be no I-797 approval notice available.

## Approval

- Beneficiary will be given complete copy of the Form I-129S.
- CBP will collect a copy at the U.S. POE and forward it to USCIS for interfiling in the blanket petition.

## Denial

- Petitioner may subsequently file an individual Form I-129 L-1 petition for that beneficiary at the appropriate Service Center.
- Petition must contain evidence of the consulate denial including the date of denial, the office where it was denied and the reasons for denial.

## Extensions

- Beneficiary may return to a Consulate and file a new Form I-129S with an L-1 visa renewal instead of filing an EOS petition with USCIS.

NOTE: Officers may need to review the L-1 visa issued to the beneficiary, CCD, and/or ADIS if additional information is required.



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# Form I-129S Filed with USCIS

Form I-129S filed USCIS Service Center.

- Petitioner must show the beneficiary qualifies for the L classification requested.

## Approval

- Beneficiary may apply to CBP or admission to the United States with the approval notice.
- A copy of the I-129S is retained for USCIS records and the other copy is forwarded to the petitioner.



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# Form I-129S Filed with CBP

Form I-129S filed with CBP at a POE or PFI:

- Only if the beneficiary is a citizen of Canada
- Submitted in conjunction with the beneficiary's application for admission to the United States as an L-1.

## Approval

- A copy will be forwarded to the USCIS service center for data entry into CLAIMS, generating a Form I-797 or Form I-292 notice, and interfiling into the blanket petition.

## Denial

- If CBP cannot issue a formal denial order, CBP will forward the Form I-129S, with a recommendation for denial, to USCIS Service Center for final action.

## Extensions

- Beneficiary may return to a POE on the U.S.-Canadian land border or a PFI inside Canada and file a new Form I-129S seeking readmission as an L-1 nonimmigrant instead of filing an EOS petition with USCIS.



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# QUESTIONS?



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**From:** Brunner, Mark A  
**To:** Baltaretu, Cristina G; Shuttle, Peter J; Tamanaha, Emisa T; Potter, Eric D; Mossey, Joanna J; Steinhour, Wallace W  
**Cc:** Larose, Ronald W; Sweeney, Shelly A  
**Subject:** I-129 Ls forwarded from CBP  
**Date:** Tuesday, November 04, 2014 10:26:00 AM  
**Attachments:** [CBP Fee NOIR.docx](#)  
[CBP L Processing Chart.docx](#)

---

Service Centers,

Attached are documents to address the change in process for approved CBP I-129 L petitions that are forwarded to the service centers for updating in CLAIMS. These files will no longer be returned to the Port of Entry (POE) if pertinent information or fees are missing or incorrect.

The documents are as follows:

**CBP L Processing Chart** – This document provides guidance as to the process for addressing approved CBP L petitions that are missing information.

**Notice of Intent to Revoke (NOIR)** - This document is to be used in the case of insufficient fees being collected at the POE.

In lieu of the initially proposed memo to file to acknowledge the error in the file, a copy of the TECS screenprint will be placed in the non-records side of the file.

These documents are effective immediately. As noted in the mailroom SOP, please contact SCOPS **before** rejecting any petitions forwarded from a POE or PFI.

If you have any comments or questions, please contact Shelly Sweeney or Mark Brunner.

Thanks,

Mark A. Brunner  
Adjudications Officer (Policy)  
SCOPS BEST  
202-272-0975



# U.S. Citizenship and Immigration Services

L-1 Foreign  
Employment  
Requirement

# Employment Abroad

DHS regulations state that a qualifying employee must have:

- At least one continuous year of full-time employment abroad in a capacity that was
  - managerial,
  - executive, or
  - involved specialized knowledge
- With a qualifying organization within the three years preceding the filing of the petition or application for admission.
- This is often internally referred to as the “1 in 3” rule.



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# Employment Abroad (Cont.)

The “1 in 3” rule is a combination of two separate regulatory requirements, which require two different but related analyses.

The Petitioner must submit sufficient documentation establishing that:

- The beneficiary was employed abroad for one continuous year out of the three years prior to filing of the petition or application for admission.
- For the entire one year of continuous employment abroad, the beneficiary was performing in a capacity that was managerial, executive, or required specialized knowledge.



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# Employment Abroad (Cont.)

This is an important distinction to make as an employee may:

- have worked abroad for a continuous year (or more) fulfilling the first requirement, but
- still fail to qualify for the L-1.

Because the employee may have worked in a qualifying position (managerial, executive or involving specialized knowledge) for less than one year.



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# Employment Abroad (Cont.)

Both previous foreign employment and the prospective U.S. employment:

- must be in one of the qualifying capacities, but
- capacity does not have to be the same.

## Example:

- The one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for a manager or executive position in the United States.

## Exception:

- A beneficiary coming to open or work at a new office in a managerial or executive capacity must have previous foreign employment experience in a managerial or executive capacity.



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# Employment Abroad (Cont.)

Periods spent in the United States during the requisite period of the alien's employment with a foreign qualifying entity;

- in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof, and
- brief trips to the United States for business or pleasure,

Shall not be interruptive of the one year of continuous employment abroad.

However, such periods shall not be counted toward fulfillment of the "1 in 3" requirement.



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# U.S. Citizenship and Immigration Services

L-1

Intracompany Transferee

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# Resources

- Immigration and Nationality Act (INA) §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- Title 8, Code of Federal Regulations (8 CFR) §§ 214.1, 214.2(l), and 248
- Multiple Policy Memos
- Form I-129 with L Supplement and Form I-129S



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# L Classifications (Cont.)

- Normally, when a beneficiary is admitted to the United States he/she is granted “L-1” classification on his/her Form I-94.
- L-1A and L-1B are merely CLAIMS designations used by USCIS for tracking whether the beneficiary was approved as a manager/executive or specialized knowledge employee.
- Seeing the L-1A or L-1B designation on an I-94 or visa helps USCIS determine the type of position the beneficiary was admitted for.



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# Filing Options

- File a Form I-129 petition at a designated Service Center (SC).
- Currently the California Service Center (CSC) and Vermont Service Center (VSC) are the two service centers that process Individual and Blanket Form I-129 petitions.
- Certain L-1 Petitioners may file using a Blanket L (LZ) processing option.
- The blanket L processing option involves filing a Blanket LZ petition on a Form I-129 with USCIS in order to qualify the Petitioner and filing a subsequent Form I-129S with either USCIS, DOS, or CBP in order to qualify the beneficiary.



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# Filing Options (Cont.)

- Canadian Citizens:
  - When a petitioner is filing for a Canadian citizen seeking to classify that individual as an L-1 nonimmigrant, the Form I-129 or I-129S may be filed with CBP at a Port Of Entry (POE) on the Canadian-U.S. Land Border or a Pre-Clearance/Pre-Flight Inspection (PFI) facility in Canada.
- Visa Exempt beneficiaries:
  - In the case of Canadian, and certain beneficiaries residing in the Caribbean, the Form I-129 or I-129S may be filed with a Service Center.
  - If approved, they may seek admission to the United States without a visa by use of the approval notice.



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# Form I-129 Fees

## Fees for a Form I-129 are:

- \$325.00. - Filing Fee
- \$500.00. - Fraud Prevention and Detection Fee
- \$2,250.00. - Public Law 111-230 Fee

## Fee for a Form I-129S:

- No filing fee for a Form I-129S, Nonimmigrant Petition Based on Blanket L Petition.



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# Fraud Prevention and Detection Fee

This fee is required from Petitioners seeking:

- Initial approval of a Form I-129 or Form I-129S L-1 petition
- Change of status to L-1
- New concurrent L-1 employment
- No exceptions or waivers available to the Fraud Prevention and Detection Fee for any individual filings.
- Not required for a Blanket (LZ) petition.



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# Public Law 111-230 Fee

- Effective 8/13/2010
- Employers are required to pay \$2,250 if:
  - L-1 petition was filed prior to October 1, 2015,
  - The employer is required to pay the \$500 Fraud Prevention and Detection fee,
  - They employ 50 or more employees in the United States, and
  - More than 50% of these employees are in H-1B or L-1 status.



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# 30 DAY Processing Time

- USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a petition has been accepted as properly filed.
- Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS.
- If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.



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# Individual L-1 Petition Requirements

- A qualifying organization is filing the petition.
- Beneficiary was employed abroad for one continuous year within prior three years in a managerial or executive capacity, or in a position that involves specialized knowledge.
- Proposed employment in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.
- Note that in the case of a *New Office*, an office that has been doing business for less than one year, there are different requirements.



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# Dependents

- Dependents of L-1 principal aliens, if otherwise admissible, and are coming for the purpose of accompanying or following to join the L-1 principal, may be granted L-2 status. Their periods of stay depend on the period granted to the L-1 principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.



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# Extension of Stay Requirements

- Alien must be in the United States at the time of filing the petition and extension of stay (EOS) request.
- Alien does not have to be physically in the United States while the EOS application is pending.
- Departure while the EOS application is pending is not treated as abandonment of the application.
- Must be maintaining status.
- Must be admissible.
- The petition must be filed prior to the expiration of the alien's stay unless the failure to file before the previously authorized period of stay expired has been excused per 8 CFR § 214.1(c)(4).



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# Change of Status Requirements

- Unlike EOS, alien must be physically in the United States.
- Departure is treated as abandonment of the change of status application.
- Must be maintaining status.
- The petition must be filed prior to the expiration of the alien's stay unless the failure to file before the previously authorized period of stay expired has been excused per 8 C.F.R. § 248.1(b).



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# Validity Periods

- Initial Approval – Three Years
- Extension Of Stay (EOS) – Two Years
- New Office – One Year



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# Limitations on Stay

- 7 YEARS – Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- 5 YEARS - Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.

Recapture time is permitted. Time spent by an L-1 outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.

- L-1s are not eligible for extensions beyond the maximum period of stay when a labor certification or I-140 is filed on their behalf or remains pending for a specific period of time (unlike certain H-1B aliens under AC21).



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# Limitations on Stay (Cont.)

- Time in an H status other than H-4 (i.e., admission under INA § 101(a)(15)(H)) is counted toward the maximum validity period of stay allowed as an L-1. Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.
- Example – An alien is admitted as an H-4 (dependent of an H-1B). After 2 years, the alien finds a job and a petition is filed changing his status to H-1B. The alien remains an H-1B for five years. The employer then files a petition for COS of the employee to L-1A. If approved, the alien can be granted a 2 year validity period in L-1A status, as the maximum amount of time allowed in L-1A status is 7 years. (5 years as H-1B + 2 years as L-1A = 7 years. The period as an H-4 does not count toward the 7 year limitation on stay.)



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# Limitations on Stay (Cont.)

- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before another L-1 petition may be approved on his/her behalf.
- **Exceptions:** There is no limitation on period of stay for:  
(1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and (2) Aliens who reside abroad and commute to the United States to engage in part time employment.



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**QUESTIONS?**

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# U.S. Citizenship and Immigration Services

## L-1 New Office

August 2014

# New Office

A 'new office' is an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

An organization seeking to establish a new business entity in the United States must meet different requirements than an established organization.



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# L-1A New Office Requirements

The petitioner is not required to establish that the U.S. entity is doing business.

However the petitioner must submit evidence establishing that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted in the case of L-1A new office petitions) and the proposed employment will involve executive or managerial authority over the new operation; AND

(C) The intended U.S. operation will within one year of the approval of the petition support an executive or managerial position.



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# L-1A New Office Requirements (cont.)

The petitioner must show it will support an executive or managerial position within one year by submitting:

- The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND
- The size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND
- The organizational structure of the foreign entity.



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# L-1B New Office Requirements

- With the filing of the initial new office petition, the petitioner does not have to establish that the U.S. entity is doing business.
- However, the petitioner must submit evidence that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The business entity in the United States is or will be a qualifying organization; and
  - (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.



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# Examples of New Office Evidence

- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.
- Evidence of the amount of the U.S. investment and ability of the foreign entity to pay the start-up expenses of the U.S. office including the beneficiary's salary.



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# More Examples of New Office Evidence

- Evidence of a qualifying relationship (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business (business plan).



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# Dormant Business

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a 'new office.' There is no rule of thumb as to whether to treat such a company as a 'new office;' this is a fact-based question.
- The petitioner must establish the requirements of a new office.
- The petition may only be granted up to one year initially.



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# New Office Extension Evidence

To extend after the first year, the petitioner must submit:

(A) Evidence that the U.S. and foreign entities are still qualifying organizations (that a qualifying relationship exists);

(B) Evidence that the U.S. entity has been *doing business* for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);



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# New Office Extension Evidence (cont.)

- (D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees (such evidence may include organizational chart and quarterly tax returns); and
- (E) Evidence of the financial status of the U.S. operation.



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# Reminders

In adjudicating a request for extension of a petition initially granted for a new office, remember:

- The petitioner established eligibility under different standards
- An L-1A would have been granted the initial year to set up the new office, hire a staff, and commence doing business.
- An L-1B would have been granted one year to set up the business and commence doing business.



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# Reminders (cont.)

- An officer in his/her discretion may approve a petition where the new office is in fact progressing and close to reaching the goals stated in the initial new office petition.
- If you have an extension petition and the previous approval was for one year, you *may* have a new office extension, but you must review the petition and the facts presented in the extension of stay (EOS) to make that determination.

Note: After one year, the "new office" will be treated as an existing company; there are no extensions of "new office" status beyond the initial one year.



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# Reminders (cont.)

- At the conclusion of one year, evidence should be submitted showing that the “new office” has been and is continuing to be “doing business” since the original petition was approved, and
- For an L-1A, that the beneficiary is now and will be performing tasks of a primarily managerial or executive nature.



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# QUESTIONS?



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# U.S. Citizenship and Immigration Services

L-1

Qualifying Organization

August 2014

# Qualifying Organization Defined

- Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
  1. Has a qualifying relationship between the U.S. entity and a foreign entity.
  2. Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.
  3. Otherwise meets the requirements of INA § 101(a)(15)(L).



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# Qualifying Organization

- The petitioner can be either a foreign entity or a U.S. entity.
- However, the petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country.
- The qualifying relationships are:
  - Parent. 8 CFR § 214.2(l)(1)(ii)(I)
  - Branch. 8 CFR § 214.2(l)(1)(ii)(J)
  - Subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)
  - Affiliate. 8 CFR § 214.2(l)(1)(ii)(L)



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# Parent

Parent - means a firm, corporation, or other legal entity which has subsidiaries.

A parent is an entity which owns and controls the operations of a subsidiary by any of the following:

1. Owning either directly or indirectly more than 50% of the subsidiary and controlling the subsidiary;
2. Owning either directly or indirectly half of the subsidiary and controlling the subsidiary;
3. Owning either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary; OR
4. Owning either directly or indirectly less than 50% of the entity but in fact controlling the entity.



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# Branch

Branch - means an operating division or office of the same organization housed in a different location.

- An “arm” of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign entity operating in the United States.



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# Subsidiary

Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent.

It must be established that the parent:

1. Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary;
2. Owns either directly or indirectly half the subsidiary and controls the subsidiary;
3. Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary; OR
4. Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary.



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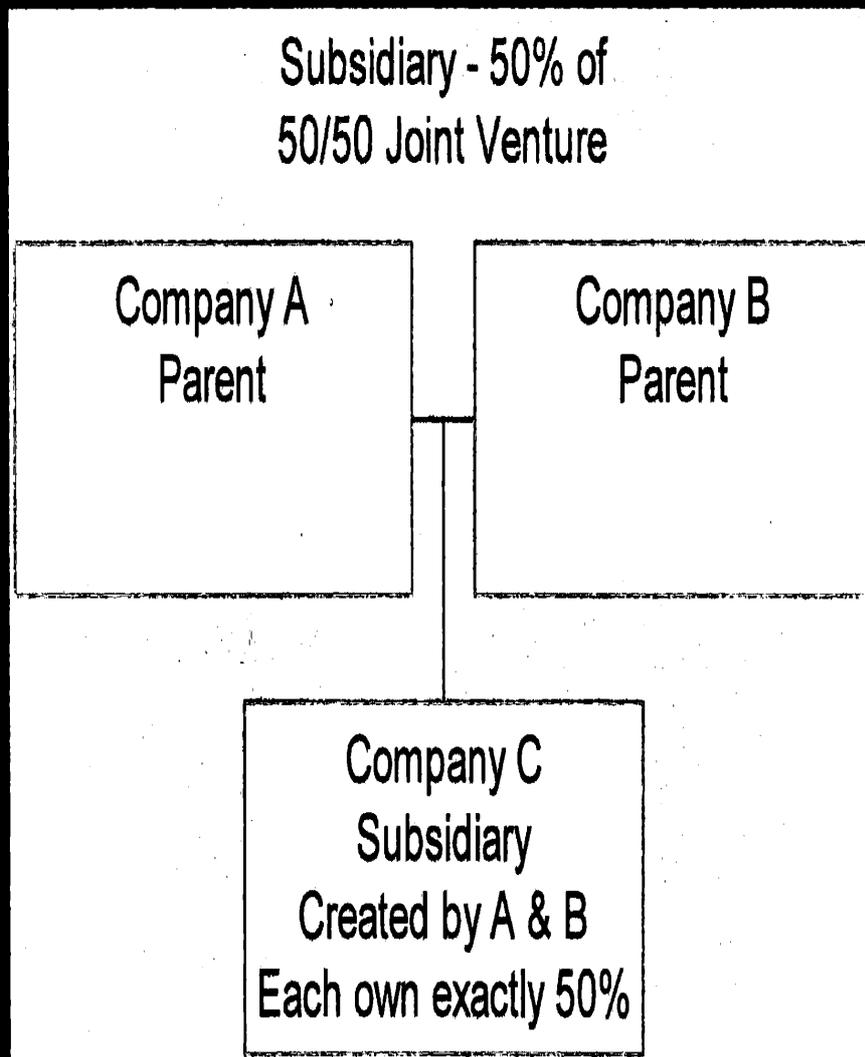
# Joint Venture as Subsidiary

- Joint venture: Parent owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity.
- Neither parent has sole control. They must agree to all controlled aspects. Thus, both have control. This is called “negative control.”



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# *Joint Venture – Two Parent Companies own and control 50% of a subsidiary*



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# Joint Ventures – Two Parent Companies Own a Subsidiary

- An alien L-1 cannot be transferred through the joint venture.
- In the above chart:
  - An alien can be transferred from A to C or C to A.
  - An alien can be transferred from B to C or C to B.
  - But, an alien cannot be transferred from A to B or B to A.



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# Affiliate

There are three types of affiliate relationships described in the regulations.

Affiliate means:

1. One of two subsidiaries both of which are owned and controlled by the same parent or individual, OR
2. One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, OR



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# Affiliate

3. In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.



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# A Note About Subsidiaries and Affiliates

When you are a company that is owned by another company, you are a subsidiary. A company that is not owned by another company is called an affiliate. Some companies are both a subsidiary and an affiliate.

Parent Co.

Usually owns at least 50% of subsidiary

Subsidiary A

Subsidiary B

Subsidiary C



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# Affiliates – Multiple Owners

One of two legal entities owned and controlled by the:

- Same group of individuals.
- Each individual owning and controlling approximately the same share or proportion of each entity.



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## *Example – Multiple Owners of Qualified Affiliates*

The two entities below are owned by individuals A, B, C, and D in the percentages indicated.

These entities are affiliates as they are both owned by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity.

*Example*

A	B	C	D
25%	25%	24%	26%

A	B	C	D
26%	24%	25%	25%



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# Affiliate – Partnership Accounting

A partnership that is organized in the United States to provide accounting services along with managerial, and/or consulting services will be considered an affiliate of a foreign partnership (or similar organization) that provides accounting services in another country if:

1. They both market their services under the same internationally recognized name,
2. Under the agreement with a worldwide coordinating organization that is owned by member accounting firms,
3. Both the U.S. accounting partnership and the foreign accounting partnership are members of the worldwide coordinating organization.



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# Example of Accounting Service Affiliates

- *Accounting Partners, NYC* is a partnership that is organized in the United States and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. The worldwide organization is owned and controlled by member accounting firms.
- *Accounting Partners, UK* is a partnership that is organized in Great Britain and provides accounting and management consulting services under an agreement with a worldwide coordinating organization. It markets its accounting services under the same internationally recognized name as Accounting Partners, NYC, and is a member of the same worldwide coordinating organization.



# Example of Accounting Service Affiliates

- *Accounting Partners, NYC* and *Accounting Partners, UK* are considered to be affiliates even though they do not exert control on each other or actually own any significant portion of each other because:
  - They both offer accounting services under the same internationally recognized name, and
  - Are members of the same worldwide coordinating organization.



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# Well Known Examples

(not an exhaustive list)

- Pricewaterhouse Coopers L.L.P.
- Ernest & Young L.L.P.
- KPMG L.L.P.
- Deloitte & Touche L.L.P.



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# Franchise Agreements

- Franchise agreements are entered into to allow one independently owned company to license the name and/or product of another independently owned company.
- Franchise agreements generally do not create a qualifying relationship between the franchisor and the franchisee.
- Franchise agreements must be read carefully to determine whether or not they establish ownership and control.



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# Issues Regarding Ownership and Control

Ownership and control can be two ways:

1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.

2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of another entity yet still controls the other entity through some other mechanism.



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# Evidence of Ownership

- Evidence of ownership must be submitted to establish the qualifying relationship.
- The petitioner may submit evidence that it feels is appropriate. The best evidence would be financial documentation showing that the foreign entity and the U.S. entity are financially linked. The submission of stock certificates with evidence of payment for that stock or shares is a common way that petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated on the stock.



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# Preferred Stock vs. Common Stock

Companies generally issue two types of stock; common stock and preferred stock.

- Preferred stock is highly customizable and varied—for example, preferred equity may have no voting rights at all or it may have super voting rights (100:1) depending on how the owners of an entity want to tailor their capital structure. For L-1 purposes, preferred stockholders may not be able to show control.
- Common stockholders usually have the right to vote on most matters related to management and control of an entity.



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# Stock Certificates

Generally, a stock certificate includes the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the individual or entity seeking to establish control. (The total number of stock issued cannot exceed the amount authorized in the company's articles of incorporation.)



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# Stock Ledger

Comparison to a stock ledger may help to determine the validity of a stock certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or “cancellation” of stock.
- Purchase amount of stock (capital contribution).



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# Examples of Financial Evidence

Evidence of the stock purchase or capital contribution (if stock has no par value or company is anything other than a corporation, i.e. partnership or LLC) may include:

- Wire transfer receipts
- Copies of cancelled checks
- Deposit receipts
- Bank statements

This list is not all-inclusive.

- Established companies may submit an annual report, Form 10-K, or federal income tax returns.



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# Issues Regarding Ownership and Control

- Ownership of a subsidiary need not be majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982).
- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on behalf of a stockholder of a corporation.



# Non-Profit Organizations

- Non-profit organizations may, under certain circumstances, be considered qualifying organizations for L-1 purposes.
- Also frequently referred to as “tax-exempt” organizations or “501(c)(4) tax exempt” organizations, although there are other types of tax exempt organizations.
- Non-profit organizations may also become incorporated.
- Generally, L-1 petitioning non-profit organizations are incorporated and have a branch or affiliate abroad.



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# Non-Profit Organizations (cont.)

To establish a qualifying relationship, a non-profit organization may submit the following:

- A copy of the bylaws of the entity.
- A list of the entity's board of directors.
- Documentation showing who or what entity has the right to possession of, or the right to direct the disposition of, the assets of the entity.
- Documentation showing who or what entity provides the full or primary source of funding to the entity.
- Any documentation regarding the right to appoint a director or board member of the entity.

This list is not all-inclusive.



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# Doing Business

- Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.
- *International trade is not required in order to establish that the entity is doing business.*



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# Doing Business (cont.)

- Generally, both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee. Exceptions for new offices apply.



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# Doing Business (cont.)

- The presence of a dormant corporation, an agent or a holding company (not active) abroad is not sufficient for establishing a qualifying relationship for L-1 purposes.
- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.



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# Doing Business (cont.)

- Example:
  - Beneficiary was a manager for Company A in Italy.
  - Beneficiary transfers to the United States to work for affiliated Company B.
  - After beneficiary transfers, Company A ceases to do business and becomes a dormant company.
  - Company B still has foreign affiliate, Company C, that is doing business in Japan.
- Therefore, the petition remains valid.



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# QUESTIONS?



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# U.S. Citizenship and Immigration Services

## L-1 MANAGERIAL and EXECUTIVE CAPACITY

August 2014

1

# General Things To Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf.
- The beneficiary's wages may be paid by the foreign qualifying organization.



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# Managerial Capacity Defined

An assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function or a component of the organization;
- 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;
- Has the authority to hire and fire, or recommend those actions as well as other personnel actions, such as promotion and leave authorization if employees are supervised. If no employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and



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# Managerial Capacity Defined (cont.)

- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The beneficiary may qualify as a "personnel manager" or a "function manager."



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# Executive Capacity Defined

An assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher level executives, the board of directors or stockholders of the organization.



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# A Combination of Criteria

A job description that uses partial definitions of both manager and executive does not qualify for an L-1A.

An employee's job description must fulfill:

- all four (4) criteria of the definition of manager

OR

- all four (4) criteria of the definition of executive



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# Executives vs. Managers

In general:

- An executive may sign a company document, legally binding a corporation. A manager cannot, by signature, legally bind the corporation.
- Executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc. A manager is likely to make decisions more narrowly applicable to the department, division, component or function under his/her supervision.



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# L-1 Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The organizational chart for the U.S. office.
- Quarterly wage reports or pay records for the employees in the U.S. office.
- Copies of performance appraisals or periodic reviews completed by the beneficiary for any subordinate employees.



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# Staffing Levels as a Factor

Officers should take into account the reasonable needs of the organization.

In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not only at the number of employees to be managed, but at the duties of such employees (e.g., are these professionals, supervisors, etc.).

The employees managed or supervised, as opposed to the beneficiary, must perform the majority of the everyday, non-qualifying duties.



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# Top Heavy Organizations

- If the organizational structure of a company indicates the majority of its employees are listed with managerial or executives titles that appear inconsistent with the nature of the business in the United States or abroad, the petition may require an explanation or additional documentation to establish eligibility.
- The supporting documentation should show who is performing the non-qualifying, operational duties of the business.
- Although the beneficiary has a managerial job title, he or she may be performing primarily non-managerial duties.



# Managing a Function

- The organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the day-to-day duties of the function.
- Normally does not directly manage workers (NOTE: Even if the position does not meet the criteria for being a “functional manager,” the position may still qualify as an L-1A personnel manager)
- The petitioner must demonstrate that the function is essential.



# Questions?



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# L-1B Specialized Knowledge Classification



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# Topics to be Covered

- Definitions of specialized knowledge L-1B (statutory and regulatory)
- L-1B visa classification and characteristics and evaluation
- Distinction between advanced and special knowledge
- Current USCIS policy on L-1B interpretation
- Factors for Consideration



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# Definitions

INA 214(c)(2)(B): An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien:

- has a special knowledge
  - of the company's product and its application in international markets or
- has an advanced level of knowledge
  - of the processes and procedures of the company.



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# Definitions (Cont.)

8 C.F.R. § 214.2(l)(1)(ii)(D): Specialized knowledge means:

- special knowledge possessed by an individual
  - of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, OR
- an advanced level of knowledge or expertise
  - in the organization's processes and procedures.



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# L-1B Visa Classification (Cont.)

- The plain language of the statute and regulations pertinent to L-1B is broad.
- USCIS has considerable discretion in determining who possesses specialized knowledge.
- The statutory and regulatory definition of specialized knowledge is interpreted broadly to account for
  - different and evolving business practices, and
  - to further the primary goal of facilitating the reliable transfer for employees of multi-national companies.
  - At the same time, the L-1B classification is neither intended to be a “catch-all” category, nor is it intended to have a negative impact on U.S. workers.



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# Possible Characteristics of Specialized Knowledge (Cont.)

- The following list of possible characteristics is not intended to be all-inclusive; a petitioner may be able to demonstrate eligibility as an L-1B in other ways as well.
- Knowledge that contributes to U.S. employer's knowledge of foreign operating conditions
- Knowledge gained from working abroad in a capacity that has enhanced U.S. employer's productivity or competitiveness
- Knowledge that normally can only be gained through prior experience with the employer



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# Possible Characteristics of Specialized Knowledge (Cont.)

- Knowledge of a product or process which cannot easily be transferred to another individual
- Knowledge of a product or process not generally known in the United States
- No requirement for a labor market test, i.e., a test whether there are similarly situated U.S. workers available to fill the position



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# Evaluation of Specialized Knowledge

Criteria that should be evaluated:

1. Employment abroad was in a position that was managerial, executive, or involved specialized knowledge for the requisite one continuous year;
2. Whether the beneficiary possesses specialized knowledge; and
3. Whether the beneficiary's position in the United States involves specialized knowledge.



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# Evaluation of Specialized Knowledge (Cont.)

- Even if the petitioner establishes that the beneficiary meets these three criteria, the petitioner must further establish by a preponderance of the evidence that the prospective employment is not in fact an arrangement to provide labor for hire for an unaffiliated employer in the United States.



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# Distinction Between Advanced and Special Knowledge

USCIS policy memos on specialized knowledge make a distinction between these two standards.

## Advanced Knowledge

- Beneficiary has an advanced level of knowledge or expertise in the petitioner's processes and procedures.
- Advanced knowledge of the petitioner's processes or procedures does not have to be narrowly held within the petitioning company. Such knowledge, however, must be of such a nature that it could not be imparted to others, if hired for the same position as that of the beneficiary, without resulting in significant economic disruption to the operations of the petitioning entity.



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# Distinction Between Advanced and Special Knowledge (Cont.)

- "Advanced knowledge" can have been obtained while also working for a company or person other than the petitioner or foreign qualifying entity. For example, more than one company may be involved in the development of highly sophisticated medical equipment. The expertise gained while working for another company, if sufficiently sophisticated, could also be needed by the petitioning company, and hiring that person might not result in any significant disruption of the petitioning company's operations.



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# Distinction Between Advanced and Special Knowledge (Cont.)

## Special Knowledge

- Beneficiary has special knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests and its application in the international markets.
- Special knowledge of the petitioner's product, service, equipment, etc. can be obtained outside the petitioning company if the product is sufficiently specialized.



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# Distinction Between Advanced and Special Knowledge (Cont.)

## Special Knowledge

- Special knowledge would be that which relates to the petitioning company's product, etc. and its application in international markets, but need not be "proprietary" or "unique" insofar as such knowledge could have been gained by the beneficiary while working elsewhere. Such knowledge could have been obtained, for example, by virtue of having worked with the product in question while employed for a client of the petitioning company.
- An L-1B petition may never be denied simply because the beneficiary's knowledge is neither "proprietary" nor "unique."



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# Policy Memoranda on Specialized Knowledge

The following legacy INS and USCIS memoranda provide guidance as to the proper interpretation of the term specialized knowledge:

- ☐ James A. Puleo, Acting Exec. Assoc. Comm., INS, "Interpretation of Specialized Knowledge," (March 9, 1994)
- ☐ Fujie Ohata, Assoc. Comm., INS, "Interpretation of Specialized Knowledge" (Dec. 20, 2002)
- ☐ Fujie Ohata, Director, Service Center Operations, USCIS, "Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L-1B Status," (Sept. 9, 2004)
- ☐ William R. Yates, "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004 (July 28, 2005)

➔ While these memoranda do not have the force of law (e.g., statute or regulations), *they represent USCIS policy and are binding, until further notice, on officers.*



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# 1994 Puleo Memo on L-1B SK

- Use common dictionary definitions of the terms “advanced” or “special”
- Different from that generally found in the particular industry
- Uncommon compared to that generally found in the particular industry
- Highly developed or complex
- Need not be proprietary or unique
- Need not be narrowly held within the company
- No U.S. labor market test



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# Puleo Memo – The Common Definitions

The common dictionary definitions of the terms “special” and “advanced;” the definitions cited in the Puleo memo are:

- **Advanced:** (1) “highly developed or complex; at a higher level than others,” OR  
  
(2) “beyond elementary or introductory; greatly developed beyond the initial stage.”
- **Special:** (1) “surpassing the usual, distinct among others of a kind,” OR;  
  
(2) “distinguished by some unusual quality; uncommon; noteworthy.”



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# Puleo Memo (Cont.)

- Officers adjudicating petitions involving SK must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized. [Note: Although not specifically addressed in the Puleo Memo, an adjudicator may find that a beneficiary possesses 'specialized knowledge,' depending on the facts presented, in a case where the entire industry is so highly 'specialized' that all or most of the persons employed within the industry possess knowledge similar to that possessed by the beneficiary.]
- Examples of general knowledge may include:
  - CPR training
  - First Aid training
- These could be regarded as general knowledge in any industry. However, general knowledge will differ from case to case depending on the specific industry.



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# 2002 Ohata Memo on L-1B SK

Reminds adjudicators to follow the 1994 Puleo Memo:

- Knowledge that is different from that generally found in the particular industry [NOTE: Although not specifically addressed in the 2002 Ohata Memo, in limited cases, some industries may be so sophisticated in nature that most if not all persons employed in that industry can be found to have SK]
- Knowledge need not be proprietary or unique
- Knowledge of company product must be noteworthy or uncommon
- Knowledge of company processes and procedures must be advanced, but need not be narrowly held throughout the company or, depending on the industry, the industry itself.
- Examination of the alien's knowledge only, no comparison to other company employees
- No U.S. labor market test



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# 2004 Ohata Memo on Chefs and Specialty Cooks

- Provides guidance on adjudication of L-1B petitions specific to chefs and specialty cooks
- Clarifies that chefs and specialty cooks are generally not specialized knowledge positions
- Reiterates that the degree to which an alien's knowledge contributes to the uninterrupted operation of the U.S. business is an important factor
- Reiterates that the knowledge would be difficult to impart to another individual without significant economic inconvenience
- Knowledge that is complex and not generally found in that particular industry



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# 2004 Ohata Memo (cont.)

- The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge of a product or process is:
  - (i) uncommon or not generally shared by practitioners in the alien's field of endeavor;
  - (ii) not easily or rapidly acquired, but is gained from significant experience or in-house training, and
  - (iii) is necessary and relevant to the successful conduct of the employer's operations.



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# Factors for Consideration

Depending upon the particular petition, the following factors may have some relevance in determining if the beneficiary possesses specialized knowledge:

- The impact on the petitioning company's operations if the company is not able to transfer the beneficiary and is required to hire and train another person to perform the duties.
- Depending upon the nature of a company and the product or service in question, a company may have an entire division or department in which all the employees possess special knowledge. This would not preclude a beneficiary from demonstrating eligibility for L-1B classification.
- There may be a limited number of individuals who have advanced knowledge of a specific process that is used in an industry in which a very limited number of companies are engaged, and the beneficiary may have acquired the knowledge while employed at one of these companies.



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# Factors for Consideration (Cont.)

- Neither the statute nor the regulations require that the beneficiary have invented, owned the rights to, or developed the petitioning company's product.
- Specialized knowledge is not limited only to knowledge obtained through training, but it can also be gained by experience. Many jobs involve on-the-job training or education, and it is the nature of the work performed, and the level of expertise and knowledge required in performing that work, that is relevant. The fact that the beneficiary received some training or took coursework while employed, without more, generally will not suffice to establish that the beneficiary possesses the requisite specialized knowledge.
- Even if such specialized knowledge may be gained on the job, the petitioner must still show that the beneficiary had the requisite one continuous year of experience abroad as a manager, executive, or specialized knowledge employee. For this reason, time spent during the "learning curve" before the worker reached the requisite level of special or advanced knowledge would not count towards meeting the one-year requirement.



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# What to Look for in Reviewing SK

- How did the beneficiary obtain specialized knowledge?
- What evidence is there to show that the beneficiary's knowledge is specialized knowledge?
- How can it be shown that the job position in the United States is one of specialized knowledge?



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# Petitioner's Statements L-1B

- The weight and probative value officers should give to statements by a petitioner that a beneficiary possesses specialized knowledge will vary from case to case, and will depend on, among other things, their degree of detail and whether the statement is supported by other evidence in the file.
- You should be alert to the fact that some petitioners may base their claim that a beneficiary has specialized knowledge by merely reiterating the definition of specialized knowledge provided in the regulations, without providing evidentiary support to back up such an assertion.
- It is important for the petitioner to fully explain and describe the beneficiary's position of specialized knowledge.



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# L-1B Evidence

- The petition should be accompanied by a description detailing how the beneficiary's knowledge of the petitioner's equipment, system, product, technique, or service is "special" and/or "advanced."
- It is just as important, however, for the petitioner to include evidence to support those assertions.
- No specific type of evidence is required under the regulations, but remember, as always, the burden of proof to demonstrate eligibility by a preponderance of the evidence remains with the petitioner.



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# L-1B Evidence (Cont.)

- Some common types of documentary evidence that may be submitted at the petitioner's option to demonstrate the requisite specialized knowledge might include:
  - Training records
  - Detailed descriptions of knowledge held by beneficiary
  - Patents held by the company obtained as a result of the beneficiary's work
  - Organizational charts showing the beneficiary's current position in the organization
  - Published material by or about the beneficiary
  - High level of remuneration compared to others
  - Human resources records
  - A description of the impact on petitioner's business if L-1B not granted



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# L-1 Visa Reform Act of 2004

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for L-1 classification if –



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# L-1 Visa Reform Act of 2004 (Cont.)

(i) the alien will be controlled and supervised principally by such unaffiliated employer; OR

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.



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# L-1B Off-Site Employment – What the Law Means

If an L-1B alien is stationed primarily at the worksite of an employer other than the petitioner:

- Control and supervision must be with the petitioner.

- Cannot be “labor for hire.”

The beneficiary’s work (the specialized knowledge) must be specific to the petitioner’s product or service.

The off-site work must require specialized knowledge of the petitioner’s product or service.



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# 2005 Yates Memo on L-1 Visa Reform Act of 2004

- L-1 Visa Reform Act of 2004 applies to all petitions filed on or after June 6, 2005 and makes an alien ineligible for an L-1B specialized knowledge visa classification, even if he or she has specialize knowledge, when:
  - The beneficiary will be stationed primarily at the worksite of an employer other than the petitioner or an affiliate, branch, subsidiary, or parent and either of the following occurs:
    - (a) the beneficiary will be principally under the control and supervision of the unaffiliated employer, *or*
    - (b) the placement at the non-affiliated worksite is essentially an arrangement to provide labor for hire for the unaffiliated employer



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# Conversion from L-1B to L-1A

- Aliens who were *initially admitted* as specialized knowledge aliens may change to a manager or executive and stay for seven years, BUT, the alien must have been employed as a manager/executive for at least six months (of the five-year stay) before applying to change from L-1B to L-1A and extend his/her stay, and the change must have been approved by USCIS.
- This means the change from L-1B to L-1A must have taken place and been approved at least six months before the expiration of the alien's five-year stay. If not, and if the alien is otherwise qualified, approve the change to L-1A status for only the balance of the five years.
- If an amended petition was filed notifying USCIS of the L-1B being promoted to a managerial position before the 4½-year mark, then this also satisfies the requirement.



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# Specialized Knowledge Professionals

- 8 C.F.R. § 214.2(l)(4)(ii) indicates that only managers, executive and specialized knowledge *professionals* may be admitted as L-1 under a *blanket petition* process.
- A specialized knowledge professional is an alien with specialized knowledge and who is a member of the professions as defined in INA § 101(a)(32).



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# QUESTIONS?



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**From:** Brunner, Mark A  
**To:** Shuttle, Peter J; Steinhour, Wallace W; Mossey, Joanna J  
**Subject:** Updated CBP Fee Process chart and Intents  
**Date:** Tuesday, December 09, 2014 11:39:00 AM  
**Attachments:** @

---

Hello VSC,

I made some small changes to the existing CBP Fee Process chart and Intent, and added an Intent for when we receive just the I-129S. Please let me know if you have comments or questions.

Thanks,

Mark A. Brunner

Adjudications Officer (Policy)

SCOPS BEST

202-272-0975

I-129 L1A/L1B Quality Review Checklist for Denials

		YES	NO	N/A	Findings	SISO Findings
<b>Proper Filing</b>		If error, write "D" in Findings column				
1	Was petition properly filed? §CFR 103.2(a)(7)					
2	Were correct fee(s) received? § CFR 103.2(a)(7)(i)					
<b>Eligibility and Evidence</b>		If error, write "D" in Findings column				
3	Did record show that petitioner is a qualified foreign or United States organization who intends to temporarily employ the beneficiary? § CFR 214.2(l)(ii)(G), § CFR 214.2(l)(2)(ii), and § CFR 214.2(l)(3)(i)					
4	Did record show that beneficiary has been employed abroad continuously for one year, in a full-time capacity, by a qualifying organization within three years preceding the filing of this petition or admission as an L-1 into the United States AND  Was beneficiary's employment abroad in a capacity that is managerial, executive, or involves specialized knowledge? § CFR 214.2(l)(1)(ii)(A) and § CFR 214.2(l)(3)(iii) 214.2(l)(1)(i), § CFR 214.2(l)(3)(iv) and § CFR 214.2(l)(3)(v)(B)					
5	Did record show that beneficiary will be employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization in the United States? INA 101(a)(44), § CFR 214.2(l)(ii)(B)(C)(D) and (E), and § CFR 214.2(l)(3)(ii)					
6	If record indicates that beneficiary is coming to open or be employed in a new office as a manager or executive, was there sufficient evidence in the record to demonstrate that all requirements have been met? § CFR 214.2(l)(3)(v) - Sufficient physical premises - One in three with foreign employer in managerial or executive capacity - Will support a managerial or executive position in one year					
7	If beneficiary is coming to the United States in a specialized knowledge capacity to open or be employed in a new office, is there sufficient evidence to demonstrate that all requirements have been met? § CFR 214.2(l)(3)(vi) - Sufficient physical premises - U.S. entity is or will be a qualifying organization - Has the financial ability to remunerate the beneficiary and commence doing business in US					
8	If beneficiary is an owner or major stockholder of the company, was there sufficient evidence to show that beneficiary's services will be used for a temporary period and that he or she will be transferred to an assignment abroad upon completion of the temporary services in the United States? § CFR 214.2(l)(3)(vii)					
9	Is period of validity within the maximum validity of classification? § CFR 214.2(b)(9)(iii)(B)					
<b>Visa Reform Act (applies only to L1-B only in cases where work is done at worksite of un-affiliated 3rd party) INA 214(c)(2)(F)</b>		If error, write "D" in Findings column				
10	Will beneficiary be principally under the supervision and control of the petitioner? INA 214(c)(2)(F)(i)					
11	Will beneficiary provide a product or service to an unaffiliated party worksite for which specialized knowledge specific to the petitioner is necessary? INA 214(c)(2)(F)(ii)					
<b>Blanket Petitions</b>		If error, write "D" in Findings column				
12	Was there evidence that showed that petitioner and all related organizations meet the blanket petition requirements? § CFR 214.2(l)(4)(i)					
13	Did petitioner include in the record, evidence of all of its branches, subsidiaries, and affiliates which it plans to seek to transfer aliens to the United States under the blanket petition? § CFR 214.2(l)(4)(iii)					
14	Were all entities seeking approval "qualified" organizations? § CFR 214.2(l)(1)(ii)(G)					
<b>All Categories</b>		If error, write "D" in Findings column				
15	At time of filing, was beneficiary's passport valid? INA 212(a)(7)(B)(i)					
16	Were full English translations included for all required documents written in a foreign language?					

<b>RFE/ITD/Abandonment</b>		Write "D" in Findings column if decisional error, "N" if non-decisional			
17	Was RFE/ITD correct? 8 CFR 103.2(b)(8)(ii), (iii), PM-602-0085 dated June 3, 2013 and Chapter 10.5(a) of the Adjudicator's Field Manual (AFM)				
18	Was the response time on the RFE/ITD correct? PM-602-0040, July 7, 2011, February 16, 2005 Aytes Memo				
19	If abandonment, was RFE/ITD mailed to correct address?				
20	If abandonment, had the correct number of days passed since the RFE/ITD was mailed? PM-602-0040, July 7, 2011				
<b>Decision</b>		If error, write "D" in Findings column			
21	Was decision correct?				
<b>Security Checks</b>		If error, write "S" in Findings column			
22					
23					
24					
25					
26					
27					
<b>VIBE Checks (RFE, NOID or NOIR and Petitioner's Eligibility)</b>		If error, write "V" in Findings column			
28					
29					
30					
<b>System Checks (Non-Security)</b>		If error, write "N" in Findings column			
31	Were all system check requirements met? (e.g., AR11, ADIS, SEVIS, US-VISIT, etc.)				
32	If required, does ADIS check indicate that beneficiary is still in the United States? 8 CFR 214.1, 8 CFR 248.1, HQ Office of Programs memo dated 06/18/2001, Travel After Filing a Request for Change of Nonimmigrant Status				
<b>Other Requirements</b>		If error, write "N" in Findings column			
33	Are all required screen prints in file?				
<b>Endorsements and Notice</b>		If error, write "N" in Findings column			
34	Are endorsements on application correct?				
35	Is information in CLAIMS/GUI correct?				
36	Was application updated in the appropriate system with "Denial Notice Ordered" within 5 business days of stamp date on application? December 15, 2010 Donald Neufeld memo				
37	If there was a correction to the filing name and/or date of birth, was it changed on application and/or system? (If answering "yes" or "no", complete question 23 above; if N/A, answer "N/A" to question 23) 9/13/2005 HQ memo Naming Conventions, Use of Full Legal Name on All USCIS Issued Documents, AFM 51.4				
38	Is copy of the denial notice in file?				
39	Was denial notice sent to the correct address?				
40	If applicable, is denial notice free of typographical, spelling, or grammatical errors?				
41	Were all applicable sections of law cited correctly in denial notice? AFM 10.7(b)(2)				
42	Were all pertinent issues discussed in denial notice? AFM 10.7(b)(4)				
43	Did denial notice advise of Appeal Rights or Motion to Reopen (MTR) rights? 8 CFR 103.3(a)(1)(iii)(A)				
44	Is file in proper ROP order?				
<b>Other</b>		Write "D" in Findings column if decisional error, "N" if non-decisional			
45	Is case free of errors not identified elsewhere on checklist?				
<b>Fraud - VSC Only</b>		If error, capture under "Other" as "N" non-decisional			
	If fraud indicators were present in the file, were all properly addressed?				
	If an SOF was present in the file, was it properly applied to the adjudication?				

(b)(7)(e)

(b)(7)(e)

Reviewer's brief comments and/or general observations:

SISO NFTS CODE: \_\_\_\_\_  Justified  Not Justified QA#: \_\_\_\_\_

**DISPOSITION**

**ERROR CORRECTED DURING REVIEW**  **BY (SME/ISO(3)/SISO) NFTS CODE:** \_\_\_\_\_  
Adjudicating Officer and SISO notified via email of error corrected

**ERROR RETURNED FOR CORRECTION**  **Date error(s) sent to Division POC:** \_\_\_\_\_  
If applicable, error must be corrected within 10 business days after receipt of file.

**ERROR OVERTURNED**  **Date Returned to Quality:** \_\_\_\_\_  
Officer: \_\_\_\_\_  
Officer's SISO: \_\_\_\_\_  
Return checklist only if error is being overturned. Check box above and provide a reason the error is being overturned. Return checklist to the Business Division Quality POC within 7 business days after receipt of file.

11291 Round Table



# Doing Business

- What types of documents show doing business?
  - Recent Tax Returns
  - Recent Annual Reports or Form 10K
  - Invoices/Sales Receipts
  - Bank statements
  - Contracts for business/products to be provided
- Do business contracts establish the petitioner is providing a service/product? Usually they do, you must read the contracts to see what the service/product is that is being provided and to whom and from whom.



# Doing Business continued

- Does any U.S. business that meets the definition of an “agent” qualify as doing business? Regulations state that the business must be a qualifying organization 8 CFR 214.2(l)(i)(G) - a U.S. or foreign firm, corporation or other legal entity, and does not include the mere presence of an agent or officer of the qualifying organization in the U.S. and abroad. 8 CFR 214.2(l)(i)(H)
- Does U.S. company have to be engaged in transactions with the foreign company? No, they only need to show that they are doing business. Regulations indicate that they do not need to be engaged in international trade. However, the petitioner must show that the qualifying foreign entity is also doing business. 8 CFR 214.2(l)(i)(G)(2)



# Reading Tax Forms

- Income
- Wages/Salaries/Compensation Officers
- Relationship

**U.S. Corporation Income Tax Return**

For calendar year 2012 or tax year beginning \_\_\_\_\_, ending \_\_\_\_\_

OMB No. 1545-0047

**2012**

Information about Form 1120 and its separate instructions is at [www.irs.gov/form1120](http://www.irs.gov/form1120).

**A Check if:**

- 1a Consolidated return (attach Form 991)
- b Life insurance consolidated return
- 2 Personal holding co. (attach Sch. PH)
- 3 Personal service corp. (see instructions)
- 4 Schedule M-3 attached

TYPE  
OR  
PRINT

B Employer identification number

C Date incorporated

03/16/2011

D Total assets (see instructions)

\$ 35,739,883.

E Check if: (1) Initial return (2) Final return (3) Name change (4) Address change

1a	Gross receipts or sales	1a	3,097,836.
b	Returns and allowances	1b	
c	Balance. Subtract line 1b from line 1a	1c	3,097,836.
2	Cost of goods sold (attach Form 1125-A)	2	391,478.
3	Gross profit. Subtract line 2 from line 1c	3	2,706,358.
4	Dividends (Schedule C, line 19)	4	
5	Interest	5	
6	Gross rents	6	36,478.
7	Gross royalties	7	
8	Capital gain net income (attach Schedule D (Form 1120))	8	
9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	
10	Other income (see instructions - attach statement)	10	
11	Total income. Add lines 3 through 10	11	2,742,836.
12	Compensation of officers (see instructions - attach Form 1125-E)	12	
13	Salaries and wages (less employment credits)	13	1,350,951.
14	Repairs and maintenance	14	1,254.
15	Bad debts	15	
16	Rents	16	63,265.
17	Taxes and licenses	17	14,623.
18	Interest	18	
19	Charitable contributions	19	
20	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	20	13,925.
21	Depletion	21	
22	Advertising	22	790.
23	Pension, profit-sharing, etc., plans	23	
24	Employee benefit programs	24	
25	Domestic production activities deduction (attach Form 9903)	25	
26	Other deductions (attach statement)	26	2,063,902.
27	Total deductions. Add lines 12 through 26	27	3,508,710.
28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	28	-765,874.
29	Net operating loss deduction (attach Form 1125-B)	29	

Instructions (See instructions for limitations on deductions.)

IRAYERS COPY  
 SEE STATEMENT 1  
 SEE STATEMENT 2

Capt

**Other Information continued (see instructions)**

**6** At the end of the tax year, did the corporation:

**a** Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on Form 991, Attribution Schedule? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below.

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

**b** Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below.

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

**6** During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file Form 9432, Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 991 for each subsidiary.

**7** At any time during the tax year, did one person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of the corporation's stock entitled to vote or (b) the total value of all classes of the corporation's stock? For rules of attribution, see section 318. If "Yes," enter:

(i) Percentage owned  $\triangleright$  29.00 and (ii) owner's capacity  $\triangleright$  RS

(c) The corporation may have to file Form 9432, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 9432 attached  $\triangleright$  1

**8** Check this box if the corporation issued publicly offered debt instruments with original issue discount. If checked, the corporation may have to file Form 9432, Information Return for Publicly Offered Original Issue Discount Instruments.

**9** Enter the amount of tax-exempt interest received or accrued during the tax year  $\triangleright$  \$ 16,364

**10** Enter the number of shareholders at the end of the tax year (if 100 or fewer)  $\triangleright$  \_\_\_\_\_

**11** If the corporation has an NOL for the tax year and is electing to forgo the carryback period, check here. If the corporation is filing a consolidated return, the statement required by Regulations section 1.1602-21(b)(3) must be attached or the election will not be valid.

**12** Enter the available NOL carryover from prior tax years (do not reduce it by any deductions on line 28c)  $\triangleright$  \$ \_\_\_\_\_

**13** Are the corporation's total assets (line 1c plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 8. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year  $\triangleright$  \$ \_\_\_\_\_

**14** Is the corporation required to file Schedule UTP (Form 1120), Unrelated Tax Position Statement (see instructions)? If "Yes," complete and attach Schedule UTP.

**15a** Did the corporation make any payments in 2012 that would require it to file Form(s) 1099?

**b** If "Yes," did or will the corporation file required Form(s) 1099?

**Part I Reporting Corporation (see instructions). All reporting corporations must complete Part I.**

1a Name of reporting corporation

1b Employer identification number

\$ 35,739,883

naics entity code # 941711

11 Total value of gross payments made or received (see instructions) reported on this Form 5472

1a Total number of Forms 5472 filed for the tax year

1b Total value of gross payments made or received (see instructions) reported on all Forms 5472

2 Check here if this is a consolidated filing of Form 5472

1i Country of incorporation

KS

1k Country(ies) under whose laws the reporting corporation files an income tax return as a resident

KO

1l Principal country(ies) where business is conducted

2 Check here if, at any time during the tax year, any foreign person owned, directly or indirectly, at least 60% of the total voting power of all classes of the stock of the reporting corporation entitled to vote, or (b) the total value of all classes of stock of the reporting corporation

**Part II 25% Foreign Shareholder (see instructions)**

1a Name and address of direct 25% foreign shareholder

1b(1) U.S. identifying number, if any

APPLD FOR

1b(2) Reference ID number (see instructions)

1c Principal country of incorporation

1d Country(ies) under whose laws the direct 25% foreign shareholder files an income tax return as a resident

KS

KS

KS

2a Name and address of direct 25% foreign shareholder

2b(1) U.S. identifying number, if any

2b(2) Reference ID number (see instructions)

3a Principal country(ies) where business is conducted

3d Country of citizenship, organization, or incorporation

3b Country(ies) under whose laws the direct 25% foreign shareholder files an income tax return as a resident

3c Name and address of ultimate indirect 25% foreign shareholder

3b(1) U.S. identifying number, if any

3b(2) Reference ID number (see instructions)

3e Principal country(ies) where business is conducted

3d Country of citizenship, organization, or incorporation

3b Country(ies) under whose laws the ultimate indirect 25% foreign shareholder files an income tax return as a resident

4a Name and address of ultimate indirect 25% foreign shareholder

4b(1) U.S. identifying number, if any

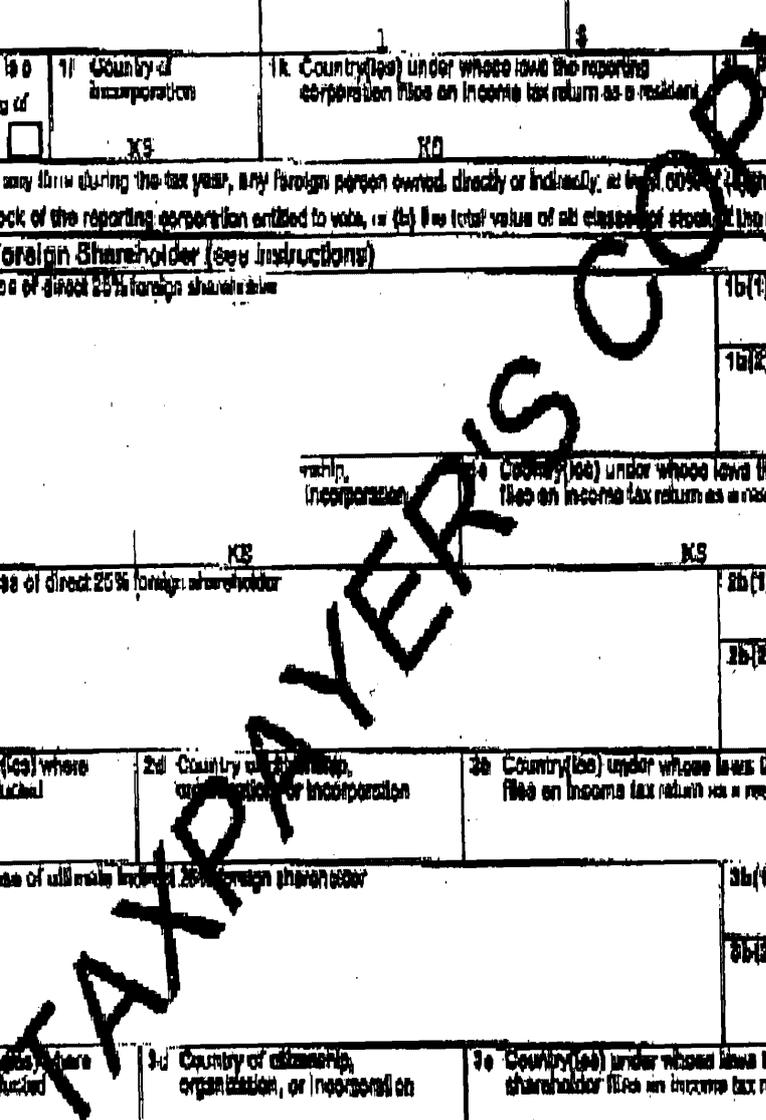
FOREIGNUS

4b(2) Reference ID number (see instructions)

4c Principal country(ies) where business is conducted

3d Country of citizenship, organization, or incorporation

4b Country(ies) under whose laws the ultimate indirect 25% foreign shareholder files an income tax return as a resident





# Change of Status/Extension of Stay Issues

- **Denying a change of status:** I-129L petition filed requesting a change of status: if the beneficiary was out of the U.S. at the time of filing or left while the petition was pending, request evidence to establish maintenance of status. If status is not established, approve the classification, deny the change of status, prepare change of status denial in CG, check off release to send to clerical for printing and mailing, send copy of petition to Consulate/Embassy/POE/PFI.
- **Denying extension of stay:** I-129 petition filed requesting an extension of stay: if the beneficiary was in the U.S. at the time of filing or only left while the petition was pending, approve the extension of stay. If the beneficiary was not in the U.S. at the time of filing, request evidence to establish maintenance status. If not established, approve the classification, deny the extension of stay, prepare the extension of stay denial in CG, check off release to send to clerical for printing and mailing, send copy of petition to Consulate/Embassy/POE/PFI.



# Change of Status/Extension of Stay Issues continued

- **Miscellaneous:** I-129 petition filed requesting “continuation of previously approved employment” and “notify consulate/embassy/POE/PFI”, and evidence is on the petition and in the file to show that the beneficiary is currently in the U.S. Review the cover letter(s) to be sure they did not incorrectly mark off the wrong blocks. If nothing is indicated in the record that they are extending here in the U.S., approve the case and send to the consulate/embassy/POE/PFI as they requested on the petition. This is not uncommon to see, especially when their status is about to expire, they will want the consulate notified so they can travel in the very near future.



# References To AAO

## Decisions/USCIS Memos/Prior Filings

- It is common to have the attorneys/petitioners reference AAO decisions and USCIS memos in their correspondence within the filing. You may respond to what they reference if it is relevant to the case and you understand/read the referenced decisions/memos.
- Do not address/reference their prior case(s) unless you have had the opportunity to review such the case(s).



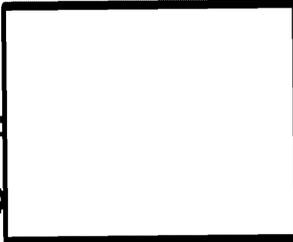
# ADIS/VISA/I-94

- CBP issuing time periods beyond PED/VISA/No petition filed
- ADIS Screen
- VISA

DEST ADDRESS:

DEST CITY NAME:

DEST STATE CODE:



(b)(6)

SEVIS STATUS: N/A

SEVIS STATUS CHG DATE: N/A

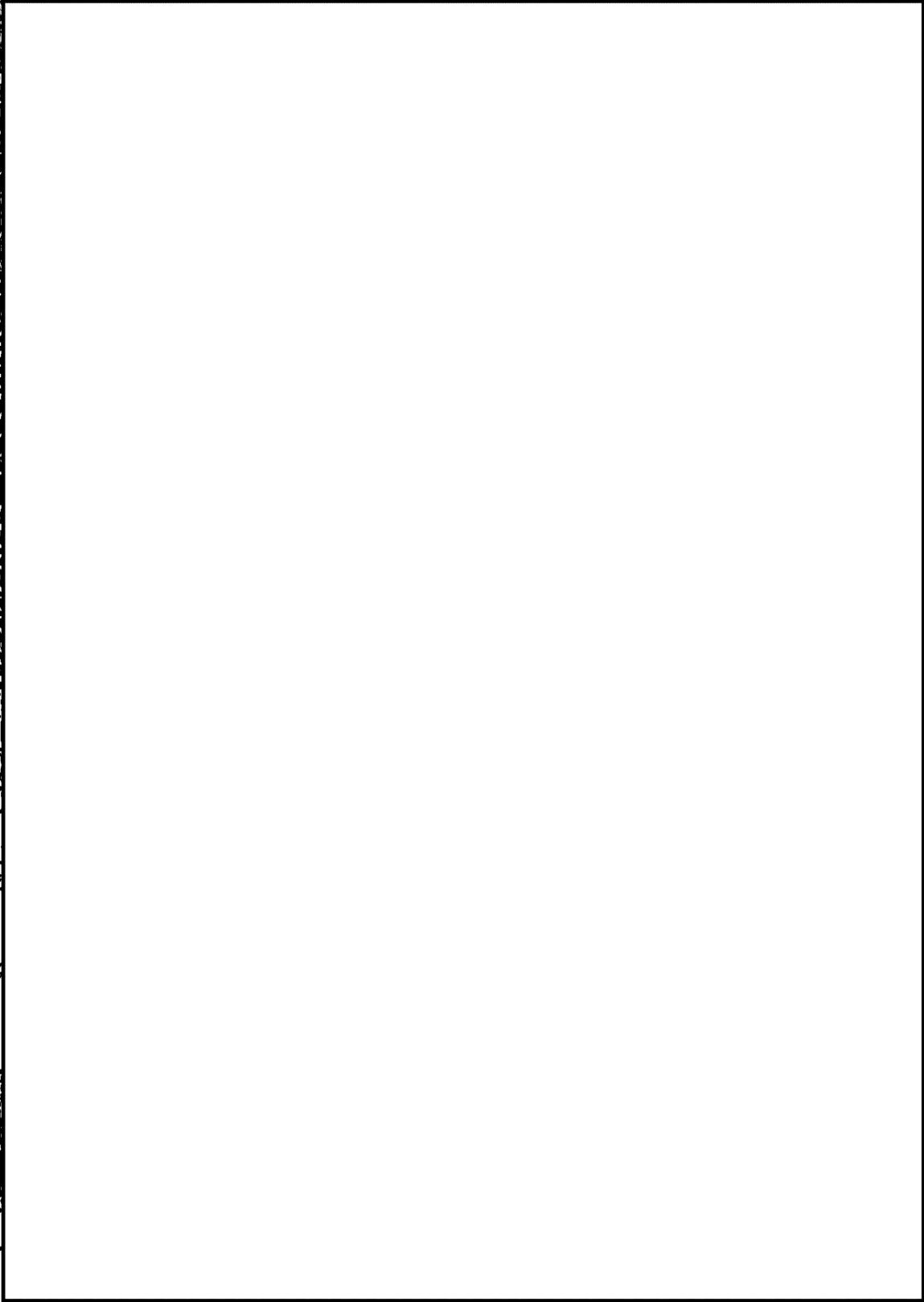
TECS NIT: N/A

NCIC NIT: N/A

Time	R Code	Location	FIN	Action Code	Bio Verified	Event COA	Event AUD	Document Info	Mede-Carrier
1:30 pm LS		ATL		Reported	N	N/A	N/A		AIR - DL:130
1:17 pm LS		ATL		Confirmed	Y	L1	04/19/2017		AIR - DL:131
1:40 pm LS		ATL		Reported	N	N/A	N/A		AIR - DL:130
1:45 pm LS		ATL		Confirmed	Y	L1	07/10/2014		AIR - DL:131
1:05 pm LS		CHI		Reported	N	N/A	N/A		AIR - UA:907
1:14 pm LS		WAS		Confirmed	Y	L1	06/30/2014		AIR - UA:988
1:21 pm LS		WAS		Reported	N	N/A	N/A		AIR - UA:916
1:41 am LS		DCT		Confirmed	N	UN	N/A		LAND
1:41 am LS		DCT		Confirmed	N	UN	N/A		LAND
1:29 pm LS		HOU		Confirmed	Y	L1	06/30/2014		AIR - LH:440
1:15 pm LS		ATL		Reported	N	N/A	N/A		AIR - DL:130
1:46 pm LS		DCB		Confirmed	N	UN	N/A		LAND
1:28 am LS		DCT		Confirmed	N	UN	N/A		LAND
1:30 pm LS		ATL		Confirmed	Y	L1	06/30/2014		AIR - DL:131
1:00 am LS		DMA		Reported	N	N/A	N/A		AIR - DL:251
1:33 pm null		WAS		Reported	N	UN	N/A		AIR - UA:902
1:00 pm LS		DMA		Reported	N	UN	N/A		AIR - DL:252
1:32 pm LS		DCT		Confirmed	N	UN	N/A		LAND
1:45 pm LS		WAS		Confirmed	Y	WB	06/08/2011		AIR - UA:903
1:45 pm LS		CHI		Reported	N	UN	N/A		AIR - LH:435
1:09 pm LS		CHI		Confirmed	Y	WB	02/06/2011		AIR - UA:907
1:35 pm LS		CLT		Reported	N	UN	N/A		AIR - LH:429
1:07 pm LS		DCT		Confirmed	N	WB	11/14/2010		LAND

(b)(6)

//



## **Most Recent I-94**

---

**Admission (I-94) Record Number:**

**Most Recent Date of Entry: 2014 April 22**

**Class of Admission: L1**

**Admit Until Date: 2017 April 19**

**Details provided on the I-94 information form:**

**Last/Surname:**

**First (Given) Name:**

**Birth Date:**

**Passport Number:**

**Country of Issuance:**

**Get Travel History**

---

► Effective April 26, 2013, DHS began automating the admission process. An alien lawfully admitted or paroled into the U.S. is required to be in possession of a preprinted Form I-94. A record of admission printed from the CBP website constitutes a valid admission. See 8 CFR § 1.4(d).

► If an employer, local, state or federal agency requests admission information, present your admission (I-94) number and



# Validity Dates

- Do we go by validity dates petition asks for or do we use the day after expiration of previously approved petition? Please use the L validity date chart that is located in the L SOP.
- What do the validity dates on the visa mean? Validity dates on a visa are not always the dates granted to the beneficiary upon entry. The visa validity dates are placed on the visa by CBP. Could be the time allowed by a USCIS approval or could be longer. 2/3/5 years.
- What does the PED date on the visa mean? The PED is the Petition Ending Date, this is the date for which the I-797 approval notice is valid and this is the date which relates to your beneficiary/case during an extension.



# Validity Dates continued...

- If L petition, extension of stay, is filed, visa is not required to be current. The beneficiary may remain in the U.S. or travel while case is pending. They can remain working for the petitioner while extension is pending. Spouse can remain here and continue working on EAD. The beneficiary's stay and spouse EAD does not "expire" just because the visa is not longer valid. If the petition is denied, both beneficiary and dependents are required to leave the U.S. Petitioner may file another petition/motion/appeal during which time the beneficiary may remain in the U.S.



# Validity Dates continued...

- If the beneficiary were to leave the U.S. and the visa had expired prior to reentry he/she will return to Consulate to get a new visa in his/her passport. The beneficiary would need a copy of the approval notice to present to the Consulate.
- Validity dates for the principal I-129 petition and the riding I-539 should match/mirror.



# Blanket vs. Non Blanket Approvals Notices





# EAD Cards

- Riding I-765 Applications. When approving, grant date requested or not more than 2 years.
- When sending an RFE for I-129/I-539 and there is a riding I-765, RFE using 5358 for the I-765. You will update the I-765 in GUI as RFE, additional evidence requested. This is done to stop the 90 day clock. Type I-765 RFE in CG. If PP, notate the worksheet that I-765 RFE needs to be sent as well.



# EAD Cards continued

## If validity date error found on card:

- ISO will receive file back with errors noted on file;
- ISO will correct dated in GUI on I-765 application and complete a GUI Review and Card Correction Worksheet located at:  
[ecn.uscis.dhs.gov/team/scops/VSC/Adjudications/Customersvc/Documents/Form/Categ/ory.aspx](http://ecn.uscis.dhs.gov/team/scops/VSC/Adjudications/Customersvc/Documents/Form/Categ/ory.aspx)
- ISO will send worksheet through email, address located at bottom of worksheet. GUI QC officer will request return of incorrect EAD and send correct card to applicant.

to be notified)

KCC \_\_\_\_\_ POE

Release sent:  DHL  Fed. Ex  UPS

USPS  Regular Mail

Blanket Attachment Sent

CG

### RFEs

I-824

87  98

RFE sent via  FAX Press  Regular Mail

Regular FAX

Initial & Add'l

FAX Press Re-Sent

2nd RFE sent

Updated CLAIMS:

rawal

CG

### ITD/Withdrawal

nts

### Abandonments

H1 Date:

Intent Typed & Sent for Sign-Off:

Hand  LAN

Withdrawal/H1 Typed:

Date:

ITD/Withdrawal/Denial Sent:

FAX Press  Regular FAX  DHL

UPS  USPS  Fed. Ex.

Updated CLAIMS:



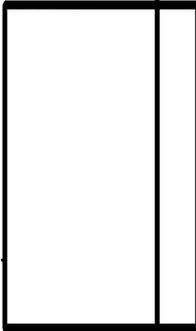
# Reminders

- If questioning U.S. Specialized Knowledge position, also question foreign specialized knowledge position and/or beneficiary's qualifications.
- When sending an RFE on a case where the beneficiary was admitted under a blanket, be sure to use blanket insert.
- When sending an RFE for a same/same, use deference disclaimer.

# Reminders continued...

- Do not send a copy of Form I-539 to KCC

- VIBE,



(b)(7)(e)

- L-1A offsite managers – Reform Act and Offsite employment applies only to L-1Bs do not address in L1A filings.



# Reminders continued...

- When approving a case, if a copy of petition and supporting evidence in the file, stamp and notate the copy and send to KCC. Do not make a copy for KCC if one is not in the file.
- Include a copy of the RFE request with the KCC copy if duplicate response was not submitted. Not required to include a copy of the entire response if not provided.



# Reminders continued...

- I-129L petitions cannot be filed more than six (6) months (180 days) prior to the requested start date. If you get one filed too early, please bring to your SISO.
- Review relationship type selected by petitioner and compare to evidence submitted, they may not have selected the proper relationship and your RFE will reflect the incorrect information. i.e. subsidiary when they are really affiliates.



# Reminders continued...

- Please verify in GUI the beneficiary's I-94 number, validity dates, COB/DOB, SEVIS number.
- Use the most recent I-94 number given to the beneficiary when updating GUI. If the beneficiary is not in the U.S., do not check ADIS for an I-94 number or put any in GUI.



# Reminders continued...

- When creating RFE in CG, tailor to your specific case, remove items from list(s) already submitted or not pertinent.
- Discuss in RFE why evidence in record did not overcome deficiencies.



# Reminders continued...

- If position/duties unclear, state duties are not clear.
- Provide definition for manager and executive when position unclear and request petitioner to specify which position they are requesting.

# Definitions

- Petitioner – Person, employer, or agent who files a petition on behalf of someone else.
- Beneficiary – Person who will receive the immigration benefit from a petition.
- Applicant – Person who files an application on his or her own behalf.
- Nonimmigrant – See 101(a)(15) of Immigration and Nationality Act or INA.



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# Statutory References

- INA Section 101(a)(15) – Definition of Nonimmigrant Classifications:  
EXAMPLE: 101(a)(15)(B) – Nonimmigrant Visitor
- INA Section 212(a) – Inadmissible Aliens
- INA Section 212(e) – Foreign Residence Requirement for Certain J-1 Exchange Visitors
- INA Section 214 – Requirements for Admission of Nonimmigrants
- INA Section 248 – Change of Nonimmigrant Classification



# Regulatory References

- 8 CFR 103.2 – Application & Petition Filing Requirements
- 8 CFR 214.1 – General Requirements for Admission, Extension of Stay, and Maintenance of Status
- 8 CFR 214.2 – Divided into Subsections (a) through (w) – Regulations for most nonimmigrant classifications:
  - EXAMPLE: 8 CFR 214.2(f) = Requirements for Admission, Extension, and Maintenance of Status of F-1 Students
- 8 CFR 248 – Requirements to Change Nonimmigrant Status



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# Entry Documents for Nonimmigrants

Generally required to have at the time of admission to the United States:

- Unexpired Nonimmigrant Visa, and
- Passport valid for period of admission.



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# What is a Visa?

- According to Merriam-Webster's Collegiate Dictionary Tenth Edition:

“A visa is an endorsement made on a passport by the proper authorities denoting that it [the passport] has been examined and that the bearer may proceed.”



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# Foreign Nationals

- A visa is issued to a foreign national
- A foreign national is a person who is not a U.S. citizen and applies for entry into the United States.

NOTE: In this presentation, foreign nationals are also referred to as aliens, beneficiaries or applicants.



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# Common U.S. Visas

- Every foreign national who is inspected and admitted to the United States is given a status. The two most common are:
  - Immigrant, and
  - Nonimmigrant.



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# Immigrant Visa

- An immigrant visa is issued to a foreign national who intends to live in the United States permanently.



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# Nonimmigrant Visa

- A nonimmigrant visa (NIV) is issued to a foreign national or alien applying to enter the United States on a temporary basis – whether for tourism, business, temporary work, or study.



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# Purpose of Form I-129

Some nonimmigrant classifications require the approval of an I-129 petition by USCIS--

- Before an NIV visa can be issued

and/or

- Before an alien can be admitted in certain NIV classifications.



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# Purpose of Form I-129, *continued...*

USCIS approval of Form I-129 is required for the following nonimmigrant classifications:

- H-1B, H-2A, H-2B, H-3
- L-1
- O-1, O-2
- P-1, P-1S, P-2, P-2S, P-3, P-3S, and
- Q-1 and R-1.

An approved Form I-129 is not required for the following nonimmigrant classifications:

- E-1, E-2, E-3
- L-1 NAFTA
- TN



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# NIV Process

1. U.S. employer or agent files Form I-129 with fees and supporting evidence at either the California Service Center (CSC) or the Vermont Service Center (VSC).
2. An Immigration Services Officer (ISO) determines whether the I-129 petition is approvable.



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# NIV Process, *continued...*

3. ISO stamps and signs approved I-129 and duplicate petition, if provided.
4. Duplicate petition and any duplicate supporting documentation are sent to the Kentucky Consular Center (KCC).
5. KCC scans the duplicate petition, and any supporting documents sent, into the Consular Consolidated Database (CCD) to appear in a section of the CCD called the Petition Information Management System (PIMS).



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# NIV Process, *continued...*

6. When the beneficiary of the I-129 petition appears at the consulate or embassy to apply for a visa, the consular officer:
  - Checks PIMS for approval of the petition, and
  - Conducts an interview of the beneficiary to determine admissibility and eligibility for classification.



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# NIV Process, *continued...*

7. If the approved I-129 petition is not found in PIMS, the consular officer may contact the KCC and KCC may contact the approving Service Center for verification.
  
8. After receiving a Visa from DOS, the alien may then apply for admission.



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# Example of an NIV



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# NIV Process, *continued...*

9. The applicant then applies for admission to the United States at a Port of Entry (POE) or Pre-Flight Inspection (PFI) facility and presents the NIV to a Customs and Border Protection (CBP) officer (a/k/a an inspector).
10. The CBP officer questions the applicant and, if satisfied, grants the applicant nonimmigrant status by stamping and completing an admission stamp in the applicant's passport.



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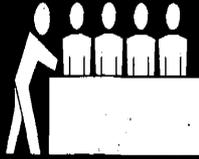
# Example of Admission Stamp



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and Immigration  
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Employer applies to DOL online for LCA. DOL emails when LCA is decided. Employer prints certified LCA, signs, and submits with I-129.

# Consular Processing

Issues Visa



Approves Classification



Grants Status



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# NIV Process, *continued...*

11. The nonimmigrant will also receive an I-94 # either:
- a) A traditional paper I-94 with the CBP Officer's stamp; or
  - b) An electronic I-94.



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# Example of Paper I-94

(b)(6)	

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# Example of Electronic I-94



U.S. Customs and Border Protection  
*Securing America's Borders*

OMB No. 1651-0111  
Expiration Date: 11/30/2014

## Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 67363482120

Admit Until Date (MM/DD/YYYY): 09/30/2013

Details provided on Admission (I-94) form:

Family Name: [REDACTED]

First (Given) Name: [REDACTED]

Birth Date (MM/DD/YYYY): 06/01/1981

Passport Number: [REDACTED]

Passport Country of Issuance: India

Date of Entry (MM/DD/YYYY): 05/19/2013

Class of Admission: H1B

► Effective April 28, 2013, DHS began automating the admission process. An alien lawfully admitted or paroled into the U.S. is no longer required to be in possession of a preprinted Form I-94. A record of admission printed from the CBP website constitutes a lawful record of admission. See 8 CFR § 1.4(d).

► If an employer, local, state or federal agency requests admission information, present your admission (I-94) number along with any additional required documents requested by that employer or agency.

► Note: For security reasons, we recommend that you close your browser after you have finished retrieving your I-94 number.



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# ADIS

12. The CBP officer will scan the alien's passport which will upload into the Arrival Departure Information System (ADIS).



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# Example of ADIS Arrival

ADIS Web - Event Detail

## US-VISIT Arrival Departure Information System



Detail View

Detail Report for: [REDACTED]

LAST NAME: [REDACTED]  
 FIRST NAME: [REDACTED]  
 BIRTHDATE: [REDACTED] 981  
 GENDER CODE: U  
 DOCUMENT NUMBER: [REDACTED]  
 COC: UNK  
 DOCUMENT COUNTRY: USA  
 DOCUMENT TYPE: S (Social Security Card)  
 TRAVELER STATUS: N/A  
 US-VISIT EXEMPT TYPE: N/A  
 VESSEL NAME: N/A  
 VESSEL NUMBER: N/A

EVENT TYPE: PENDING  
 EVENT DATE: 09/27/2013 12:00 am  
 LOCATION CODE: N/A (NOT APPLICABLE)  
 SITE: N/A  
 ACTION CODE: N/A  
 ADMIT UNTIL DATE: N/A  
 EVENT ADMIT UNTIL DATE: N/A  
 OVERSTAY DAYS: 0  
 RECONCILIATION CODE: AOS  
 EVENT ADMISSION CLASS: 181  
 ADMISSION CLASS: 181  
 CARRIER CODE: N/A  
 FLIGHT NUMBER: N/A  
 DEST ADDRESS: ELEVEN MADISON AVE  
 DEST CITY NAME: NEW YORK  
 DEST STATE CODE: NY

CLOSED VISIT: N  
 PERSON ID: [REDACTED]  
 ENCOUNTER ID: N/A  
 EVENT FPK: N/A  
 SEVIS ID: N/A (b)(6)  
 BIO FLAG: N  
 I4 NUMBER: [REDACTED]  
 LAND I4 FEE EXEMPT: N/A  
 C3 RECEIPT: [REDACTED]  
 C3 SEQ: 0001  
 C3 FORM TYPE: 1129  
 SEVIS ACTION: N/A  
 SEVIS STATUS: N/A  
 SEVIS STATUS CHG DATE: N/A

AID NUMBER: N/A  
 LANE: N/A

TECS HIT: N/A

NCIC HIT: N/A

Events for: [REDACTED]

Event	Event Date	Location	FIN	Action Code	Bio Verified	Class	Admit Until	Document Info	Mode - Name:ID/Flight	C
PENDING	09/27/2013 12:00 am	UNK	N/A	N/A	N	181	N/A	S-USA: [REDACTED] UNK		Stat
PENDING	09/27/2013 12:00 am	UNK	N/A	N/A	N	181	N/A	S-USA: [REDACTED] UNK		Stat



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# Visa Exempt Nonimmigrants

The following nationals are not required to present a visa for admission to the United States:

- Canadian citizens
- Bermuda citizens
- Bahamian nationals & British subjects residing in Bahamas
- Certain Caribbean residents
- Mexican nationals with BCC
- Visa Waiver Program (WT/WB)



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# Visa Exempt Nonimmigrants, *continued...*

- Visa exempt nonimmigrants do not apply at a consulate or embassy. They go straight to the Port of Entry (POE) or to a Pre-Flight Inspection (PFI) facility and seek admission directly from CBP.
- The CBP officer questions the applicant and, if satisfied, grants the applicant nonimmigrant status by stamping and completing an admission stamp in the applicant's passport.



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# Visa Exempt Nonimmigrants, *continued...*

- In most instances, the CBP officer does NOT issue an I-94 to a visa exempt nonimmigrant visitor.
- If Canadian Visitors or Mexican Border Crossers wishes to change or extend status in the United States and they qualify to do, the ISO will
  - Issue a paper I-94 Card,
  - Enter the I-94 number into GUI and
  - Send the duplicate copy to the KCC.



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# Change of Status (COS) and/or Extension of Stay (EOS)

- If the beneficiary is already in the United States, the I-129 petition may also be used to request an extension of stay or a change of status.
- A change of status (COS) or extension of stay (EOS) can be requested in Parts 2 and 3, on Pages 2 and 3 of the petition.



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# COS/EOS Requirements

- Beneficiary has to:
  - be in status at time of filing and
  - continue to maintain status as of requested starting employment date.
  
- Beneficiary has to be admissible.
  
- ADIS or SQ94 check is required for all COS requests and all EOS denials.



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# Example

- John Doe was admitted as an F-1 student to study at UVM for his master's degree in Education. BFA would like to hire John as a special education teacher and petitions for him as an H-1B nonimmigrant.
- Does John have to leave the United States and apply for a new NIV and be admitted in his new classification as an H-1B?



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# Example, *continued...*

No - BFA can file an I-129 petition to seek both:

- H-1B classification approval for John Doe as well as
- A request to change John's status from F-1 to H-1B.



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# Example of COS Approval Notice

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797A, Notice of Action

---

**THE UNITED STATES OF AMERICA**

CASE NO. 1123	
PETITION FOR A NONIMMIGRANT WORKER	
EXPIRES June 9, 2011	ADDITIONAL
RECEIVED September 7, 2011	PAGE 1 of 1
(b)(6)	Notice Type: Approval Notice Class: H1B Valid from 10/01/2011 to 09/30/2014

The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IIS with any questions about tax withholding.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, Arrival/Departure Record. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-84, Application for Action on a Pending Application or Petition, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself grant the immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA AND MAY NOT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVCS  
VERMONT SERVICE CENTER  
75 LOWER WILKES STREET  
SAINT ALBANS VT 05479-0001  
Customer Service Telephone: (800) 376-5200

Form I-797A (Rev. 09/07/02) IN

PLEASE TEAR OFF FROM THE PRINTED REGION, AND RETURN TO ORIGINAL MAIL IF AVAILABLE

Detach This Half for Personal Records	
Recd: (b)(6)	Immigration and Naturalization Service
I-94#	1-94
NAME	Departure Record
CLASS H1B	Petitioner: [redacted]
VALID FROM 10/01/2011 UNTIL 09/30/2014	
PETITIONER	

Form I-797A (Rev. 10/25/09) N



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# Example

- EXAMPLE 2: John Doe received an I-129 approval three years ago and changed his status to work as an O-1A teacher. Now, a new employer wants to employ John as an O-1A teacher.
- Does John have to leave the United States and apply for a new visa and admission to extend his O-1A status?



# Example, *continued...*

No - The new employer can file an I-129 O-1A petition to seek both:

- O-1A classification for John Doe as well as
- A request to extend John's O-1A status.



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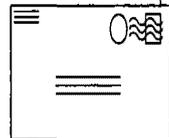


Has a qualifying H1B position as a Biochemist.



DOL LCA Fax Service

Employer faxes a completed LCA to Labor Dept who in turn faxes it back electronically certified.

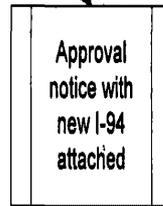


Petition mailed for adjudication

Officer approves the nonimmigrant classification and the change of status



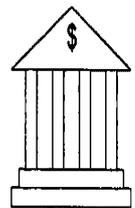
Officer adjudicates



Approval notice with new I-94 attached



Alien



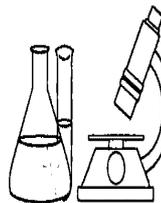
Harvard University

Just graduated with a PhD in Biochemistry.

EOS/COS



U.S. Citizenship and Immigration Services



POOFI New Biochemist in the United States

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# Nonimmigrant Review

Q. What is the difference between a petition and an application?

A. A petition is filed by a petitioner seeking an immigration benefit for someone else (the beneficiary), while an application is filed by an applicant seeking an immigration benefit for himself or herself.



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# Nonimmigrant Review, *continued...*

- Q. What is the difference between a nonimmigrant visa (NIV) and nonimmigrant status?
- A. An NIV is a document placed in an alien's passport that allows him or her to apply for admission, while nonimmigrant status is the actual granting of admission to an alien for a period of time.



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# Nonimmigrant Review, *continued...*

Q. A visa exempt Canadian applies for admission as a nonimmigrant at:

- a. Consulate
- b. Embassy
- c. POE
- d. PFI

Choose all that apply

A. POE, PFI



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# Change of Status

We will now introduce you to some of the nonimmigrant classifications that you may see beneficiaries requesting a change of status from.



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# Travel not Authorized

Per 8 CFR 248.1 - An applicant may not travel outside the U.S. while their request for a COS is pending.



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# B-1 vs. B-2

▪ B-1 is a temporary visitor for business.



▪ B-2 is a temporary visitor for pleasure.



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# B-2 Visitor Issues

- May not work or attend school

Exception: Part-time incidental classes

- Medical Treatment



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# Dependent Classifications

Principal	Dependent
E-1	E-1
E-2	E-2
E-3	E-3
H1B, H2 or H3	H4
L1A or L1B	L2
O1A or O1B	O2
P1A, P1B, P2, P3	P4
Q2	Q3
R1	R2
TN	TD



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# Not Eligible for COS

- J-1 physicians (exception: “Conrad Waiver”, Form I-612).
- J-1 students subject to the foreign residency requirement who have not received a waiver.
- Aliens admitted under the Visa Waiver Program (WT/WB).
- Aliens in transit: C-1, C-2, C-3
  - C-1 is an alien in transit
  - C-2 is an alien in transit to the UN
  - C-3 is a foreign government official in transit
  - Alien in transit without a visa (TWOV).



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# Not Eligible for COS, *continued...*

- Crewman (D-1/D-2).
- Fiancé(e) and dependents, K-1/K-2.
- Spouse and dependents of a U.S. citizen, K-3 and K-4 (This is a visa created by the LIFE Act).
- Informants, admitted with visa type "S".
- Refugees, asylees, and parolees.



# I – 539 Rider Applications



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# Who is eligible to file an EOS or COS on an I-539?

The spouse and unmarried  
minor children of the  
nonimmigrant worker with  
whom they are staying in the  
United States are eligible for  
an EOS or COS.



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# Documentary Requirements for I-539

- Application must be signed by the applicant.
- Evidence of lawful admission, passport pages, or other documentary evidence to verify a lawful entry and status.
- A copy of the principal alien's I-797 approval notice verifying his or her nonimmigrant status and validity dates.



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# Documentary Requirements for I-539, *continued...*

- Evidence that the principal alien is maintaining status.
- Proof of Relationship
  - Birth certificate
  - Marriage certificate
  - Principal alien's name listed on visa
  - Principal alien's name listed on passport
  - Principal alien's name on the back of the I-94 card



# Validity Dates

- For EOS grant validity dates which mirror the dates granted to the principal alien (except for age-outs).
  
- For COS :
  - Grant from the date of adjudication or the start date granted to the principal alien, whichever is later.
  - The validity date's expiration should mirror the expiration date of the principal alien's status (except for age-outs).
  - Make appropriate notations on Form I-539 Remarks section if limited.



# Dependent Child Turning 21 (age-outs)

If an applicant is a dependent child, and he or she will turn 21 prior to the principal alien's status expiration, you must grant validity of all applicants to the day before the dependent child's 21st birthday.



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# Dependent Child Has Already Turned 21 (age-out split decision)

- If an applicant is a dependent child and he or she has already turned 21, his or her application will be denied.
- If there are riding co-applicants, then a split decision will be done approving the co-applicants and denying the 21 year old.



# Required System Checks

- TECS check for individuals over 14 years of age.
- ADIS/SQ94 query for all change of status requests and all denials.

NOTE: The ADIS/SQ94 query is valid for 15 days.

- SEVIS if COS from F, M or J status.
- NSEERS registration compliance check.



# Approval Processing

- Correct notations on application
- Compute validity dates, length of stay, etc.
- Record of Proceeding
- Correct approval phrase and GUI update
- Complete adjudication worksheet, if applicable (i.e. return original documents)
- Proper routing



# Summary – General Information

- The status of the dependent is based on status of nonimmigrant spouse or parent.
- EOS and COS of dependents are adjudicated at the Service Center with jurisdiction over the applicants' address.
- The ending validity date typically mirrors the ending validity period given to the nonimmigrant spouse or parent on EOS cases.



# I-539 Adjudication

## Change of Status from F-M-J



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# F-1's

- Students attending one of the following:
  - colleges
  - universities
  - seminaries
  - conservatories
  - academic high school
  - elementary school
  - other academic institutions and
  - language training programs.



# Eligibility Requirements: COS from F-1/F-2

- Must be lawfully admitted into the United States as a nonimmigrant,
- Must be maintaining status at the time the COS was filed.



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# Documentary Requirements: COS from F-1/F-2

- Evidence of a lawful admission
- Proof of maintenance of status,
- Employment Authorization Document (EAD), if applicable,
- Documentation establishing Optional Practical Training (OPT), if applicable.



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# 30 Day Gap F Student COS

- F students requesting a COS are authorized:
  - Up to 30 days prior to the start date of their classes for course preparation, and
  - 60 days at the end of their program for preparation for their departure.



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# CaseBook

- Created so adjudicators can identify areas of fraud that CFDO is unable to scrape for.
- Located in “Local Databases”
- You are required to look up the school(s) that the beneficiary attended prior to the I-129 filing.



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# J1's

- INA Section 101(a)(15)(J) the “J” classification applies to:
  - Exchange visitors and their immediate family members participating in a program sponsored by the Department of State.
- The intent of the J classification is to have the participating aliens return to their home countries as goodwill ambassadors and sources of knowledge.



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# Dependents Riding With Principal Applicant (J-2)

- Each dependent will get his/her own SEVIS DS-2019
- Must show proof of relationship to principal
- DS-2019 processed the same as J-1's
- Watch for age-outs (already 21)



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# Initial Validity Period (upon admission)

## J-1/J-2

Duration of status - D/S plus 30 days to prepare to depart the United States.



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# Documentary Requirements: COS from J-1/J-2

- Evidence of a lawful admission
- Proof of maintenance of status
- Copy of current SEVIS Form DS-2019 or dependent Form DS-2019
- Copy of all previously issued SEVIS Form DS-2019 or dependent Form DS-2019
- Copy of I-612 waiver, if applicable



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# J's Subject to 212(e)

A J-1/J-2 exchange visitor who is subject to the two year foreign residency requirement (212(e)) must have a waiver (I-612) in order to change status.



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# Which J's are Subject to 212(e)?

Check the DS-2019 for the following:

- Directly or indirectly government funded program
  - 1) Programs beginning with "G" in the program number are usually government funded



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# Which J's are Subject to 212(e)?, *continued...*

- Programs where the applicant will be receiving graduate medical training.

1) DS-2019 indicates :

- “Educational Commission for Foreign Medical Graduates” (ECFMG)
- “ALIEN PHYSICIAN”
- Endorsement section, Block 2 and C are checked.



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# J's NOT Subject to 212(e)

- Au Pair
- General labor
- Summer Work/Travel



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# Skills List

- Check the job to see if it is one of the jobs NOT subject to 212(e).
  
- Check the country to see if it is on the list.

**NOTE:** Do not use the DOS Skills List, use the Skills List from the Federal Registrar.



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# Skills List, *continued...*

- If the country is on the Skills list:
  - Look up the country in the Register to determine if that group is subject to 212(e).
  - Determine the Group (i.e. medical, education, business, etc.) based on the category and subject field code description in Part 4 of the DS-2019.



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# J Waiver

- USCIS may waive the requirement for foreign residence as put forth in 212(e).
- If the applicant is subject to the two year residency requirement a waiver is necessary.
- Must have an approved Form I-612.

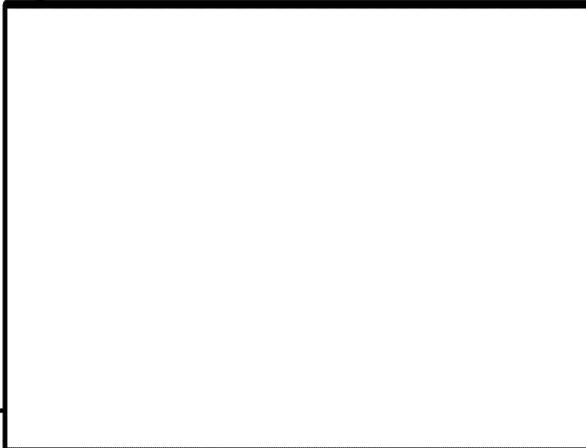


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U.S. Department of State  
**CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS**

OMB APPROVAL NO. 1605-0111  
 EXPIRES 03-31-2013  
 ESTIMATED BURDEN TIME: 45 min  
 (See Page 2)



W0000019190

J-1

1. During the period covered by this form, the individual identified supports U.S. D. S. to be provided to the exchange visitor by:



(b)(6)

**Sample**

Responsible Officer for Exchange Visitor (J-1) STATUS

Name of the Preparing Firm: \_\_\_\_\_ Title: \_\_\_\_\_  
 Name of the Exchange Visitor: \_\_\_\_\_  
 Telephone Number: 02-850-1212  
 Date: 04-27-2008

2. Signature of Responsible Officer for Exchange Visitor (J-1) STATUS (FBI TRANSFER OF PERSONS)  
 Signature of Responsible Officer for Exchange Visitor (J-1) STATUS: \_\_\_\_\_ Date: (mm-dd-yyyy) \_\_\_\_\_

**TRAVEL VALIDATION BY RESPONSIBLE OFFICER**  
 (Maximum validation period is one year)

EXCEPT: Maximum validation period is up to six months for Short-Term Exchange and four months for Long-Term Exchange and Domestic Travel Work.

(1) Exchange Visitor is in great standing in the present time

Date: (mm-dd-yyyy) \_\_\_\_\_

Signature of Responsible Officer or Alternate Responsible Officer: \_\_\_\_\_  
 (2) Exchange Visitor is in good standing in the present time

Date: (mm-dd-yyyy) \_\_\_\_\_

Signature of Responsible Officer or Alternate Responsible Officer: \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_ Date: (mm-dd-yyyy) \_\_\_\_\_

DS-2019 (Rev. 04-14-10)  
 16-201

Page 1 of 2

Form DS-2019



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# Required Systems Checks

- **Nationals**
- **TECS Manifest**
- **GUI:** Verify all information
- **SEVIS:** Student and Exchange Visitor Information System
- **ADIS/TECS SQ94:** TECS - Subject Query
- **CaseBook**



# SEVIS Checks

- Log on / Password
- SEVIS Main Menu
- Student vs. Exchange Visitor
- SEVIS ID Query
- Verify Information on the Form I-20

\* Refer to the SEVIS Adjudication Guide in:

MSWord/Add'l Resources/ADJ SOPs/General



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# SEVIS Checks, *continued...*

- Perform SEVIS check to verify eligibility and registration
- Search SEVIS by “N” number or name and DOB
- Ensure SEVIS “N” number(s) are entered in GUI
- Verify applicant’s and school’s status in SEVIS
- Compare SEVIS database to I-20/DS-2019 (the information should match)



# SEVIS Status- J Programs

Term	Definition
Active	The program has been approved to use SEVIS.
Cancelled	The program has chosen to discontinue participation in SEVIS.
Withdrawn	<p>The program's SEVIS participation has been ended by DOS.</p> <p><b><u>DO NOT RFE</u></b> to have the program status changed to "Active":</p> <ul style="list-style-type: none"> <li>• If the program status is listed as "Withdrawn" but the J-1/J-2 are listed as "Active" in SEVIS.</li> </ul> <p>This applies only to J's where the program status is listed as "Withdrawn" and the J-1/J-2's status is listed as "Active" or became "Inactive" during the 30 day grace period or after the COS request.</p> <p>The program will not be "Cancelled" until all current "Active" program participants complete or finish their participation in the program.</p>



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Presenter's Name: CTU Revised: 20139

# TECS: Subject Query (SQ94)

The SQ94 screen in TECS contains the information formerly contained in NIIS.

(Follow the instructions in the *SQ94 User Guide* to access and perform searches using SQ94 or crossings in SQ11 in TECS.)



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Presenter's Name: CTU Revised: 2013

# TECS: SQ94, *continued...*

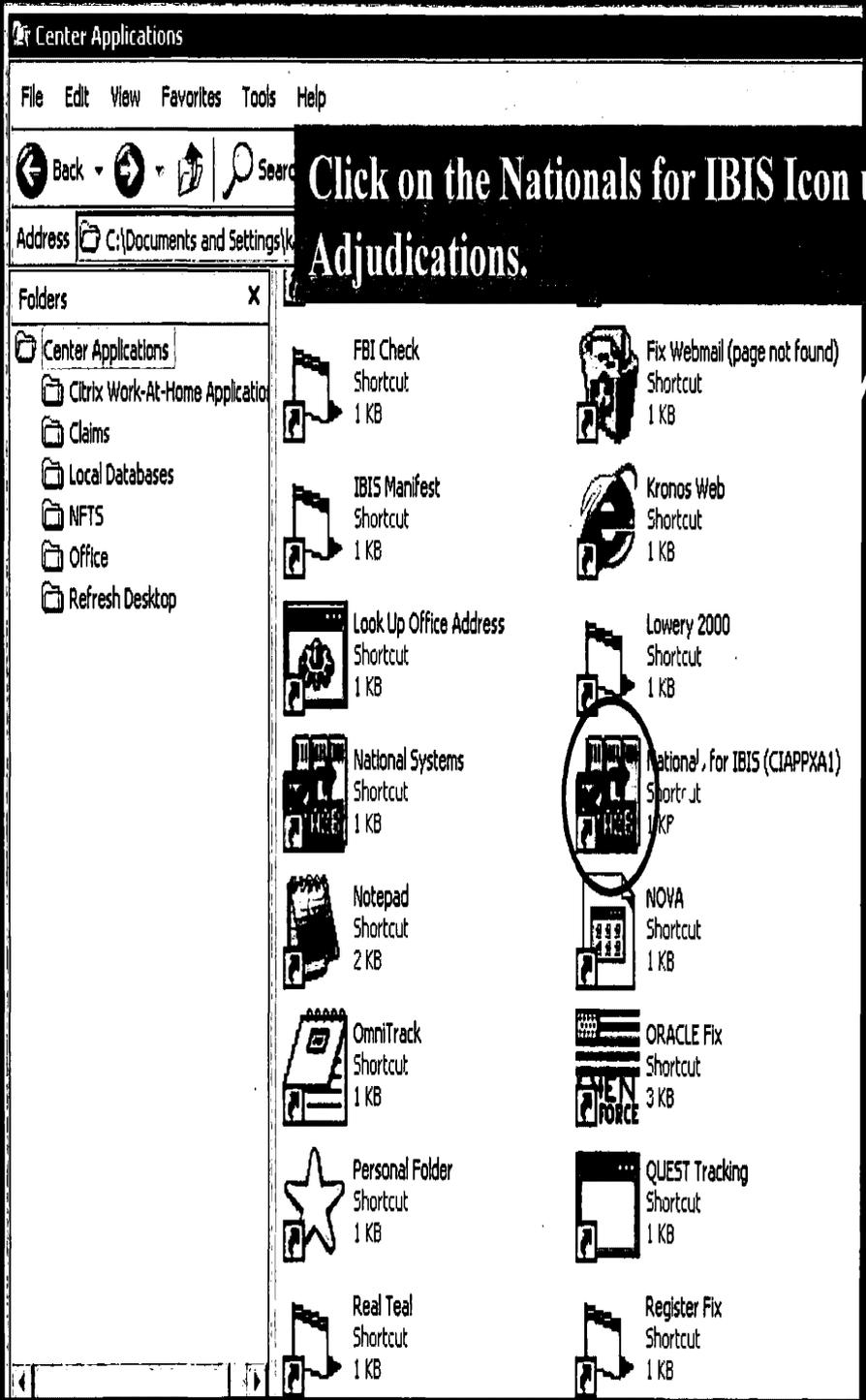
Data can be queried by any of the following search options:

- I-94 #
- Passport #
- Last Name, First Name, and DOB
- Arrival Date, Arrival Airline, and Flight #



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# Accessing SQ94



Click on the Nationals for IBIS Icon under Center Adjudications.



U.S. Citizenship and Immigration Services

# Log on to SQ 94



14:39:49  
TID= T510

TECS II MAIN SYSTEM SIGNON  
PRODUCTION

10/24/09 T2MG0113  
T2P00199

ENTER 9 DIGIT CODE:  
  
ENTER PASSWORD:  
  
ENTER NEW PASSWORD:

Enter user ID and Password.

3270

3270 Keypad - 18 Keys

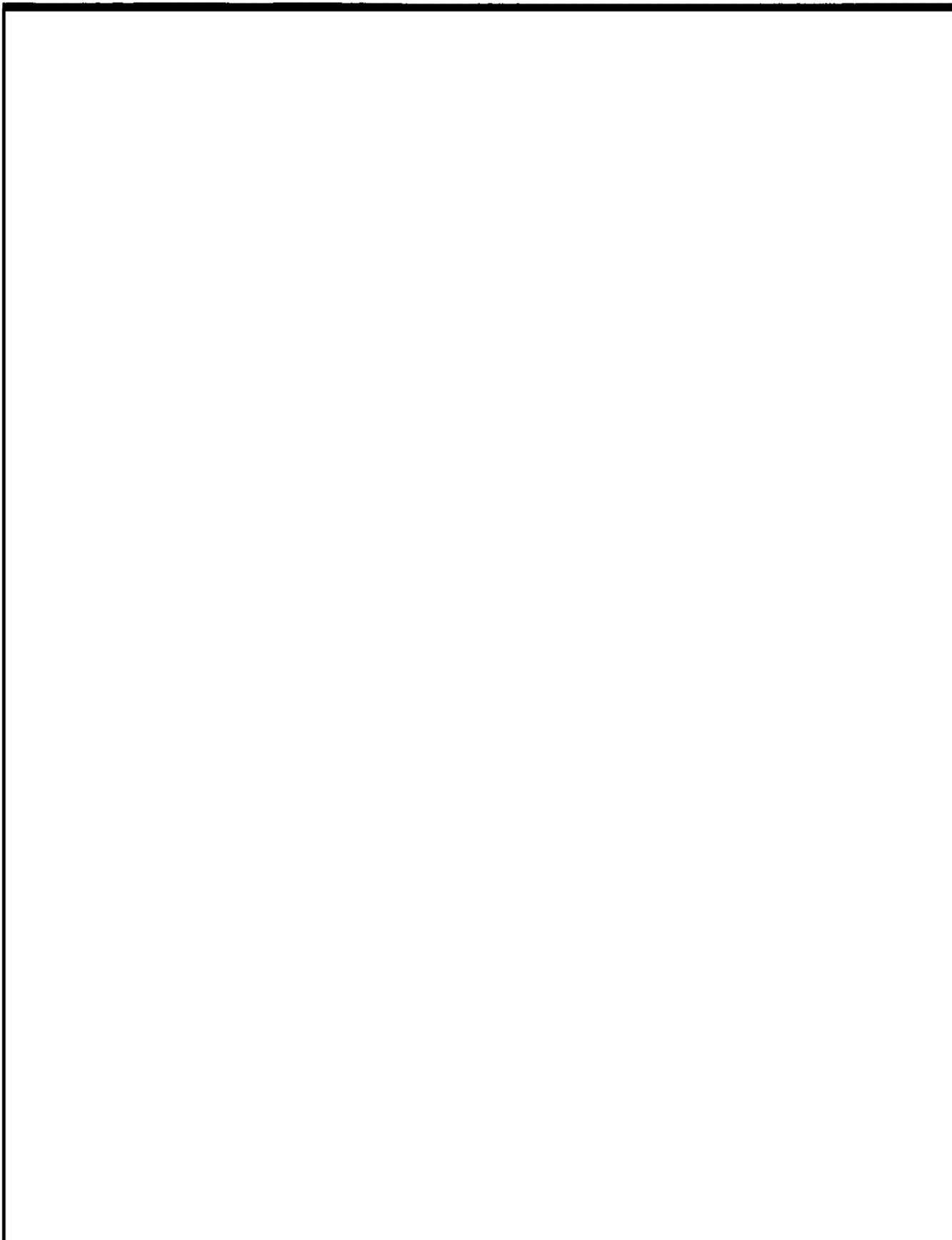
Enter	Clear	Reset	PA1	PA2	PA3
PF1	PF2	PF3	PF4	PF5	PF6
PF7	PF8	PF9	PF10	PF11	PF12

Attempting to connect to the Customs mainframe...

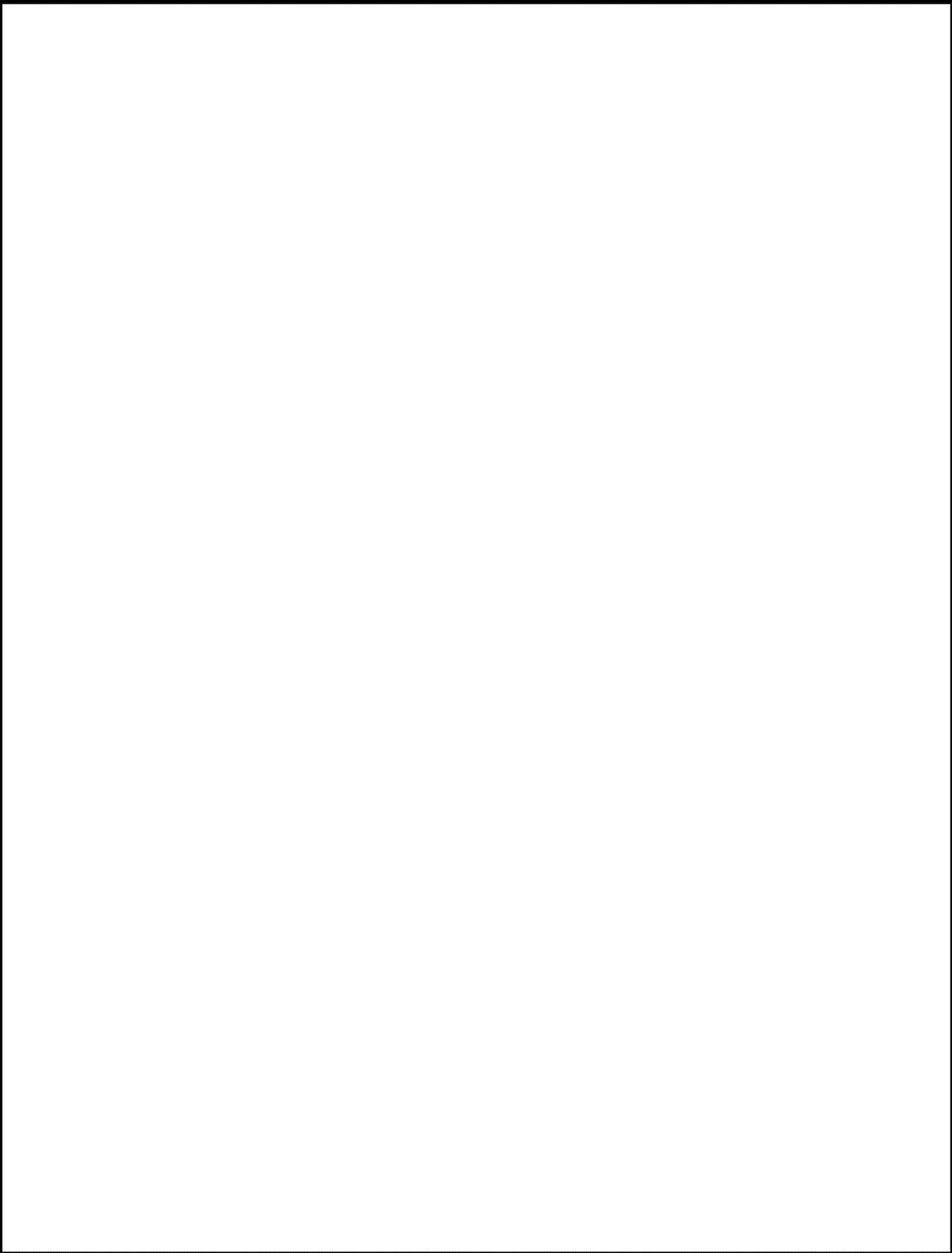
NUM OVR RUN



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# Statutory Reference

Section 101(a)(15) of the INA defines the nonimmigrant classifications.

For example:

101(a)(15)(B) – temporary visitor for business or pleasure, B-1, B-2



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Presenter's Name: CTU Revised: 2013

# EOS Regulation

- 8 CFR 214.1 creates subclassifications of nonimmigrant classifications defined in 101(a)(15) of the Act.

For example,

101(a)(15)(H) is divided to create H-4 for the spouse & children of an H-1B, H2A, H2B and H-3 principal nonimmigrant.

- This regulation also allows certain nonimmigrants to extend their stay.



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# COS Regulations

- 8 CFR 214.2 covers the special requirements for admission, extension and maintenance of status.
- 8 CFR 248 allows certain nonimmigrants to change from one classification to another.
  - 8 CFR 248.1 Eligibility
  - 8 CFR 248.2 Ineligible Classes
  - 8 CFR 248.3 Application



# About this Presentation

- Author: Vermont Service Center / Center Training Unit
- Date of last revision: 1/16/14
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.



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# Forms I-539 and I-824



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# Adjudication Process for H-4 Dependents of H-1Bs



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# Statutory & Regulatory References

- Section 101(a)(15)(L)(i)(b) of the INA
- 8 CFR 214.2(l)(7)(ii)
- 8 CFR 248.1(a)



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# Dependent Classification

- L-2: Dependent of an L-1



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# Form I-539

Department of Homeland Security  
U.S. Citizenship and Immigration Services

OMB No. 1618-0002, Edition 03/2013  
I-539, Application to Extend/  
Change Nonimmigrant Status

**START HERE - Please type or print in black ink**

**For USCIS Use Only**

<b>Part I. Information About You</b>				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Returned</td> <td style="width: 50%;">Initial</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	Returned	Initial																		
Returned	Initial																							
Family Name		Given Name																						
Address - In care of:																								
Street Number and Name		Apt. Number																						
City	State	Zip Code	Foreign Phone Number																					
Country of Birth		Country of Citizenship																						
Date of Birth (mm/dd/yyyy)	U.S. Social Security # (if any)	A-number (if any)																						
Date of Last Arrival Into the U.S.	I-94 Number																							
Current Nonimmigrant Status	Expires on (mm/dd/yyyy)																							
<b>Part II. Application Type (See instructions for fee)</b>																								
1. I am applying for: (Check one)																								
a. <input type="checkbox"/> An extension of my entry current status																								
b. <input type="checkbox"/> A change of status. The new status I am requesting is: _____																								
c. <input type="checkbox"/> Admission to initial status.																								
2. Number of people included in this application: (Check one)																								
a. <input type="checkbox"/> I am the only applicant.																								
b. <input type="checkbox"/> Members of my family are filing this application with me. The total number of people (including me) in the application is: _____ (Complete this application for each co-applicant.)																								
<b>Part III. Extending Information</b>																								
1. I/We request that my/our current or requested status be extended until: (mm/dd/yyyy) <input type="checkbox"/>																								
2. Is this application based on an extension or change of status already granted to your spouse, child, or parent? <input type="checkbox"/> No <input type="checkbox"/> Yes. USCIS Receipt #: _____																								
3. Is this application based on a separate petition or application to give your spouse, child, or parent authorization or change of status? <input type="checkbox"/> No <input type="checkbox"/> Yes. Filed with this I-539. <input type="checkbox"/> Yes. Filed previously and pending with USCIS. Receipt #: _____																								
4. If you answered "Yes" to Question 3, give the cause of the petitioner or applicant:																								
If the petition or application is pending with USCIS, also give the following data: Case filed at: _____ Filed on: (mm/dd/yyyy) <input type="checkbox"/>																								
<b>Part IV. Additional Information</b>																								
1. For applicant(s), provide passport information: Valid to: (mm/dd/yyyy)		Country of Issuance: _____ <input type="checkbox"/>																						
2. Foreign Address: Street Number and Name		Apt. Number																						
City or Town	State or Province																							
Country	Zip/Postal Code																							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><b>To Be Completed by Attorney or Representative, if any:</b></td> <td style="width: 50%;"> </td> </tr> <tr> <td><input type="checkbox"/> Will be used if O-39 is attached to represent the applicant</td> <td> </td> </tr> <tr> <td>ATTY State License #</td> <td> </td> </tr> </table>				<b>To Be Completed by Attorney or Representative, if any:</b>		<input type="checkbox"/> Will be used if O-39 is attached to represent the applicant		ATTY State License #																
<b>To Be Completed by Attorney or Representative, if any:</b>																								
<input type="checkbox"/> Will be used if O-39 is attached to represent the applicant																								
ATTY State License #																								



U.S. Citizenship and Immigration Services

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# Who is eligible to file an L-2 EOS/COS?

- The spouse and unmarried minor children of the nonimmigrant worker with whom they are staying in the United States.



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# Documentary Requirements

- Applicants must file for an EOS or COS using a Form I-539.
- Application must be signed by the applicant.
- An I-94 card, passport pages, or other documentary evidence to verify a lawful entry and status.
- A copy of the principal alien's I-797 approval notice verifying his or her nonimmigrant status and validity dates.
- Evidence that the principal alien is maintaining status.



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# Proof of Relationship

- Birth certificate
- Marriage certificate
- Principal alien's name listed on visa
- Principal alien's name listed on passport
- Principal alien's name on the back of the I-94 card
- ADIS or SQ94 check misc field



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# Validity Dates

- For EOS: grant validity dates which mirror the dates granted to the principal alien (except for age-outs).
- For COS to any one of the dependent classes:
  - Grant the initial validity date as the date of adjudication, or the start date granted to the principal alien, whichever is later.
  - The validity date's expiration should mirror the expiration date of the principal alien's status.
  - Make appropriate notations on Form I-539 Remarks section.



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# Dependent Child Turning 21 (age-outs)

- If an applicant is a dependent child, and he or she will turn 21 prior to the principal alien's status expiration, you must grant validity to the applicant and any other co-applicants to the day before the applicant's 21st birthday.



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# Processing a Request for Evidence

- Prepare a request for evidence if the applicant fails to enclose any of the required documentation.
- Subsequent failure to submit such materials warrants a denial.
- RFEs: standard callups in CG
- Routing
- NOVA stats (Others)



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# Processing an Approval

- Notations on application
- Calculate validity dates, length of stay, etc.
- Correct approval phrase and updating CLAIMS
- Record of Proceeding
- Routing
- NOVA stats (Others)



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# Processing a Denial

- Denial standards
- Record of Proceeding
- Updating CLAIMS
- Routing
- NOVA stats (Others)



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# Required System Checks

- All I-539s require TECS check (all individuals over 14 years of age).
- ADIS/SQ94 query is required for all change of status requests and all denials.

NOTE: The validity period for an ADIS/SQ94 query is 15 days.

- SEVIS if COS from F, M or J status.



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# I-824 Application

Two reasons an I-824 would be attached:

- Duplicate notice
- Consulate notification



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# Employment Authorization

- 8 CFR 274a.12(a)(18) authorizes employment for an L-2 spouse of an L-1 non-immigrant.



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# Employment Authorization, Con't

## Evidentiary Requirements of (a)(18):

- Evidence of the applicant's L-2 non-immigrant status.
- Evidence of the principal alien's L-1 non-immigrant status.
- Evidence of the principal and applicant's relationship



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# Employment Authorization, Cont'd

- The validity period will begin on the date of adjudication, and end on the validity date of the applicant's status or the principal alien's status or two years, whichever is less.



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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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(b)(6)

DATE: **AUG 04 2014** Office: VERMONT SERVICE CENTER FILE

IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

*R* Ron Rosenberg  
Chief, Administrative Appeals Office

[www.uscis.gov](http://www.uscis.gov)

**DISCUSSION:** The Vermont Service Center's director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, an IT consulting and development services company, is an affiliate of the beneficiary's foreign employer, located in India. The petitioner seeks to employ the beneficiary as a Development Manager for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed abroad, or would be employed in the United States, in a qualifying managerial or executive capacity. The director further found that the petitioner's placement of the beneficiary at the worksite of an unaffiliated employer "is essentially an arrangement to provide labor for hire for the unaffiliated employer."

On appeal, counsel for the petitioner contends that the director mischaracterized the nature of the beneficiary's position and disregarded portions of the statutory definition of "managerial capacity" in evaluating the beneficiary's qualification for the requested classification. Counsel asserts that the beneficiary has managed and will manage a distinct component or subdivision of the organization and supervises a staff of professional employees. Counsel submits a brief in support of the appeal.

### I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

## II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner has established that the beneficiary has been employed abroad and will be employed in the United States in a primarily managerial capacity.

### A. Facts

On the Form I-129, the petitioner stated that the beneficiary would work off-site in Windsor, Connecticut, as a development manager "responsible for managing and directing the allocation of materials and resources to Petitioner's large on-site/off-site software development projects in the United States." The petitioner indicated that the beneficiary has been employed by its foreign affiliate since 2005 and currently performs the same duties as a development manager based in India.

In a letter in support of the petition, the petitioner included a detailed description of the beneficiary's current and proposed responsibilities, which include: managing, directing, and planning of projects; approving financial matters relating to the projects; overseeing project documentation; and managing and directing all project resources including materials and personnel.

The petitioner stated that the beneficiary would directly supervise one subordinate supervisor and four professionals in the United States. The petitioner also stated that he would continue to supervise his current team of eight professionals based in India pursuant to the company's "Global Delivery Model" whereby software is developed at its center in India and remotely managed and coordinated by on-site project management staff in the United States. In support of these assertions, the petitioner submitted its organizational charts for both entities which identified the beneficiary's subordinates by name and job title.

The director subsequently issued a Request for Evidence (RFE) instructing the petitioner to provide additional evidence relating to the beneficiary's U.S. and foreign employment.

In response, the petitioner provided more detailed descriptions of the beneficiary's current and proposed duties along with information regarding the amount of time the beneficiary allocates and would allocate to specific duties in his role as development manager. The petitioner included documentary evidence demonstrating the educational qualifications of the beneficiary's subordinates, and provided brief descriptions of their job duties and evidence of their employment. The petitioner also provided evidence that the beneficiary conducts performance appraisals for all employees identified as his subordinates on the foreign entity's organizational chart.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or would be employed in a qualifying managerial capacity. The director observed that the evidence submitted indicated that the beneficiary will manage a team that works on a specific project and engages in activities directly associated with producing a product or providing a service to the client. The director concluded that "[m]anaging a small team on a specific client project is not evidence that the beneficiary is managing an 'essential function' or component of your organization," and added that "it appears . . . your business would continue to conduct business if this individual client project ceased."

The director ultimately concluded that the beneficiary has not been employed abroad and will not be employed in the United States in a managerial or executive capacity because his role does not involve managing the organization or a "department, subdivision, function, or component of the organization." Finally, the director observed that the beneficiary's physical placement working at an unaffiliated employer's location is essentially an arrangement to provide labor for hire for that unaffiliated employer.

On appeal, counsel asserts that the beneficiary's role involves managing a distinct component of the organization and supervising a staff of professional and supervisory employees, consistent with the definition of "managerial capacity" at section 101(a)(44)(A) of the Act. Counsel objects to the director's determination that the beneficiary's management of client projects is not of sufficient

consequence to qualify as a component or function of the organization, and provides an additional explanation from the petitioner as follows:

[E]ach "project" is the most distinct, independent and readily identifiable component of our organization. In addition to the engineering expertise, it requires direct management of professional teams, budgets, client liaison, supply, transportation, training, H.R. etc. . . . Each project has its own management team, its own budget, client liaison and offshore development teams. . . . Each Project Manager functions as a Chief Operations Officer within the matrix of the project. . . . While a single project may only be valued at 2 to 3 million dollars, it is the failure of the project that could easily lead to loss of a valuable client with severe financial consequences for the company . . . . [The petitioner] is the sum of its projects."

Counsel emphasizes that the director did not contest that the beneficiary's subordinates are professionals or that his current and proposed duties are otherwise not in compliance with the applicable regulations.

#### B. Analysis

Upon review, the petitioner has established that the beneficiary has been employed abroad and would be employed in the United States in a managerial capacity. Accordingly, the director's decision will be withdrawn and the appeal will be sustained.

As a preliminary matter, the director erred by denying the petition, in part, based on a finding that the beneficiary's placement at the worksite of an unaffiliated employer is essentially an arrangement to provide "labor for hire." The director inappropriately applied Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act") to this petition to classify the beneficiary as an L-1A nonimmigrant. The restrictions on off-site employment imposed by section of the Act are applicable only to L-1 petitions filed on behalf of L-1B specialized knowledge personnel.

The director's finding that the beneficiary's role is not in a managerial capacity was based on a finding that his management of a "client project" cannot qualify as management of "a department, subdivision, function, or component of the organization," pursuant to section 101(a)(44)(A)(i) of the Act.

The petitioner has provided sufficient support for a conclusion that, within the context of its business, its client projects are in fact distinct components of the company that require independent management and a significant level of responsibility on the part of managers assigned to lead them. The record establishes that the beneficiary has been and would be providing such management for client projects, and that he exercises discretion over the day-to-day operations of the activities for which he has authority as required by 101(a)(44)(A)(iv) of the Act.

Further, the petitioner established that the beneficiary has supervised and will supervise a subordinate team of software professionals employed by the petitioner and its foreign affiliate, and

that he has the authority to hire and fire or recommend those as well as other personnel actions. See sections 101(a)(44)(A)(ii) and (iii).

Finally, the petitioner has described the beneficiary's current and proposed duties in sufficient detail to establish that he has been and will be primarily performing managerial duties, and will not allocate a significant portion of his time to duties that do not fall within the statutory definition of managerial capacity.

Based on the foregoing the petitioner has established that the beneficiary has been and will be employed in a managerial capacity. The appeal will be sustained.

### III. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has sustained that burden. Accordingly, the director's decision dated July 18, 2013 is withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained.

# L DENIAL TRAINING



# General Reminders

Please:

- Do not turn on computers until instructed.
- Turn off all cell phones and pagers.
- Avoid sidebar conversations.



# Course Objective

The goal of this training is to provide adjudicators with the basic tools necessary to produce a clear and concise denial for a Form I-129 L1 petition.

# Introduction

- General Tools to ensure consistency.
- Time, effort, practice and attention to detail.
- Adjudicator Responsibility to build writing skills:
  - Decision Writing SOP
  - Mentor/Help Desk/Senior/Supervisor
  - Read sample denials/administrative decisions on ECN
  - Effective writing books.

# Agenda

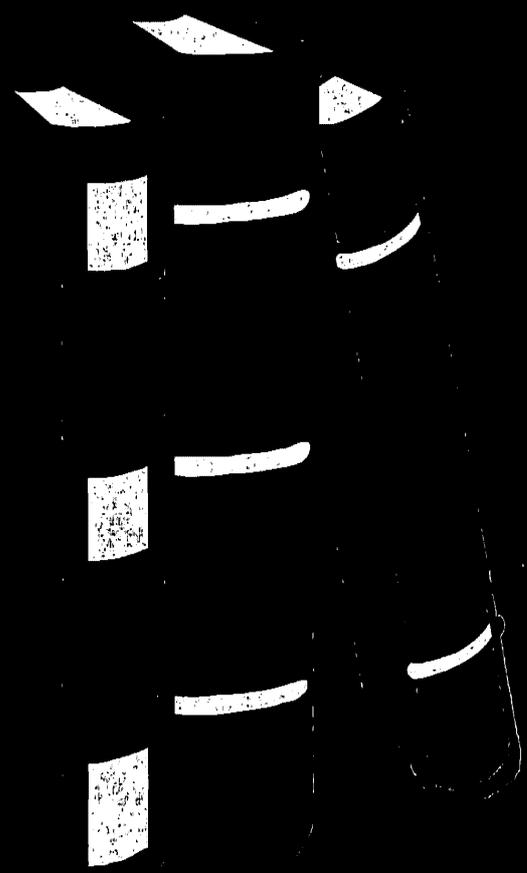
- Resources
- Denials/Orders
  - Standard Orders & Statements
  - Citations
  - Structure
  - Multiple Grounds

# Agenda, Cont'd

- Tips & Suggestions
- L1 EOS/COS Denials
- L1 Denials
- AAO Decisions

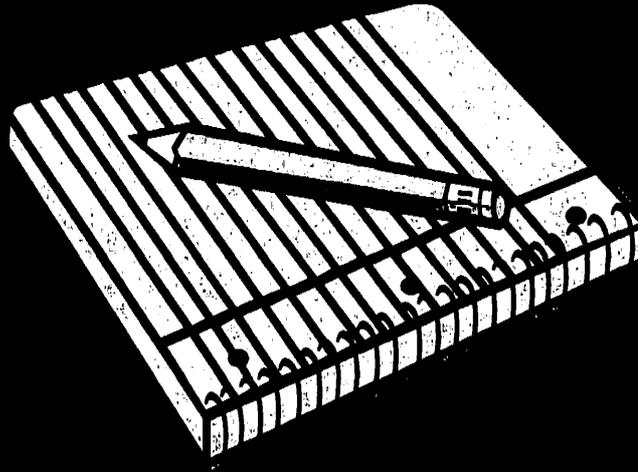
# Resources

- Immigration and Nationality Act (INA)
- Code of Federal Regulation (CFR)
- Operating Instructions (OI)
- Precedent Decisions
- Interim Decisions
- Interpretations
- Interpreter Releases
- Foreign Affairs Manual (FAM)
- USCIS/Local Policy
- Federal Register



# Denial/Order Guidelines

- Clear
- Concise
- Consistent
- Guide the applicant/ petitioner through the law
- Address all grounds of the denial
- Accurate within the law



# Standard Orders & Statements

Each case type has standard denial letters and standard phrases, inserts, statements, and paragraphs. Each of these:

- Contains highlighted sections (hidden text) to be filled in by the officer
- Should be used for consistency, accuracy and saving time
- When adapted, should keep a logical order of cites, discussions and conclusions

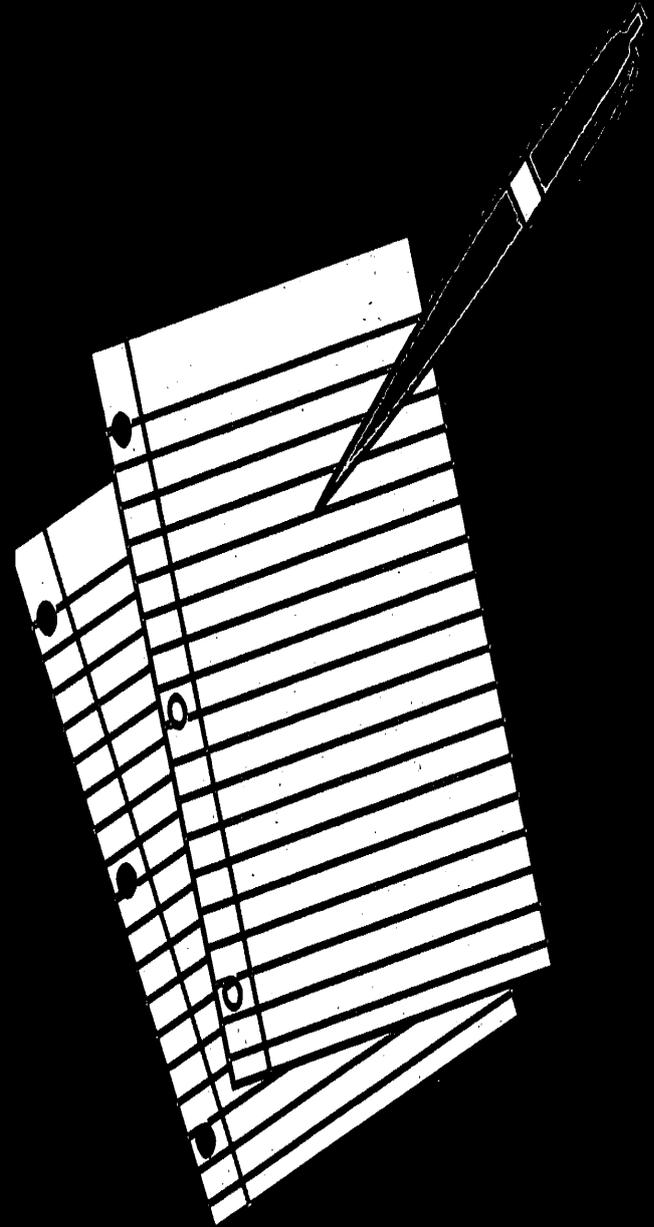
Note: Standard phrases, inserts, statements, and paragraphs are not as refined as H1B

# Citations

- Excerpts taken from precedent decisions, statute, regulations, etc.
- Significant parts of decisions
- Read the corresponding decision to ensure relevance.
- Link <http://www.justice.gov/eoir/vll/libindex.html>

# Denial/Order Structure

- Introduction
- INA and regulation citations
- Discussion
- Summarizing Statement
- Additional supporting citations
- Summary/Decision



# Discussion Structure

- Topic Sentence
- Background
- Summary of RFE
- Acknowledgement of the Response
- Assessment of the Evidence

# Multiple Grounds of Denial

- Strongest/most important ground first
- Logical progression
- Spend time organizing the denial
- Address all grounds of the denial
- Address each issue in a separate paragraph
- Use transitional sentences
- Combine two or more standard denial letters when necessary\*

# Addressing RFE Deficiencies

If an eligibility ground was not addressed in the RFE:

- Officers can make note of RFE/NOID/NOIR deficiencies in a separate paragraph of the denial.
- Officers should indicate that even if this evidence had been submitted, the case would still be denied.

# Denial Training Specific to Ls

# EOS/COS Denial Process

- If approving the L-1 classification, but denying the EOS or COS, the approval must be:
  - Updated as a release, and
  - A separate EOS or COS denial is sent with the released approval.
  
- Add autotext 0053 or 0054 if the beneficiary is out of status.

# EOS/COS Denial Standards

- Call up EOS/COS denial shell in CG, insert standards and place on hold for clerical release.
- The I-129 EOS/COS denial standards are located in autotext and are numbered from 4889 – 4929.
- May have to modify one of the I-539 denial standards located in autotext and numbered from 7710 – 7799.
- If you create a unique denial standard you use over and over, send to your supervisor.



# L-1 Classification Denials, (continued)

- List of I-129 L-1 Denial Standards
- May have to combine two or more denials;  
e.g., qualifying relationship and  
specialized knowledge

# Sample Denial

# Organizing Your Ideas

In the sample denial, which paragraph is:

- The introduction
- Discusses the issue(s)
- Explains the initial evidence and why it was deficient
- Discusses the requested evidence
- Addresses the evidence submitted in response
- Summarizes why petition is still deficient
- The conclusion

# Put the Most Important Ideas First

For example:

- First, is there a qualifying relationship?
- Second, did the beneficiary work for a qualifying foreign employer for one year?
- Third, was the beneficiary employed in a qualifying capacity?
- Fourth, will the beneficiary be employed in a qualifying capacity in the United States?

# Put the Most Important Ideas First, (continued)

- Fifth, if the petition is seeking an EOS/COS, was the beneficiary maintaining status at the time of filing?

# Fee Issues

- Prepare an Intent to Deny when requesting just the Fraud fees.
- If other deficiencies are present, address fee issues first in an RFE and follow with other deficiencies.

ITD---B3EXEMPT FRAUD

# AAO Concerns

There are instances when:

- Denials do not contain enough analysis of the evidence contained in the record.
- There is a disconnect in the decision; i.e., one part of the letter might refer to a denial, but later will refer to the letter as a revocation.

# Denial Concerns

- A denial may only be issued for grounds addressed through an RFE, ITD or ITR.
- If other deficiencies are determined at the time of denial, the officer should recognize the deficiency but not address as a ground for denial.

# Summary

- Resources
- Denials/Orders
  - Standard Orders & Statements
  - Citations
  - Multiple Grounds

# Summary, (continued)

- Tips & Suggestions
- L-1 EOS/COS Denials
- L-1B Denials
- ITD for Fraud Fees
- AAO Decisions

Questions?

# Denial Writing Workshop

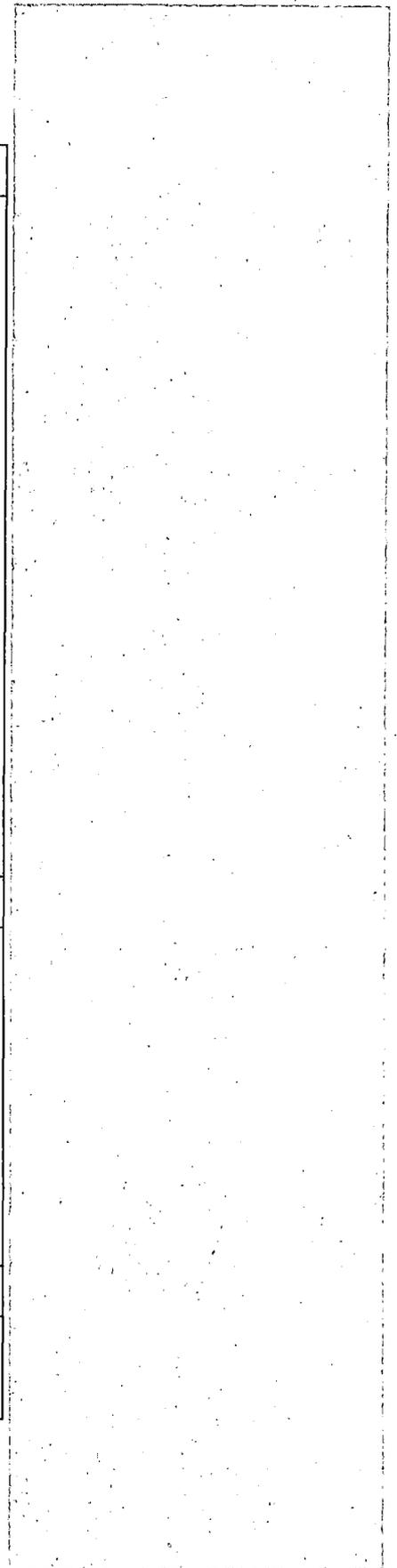
➤ Virtusa Corporation

**L-1 Process for LPRs**

Refer to the table below to determine the action to take on an L-1 petition when the beneficiary adjusts to lawful permanent resident (LPR) status.

<b>If the beneficiary...</b>	<b>Then...</b>						
Adjusts to LPR status after the requested start date on the L-1 petition,	Grant L-1 validity up to date of adjustment.						
Adjusted prior to the requested start date, and Seeks consular notification,	Adjudicate on merit. Notate the KCC copy to indicate the alien is an LPR.						
Adjusted prior to requested start date, and Seeks EOS/COS,	Send an RFE questioning the alien's intent to be a nonimmigrant or immigrant.						
	<table border="1"> <thead> <tr> <th><b>If the response indicates...</b></th> <th><b>Then...</b></th> </tr> </thead> <tbody> <tr> <td>Intent to abandon LPR status,</td> <td>Change the petition to consular notification, and Indicate on the KCC copy that the alien will abandon LPR status at the consulate.</td> </tr> <tr> <td>No intention to abandon LPR status,</td> <td>Deny the EOS portion of the petition.</td> </tr> </tbody> </table>	<b>If the response indicates...</b>	<b>Then...</b>	Intent to abandon LPR status,	Change the petition to consular notification, and Indicate on the KCC copy that the alien will abandon LPR status at the consulate.	No intention to abandon LPR status,	Deny the EOS portion of the petition.
	<b>If the response indicates...</b>	<b>Then...</b>					
Intent to abandon LPR status,	Change the petition to consular notification, and Indicate on the KCC copy that the alien will abandon LPR status at the consulate.						
No intention to abandon LPR status,	Deny the EOS portion of the petition.						

XXX1	CFR Evidence Abroad – Denial Standards - Snippet
	<p>Title 8 Code of Federal Regulations (8 CFR), section 214.2(1) states in pertinent part:</p> <p>(3) Evidence for individual petitions. An individual petition filed on Form I-129L shall be accompanied by:</p> <p>(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.</p> <p>(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.</p>
XXX2	Staffing Levels – General L1A - Snippet
	<p>If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed. [Indicate the parts not established and explain why.]</p>
XXX3	Text - No Qualifying Relationship - VSC L XXX3
	<b>Qualifying Relationship</b>



The ownership and control of

To establish a "qualifying relationship" under the Act and USCIS regulations, you must show that the beneficiary's foreign employer and the proposed U.S. employer are qualified employers; i.e. one entity with "branch" offices or related as a "parent and subsidiary" or as "affiliates."

Foreign Entity Ownership and Control

You did not initially provide evidence to establish ownership and control of the beneficiary's foreign employer.

The evidence you initially submitted to establish ownership and control of the foreign entity was not sufficient.

In response to USCIS's request for additional evidence to satisfy ownership and control of the foreign entity, you submitted .

This evidence is not sufficient to establish ownership and control of the foreign entity.

U.S. Entity Ownership and Control

You did not initially provide evidence to establish ownership and control of the U.S. entity.

The evidence you initially submitted to establish ownership and control of the U.S. entity was not sufficient.

In response to USCIS's request for additional evidence to satisfy ownership and control of the U.S. entity, you submitted .

This evidence is not sufficient to establish ownership and control of the

	<p>U.S. entity.</p> <p>Therefore, the evidence does not establish that a qualifying relationship exists pursuant to 8 CFR 214.2(l)(1)(ii).</p>
XXX4	No Doing Business – VSC L XXX4
	<p><b>Doing Business</b></p> <p>Title 8 Code of Federal Regulations (8 CFR), section 214.2(l) states in pertinent part:</p> <p>(3) Evidence for individual petitions. An individual petition filed on Form I - 129 shall be accompanied by:</p> <p>(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.</p> <p>8 CFR 214.2(l)(1)(ii) states in pertinent part:</p> <p>(G) Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:</p> <p>(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany</p>

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	<p>transferee;</p> <p>(H) Doing business means the regular, systemic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.</p>
XXX5	Text – 1 in 3 Abroad Prior to Filing – VSC XXX5
	<p><b>Foreign Employment Abroad</b></p> <p>The initial evidence did not demonstrate that the beneficiary had been employed with the qualifying foreign entity for at least one of the three years preceding the filing of the petition or at the time of admission as an L-1 nonimmigrant in a managerial, executive, or specialized knowledge capacity.</p> <p>In response to USCIS's request for evidence to verify the beneficiary's qualifying foreign employment, you submitted .</p> <p>This evidence is insufficient to show that the beneficiary was employed with the foreign entity for one of the past three years prior to filing this instant petition or at the time of admission as an L-1 nonimmigrant.</p> <p>Therefore, the evidence does not demonstrate that the beneficiary was employed with the foreign entity for one of the past three years prior to filing in a managerial, executive, or specialized knowledge capacity as required by 8 CFR 214.2(i)(3)(iii).</p>
XXX6	L1B Offsite Unaffiliated Employer - VSC L1B XXX6
	<b>Offsite Employment in the United States</b>

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The record appears to indicate the beneficiary will be employed offsite as a(n) at , located in , .

The L-1 Reform Act of 2004 contained in the Omnibus Appropriations Act for Fiscal Year 2005 (Public Law 108-447) amends Section 214(c)(2) of the Act by adding:

(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of Section 101(a)(15)(L) of the Act and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under Section 101(a)(15)(L) of the Act if..

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary (emphasis added).

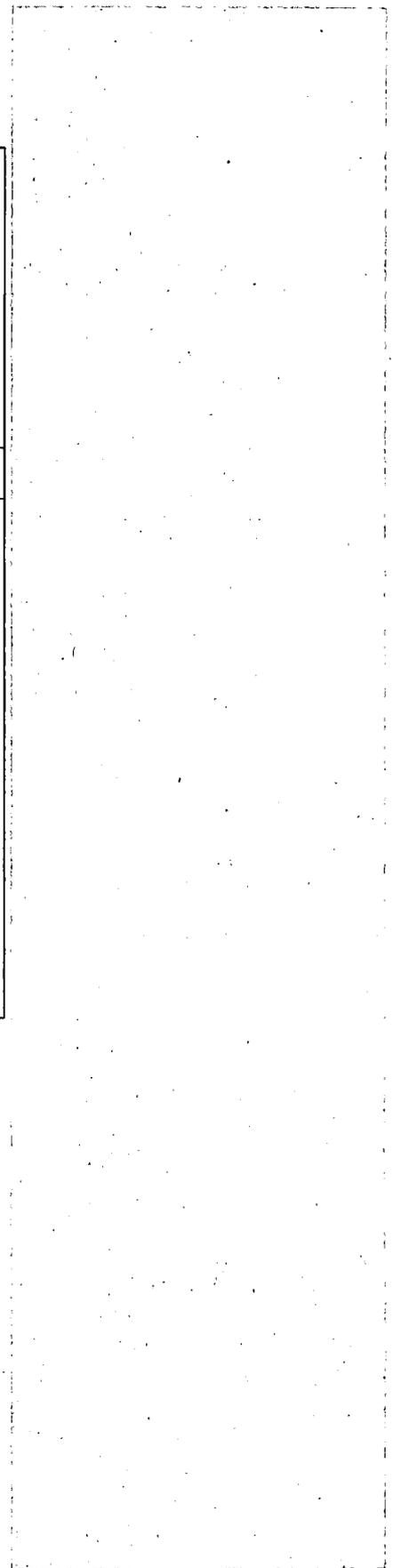
The L-1 Visa Reform Act of 2004, requires you to establish that the placement of the alien at the worksite of the unaffiliated employer is not essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to you is necessary.

Supporting documentation suggests that the beneficiary's value to the project involves the beneficiary's familiarity with and knowledge of the client's software, methodologies, and procedures, rather than a special or an advanced knowledge of your product or services, exclusively.

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	<p>Since it appears that the proposed position will be located primarily at a worksite belonging to someone other than the petitioning employer or its affiliate, subsidiary, or parent, and does not necessarily require special and/or advanced knowledge specific to the petitioner, the evidence does not show that the proposed employment qualifies as requiring specialized and/or advanced knowledge.</p>
XXX7	Denial Intro - VSC L Denial Standards
	<p>Your organization, , is a enterprise located in with employees in the United States and has a reported gross annual income of \$. You seek to temporarily employ the beneficiary, , as afor a period of years.</p> <p>On , you were granted an opportunity to submit additional evidence to address .</p> <p>On , U.S. Citizenship and Immigration Services (USCIS) received correspondence containing your response.</p> <p>USCIS will discuss each ground for denial below.</p>





# U.S. Citizenship and Immigration Services

# BLANKET L-Z PETITION PROCESS



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 2

# Blanket Petition Authority and Purpose

INA § 214(c)(2)(A)

8 CFR 214.2(1)(4)

Blanket Petition approvals grant permission to entities/corporations for any of their qualifying entities to petition to transfer an employee from any approved foreign entity to any approved United States entity.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 3

# Blanket Petitions

In order to bring a qualified L-1 alien into the United States under the L Blanket Petition process, two steps must occur:

- (1) The Petitioner must file the Form I-129 and L Supplement requesting Blanket Petition (LZ) approval.
- (2) With a currently valid approved LZ petition, the Petitioner may file Form I-129S on behalf of an employee in order to transfer him/her to the United States as an L-1 nonimmigrant.

Note: The approved LZ petition has established a qualifying relationship between the petitioner and foreign entities.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 4

# Filing an LZ Petition

A U.S. or foreign organization may file an I-129 requesting approval of an LZ petition on behalf of itself and its parent, branches, subsidiaries, and affiliated companies.

Officers should review Question 3 on Page 20 of the Form I-129 (the first page of the L Supplement) to determine if the Petitioner is seeking the LZ nonimmigrant classification.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 5

# Filing an LZ Petition, *continued...*

A petitioner which meets the following requirements may file an LZ petition:

(A) The petitioner and each of those entities listed are engaged in commercial trade or services; AND

(B) The petitioner has an office in the United States that has been doing business for one year or more; AND



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 6

# Filing an LZ Petition, *continued...*

(C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; AND

(D) The petitioner and the other qualifying organizations have:

(1) obtained approval of at least 10 L-1 petitions during the previous 12 months; OR

(2) have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; OR

(3) have a United States work force of at least 1,000 employees.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 7

# Filing an LZ Petition, *continued...*

Establishing control and ownership of all entities:

The LZ petition must include a list of all the organizations eligible to transfer L-1 workers under the blanket petition to include documentation **establishing the qualifying relationships of the organizations as well as establishing that they are doing business.**

If control and ownership are not established and/or doing business, send an RFE tailored to the case.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 8

# LZ Petition Validity

An LZ petition to qualify a company as a blanket petitioner may be approved for an initial period of three years. A subsequent petition for extension may be approved indefinitely if all extension requirements are met.

See 8 CFR § 214.2(l)(7)(i)(B)  
and 8 CFR § 214.2(l)(14)(iii)(A)

The LZ petition may be approved in part or in whole. You may approve some of the entities and deny others.

See 8 CFR § 214.2(l)(7)(i)(B)(3)



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 9

# Blanket Extensions

- A blanket extension may be filed six months prior to the expiration of the initial blanket Form I-129 petition.
- An extension **must** be filed in a timely fashion or the company's LZ petition status will become invalid, and the Petitioner must then wait three years to file a new initial LZ petition. See 8 CFR § 214.2(l)(14)(iii)(B)



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 10

# Blanket Extension Requirements

The documentation required to support the blanket extension include:

- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
  - Positions held during that period.
  - The employing entity.
  - The dates of initial admission and final departure, if applicable, of each beneficiary.
- A statement from the petitioner indicating whether it still meets the blanket criteria.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 11

# Blanket Extension Requirements,

*continued...*

- Documentation to support any changes in approved relationships or additional qualifying organizations.
- Petitioner must file an amended petition with fee if:
  - There are changes in approved relationships.
  - There are additional qualifying organizations.
- An amended petition may only be approved for the validity period of the petition it amends.
- A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely.

See 8 CFR § 214.2(l)(7)(i)(C)



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 12

# Approving an LZ Petition

- Check VIBE.
- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**).
- Indicate the dates of approval/validity dates (which will either be **three years** from the date of approval (for an initial) or **“INDEFINITELY”** (for an extension)).
- Make a notation **“BLANKET PETITION”** in the block entitled **“PARTIAL APPROVAL.”**



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 13

# Approving an LZ Petition, *continued...*

- If partial denial of some organizations/entities – notate **“PARTIAL DENIAL”** in the **“PARTIAL APPROVAL”** block.
- Copy list of qualifying organizations/entities, place on non-record side for the AST to copy and send with approval notice.
- Stamp petition(s) and sign stamp.
- Forward second copy of petition and list of organizations/entities to KCC.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 14

# Approving an LZ Petition, *continued...*

- Complete Adjudication Worksheet/Premium Processing Worksheet as a release, notate the following on top of worksheet: Blanket/LZ-Copy List to Form I-797.

## ▪ GUI UPDATING

- Review and make corrections to the information on first screen, as needed.
- Click on Adjudicate (F10), use approval phrase #6, Blanket Approval, for all approvals.
- Check “Y” to clerical.
- Click “SAVE”



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 15

# LZ Petition RFE

- Check VIBE.
- Update case in GUI as “Additional Evidence Requested”.
- Prepare RFE in CG using call ups: 4200 (MASTER RFE) or 4201-4212 (INDIVIDUAL CALL UPS).



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 16

# LZ Petition RFE, *continued...*

## Brown file:

- Send RFE and attach original RFE to record side on top of petition/G28.
- Send file to FCU/RFE Shelf.

## PP file:

- Notate worksheet as RFE.
- Send file to the AST for release and mailing of RFE.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 17

# Denying an LZ Petition

- Check VIBE.
- Review petitioner information in GUI.
- Update case as denied.
- Stamp petition and sign (after SISO review).
- Create denial in CG using I129LZ Blanket L Denial shell, place on hold.
- All denials require SISO review and sign off.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 18

# Denying an LZ Petition, *continued...*

## Brown file:

- Print Original denial.
- Place file in ROP order with original denial on top and pink ROP coversheet on top of denial.
- Send file to Records.

## PP file:

- Staple file copy of denial on non-record side of file.
- Place file in ROP order.
- Notate worksheet as denial, NFTS code and date.
- Send file to AST to release and mail denial.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 19

# LZ Petition Questions



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 20

# About this Presentation

- Author:     VSC CTU
- Date of last revision:   6/19/2014
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 21

# Disclaimer

This training module is intended solely to provide internal training to DHS/USCIS Field Offices. It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in benefit applications before USCIS, in removal proceedings, in litigation with the United States, or in any other form or manner. This training module does not have the force of law, or of a DHS directive.



U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 22

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U.S. Citizenship  
and Immigration  
Services

Presenter's Name: CTU Revised: 2014 23

## **LZ Lesson Plan**

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**Slide 1**            **Branding Slide**

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**Slide 2**            **Blanket LZ Process**

**Instructor:**

Introduce yourself and the course. A brief description of what LZ petitions are and how they will affect the trainees.

Remind trainees to turn off their computers, put their cell phones on vibrate and not to engage in sidebar conversations or access their email during the presentation.

---

**Slide 3**            **Blanket Petition Authority and Purpose**

INA 214(c)(2)(A)

8 CFR 214.2(l)(4)

Blanket Petition approvals grant permission to entities/corporations for any of their qualifying entities to petition to transfer an employee from any approved foreign entity to any approved United States entity.

---

**Slide 4**

**Blanket Petitions**

In order to bring a qualified L-1 alien into the United States under the L Blanket Petition process, two steps must occur:

- 1) The petitioner must file the Form I-129 and L Supplement requesting Blanket Petition (LZ) approval.
- 2) With a currently valid approved LZ petition, the Petitioner may file Form I-129S on behalf of an employee in order to transfer him/her to the United States as an L-1 nonimmigrant.

Note: The approved LZ petition has established a qualifying relationship between the petitioner and foreign entities.

**Instructor:**

I-129S petitions were discussed in the initial L training and will not be discussed in this training. The mentioning of the I-129 S here is just to show you what the petitioner/beneficiary will do with the blanket approval you will issue to the petitioner.

---

**Slide 5**

**Filing an LZ Petition**

A U.S. or foreign organization may file an I-129 requesting approval of an LZ petition on behalf of itself and its parent, branches, subsidiaries, and affiliated companies.

Officers should review Question 3 on Page 20 of the Form I-129 (the first page of the L Supplement) to determine if the Petitioner is seeking the LZ nonimmigrant classification.

---

**Slide 6**

**Filing an LZ Petition, *continued...***

A petitioner which meets the following requirements may file an LZ petition:

- (A) The petitioner and each of those entities listed are engaged in commercial trade or services; AND
  - (B) The petitioner has an office in the United States that has been doing business for one year or more; AND
-

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Slide 7

**Filing an LZ Petition, *continued*...**

- (C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; AND
  - (D) The petitioner and the other qualifying organizations have;
    - (1) obtained approval of at least 10 L-1 petitions during the previous 12 months; OR
    - (2) have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; OR
    - (3) have a United States work force of at least 1,000 employees.
- 

Slide 8

**Filing an LZ Petition, *continued*...**

Establishing control and ownership of all entities:

The LZ petition must include a list of all the organizations eligible to transfer L-1 workers under the blanket petition to include documentation **establishing the qualifying relationships of the organizations as well as establishing that they are doing business.**

If control and ownership are not established and/or doing business, send an RFE tailored to the case.

---

Slide 9

**LZ Petition Validity**

An LZ petition to qualify a company as a blanket petitioner may be approved for an initial period of three years. A subsequent petition for extension may be approved indefinitely if all extension requirements are met. See 8 CFR 214.2(l)(7)(i)(B) and 214.2(l)(14)(iii)(A)

The LZ petition may be approved in part or in whole. You may approve some of the entities and deny others.  
See 8 CFR 214.2(l)(7)(i)(B)(3)

**Instructor:**

Slides 10, 11 and 12 explain the requirements for an extension.

---

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Slide 10

**Blanket Extensions**

- A blanket extension may be filed six months prior to the expiration of the initial blanket Form I-129 petition.
- An extension **must** be filed in a timely fashion or the company's LZ petition status will become invalid, and the petitioner must then wait three years to file a new initial LZ petition.  
See 8 CFR 214.2(l)(14)(iii)(B)

**Instructor:**

If the petitioner fails to file for an extension prior to the expiration of initial blanket approval or if an extension request is denied, the petitioner and its qualifying organizations must wait three years to file another blanket. In the interim, individual petitions must be filed by these organizations for beneficiaries.

---

Slide 11

**Blanket Extension Requirements**

- The documentation required to support the blanket extension include:
- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary;
    - Positions held during that period.
    - The employing entity.
    - The dates of initial admission and final departure, if applicable, of each beneficiary.
  - A statement from the petitioner indicating whether it still meets the blanket criteria.
-

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Slide 12

**Blanket Extension Requirements, *continued...***

- Documentation to support any changes in approved relationships or additional qualifying organizations.
- Petitioner must file an amended petition with fee if:
  - There are changes in approved relationships.
  - There are additional qualifying organizations.
- An amended petition may only be approved for the validity period of the petition it amends.
- A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely.  
See 8 CFR 214.2(l)(7)(i)(C)

**Instructor:**

Bullet 3: End of initial 3 years or indefinitely depending upon the petition it is amending. Explain.

---

Slide 13

**Approving an LZ Petition**

- Check VIBE.
  - Complete the approval information blocks on the petition.
  - Indicate on the petition the classification (which is **LZ**).
  - Indicate the dates of approval/validity dates (which will either be **three years** from the date of approval (for an initial) or **“INDEFINITELY”** (for an extension)).
  - Make a notation **“BLANKET PETITION”** in the block entitled **“PARTIAL APPROVAL.”**
- 

Slide 14

**Approving an LZ Petition, *continued...***

- If partial denial of some organizations/entities-notate **“PARTIAL DENIAL”** in the **“PARTIAL APPROVAL”** block.
- Copy list of qualifying organizations/entities, place on non-record side for the AST to copy and send with approval notice.
- Stamp petition(s) and sign stamp.
- Forward second copy of petition and list of organizations/entities to KCC.

**Instructor:**

Bullet 2: Place a stickie note on the list indicating (copy) so the AST not have to search for the list in the file.

Bullet 3: Make sure there is a copy of the list going to KCC with the copy of the petition.

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**Slide 15**

**Approving an LZ Petition, *continued...***

- Complete Adjudications Worksheet/Premium Processing Worksheet as a release, notate the following on top of worksheet: Blanket/LZ-Copy List to Form I-797.
- **GUI UPDATING**
  - 1) Review and make corrections to the information on first screen, as needed.
  - 2) Click on Adjudicate (F10), use approval phrase #6, Blanket Approval, for all approvals.
  - 3) Check "Y" to clerical.
  - 4) Click "SAVE."

**Instructor:**

Sometimes the petitioner will indicate amended petition when its an extension. Make sure to change petition and GUI. Make sure validity dates are either 3 years for initial/amended or INDEF for extension/amended. Explain this.

All blanket approvals will be Y to the AST due to the fact that the AST must copy the list to send with approval notice. Only one approval phrase, #6, even if going to consulate/embassy.

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**Slide 16**

**LZ Petition RFE**

- Check VIBE.
  - Update case in GUI as "Additional Evidence Requested".
  - Prepare RFE in CG using call-ups: 4200 (Master RFE) of 4201-4212 (INDIVIDUAL CALL UPS).
- 

**Slide 17**

**LZ Petition RFE, *continued...***

**Brown file:**

- Send RFE and attach original RFE to record side on top of petition/G28.
- Send file to FCU/RFE Shelf.

**PP file:**

- Notate worksheet as RFE.
  - Send file to the AST for release and mailing of RFE.
-

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**Slide 18**

**Denying an LZ Petition**

- Check VIBE.
  - Review petitioner information in GUI.
  - Update case as denied.
  - Stamp petition and sign (after SISO review).
  - Create denial in CG using I129LZ Blanket Denial shell, place on hold.
  - All denials require SISO review and sign off.
- 

**Slide 19**

**Denying an LZ Petition, *continued...***

**Brown file:**

- Print original denial.
- Place file in ROP order with original denial on top and pink ROP coversheet on top of denial.
- Send file to Records.

**PP file:**

- Staple file copy of denial on non-record side of file.
  - Place file in ROP order.
  - Notate worksheet as denial, NFTS code and date.
  - Send file to AST to release and mail denial.
- 

**Slide 20**

**LZ Petition Questions**

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**Slide 21-23**

**CTU Disclaimer Slides**

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**Business Division "L" 129 Round Table**

**- Minutes -**

**May 27, 2014\_ Marble Room**

**In attendance:**

**St. Albans:** Collins, Richard, Jennifer Young, Elizabeth Pigeon, Kristina Ellsworth-Spooner, Miranda Baltzell, Peter Palumbo, Thayer Robtoy, Gloria Wood, Cynthia Lawyer, Janet Parrotte, Ted Quizon, Julie Gleason, Karla Messier, Kim Fiske, Marlene Mercy, Carla Lemire, Jason Chagnon, Stephanie Langlais, Tina Abdelaziz, Shana Elwood, Linette Boyse, Renee Gonyeau-(Fairbanks), Hillary Fraties, John Quinn, Angie Johnson, Earl Tabacco, Candy Feeley, Joanne Deaette, Samantha Liu, Gary O'Dell, and Scribe Paula Mayo

**SISOs & ISO3's:** Bosley, Bonnie M; Nolette, Robert D, Karen Brouillette, Karen Reilly, Joanna Mossey, Wally Steinhour, Dave Barrow, Alex Collins, Pete Piersa

**I-129 Round Table:**

- I've attached the hyper link below of the PowerPoint Presentation for you on the "L" Round Table meeting yesterday. As well as the list of agenda items listed below for you to reflect back on.

[L:\ADI\Officers\Business Metro\L\L 129 Round Table Power Point Questions & Answers 5 27 14 PRB.pptx](#)

**Agenda Items for discussion listed below:**

1. Doing Business - Basics of Tax Forms - Change of Status/Extension of Stay - AAO Decisions/USCIS Memos/Prior Filings
2. ADIS/VISA/I-94 - Validity Dates - Blanket vs Non Blanket Approvals - EAD/I765 - Premium Processing Worksheet.

**DOS, NIV Chief Lindsey Rothenberg:**

- SISO, Karen Reilly updated all on DOS, NIV Chief Lindsey Rothenberg. Chennai processes the most H1B visas in the world and the only post in India that processes L's.
- There average interviewing processing time is two (2) minutes.

**Questions:**

**L1B to L1A – RFE & Denials:**

- Joanna Mossey will get back to all and update...More to come

**L1B to L1A- Call Up Number**

- Time of change must occur within 6 months prior to the end of the L1B to L1A status.
  1. RFE call up number #4263
  2. Blanket call up number # 4882
  3. Deference call up number # 1818

**Reminders:**

1. If questioning knowledge in the U.S. closely examine specialized knowledge abroad.
2. Need SISO approval on Same-Same
3. 129 L cases that are received early please; bring these cases to the attention of an SISO (ASAP).
4. Back out time 1.5 hours for meeting\_5.27.2014

Chalk, Mary N (CTR)

11-06-2012 L-1B to L-1A/Less than Six Months Remaining as L-1B

The request for a change from L-1B to L-1A must be approved at least six months prior to the end of the beneficiary's five year period in L-1B status for the beneficiary to be eligible for the additional two years as an L-1A. If a beneficiary is found eligible for the L-1A position but it is within the last six months of the five years as the L-1B, the petition will be approved up to five year limit only.

If you should see a request for an extension of an L-1A and the previous period authorized was less than six months, it is likely that the beneficiary was limited to the five year eligibility period and the extension must not be granted. If a determination cannot be made from the record as to why the initial L-1A period was limited, an RFE requesting the sequence of events should be issued or you may request the previous file.

From: Bouchard, Armanda M  
Sent: Wed 10/11/2006 3:32 PM  
To: VSC Allied Group 5  
Subject: L1B to L1A  
L1 Adjudicators:

Recently there have been issues concerning the prohibition on changing from L1B to L1A when the alien will not have had at least six in the new managerial or executive position at the end of the five years in L-1B status. Further, an amended petition was not filed with the Service to reflect the change to managerial or executive position at the time the change occurred.

Officers may see petitioners or attorneys providing AILA/USCIS Liaison minutes from the Spring of 2006 in which a HQ official indicated that "the Service Centers should not deny an extension request simply because it was filed during the final 6 months of the 5-year stay. It can be filed the last day if need be, so long as the change occurred at least six months ago." This was verified with Headquarters and although this is what was said, there has been subsequent guidance to us on the issue.

8 CFR 214.2 (l)(15)(ii) states the following:

An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not

exceed seven years. No further extensions may be granted. When an alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by the Service in an amended, new, or extended petition at the time that the change occurred.

AFM Chapter 32.3(g)(2) states the following:

**Conversion from Specialized Knowledge to Executive / Manager Position.** An L-1B specialized knowledge alien may change to an L-1A executive/manager to receive the benefits of the seven year limit of stay. The petitioner must have a Form I-129 petition approved in the alien's behalf as an executive or manager for six months to be able to receive the limitation of stay of seven years. This means that a specialized knowledge alien must have an I-129 approved as an executive or manager prior to his four and one half year period of stay in the United States. Remember that the work experience outside the U.S. does not have to be in the same capacity as the proposed employment in the U.S.

Recent headquarters guidance indicates that we should hold to the regulation and procedures provided above when the L1B position is that of a specialized knowledge worker, such as a programmer analyst. However, if the petitioner had notified us through the filing of an initial, amended, or extension petition that the L-1B would also be performing managerial/executive duties, we should look at these circumstances differently than an L1B position for which non-managerial/non-executive specialized knowledge duties are primarily performed. Since the L1B manager or executive is already acting in a managerial capacity and the petitioner is only seeking to maximize the full seven years, there may be no actual change in the job title and duties; thus there has been no promotion which would have required that a new I-129 petition be filed with the Service. In addition the petitioner would have already put USCIS on notice that the beneficiary was performing managerial/executive duties when they were approved as an L1B manager.

Examples— all filed within last six months of L1B status.

- An alien has held L1B status as a Programmer Analyst. At the beginning of the alien's third year in L1B status they are promoted to IT Project Manager, but no I-129 petition is filed at this time to reflect the promotion. Later, in the last month of the alien's fifth year in L1B status, an I-129 is filed asking for L1A status. Even though the alien has held the managerial position for at least six months, they did not file a new I-129 petition at the time that the promotion took place. We will hold to 8 CFR 214.2(l)(15)(ii) and AFM32.3(g)(2) and deny the request for change from L1B to L1A because an I-129 petition was not filed when the promotion took place. Having said this, this does not take away our discretion if a case has special circumstances to be considered.

• An alien has held L1B status as an IT Project Manager. Just prior to the alien completing their five years in L1B status a new I-129 petition is filed asking for a change to L1A. The alien is entitled to the L1A classification because they have been a bona fide manager for more than six months. The requirements of 8 CFR 214.2(l)(15)(ii) and AFM32.3(g)(2) stating that the change to managerial or executive capacity must have been approved in an amended, new, or extended petition at the time that the change occurred does not apply since there is no change in the alien's title or duties. In this case we will grant the request for the L1A classification.

• An alien has held L1B status as a Programmer Analyst. At the beginning of the alien's third year in L1B status they are promoted to IT Project Manager and an I-129 petition is filed at that time to amended the conditions of the L1B classification to include supervisory/managerial duties and to reflect the promotion. In this example, the alien's period of stay should be extended beyond five years because 1) they will have been in the managerial position for at least six months prior reaching the full five years in L1B status, and 2) they filed for the L1B amended petition at the time that the alien was promoted. This alien will ultimately be entitled to the full seven years of L1 status.

## I-129 L1A AND L1B INTRACOMPANY TRANSFEREES

### Training Summary

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<b>Training</b>	This training is for Form I-129 L-1A and L1B Intracompany Transferees.
<b>Goal</b>	The goal of this training is to provide students with the skills and resources to adjudicate I-129 L. Intracompany Transferee filings.
<b>Class Time</b>	This training will take 8 hours with 10-minute breaks approximately each hour and one hour for lunch (.5 hrs for lunch, .5hrs to check e-mail and to respond to inquiries.
<b>Intended Audience</b>	The intended audience is primarily officers who adjudicate I-129 H petitions and have demonstrate the skills necessary adjudicate I-129 L filings.

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## Information Strategy

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Introduction The information will be presented using PowerPoint.

Content      Materials Needed

- I-129 L1A AND L1B INTRACOMPANY TRANSFEREES Training presentation
- I-129 L1A AND L1B INTRACOMPANY TRANSFEREES SOP
- Law Book (available on-line)
  - 8 CFR Section 214.1
  - 8 CFR Section 214.2(l)
  - 8 CFR Section 248
  - INA 101(a)(15)(L)
  - INA 101(a)(32)
  - INA 101(a)(44)
- Adjudicator's Field Manual (AFM)(available on-line)
- Department of State (DOS) Foreign Affairs Manual (FAM)
- Form I-129 with L Supplement
- I-129 L Auto-text call-ups (4000-4999)
- Decision Writing SOP (on-line)
- AAO Decision Examples (scanned and available)
- Decision Writing SOP (on-line)

## Module 1 Opening Remarks-

Slide 1: USCIS Slide

Slide 2: I-129 L-1 Intra-Company Transferees

Introduce yourself, any other presenters, mentors and the course: I-129 L-1 Intra-Company Transferees.

Slide 3: Ground Rules

Remind the trainees not to: access their e-mail during the presentation, or engage in sidebar conversations. Remind the trainees to either turn off their cell phones or put them on vibrate.

Advise the trainees to turn on their computers. Explain the computers will be needed through-out the training.

Slide 4: Account for time in NOVA

Trainee will back time out under, "Group Activities" and "Production Trainee."  
Mentor will back time out under, "Group Activities" and "Production Trainer/Mentor."

Slide 5: Training Back-out

- All time in the classroom working training cases is back-out.
- All time spent with your mentor until certified is back-out.
- After certification, you are granted two hours per week up to 10 hours or 150 non-denial actions total (to meet with your mentor).

Slide 6: Training Variance

Given on the first 150 non-denial actions and for the first 25 denials.

Slide 7: General Training Information

- This presentation was created to facilitate the training process.
- All information in this presentation is superseded by the relevant laws, regulations, SOPs, policies, and guidance from management.

Slide 8: Course Objective

To provide Officers with a strong foundation of knowledge upon which a quality, timely adjudicative decision can be made on a Petition for a Nonimmigrant Worker, Form I-129 Intracompany Transferee filing.

Slide 9: Performance Objective

Through application of pertinent laws, regulations, policy, and operation instructions, successfully determine an applicant's initial eligibility and/or eligibility to extend or change his/her nonimmigrant status in the United States.

\*\*\*CTU Disclaimer Slides\*\*\*

## Module 2: The Historical Evolution of the L Classification

Slide 2: The History of the L Visa

Slide 3: Definition of Intracompany Transferee

According to 8 CFR 214.2 (i)(1)(ii)(A):

“Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge...”

Instructor Note:

Officers need a basic introduction to the I-129 L classification before going into the history of the L non-immigrant visa.

Based on INA 101(a)(15)(L) it is an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him:

Slide 4: Introduction

Prior to 1965, immigrants entered the United States based on their nationality, skills, and level of education. Nonimmigrant classifications did not exist for intracompany transferees.

Slide 5: Legislation

Congress enacted the following:

- Immigration and Nationality Act Amendments of 1965;
- Public Law 91-225 (April 7, 1970);
- Immigration Act of 1990;
- L-1 Visa Reform Act of 2004;
- Public Law 111-230

Slides 6 - 7: Immigration and Nationality Act Amendments of 1965

- Known as the Hart-Cellar Act.
- The Act abolished the national origins quota system that had structure immigration policy since the 1920s, replacing it with a preference system that focused on immigrants' skills and family relationships.
- Limited the ability of multinational corporations to transfer top-level personnel to offices in the United States.
- Forced foreign workers to apply for immigrant visas if they were not eligible for E nonimmigrant visas.

Slides 8 - 9: Public Law 91-225 (1970)

- Created the L nonimmigrant visa classification at INA 101(a)(15)(L) for intracompany transferees.
- Permitted international companies to temporarily transfer top-level managers and executives or employees with specialized knowledge to the United States.
- Prior to this Law, those who did not qualify as E nonimmigrants were forced to apply for immigrant visas even if there was no intent to remain permanently in the United States.
- Required that the employee worked for the foreign company for at least one year prior to coming to the United States.
- Law was not intended to alleviate or remedy a shortage of U.S. workers.
- Created the L2 visa for dependents.

Slides 10 - 12: Immigration Act of 1990 (Public Law 101-649)

- Clarified the meaning of "specialized knowledge," (knowledge of a company's own product). By creating the following definition:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

- Placed a seven (7) year time limit for managers and executives.
- Placed a five (5) year time limit for specialized knowledge employees.
- Required an employee to work one continuous year abroad with the foreign employer within the three years immediately preceding admission.
- Permitted L employees and their dependents "dual intent" to apply as lawful permanent residents.
- Permitted L-2 (dependents) to work while in the United States.
- Established the L Blanket classification.

Slides 13 - 14: L-1 Visa Reform Act of 2004

Applies only to L-1Bs.

- Established that employees can no longer work primarily at a worksite other than their petitioning employer if the work will be controlled or supervised by a different employer; or

- Cannot work if the offsite arrangement is essentially to provide labor for hire, rather than service related to the specialized knowledge of the petitioning employer.  
(Applies to petitions filed on or after June 6, 2005.)
- Requires that all L-1 employees must have worked for a period of no less than one (1) year outside of the United States for an employer with a qualifying relationship to the petitioning employer.
- Created a new Fraud Prevention and Detection Fee of \$500 which must be paid by the petitioner.  
(Applies for petitions filed on or after March 8, 2005).

**Instructor Note:**

Restored the prior law requiring that the L-1 beneficiary of a blanket petition employed abroad by the L entity for a period of 12 months prior to filing. In doing so, the L-1 Reform Act eliminated the 6-month exception that had been the law for blanket beneficiaries since 2001.

Slides 15 - 16:      Public Law 111-230

- **Emergency Supplemental Appropriations for Border Security**
  - Requires the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions. The fee applies to petitions postmarked on or after August 14, 2010. Public Law 111-230 will remain in effect through September 30, 2015.
- The additional fee applied to petitions:
  - that are requests for new employment or change of employer,
  - where the petitioner employs 50 or more employees in the United States,
  - where the petitioner has more than 50% of their employees in the United States in H-1B or L-1A or L-1B nonimmigrant status.

Petitioners meeting these criteria must submit the additional fee when filing an H-1B or L-1 petition.

**Instructor Note:**

All three criteria need to be established for the Border Security fee to be applied.

Slide 17:      The History of the L-Visa

Question?

Concerns?

## Module 3- L Overview

Slide 2: L-1 Overview

Slide 3: Sources of Information

- INA §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- 8 CFR §§ 214.1, 214.2(l), & 248
- Adjudicator's Field Manual (AFM)
- *Interpretation of Specialized Knowledge*, Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS (March 9, 1994)
- Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004, Memorandum of William Yates, Associate Director of Operations
- Department of State Foreign Affairs Manual (FAM)
- Form I-129 with L Supplement and Form I-129S

Instructor Note:

***Show Officers the INA and 8 CFR online (VSC Adjudications ECN page, right hand side of the page). Policy Memos (VSC Business Division ECN page, I-129 Policy Memos***

Slide 4: Definition of L-1

...an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge...

INA § 101(a)(15)(L);  
see also 8 CFR § 214.2(l)(1)(i)

Slides 5 - 6: L Classification

- L-1A classification is for managers and executives.
- L-1B classification is for specialized knowledge aliens.
- L-2 classification is for dependents (dependents use Form I-539).
- LZ is the designation given to an approved blanket petition. The Petitioner is referred to as a Blanket Petitioner, there is no individual beneficiary of an approved LZ.
- L-1A and L-1B are CLAIMS/GUI designations. When an intracompany transferee is admitted to the United States, the alien is admitted by CBP as an L-1, or, in the case of an extension of stay or change of status, is granted L-1 classification. Therefore, you will only see the classification "L-1" on the Form I-94 issued to the aliens.

Slide 7: 30 Day Processing Time

INA § 214(c)(2)(C) of the Act states that USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a completed petition has been filed.

8 CFR § 214.2(l)(7) indicates that a Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS. If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.

**Instructor Note:**

Adjudication of RFE responses is determined by management priorities.

**Slide 8:**                      Where to file the I-129

I-129 L-1 petitions are primarily filed at the CSC and VSC.

**Exception:**

- NAFTA & I-129S filings may be filed at a POE/PFI or Service Center.
- Blanket filings may be filed at a consulate or a Service Center.

Jurisdiction is determined by the beneficiary's work location or (in the case of I-129S) the Service Center that adjudicated the Blanket petition

**Instructor Notes:**

If Multiple work locations exist, jurisdiction reverts to the petitioner's address.

**Slides 9 - 10:**                      Fees

- I-129 (L-1 and LZ) Petition filing fee: **\$325.00**. Note that there is no filing fee for an I-129S, *Nonimmigrant Petition Based on Blanket L Petition*.
- Fraud Prevention and Detection Fee: **\$500.00**. This fee is required to be paid by Petitioners seeking the initial approval of an I-129 L-1 petition (including a change of status to L-1, or a petition for new concurrent L-1 employment). There are no exceptions or waivers available to the Fraud Prevention and Detection Fee. The Fraud Fee does not need be paid when a petition seeking blanket LZ approval is filed.
- P.L. 111-230 fee: **\$2,250.00**. Effective 8/13/2010, this law requires employers filing an L-1 petition prior to October 1, 2014, who are required to pay the \$500 Fraud Prevention and Detection fee as detailed above, to pay an additional \$2,250 if: (1) they employ 50 or more employees in the United States; and (2) more than 50% of those employees are in H-1B or L-1 status.  
See INA § 214(c)(12).

P.L. 111-230 applies when:

1. Initial filing, COS, or Concurrent
2. Employ 50 or more employees
3. 50% of those employees are in H and/or L status\*

**Instructor Note:**

***Review the Form I-129 and the I-129 Filing Instructions.***

## Module 4: Basic Requirements for L-1 Petitions

Slide 2: Basic Requirements for L-1 Petitions

Slides 3 - 4: Basic Requirements for an Individual L-1 Petition

8 CFR Section 214.2(l)(3) Evidence for individual petitions. An individual petition filed on Form I-129 shall be accompanied by:

- Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be in the same work which the alien performed abroad.

Slide 5: Qualifying Organization Defined

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- (1) Has a qualifying relationship between the U.S. entity and a foreign entity.
- (2) Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

See 8 CFR 214.2(l)(1)(ii)(G)

Slides 6-10: Employment Abroad

- The regulation indicates that a qualifying employee must have at least one continuous year of full-time employment abroad in a capacity that was managerial, executive, or involved specialized knowledge with a qualifying organization within the three years preceding the filing of the petition.
- This is referred to as the "1 in 3" rule.
- It is important to note that the 1 in 3 rule is a combination of two separate regulatory requirements which require two different but related analyses.
- The Petitioner must submit sufficient documentation establishing that:
  - 1. The beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. **and**

- 2. For the entire one year of continuous employment abroad, the beneficiary was performing in a capacity that was managerial, executive, or required specialized knowledge.
- The prior foreign employment and proposed U.S. employment capacity do not have to be the same. For example, the one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for an L-1A position in the United States.
- Both previous foreign employment and the prospective U.S. employment must be in one of the qualifying capacities.
- Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

8 CFR § 214.2(l)(3)(iii) and (iv)

INA 101(a)(15)(L)

8 CFR 214.2(l)(1)(ii)(A)

**Instructor Note:**

The INA and the Regs differ in the wording on this requirement. INA 101(a)(15)(L) describes an L-1 nonimmigrant as “an alien who, *within 3 years preceding the time of his application for admission into the United States*, has been employed continuously for one year...” (Emphasis added.) The regulation at 8 CFR 214.2(l)(1)(ii)(A) also uses similar language: “Intracompany transferee means an alien who, *within three years preceding the time of his or her application for admission into the United States*, has been employed abroad continuously for one year...” (Emphasis added.)

SCOPS has advised that the beneficiary must have been employed abroad for one year within the three years preceding the filing of the petition. Time spent by the beneficiary in the United States in a lawful status as an employee of a parent, affiliate, branch, or subsidiary of the foreign employer; or for brief trips for business or pleasure, will not interrupt the one continuous year of employment abroad but the time in the United States cannot be counted toward the one continuous year requirement.

In regards to the “1 in 3” rule--INA 101(a)(15)(L) states preceding the application for admission. This is an important distinction to make as an employee who may have worked abroad for a continuous year (or more) fulfilling the first requirement, may still fail to qualify for the L-1 because the employee may not have worked in a qualifying position for one year.

Example of last bullet: Beneficiary has worked in the United States for 3 years in H-1B status for a branch of the same employer or a parent, affiliate, or subsidiary. Now the petitioner wants the beneficiary to work in L status. Base the “1 in 3” assessment on the 3 years preceding the beneficiary entry to the United States in H-1B status.

Slide 11: Position in the United States

The Petitioner must submit sufficient documentation establishing that:

The position in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.

Instructor Note:

Typically, if the petitioner establishes that the beneficiary was performing qualifying employment abroad and the beneficiary will be transferring laterally to *the same position* in the United States, your review may not need to be as extensive as a situation where the beneficiary is transferring to the United States to occupy a different position, involving a different set of job duties. (This happens frequently as the regulation indicates that the employment in the United States need not be the same as the employment performed abroad.)

Slide 12: Beneficiary's Qualifications for the Position in the U.S.

The regulation states that the employee need not be filling the same position in the United States that he/she occupied abroad. However, the regulation indicates that the employee must be qualified for the position in the United States.

Instructor Note:

If the position in the United States appears to be substantially different than the one that the beneficiary occupied abroad, Officers should review the petition to ensure that the beneficiary's prior education, training and employment qualify him/her for the position in the United States.

See 8 CFR § 214.2(l)(3)(iv).

## Module 5: Qualifying Relationship

### Slide 2: Qualifying Relationship

Instructor Note:

***Have Trainees read the laws and regulations regarding qualifying relationship***

### Slide 3: Qualifying Organization—Does a qualifying relationship exist?

The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:

- Parent 8 CFR § 214.2(l)(1)(ii)(I)
- Branch 8 CFR § 214.2(l)(1)(ii)(J)
- Subsidiary 8 CFR § 214.2(l)(1)(ii)(K)
- Affiliate 8 CFR § 214.2(l)(1)(ii)(L)

### Slides 4 - 5: Parent

- Parent means a firm, corporation, or other legal entity which has subsidiaries.
- For a broader explanation of what constitutes a 'parent,' the definition of subsidiary at 8 CFR § 214.2(l)(1)(ii)(K) indicates that a parent company is an entity which owns and controls the operations of a subsidiary by:
  - - (1) Owning either directly or indirectly more than 50% of the subsidiary and controls the Subsidiary.
    - (2) Owns either directly or indirectly half of the subsidiary and controls the subsidiary.
    - (3) Owns either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary.
    - (4) Owns either directly or indirectly less than 50% of the entity but in fact controls the entity.

8 CFR § 214.2(l)(1)(ii)(I)

8 CFR § 214.2(l)(1)(ii)(K)

### Slide 6: Branch

Branch means an operating division or office of the same organization housed in a different location.

- An "arm" of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign corporation operating in the United

8 CFR § 214.2(l)(1)(ii)(J)

Instructor Note:

Example: Banks can have many branch locations.

About bullet 4: Opposite occurs when it is a U.S. branch operating in a foreign country.

Slides 7 - 8: Subsidiary

Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent.

It must be established that the parent:

- (1) Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.
- (2) Owns either directly or indirectly half the subsidiary and controls the subsidiary.
- (3) Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary.
- (4) Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary. 8 CFR § 214.2(l)(1)(ii)(K)

Slide 9: Issues Regarding Ownership and Control

Ownership and control can happen two ways:

- 1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.
- 2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of an entity yet still controls the entity.

Slides 10-15: Examples of Qualifying Relationships

Slides 16-18: Affiliate

Affiliate means:

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or
- (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member. 8 CFR § 214.2(l)(1)(ii)(L)

Instructor Note:

An Affiliate is comparable to a sibling relationship. If this parent co. owns 100% of Subsidiary A and 75% of Subsidiary B, Subsidiaries A and B are affiliated.

Slides 19 - 20: Examples of Affiliates

Slide 21: Affiliates – Multiple Owners

One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Slide 22: Example: Multiple Owners of Qualified Affiliates

Refer to the illustrated example on the slide.

Instructor Note:

07-03-2013 Bulletin Board Announcement

OCC has advised us that qualifying entities do not always need to be owned by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. If one individual owns a majority of each entity and controls each entity, then a qualifying relationship would exist based on both the statute and the first part of the regulatory definition of an “affiliate.”

INA 101(15) states:

An alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an **affiliate or subsidiary** thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge,...

Affiliate” is defined by 8 CFR 214.2(l)(1)(ii)(L) as:

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual...

According to OCC’s interpretation, the INA separates affiliate and subsidiary, thus it recognizes the two are separate and distinct. Following this logic, OCC has concluded that it does not make sense that you have to be a subsidiary in order to qualify as an affiliate. If this were the case, there would be no need for affiliates.

EXAMPLE OF AFFILIATION---Illustrate the example below to the trainees.

Company A is owned: 51% by X, 29% by Y, and 20% by Z. Company B is owned: 50% by X and 50% by Y. Company A and Company B are affiliates because they are both

controlled by the same individual, X, who owns a majority of shares in Company A and has negative control of Company B.

Slide 23: Franchise Agreements

- Franchises are companies operating under franchise agreements. Franchise agreements are entered into to allow one independently owned company to license the name and/or product of another independently owned company.
- There is usually no qualifying relationship between a foreign entity and a U.S. entity associated by a franchise agreement or contract.

**Instructor Note:**

With franchise agreements, the concern is not with ownership but with control of the organization.

Slides 24-26: Affiliate—Partnership Accounting

A partnership that is organized in the United States to provide accounting services along with managerial, and/or consulting services will be considered an affiliate of a foreign partnership (or similar organization) that provides accounting services in another country if:

- (1) They both market their services under the same internationally recognized name,
  - (2) Under the agreement with a worldwide coordinating organization that is owned by member accounting firms,
  - (3) Both the U.S. accounting partnership and the foreign accounting partnership are members of the worldwide coordinating organization.
- **Explanation:** Accounting firms such as *Deloitte Touche Tohmatsu Limited (Deloitte)* are large internationally branded accounting firms. However, the individual Deloitte firms in each respective country are single entity partnerships that do not normally own any part of the Deloitte firms in the other countries. [Deloitte-U.S. is an accounting firm set up as a partnership that is owned by the U.S. partners that in most instances do not own any part of Deloitte- Spain.] However, these firms are all part of an agreement to provide services under the same name and coordinated through a organization that is set up and owned by the member organizations with no actual control exerted by one member firm. This set-up has significant business benefits as it allows the individual member firms to refer their clients to other foreign member organizations and/or receive new clients through the same referral process. It also allows these firms to meet the different accounting regulations that are set up in each country and to cut ties with offending accounting firms without suffering financial losses.
  - These accounting partnerships are considered affiliates even though they do not exert control on each other or actually own any significant portion of each other.

8CFR 214.2(l)(1)(ii)(L)(3)

**Examples of Accounting Service Affiliates:**

- Pricewaterhouse Coopers L.L.P.
- Ernest & Young L.L.P.
- KPMG Peat Marwick L.L.P.
- Deloitte & Touche, Tohmatsu Limited (Deloitte) L.L.P.
- Schneider Downs & Co. Inc.
- Alpern, Rosenthal & Co.
- Sisterson & Company L.L.P.

**Instructor Note:**

Partnership Accounting was a special consideration written into the regulations.  
There is not a qualifying relationship in the traditional sense.

## Module 5.1: Types of Business Entities

Slide 2:           Types of Business Entities

Slide 3:           Types of Business Entities

- Sole Proprietorship
- Partnership
- C Corporation
- S Corporation
- Limited Liability Company
- Joint Venture

Slides 4-6:   Sole Proprietorship

Someone who owns an unincorporated business by him or herself.

- Easiest business to create.
- There is no legal distinction between the owner and the business.
- Liability
- Business income is not taxed separately from the owner.
- Business net income/loss is reported on Schedule C or C-EZ filed with Form 1040.
- Schedule C shows the profit or loss of the business.

Instructor note:

Established when an individual starts a business. No requirement to execute or file any paperwork. The owner is personally responsible for the debts of the business. Owner's liability may exceed the assets of the business.

Slide 7:           Partnership

A partnership is the relationship existing between two or more persons who join to carry on a trade or business. Each person (partner) contributes money, property, labor or skill, and expects to share in the profits and losses of the business.

Slide 8:           Types of Partnership

There are two types of partnership:

- General
- Limited

Slide 9:           General Partnership

Is two or more partners in which each partner is liable for any debts taken on by the business. Since the partners do not enjoy limited liability, all the partners' assets can be involved in an insolvency case against the company.

No formal, written partnership agreement is required to create a general partnership. However, general partnerships typically do execute agreements.

Instructor Note:

Creditors can sue the partners to take their houses, cars, or other personal assets to pay off the partnership debts.

### Slides 10 - 11: Limited Partnership

Entity in which one or more persons, with unlimited liability, called general partners, manage the partnership, while one or more other persons contribute only capital. Limited partners have no right to participate in the management and operation of the business and assume no liability beyond the capital contributed.

Requires:

- A formal, written partnership agreement.
- At least one general partner.
- An employer's identification number (EIN)

Instructor Note:

General partners manage the business. Limited partners contribute only capital. If a limited partner participates in the managing of the business, he or she becomes a general partner.

### Slide 12: Partnership Ownership and Control

- Only general partners can be considered to have both ownership and control over a limited partnership. Limited partners are not allowed to participate in the business.
- Common documents provided to show ownership and control:
  - Form 1065 Federal Tax Return
  - Partnership Agreement

### Slide 13: Partnership Agreements

A typical agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited interest,
- Each partner's initial percentage of ownership,
- The type of business conducted,
- How the partnership interest can be transferred,
- The conditions under which the partnership can be dissolved.

### Slides 14 - 15: Partnership Tax Return

The profits and losses of the partnership are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

The partnership's tax return provides information that is relevant to the adjudication of I-129s:

- Date the partnership started,
- The names and % of ownership of each partner at year end,
- Whether the partnership has limited partners, and
- Evidence of business activity in the U.S.

Instructor Note:

A partner's percentage of ownership may not equal his or her capital investment. A partner may bring non-financial assets to the partnership.

Slide 16: C Corporation

Is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Slides 17-21: Distinguishing Features of a Corporation

1. Limited Liability
2. Easy transfer of ownership
3. Continuity of ownership
4. Centralized management

**Limited Liability:**

The debts of the corporation are the responsibility of the corporation. Shareholders cannot lose any more money than they paid for their stock.

**Easy transfer of ownership:**

Ownership is transferred with the sale or transfer of stock.

**Continuity of ownership:**

Corporation doesn't end with the death of an owner like in a sole proprietorship or partnership.

**Centralized management:**

Each corporation is made up of a board of directors who manage the business.

Slide 22: Ownership & Control of Corporations

Several documents can be used to demonstrate ownership and control.

- Certificate of Incorporation
- Articles of Incorporation
- By-Laws
- Stock Certificates both common and preferred
- Stock ledger
- Tax Return
- Annual Report
- Form 10 K (typically seen from large companies)

Slide 23: Certificate of Incorporation

- The birth certificate for the corporation. It shows that the corporation exists as a legal entity.
- Issued by the incorporating State.

**Instructor Note:**

Think of as a license from a respective state to form a business.

Slide 24: Articles of Incorporation

Will identify the:

- Acceptable business activities that may be conducted.
- Type and number of stock shares that may be authorized and issued by the corporation.
- Par value, if any of the stock shares.

Slide 25: By-Laws

Rules made by the board of directors that govern how the corporation will function. The rules may not conflict with any provision of the articles of incorporation.

The bylaws cover such topics as:

- Location of the corporation
- Location of annual meeting and special meetings of the corporation
- For a stock certificate, information about stockholders and voting of shares of stock
- Date and place of the annual meeting
- Corporate officers and their duties
- Board of directors membership, meetings, compensation, selection and removal of board members
- Information about corporate records

Slide 26: Corporate Tax Returns

Most corporations file Form 1120, U.S. Corporation Income Tax Return. A corporate tax return provides information that is relevant to the adjudication of I-129s:

- Date of incorporation
- Evidence of business activity
- The name of individuals or organizations that own the corporation.

Slide 27: Structure of Corporations

Common terms in corporate structure:

- Parent
- Branch
- Subsidiary
- Affiliate

These terms refer to the degree of ownership. Each term will be discussed later.

Slides 28 - 29: S Corporations

Corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes.

S Corps are not taxable entities. They are required to file an informational tax return called a Form 1120S, U.S. S Corporation Income Tax Return.

Income and expenses flow to the shareholders' individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

Slide 30: Schedule K

Comprised of various questions that the corporation needs to answer, including what accounting method is used, business activity codes, and type of product or service offered. This schedule also includes questions about foreign and other related companies.

Slide 31: To Qualify as a S-Corporation

Corporation must:

- Be a domestic corporation.
- Have only one class of stock, common.
- Have no more than 100 shareholders
- Have as shareholders only individuals, estates, and certain trusts.
- Have shareholders that are U.S. citizens or residents of the U.S.

Instructor Note:

The IRS definition of resident is different from the USCIS definition.

You are considered a resident alien if you met one of the following two tests for the calendar year:

The first test is the "green card test." If at any time during the calendar year you were a lawful permanent resident of the United States according to the immigration laws, and this status has not been rescinded or administratively or judicially determined to have been abandoned, you are considered to have met the green card test.

The second test is the "substantial presence test."

Slide 32: Ownership and Control of S Corp.

Corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp. If this type of ownership is claimed, additional evidence will be needed.

If you have this type of case, consult with a supervisor or senior. They are very rare.

Instructors Note:

A U.S. S corporation may own a foreign entity which may create the required relationship.

Slides 33-37: Limited Liability Company

A form of business organization with the liability-shield advantages of a corporation and the flexibility and tax pass-through advantages of a partnership.

Advantages:

- Like a corporation, owners have limited liability for the debts and actions of the business
- Like a partnership, the profits and losses can pass through to the owners of the LLC. Allows owners to avoid double taxation.

Disadvantages:

- There is a “transferability restriction test” which means it is not as easy to transfer ownership of the company. This can make it hard for a growing company to get financing.

The federal government does not recognize an LLC as a classification for federal tax purposes. An LLC business entity must file as a corporation, partnership or sole proprietorship. LLC Tax returns are:

- LLC filing as a Corporation Form 1120
- LLC filing as a Partnership Form 1065
- LLC filing as a S-Corporation Form 1120S
- LLC filing as a sole proprietorship, Form 1040

Slides 38 - 42: Joint Venture

- Two or more individuals or entities working together for a joint profit motive.
- A joint venture can be a corporation, a partnership, or a non-entity
- Joint venture participants create a separate entity to carry on a trade, business, financial operation, or venture and divide the profits from the entity.
- A joint venture created solely to share expenses does not create a separate entity.
- Joint Ventures are typically created for a single project and are established for a defined period of time.

Advantages:

- New capacity and expertise
- Access to new markets
- Access to greater resources
- The sharing of risks
- Flexibility

Disadvantages:

- It takes time and effort to build the right relationships.
- Objectives of the venture are not always clear and/or communicated well.
- Imbalance in levels of expertise, investment or assets brought to the relationship.
- Differing cultures and management styles.

Slide 43: Joint Venture Agreement

A Joint Venture Agreement should cover:

- The parties involved
- The objectives of the joint venture
- The financial contribution of both parties
- Intellectual property developed by the participants in the joint venture.
- Day to day management of finances
- Dispute resolution
- Terminating the agreement
- The use of confidentiality or non-disclosure agreements

Slides 44-48: Non-Profit Organization

- A non-profit organization is one that is organized for a purpose other than generating a profit.
- A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization.
- A non-profit must be incorporated to obtain tax-exempt status and commence doing business as a legal entity.
- Are exempt from federal income tax. Examples of these organizations include:
  - 501(c)(3) Charitable, religious, and educational organizations.
  - 501(c)(4) Civic leagues and social welfare organizations.
  - 501(c)(5) Labor/agricultural/horticultural organizations.
  - 501(c)(6) Business and professional leagues.
  - 501(c)(7) Social and recreational clubs.
- Non-Profits are rare in L filings but they do occur.
- Generally, these organizations have “branch” organizations or “sister” corporations abroad.
- Evidence of ownership and control will include incorporation document, audited or reviewed financial statements, or federal informational returns.
- File Form 990 – Information Returns. There are five different Form 990s:
  - Form 990, Return of Organization Exempt from Income Tax.
  - Form 990-EZ, Short Form Return of Organization Exempt from Income Tax
  - Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as Private Foundation
  - Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons.

**Instructor Note:**

The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.

**Instructor Note:**

***Review two L training cases. In the first case the evidence will establish a QR. In the second case, QR is not established. Have the trainees pair up in small groups and review the evidence and prepare an RFE addressing just QR. Have the trainees present their RFEs for discussion.***

## Module 6- Ownership and Control

### Slide 2: Evidence of Ownership and Control

- The evidence must demonstrate ownership and control in order to establish the qualifying relationship.
- The petitioner may submit any evidence that it feels is appropriate; Officers must weigh the evidence submitted appropriately.
- Submission of Stock Certificates is a common way that Petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated.

### Slides 3 - 5: Reviewing Stock—Preferred Stock vs. Common Stock

Companies generally issue two types of stock; common stock and preferred stock.

- Preferred stock usually gives holders certain privileges regarding the assets of the corporation in the event of a bankruptcy, but usually does not give preferred stockholders any voting rights. For L-1 purposes, if control is an issue in determining ownership, the stockholders with preferred stock would not qualify if they lack “control in fact” of the corporation/entity. For this reason, preferred stock certificates are rarely submitted as evidence.
- While common stock holders typically do not receive such privileges, they are, generally, the shareholders who have certain voting rights with respect to how the corporation may be managed. Common Stock holders generally do have various degrees of control over the corporation.
- When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the entity seeking to establish control.

#### Instructor Note:

The total number of stock issued cannot exceed the amount authorized in the company's articles of incorporation. All authorized stock should be accounted for in the evidence.

Illustrate the above example to the class.

Brown-India indicates that they have a qualifying relationship with Brown-U.S. Brown-U.S. has issued 2 million shares of common stock. Brown-India submits a stock certificate indicating that they own 1.1 million shares of Brown-U.S. stock. Because Brown-India owns more than 50% of the voting stock issued by Brown-U.S., they have a qualifying relationship of parent-subsidary.

### Slide 6: Are the Stock Certificates Genuine?

There is always a possibility that the submitted stock certificates may have been altered in order to make a qualifying relationship appear to exist and/or the possibility that the stock certificates were not issued in the normal course of business.

If this is suspected, an Officer should review the stock certificates to determine if they (and the information contained on them) are genuine and were produced in the normal course of the company's business. Generally, an acceptable stock certificate includes the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

Slides 7 - 8:                    Examples of Stock Certificates

Slides 9 - 10:                Are the Stock Certificates Genuine? (continued)

A comparison to the company's stock ledger may help validate the certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or "cancellation" of stock.
- In those *limited* instances where the officer has *reason to question* the validity or authenticity of the stock certificate(s), it may also be appropriate to ask for evidence of the transfer of payment for the stock certificate(s) in question. Such evidence may include but is not limited to copies of cashed checks or documentation of wire transfers.

Instructor Note:

The dictionary definition of a stock ledger is a permanent record of the capital stock of a corporation, listing the names and addresses of the stockholders, the number of the shares owned, the serial numbers of their stock certificates, etc.

Slide 11:                    When to Ask for Financial Evidence of Ownership and Control

- As indicated previously - the officer has reason to question the validity or authenticity of submitted stock certificates.
- In the case of a new office, if the submitted evidence is insufficient to determine whether the size of the U.S. investment is sufficient to conduct business.
- If the entity is a type that does not issue stock certificates, such as a partnership or limited liability corporation.
- If the Officer can articulate a justifiable reason that necessitates asking for the evidence.

Slide 12:                    Examples of Financial Evidence

1. Evidence of the stock purchase or Capital Contribution (if stock has no par value or company is anything other than a corporation, i.e. partnership or LLC).
  - Wire transfer receipts
  - Copies of cancelled checks
  - Deposit receipts
  - Bank statements

This list is not all-inclusive.

2. Larger well-known companies may submit Annual Report/10-K or Federal Income Tax returns.

**Slide 13: Issues Regarding Ownership and Control**

- Ownership of a subsidiary need not be majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982).
- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on behalf of a stockholder of a corporation.

Example: Company A owns 49% of the voting stock of Company B and has proxy power over an additional 2% of Company B's voting stock. Company A has control of Company B by having the majority voting power of Company B (51%).

**Instructor Notes:**

Documentary evidence is needed to show proxy control.

Matter of Hughes concluded, the terms "affiliate" or "affiliation" may be broadly used to describe business entities which have relationships with one another based upon both ownership and control and that ownership need not be majority if control exists .

Module 6.1- VIBE

Slide 2: VIBE for I-129 L Adjudication

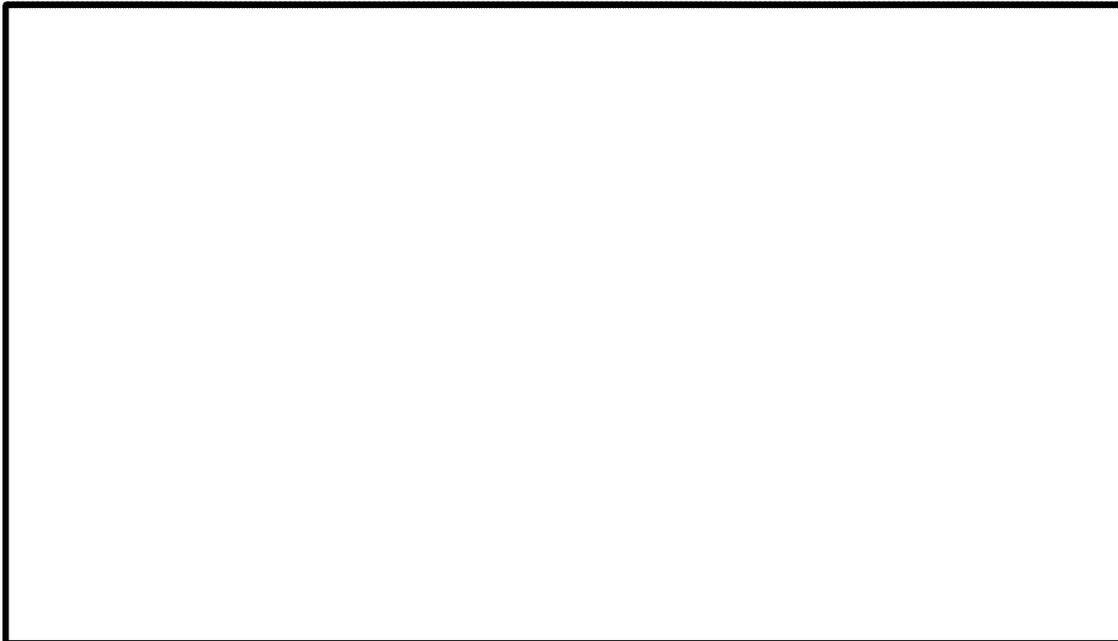
Slide 3: Introduction

How VIBE differs for L-petitions?



Slides 4 - 5: VIBE Processing

(b)(7)(e)

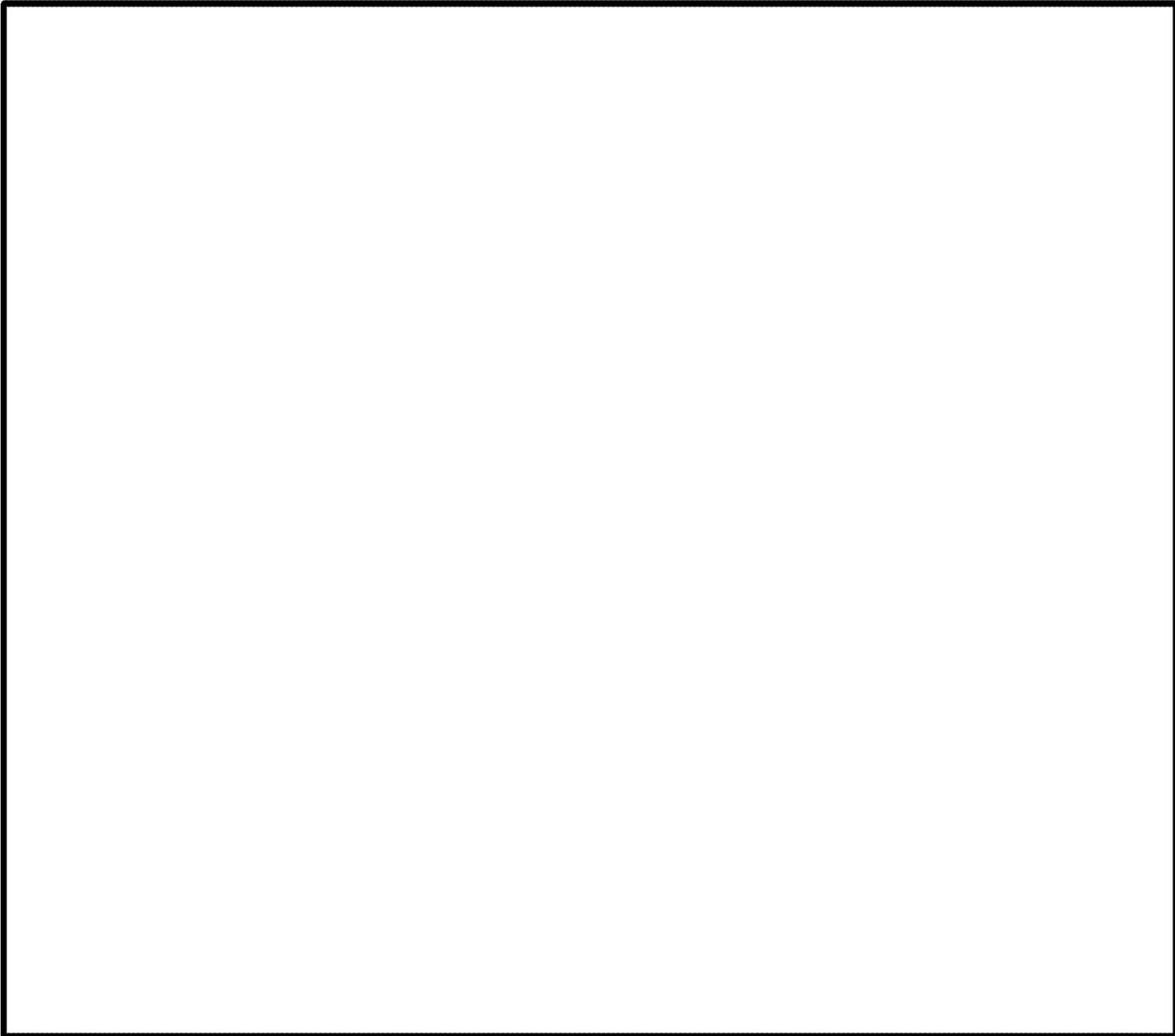


**Slide 6: VIBE Exception**

Adjudicative Action	Guidance
Instances were a VIBE check is not required.	

**(b)(7)(e) Slides 7-9: VIBE and Foreign Affiliation**

[Redacted Content]
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(b)(7)(e)

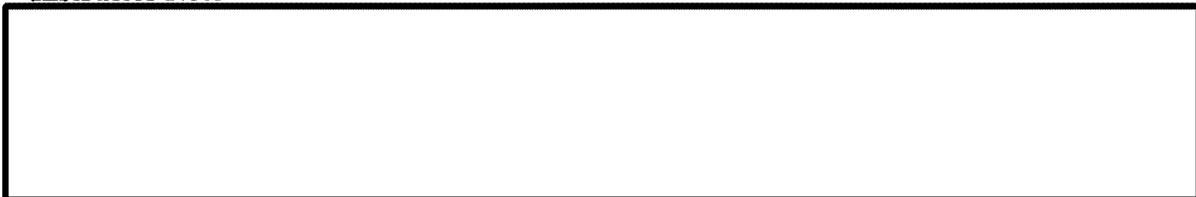
**Slide 10: VIBE and L Adjudication as it Relates to Foreign Affiliation**

Adjudicate on merits regardless of VIBE results :

Cases where the U.S. business has been in business for less than one year.

Note: In the past, businesses owned by individuals were adjudicated on their merits. With the introduction of the comment field, HQ wants comments on businesses owned by individuals.

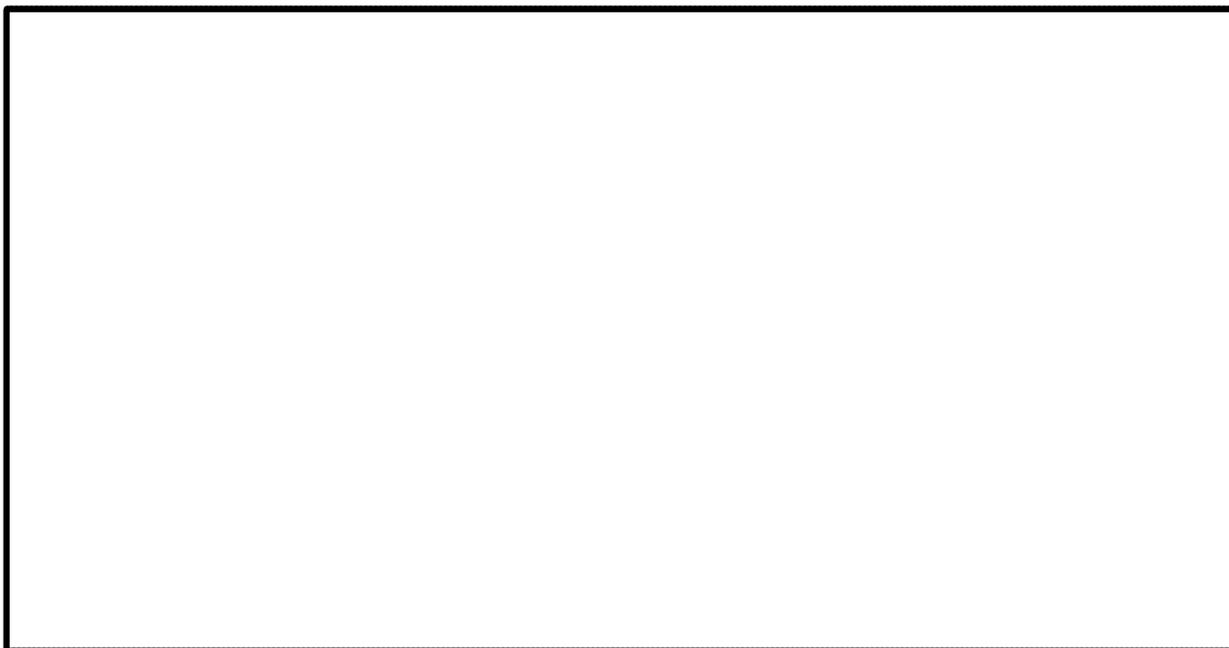
**Instructor Note:**



**Slide 11:**



(b)(7)(e)



(b)(7)(e)

Slide 12:      **Preparing a Comment**



Slide 13:      **Key Elements of a Comment**

(b)(7)(e)



**Instructor Note:**

(b)(7)(e)

*If time permits, have the trainees prepare a QR comment based on one the training cases.*

## Module 7- Doing Business

### Slides 2 - 3:                   Qualifying Organization Doing Business

- Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.
- The U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee.
- There are exceptions for new offices filings.       See 8 CFR §214.2(D)(1)(ii)(H)

#### Instructor Note:

An example of not doing business: An office set up to monitor the production of products purchased by the foreign entity. China Air monitoring production of jets purchased from Boeing.

### Slide 4:                   Corporate Titles

- Do not get confused by the type of company that is involved in the petition or the way in which it was formed. The criteria regarding qualifying organizations and establishing the qualifying relationship are the same regardless of the country where the company is set up and the form of company used.
- Companies may use different corporate titles/forms depending on where the company was set up. Example: In Great Britain, a "Limited" Company is a common form of business, where registration under the Companies Act is comparable to incorporation under state law in the United States. It is abbreviated Ltd.

Limited = Incorporated

Ltd. = Inc.

## Module 8- Managerial and Executive Capacity

### Slide 2: Managerial and Executive Capacity

Instructor Note:

***Have the trainees read the sections of laws and regulations for L-1A.***

### Slides 3 - 4: Managerial Capacity Defined

An assignment within an organization in which the employee *primarily*:

- (1) Manages the organization, or a department, subdivision, function or a 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 and fire or recommend those actions as well as other personnel actions, such as promotion and leave authorization if employees are supervised. If no employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
  - (4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.
- 8 CFR 214.2(l)(1)(ii)(B)

### Slide 5: Executive Capacity

An assignment within an organization in which the employee *primarily*:

- (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, the board of directors or stockholders of the organization.
- 8 CFR § 214.2(l)(1)(ii)(C)

### Slide 6: Managers/Executives

- A job description that uses partial definitions of both manager and executive does not qualify for an L-1A.
- An employee's job description must fulfill all four criteria of the definition of either manager or all four criteria of the definition of executive.

Instructor Note:

This does not preclude the employee from performing duties that fall under the other definition.

### Slide 7: Distinguishing Between Executives and Managers

- Generally, an executive may sign a company document, legally binding a corporation. Generally, a manager cannot, by signature, legally bind the corporation.
- An executive may direct multiple plants, sometimes in several different nations. A manager may oversee only one office or plant.
- Generally, executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc.

Instructor Note:

Stress the importance to make a distinction between executives and managers.

Slide 8: Evaluating Managerial or Executive Positions

In large, well-known and well-established business entities:

A description of the position written by a high level executive of the company may be submitted as evidence. Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title. You must always look at the job duties.

In small and/or young, unknown or less substantial business entities:

- The qualifications of the beneficiary and/or the eligibility of the proposed employment in the United States are more difficult to determine.
- Do not determine eligibility solely by the size of company; rather, examine all the facts presented, including the nature of the duties to be performed, the nature of the petitioner's business, and the developmental stage of the company.

Slide 9: Staffing Levels as a Factor

- Officers should take into account the reasonable needs of the organization.
- In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not just at the number of employees to be managed, but at their duties (e.g., are these professionals, etc.).
- Evidence can include an organizational chart and State quarterly wage reports upon request.
- The employees managed, as opposed to the beneficiary, perform the majority of the everyday duties.

INA 101(a)(44)(C)

Instructor Note:

INA § 101(a)(44)(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity... take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity...merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed

Slide 10: Too Many Queen Bees, Not Enough Worker Bees

- The petitioner indicates the majority of its employees are primarily engaged as managers or executives. Based on the evidence this may be inconsistent with the nature of the business. An RFE may be warranted.
- Request more detailed position descriptions and payroll documentation to determine who is performing the non-qualifying, everyday operational duties of the business.
- Even though a beneficiary has a job title of a manager, he or she may or may not be performing primarily non-managerial duties. This is a fact question which you must determine on a case-by-case basis.

Slide 11: Example Organizational Chart with too many “Queen Bees”

Slide 12: L-1A Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The U.S. organizational chart for the U.S. office.
- Quarterly wage reports for the employees in the U.S. office.

Slide 13: Managing a Function

- The organization is structured in such a way that the beneficiary is primarily managing a function, not primarily performing the duties of the function.
- Normally the beneficiary does not directly manage workers. The beneficiary directs or manages an essential function.

Instructor Notes:

In regards to bullet #2: The person may still qualify as an L-1A *manager of personnel* if the beneficiary meets the requirements of 8 CFR § 214.2(l)(1)(ii)(B). (Definition of Manager)

Slide 14: Conversion from L-1B to L-1A

- Must occur at least 6 months prior to reaching the L-1B 5 year mark to be eligible for the total period of stay of 7 years. Recapture of time can be used to go back 6 months.
- If the promotion from L-1B to L-1A was not 6 months prior to the end of 5 years in L status, then you may approve the classification but deny the EOS request and send the case for consular processing.

(1)(15)(ii)

**Instructor Notes:**

If an amended petition was filed notifying USCIS of the L-1B being promoted to a managerial position before the 4½-year mark, then this also satisfies the requirement.

A change from L-1A to L-1B or L-1B to L-1A is not a change of status. It is considered a change in employment.

**Instructor Note:**

***Have the Trainees review the L-1A training case.***

## Module 9- New Office

Slide 2: New Offices

Slide 3: New Office definition

- An organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

8 CFR 214.2(l)(1)(ii)(F)

Slide 4: New Office Filings

An organization seeking to establish a new business entity in the United States must meet different requirements than a petition for an established company.

Slides 5 - 6: Requirements for an L-1A New Office Petition

- The Petitioner is not required to establish that the U.S. entity is doing business.
- However the Petitioner must submit evidence establishing that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted); AND
  - (C) The intended United States operation will within one year of the approval of the petition support an executive or managerial position by submitting:
    - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND
    - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND
    - (3) The organizational structure of the foreign entity. 8 CFR § 214.2(l)(3)(v)

Slide 7: Requirements for an L-1B New Office Petition

With the filing of the initial new office petition, the Petitioner has to establish that the beneficiary is coming to the U.S. in a specialized knowledge capacity to open or to be employed in a new office.

To demonstrate eligibility the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization; and
- (C) The Petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States. 8 CFR § 214.2(l)(3)(vi)

Slides 8 - 9: Examples of New Office Evidence

- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.

- Evidence of the amount of the U.S. investment, source of funds and ability of the foreign entity to pay the bills related to operating the U.S. office.
- Evidence that the foreign entity owns the U.S. office (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business.

Slide 10: Purchase and Takeover of an Established Business

- If the Petitioner purchases and takes over the management of an established ongoing business, the petition should not be treated as a new office filing.
- Such a petition should be, if approvable, should be granted for an initial period of up to three years or the period requested by the petitioner, if less.

Slide 11: New Business for an Established Business

An organization will not be considered a new office if it is part of a larger organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for one year or more.

**Instructor Note:**

Example: If Toyota want to open a new assembly plant in Vermont, it would not be treated a new office because Toyota already has other businesses in the United States.

Slide 12: Dormant Business

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a 'new office.' There is no rule of thumb as to whether to treat such a company as a 'new office;' this is a fact-based question.
- All of the "new office" filing requirements must be met.

Slide 13: New Office Eligibility

Business plans and other documentary evidence must demonstrate the likelihood the business will have the ability to support a managerial or executive position within one year.

Slides 14-17: New Office Extensions

To extend after the first year, the Petitioner must submit:

- (A) Evidence that the United States and foreign entities are still qualifying organizations (that a qualifying relationship exists);
- (B) Evidence that the United States entity has been *doing business* for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);

- (D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees (such evidence may include organizational chart and quarterly tax returns); and
- (E) Evidence of the financial status of the United States operation.

**Remember:**

- In the initial petition for a new office, the Petitioner must meet different standards to qualify. The L-1A was given one year to set up the new office, hire a staff and initiate doing business. An L-1B was given one year for the Petitioner to set up the business and commence doing business. On extension, it must be demonstrated that the petitioner is doing business at a level that supports the beneficiary's position.
- If you are reviewing a petition requesting an extension and the previous approval was for only one year, it does not necessarily establish the previous filing was a new office filing, you must review the petition and the facts presented in the EOS to make that determination.
- Do not apply new office extension standards to long standing businesses.
- After one year of doing business, the "new office" will be treated as an existing company; typically there are no extensions of "new office" status beyond one year.

8 CFR 214.2(l)(14)(ii)

**Slide 18: Unanticipated Circumstances to a "New Office" Extension**

In instances where the start-up of the new office is hampered by circumstances that are beyond the petitioner's control additional time may be granted. Time granted should only be the time effected by the unanticipated event. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
- A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
- Litigation involving the new office which prevented the normal functioning of the business.

**Instructor Note:**

***Have trainees the L-1A training case and prepare an RFE. Ask a few officers share their RFEs.***

## Module 10- Maintenance of Status and Validity Period

### Slide 2: Maintenance of Status and Validity Periods

Instructor Note:

***Have the trainees read the Limitation on Period of Stay and EOS sections in 8 CFR 214.2(l) and COS section at 8 CFR 248.***

### Slide 3: Validity Periods for Individual Petitions

- Petitions filed by established Petitioners may be approved for a period not to exceed three years initially.
- Petitions filed to establish a new business may be approved for a period not to exceed one year.
- Extensions (EOS) are granted in increments of up to two years.

Instructor Notes:

For new office filings, grant one year from the date of approval. Do not grant what was requested on the petition, unless the dates are in the future.

### Slides 4 - 6: Limitations of Stay

- Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- Recapture time is permitted. Time spent by a beneficiary in H or L status, outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.
- Time in H-1B status counts toward the maximum validity period of stay allowed as an L-1.
- Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.
- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before a new L-1 petition may be approved on his/her behalf.
- **Exceptions:** There is no limitation on period of stay for: (1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and (2) Aliens who reside abroad and commute to the United States to engage in part time employment.

8 CFR 214.2(l)(12)(i)  
8 CFR § 214.2(l)(12)(ii)

Instructor Note:

There is no AC21 for L filings. L-1's are **not eligible** for extensions beyond the maximum period of stay when a labor certification or I-140 is filed on their behalf or remains pending for a specific period of time (unlike H-1Bs).

Slide 7: Dependents

- Dependents of L-1 principal aliens are L-2s. Their periods of stay depend on the principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.

Slides 8 - 9: Requirements for Extension of Stay (EOS)

- Alien must be in the United States at the time of filing the petition.
- Alien does not have to be physically in the United States while the EOS is pending.
- Departure is not treated as abandonment.
- Must be maintaining status.
- The petition must be filed prior to the expiration of the alien's stay.

Exception: failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 214.1(c)(4).

- If the I-129 requests consular processing, then the accompanying I539 EOS or COS must be denied.

Instructor Note:

The I-539 applicant's status is dependent upon the I-129 beneficiary's status. If the I-129 petition was sent for consular notification the beneficiary has not been granted status. Family members can only accompany or follow to join the principle, they cannot be granted EOS or COS ahead of the principal.

Slide 10: Part 6 of the I-129

- Petitioner must fill out the Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States section.
- If the section is not filled, RFE for the information. (call-up 1817)
- If the RFE response does not include the information deny the case.
- The denial to use is (I129H1L1BSFEE).

Slides 11 - 12: RFEs and Denials on EOS Petitions

A prior determination by an adjudicator that an alien is eligible for the classification should be given deference unless one of the following conditions can be established.

- "Material Error"
- "Substantial Change in Circumstances"
- "New Material Information"

A SISO must approve the issuance of an RFE or final decision for any case involving an extension of stay where the parties and facts involved have not changed, but where the current adjudicating Officer determines that it is necessary to issue an RFE or deny the for extension

An exception is for an alien admitted under a Blanket petition (LZ). The alien's qualifications have not been examined by USCIS and SISO approval is not required for an RFE.

Instructor Note:

*Have the trainees review the pertinent L sections of Memo dated April 23, 2004, titled "The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity".*

Slide 13: Requirements for Change of Status (COS)

- Must be maintaining status.
- Unlike EOS, alien must be physically present in the United States.
- Departure is treated as abandonment.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR 248.1(b).

Instructor Note:

Nunc pro tunc literally means "now for then."

Definition from Dictionary.law.com---For informational purposes only:

This phrase is used to express that a thing is done at one time which ought to have been performed at another. Leave of court must be obtained to do things nunc pro tunc, and this is granted to answer the purposes of justice, but never to do injustice. A judgment nunc pro tunc can be entered only when the delay has arisen from the act of the court.

Slides 14 - 15: General Things to Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf. EXCEPTION: In the case of an I-129S filed on behalf of a blanket beneficiary, the Petitioner must be a U.S. Petitioner.
- The beneficiary may not directly perform services for a foreign employer.
- The beneficiary's wages may be paid by the foreign organization.

- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.

Instructor Notes:

Matter of Pozzoli- AAO found that IBM Italy could pay the beneficiary's salary while in the United States.

Refer trainees to 8 CFR 274a.1

8 CFR 274a.1(f) Beneficiary cannot be a contracted employee. Evidence must establish that the beneficiary is actually an employee "who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined"

8CFR274a.1(g) defines independent contractor

The qualifying foreign entity that employed the beneficiary must be doing business at the time the beneficiary is initially granted L-1 status.

Slide 16: Things to Know: Independent Contractors as Employees

- In determining whether an employee meets the criteria of a manager, the persons who the manager supervises abroad or will supervise in the United States may include independent contractors.
- There is no regulation requiring that the employees supervised must be individuals on the company's payroll.
- If the claim is made that the beneficiary qualifies based on managing or supervising independent contractors, request evidence of contracts.

8 FAM 41.54 N7.2-1

Instructor Notes:

Contracts will demonstrate the beneficiary manages or supervises the contract workers.

Slide 17: Company Owner as Petition Beneficiary

- An owner or majority stockholder of the petitioning or affiliated company may be the beneficiary of a petition for L-1 status if the petition is accompanied by evidence that the beneficiary's services are to be temporary and that the beneficiary will be transferred abroad at the completion of the temporary services in the United States.
- In these types of cases, the petitioner must establish that a foreign qualifying company will be doing business the entire time the owner or majority stockholder is in the United States in L-1 classification.

8 CFR § 214.2(l)(3)(vii)  
Matter of M, 8 I&N Dec. 24 (BIA 1958; Ass't Comm'r,  
 AG 1958)

Instructor Note:

If the majority owner of the foreign entity is in the United States, evidence should establish who is running the foreign entity in the beneficiary's absence and that the foreign entity is doing business.

Slide 18: Required Systems Checks

- TECS
- ADIS/SQ94
  - EOS Denial within 15 days before
  - COS Approval within 15 days before
  - COS Denial within 15 days before
- SEVIS for F, J, or M COS printout on non-record side of file
- VIBE
- A# check

Slide 19: No Appeal Rights

- Status denials – cases where the petition for classification as an L-1 is approved but the requested EOS or COS is denied (split decisions).
- Denial for failure to pay the Fraud Detection fee.
- Denial for failure to pay Border Protection fee.

## Module 11: Specialized Knowledge

Slide 2: Specialized Knowledge

Slide 3: Specialized knowledge means:

- special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, *or*
- an advanced level of knowledge or expertise in the organization's processes and procedures.

8 CFR 214.2(l)(ii)(D)

Slide 4: Policy Regarding the Interpretation of Specialized Knowledge

The *Puleo* memo is one of the primary policy memos regarding the interpretation of specialized knowledge. Officers must follow this interpretation when adjudicating SK petitions. The memo instructs that Officers are to utilize common dictionary definitions of the terms "special" and "advanced;" the definitions cited in the *Puleo* memo are:

Instructor Note:

***Have the trainees read the Puleo Memo.***

Slide 5: Puleo Memo—The Special Knowledge Definition

*Special:* (1) "surpassing the usual, distinct among others of a kind," OR; (2) "distinguished by some unusual quality; uncommon; noteworthy."

Instructor Note:

An alien would possess specialized knowledge if it was shown that the knowledge is different from that generally found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

Slide 6: Puleo Memo—The Advanced Level of Knowledge or Expertise Definition

*Advanced:* (1) "highly developed or complex; at a higher level than others," OR (2) "beyond the elementary or introductory; greatly developed beyond the initial stage."

Instructor Note:

An alien would possess specialized knowledge if it was shown that the knowledge is advanced. There is no requirement that the knowledge be proprietary or unique, or narrowly held throughout the company, the knowledge must only be advanced.

Slide 7: Puleo Memo

- The determination of whether the alien possesses SK does not involve a test of the U.S. labor market. Officers should not consider whether there are U.S.

- workers available to perform the duties in the United States when determining whether the alien has SK.
- Officers adjudicating petitions involving SK must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized.

**Instructor Notes:**

Examples of general knowledge may include: CPR training, First Aid training, and Safety training. These could be regarded as general knowledge in any industry. However, general knowledge will differ from case to case depending on the specific industry.

General IT examples: JAVA, C++, COBOL, SQL

**Slides 8 - 9: Possible Characteristics of SK**

- The alien possesses knowledge that is valuable to the employer's competitiveness in the market place; or
- The alien is qualified to contribute to the U.S. employer's knowledge of foreign operating conditions as a result of knowledge not generally found in the industry; or
- The alien has been employed abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position; or
- The alien possesses knowledge which, normally, can be gained only through prior experience with that employer; or
- The alien possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; or
- The alien has knowledge of a process or a product, which is of a sophisticated nature, although not specific to the foreign firm, which is not generally known in the United States (although in some *limited* cases it may be generally known within a particular industry)

**Instructor Notes:**

There may be some industries that are so sophisticated or specialized in nature that even such generalized knowledge may arise to the level of specialized knowledge for L-1B purposes.

There is no requirement that the specialized knowledge be gained through prior experience with the petitioner. It may have been obtained through prior employment, education, or experience. This is rare.

**Slide 10: What to Look for in Reviewing SK**

- How did the beneficiary obtain specialized knowledge?
- What evidence is there to establish that the beneficiary's knowledge is specialized knowledge?

- How can it be shown that the position in the United States requires specialized knowledge?

Slide 11: Petitioner's Statements L-1B

- It is important for the Petitioner to fully explain and describe the beneficiary's specialized knowledge.
- The weight and probative value Officers give to statements by a Petitioner that a beneficiary possesses specialized knowledge will vary from case to case, and will depend on the degree of detail provided and whether the statement is supported by other documentary evidence.

Instructor Note:

Be alert to the fact that some Petitioners may base their claim that a beneficiary has specialized knowledge by merely reiterating the definition of specialized knowledge provided in the regulations, without providing evidentiary support to back up such an assertion.

Slides 12 - 13: L-1B Evidence

- The petition must be accompanied by a detailed description of how the beneficiary's knowledge of the Petitioner's equipment, system, product, technique, or service is "special" and/or "advanced."
- The Petitioner must include documentary evidence to establish the beneficiary's "special" and/or "advanced" knowledge.
- Some common types of documentary evidence submitted are:
  - Training Records
  - Patents held by the company obtained as a result of the beneficiary's work
  - Organizational Charts showing the beneficiary's current position in the organization
  - Published Material by or about the beneficiary
  - High level of Remuneration compared to others
  - Human Resources Records

No specific type of evidence is required under the regulations, but remember, as always, the burden of proof remains with the Petitioner.

Instructor Note:

This is not an exhaustive list, just common examples of evidence typically provided.

Slide 14: L1B IT Filings

- L1B IT filings must be carefully examined. It has been observed that in most cases the claimed specialized knowledge is common to the industry and/or the petitioning company.
- All new L1B IT filings which appear approvable must be brought to a SISO for concurrence.

Slide 15: L-1 Visa Reform Act of 2004

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for L-1 classification if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; OR
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Instructor Note:

The L-1 Visa Reform Act applies to L-1B petitions filed on or after June 6, 2005, whether for initial, extended, or amended classification

Have the trainees review the L-1 Visa Reform Act Memo. Answer questions.

Slide 16: L-1B Off-Site Employment—What the Law Means

If an L-1B alien is stationed primarily at the worksite of an employer other than the Petitioner:

- Control and supervision must be with the Petitioner.
- Cannot be “labor for hire.”
- The beneficiary’s work (the specialized knowledge) must be specific to the Petitioner’s product or service.
- The off-site work must require specialized knowledge.

Instructor Note:

L-1 Visa Reform Act applies only when the U.S. position requires specialized knowledge. However, VSC management wants the L-1 Visa Reform Act addressed in all L-1B offsite denials.

Slide 17: L-1B Extension Adjudication

- When adjudicating L-1B extensions, Officers are required to give deference to the prior Officer’s approval; however, Officers should review the claimed SK to determine if in the intervening time, the knowledge has become general knowledge.
- Be cognizant of the fact that:

“Cutting edge” technologies may become “general industry knowledge” in a rather short period of time.

The “advanced” nature of the beneficiary’s knowledge must be considered in relation to the current level of knowledge in the industry.

Instructor Notes:

Have trainees read the April 23, 2004 Yates Memo titled, “The Significance of a Prior Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity.”

Specialized Knowledge today can be general knowledge tomorrow. Example of specialized knowledge becoming general knowledge: In the early nineties, expertise in the creation and maintenance of certain internet websites was not commonly held in the computer industry. Such knowledge was considered truly specialized. Today, many grade school children possess the knowledge and ability to perform some, many or all of these tasks. Such commonly possessed knowledge is no longer thought of as "special" or "advanced".

Slides 18 - 19: Specialized Knowledge Language

In RFEs and Denials do not use the following words unless they are used by the petitioner:

Narrowly held  
Key  
Key personnel  
Proprietary  
Essential  
Essential process  
Unique

Acceptable words and phrases to use in RFEs and denials:

- Different
- Uncommon
- Materially different
- Distinguished in the industry
- Noteworthy
- Highly developed
- Complex

Slide 20: Specialized Knowledge Language (continued)

IMMACT'90 Changes to Specialized Knowledge requirements:

Matter of Sandoz Crop Protection Corp., Colley and Penner predate the 1990 statutory amendments which eliminated the requirement that specialized knowledge be either "proprietary" or "unique" and therefore, these decisions should be viewed in light of this. While the legislative history (from 1970) may have used these terms, they do not appear in the statute nor in the regulations, so do not use this kind of terminology in decisions.

The language in these cites can be used if it speaks to a common concept.

Example:

Matter of Colley, et al 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

Where not specified, officers may use any cite they feel is pertinent to their case. However, it is the responsibility of the officer to ensure the cite is still valid. Please check with your supervisor if you want to use cites not specified in this presentation.

**Instructor Note:**

It would be acceptable to state, "A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation." This is a generic comment and does not need to be cited.

***Have the trainees an L-1B approval. Discuss why the case with the class why the case was approved. Have the trainees review and prepare an RFE on an L-1B case.***

## Module 12: Blanket Petitions

Slide 2: Blanket L-1 Petition Process

Slide 3: Blanket Petition Authority

INA 214(c)(2)(A) is the statutory authority for blanket petitions.

Slide 4: Blanket Petitions

In order to bring a qualified L-1 alien into the United States under the L Blanket Petition process, two steps must occur:

- (1) The Petitioner must file the Form I-129 and L Supplement requesting Blanket Petition (LZ) Approval.
- (2) With a currently valid approved LZ petition, the Petitioner has established a qualifying relationship to foreign entities and may file Form I-129S on behalf of an employee in order to transfer him/her to the United States as an L-1 nonimmigrant.

Instructor Note:

I-129 S petitions will be discussed later in the presentation. Note that there is no limit to the number of I-129S petitions that can be filed based on an approved LZ petition.

Slides 5 - 6: Filing and LZ Petition

- A U.S. or foreign organization may file an I-129 requesting approval of an LZ petition on behalf of itself and its parent, branches, subsidiaries, and affiliated companies.
- Officers should review Question 3 on Page 20 of the Form I-129 (the first page of the L Supplement) to determine if the Petitioner is seeking the LZ nonimmigrant classification.
- The LZ petition must include a list of all the organizations eligible to transfer L-1 workers under the blanket petition to include documentation establishing the qualifying relationships of the organizations as well as establishing that they are doing business.
- The Petitioner will not submit evidence pertaining to a specific beneficiary as they will not be seeking classification of an employee as an L-1 nonimmigrant with the filing of an LZ petition.

Instructor Note:

The I129S is used by petitioners to file for beneficiaries under a blanket approval.

Slide 7: Who May Use the Blanket Process?

A Petitioner which meets the following requirements may file an LZ petition:

- (A) The Petitioner and each of those entities listed are engaged in commercial trade or services; AND
- (B) The Petitioner has an office in the United States that has been doing business for one year or more; AND

- (C) The Petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; AND
- (D) The Petitioner and the other qualifying organizations have:
- (1) obtained approval of at least 10 L-1 petitions during the previous 12 months; OR
  - (2) have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; OR
  - (3) have a United States work force of at least 1,000 employees. 8 CFR 214.2(l)(4)

Slide 8: LZ Petition Validity

An LZ petition to qualify a company as a blanket petitioner (with no beneficiary listed) may be approved for an initial period of three years. A subsequent petition for extension may be approved indefinitely if all extension requirements are met.

The LZ petition may be approved in part or in whole. You may approve some of the organizations entities and deny others.

- 8 CFR 214.2(l)(7)(i)(B)
- 8 CFR 214.2(l)(14)(iii)(A)
- 8 CFR 214.2(l)(7)(i)(B)(3)

Slide 9: Blanket Extensions

- A blanket extension may be filed six months prior to the expiration of the initial blanket of Form I-129
- An extension must be filed in timely fashion or the company's LZ petition status will become invalid, and the Petitioner must then wait three years to file a new initial LZ petition.

8 CFR 214.2(l)(14)(iii)(B)

Instructor Note:

If the petitioner fails to file for the extension prior to the expiration of the initial blanket approval or if an extension request is denied, the petitioner and its qualifying organizations must wait three years to file another blanket. In the interim, individual petitions must be filed by these organizations for beneficiaries.

Slides 10 - 11: Blanket Extension Requirements

- The documentation required to support the blanket extension include:
- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
  - Positions held during that period
  - The employing entity
  - The dates of initial admission and final departure, if applicable, of each beneficiary
- A statement from the petitioner indicating whether it still meets the blanket criteria.
- Documentation to support any changes in approved relationships or additional qualifying organizations.
- Petitioner must file an amended petition with fee if:
  - There are changes in approved relationships.

- There are additional qualifying organizations.
- An amended petition may only be approved for the validity period of the petition it amends.
  - A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely. 8 CFR 214.2(l)(7)(i)(C)

Slide 12: Approving an LZ Petition

When approving a case, you must:

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is LZ).
- Indicate the dates of approval/validity dates (which will either be three years from the date of approval (for an initial) or "INDEFINITELY" (for an extension)).
- Make a notation "BLANKET PETITION" in the block entitled "PARTIAL APPROVAL."

Slide 13: Filing an I-129S for the Beneficiary

- A U.S. Petitioner listed on an LZ petition approval notice may file a Form I-129S on behalf of an employee.
- The Petitioner bears the burden of establishing:
  - (1) that the beneficiary meets the 1 in 3 rule and,
  - (2) that the beneficiary will be employed in the United States in a managerial or executive capacity or as a specialized knowledge *Professional*. 8CFR 214.2(l)(4)(ii)

Instructor Note:

The I-129S Petitioner must be a U.S. Petitioner unlike an I-129 Petitioner which can be filed by a foreign entity.

Note that if filing the I-129S on behalf of a specialized knowledge employee, the position in the United States must be a 'profession' as defined by INA § 101(a)(32) and the beneficiary must be a professional. However, there is no requirement that the beneficiary have been employed abroad in a position as a specialized knowledge Professional.

Slide 14: Specialized Knowledge Professional

- INA § 101(a)(32) provides that the term "profession" includes but is not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."
- "Profession," as defined by section 101(a)(32) of the Act, contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. See Matter of Sea, 18 I&N Dec. 817.

- In order to be considered a professional, the alien must hold a U.S. bachelor's degree or equivalent (may include a work experience evaluation) and be working in a position that normally requires a minimum of a bachelor's degree.

**Instructor Note:**

Only under blanket filings must a specialized knowledge worker possess a bachelor's degree or equivalent.

**Slide 15:** Notes about the Form I-129S

- There is no filing fee required. However, the Petitioner must submit the \$500 fraud fee and the \$2,250 P.L. 111-230 fee if required.
- The Petitioner does not need to establish that they are a qualifying organization as this has already been established with the approval of the LZ petition. Instead, the Petitioner needs to submit a copy of the LZ approval notice with the I-129S filing documenting that the Petitioner is listed on the LZ approval notice.

**Slide 16:** I-129S Filing Option

The U.S. Petitioner may file the I-129S with:

- (a) DOS – If the beneficiary is abroad and requires a visa to seek admission to the United States, the I-129S should be submitted directly to the Consulate or Embassy with the beneficiary's L-1 visa application. If approved, the beneficiary may use the L-1 visa and apply for admission to the United States.

8 CFR 214.2(l)(5).

**Slide 17:** I-129S Filing Options (continued)

- (b) USCIS – If the beneficiary is a visa exempt alien (Canadian citizens and certain aliens resident in the Caribbean) who is outside the United States, the I-129S may be filed with the appropriate USCIS Service Center. If approved, the alien may apply for admission to the United States with the approval notice. [Aliens currently present in the United States may not use Form I-129S to COS or EOS or amend a previously approved I-129S.]

8 CFR 214.2(l)(5)(C)

**Instructor Note:**

Clarify (b) it agrees with the filing instructions but disagrees with the Regs. 8 CFR 214.2(l)(5)(C) states if an alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I-129S. Per HQ, go by the I-129 Filing Instructions, Aliens currently present in the United States may not use Form I-129S to COS or EOS or amend a previously approved I-129S

Note regarding (c) POE/PFI can't deny cases. These cases are sent to the Service Centers for receipt and for the issuance of an ITD.

Slide 18: I-129S Filing Options (continued)

(c) CBP at a Port Of Entry (POE) on the Canadian-U.S. land border or a pre-clearance/pre-flight station (PFI) in Canada. If the beneficiary is a citizen of Canada, the Form I-129S may be filed with CBP at the POE or PFI in conjunction with the alien's application for admission to the United States as an L-1.

It is the responsibility of the agency with whom the I-129S is filed to collect all required fees and adjudicate the I-129S properly. 8 CFR § 214.2(l)(17)(ii)

Slides 19 - 20: Reassignment Benefits of an I-129S

An employee admitted under the blanket petition process may be reassigned to any organization on the blanket without filing a petition with USCIS if the employee will be performing virtually the same job duties. Such a reassignment will not be considered a violation of status.

Therefore, when adjudicating EOS petitions for L-1 aliens who were previously admitted by means of an approved I-129S, the Officer may not deny the petition if the employee has moved to a different organization *listed on the blanket LZ petition* without filing a new petition.

Instructor Note:

It is acceptable for an employer to assign an a beneficiary to another entity listed on the blanket approval notice. Do not deny for qualifying relationship if both organizations are listed on the blanket approval.

Slide 21: Notes About I-129S Filed with DOS

- Form I-129S filed with DOS will be adjudicated by a Consular Officer. If approved, the alien will be given copies of the I-129S. One copy should be collected by CBP upon the alien's admission to the United States at a POE and forwarded to USCIS for interfiling in the LZ petition.
- L-1 aliens admitted pursuant to an I-129S petition adjudicated by DOS may, instead of filing an EOS petition with USCIS, return to a Consulate and file a new Form I-129S with an L-1 visa renewal.
- I-129S petitions adjudicated by DOS are not tracked in GUI/CLAIMS and there will be no I-797 approval notice available. When reviewing EOS petitions filed on behalf of beneficiaries whose original I-129S was approved by DOS, Officers may need to review the L-1 visa issued to the beneficiary, CCD and/or ADIS/SQ94 if additional information is required.

Instructor Note:

All approved blanket petitions stay with the approving service center so that all approved I-129S filings can be interfiled.

Slide 22: Notes about I-129S Filed with CBP

- I-129S petitions filed with CBP at a POE/PFI on behalf of a Canadian citizen will be adjudicated by a CBP Officer. If approved, a copy will be forwarded to the appropriate USCIS Service Center for data entry into GUI and interfiling into the LZ petition.
- CBP cannot issue a formal denial notice to the alien, they will forward the I-129S to the USCIS Service Center for issuance of an ITD and final action.

- L-1 aliens admitted pursuant to I-129S petition adjudicated by CBP may, instead of filing an EOS petition with USCIS, return to a POE on the U.S.-Canadian land border or a PFI inside Canada and file a new Form I-129S and seek readmission as an L-1 nonimmigrant.

**Instructor Note:**

POE/PFIs can't deny cases. These cases are sent to the Service Centers for receipting and for the issuance of an ITD and possibly a denial.

**Slide 23: I-129S Filings**

All I-129S requests filed for an L-1 alien must contain the LZ petition approval notice to show the Petitioner has an approved LZ petition.

**Slide 24: Filing for an L-1 Beneficiary Who is in the United States**

- If an approved L-1 blanket employer wants to file a petition on behalf of an employee who is in the United States applying for either a change of nonimmigrant status (COS) or an extension of stay (EOS), Form I-129 must be used, not the Form I-129S. The petition must be adjudicated as an individual L-1 petition and all the requirements of an individual petition must be met.
- When a Petitioner files an I-129 Individual L-1 petition, they must submit documentation establishing the fact that they are a qualifying organization (including evidence that they have a qualifying relationship and are doing business). However, in the above instance, where a blanket L-1 Petitioner is filing an I-129 on behalf of an alien who is already inside the United States seeking an EOS or COS, a copy of the LZ Blanket approval notice is often submitted as proof that the qualifying relationship has already been established

**Instructor Note:**

Reminder first bullet agrees with the filing instructions but disagrees with the Regs. 8 CFR 214.2(l)(5)(C) states if an alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I-129S. Per HQ, go by the I-129 Filing Instructions, Aliens currently present in the United States may not use Form I-129S to COS or EOS or amend a previously approved I-129S

Note regarding (c) POE/PFI can't deny cases. These cases are sent to the Service Centers for receipting and for the issuance of an ITD.

**Slide 25: I-129S Validity Period**

- An I-129S filed for a beneficiary under an initial LZ petition of three years or an indefinite blanket petition may be approved initially for a period of up to three years, even if the LZ petition will expire before the three-year validity period granted the beneficiary.
- Extensions may be granted in up to two year increments.
- It is the burden of the Petitioner to file a LZ petition extension in timely fashion and to timely file extensions for individual L-1 aliens approved under a blanket petition.

8 CFR 214.2(l)(11)

8 CFR 214.2(l)(15)(ii)

Slide 26: Blanket Petition Limitation

- A blanket Petitioner can file an I-129S for an alien under the blanket petition or can file a normal individual petition for an alien, but cannot file both for the same alien.
- If an I-129S is filed for an alien at the consulate and is denied, the Petitioner may subsequently file an I-129 individual L-1 petition for that alien at the appropriate Service Center. The petition must contain evidence of the consulate denial including the date of denial, the office where it was denied and the reasons for denial.

## Module 13: Bundled Petitions

Slide 2: Bundled Petitions

Slide 3: Bundled Petitions

Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in "bundles". The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.

Slide 4: Bundling Requirements

All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.

Slide 5: Adjudicating Bundled Petitions

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time.

Slide 6: Notes about Bundled Petitions

- L-1A petitions can be included with the bundle if the L-1A beneficiary will be managing the L-1B beneficiaries.
- If one or more of the petitions does not meet the bundle criteria these petitions will be removed from the bundle and adjudicated as single filings.  
Example: different positions or different duties under the same position title.
- Bundled petitions must remain together.

**Meeting Notes I-129L Follow up:**

Any changes/corrections you make/mark on the petition in red you must also make the same changes in GUI.

**I-94 Arrival/Departure Record:**

I-94 numbers must be on the petition and in GUI whenever you are processing a change of status or extension of stay. If there is no record in the file, please check ADIS or SQ94. If no record, you will need to RFE asking for evidence of the entry and the Arrival-Departure Record (Form I-94).

**First extension after an initial approval based upon blanket:**

Initial admission approval based upon a blanket, your file is asking for the first extension. You would need evidence to show that the beneficiary was employed, abroad, in a qualifying capacity (managerial/executive/specialized knowledge) and you need evidence to show that the beneficiary's qualifies for the position in the U.S. or that the position requires a manager/executive or specialized knowledge.

**IF**

The petition is requesting a change from L1B to L1A and the initial entry was based upon a blanket approval; you may still need evidence to show that the beneficiary was employed in a qualifying capacity abroad (managerial/executive/specialized knowledge) if not in the record and that the beneficiary is performing L1A duties in the U.S. We should not assume that because the beneficiary's duties in the U.S. are managerial and he/she qualifies for the position, that the beneficiary was in employed in a qualifying capacity abroad.

**Visa Reform Act – Offsite employment:**

There are two (2) prongs for this request: there is evidence that the beneficiary is managed/supervised by the petitioner (right to control/employee-employer relationship) and that the beneficiary is not labor for hire, meaning that the beneficiary will be working with specialized knowledge of the petitioner's tools, methods, processes on this project at the client site rather than the client's tools, methods, processes. Even if the beneficiary has specialized knowledge of the petitioner's items (which could be the case), he/she must be primarily working on these items at the client site and not the client's items.

When sending an RFE, if they have established right to control, let them know that you acknowledge that portion has been met, however they did not meet the labor for hire portion and delete the requests for evidence for right to control. Do not include the whole call up if you only need parts of it. This confuses the petitioner/attorney.

**Qualifying Relationship:**

The petitioner may indicate subsidiary when in reality they are affiliates, etc. Please make sure you are requesting for the correct documents pertaining to the correct relationship. They do make mistakes and we are allowed to change/clarify this in an RFE.

**VIBE:**

(b)(7)(e)



**Approvals/Phrases:**

Amended filings: Petitioner checks off blocks F and D on page. A true amended filing will never request an extension of time in the prior validity period. In that case you would approve the case using #12 approval phrase and give them the same ending date as the prior approval. Often ~~Usually~~ a true amended is when there is a name change for the petitioner, acquisition/merger and nothing has changed in the beneficiary's duties or validity period.

Change in Previously Approved Employment/Extension of Stay: Petitioner checks off blocks C and C. There is a change in the beneficiary's work conditions, job title, job location. This is not an amended filing, even if the petitioner checks off blocks F and C; you will change the petition to C and C and correct GUI as well to match the changes. You will use approval phrase #16.

New employment/change of employer: Petitioner can check off either of those blocks (A or E) when requesting new employment, they both mean the same. You would then need to know what they checked off for Requested Action #4 page 2 of petition.

Blocks checked and Approval Phrase to use:

New employment (a) and Notify consulate (a): Approval phrase #1

New employment (a) and notify POE/PFI (a): Approval phrase #3, beneficiary is visa exempt, from Canada/Mexico.

Continuation of previously...(b) and notify consulate/POE/PFI (a): Approval phrase #1.

Please note if continuation (b) is checked off by the petitioner and the beneficiary has held or is holding L status you will only give them a 2 year extension period (not 3 that they will probably be requesting as they are requesting a continuation), no matter what block they check off on #4, page 2 of the petition.

New employment (a) and change of status (b): Approval phrase #7, changes of status approved.

Change in previously approved employment (c) and extend (c): Approval phrase #16.

**KCC Copies:**

If you approve a petition and there is another copy of the I-129 in the file, you will need to pull that copy out of the file, make the proper annotations on the petition like the one in the file, stamp with your approval notice/signature and place the copy in FCU on the KCC shelf for consulate/embassy or the POE/PFI shelf for port of entry or pre-flight inspection. You need to do this even if the beneficiary is in the U.S.

If there is no copy in the file, you do not need make a copy or send anything to KCC.

If there is an ROIT and/or a resolution memo for the beneficiary, please place copies with the KCC copy, under the petition but before all supporting evidence.

You do not need to send a copy of the I-539 to KCC/POE/PFI even if they have a copy in the file.

**New Offices:**

We are starting to see new offices which are indicating they are "licensing space/desk/office". Just like a virtual office, you must look at the totality of the case. Is this licensing agreement for the space sufficient for the first year to house the business, the services/products they will be providing and all personnel? If they are an import/export business and they indicate they will be importing/exporting large machinery, they are showing you pictures of the machinery they say they have already in the U.S. and show in the business plan they will have 8 employees in the first three months of business, this licensing space is more likely than not sufficient and you would need to RFE for additional space documentation. If they indicate in the business plan that the space will only be used for the start up with 1 or 2 persons and they will be leasing larger office space, warehouse, etc. within the first six months, and the totality is showing that this is more likely to happen, then you may want to consider the licensing agreement as ok in the initial filing. Again, the totality of the case, we cannot assume that just because they have a licensing agreement for space or a virtual office that they won't and/or cannot start a business.

**First Extension of a new office:**

You will treat these like you would for a new? office, making sure they can support the beneficiary's position within the company, that they the U.S. and a foreign entity is and will continue to do business, that there are sufficient personnel to operate the business and if questionable, that there is sufficient space for the business/employees and there is a qualifying relationship. We cannot assume that because they were given a year to start this business that all of these requirements are still there and we cannot/should not consider this a same/same extension.

# L-1 Overview



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# Sources of Information

- INA §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- 8 CFR §§ 214.1, 214.2(l), & 248
- Adjudicator's Field Manual (AFM)
- *Interpretation of Specialized Knowledge*, Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS (March 9, 1994)
- Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004, Memorandum of William Yates, Associate Director of Operations
- Department of State Foreign Affairs Manual (FAM)
- Form I-129 with L Supplement and Form I-129S



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# Definition of L-1

...an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge...

INA § 101(a)(15)(L);

see also 8 CFR § 214.2(l)(1)(i)



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# L Classification

- L-1A classification is for managers and executives.
- L-1B classification is for specialized knowledge aliens.
- L-2 classification is for dependents (dependents use Form I-539).
- LZ is the designation given to an approved blanket petition. The Petitioner is referred to as a Blanket Petitioner, there is no individual beneficiary of an approved LZ.



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# 30 day Processing Time

INA § 214(c)(2)(C) of the Act states that USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a completed petition has been filed.

8 CFR § 214.2(1)(7) indicates that a Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS. If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.



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# Where to File the I-129

I-129 L-1 petitions are primarily filed at the CSC and VSC.

Exception:

- NAFTA & I-129S filings may be filed at a POE/PFI or Service Center.
- Blanket filings may be filed at a consulate or a Service Center.

Jurisdiction is determined by the beneficiary's work location or (in the case of I-129S) the Service Center that adjudicated the Blanket petition



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# Fees

- I-129 (L-1 and LZ) Petition filing fee: **\$325.00**. Note that there is no filing fee for an I-129S, *Nonimmigrant Petition Based on Blanket L Petition*.
- Fraud Prevention and Detection Fee: **\$500.00**. This fee is required to be paid by Petitioners seeking the initial approval of an I-129 L-1 petition (including a change of status to L-1, or a petition for new concurrent L-1 employment). There are no exceptions or waivers available to the Fraud Prevention and Detection Fee. The Fraud Fee does not need be paid when a petition seeking blanket LZ approval is filed.

See INA § 214(c)(12).



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# Fees, (continued)

- P.L. 111-230 fee: **\$2,250.00**. Effective 8/13/2010, this law requires employers filing an L-1 petition prior to October 1, 2014, who are required to pay the \$500 Fraud Prevention and Detection fee as detailed above, to pay an additional \$2,250 if: (1) they employ 50 or more employees in the United States; and (2) more than 50% of those employees are in H-1B or L-1 status.



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# Basic Requirements for L-1 Petitions



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# Basic Requirements for an Individual L-1 Petition

(3) Evidence for individual petitions. An individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.



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# Basic Requirements for an Individual L-1 Petition, cont'd

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.



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# Basic Requirements for an Individual L-1 Petition, cont'd

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

8 CFR Section 214.2(l)



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# Basic Requirements for an Individual L-1 Petition, cont'd

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be in the same work which the alien performed abroad.

8 CFR Section 214.2(l)



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# Qualifying Organization Defined

See 8 CFR § 214.2(l)(1)(ii)(G)

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Has a qualifying relationship between the U.S. entity and a foreign entity.

(2) Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.



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# Employment Abroad

- The regulation indicates that a qualifying employee must have at least one continuous year of full-time employment abroad in a capacity that was managerial, executive, or involved specialized knowledge with a qualifying organization within the three years preceding the filing of the petition.

8 CFR § 214.2(l)(3)(iii) and (iv)

INA 101(a)(15)(L)

8 CFR 214.2(l)(1)(ii)(A)



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# Employment Abroad (continued)

- This is referred to as the “1 in 3” rule.
- It is important to note that the 1 in 3 rule is a combination of two separate regulatory requirements which require two different but related analyses.



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# Employment Abroad (continued)

- The Petitioner must submit sufficient documentation establishing that:

1. The beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. See 8 CFR § 214.2(1)(3)(iii), and

2. For the entire one year of continuous employment abroad, the beneficiary was performing in a capacity that was managerial, executive, or required specialized knowledge. See 8 CFR § 214.2(1)(3)(iv).



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# Employment Abroad (continued)

- The prior foreign employment and proposed U.S. employment capacity do not have to be the same. For example, the one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for an L-1A position in the United States. See 8 CFR § 214.2(l)(3)(iv)
  
- Both previous foreign employment and the prospective U.S. employment must be in one of the qualifying capacities.



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# Employment Abroad (continued)

- Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement. See 8 CFR § 214.2(l)(1)(ii)(A)



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# Position in the United States

The Petitioner must submit sufficient documentation establishing that:

The position in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.



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# Beneficiary's Qualifications for the Position in the U.S.

The regulation states that the employee need not be filling the same position in the United States that he/she occupied abroad. However, the regulation indicates that the employee must be qualified for the position in the United States.



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# Qualifying Relationships



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# Qualifying Organization

- Does a qualifying relationship exist?

The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:

- Parent 8 CFR § 214.2(l)(1)(ii)(I)
- Branch 8 CFR § 214.2(l)(1)(ii)(J)
- Subsidiary 8 CFR § 214.2(l)(1)(ii)(K)
- Affiliate 8 CFR § 214.2(l)(1)(ii)(L)



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# Parent

- Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 CFR § 214.2(l)(1)(ii)(I)

- For a broader explanation of what constitutes a ‘parent,’ the definition of subsidiary at 8 CFR § 214.2(l)(1)(ii)(K) indicates that a parent company is an entity which owns and controls the operations of a subsidiary by:

(1) Owning either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.



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# Parent (continued)

- (2) Owns either directly or indirectly half of the subsidiary and controls the subsidiary.
- (3) Owns either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary.
- (4) Owns either directly or indirectly less than 50% of the entity but in fact controls the entity.



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# Branch

Branch means an operating division or office of the same organization housed in a different location. 8 CFR § 214.2(l)(1)(ii)(J)

- An “arm” of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign corporation operating in the United States.



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# Subsidiary

Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent.

8 CFR § 214.2(l)(1)(ii)(K)

It must be established that the parent:

(1) Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.

(2) Owns either directly or indirectly half the subsidiary and controls the subsidiary.



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# Subsidiary (continued)

(3) Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary.

(4) Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary.



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# Issues Regarding Ownership and Control

Ownership and control can happen two ways:

1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.

2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of an entity yet still controls the entity.



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# Doing Business (continued)

- The U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee.
  
- There are exceptions for new offices filings.



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# Types of Business Entities



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# Types of Business Entities

- Sole Proprietorship
- Partnership
- C Corporation
- S Corporation
- Limited Liability Company
- Joint Venture



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# Sole Proprietorship

Someone who owns an unincorporated business by him or herself.



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# Partnership

A partnership is the relationship existing between two or more persons who join to carry on a trade or business.

Each person (partner) contributes money, property, labor or skill, and expects to share in the profits and losses of the business.



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# Types of Partnership

There are two types of partnership:

General

Limited



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# General Partnership:

Is two or more partners in which each partner is liable for any debts taken on by the business. Since the partners do not enjoy limited liability, all the partners' assets can be involved in an insolvency case against the company.

No formal, written partnership agreement is required to create a general partnership. However, general partnerships typically do execute agreements.



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# Limited Partnership

Entity in which one or more persons, with unlimited liability, called general partners, manage the partnership, while one or more other persons contribute only capital.

Limited partners have no right to participate in the management and operation of the business and assume no liability beyond the capital contributed.



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# C Corporation

## Definition:

Is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.



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# S Corporations

Corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes.



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# S Corporations (continued)

S Corps are not taxable entities. They are required to file an informational tax return called a Form 1120S, U.S. S Corporation Income Tax Return.

Income and expenses flow to the shareholders' individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.



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# Limited Liability Company (LLC)

A form of business organization with the liability-shield advantages of a corporation and the flexibility and tax pass-through advantages of a partnership.



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# Joint Venture

Two or more individuals or entities working together for a joint profit motive.

A joint venture can be a corporation, a partnership, or a non-entity.



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# Evidence of Ownership and Control

- The evidence must demonstrate ownership and control in order to establish the qualifying relationship.
- The petitioner may submit any evidence that it feels is appropriate; Officers must weigh the evidence submitted appropriately.
- Submission of Stock Certificates is a common way that Petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated on the stock.



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# Reviewing Stock Certificates

- When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the entity seeking to establish control.



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# Are the Stock Certificates Genuine?

There is always a possibility that the submitted stock certificates may have been altered in order to make a qualifying relationship appear to exist and/or the possibility that the stock certificates were not issued in the normal course of business.

If this is suspected, an Officer should review the stock certificates to determine if they (and the information contained on them) are genuine and were produced in the normal course of the company's business. Generally, an acceptable stock certificate includes the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation



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**Certificate**

No. \_\_\_\_\_

For \_\_\_\_\_ Shares

Entirely

\_\_\_\_\_

\_\_\_\_\_

Class \_\_\_\_\_

From whom transferred \_\_\_\_\_

Class \_\_\_\_\_

1. Paid in full	2. Paid in part	3. Not paid

Company Certificate No. \_\_\_\_\_

To \_\_\_\_\_ Shares

On \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

No. _____	Shares _____
<b>A. Datum Corporation</b>	
<i>This certifies that _____ is the registered holder of _____ Shares of the Capital Stock, payable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed.</i>	
	<i>In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officer and the corporate Seal to be hereunto affixed this _____ day of _____, A.D. _____</i>



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# STOCK CERTIFICATE

THIS IS TO CERTIFY THAT

\_\_\_\_\_

IS THE OWNER OF \_\_\_\_\_ SHARES OF STOCK

OF \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ IN THE YEAR \_\_\_\_\_

AT: \_\_\_\_\_

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
SIGNED



Certificate provided by www.uscis.gov



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# Are the Stock Certificates Genuine?

## (continued)

A comparison to the company's stock ledger may help validate the certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or "cancellation" of stock.



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# Are the Stock Certificates Genuine?

## (continued)

- In those *limited* instances where the officer has *reason to question* the validity or authenticity of the stock certificate(s), it may also be appropriate to ask for evidence of the transfer of payment for the stock certificate(s) in question. Such evidence may include but is not limited to copies of cashed checks or documentation of wire transfers.



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# When to Ask for Financial Evidence of Ownership and Control

- As indicated previously - the officer has reason to question the validity or authenticity of submitted stock certificates.
- In the case of a new office, if the submitted evidence is insufficient to determine whether the size of the U.S. investment is sufficient to conduct business.
- If the entity is a type that does not issue stock certificates, such as a partnership or limited liability corporation.
- If the Officer can articulate a justifiable reason that necessitates asking for the evidence.



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# Examples of Financial Evidence

1. Evidence of the stock purchase or Capital Contribution (if stock has no par value or company is anything other than a corporation, i.e. partnership or LLC).
  - Wire transfer receipts
  - Copies of cancelled checks
  - Deposit receipts
  - Bank statements

This list is not all-inclusive.

2. Larger well-known companies may submit Annual Report/10-K or Federal Income Tax returns.



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# Issues Regarding Ownership and Control

- Ownership of a subsidiary need not be majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982).
- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on behalf of a stockholder of a corporation.

Example: Company A owns 49% of the voting stock of Company B and has proxy power over an additional 2% of Company B's voting stock. Company A has control of Company B by having the majority voting power of Company B (51%).



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# VIBE for I-129 L Adjudication



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# Introduction

How VIBE differs for L-petitions?



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# VIBE Processing

- Aside from foreign affiliation issues, process L cases the same as you would other I-129 filings.
- Perform manual searches on any additional names or addresses found in the record.
- Possible reasons to launch a data inquiry:



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(b)(7)(e)

# VIBE Exceptions

Adjudicative Action	Guidance
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# VIBE and Foreign Affiliation



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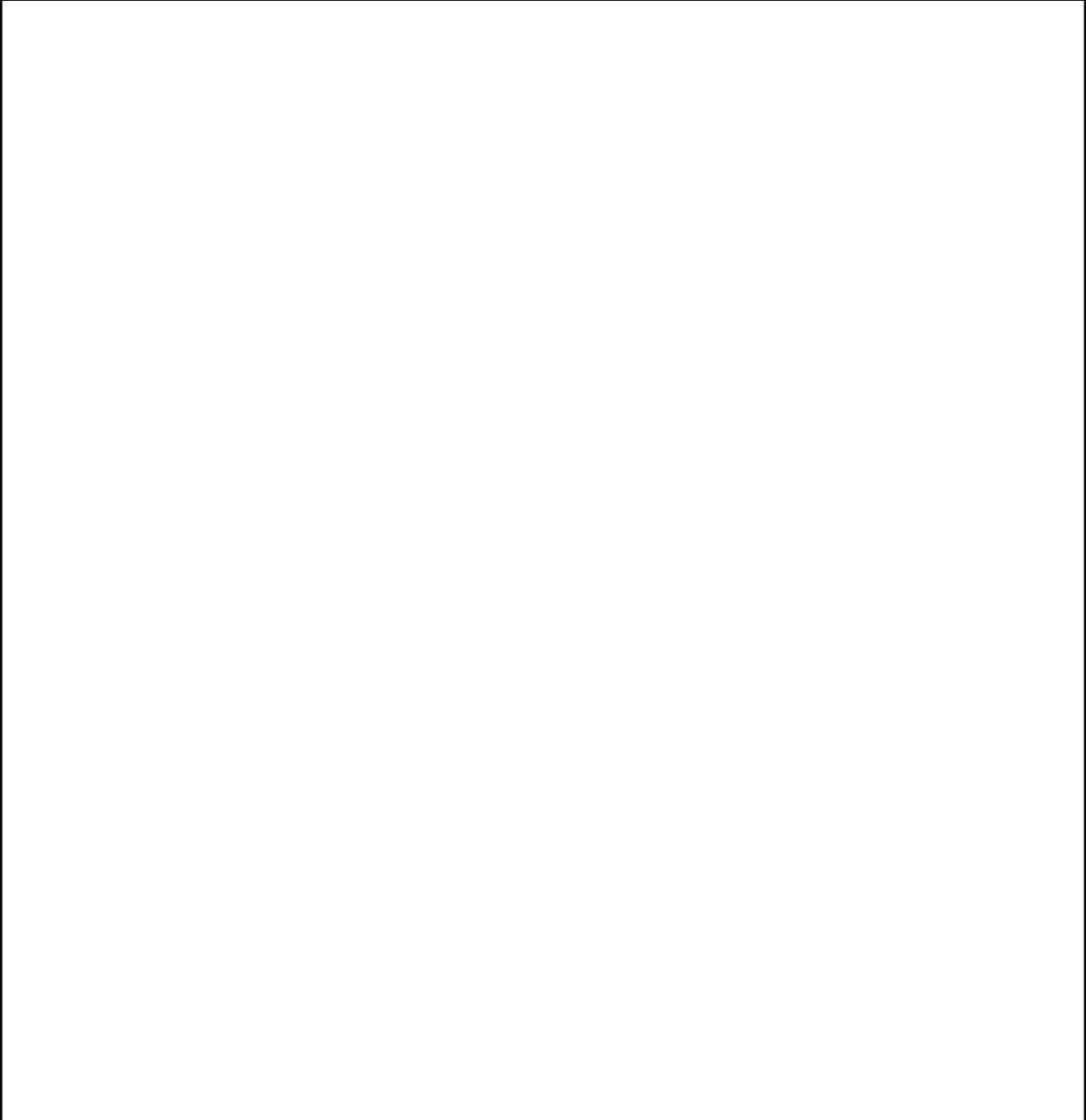
# VIBE and Foreign Affiliation (continued)



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# VIBE and Foreign Affiliation (continued)



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# VIBE and L Adjudication as it Relates to Foreign Affiliation

Adjudicate on merits regardless of VIBE results :

Cases where the U.S. business has been in business for less than one year.

Note: In the past, businesses owned by individuals were adjudicated on their merits. With the introduction of the comment field, HQ wants comments on businesses owned by individuals.



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# Orange for Foreign Affiliation Only



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# Preparing a Comment

Example of a Good VIBE Comment:



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# Key Elements of a Comment



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# Managerial and Executive Capacity



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# Managerial Capacity Defined

8 CFR § 214.2(l)(1)(ii)(B)

An assignment within an organization in which the employee *primarily*:

- (1) Manages the organization, or a department, subdivision, function or a 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;



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# Managerial Capacity Defined (continued)

(3) Has the authority to hire and fire or recommend those actions as well as other personnel actions, such as promotion and leave authorization if employees are supervised. If no employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.



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# Executive Capacity Defined

An assignment within an organization in which the employee primarily:

- (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, the board of directors or stockholders of the organization.

8 CFR § 214.2(l)(1)(ii)(C)



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# Managers/Executives

- A job description that uses partial definitions of both manager and executive does not qualify for an L-1A.
- An employee's job description must fulfill all four criteria of the definition of either manager or all four criteria of the definition of executive.

**Note:** This does not preclude the employee from performing duties that fall under the other definition.



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# Distinguishing Between Executives and Managers

- Generally, an executive may sign a company document, legally binding a corporation. Generally, a manager cannot, by signature, legally bind the corporation.
- An executive may direct multiple plants, sometimes in several different nations. A manager may oversee only one office or plant.
- Generally, executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc.



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# Evaluating Managerial or Executive Positions

In large, well-known and well-established business entities:

A description of the position written by a high level executive of the company may be submitted as evidence. Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title. You must always look at the job duties.

In small and/or young, unknown or less substantial business entities:

The qualifications of the beneficiary and/or the eligibility of the proposed employment in the United States are more difficult to determine.

Do not determine eligibility solely by the size of company; rather, examine all the facts presented, including the nature of the duties to be performed, the nature of the petitioner's business, and the developmental stage of the company.



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# Staffing Levels as a Factor

INA § 101(a)(44)(C)

Officers should take into account the reasonable needs of the organization.

In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not just at the number of employees to be managed, but at their duties (e.g., are these professionals, etc.).

Evidence can include an organizational chart and State quarterly wage reports upon request.

The employees managed, as opposed to the beneficiary, perform the majority of the everyday duties.



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# Too Many Queen Bees Not Enough Worker Bees

- The petitioner indicates the majority of its employees are primarily engaged as managers or executives. Based on the evidence this may be inconsistent with the nature of the business. An RFE may be warranted.
- Request more detailed position descriptions and payroll documentation to determine who is performing the non-qualifying, everyday operational duties of the business.
- Even though a beneficiary has a job title of a manager, he or she may or may not be performing primarily non-managerial duties. This is a fact question which you must determine on a case-by-case basis.

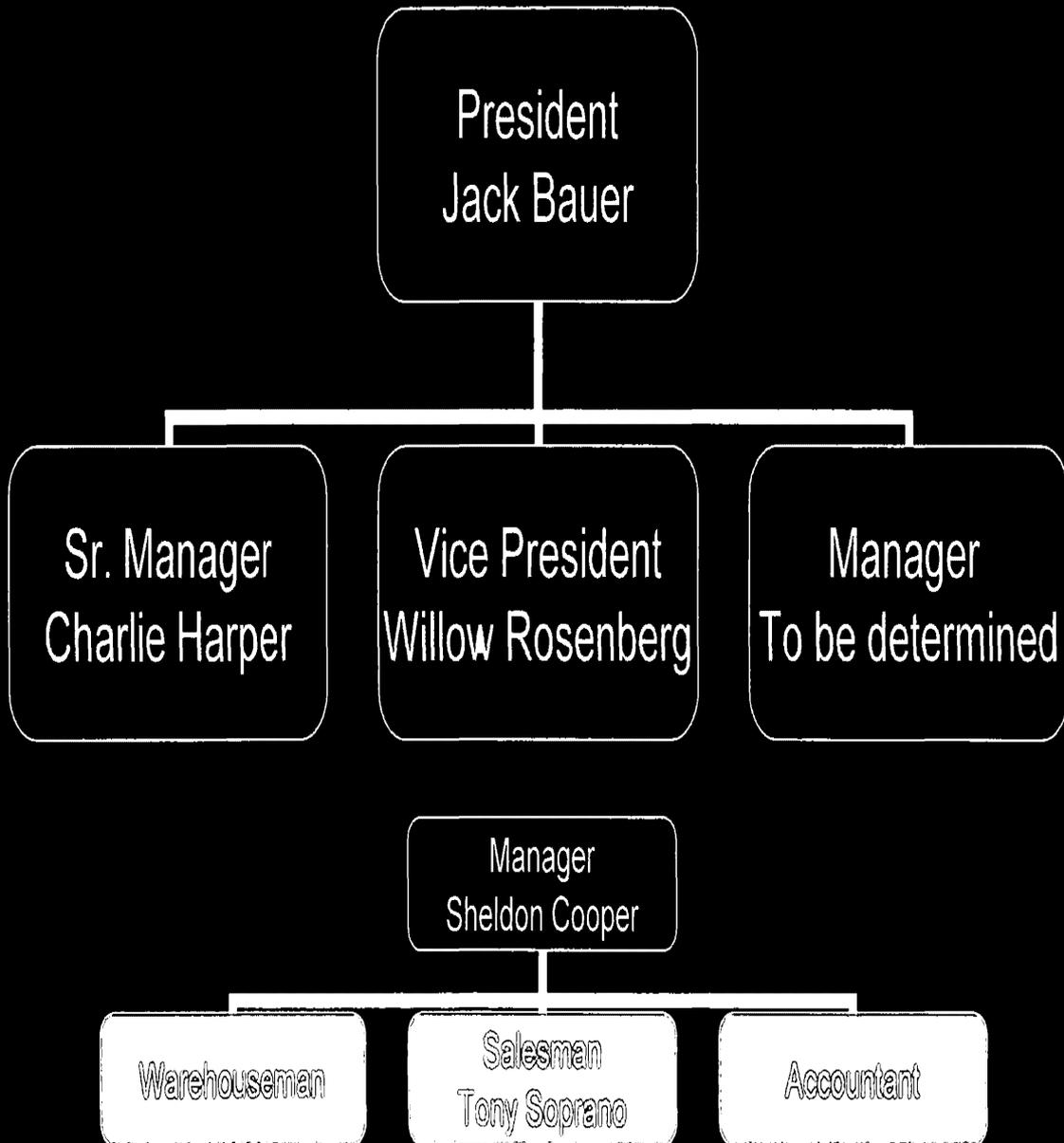


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# Example Organizational Chart

## Possible Example of a Business with too many Queen Bees



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# L-1A Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The U.S. organizational chart for the U.S. office.
- Quarterly wage reports for the employees in the U.S. office.



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# Managing a Function

- The organization is structured in such a way that the beneficiary is primarily *managing* a function, not primarily performing the duties of the function.
- Normally the beneficiary does not directly manage workers. The beneficiary directs or manages an essential function.



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# Conversion from L-1B to L-1A

- Must occur at least 6 months prior to reaching the L-1B 5 year mark to be eligible for the total period of stay of 7 years. Recapture of time can be used to go back 6 months.
- If the promotion from L-1B to L-1A was not 6 months prior to the end of 5 years in L status, then you may approve the classification but deny the EOS request and send the case for consular processing.

[8 CFR § 214.2 (l)(15)(ii)]



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# NEW OFFICES



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# New Office Definition:

An organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

See 8 CFR § 214.2(l)(1)(ii)(F)



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# Requirements for an L-1A New Office petition

- The Petitioner is not required to establish that the U.S. entity is doing business.
- However the Petitioner must submit evidence establishing that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted); AND

see 8 CFR § 214.2(1)(3)(v)



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# New Office L-1A (continued)

(C) The intended United States operation will within one year of the approval of the petition support an executive or managerial position by submitting:

- (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND
- (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND
- (3) The organizational structure of the foreign entity.



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# Requirements for an L-1B New Office Petition

See 8 CFR § 214.2(l)(3)(vi)

With the filing of the initial new office petition, the Petitioner has to establish that the beneficiary is coming to the U.S. in a specialized knowledge capacity to open or to be employed in a new office.

To demonstrate eligibility the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization; and
- (C) The Petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.



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# Examples of New Office Evidence

- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.
- Evidence of the amount of the U.S. investment, source of funds and ability of the foreign entity to pay the bills related to operating the U.S. office.



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# More Examples of New Office Evidence

- Evidence that the foreign entity owns the U.S. office (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business.



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# Purchase and Takeover of an Established Business

- If the Petitioner purchases and takes over the management of an established ongoing business, the petition should not be treated as a new office filing.
  
- Such a petition should be, if approvable, should be granted for an initial period of up to three years or the period requested by the petitioner, if less.



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# New Business for an Established Business

An organization will not be considered a new office if it is part of a larger organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for one year or more.



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# Dormant Business

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a ‘new office.’ There is no rule of thumb as to whether to treat such a company as a ‘new office;’ this is a fact-based question.
  
- All of the “new office” filing requirements must be met.



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# New Office Eligibility

Business plans and other documentary evidence must demonstrate the likelihood the business will have the ability to support a managerial or executive position within one year.



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# New Office Extensions

see 8 CFR § 214.2(l)(14)(ii)

To extend after the first year, the Petitioner must submit:

- (A) Evidence that the United States and foreign entities are still qualifying organizations (that a qualifying relationship exists);
- (B) Evidence that the United States entity has been *doing business* for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);



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# New Office Extensions (continued)

see 8 CFR § 214.2(l)(14)(ii)

(D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees (such evidence may include organizational chart and quarterly tax returns); and

(E) Evidence of the financial status of the United States operation.



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# New Office Extensions (continued)

Remember:

- In the initial petition for a new office, the Petitioner must meet different standards to qualify. The L-1A was given one year to set up the new office, hire a staff and initiate doing business. An L-1B was given one year for the Petitioner to set up the business and commence doing business. On extension, it must be demonstrated that the petitioner is doing business at a level that supports the beneficiary's position.



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# New Office Extensions (continued)

- If you are reviewing a petition requesting an extension and the previous approval was for only one year, it does not necessarily establish the previous filing was a new office filing, you must review the petition and the facts presented in the EOS to make that determination.
- Do not apply new office extension standards to long standing businesses.
- After one year of doing business, the "new office" will be treated as an existing company; typically there are no extensions of "new office" status beyond one year.



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# Unanticipated Circumstances to a “New Office” Extension

In instances where the start-up of the new office is hampered by circumstances that are beyond the petitioner’s control additional time may be granted. Time granted should only be the time effected by the unanticipated event. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
- A fire, flood, or other catastrophic natural disaster that prevented the new office’s business plan from being fully implemented, or;
- Litigation involving the new office which prevented the normal functioning of the business.



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# Maintenance of Status and Validity Periods



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# Validity Periods for Individual Petitions

- Petitions filed by established Petitioners may be approved for a period not to exceed three years initially.
- Petitions filed to establish a new business may be approved for a period not to exceed one year.
- Extensions (EOS) are granted in increments of up to two years.



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# Limitations on Stay

- Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- Recapture time is permitted. Time spent by a beneficiary in H or L status, outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.



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# Limitations on Stay (continued)

- Time in H-1B status counts toward the maximum validity period of stay allowed as an L-1.
  
- Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.



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# Limitations on Stay (continued)

- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before a new L-1 petition may be approved on his/her behalf. 8 CFR § 214.2(l)(12)(i)
  
- **Exceptions:** There are no limitation on periods of stay for:  
(1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and (2) Aliens who reside abroad and commute to the United States to engage in part-time employment. 8 CFR § 214.2(l)(12)(ii)



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# Dependents

- Dependents of L-1 principal aliens are L-2s. Their periods of stay depend on the principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.



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# Requirements for Extension of Stay (EOS)

- Alien must be in the United States at the time of filing the petition.
- Alien does not have to be physically in the United States while the EOS is pending.
- Departure is not treated as abandonment.
- Must be maintaining status.



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# Requirements for Extension of Stay (EOS), (continued)

- The petition must be filed prior to the expiration of the alien's stay.

Exception: failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 214.1(c)(4).

- If the I-129 requests consular processing, then the accompanying I-539 EOS or COS must be denied.



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# Requirements for Change of Status (COS)

- Must be maintaining status.
- Unlike EOS, alien must be physically present in the United States.
- Departure is treated as abandonment.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 248.1(b).



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# General Things To Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf. **EXCEPTION:** In the case of an I-129S filed on behalf of a blanket beneficiary, the Petitioner must be a U.S. Petitioner.
- The beneficiary may not directly perform services for a foreign employer.
- The beneficiary's wages may be paid by the foreign organization.



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# General Things To Know (continued)

- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.



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# Things to Know: Independent Contractors as Employees

- In determining whether an employee meets the criteria of a manager, the persons who the manager supervises abroad or will supervise in the United States may include independent contractors.
- There is no regulation requiring that the employees supervised must be individuals on the company's payroll.
- If the claim is made that the beneficiary qualifies based on managing or supervising independent contractors, request evidence of contracts.



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see 9 FAM 41.54 N 7.2-1

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# Company Owner as Petition Beneficiary

- An owner or majority stockholder of the petitioning or affiliated company may be the beneficiary of a petition for L-1 status if the petition is accompanied by evidence that the beneficiary's services are to be temporary and that the beneficiary will be transferred abroad at the completion of the temporary services in the United States.

See 8 CFR § 214.2(l)(3)(vii) and also Matter of M,  
8 I&N Dec. 24 (BIA 1958; Ass't Comm'r, AG 1958)

- In these types of cases, the petitioner must establish that a foreign qualifying company will be doing business the entire time the owner or majority stockholder is in the United States in L-1 classification.



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# Specialized Knowledge



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# Specialized Knowledge

See 8 CFR § 214.2(l)(ii)(D)

Specialized knowledge means:

- special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, *or*
- an advanced level of knowledge or expertise in the organization's processes and procedures.



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# Policy Regarding the Interpretation of Specialized Knowledge

The *Puleo* memo is one of the primary policy memos regarding the interpretation of specialized knowledge. Officers must follow this interpretation when adjudicating SK petitions. The memo instructs that Officers are to utilize common dictionary definitions of the terms “special” and “advanced;” the definitions cited in the *Puleo* memo are:

Puleo Memo – March 9, 1994



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# Puleo Memo – The Special Knowledge Definition

*Special:* (1) “surpassing the usual, distinct among others of a kind,” OR; (2) “distinguished by some unusual quality; uncommon; noteworthy.”



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# Puleo Memo – The Advanced Level of Knowledge or Expertise definition

*Advanced:* (1) “highly developed or complex; at a higher level than others,” OR (2) “beyond the elementary or introductory; greatly developed beyond the initial stage.”



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# Puleo Memo (continued)

- The determination of whether the alien possesses SK does not involve a test of the U.S. labor market. Officers should not consider whether there are U.S. workers available to perform the duties in the United States when determining whether the alien has SK.
  
- Officers adjudicating petitions involving SK must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized.



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# Possible Characteristics of SK

Puleo Memo

- The alien possesses knowledge that is valuable to the employer's competitiveness in the market place; or
- The alien is qualified to contribute to the U.S. employer's knowledge of foreign operating conditions as a result of knowledge not generally found in the industry; or
- The alien has been employed abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position; or



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# Possible Characteristics of SK (continued)

- The alien possesses knowledge which, normally, can be gained only through prior experience with that employer; or
- The alien possesses knowledge of a product or process that cannot be easily transferred or taught to another individual; or
- The alien has knowledge of a process or a product, which is of a sophisticated nature, although not specific to the foreign firm, which is not generally known in the United States (although in some *limited* cases it may be generally known within a particular industry)



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# What to Look for in Reviewing SK

- How did the beneficiary obtain specialized knowledge?
- What evidence is there to establish that the beneficiary's knowledge is specialized knowledge?
- How can it be shown that the position in the United States requires specialized knowledge?



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# Petitioner's Statements L-1B

- It is important for the Petitioner to fully explain and describe the beneficiary's specialized knowledge.
- The weight and probative value Officers give to statements by a Petitioner that a beneficiary possesses specialized knowledge will vary from case to case, and will depend on the degree of detail provided and whether the statement is supported by other documentary evidence.



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# L-1B Evidence

- The petition must be accompanied by a detailed description of how the beneficiary's knowledge of the Petitioner's equipment, system, product, technique, or service is "special" and/or "advanced."
- The Petitioner must include documentary evidence to establish the beneficiary's "special" and/or "advanced" knowledge.



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# L-1B Evidence (continued)

- Some common types of documentary evidence submitted are:
  - Training Records
  - Patents held by the company obtained as a result of the beneficiary's work
  - Organizational Charts showing the beneficiary's current position in the organization
  - Published Material by or about the beneficiary
  - High level of Remuneration compared to others
  - Human Resources Records

No specific type of evidence is required under the regulations, but remember, as always, the burden of proof remains with the Petitioner.



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# L1B IT Filings

- L1B IT filings must be carefully examined. It has been observed that in most cases the claimed specialized knowledge is common to the industry and/or the petitioning company.
  
- All new L1B IT filings which appear approvable must be brought to a SISO for concurrence.



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# L-1 Visa Reform Act of 2004

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for L-1 classification if –

(i) the alien will be controlled and supervised principally by such unaffiliated employer; OR

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

see INA § 214(c)(2)(F)



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# L-1B Off-Site Employment – What the Law Means

If an L-1B alien is stationed primarily at the worksite of an employer other than the Petitioner:

- Control and supervision must be with the Petitioner.

Cannot be “labor for hire.”

The beneficiary’s work (the specialized knowledge) must be specific to the Petitioner’s product or service.

The off-site work must require specialized knowledge.



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# L-1B Extension Adjudication

- When adjudicating L-1B extensions, Officers are required to give deference to the prior Officer's approval; however, Officers should review the claimed SK to determine if in the intervening time, the knowledge has become general knowledge.
- Be cognizant of the fact that:

“Cutting edge” technologies may become “general industry knowledge” in a rather short period of time.

The “advanced” nature of the beneficiary's knowledge must be considered in relation to the current level of knowledge in the industry.



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# Specialized Knowledge Language

In RFEs and Denials do not use the following words unless they are used by the petitioner:

- Narrowly held
- Key
- Key personnel
- Proprietary
- Essential
- Essential process
- Unique



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# Specialized Knowledge Language (continued)

Acceptable words and phrases to use in RFEs and denials:

- Different
- Uncommon
- Materially different
- Distinguished in the industry
- Noteworthy
- Highly developed
- Complex



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# Specialized Knowledge Language (continued)

IMMACT'90 Changes to Specialized Knowledge requirements:

Matter of Sandoz Crop Protection Corp., Colley and Penner predate the 1990 statutory amendments which eliminated the requirement that specialized knowledge be either “proprietary” or “unique” and therefore, these decisions should be viewed in light of this. While the legislative history (from 1970) may have used these terms, they do not appear in the statute nor in the regulations, so do not use this kind of terminology in decisions.



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# Specialized Knowledge Language (continued)

The language in this cite can be used if it speaks to a common concept.

Matter of Colley, et al 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

Where not specified, officers may use any cite they feel is pertinent to their case. However, it is the responsibility of the officer to ensure the cite is still valid. Please check with your supervisor if you want to use cites not specified in this presentation.



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# Bundled Petitions



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# Bundled Petitions

Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”.

The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.



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# Bundling Requirements

All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.



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# Adjudicating Bundled Petitions

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time.



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# Notes about Bundled Petitions

- L-1A petitions can be included with the bundle if the L-1A beneficiary will be managing the L-1B beneficiaries.
- If one or more of the petitions does not meet the bundle criteria these petitions will be removed from the bundle and adjudicated as single filings.

Example: different positions or different duties under the same position title.

- Bundled petitions must remain together.



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Presenter's Name: CTU Revised: 2013 130

## I-129 L Denial Writing Lesson Plan

### Training Summary

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**Training** This training is for Form I-129 L Denial Writing.

---

**Goal** The goal of this training is to provide students with the skills and resources to write clear and concise I-129 L denials.

---

**Class Time** This training will take 8 hours with 10-minute breaks approximately each hour and one hour for lunch (.5 hrs for lunch, .5 hrs to check e-mail and to respond to inquiries.

---

**Intended and are Audience** The intended audience is for officers who have had I-129 L training certified in approvals and RFEs.

---

## **Information Strategy**

---

The information will be presented using PowerPoint, discussion, class participation, sample cases, and a writing workshop.

---

### **Materials needed:**

- I-129 L-Denial Writing Training presentation
  - Law Book (available on-line)
    - 8CFR Section 214
    - Section 101 of the INA
  - AAO Decision Examples (scanned and available)
  - L-1 Denial Example (EAC1314453177, scanned and available)
  - L-1B Denial Shell
  - L-1B
  - Decision Writing SOP (on-line)
  - I-129 Denial Index
  - AutoText Index, specifically:
    - L-Definitions & Cites (4240-4260)
    - L-Standards (4810-4888)
-

## Presentation

---

Slide 1

### **L Denial Training**

Presenter: Introduce yourself and the course

---

Slide 2

### **PII Disclaimer**

---

Slide 3

### **General Reminders**

Presenter:

Remind trainees not to: access their e-mail during the presentation, or engage in sidebar conversations. Remind the Officers to either turn off their cell phones or put them on vibrate.

Advise trainees to turn on the computer as it will be needed throughout the training.

---

Slide 4

### **Course Objectives**

To provide the tools necessary to produce clear and concise denials.

---

*Continued on next page*

## Presentation, Continued

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### Slide 5

#### **Introduction**

Denial writing takes time, attention to detail, effort and practice. It is the responsibility of Officers to build and to continually improve their writing skills.

General tools to ensure consistency:

- Decisions Writing SOP
- Mentor/Help Desk/Supervisor/Senior
- Read sample denials/administrative decisions on the ECN
- Effective writing books.

Presenter:

Have Officers review the denial writing portion of the Decision Writing SOP (pgs. 31-44).

Show Officers how to find AAO decisions on-line:

[http://www.justice.gov/eoir/vll/intdec/ao\\_comm.html](http://www.justice.gov/eoir/vll/intdec/ao_comm.html)

---

### Slide 6

#### **Agenda**

Resources

Denials/Orders

- Standard Orders & Statements
  - Citations
  - Structure
  - Multiple Grounds
- 

### Slide 7

#### **Agenda (continued)**

- Tips & Suggestions
  - L1 EOS /COS Denials
  - L1 Denials
  - AAO Decisions
- 

*Continued on next page*

## **Presentation, Continued**

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### **Slide 8**

#### **Resources**

- Immigration and Nationality Act (INS)
- Code of Federal Regulation (CFR)
- Operating Instructions (OI)
- Precedent Decisions
- Interim Decisions
- Interpretations
- Interpreter Releases
- Foreign Affairs Manual (FAM)
- USCIS/Local Policy
- Federal Register

#### **Presenter:**

Show Officers the location of INA, CFR, FAM on the ECN.

---

### **Slide 9**

#### **Denial/Order Guidelines**

#### **Be:**

- Clear
- Concise
- Consistent
- Accurate within the law

#### **Should:**

- Guide the applicant/petitioner through the law
  - Address all grounds of the denial
- 

*Continued on next page*

## Presentation, Continued

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### Slide 10

#### Standard Orders & Statements

Each case type has standard denial letters and standard phrases, inserts, statements, and paragraphs. Each of these:

- Contain highlighted section (hidden text to be filled in by the officer)
- Should be used for consistency, accuracy and saving time
- When modified, should keep a logical order of cites, discussions and conclusions

Presenter:

Standard phrases, inserts, statements, and paragraphs are not as refined as the H-1Bs but are getting closer.

Show Officers the L1B Denial Shell and all of the hidden text.

Show and give the Officers 15-20 minutes to review the standard phrases, inserts, statements, and paragraphs.

---

### Slide 11

#### Citations

- Are excerpts taken from precedent decisions, statute, regulations, etc?
- Form a significant part of decisions.
- Prior to use; read the corresponding decision to ensure relevance.

Presenter:

AAO has advised to limit citations to precedent decisions and instructed to cite INA and regulations.

Explain that Officers are not to cite Matters of Penner, Colley or Sandoza Corp. because it might give the impression we are applying pre-1990 IMMACT standards. Refer to bulletin board post.

Allow Officers time to read sample AAO decisions.

---

### Slide 12

#### Denial/Order Structure

- Introduction
  - INA and regulation citations
  - Discussion
  - Summarizing Statement
  - Additional support citations
  - Summary/Decision
- 

*Continued on next page*

## Presentation, Continued

---

Slide 13

### Discussion Structure

- Topic Sentence
  - Background
  - Summary of RFE
  - Acknowledgement of the Response
  - Assessment of the Evidence
- 

Slide 14

### Multiple Grounds of Denial

- Strongest ground first
- Logical progression
- Take the time to organize the denial
- Address all grounds of denial
- Address each issue in a separate paragraph or under a different header
- Use transitional sentences
- Combine two or more standard denial letters when necessary

Presenter:

Provide example of denial with headers.

Currently, for Ls, you will only be able to take regulatory language from other standard letters.

---

Slide 15

### Addressing RFE or Intent Deficiencies

If an eligibility ground was not addressed in the RFE or Intent:

- Note the deficiencies in a separate paragraph of the denial.
  - Indicate that even if this evidence had been submitted, the case would still be denied.
- 

Slide 16

### Denial Training Specific to Ls

---

Slide 17

### EOS/COS Denial Process

- For EOS or COS denials, the approval must be:
    1. Updated as a release, and
    2. An EOS or COS denial is sent with the released approval
  - Add Autotext 0054 if the decision will place the beneficiary out of status.
- 

*Continued on next page*

## Presentation, Continued

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Slide 18

### **EOS/COS Denial Standards**

- EOS/COS denial shell is in CG
  - The case will need to be placed on hold for clerical release.
  - I-129 EOS/COS denial standards are 4889-4929 in autotext.
  - May need to modify the I-539 denial standards (7710-4499).
  - If an Officer creates a unique denial standard, which he or she uses repeatedly, it should be sent for SISO review.
- 

Slide 19

### **L-1 Classification Denials**

---

Slide 20

### **L-1 Classification Denials (continued)**

When denying a case, two or more denials may need to be combined; e.g., qualifying relationship and specialized knowledge.

Presenter:

If you need assistance in cutting and pasting from one denial to another in CG/MSWord, see a SISO or Senior and they will be happy to help.

---

Slide 21

### **Sample Denial**

---

Slide 22

### **Organize Your Ideas**

In reviewing the sample denial, identify which paragraph addresses:

- The introduction
- Discusses the issue(s)
- Explains the initial evidence and why
- Discusses the requested evidence
- Addresses the evidence submitted in response
- Summarizes why the petition is still deficient
- The conclusion

Presenter:

Ask for Officer comments on the decision.

Ask the Officers if there is anything that should not be in the denial.

---

*Continued on next page*

## Presentation, Continued

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Slide 23

### Put the Strongest Ground First

For example in Ls:

1. Qualifying Relationship
2. Beneficiary's one year of foreign employment with a qualifying foreign entity.
3. Beneficiary was employed in a qualifying capacity with the foreign entity.
4. Will the beneficiary be employed in a qualifying capacity?
5. Maintenance of Status.

Presenter:

If not maintaining status, do not forget 0054.

---

Slide 24

### Fee Issues

- Issue an ITD when requesting just the fraud fee.
- If other deficiencies exist, address the fraud fee first in a RFE and then address the other deficiencies.
- Fraud Fee ITD: B3EXEMPT FRAUD

Presenter:

ACWIA portion of ITD needs to be deleted.

---

Slide 25

### AAO Concerns

- Not enough analysis of the evidence of record.
  - Disconnect in decision; i.e., decision refers to denial and revocation.
- 

Slide 26

### Denial Concerns

- Decisions must be based on grounds addressed in RFEs, ITDs or ITRs.
  - Other deficiencies may be noted in a decision but cannot be a basis of the decision.
- 

*Continued on next page*

## **Presentation, Continued**

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**Slide 27**

### **Summary**

- Resources
  - Denials/Orders
    - Standard Orders & Statements
    - Citations
    - Multiple Grounds
    - Tips & Suggestions
    - L-1 EOS/COS Denials
    - L-1B Denials
    - ITD for Fraud Fees
    - AAO Decisions
- 

**Slide 28**

### **Questions**

---

**Slide 29**

### **Denial Writing Workshop**

**Presenter:**

Have Officers prepare a denial using the L-1B denial shell and the denial sample case.

---

# L-1 Adjudications

Immigration Services Officer (ISO)

Day to Day Guide



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# L-1 Petition Workflow

1. Petition is received through mail by the California Service Center or Vermont Service Center.
2. Information from the I-129 or I-129S is keyed into CLAIMS and the petition and documentation are placed into a file by the contractor
3. The contractor delivers files to the ISOs' workstations

Some ISOs adjudicate both L-1A and L-1B but some only do one classification

Files are normally sorted by Premium Processing or Non-Premium

1. ISO adjudicates the petition
  - Approvals are stamped, signed, and annotated and forwarded to clerical
  - Denials are drafted and sent for supervisor review
  - Requests for Evidence or Intent Notices are drafted and forwarded to clerical
2. Clerical staff prepares notices and forwards files.
  - Duplicate copies are sent to KCC
  - Files are forwarded to a storage facility in Harrisonburg, Virginia.
  - Notices are mailed to the petitioners.



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# L-1 Adjudication

- New files and resubmits (RFE or ITD) are delivered to the ISO's workstation by the contractor
  - ISO performs required system checks – TECS, ADIS, CLAIMS, VIBE, etc.
  - ISO determines whether petitioner and beneficiary qualify for the requested classification
  - Any notices are prepared by an ISO and forwarded to clerical for processing
- 
- ISO spends approximately 1-2 hours adjudicating each case
  - ISO takes action on new filings typically within 1-2 weeks and resubmits within 30 days



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# Additional Case Review/Actions

- **Customer Service Inquiries**
  - Could be pre or post-adjudication
  - May question entire decision, whether specific evidence was reviewed, or validity dates
- **Appeals and Motions**
  - Post-adjudication review of previous decision and any additional brief or evidence
  - Appeals returned from the AAO are reviewed
- **Litigation Cases**
  - Post-adjudication review of previous decision and any additional brief or evidence
  - Consultation and discussion with supervisor, section chief, local counsel
- **Consular Returns**
  - Review memo from consulate and summary of findings from CFDO
  - Determine whether case warrants an Intent to Revoke or Reaffirmation
- **Fraud Referrals**
  - Complete referral requests
  - Review any Summary of Findings



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# Sources of Information for L-1s

- INA §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- 8 CFR §§ 214.1, 214.2(l), & 248
- Various policy memos and precedent decisions
- Form I-129 with L Supplement and Form I-129S along with the instructions to these forms



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# Introduction to the New L-1A & L-1 Blanket RFE Templates



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# Course Discussion

- The RFE Project
- Legal matters
- Plain Language basics
- Benefits of the Template
- How to Use the Template
- Review of the L-1A and L1 Blanket Templates
- Suggested Evidence
- Summary
- Questions



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# Training

This training will focus on the use of the new L-1A and L-1 Blanket Request for Evidence (RFE) templates and is not meant to be a full training on the statutory and regulatory requirements of the L nonimmigrant classification.



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# The RFE Project



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# The RFE Project

On April 12, 2010, Director Mayorkas announced the RFE Project to stakeholders. A working group reviews and revises current Service Center RFE templates to ensure they are:

- Consistent across Service Centers
- Relevant to the requested classification
- Adaptable to the facts of an individual case
- Concise and clear



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# The RFE Project (cont.)

The project also:

Partners USCIS with stakeholders in a project by which they will be directly affected that:

- Enhances transparency within USCIS
- Ensures integrity and efficiency in RFEs
- Streamlines RFE creation for officers



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# Legal Matters



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# Legal Citations and Tone

Immigration Services Officers (ISOs) are “triers of the facts.” This means that RFEs will have a neutral tone and will weigh evidence to determine only whether the basic requirements have been met. They will therefore contain no citations of statutes, regulations, case law, the AFM, etc.



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# Legal Citations and Tone (cont.)

- Future denial templates will contain legal citations but will be vetted by Counsel.
- If a neutral tone is inappropriate (such as when fraud is apparent in initial evidence), consider issuing a Notice of Intent to Deny (NOID) instead.
- A NOID is also appropriate in cases where we have derogatory information that would make the petitioner or beneficiary ineligible.



# Burden and Standard of Proof

## Adjudicator's Field Manual (AFM) 11.1(c)

### ■ Burden of Proof

- The burden is on the petitioner to establish that he or she is eligible for the benefit sought. See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966).

### ■ Standard of Proof

- The standard of proof applied is the “preponderance of the evidence” standard. See Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010)
- Preponderance of the evidence means that it is more likely than not that the beneficiary qualifies for the benefit sought. See Matter of E-M-, 20 I. & N. Dec. 77 (BIA 1989).



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# Three Standards of Proof

## Differentiating between the three standards of proof:

- Preponderance of evidence means more than 50% certainty. It is also commonly expressed as “probably true” or “more likely true than not”. This is the most common standard governing USCIS petitions and applications.
- Clear and convincing evidence is higher than “preponderance”, requiring a higher level of certainty. There are very limited circumstances when adjudicating petitions will require the adjudicator to apply the “clear-and-convincing” standard such as the I-130 bonafide marriage exemption, parent-child relationship on prior unclaimed child, and exception to L-1 nonimmigrant visa time limitations.
- Beyond a reasonable doubt is the highest standard of evidence and requires the highest level of certainty such that there exists no reasonable doubt of the applicant’s qualification. This standard is generally reserved for criminal proceedings but used in Adam Walsh cases in determining that the petitioner poses no risk to the beneficiary.



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# Preponderance of Evidence Standard

- “Preponderance of the evidence” requires a lesser quantum of proof than the “*clear and convincing*” standard and is significantly less stringent than the “*beyond a reasonable doubt*” standard used in criminal proceedings. *Matter of Patel*, 19 I&N Dec. 774, 783 (BIA 1988).
- This burden “simply requires the trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence . . . .’” *In re Winship*, 397 U.S. 358, 371-72 (1970).
- This means “more likely than not” or slightly better than a 50% likelihood.



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# Application of the Preponderance Standard

- If the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is “probably true” or “more likely than not,” the petitioner has satisfied the standard of proof. (“More likely than not” is defined as a greater than 50 percent probability of having something occur.)
- If a petitioner provides supporting documentation that satisfies the regulatory criteria, and such documentation is legitimate (i.e. not forged, not issued in error, not inaccurate, etc.), USCIS cannot unilaterally impose novel substantive or evidentiary requirements beyond those set forth in the regulatory requirements.



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# Plain Language Basics



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# Plain Language Basics

## Plain Language:

- Shows customer focus
- Communicates more effectively
- Reduces time spent explaining
- Improves compliance
- Reduces ambiguity and complaints
- Reduces the need for multiple RFEs, appeals, or even litigation



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# Plain Language Basics (cont.)

## History:

- Presidential Memo dated June 1, 1998 requires PL in all documents that we write for the public
- Executive Order 12866 requires regulations to be “simple and easy to understand” in order to avoid uncertainty and litigation
- Congress introduced PL bills in 2009
- Secretary Napolitano and Director Mayorkas strongly advocate PL



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# Plain Language Basics (cont.)

For the purposes of the new RFE templates, use:

- Simple words
- Active voice
- “You” in place of “the petitioner”
- Short sentences (approx. 20 words or less) and paragraphs (7 sentences or less)
- Tables or bulleted lists, if describing evidence gets too complicated
- Extra blank spaces on the page for readability



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# Certain Words and Phrases to Avoid

WORD TO AVOID	SUGGESTED ALTERNATIVES
allege	state; explain; say; suggest
blatantly obvious	
claim	state; explain; say; suggest
deception	
failed to submit	did not submit
half-truths	
implausible	
ludicrous	not credible
preposterous	not credible
merely	only; or delete altogether
outlandish	not credible
"Petitioner will say anything to obtain the benefit"	delete altogether
poppycock	not credible
prove	show; establish
ridiculous	not credible
self-serving	
specter of fraud	
stretches the bounds of credulity	
supposedly	delete altogether
thinly-veiled attempt to defraud	
untruths, half-truths	



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# I-129 L-1A & L-1 Blanket Templates

- L-1A Intracompany Transferee Executive/Manager
- L-1A Intracompany Transferee New Office or New Office Extension
- L-1 Intracompany Transferee Blanket Petition



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# New RFE Templates

## Benefits for Stakeholders

- Describes the classification and requirements.
- Does not cite statutes, regulations, or case law.
- Uses a neutral tone.
- Directly addresses deficiencies in the evidence by:
  - Indicating what was submitted and what is lacking;
  - Explaining why certain initial evidence is insufficient;
  - Suggesting a variety of evidence that could be submitted to satisfy the statutory and regulatory requirements; and
  - Giving petitioners the opportunity to submit any evidence they feel would satisfy requirements – even evidence which is not suggested in the RFE.



# New RFE Templates

## Benefits for Stakeholders (cont.)

- Through public engagement and the implementation of the new RFE templates, petitioners will generally and more clearly know what:
  - To expect in RFEs
  - Deficiencies they must overcome to obtain an approval
  - USCIS expects to see in response



# New RFE Templates

## Benefits for ISOs

- A totality review of the file will allow ISOs to target only the statutory and regulatory requirements which are missing.
- A more targeted RFE by the ISO leads to a more targeted response by the stakeholder.
- More informed stakeholders lead ultimately to better filings:
  - allowing ISOs to more easily look at the file in its totality to see if the statutory and regulatory requirements have been met.
  - eventually providing petitions that are easier for ISOs to review also lead to less RFEs.



# How to Use the RFE Template

- The L-1A template is divided into three primary sections:
  - General Petitioner Requirements for the L-1A Classification
  - General Beneficiary Requirements for an L-1A Manager or Executive
  - Beneficiary is Owner or Major Stockholder of Company
  
- The L-1A New Office is divided into four primary sections:
  - General Petitioner Requirements for the L-1A Classification
  - General Requirements for an L-1A Manager or Executive in a New Office
  - Beneficiary is Owner or Major Stockholder of Company
  - Additional Requirements for New Office Extensions
  
- The L-1 Blanket is divided into three primary sections:
  - Requirements for an Initial Blanket Petition
  - Requirements for a Blanket Petition Extension
  - List of Subsidiaries and Affiliates



# How to Use the RFE Template (cont.)

- For each section, the ISO will determine whether each criterion (or subsection) has been met or is deficient.
  - If all elements within a section have been met, do not include that section in the RFE.
- For each section that has not been met, the ISO will list what evidence was submitted.
- Where evidence was submitted but was deemed insufficient, the ISO will articulate what is wrong with the evidence that was already submitted, which in turn allows the stakeholder to respond with different evidence.



# How to Use the RFE Template (cont.)

- ISOs have the opportunity to address specific issues within each criteria.
- When articulating specific issues, ISOs should:
  - Make appropriate changes that are specific to an individual case.
  - Use Plain Language.
- For highlighted text, ISOs should:
  - Use provided language or provide an articulated explanation for sections in yellow highlights; and
  - Remove all highlighting prior to printing and sending the RFE.
- Assure proper spacing between sections for readability.
- Remove any unused bullets



# How to Use the RFE Template (cont.)

- ISOs use the same suggested evidence list, whether they determine that the petitioner submitted no evidence, or the initial evidence was insufficient.
  - If the list does not appropriately reflect what is needed by the ISO, the ISO should make changes and then consult with his/her supervisor prior to RFE issuance.
- In this format, the responsibility to determine what evidence is appropriate to request, or what is appropriate to submit, is shifted from the ISO to the petitioner.



# How to Use the RFE Template (cont.)

- The first page of the RFE is information for the petitioner.
- Outside of the officer fill-ins, this page should remain intact for all RFEs.

## I-129 L-1A Intracompany Transferee Executive/Manager

You, (insert name of petitioner), filed Form I-129, Petition for a Nonimmigrant Worker, seeking L-1 nonimmigrant classification for (insert beneficiary name) (beneficiary). You seek to employ the beneficiary as a/an (position title).

The L-1 classification may be granted to an individual who, within three years preceding the time of his or her application for admission into the United States:

- Has been employed abroad continuously for one year by a firm, corporation, or other legal entity.
- Seeks to enter the United States temporarily to render services to a branch of the same employer, or a parent, affiliate, or subsidiary; and
- Will work in a capacity that is managerial or executive, or involves specialized knowledge.

To process your petition and determine if the beneficiary is eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Note, however, that you are responsible for providing evidence that best shows that you and the beneficiary meet all requirements. Evidence must show that both you and the beneficiary were eligible for the requested benefit when you filed Form I-129.

USCIS checks all petitions filed for this classification in its Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations petitioning to employ foreign workers. For more information about this program, please visit USCIS's website at [www.uscis.gov/VIBE](http://www.uscis.gov/VIBE).

### Request for Translations

All foreign language documents must have a complete English translation to establish eligibility. This includes any documents you submit in response to this Request for Evidence.

Your submitted documents which are in a language other than English. In order for USCIS to consider this evidence, you must submit English language translations for each document. The translator must certify that:



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# How to Use the RFE Template (cont.)

- Primary section titles are center justified and bolded
- Subsections are left justified and bolded
- Sub-subsections are underlined but not bolded

## General Petitioner Requirements for the L-1A Classification

To qualify for the L-1A classification, you must show:

- That you and the organization which employed or will employ the beneficiary are qualifying organizations;
- The foreign entity is doing business; and
- The U.S. entity is, or will be, doing business.

To satisfy these requirements, you submitted:

- 
- 
- (list submitted evidence).

**Qualifying Relationship: Ownership and Control.** To transfer an employee from a foreign entity to a U.S. entity as an L-1 nonimmigrant, a qualifying relationship must exist between the two entities. Qualifying relationships may occur between branches of the same employer, or amongst parent and affiliates, or subsidiaries. To show this relationship, you must provide evidence of ownership and control of these entities.

For the purposes of L-1 classification, ownership means the legal right to have possession of an organization. Control means the legal or actual ability to exercise authority or influence over an organization.

(ISO: If only one of these subsections is applicable, delete the one which does not apply.)

### Ownership and Control of the Foreign Entity

You did not submit any evidence for this requirement. You may still submit evidence to satisfy it.



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# How to Use the RFE Template (cont.)

- ISO lists evidence submitted
- ISO chooses applicable text from two standard choices (no evidence submitted or evidence insufficient)
- In addition to explaining insufficient evidence, if applicable, ISO adds provided VIBE language to RFE

## General Petitioner Requirements for the L-1A Classification

To qualify for the L-1A classification, you must show:

- That you and the organization which employed or will employ the beneficiary are qualifying organizations; and
- Both of these entities are doing business.

To satisfy these requirements, you submitted:

- 
- 
- (list submitted evidence).

**Qualifying Relationship: Ownership and Control.** To transfer an employee from a foreign entity to a U.S. entity as an L-1 nonimmigrant, a qualifying relationship must exist between the two entities. Qualifying relationships may occur between branches of the same employer, or amongst parent companies, affiliates, or subsidiaries. To show this relationship, you must provide evidence of ownership and control of these entities.

For the purposes of L-1 classification, ownership means the legal right to have possession of an organization. Control means the legal or actual ability to exercise authority or influence over an organization.

(ISO: If only one of these subsections is applicable, delete the one which does not apply.)

### Ownership and Control of the Foreign Entity

You did not submit any evidence for this requirement. You may still submit evidence to satisfy it.

-OR-

The evidence you submitted is insufficient. (ISO should explain why the evidence that was submitted is insufficient to establish eligibility. If applicable, additionally, the ISO may explain that the evidence was unable to validate a relationship between the U.S. and foreign entities.) You may still submit evidence to satisfy this requirement.

Evidence may include, but is not limited to, copies of: (Delete any of the following that were already provided by the petitioner)

- The most recent Securities and Exchange Commission Form 10-K, which lists all



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# How to Use the RFE Template (cont.)

- OFAC Requirements for Iranian businesses
- Be sure to delete the highlighted instructive portions above and in the box

**NOTICE OFFICER:** Iranian Sanctions – use only if it appears that the resources/capital used to fund the U.S. entity came from a prohibited source.

**Iranian Transactions – Office of Foreign Assets Control (OFAC) Licensing:** The Department of Treasury states that dollar clearing transactions are prohibited directly between a U.S. depository institution and a banking institution in Iran, persons in Iran, or the Government of Iran. However, U.S. depository institutions are permitted to handle monies transferred through intermediary third-country banks. Provide evidence to show the lawful transaction of funds. Evidence may include, but is not limited to:

**OFFICER INFORMATION ONLY – DELETE BEFORE COMPLETING RFE**

The Office of Foreign Assets Control (OFAC) states that licensing is required for all U.S. dollar clearing transactions directly involving Iran. Note that dollar clearing transactions involving a third party and Iran may be permissible. A license is required, however, in instances where the monies have passed through a prohibited banking resource in Iran.

**OFFICER NOTE:** Only request an OFAC license if you have verified that the monies in question have passed through a prohibited institution. For a list of these institutions, please visit:

[http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ir\\_fsi.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ir_fsi.pdf)



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# Review of L-1A and L-1 Blanket Templates

- L-1A Intracompany Transferee Executive/Manager
- L-1A Intracompany Transferee New Office or New Office Extension
- L-1 Intracompany Transferee Blanket Petition



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[Refer to RFE Template Handouts]

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# Summary

- Three I-129 L RFE Templates approved for use:
  - L-1A Intracompany Transferee Executive/Manager
  - L-1A Intracompany Transferee New Office or New Office Extension
  - L-1 Intracompany Transferee Blanket Petition
- Templates are written in Plain Language based on statute and regulatory requirements that are instructive for petitioners and complete with suggested evidence lists for ISO use.
- ISOs only need to use sections and subsections of the templates that require additional evidence.



# Questions?



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# Example



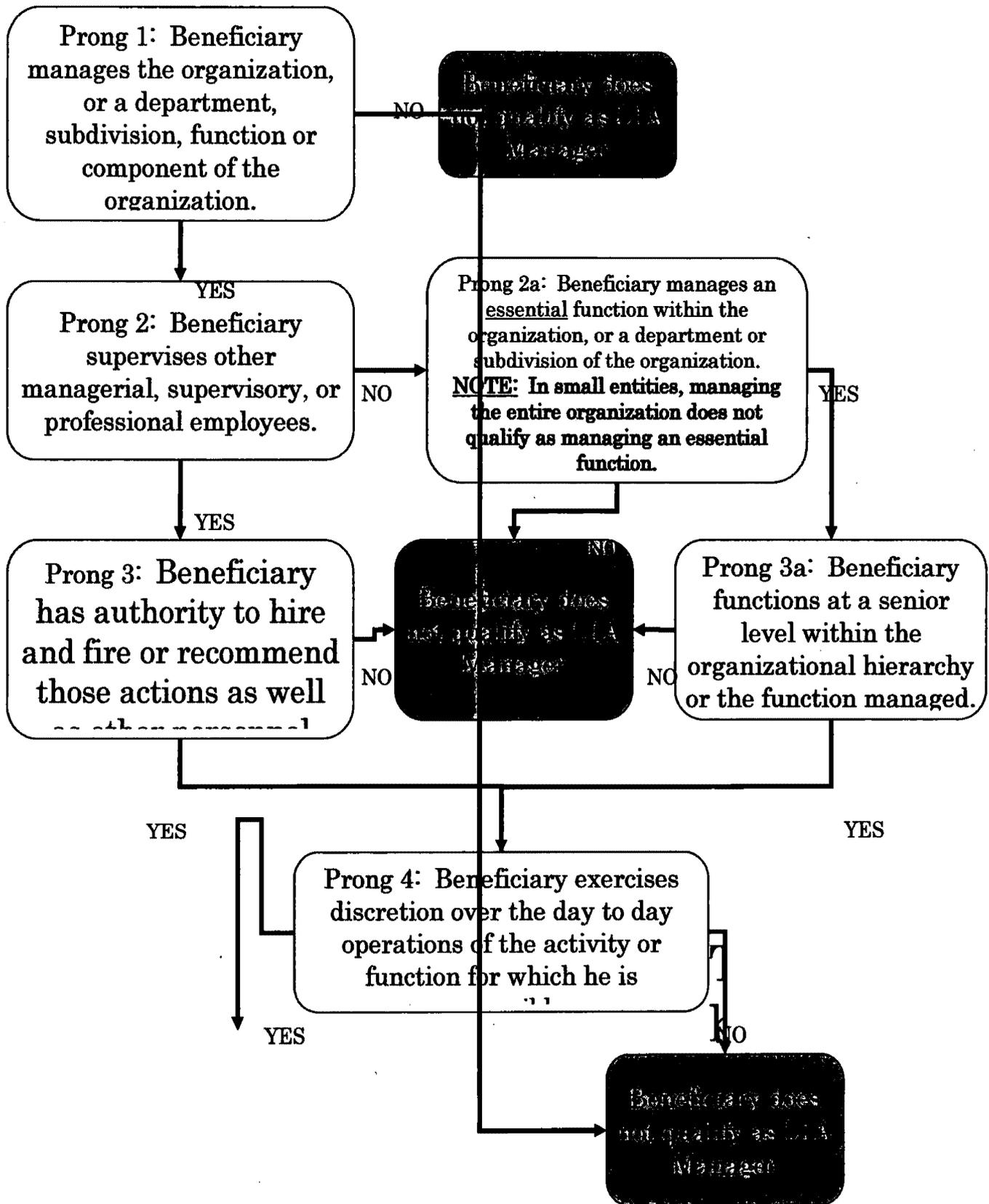
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# The 4 Prongs of L1A Manager Definition



Filed as: Initial/New Consular Notification    Initial/New COS  
 Same/Same First filing after blanket entry    Change of employer  
 New Office    First Extension of New Office    L1B to L1A

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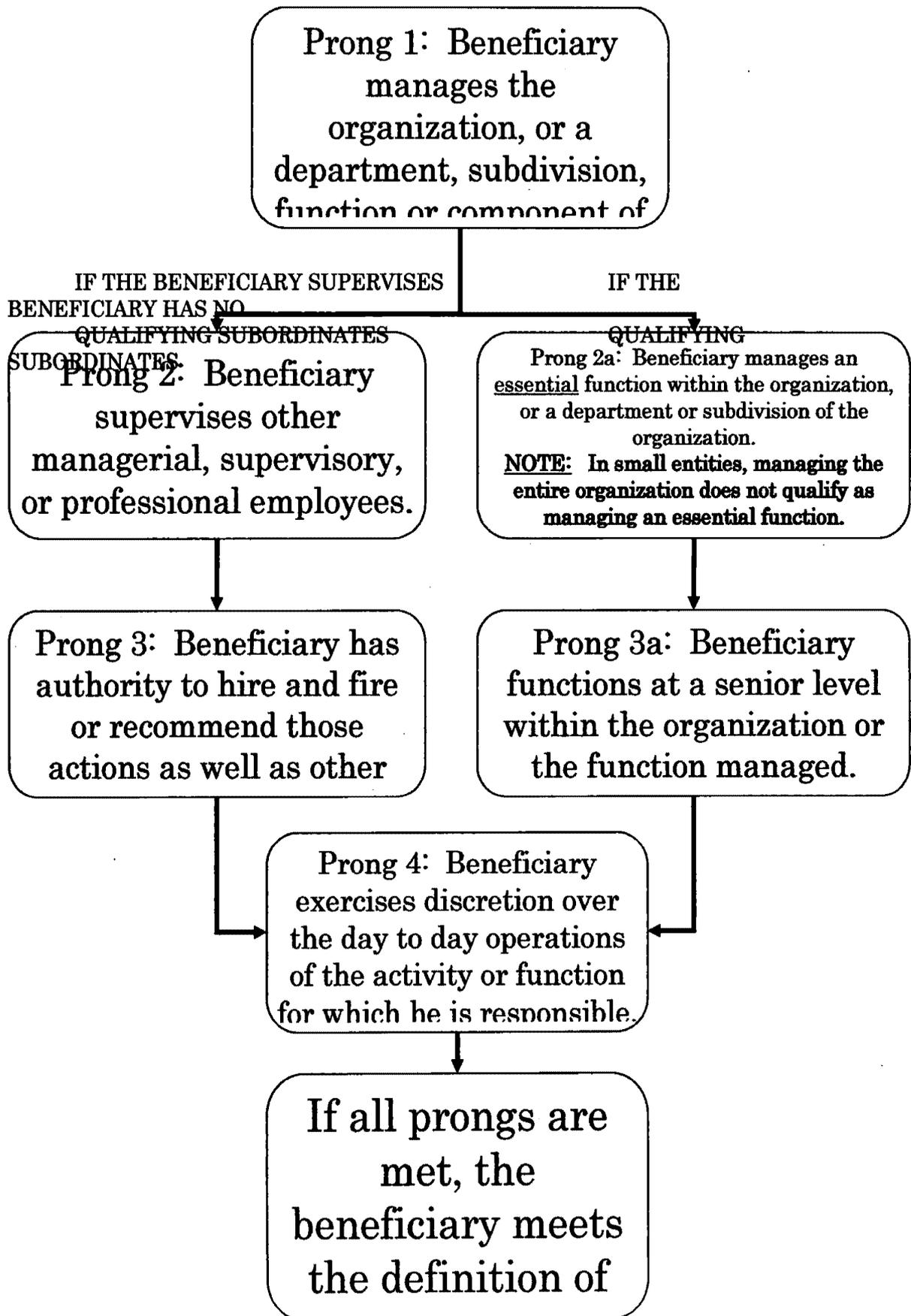
Worked for Foreign entity since \_\_\_/\_\_\_/\_\_\_ A#: \_\_\_\_\_  
 Current class \_\_\_\_\_

<b>QR</b>	<b>Foreign Entity:</b>	<b>U.S. Entity:</b>	
	<b>Manager / Executive / SK / Advanced</b>	<b>Manager / Executive / SK / Advanced and @ client site</b>	
<b>Job Title</b>	Est. _____	Est. _____	
	Art./Cert of Inc/org Stock/member	Art./Cert of Inc/org Stock/member	
	certificate/bylaws/meeting minutes/agreements Tax Return	certificate/bylaws/meeting minutes/agreements Tax Return	
	Ann. Report Lease (SF___ Rent___ Rooms___)	Ann. Report Lease (SF___ Rent___ Rooms___)	
	Brochure	Business Plan Brochure	
	Bank Statements Financial/Balance sheets audited	Bank Statements Financial/Balance sheets audited	
	Invoices/bills of lading/other _____	Invoices/bills of lading/other _____	
<b>Doing Business Recent Docs</b>		Quarterly Wage Reports	
	<b>Position Duties And Experience Training</b>	Cover Letter/letter from foreign manager/employer/letter from foreign HR/Training record/certificates/degrees/ Org chart(s)/# of subordinates/their qualifications/duties Proprietary tools, processes, procedures, methodologies of petitioner	Cover Letter/letter from foreign manager/employer/letter from foreign HR/Training record/certificates/degrees/ Org chart(s)/# of subordinates/their qualifications/duties Salary documentation/pay statements Proprietary tools, processes, procedures, methodologies of petitioner In-house Project
			<b>NEW OFFICE:</b> Lease(SF___ Rent___ SUBLEASE___ ROOMS___) Business Plan/Feasibility Report/Wire Transfer of Funds
			<b>NEW OFFICE 1<sup>st</sup> EXT:</b> Can support beneficiary's position
			<b>VISA REFORM ACT:</b> Master Services Agreement/right to control/SOW/work order/itinerary/labor for hire
			No. of projects ___ worth \$___M
<b>1 in 3 Years met</b>	Salary documentation/pay statements		

V = G / Y / O Data Inquiry Required for low/no match, comment or multiple issues: Y/N  
 Remove all system printouts from record side of file. Remove ISO worksheet from file. Non Record side ROP: Mailer(if supplied): FOUO Coversheet (if in file); Resolution; ROIQ/TECS Printout/ADIS/SEVIS/CIS drafts of denial/RFE/Withdrawal; and, any system printouts from Data Entry.

<input checked="" type="checkbox"/> Approved	<input checked="" type="checkbox"/> RFE	<input checked="" type="checkbox"/> Denied	<input checked="" type="checkbox"/> Withdrawal
<input type="checkbox"/> CIS 129: A# N/A 539: A# N/A	<input type="checkbox"/> CIS 129: A# N/A 539: A# N/A	<input type="checkbox"/> CIS 129: A# N/A 539: A# N/A	<input type="checkbox"/> CIS 129: A# N/A 539: A# N/A
<input type="checkbox"/> TECS/ROIQ/Resolution (Also for KCC)	<input type="checkbox"/> TECS/ROIQ/Resolution	<input type="checkbox"/> TECS/ROIQ/Resolution	<input type="checkbox"/> TECS/ROIQ/Resolution
<input type="checkbox"/> VIBE (30 days of G/Y, 48 hrs if O)	<input type="checkbox"/> VIBE (30 days of G/Y, 48 hrs if O)	<input type="checkbox"/> VIBE (30 days of G/Y, 48 hrs if O)	<input type="checkbox"/> Request on top of the ROP
<input type="checkbox"/> ADIS (15 days of final action)	<input type="checkbox"/> Update GUI	<input type="checkbox"/> ADIS (15 days of final action)	<input type="checkbox"/> ADIS (15 days of final action)
<input type="checkbox"/> SEVIS(30 days)/Casebook FMJ	<input type="checkbox"/> CG: Send or Hold	<input type="checkbox"/> SEVIS (30 days)/Casebook FMJ	<input type="checkbox"/> SEVIS (30 days)/Casebook FMJ
<input type="checkbox"/> Update GUI	<input type="checkbox"/> RFE copy on non-record side for PP; on record side for brown files	<input type="checkbox"/> Update GUI	<input type="checkbox"/> Update GUI (Deny - Withdrawal)
<input type="checkbox"/> Sign/Stamp original & KCC copy		<input type="checkbox"/> CG: Send or Hold	<input type="checkbox"/> CG: Send or Hold I-129L G1 letter
<input type="checkbox"/> Separate KCC attach		<input type="checkbox"/> Sign/Stamp	<input type="checkbox"/> CG: Send or Hold I-539 denial letter
ROIQ/Resolution under Petition		<input type="checkbox"/> Denial copy (loose), SILO signoff	<input type="checkbox"/> Place withdrawal sticker on petition

# The 4 Prongs of L1A Manager Definition



## BULLETIN BOARD POSTINGS

**10-01-2014**

This guidance relates to how we process I-129 L-1A Project Manager and Functional Manager petitions, and is in affect as of today's date.

Section 101(a)(44)(A) of the Act defines a manager as an employee who primarily:

- (1) Manages the organization, or a 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 and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised, or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

I-129 L-1A Project Managers have been a topic of discussion for a number of years now between HQ, CSC, and the VSC. Until now our local guidance has stressed that many of these cases have been deniable. However, a recent AAO non-precedent decision found that specific individual client projects can be distinct components of a company that require independent management and a significant level of responsibility on the part of the managers assigned to lead them.

This AAO decision is in line with recent discussions the VSC has had with HQ SCOPS leadership, who have instructed officers to look at the managerial definition collectively as is suggested by the use of the word "and" in the definition, and not evaluate each piece of the managerial definition separately.

Going forward recognized specific client projects can be treated as components of an organization. In addition, recent AAO decisions have concluded that it is reasonable to consider employees (must be professionals, supervisory or managerial employees) the beneficiary manages abroad as part of his managerial duties in the United States.

As you adjudicate project manager filings, consider the evidence provided. If the evidence presented indicates the beneficiary manages a project, it is possible to consider the project a component or function of the organization and the petition may be approvable if the other three prongs of the managerial definition have been satisfied through the evidence of record. In addition, be open to considering the beneficiary's managerial staff in the U.S. and the beneficiary's staff abroad.

If you have questions regarding this guidance please see your supervisor. Also we plan to have this as a discussion item during upcoming I-129 L roundtables in October, stay tuned for more information regarding the roundtable plans.

**12-9-2014**

### **New Office Clarification:**

The purchase of an existing/established business does not need to be treated as a new office unless the "existing/established business" has been "doing business" for less than one (1) year. The purchase of a business that was "doing business" for more than one year, can be treated as an existing business, not a new office. You should look at the "doing business" part of the business. For example, the purchase of an existing business that had 100 employees and \$10 million in profit in the previous year does not need to be treated as a new office. This does not preclude us from granting them one year if that is what is requested because the qualifying relationship has not existed for one year.

There all kinds of scenarios where you have to look at the specific facts of the case to see whether it qualifies or not. You will normally treat the purchase of an existing office as an established business and not a "new office." However, if it was established less than one year ago, it will be treat it as a new office. If the foreign entity bought a struggling or bankrupt business, you can treat the business as a new office. If not, then you would RFE and let them know that we are treating them as an existing office unless they can prove they qualify as a "new office." You may need to combine new office call ups along with existing office call ups in an RFE.

**02/05/2014**

**Starting  
and  
Ending  
Dates**

Use the below table to determine the starting and ending validity dates of the L1 petition.

<b>If...</b>	<b>Then starting validity date should be...</b>	<b>And ending validity date should be...</b>
New employment, or Initial L1A or L1B request (Consular notification)	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed three years.
New Office L1A or L1B	Date of approval or date requested, whichever is later.	Date requested or one full year from starting date.
Change of Status	Date of approval or date requested, whichever is later.	Date requested on petition.
Extension of Stay	Day after expiration of previously approved L1 for that company, or date requested, whichever is earlier.	Date requested on petition, not to exceed two years.
Extension of Stay where there has been a change in the employment conditions	Date of approval or date requested, whichever is later. <sup>1</sup>	Date requested on petition, not to exceed two years.
Amended petitions where there was a USCIS error with the original notice	Same start date as initially approved petition.	Same expiration date as initially approved petition.
Amended petitions where there has been a change in the employment conditions	Date of approval, date requested, whichever is later. <sup>1</sup>	Same expiration date as initially approved petition, if no additional time is requested. Date requested on petition, not to exceed two years, if additional time is requested.

<sup>1</sup> If the beneficiary's status has expired or will expire prior to the date that you selected as the "from" date, AND the petition was filed by the same employer, then backdate the validity date to the day after the beneficiary's status expires to eliminate gaps. The petition must be timely filed.

**01-10-2014**

**I129 L Reminders:**

New Office

Regulations allow for new office filings to be approved for up to one year to establish a new office and commence doing business. In instances where the petitioner cites unanticipated circumstances that hampered the new office's ability to commence doing business, the new office petition may be classified as a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year. This provides the petitioner with the full one year to get the new office up and running.

[See 8 CFR 214.2(l)(1)(ii)(F) and 8 CFR 214.2(l)(ii)(F)]

A limited approval should only be granted where the petitioner has adequately corroborated the nature of the events that led to the new office's difficulties. The limited approval should not be granted where there is evidence of fraud or misrepresentation.

**NOTE:** The Service should not request evidence of unanticipated circumstances, unless the petitioner has first made this claim.

When a petitioner already has an office in one State (Virginia) and now they wish to open another office in a different state (Florida), this will be considered a new office and officer would only grant a one year validity period.

New office filings are to be approved for one full year. In most cases, officers will need to disregard the ending validity period on the petition because at the time of approval the requested validity period will result in the petition being approved for less than one full year.

**Specialized knowledge-**

In regards to advanced vs. special, since the regulatory definition states specialized knowledge can be either special or advanced, the evidence only needs to meet one. If the petitioner is claiming the knowledge is both special and advanced, each should be addressed separate in an RFE or Denial; i.e., why does the evidence fail to show the knowledge is special, and why does the evidence fail to show the knowledge is not advanced. The petitioner must respond with which one the beneficiary possesses and how the beneficiary possesses such knowledge.

**Top Filers bundling-**

Workflow management has decided to group top filer companies together according to receipt date in an effort to explore innovative approaches to efficiency. You may have noticed that your work orders now contain large companies bundled together. Please adjudicate these cases in the same manner that you would any other L case. Also

[Redacted]

[Redacted]

(b)(7)(e)

Please do not confuse the **Top Filers** bundling with **Bundled Petitions**.

**Bundled Petitions-**

Allow a petitioner to file a group of petitions for multiple L-1B nonimmigrant beneficiaries filed by the same petitioner/same address. However, all the beneficiaries are coming to the United States for the same particular project, at the same location, requiring the same specialized knowledge duties. Further, these petitions will receive the same action as the same time

[Redacted]

[Redacted]

(b)(7)(e)

**10-02-2013**

According to the AAO in EAC1018151095, Matter of Ho is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structure, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and /or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

According to the Small Business Administration the Essential Elements of a Good Business Plan are as follows:

- **Business Plan Executive Summary**

The executive summary is a snapshot of the business plan as a whole and touches on the company profile and goals.

- **Market Analysis**

Before launching a business, it is essential to research the business industry, market and competitors.

- **Company Description**

The company description provides information on what the business does, what differentiates the business from others, and the markets the business serves.

- **Organization & Management**

Every business is structured differently. Every business must find the best organization and management structure for their business.

- **Marketing & Sales**

How does the business plan to market the business? What is the sales strategy?

- **Service or Product Line**

What does the business sell? How does it benefit the business's customers? What is the product lifecycle?

- **Funding Request**

If the business is seeking funding, the business plan should outline how the business plan will go about securing funding.

- **Financial Projections**

Providing financial projections will back up any funding request and is critical to securing.

- **Appendix**

An appendix is optional, but a useful place to include information such as resumes, permits, research materials and leases.

## 07-03-2013

The Business Division has reached out to OCC about qualifying relationships where the U.S. and foreign entities are owned by different individuals with different percentages of ownership. OCC has advised us that qualifying entities do not always need to be owned by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. If one individual owns a majority of each entity and controls each entity, then a qualifying relationship would exist based on both the statute and the first part of the regulatory definition of an "affiliate."

INA 101(15)(L)states:

An alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an **affiliate or subsidiary** thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge,....

"Affiliate" is defined by 8 CFR 214.2(l)(1)(ii)(L) as:

( 1 ) One of two subsidiaries both of which are owned and controlled by the same parent or individual....

According to the OCC's interpretation, the INA separates affiliate and subsidiary, thus it recognizes the two are separate and distinct. Following this logic, OCC has concluded that it does not make sense that you have to be a subsidiary in order to qualify as an affiliate. If this were the case, there would be no need for affiliates.

EXAMPLE OF AFFILIATION: Company A is owned 51% by X, 29% by Y, and 20% by Z. Company B is owned 50% by X and 50% by Y. Company A and Company B are affiliates because they are both controlled by the same individual, X, who owns a majority of the shares in Company A and has negative control of Company B.

## 04-16-2013

Contract employees hired by the foreign entity- In general an individual hired as a contractor will not be considered an employee of the foreign entity. Thus, the petitioner will not be able to establish the beneficiary has worked for the qualifying foreign entity for one continuous year in the three preceding his/her application for admission to the United States in L non-immigrant status.

Please forward any petitions where the beneficiary was employed as a contract employee for the foreign entity to Wally Steinhour or Karen Brouillette for review prior to final adjudication.

## 07-24-2013

### ***Matter of Colley, Penner, and Sandoz Crop Protection Corp.***

These decisions should no longer be cited in decisions. While the overall premise in the decisions is sound and they are still considered good law, officers should avoid citing these decisions because they pre-date IMMACT 90. Citing these decisions may give the impression that USCIS is relying on the outdated aspects of the decisions.

In the fall of 2011, the Office of Policy and Strategy Service Center Operations; and the Office of Chief Counsel provided an L-1B PowerPoint presentation/training. In this presentation, VSC was advised *Matter of Penner and Colley* predate the 1990 statutory amendments which eliminated the requirement that specialized knowledge be either "proprietary" or "unique" so use of this terminology should be viewed in this

light. Based on this presentation/training it was expected that all citing of *Matter of Penner and Colley* would cease. *Matter of Sandoz Corp Protection Corp.* was added later as a decision not to cite.

**History-**

The term "key personnel" appears in the legislative history of the 1970 Act that created the "specialized knowledge" subcategory and was used to generally describe all L-1 personnel (i.e. executives, managers, and specialized knowledge). The term "essential" in turn appears in a published decision, *Matter of Penner*. *Matter of Penner* and *Matter of Colley* are often cited for their background discussion of the 1970 legislative history. It is important to note, however, that these decisions imposed a requirement that "specialized knowledge" be either "proprietary" or "unique" in nature (see examples below). This requirement was effectively overruled by Congress at the time it enacted the definition of specialized knowledge in section 214(c)(2)(B) of the INA. In enacting section 214(c)(2)(B), Congress declined to adopt the then-existing regulatory requirement that a person possess "proprietary" or "unique" knowledge (reflected in *Penner* and *Colley*).

*Matter of Penner* 18 I&N Dec. 49 (Comm. 1982)

An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee.

*Matter of Colley, et al* 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

Specialized knowledge involves proprietary knowledge and an advanced level of expertise not readily available in the United States job market. This knowledge and expertise must be clearly different from those held by others employed in the same or similar occupations. Different procedures are not a proprietary right within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition. The 1970 legislative history may contain the term "key personnel," this language does not appear in the statute, regulations, or in any post-1990 precedent decision. Further, this term, taken from the legislative history, was not specifically applied to the "specialized knowledge" category. Similarly, the term "essential" does not appear in the statute, regulations, or in any post-1990 precedent decision.

In decisions there should be a strong focus on the facts and regulations rather than citing precedent decisions, unless the precedent decision is needed to clarify gaps in INA or regulations. Officers may use the language in some precedent decisions without necessarily citing the precedent decisions, when the verbiage is repeating a generally accepted principle that has other sources in law beyond the precedent.

**Vermont Service Center**

**Standard Operating Procedure (SOP)**

**L1A AND L1B  
INTRACOMPANY  
TRANSFEREES**

Prepared by:  
Center Training Unit

Vermont Service Center

December 5, 2014

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## General

---

**Purpose** This SOP prescribes procedures for the adjudication and processing of Form I-129, Petition for a Nonimmigrant Worker, filed under 8 CFR 214.2(l) at the Vermont Service Center (VSC).

---

**Applicability/Scope** This SOP is applicable to all VSC SISOs, ISOs, and Adjudication Support Team (AST) personnel performing I-129L adjudicative or AST functions or review of those functions. Personnel performing other duties pertaining to I-129s will be similarly bound by the provisions of this SOP which apply to their specific tasks or duties.

---

**Conflict Resolution** Any provision of the INA or 8 CFR that conflicts with this SOP will take precedence over the SOP. If you identify a conflict, report the matter immediately to your supervisor or to any SISO.

If any conflict is noted between this SOP and policy or guidance documents issued by HQSCOPS, report the matter through the supervisory chain for resolution.

This SOP supersedes all prior Vermont Service Center guidance documents, policy memoranda, training packets, or other material pertaining to I-129(L) cases; these documents should be discarded.

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*Continued on next page*

## General, Continued

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**Revisions** The Center Training Unit will issue numbered revisions to this SOP. No other document will be considered a valid modification.

***Electronic and Print Copies***

All personnel who maintain a printed copy of the SOP will post the revisions upon receipt. Electronic copies of the SOP will be modified to reflect changes as they are issued. A listing of previous revisions will be linked to the SOP to serve as a summary of all applicable revisions.

***Proposed Changes***

Submit proposed changes with appropriate supporting documents through first-line supervisors to the Center Training Unit.

***Current Revisions***

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow.

***Prior Revisions***

A list of the most recent revisions made to this document is located after the Appendices. A complete list of previous revisions is located on the Add-Ins toolbar under Add'l Resources>ADJ SOPs>Revisions>I-129 SOP Revisions>I-129L SOP Revisions.

---

Revision #	Date	Subject	Pages	KM#
34	12/5/14	Added instructions to place replacement I-94 stamp on back of New I-94.	104	2322

---

# L1A AND L1B INTRACOMPANY TRANSFEREES

## Overview

---

**Introduction** A qualifying United States or foreign employer may file a Form I-129 petition on behalf of an alien beneficiary requesting classification as an Intracompany Transferee.

---

**Statutory Basis** Section 101(a)(15)(L) of the Act makes provision for temporary positions for:

- Certain managers and executives, and
- Specialized knowledge professionals.

The nonimmigrant classifications for this section of law are L1A and L1B, respectively.

---

**Regulatory Basis** USCIS has responsibility for determining whether the alien beneficiary is eligible for admission and whether the petitioner is a qualifying organization.

Title 8, Code of Federal Regulations, Part 214.2(l), sets forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions.

---

**Dual Intent for L-1s** 8 CFR 214.2(l)(1)(i) states that an intracompany transferee can be admitted temporarily to the United States to be employed by a qualifying organization. However, the approval of a permanent labor certification or the filing of a preference petition for the beneficiary shall not be the basis for denying an L1 petition or the beneficiary's application for admission.

The beneficiary may legitimately come to the U.S. as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States. [See 8 CFR 214.2(l)(16)]

---

**Timely Adjudication** In general, Form I-129L petitions should be processed within thirty days of receipt. [Section 214(c)(2)(C) of the Act, 8 CFR 214.2(l)(7)(i)]

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*Continued on next page*

## Overview, Continued

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### Record of Proceeding

The record of proceeding for the L1 petition from top to bottom:

- G-28
  - I-129
  - I-129L Supplement
  - Evidence of qualifying relationship between the United States and foreign organizations
  - Evidence of the beneficiary's qualifying foreign employment
  - Evidence that the foreign organization is doing business
  - Evidence of the beneficiary's proposed employment in the United States
  - Evidence that the United States organization is doing business, or evidence that meets the "new office" evidentiary requirements
  - RFE notices and Intent to Deny Notices (if applicable)
  - All evidence submitted in response to RFE and Intent to Deny Notices in the order dictated above.
- 

### Part 6 of Form I-129 is Not Completed

If Part 6 is not completed, you must provide the petitioner with the opportunity to submit the required response by issuing a Request for Evidence (RFE). Use standard 1817 which asks the petitioner to complete and submit Page 5, Part 6, of Form I-129 with a revision date of November 23, 2010 or later. You should not return the original signed petition to the petitioner.

**NOTE:** At this time, USCIS does not require a copy of the export control license as part of the nonimmigrant visa petition process. However, if the petitioner declines to respond to Part 6 in response to an RFE, deny the petition pursuant to 8 CFR 103.2(b)(1) for failure to properly complete and file the petition with any initial evidence required by applicable regulation and/or the form's instructions.

The standard denial to address this scenario is the I129CTECH letter.

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*Continued on next page*

## Overview, Continued

---

### **Banned Employers**

When DOL informs USCIS that certain organizations have violated the INA, DOL will provide USCIS with a list of these employers that are banned for a specific time period from having an immigrant and/or nonimmigrant petition approved. The ban does not affect petitions that were previously approved; however, new petitions may not be approved during the banned period for the listed employers.

**NOTE:** The Data Reporting Group (DRG) runs a scrape for banned employers. If you receive a petition filed by a banned employer, bring the petition to the appropriate form type ISO3.

---

### **List of Banned Employers**

The list of organizations ineligible for approval of immigrant and nonimmigrant petitions is found on the VSC ECN site under Adjudications/Policy Memos/Business.

**Important:** Be sure to view the most recent list of organizations ineligible for approval of immigrant and nonimmigrant petitions. There may be old lists still present on this page.

---

## Fees Required for L Petitions

---

### Fraud Prevention and Detection Fee

In addition to the base filing fee, a Fraud Prevention and Detection Fee of \$500 must be paid by:

- Petitioners seeking initial (H-1B) or L nonimmigrant classification,
- A change of status to (H-1B) or L nonimmigrant classification, or
- A change of employer in these classifications.

[INA § 214(c)(12)]

This new \$500 fee applies to petitions filed on or after March 8, 2005 and may be paid by any party.

#### EXCEPTIONS:

- Amended petitions
  - Successor in interest
- 

### Border Security Fee

On August 12, 2010, President Obama signed Public Law 111-230, the Emergency Supplemental Appropriation for Border Security Act. The new fee is in addition to the Base Fee, Fraud Prevention and Detection Fee, as well as any Premium Processing Fee, if applicable.

Public Law 111-230 requires the submission of an additional fee of:

- \$2,000 for certain H-1B petitions and
- \$2,250 for certain L-1A and L-1B petitions.

An I-129 petition for H-1B or L status postmarked on or after August 14, 2010 through September 30, 2015 must pay the fee if the following criteria are met:

1) The petition is requesting:

- An initial grant of L-1A or L-1B status **OR**
- Authorization to change employers

#### **AND**

2) The petitioner meets both of the following conditions:

- Employs 50 or more U.S. employees **AND**
- More than 50% of those employees are in H1B or L1 status.

**NOTE:** The fee is required when the petitioner requests a change of status H1B to an "initial grant" L-1 for the same beneficiary to perform essentially the same job.

---

*Continued on next page*

## Fees Required for L Petitions, Continued

### Determining Number of U.S. Employees

All of the petitioner's U.S. Employees should be counted when determining whether it is subject to the Border Security Fee. If a petitioner claims exemption from the Border Security Fee based on a combination of employees within a controlled group of corporations, an RFE using AutoText 2036 should be issued to request clarification about the number of the petitioner's U.S. employees.

When determining the total number of employees in the United States for the purpose of the Border Security Fee, petitioners should **not** include:

- Employees from partnerships, proprietorships, etc., which are under common control;
- Employees from affiliated service groups; and
- Leased employees.

### Who Can Pay the Fees?

Refer to the table below to determine which party can pay the different fees associated with the filing of an I-129.

Type of Fee	Must be paid by...
Base Filing Fee	The petitioner, attorney, or beneficiary
Premium Processing Fee/I-907	The petitioner, attorney or beneficiary. **If paid by the beneficiary, the I-907 still needs to be signed by the petitioner or attorney. An I-907 may be signed by the attorney, if there is a properly executed G-28 for the attorney signed by both the attorney and petitioner.
Fraud Fee	The petitioner, attorney, or beneficiary
Border Security Fee	The petitioner or attorney. **Cannot be paid by the beneficiary.

### Requests for Fraud and/or Border Security Fees

Refer to the chart below to determine which notice should be issued to request Fraud and/or Border Security Fees when the file does not contain acceptable evidence of an exemption.

When the file is missing the...	Issue an...	Using...
Fraud Fee	ITD	B3EXEMPT FRAUD
Border Security Fee	RFE	AutoText 2034

## Eligibility Requirements

---

### Reviewing Evidence

This section identifies the initial evidence required in the adjudication of a Form I-129L petition. Review all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted.

Each piece of evidence must meet the standard of acceptability as noted. If for any reason the evidence submitted is deemed to be unacceptable or is missing, the officer must request the submission of acceptable evidence.

---

### Required Evidence

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations,
- U.S. organization and the organization abroad are both actively engaged in doing business,
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the I-129 L petition.
- Beneficiary will be employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization in the United States.

[See 8 CFR 214.2(l)(3)]

- If the beneficiary will be in a specialized knowledge capacity and working at a location other than the petitioner's, evidence is also required that the beneficiary will be under the primary control and supervision of the petitioner and will be providing a product or service for which specialized knowledge specific to the petitioner is necessary.

(See July 28, 2005, William R. Yates memo "Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004).

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*Continued on next page*

## Eligibility Requirements, Continued

---

**Exception: New Office** If the petitioning organization that is filing for an L1 beneficiary has been doing business for one year or less, it is not required to be actively engaged in doing business at the time of filing.

Instead, the petitioner must submit evidence that:

- Sufficient physical premises to house the new office have been secured, and
- The intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

---

**Date of Filing** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

---

## Determination of Proper Filing

---

### Proper Filing

A petition is considered to be properly filed when it is:

- Completed and signed, in the original, by a designated representative of the qualifying employing organization, and
- Accepted for processing with the correct fee, by the USCIS office having jurisdiction over the area of the beneficiary's intended employment.

[See 8 CFR 103.2(a)(7)(i)]

---

### Who may File the Petition

Form I-129L petitions may be filed by either:

- The qualifying foreign organization or
- The qualifying U.S. organization that intends to employ the beneficiary.

[See 8 CFR 214.2(l)(2)(ii)]

---

### Representation

- A representative of the petitioner must complete and sign a Form G-28.
- The petitioner and the representative must sign the Form G-28 in the original.
- Facsimile stamped signatures for representatives are also acceptable.
- E-filed cases state "certified by the internet."
- Refer to the G-28 SOP for further information regarding G-28s and representatives/attorneys.

[See 8 CFR 103.2(a)(3), 292.1, and 292.2]

---

### When to File

The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

[I-129 Filing Instructions and See Federal Register at 70 FR 21983-01 (April 28, 2005)]

In the event that a petition is accepted more than six months prior to the date of actual need, (i.e. requested employment start date), route the case, and any accompanying I-539, to an IS03 L POC. The case will be sent to the Case Resolution Unit where an appropriate letter will be prepared and the fee refunded.

---

## Jurisdiction

---

### General

In general, I-129L petitions must be filed at the Service Center that has jurisdiction over the area where the beneficiary is to be employed.

VSC will serve as the filing location for all individual I-129 L petitions filed directly with a Service Center where the beneficiary is or will be employed in the following locations:

Alabama	Maryland	Puerto Rico
Arkansas	Massachusetts	Rhode Island
Connecticut	Mississippi	South Carolina
Delaware	New Hampshire	Tennessee
District of Columbia	New Jersey	Texas
Florida	New Mexico	Vermont
Georgia	New York	Virginia
Kentucky	North Carolina	U.S. Virgin Islands
Louisiana	Oklahoma	West Virginia
Maine	Pennsylvania	

The following link provides updates for filing locations that may not yet be captured in the I-129 filing instructions:

[USCIS - Direct Filing Addresses for Form I-129, Petition for Nonimmigrant Worker](#)

**IMPORTANT:** The petitioner shall advise USCIS whether they have filed a petition for the same beneficiary with another office, and certify that they will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed.

Failure to make a full disclosure of previous petitions filed may result in the denial of the petition.

[See 8 CFR 214.2(l)(2)(i)]

---

### Blanket L Petitions

Jurisdiction for Blanket L petitions remains at the Service Center that approved the blanket petition regardless of the geographic location of the beneficiary's employment in the United States.

[See 8 CFR 214.2(l)(2)(ii)]

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*Continued on next page*

## Jurisdiction, Continued

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### **L1 Petitions for Citizens of Canada under NAFTA**

The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

---

### **Amended Petitions**

The petitioner must file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in:

- Approved relationships,
- Additional qualifying organizations under a blanket petition,
- Change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or
- Any information which would affect the beneficiary's eligibility under Section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(7)(i)(C)]

---

# Qualifying Relationships

## Overview

---

**Introduction** When an employer wishes to transfer an employee of a foreign company to a U.S. company as an L1 nonimmigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer.

---

**Qualifying Organizations** A qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- Meets exactly one of the qualifying relationships specified in 8 CFR 214.2(l)(ii),
- Is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intracompany transferee, and
- Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(1)(ii)(G)]

---

**Outsourcing** An L1B nonimmigrant alien who has been employed by a firm with an affiliated entity in the United States, who comes to the United States to perform services for the international entity, can no longer work primarily at a worksite other than that of the petitioning employer.

**EXCEPTION:** The work is controlled and supervised by the L1-B petitioning employer. The petitioning employer must show they retain ultimate authority over the L1-B worker, and the L1-B worker must provide a product or service to the offsite employer for which specialized knowledge specific to the petitioner is necessary.

[See L-1 Visa Reform Act 2004]

---

**Commercial Enterprises** The majority of L1 petitioners are commercial enterprises, organized as corporations, partnerships, or sole proprietorships. They are called commercial enterprises because they are trying to make a profit.

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*Continued on next page*

## Overview, Continued

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### Non-Profit Enterprises

It is also possible for non-profit employers, such as religious or charitable organizations, to use the L1 classification. However, the petitioner must still demonstrate that all of the L1 eligibility requirements have been met.

[See *Matter of Church of Scientology*, 19 I&N Dec. 593]

---

### Ownership and Control

Regardless of whether a business is set up as a corporation, partnership, or sole proprietorship, somebody normally owns the business and somebody controls the business.

**Ownership and control** are the deciding factors used by the officer to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer and will be discussed thoroughly later.

---

### Foreign Employer Must Continue to do Business

There must be an organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad but the relationship must continue to exist.

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## Ownership & Control

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**Definitions**      **Ownership** for L1 purposes means the legal right to have possession of an organization.

**Control** for L1 purposes means to exercise authority or influence over an organization.

---

**Deciding Factors for a Qualifying L1 Relationship**

**Ownership and control** are the deciding factors used to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer.

Both ownership and control must be present to have a qualifying relationship.

---

**Beneficiary May be the Sole Owner**

In many instances the beneficiary of the L1 petition may own both the foreign employer and the U.S. employer in whole or in part. There is no problem with this arrangement as long as all of the L1 eligibility requirements are met.

**NOTE:** The company in the foreign country must continue to do business.

[See *Matter of M 8 I&N Dec. 618* and *Matter of Aphrodite Investments 17 I&N, Dec. 530*]

---

**De Jure Control**

Ownership of more than 50% of an organization is considered to be evidence of control. Control on the basis of ownership of more than 50% is called de jure control.

De jure simply means “by law”, and it is a straightforward form of control.

---

**Negative Control - Joint Ventures**

In many instances, two individuals or organizations will create an organization in which each individual or organization has 50% ownership. This arrangement is called a joint venture.

Each of the owners could be said to exert de jure control over the joint venture. As they can each “block” any decision made by the other owner by virtue of their 50% control over the organization, their control can be described as a “negative control”.

[See *Matter of Siemens Medical Systems 19 I&N Dec. 362*]

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*Continued on next page*

## Ownership & Control, Continued

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### De Facto Control

It is possible for an owner of less than 50% of a company to exercise control over the organization.

De facto simply means “in fact”. [See *Matter of Hughes* 18 I&N Dec. 289]

**NOTE:** If a petitioner argues that de facto control exists on some other basis than discussed previously or in *Matter of Hughes*, consider the argument with an open mind, and see if the argument makes sense.

---

### Contractual Relationships

A contractual relationship between the foreign employer and the U.S. employer is not sufficient. There must be both ownership and control.

[See *Matter of Schick* 13 I&N Dec. 647]

An executed contract between organizations may allow one organization to exert influence over the other, but a solely contractual relationship is not qualifying for L1 purposes.

---

## Definitions of Qualifying Relationships

---

**Introduction** The following definitions describe the qualifying L1 relationships.

[See 8 CFR 214.2(l)(1)(ii)(H), (I), (J), (K), and (L)]

---

**Substance Over Form** A petitioner may identify the qualifying relationship between the U.S. organization and the foreign organization in a manner that is not correct per USCIS' definition of that particular qualifying relationship. However, as long as the relationship conforms to one of the qualifying relationships defined in regulation, it is acceptable for L1 purposes.

There are times when the nature of the relationship between the two organizations is not clear based on the evidence in the record. In these instances, it is best to request an additional explanation from the petitioner, along with corroborative documentary evidence, if needed.

---

**Parent** Parent means a firm, corporation, or other legal entity, which owns and controls at least one subsidiary. An organization is said to be a parent to a subsidiary when:

- It owns more than half of the subsidiary, and
- Controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(I)]

**NOTE:** The definition of subsidiary includes other qualifying forms of parent/subsidiary relationships.

---

**Branch** Branch means an operating division or office of the same organization housed in a different location.

[See 8 CFR 214.2(l)(7)(ii)(J)]

---

**Subsidiary** Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. As stated in the definition for a parent, the parent owns more than half of the subsidiary and controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(K)]

---

# Affiliates

---

## Introduction

There are three categories of qualifying affiliate relationships, to include:

- (1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual.
- (2) One of two legal entities owned and controlled by the same group of individuals, each owning and controlling approximate the same share or proportion of each entity.
- (3) A partnership that is:
  - Organized in the United States
  - To provide accounting, managerial, and/or consulting services
  - Under an agreement with a worldwide coordinating organization
  - That is owned and controlled by member accounting firms.

[See 8 CFR 214.2(l)(1)(ii)]

---

## Partnership Organized Outside the US

A partnership (or similar organization) that is organized outside the United States to provide accounting services is considered an affiliate of the U.S. partnership if:

- It markets its accounting services under the same internationally recognized name;
  - Under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.
-

# Types of Businesses

## Sole Proprietorships

---

<b>Definition</b>	A sole proprietorship is a business that is owned by one individual.
<b>Unlimited Liability</b>	A sole proprietorship is not legally separate from its owner. The owner is personally responsible for the debts of the business. Creditors can sue the owner to take his or her house, car, or other personal assets to pay off the sole proprietorship's debts.
<b>How a Sole Proprietorship is Created</b>	A sole proprietorship is the easiest business to create. An individual merely establishes a business, and the sole proprietorship is automatically created.
<b>Evidence of Ownership &amp; Control</b>	<p>Generally, no special documents are executed when a sole proprietorship is created and commences doing business.</p> <p>In the United States, a sole proprietorship is not required to execute or file any documents of creation, and may use the owner's own social security number as its EIN (employer's identification number).</p> <p>The most common document that is provided as evidence of the ownership and control of a sole proprietorship is the owner's individual federal tax return. In addition, contracts, such as leases or sales agreements that were executed by the owner on behalf of the sole proprietorship may be submitted.</p>
<b>Owner's Individual Federal Tax Return</b>	Sole proprietors located in the United States must report the income and expenses from their businesses in their individual Form 1040 federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return.

---

## General and Limited Partnerships

---

**Partnership  
Definition**

A partnership means the shared ownership of a business.

---

**Limited  
Partnership  
Definition**

A limited partnership is the shared ownership of a business in which certain partners provide a capital investment without being held personally liable for the debts of the partnership above the level of their investment.

The trade-off for having the limited liability is that the limited partner may not materially participate in the running of the business or attempt to control the business.

---

**General  
Partnership:  
Unlimited  
Liability**

A partnership is not legally separate from its partners. The partners are personally responsible for the debts of the partnership. Creditors can sue the partners to take their houses, cars, or other personal assets to pay off the partnership's debts.

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**Limited  
Partnership:  
Both Unlimited  
and Limited  
Liability**

All general partners of a limited partnership are personally responsible for the debts of the partnership. Creditors can sue the owners to take their houses, cars, or other personal assets to pay off the partnership's debts.

Limited partners are only liable up to the amount of their capital investment in the partnership. The limited liability can be legally stripped from the limited partner if he or she is found to have materially participated in the business.

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**How a General  
Partnership is  
Created**

No formal, written partnership agreement is required to create a general partnership. However, many general partnerships do execute partnership agreements.

In the United States, partnerships must obtain an EIN (employer's identification number) for the partnership.

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## General and Limited Partnerships, Continued

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### How a Limited Partnership is Created

A formal, written partnership agreement is required to create a limited partnership.

- Every limited partnership must have at least one general partner.
  - In the United States, limited partnerships must obtain an EIN (employer's identification number) for the partnership.
- 

### Only General Partners have BOTH Ownership & Control

Only general partners can be considered to have both ownership and control over a limited partnership. When trying to establish qualifying affiliate relationships, only the percentage of ownership by each of the general partners should be considered.

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### Limited Partners have NO Control

Limited partners may own a portion of a limited partnership, but they do not have any control over the partnership, as they cannot materially participate in the operation of the business.

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### Evidence of Ownership & Control

The most common documents that are provided as evidence of the ownership and control of a general or limited partnership are partnership agreements and the partnership's Form 1065 federal tax return.

In addition, contracts, such as leases or sales agreements that were executed by the partners on behalf of the partnership may be submitted.

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### Partnership Agreements

A partnership agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited partnership interest,
- Each partner's initial percentage of ownership,
- The type of business to be conducted by the partnership,
- How partnership interests can be transferred, and
- The conditions under which the partnership can be dissolved.

The partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.

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## General and Limited Partnerships, Continued

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### **Partnership Tax Returns**

In the United States, partnerships (including limited partnerships) are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

The partnership's tax return provides certain information that is relevant to the ownership and control of the partnership to include the:

- Date of origination of the partnership,
  - The names and % of ownership for each of the partners at year end,
  - Whether the partnership has limited partners, and
  - Evidence of the partnership's business activities in the United States.
- 

### **Ownership Percentage May Not Equal the Capital Investment**

A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

- The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.
  - Shared ownership of the business does not always mean shared ownership of the assets used in the business.
-

# Corporations

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**Definition**

A corporation is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Corporations are a taxable entity and must pay taxes on the income generated by them prior to distributing the income to its shareholders.

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**Limited Liability**

The debts of the corporation are the responsibility of the corporation, not the individual shareholders. If a corporation goes bankrupt, the shareholders cannot lose any more money than they paid for their stock.

Normally, creditors cannot sue the shareholder to take his or her house, car, or other personal assets to pay off corporate debts. This limited liability is one of the big attractions of corporations.

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**Where a Business Incorporates**

In the United States each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of businesses.

Businesses may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

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**How a Business Incorporates**

In order to incorporate a business in the United States, articles of incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a certificate of incorporation.

After the business is incorporated, the corporation may sell and issue shares of stock, and commence doing business as a legal entity apart from its owners.

The shareholders of the corporation will elect a board of directors, who may or may not be shareholders. The board of directors may enact by-laws for the corporation.

In the United States, corporations must obtain an EIN (employer's identification number).

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## Corporations, Continued

### Federal Tax Returns

Generally, corporations doing business in the United States must file a federal tax return each year, Form 1120, U.S. Corporation Income Tax Returns. The federal tax return provides certain information that is relevant to the ownership and control of the corporation to include the:

- Date of incorporation,
- Evidence of the corporation's business activities in the U.S., and
- In some instances, the name of the individuals or organizations that own the corporation will be noted (usually on the second page or in the supporting statements).

### Annual Reports

Some corporations submit annual reports as evidence of the qualifying relationship. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements. (For more information see the discussion of financial statements in the Doing Business portion of the SOP.)

### Evidence of Ownership & Control

The following table describes the typical documents that are submitted as evidence of the existence, rules, ownership and control of a corporation.

Document	Existence	Rules	Ownership	Control
Petitioner's Letter	X		X	X
Certificate of Incorporation	X	Generally, number and type of stock shares only		
Articles of Incorporation	Yes, if stamped by the Gov. agency	X		
by-laws		X		
Common Stock Shares			X	X
Preferred Stock Shares			X	
Stock Ledger			X	X
Tax Returns	X		Sometimes	Sometimes
Annual Reports	X	Sometimes	Sometimes	Sometimes

## S-Corporations

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**Definition** Sub-Chapter S corporations or “S Corps” as they are called, are a hybrid of the standard corporation.

The main difference between S Corps and regular corporations is that S Corps are not taxable entities and are limited to a certain type and number of shareholders.

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**S Corps are Not Taxable Entities** S Corps are not taxable entities. They are required to file an informational tax return, called a Form 1120S, U.S. S Corporation Income Tax Return. Income and expenses flows through to the shareholders’ individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

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**Qualifying for S Corp Status** To qualify for S Corp status under IRS rules, a corporation must meet a number of requirements. It must:

- Be a domestic corporation, i.e. organized in the United States under federal or state law.
- Be an eligible corporation. Ineligible corporations may be certain financial institutions, insurance companies, and domestic international sales corporations.
- Have only one class of stock, common.
- Have no more than 100 shareholders.
- Have as shareholders only individuals, estates, and certain trusts (partnerships and corporations cannot be shareholders).
- Have shareholders that are U.S. citizens or residents of the United States (per the IRS definition of residents). Nonresident aliens cannot be shareholders.

The IRS defines a resident alien by establishing if the beneficiary has been physically present in the United States at least:

- 31 days during the current year, and
- 183 days during the 3 year period that includes the current year and the 2 years immediately before. To satisfy the 183 days requirement count:
  1. All of the days the beneficiary was present in the current year, **and**
  2. One-third of the days the beneficiary was present in the first year before the current year, **and**
  3. One-sixth of the days the beneficiary was present in the second year before the current year.

**NOTE:** If you believe the beneficiary is an unqualified shareholder, discuss with a SISO.

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## **S-Corporations, Continued**

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### **Qualifying L1 Relationships for S Corps**

As noted above, corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp.

If such ownership is claimed on an L1 petition, additional evidence, such as a statement from an official of the IRS confirming the validity of the shareholders' S Corp ownership should be requested.

However, S Corps may own businesses abroad. So, if the claimed qualifying relationship involves a U.S. S Corp's ownership of a foreign employer, the relationship may be qualifying as long as it conforms to the defined L1 relationships.

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# Incorporation

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## **Certificate of Incorporation**

The Certificate of Incorporation is the birth certificate for the corporation. It shows that the corporation exists as a legal entity.

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## **Articles of Incorporation**

The Articles of Incorporation will identify the:

- Acceptable business activities that may be conducted by the corporation
- Type and number of stock shares that may be authorized and issued by the corporation
- Par value, if any, of the stock shares

This document is the constitution of the corporation and cannot be changed or amended without a majority vote of the shareholders.

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## **Conformed Copy of the Articles of Incorporation**

A conformed copy of the Articles of Incorporation is a copy that agrees with the original and all amendments to it.

If the original document required a signature, the copy should be signed by a principal officer, or if not signed, be accompanied by a written declaration signed by an authorized officer of the corporation. With either option, the officer must certify that the document is a complete and accurate copy of the original.

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## **By-Laws**

The By-Laws of a corporation are the lesser rules made by the board of directors that govern how the corporation will function. They may not conflict with any provision of the Articles of Incorporation.

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## Shares of Stock

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### Introduction

Stock shares are ownership certificates that are issued by a corporation when an individual or an organization makes an investment in the corporation. The number of shares of stock owned by an individual or organization relative to the number of shares issued determines their percentage of ownership in the corporation.

- The number of shares of stock issued by the corporation may not exceed the number of shares authorized by its articles of incorporation.
- Corporations can issue two classes of stock, common and preferred.

**EXAMPLE:** If one person owns 100 shares of stock in a corporation and the corporation has issued 200 shares of stock, that individual can be described as the owner of 50% of the corporation.

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### Stock Share Identification

Each stock share should identify the:

- Number of shares authorized
- Class of stock, either common or preferred
- Par value of the stock shares, if any
- Number of shares represented by the share certificate\*
- Name of the shareholder
- Date of stock issuance

**\*NOTE:** Number of shares authorized should be in Articles of Incorporation and not all authorized shares need to have been issued.

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## Shares of Stock, Continued

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**Stock  
Certificates are  
Internally  
Generated**

Stock share certificates can be purchased at any large office supply store. Stock certificates are issued by the corporation itself. The information provided on the stock certificates is internally generated by the issuing corporation and is not subject to scrutiny by any government agency, unless the corporation is publicly traded.

At a minimum, an acceptable stock certificate should include the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

Stock certificates alone are not sufficient evidence to determine ownership and control of a corporate entity. The stock ledger, stock certificate, corporate By-Laws, and the minutes of relevant annual meetings must also be examined. Without full disclosure of relevant documents; ownership and control cannot be determined.

[See *Matter of Siemens Medical Systems, Inc., supra*]

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## Shares of Stock, Continued

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**Common Stock** Common stock gives its holder voting rights. The significance of voting rights is control.

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**Preferred Stock** Preferred stock does not normally give its holder voting rights. While preferred stock may give its holder a percentage of ownership in a corporation, the holder does not have control over the corporation because the preferred stock does not give voting rights.

The Articles of Incorporation will identify whether the corporation is authorized to issue preferred stock.

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**Par Value of Stock** Par value is the nominal or face value of a share of stock. A corporation cannot issue a share of stock for less than the stated face value of the share.

The par value of a share of stock does not generally bear any relation to the amount of investment made by the shareholder at the time the stock was purchased, nor does it represent the value of the stock after the time of issuance.

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**Stock Ledger** The stock ledger is a document that is used by the corporation to record various stock transactions, to include the:

- Initial issuance of stock
  - Transfer of stock from one shareholder to another
  - Repurchase of stock by its own corporation (treasury shares)
  - Retirement or “cancellation” of stock
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## Non-Profit Organizations

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**Definition** A non-profit organization is one that is organized for a purpose other than generating a profit. They are also frequently referred to as “tax-exempt” organizations as many of them qualify for an exemption from federal and state taxation.

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**Limited Liability** A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization. Though they may be personally sued if they did not deal with the organization “at an arm’s length” or as a disinterested third party would.

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**Where a Non-Profit Incorporates** In the United States, each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of non-profits.

Non-profit may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

---

**How a Non-Profit Incorporates** In order to incorporate a non-profit in the United States, Articles of Incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a Certificate of Incorporation.

After the non-profit is incorporated, the corporation may obtain tax-exempt status, and commence doing business as a legal entity.

In the United States, non-profit corporations must obtain an EIN (employer’s identification number).

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## Non-Profit Organizations, Continued

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### How a Non-Profit Obtains Tax-exempt Status

In the United States, tax-exempt status must be obtained by requesting that designation from the Internal Revenue Service.

In order to qualify for tax-exempt status, the non-profit must be organized and operated exclusively for one or more of the following purposes:

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for public safety
- Fostering national or international amateur sports competitions, or
- The prevention of cruelty to children or animals.

The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.

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### Assets of Non-Profit Organization

The assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose or to the local, state, or federal government for a public purpose.

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### Evidence of Ownership & Control

Generally, L-1 petitioning non-profit organizations are incorporated and have “branch” organizations or “sister” corporations abroad. Evidence of ownership and control will include incorporation documents, audited or reviewed financial statements, or federal informational returns.

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## Non-Profit Organizations, Continued

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**Federal  
Informational  
Returns**

Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

Tax-exempt organizations are required to file a yearly Form 990 or 990EZ if the organization's gross receipts exceed \$25,000.00 from sources other than the exempt purpose.

Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return, and provides an abbreviated balance sheet as well as an analysis of excess revenue or (deficit) for the year.

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# Evaluating L1A and L1B Positions

## L1A: Managers and Executives

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**Introduction** The L1A classification is reserved for certain managers and executives. The definitions for L1 managers and executives can be found in section:

- 101(a)(44) of the Act,
- 8 CFR 214.2(l)(1)(ii)(B) and
- 8 CFR 214.2(l)(1)(ii)(C).

**NOTE:** The same managerial and executive capacity definitions apply to the nature of the beneficiary's position abroad and in the United States.

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**Manager  
Capacity  
Defined**

Managerial capacity means an assignment within an organization in which the employee **primarily**:

- Manages the organization, department, subdivision, function, or component of the organization;
- 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;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed, AND;
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

**NOTE:** All four criteria listed above must be met to qualify as a manager.

[See 8CFR 214.2(l)(ii)(B)]

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## L1A: Managers and Executives, Continued

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### Executive Capacity Defined

Executive capacity means an assignment within an organization in which the employee **primarily**:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making, **AND**;
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

**NOTE:** All four criteria must be met to qualify as an executive.

[See 8 CFR 214.2(l)(ii)(C)]

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### Evaluating Managerial or Executive Positions

When evaluating the nature of a claimed managerial or executive position, the petition and supporting evidence must be reviewed to establish that the beneficiary's employment qualifies for L1 purposes.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers and how the beneficiary's position fits into its organizational hierarchy.

A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, they must establish that the beneficiary meets each of the four criteria set forth in both the statutory definitions for "executive" *and* for "manager."

Frequently, the petitioner will merely reiterate the definitions of manager and executive as defined in statute and regulation.

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## L1A: Managers and Executives, Continued

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<b>If the employer is a...</b>	<b>Then...</b>
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been, or will, be employed in a qualifying capacity becomes more difficult to determine.  In some instances, no individual position within the organization may involve duties that could be construed as being primarily managerial or executive in nature.

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## Factors in Determining Managerial or Executive Capacity

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### Staffing Levels as a Factor

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, take into account the reasonable needs of the:

- Organization,
- Component, or
- Function.

**NOTE:** An individual will not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual:

- Supervises or has supervised, or
  - Directs or has directed.
- 

### Doing Business as it Relates to Managerial or Executive Positions

The employing organization must be doing business in a manner that would require the beneficiary to perform duties that are primarily managerial or executive in nature.

The petitioner should provide a statement that clearly describes:

- The business activities that the employing organization engages in, and
- How the beneficiary's position is, or was, required to further the organization's strategic or operational goals.

The record may also contain various documents as evidence of the organizations' business activities. The documentary evidence that is submitted should corroborate the petitioner's statements.

In order to make an accurate determination of the eligibility of the beneficiary's position, either abroad or in the United States, the description of his or her duties must be placed in the context of the:

- Personnel structure of the organization, and
  - Magnitude of the business that it conducts.
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## Factors in Determining Managerial or Executive Capacity, Continued

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### **Too Many Managers, not Enough Worker Bees**

It is not uncommon to encounter an organization that employs only a few people, yet claims that the majority of its employees are primarily engaged as managers or executives.

In these instances, it is often helpful to request complete position descriptions and hourly breakdowns for the duties performed by all of the individuals employed by the organization, including one for the beneficiary, as well as copies of corroborative payroll documentation.

The position descriptions and payroll documentation are used to determine who is performing the non-qualifying, operational duties of the business.

In addition, the entity may be substantial in size but the department or division where the beneficiary is, or will be, employed may be “top-heavy” with managers and executives.

If the employer is a large organization, detailed staffing inquiries should be limited to the department or division where the beneficiary has been or will be employed.

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### **Contract Employees**

The record may indicate that the business employs only one or two people, including the beneficiary. As mentioned previously, it may be helpful to try to determine who is performing the non-managerial operational duties of the business.

The business may not directly employ individuals to perform the non-managerial services of the business. Instead, the business may “contract out” some of its functions such as accounting, sales, warehousing, personnel, etc.

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## Factors in Determining Managerial or Executive Capacity, Continued

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### Unpublished Decision by the AAO

Representatives and petitioners occasionally refer to an unpublished decision by the AAO, (Irish Dairy Board, Inc.), in which a pre-IMMACT 90, Schedule A, Group IV beneficiary was found to be primarily engaged in a managerial/executive position, even though he was the sole employee of the petitioning entity.

In this case, the petitioning entity imported over \$90 million worth of goods to the United States while exporting in excess of \$50 million worth of goods in the year of filing. The business used independent contractors to perform all of its sales and import/export functions. The beneficiary did not directly perform the duties of these functions himself. Rather, he directed the work of the contractors in the furtherance of the operational duties related to the primary function of the business.

The AAO decided, in this unpublished decision, that if these contractors had been employed “in-house”, that the beneficiary would have been clearly classifiable as an executive.

Pursuant to 8 CFR 103.3(e), Service precedent decisions are binding on Service employees; unpublished decisions are not binding. However, this decision outlines how substantial business activity and contractors may add up to a qualifying L1A position that is primarily managerial or executive in nature.

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### Beneficiary may Own the Organization if the Employment = L1

The beneficiary may own the foreign and U.S. organizations in whole or in part. However, maintaining a “figure head” title and position, such as “Director” or “President”, without being primarily engaged in the management of the organization is not qualifying for L1 purposes.

[See *Matter of Aphrodite Investments*, 17 I&N, Dec. 530]

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## Factors in Determining Managerial or Executive Capacity, Continued

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### **Managing a Function**

L1 beneficiaries are commonly identified as the manager or executive of a “function” within the organization. Functional managers are included in the Service’s definitions for managers and executives.

However, it must be demonstrated that the organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the duties of the function. The petitioner’s evidence must demonstrate that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will remove him or her from performing the services or duties of the company.

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# L1B: Specialized Knowledge

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**Introduction** The L1B classification is reserved for certain specialized knowledge individuals and professionals. The definitions for L1 specialized knowledge professionals can be found in section 214(c)(2)(B) of the INA and 8 CFR 214.2(l)(1)(ii)(D) and (E). The requirement that the individual is a professional only applies when the person is being petitioned for under a blanket petition.

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**Specialized Knowledge Defined** Specialized knowledge means special knowledge possessed by an individual of the organization's:

- Product
- Service
- Research
- Equipment
- Techniques
- Management, or other interests and its application in international markets, or
- An individual's advanced level of knowledge or expertise in the organization's processes and procedures.

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**Specialized Knowledge Interpretation** Headquarters' memo CO 214L-P, dated March 9, 1994, provides additional guidance on the interpretation of "specialized knowledge" as defined by statute and regulation.

The memo notes that there are no statutory definitions or legislative history to provide guidance or insight as to the interpretation of the terms "special" or "advanced", and instructs adjudicators to rely on the common dictionary definitions. See the *Term "Special" Defined* section.

USCIS has several policy memorandums that provide guidance on how to interpret specialized knowledge for the L1B classification.

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## L1B: Specialized Knowledge, Continued

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**Term “Special” Defined** Webster’s II New Riverside University Dictionary defines the term “special” as “surpassing the usual; distinct among others of a kind.” Also, Webster’s Third New International Dictionary defines the term “special” as “distinguished by some unusual quality; uncommon; noteworthy.”

Based on the above definition, a beneficiary would possess specialized knowledge if the record demonstrated that the beneficiary’s knowledge is different from that found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

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**Term “Advanced” Defined** Webster’s II New Riverside University Dictionary defines the term “advanced” as “highly developed or complex; at a higher level than others.” Also, Webster’s Third New International Dictionary defines the term “advanced” as “beyond the elementary or introductory; greatly developed beyond the initial stage.”

Again, based on the above definition, the beneficiary’s knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout an organization, only that the knowledge be advanced.

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**No Test of the U.S. Labor Market Required** The determination of whether a beneficiary possesses specialized knowledge does not involve a test of the U.S. labor market.

Whether or not there are U.S. workers available to perform the duties is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the beneficiary, not whether there are similarly employed U.S. workers.

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## L1B: Specialized Knowledge, Continued

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### L-1 Visa Reform Act of 2004

The L-1 Visa Reform Act of 2004 addresses L-1B workers stationed primarily outside the L organization. Beginning June 6, 2005, section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent if the alien is under the “control and supervision” of the unaffiliated employer, or if the placement at the non-affiliated worksite is “essentially an arrangement to provide labor for hire.”

For this ground of ineligibility to apply:

- The alien worker must be a specialized knowledge worker as defined at 8 CFR 214.2(l)(1)(D) and (E), and
- The worker must be stationed primarily (more than 50%) offsite.

**NOTE:** If more than 50% of the total work time is spent offsite, the petition must establish “control and supervision” of the alien. (Yates memo)

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## Factors in Determining Specialized Knowledge

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### **General Knowledge Does Not Equal Specialized Knowledge**

Though there is no required test of the U.S. labor market, the officer must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized knowledge.

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### **Specialized Knowledge May Become General Knowledge**

In this era of rapid technological advances, expertise in certain “cutting edge” technologies may become “general industry knowledge” in a rather short period of time. The true “advanced” nature of the beneficiary’s knowledge must be considered in relation to the current level of knowledge commonly held in the area of the beneficiary’s specialty.

**EXAMPLE:** In the early nineties, expertise in the creation and maintenance of internet websites was not commonly held in the computer industry. Today, many grade school children possess the ability to perform these tasks. Such knowledge is no longer thought of as “special” or “advanced”.

---

### **Characteristics That May Equal Specialized Knowledge**

The following are some of the possible characteristics of a beneficiary who may possess specialized knowledge. They are not all inclusive. The beneficiary:

- Possesses knowledge that is valuable to the employer’s competitiveness in the market place;
  - Is qualified to contribute to the U.S. employer’s knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
  - Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position;
  - Has knowledge which, normally, can be gained only through prior experience with that employer, or;
  - Has knowledge of a product or process that cannot be easily transferred or taught to another individual;
  - Has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States.
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## Factors in Determining Specialized Knowledge, Continued

### Evaluating Specialized Knowledge Positions

When evaluating the nature of the beneficiary's claimed specialized knowledge position, the petition and supporting evidence must be reviewed to establish that:

- The beneficiary's prior and proposed employment qualifies for LIB purposes, and
- He or she truly possesses knowledge that is special or advanced in relation to knowledge commonly held in the beneficiary's field.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers, and how the beneficiary's position requires the services of an individual who possesses specialized knowledge.

### Petitioner's Allegations

The mere fact that a petitioner alleges that a beneficiary's knowledge is somehow different does not, in and of itself, establish that the beneficiary possesses specialized knowledge.

Frequently, the petitioner will merely reiterate the definitions of specialized knowledge professionals as defined in statute and regulation.

<b>If the employer is a...</b>	<b>Then...</b>
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.

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## Factors in Determining Specialized Knowledge, Continued

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**Petitioner  
Bears Burden  
of Proof**

The petitioner bears the burden of establishing, through the submission of probative evidence, that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor.

Likewise, a petitioner's assertion that the beneficiary possesses an advanced knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.

It is the quality and caliber of the evidence that establishes whether or not the beneficiary possesses specialized knowledge.

[See *Matter of Brantigan*]

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# Specialized Knowledge Language

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## Unacceptable Words and Phrases

Words and phrases to avoid in specialized knowledge denials and call-ups.

- Narrowly held
  - Key
  - Key Personnel
  - Proprietary
  - Essential
  - Essential Process
- 

## Acceptable Words and Phrases

Words and phrases to use in specialized knowledge denials and call-ups.

- Different
  - Uncommon
  - Material different
  - Noteworthy
  - Distinguished by some unusual quality
  - Highly developed
  - Complex
- 

## Pre-IMMACT'90 Precedent Decisions

*Matters of Colley, Penner, and Sandoz Crop Protection Corp.* should no longer be cited in decisions. While the overall premise in the decisions is sound and they are still considered good law, officers should avoid citing these decisions because they pre-date IMMACT'90. Citing these decisions may give the impression that USCIS is relying on the outdated aspects of the decisions.

In the fall of 2011, the Office of Policy and Strategy Service Center Operations and the Office of Chief Counsel provided an L-1B PowerPoint presentation/training. In this presentation, VSC was advised *Matters of Penner and Colley* predate the 1990 statutory amendments which eliminated this requirement that specialized be either "proprietary" or "unique" so use of this terminology should be viewed in this light. Based on this presentation/training it was expected that all citing of *Matters of Penner and Colley* would cease. *Matter of Sandoz Crop Protection Corp.* was later added as a decision not to cite.

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## Specialized Knowledge Language, Continued

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Pre-  
IMMACT'90  
Precedent  
Decisions  
(continued)

### History-

The term “key personnel” appears in the legislative history of the 1970 ACT that created the “specialized knowledge” subcategory and was used to generally describe all L-1 personnel (i.e., executives, managers, and specialized knowledge). The term “essential” in turn, appears in a published decision, *Matter of Penner*.

*Matters of Penner and Colley* are often cited for their background discussion of the 1970 legislative history. It is important to note, however, that these decisions imposed a requirement that “specialized knowledge” be either “proprietary” or “unique” in nature (see examples below). The requirement was effectively overruled by Congress when it enacted the definition of specialized knowledge in section 214(c)(2)(B) of the Act. By enacting section 214(c)(2)(B), Congress declined to adopt the then-existing regulatory requirement that a person possess “proprietary” or “unique” knowledge as reflected in *Penner* and *Colley*.

*Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982)

An employee of “crucial importance” or “key personnel” must rise above the level of the petitioner’s average employee.

*Matter of Colley, et al*, 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm’s operation.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

Specialized knowledge involves proprietary knowledge and an advanced level of expertise not readily available in the United States job market. This knowledge and expertise must be clearly different from those held by others employed in the same or similar occupations. Different procedures are not a proprietary right within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.

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## Specialized Knowledge Language, Continued

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### Pre- IMMACT'90 Precedent Decisions (continued)

The 1970 legislative history may contain the term “key personnel,” this language does not appear in the statute, regulations, or in any post-1990 precedent decision. Further, this term, taken from the legislative history, was not specifically applied to the “specialized knowledge” category. Similarly, the term “essential” does not appear in the statute, regulations, or in any post-1990 precedent decision.

In adjudicative decisions there should be a strong focus on the facts and regulations rather than citing precedent decisions, unless the precedent decision is needed to clarify gaps in the Act or regulations. Officers may use the language in some precedent decisions without necessarily citing the precedent decisions, when the verbiage is repeating a generally accepted principle that has other sources in law beyond the precedent.

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### Using Cites

Where not specified above, officers may use any cite pertinent to case. However, it is the responsibility of the officer to ensure all cites are still valid. Check with a supervisor to use cites not specified in this document.

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# Qualifying Employment

## Qualifying Foreign Employment

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**Introduction** The beneficiary must have one year of continuous employment in a primarily managerial, executive or specialized knowledge capacity with a qualifying organization abroad within the three-year period immediately preceding the filing of the petition.

[See 8 CFR 214.2(l)(1)(i), 8 CFR 214.2(l)(1)(ii)(A), 8 CFR 214.2(l)(3)(iii), and (iv), and *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248]

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**Foreign Capacity Does Not Have to Equal U.S. Capacity**

Generally, there is no requirement that the beneficiary has been employed abroad in the same capacity as he or she will have in the United States.

[See 8 CFR 214.2(l)(3)(iv)]

**EXCEPTION:** If the beneficiary is coming to open or be employed in a **new office** in the United States and will be employed in a managerial or executive capacity, he or she must have been employed in the same capacity abroad.

[See 8 CFR 214.2(l)(3)(v) and 8 CFR 214.2(l)(3)(vi)]

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**Employed Abroad**

Employed abroad means what it appears to mean. Experience acquired in the United States may not be counted as part of the required one year of experience, even if the U.S. experience was with a qualifying entity.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Kloeti* 18 I&N Dec. 295]

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*Continued on next page*

## Qualifying Foreign Employment, Continued

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### One Year of Continuous Employment Abroad

Continuously generally means an unbroken and uninterrupted year of qualifying work experience abroad.

The intracompany transferee definition seems to assume that all L1 beneficiaries will be outside the United States when an initial L1 petition is filed.

If the beneficiary has been outside the United States during the three-year period immediately preceding the filing of the petition, it is very easy to determine the three-year period to examine.

However, in some instances the beneficiary has been present in the United States for quite some time prior to the filing of the petition. In addition, the beneficiary may have been employed in the United States for part of the three-year period immediately preceding the filing of the petition. In these instances, the officer must determine whether the beneficiary's stay in the United States has "interrupted" his or her qualifying foreign employment.

Periods of employment in the United States in a lawful status for a qualifying entity and brief trips to the United States for business or pleasure are not considered to be interruptive of the beneficiary's foreign employment.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Continental Grain Co.* 14 I&N Dec. 140]

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### Successorship in Interest

In some instances, the beneficiary's one year of continuous employment may be gained prior to a qualifying relationship between the foreign employer and the U.S. employer being established.

If all of the assets and liabilities of one entity are substantially acquired through sale, merger or reorganization by another entity such that a qualifying relationship is created between a U.S. employer and a foreign employer, then the beneficiary's foreign employment could have been gained prior to the creation of the qualifying relationship.

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## Qualifying U.S. Employment

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**Introduction** The qualifying U.S. employer must be offering the beneficiary a primarily managerial, executive, or specialized knowledge position in the United States.

[See section 101(a)(15)(L) of the ACT, 8 CFR 214.2(1)(l)(i), and 8 CFR 214.2(1)(l)(ii)(A), (B), (C), (D) and (E)]

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**U.S. Organization Must Directly Employ the Beneficiary**

A qualifying U.S. organization must directly employ the beneficiary for the entire duration of his or her L1 nonimmigrant status. However, the qualifying foreign employer may file the petition on the beneficiary's behalf.

The beneficiary may not directly perform services for a foreign employer in the United States without maintaining a valid employment relationship with the U.S. organization. The test is which organization controls the beneficiary's employment.

[See *Matter of Penner*, 18 I&N Dec. 49]

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**Beneficiary May be Paid by the Foreign Employer**

While a qualifying U.S. employer must directly employ the beneficiary, the beneficiary's wages may be paid by the foreign organization.

[See *Matter of Pozzoli*, 14 I&N, Dec. 569]

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**Required Evidence**

At a minimum, the petitioner must provide:

- A detailed statement that describes the duties to be performed by the beneficiary in the United States, and;
- Evidence that the beneficiary prior education, training and employment qualify him or her to perform the intended services in the United States.

[See 8 CFR 214.2(l)(3)(ii) and 8 CFR 214.2(l)(3)(iv)]

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**Evaluating the U.S. position**

For a thorough discussion of how to evaluate the offered position, refer to the manager and executive, or specialized knowledge professional sections of the SOP.

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# Doing Business

## Overview

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**Definition** Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

Doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

[See 8 CFR 214.2(l)(1)(ii)(H)]

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**Introduction** Both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an intracompany transferee

[See 8 CFR 214.2(l)(1)(ii)(G)]

**EXCEPTION:**

A petitioner filing for an L1 beneficiary coming to be employed for a U.S. organization that has been doing business for less than one year does not have to be actively engaged in doing business at the time of filing of the petition.

Instead, the petitioner must submit evidence that sufficient physical premises to house the new office has been secured, and the intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

**NOTE:** L1 "new office" petitions will be discussed thoroughly later.

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*Continued on next page*

## Overview, Continued

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**Foreign  
Employer Must  
Continue to do  
Business**

There must be a qualifying organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist.

[See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad.

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**Organization  
Must have  
Sufficient  
Resources**

In addition to conducting business, the organization must be shown to have sufficient resources in order to compensate the beneficiary and to continue to conduct business into the foreseeable future.

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## Determination of Doing Business

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**Introduction** While the organization must be shown to be involved in the continuous provision of goods or services, there is no statutory or regulatory minimum level of business activity that must be conducted in order for the U. S. and the Foreign organizations to meet this eligibility requirement.

However, the organization must be conducting business in a manner that would require the services of an individual **primarily** engaged in a managerial, executive, or specialized knowledge capacity.

In order to make a determination that the organization is conducting sufficient business to require the services of the beneficiary, the organization's personnel structure and the beneficiary's stated duties must be placed in the context of the level of business that is being conducted by the organization.

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**Credible Evidence May Not Establish Eligibility**

This section discusses the various categories of evidence that are routinely submitted to document an organization's business activities. It should be noted that the submission of what is considered to be "credible" evidence is not equivalent to meeting the eligibility criteria. The validity of the evidence must be evaluated. The evidence submitted may be negative as well as positive.

In other words, a tax return may be submitted by the petitioner and be considered credible evidence, but the information provided on the tax return may fail to establish that the eligibility requirement has been met.

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**Evidence of Doing Business**

A variety of documents may be submitted in order to establish that the U.S. and the foreign organizations are doing business.

Frequently, the petitioner will merely submit a letter that describes the nature and level of business activity conducted by the organization.

<b>If the employer is a...</b>	<b>Then...</b>
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the organization's business activities.
Small and/or young, unknown or less substantial business,	The issue of whether the organization is doing business requires the submission of credible, documentary evidence in order to make a determination.

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## Determination of Doing Business, Continued

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**Calendar or Fiscal Year**

Organizations publish annual reports and financial statements, and file tax returns based on either a calendar or a fiscal year.

<b>If the reporting year is a...</b>	<b>Then the year starts on...</b>	<b>And ends on...</b>
Calendar year	January 1 <sup>st</sup>	December 31 <sup>st</sup>
Fiscal year	The 1 <sup>st</sup> day of any month other than January	The last day of any month other than December

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**Change of Year for Tax Purposes**

An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.

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## Primary Evidence of Doing Business

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### **Primary Documentary Evidence**

Primary documentary evidence of an organization's business activities includes:

- Annual Reports, containing audited or reviewed financial statements,
  - Audited financial statements,
  - Reviewed financial statements, or;
  - Federal Tax Returns.
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### **Evaluating Primary Evidence**

Primary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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### **Annual Reports**

Annual Reports are published by all publicly traded corporations in the United States. Many foreign organizations also publish annual reports.

Annual reports provide information describing the organization's:

- Products and Services
- Management and personnel structure on the macro level
- Ownership & Control
- Subsidiaries, affiliates, joint ventures, and branch offices
- Current and long-term objectives

In addition, annual reports should include audited or reviewed financial statements for the past year.

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## Primary Evidence of Doing Business, Continued

### Federal Tax Returns

In general, organizations that are conducting business in the United States must file federal tax returns each year. Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format.

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a...	Then the Tax Return is Form...	And the tax return provides a modified...	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

### Foreign Tax Documentation

- The petitioner may provide copies of foreign tax returns as evidence of the business activities of the foreign entity.
- Canada and most Western European countries require tax returns that are very similar to the United States' tax returns and are usually credible.
- Many other countries rely on hand-written tax returns and receipts that are less reliable.

# Financial Statements

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**Introduction** Financial statements are used to convey a picture of the profitability and the financial position of a business. The two most important are the income statement and the balance sheet.

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**Income Statement** The income statement shows whether or not the business earned a “profit” or net income during a specific time period. Net income is earned when revenues exceed expenses, but a net loss is incurred if the expenses exceed the revenues.

Income statements provide useful information for the adjudication of L1 petitions such as the organization’s:

- Gross sales/revenues (and sometimes the source of the revenue),
  - Cost of goods or services sold,
  - Wages, salaries, and commissions expense,
  - Rental or mortgage expense,
  - Utility expenses,
  - Brokerage, freight, travel, and contractor expenses, and
  - Net income or net loss.
- 

**Balance Sheet** The balance sheet can be likened to a snap shot of the organization’s financial position. Financial position is shown by listing the organization’s:

- Assets,
- Liabilities, and
- The equity of the owners.

The balance sheet provides useful information for the adjudication of L1 petitions such as the organization’s:

- Type and amount of assets held,
  - Type and amount of the liabilities owed, and
  - Level of investment in the organization by its owners.
- 

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## Financial Statements, Continued

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### **Internally Generated Financial Statements**

Internally generated financial statements are created by and are based on the representations of the management of the organization. Employees of the petitioning organization prepare the financial statements and they are not subject to the scrutiny of anyone outside the organization.

Internally generated financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Compiled Financial Statements**

A compilation is the preparation of financial statements from the accounting records and other representations of the management of the organization. The accountant who prepares the financial statements is not required:

- To verify any information provided by management, or
- Have any degree of independence from the organization.

Compiled financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Reviewed Financial Statements**

A review of financial statements involves:

- Obtaining an understanding of the entity's accounting system.
- Applying analytical procedures to financial data.
- Making inquiries of persons responsible for the organization's financial and accounting matters.

An accountant (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform a review.

The CPA will then either prepare the financial statements or review internally generated financial statements. The objective of a review is to express limited assurance that the information provided in the financial statements is in accordance with generally accepted accounting principles.

Reviewed financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Financial Statements, Continued

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### **Audited Financial Statements**

An audit is the examination of financial statements, the accounting records and other supporting evidence both within and outside the organization. It is more substantial in scope than a review, but involves many of the procedures that are performed during a review.

An auditor (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform an audit.

Auditors never express an opinion on the fairness of the financial statements without first performing an audit. The auditor's report will either contain an expression of opinion regarding the fairness of the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed.

Audited financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Secondary Evidence of Doing Business

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### **Secondary Documentary Evidence**

Secondary documentary evidence of an organization's business activities may include, but is not limited to:

- Commercial leases or title to commercial properties,
  - Form W-2s and Form 1099s,
  - Form 941, Employer's Quarterly Tax Return,
  - Internally generated payroll documentation,
  - Sales contracts and invoices,
  - Bills of lading, shipping receipts and brokerage bills,
  - Commercial loan agreements,
  - Bank Statements, or
  - Telephone and other utility bills.
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### **Evaluating Secondary Evidence**

Secondary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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## New Office

### Overview

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**Introduction** The L1 classifications have special eligibility requirements and approval limitations for L1 beneficiaries who are coming to open a new office in the United States.

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**New Office Defined** New office means an organization that has been doing business in the United States through a qualifying organization for less than one year.

[See 8 CFR 214.2(l)(1)(ii)(F)]

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**Doing Business Does Not Equal Legal existence** An organization may have a legal existence in the United States for more than one year, but if it has not engaged in the continuous provision of goods and services for more than a year, it must be defined as a new office.

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## Overview, Continued

### New Office Eligibility Requirements

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations;
- Organization abroad must be actively engaged in doing business;
- U.S. organization must be shown to have sufficient physical premises to house the new office;
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition, and;
- Intended U.S. organization, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position supported by information regarding the:
  - Proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - Size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, and;
  - Organizational structure of the foreign entity

[See 8 CFR 214.2(l)(3)]

**NOTE:** All of the eligibility requirements must be met as of the date of filing of the petition.

[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

### Beneficiary's Qualifying Employment Abroad

Use the table below for beneficiary's qualifications.

If the petition indicates that the beneficiary is coming to the United States...	Then the beneficiary's qualifying employment abroad must have been in a primarily...
As a manager or an executive to open or to be employed in a new office in the United States,	Managerial or executive capacity. [See 8 CFR 214.2(l)(3)(v)]
In a specialized knowledge capacity or to be employed in a new office in the United States,	Specialized knowledge, managerial or executive capacity. [See 8 CFR 214.2(l)(3)(vi)]

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## Overview, Continued

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**New Office  
Petitions May  
Only be  
Approved for  
One Year**

New office petitions may be approved for a period that does not exceed one year.

[See 8 CFR 214.2(l)(7)(i)(A)(3)]

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**Advantages for  
the Petitioner**

There are two main advantages of the new office designation for the petitioner.

1. The U.S. organization does not have to be actively engaged in the provision of goods and services as of the date of filing.
  2. The beneficiary does not have to be engaged in a primarily managerial, executive, or specialized knowledge capacity at the time of his or her change of status or entry into the United States as an L1 nonimmigrant. Instead, the petitioner must demonstrate that the U.S. organization, within one year of the approval of the petition, will support the beneficiary in a primarily executive, managerial or specialized knowledge position by providing:
    - A coherent plan in order to commence doing business in the United States,
    - The financial ability to compensate the beneficiary and invest sufficient resources in the U.S. organization in order to realize its proposed business plan, and
    - Acquired sufficient physical premises in the United States in order to start doing business as described in the business plan.
- 

**Disadvantages  
for the  
Petitioner**

There are two main disadvantages of the new office designation for the petitioner.

1. The beneficiary must be coming to provide services in a capacity that is similar to the position abroad. Hence, managers and executives must be classified as L1As and specialized knowledge employees must be classified as L1Bs, which limits the staffing options of the new office petitioners.
  2. The petition may only be approved for one year, while regular L1 petitions may be given initial approvals for up to three years.
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## Business Plans and Foreign Investments

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**Business Plans** While the new office's business plan may be entirely prospective, the petitioner's statement and supporting documentation should provide a clear picture of how the U.S. organization will conduct business to include:

- A description of the products and/or services that will be provided to its customers;
- The type and general location of the customers or clients to be targeted;
- A description of its short-term and strategic goals and the general time-frame during which these goals will be achieved;
- The amount of investment that will be required to fund the acquisition of sufficient plant, equipment and staffing in order to realize the goals, and;
- Why the beneficiary's services are needed during the start-up phase of the organization.

In addition, the petitioner's plans for the U.S. organization must demonstrate that the nature of the beneficiary's business will be such that he or she will be employed in a primarily managerial, executive or specialized knowledge capacity within one year of the approval of the petition.

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**Statement that Business Plan Cannot be Provided** In general, statements by the petitioner that no business plan can be provided, or that the investment and/or acquisition of a physical premises cannot be made until the approval of the L1 petition are not sufficient for the purposes of establishing the beneficiary's eligibility for a new office approval.

The petitioner must establish eligibility at the time of filing of the petition.

[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Business Plans and Foreign Investments, Continued

### Evidence of the Foreign Organization's Investment

While there is no statutory or regulatory minimum investment required, the investment must be commensurate with the activities to be conducted by the business during its start-up phase.

The petitioner must identify the size of its financial investment in the new office and show that it has sufficient resources to pay the beneficiary's salary and implement its business plan.

Where documentary evidence is required, the record should contain:

- Bank statements for the new office, as well as the bank wire transfers, cancelled checks, or letters of credit that were executed by the foreign organization to execute the transfer of funds, or
- Evidence of commercial loans, enforceable promissory notes, or other such documentation that would show that sufficient funds are at the new office's disposal.

If the new office is being opened by a...	Then...
Large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of its investment in the new office.
Small and/or young, unknown or less substantial business,	The issue of the level of its investment and financial capabilities requires the submission of credible, documentary evidence in order to make a determination.

### Foreign Organization's Investment "Hand-Carried"

Occasionally, the petitioner will claim that the foreign organization's investment was "hand-carried" into the United States by the beneficiary or by another individual. Such claims should be corroborated with the submission of a Customs Form 4790. This is the document that is required when an individual is entering the United States in possession of \$10,000.00 or more in currency.

This claim is an indicator that the foreign organization may not exist, or is not actually involved in the start-up of the new office.

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## **Business Plans and Foreign Investments, Continued**

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**Evidence of  
Sufficient  
Physical  
Premises in the  
United States.**

There is no statutory or regulatory minimum for the size of the new office's physical premises. However, the size and nature of the physical premises must be of a sufficient size and type that would enable the new office to perform the initial activities outlined by the business plan during the start-up phase.

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## New Office Extensions

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### Introduction

The petitioner can request an extension of the L1B or L1A's nonimmigrant status prior to the expiration of his or her L1 nonimmigrant status.

A new office petitioner can frequently establish an L1 beneficiary's eligibility for an initial one year approval by the submission of documentation that is almost entirely prospective in nature. However, at the end of the L1 beneficiary's one-year approval, the new office must be shown to have grown to a point where he or she is primarily engaged in a managerial, executive or specialized knowledge capacity.

The petitioner must still continue to meet all of the regular L1 eligibility requirements.

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### Validity Dates

The petition may be approved for a period of time not to exceed two years.

[See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

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### Required Evidence

The petitioner must provide the following evidence in support of a new office extension petition:

- Evidence that the U.S. and foreign entities are still qualifying organizations;
- Evidence that the U.S. entity has been actively engaged in the provision of goods and services for the previous year;
- A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- A statement describing the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees when the beneficiary is to be employed in a managerial or executive capacity, and;
- Evidence of the financial status of the U.S. operation.

[See 8 CFR 214.2(l)(14)(ii)]

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## New Office Extensions, Continued

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### Additional Evidence

While the evidence described above is required by regulation, additional evidence may be requested in order to establish the beneficiary's eligibility for the extension.

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### Renewed New Office Approvals

In general, a new office extension petition should be denied if the U.S. organization is not doing business in a manner that would require and support the employment of the beneficiary in a primarily managerial, executive or specialized knowledge capacity.

However, there are instances in which the start-up of the new office is hampered by circumstances that are beyond the petitioner's control. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
  - A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
  - Litigation involving the new office which prevented the normal functioning of the business.
- 

### Petitioner Cites Unanticipated Circumstances

Regulations allow for new office fillings to be approved for up to one year to establish a new office and commence doing business. In instances where the petitioner cites unanticipated circumstances that hampered the new office's ability to commence doing business, the new office petition may be classified as a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year. This provides the petitioner with the full one year to establish the new office and commence doing business.

[See 8 CFR 214.2(l)(1)(ii)(F) and 8 CFR 214.2(l)(ii)(F)]

A limited approval should only be granted where the petitioner has adequately corroborated the nature of the events that led to the new office's difficulties. The limited approval should not be granted where there is evidence of fraud or misrepresentation.

**NOTE:** The Service should not request evidence of unanticipated circumstances, unless the petitioner has first made this claim.

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## Extensions

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**Introduction** The petitioner may request an extension of an L1B or L1A's nonimmigrant status by filing a petition prior to the expiration of the beneficiary's L1B or L1A status.

[See 8 CFR 214.2(l)(14)]

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**Validity Dates** The petition may be approved for a period of time not to exceed two years.

[See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

---

**Required Evidence** Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director.

[See 8 CFR 214.2(l)(14)]

<b>If the extension petition is being filed by...</b>	<b>Then...</b>
A large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of the beneficiary's eligibility.
A small and/or young, unknown organization,	The issue of the beneficiary's eligibility may require the submission of credible, documentary evidence in order to make a determination.

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*Continued on next page*

## Extensions, Continued

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### Previously Approved Petition

Information that is discovered at the time of an L1 extension petition might show that the beneficiary was never eligible for the benefit that was previously received. The Service is under no obligation to establish that the previously approved petition was approved in gross Service error.

Further, the Service is not obligated to approve applications or petitions where eligibility has not been demonstrated.

- *Matter of M--*, 4 I&N Dec. 532 (A.G.1952; BIA 1952)
  - *Pearson V. Williams*, 202 U.S. 281 (1906)
  - *Mannerfrid V. Brownell*, 145 Supp. 55 (D.D.C. 1956), affirmed 238 F. 2<sup>nd</sup> 32 (D.C. Cir. 1956), *Lazarescu V. United States*, 199 F. 2<sup>nd</sup> 898 (4<sup>th</sup> Cir. 1952)
  - U.S. Ex. Rel. *Vajta V. Watkins*, 179 F. 2<sup>nd</sup> 137 (2<sup>nd</sup> Cir. 1950)
- 

### Same/Same RFEs

SISO authorization is needed if an RFE will be issued on a petition that is requesting an extension with the same petitioner for the same beneficiary. The officer must clearly articulate the reason the RFE is needed, such as; material error, changed circumstances or new material information.

SISO authorization is **not** needed in the following scenarios:

- New office extensions when there has been a change in the:
  - corporate relationship, or
  - nature of the beneficiary's employment, such as job duties, a change from L1B to L1A or vice versa, or a change in the organizational structure.
- L1B beneficiary stationed primarily at the worksite of an employer other than the petitioner (see William R. Yates memo dated July 28, 2005, regarding the L-1 Reform Act of 2004.)
- Beneficiary previously entered under a blanket petition. Although these extensions do not always require an RFE, these petitions may need closer scrutiny because USCIS has not previously examined the beneficiary's qualifications or the proposed U.S. position.

[See William R. Yates memo of April 23, 2004, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity.*]

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## L1 Limitations of Stay

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**Introduction** An alien who has spent five years in the United States in a specialized knowledge capacity, or seven years in the United States in a managerial or executive capacity under section 101(a)(H) and/or (L) of the Act may not be readmitted to the United States under section 101(a)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior year.

- No new petitions may be approved where the alien has spent the maximum time period allowed in either the H or L classification.
- Brief trips to the United States for business or pleasure are not considered to interrupt the required one-year outside the United States.

[See 8 CFR 214.2(l)(12)(I)]

---

**L2 Dependents** Dependents are eligible for L-2 status extensions through the proper filing of a Form I-539 with fee, and whenever possible, filed concurrently with the principal's Form I-129.

Any time spent in L-2 status does not count against the maximum allowable periods of stay available to principals in L-1 status.

*[See Aytes Memo of December 5, 2006, Guidance on Determining Periods of Admission for Aliens Previously in H-4 or O-2 Status; Aliens Applying for Additional Periods of Admission beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year]*

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*Continued on next page*

## L1 Limitations of Stay, Continued

### General L1 Limitations of Stay

The following table describes the general L1 limitations of stay for L1 nonimmigrants. No further extensions may be granted.

[See 8 CFR 214.2(l)(15)(ii)]

If the Classification is...	Then the Maximum Period of stay is...
L1A, Manager or Executive	7 years
L1B, Specialized Knowledge	5 years

### Limitation of Stay: Exception

The limitations of 8 CFR 214.2(l)(12)(i) do not apply to aliens who:

- Do not reside continually in the United States, and
- Whose employment in the United States is seasonal, intermittent, or consists of an aggregate of six months or less per year.

In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment.

[See 8 CFR 214.2(l)(12)(ii)]

### Evidence that Beneficiary Qualifies for Exception

The petitioner must provide clear and convincing proof that the beneficiary qualifies for an exception, to include:

- Arrival and departure records,
- Copies of tax returns, and
- Records of employment abroad.

### Memo Regarding Recapture of Time

Refer to the October 21, 2005, Michael Aytes memo, Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants, covering the recapture of time.

**NOTE:** To access the "Date calendar" online, type the following site into the address line of Internet

Explorer: <http://www.timeanddate.com/date/duration.html>.

Enter the start and end date and then click "Calculate duration"

*Continued on next page*

## L1 Limitations of Stay, Continued

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**Limitation of  
Change of  
Status from  
L1B to L1A**

When a beneficiary is initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years.

The beneficiary must qualify for the L-1A classification at the time of filing.

If the six month rule applies, and the beneficiary qualifies as an L-1A, then approve the classification but deny the EOS request and send the case for consular processing. As long as the beneficiary is functioning as an L-1A, the petition should be approved for consular processing.

If the petition is filed outside the six month window, but is now inside the window at the time of adjudication, despite how the regulation reads, approve the petition and EOS, if otherwise approvable.

There may be times the petitioner will request recapture of time to put themselves outside the six month window. This is permitted.

Beware of L-1A extensions where the prior approval was limited to a short period-this could be an indicator that they were not eligible to extend beyond the five year mark due to regulatory requirement.

The Service must have approved the change to managerial or executive capacity in an amended, new, or extended petition at the time the change occurred.

[See 8 CFR 214.2(l)(15)(ii)]

**NOTE:** A change from L1A to L1B or L1B to L1A is not a change of status. A change from one to the other with the same employer will be a change in employment and possibly an extension.

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## Dependent(s)

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**Dependent(s) of the L-1** The spouse and unmarried dependent children (under the age of 21) of an L1 beneficiary may be granted the L2 classification and be given the same validity dates as the L1 principal.

L1 dependents are not included on the L1 petition. Rather, they must apply for an L2 visa at the consulate based on the L1 principal's petition, or they can file a Form I-539 in order to change or extend their nonimmigrant status.

Dependent minor children can be given the same validity dates as the L1 principal up until the day they marry or reach the age of 21.

The spouse and dependent minor children may not accept employment in the United States unless otherwise authorized under the Act.

[See 8 CFR 214.2(l)(17)(v)]

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**Dependents May Attend School**

L-2 dependents may attend school without a COS to student status. This information is found in 8 CFR 248.3(e).

---

**L's Status Contingent upon Qualifying Employment**

The continuation of the L1 principal's status and the L2 dependent's status hinges on the L1's qualifying employment with the petitioner. When the employer/employee relationship is terminated, or the nature of the employment no longer qualifies for L1 purposes, the L's status is no longer valid.

---

# Bundled Petitions

---

**Introduction** Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”. All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.

The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.

---

**Petitioner Submissions** Petitioners can submit:

- More than one bundle of L-1B petitions if there is more than one specialized occupation related to a project.
  - L-1A petitions with the bundle if the L1A will be managing the L1B beneficiaries.
  - Form I-539 for any qualifying dependents.
- 

**Adjudicating Bundled Petitions** Once received, a bundle, or a group of connected bundles, will be banded together as one unit and be included as part of an officer’s work order.

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time. For example, if bundled petitions require RFEs, all of the RFEs will be issued the same day.

**NOTE:** A bundle of petitions must remain together and move throughout the VSC as one unit.

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**Does not meet bundle criteria** If one or more of the petitions in a bundle do not meet the bundling criteria or do not require the same officer action as the rest of the bundle, remove those petitions from the bundle and adjudicate as single filings.

**Example:** If it does not appear that one of the beneficiaries included in the bundle will be working on the same project as the other beneficiaries, remove that petition from the bundle.

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*Continued on next page*

## **Bundled Petitions, Continued**

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**Timely  
Adjudication**

If a bundle or group of related bundles is so large that you will not be able to timely adjudicate the petitions, notify your supervisor.

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## Iranian Sanctions

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### Iranian Sanctions

On May 6, 1995, the President of the United States promulgated Executive Order 12,959, entitled "*Prohibiting Certain Transactions With Respect to Iran*" [EO 12,959, 60 Fed. Reg. 27, 797 (1995)]. The Executive Order imposed economic sanctions against Iran that prohibit, among other things, the importation of Iranian services where the alien is performing such service as an agent, employee, or contractor of the Iranian government or a business or other organization in Iran. The Office of Foreign Assets Control (OFAC) published regulations in 1999, which clarified the sanctions, whereby an I-129 petition for an Iranian citizen may be approved as long as the Iranian is:

- Not normally a resident of Iran, **AND**
- Not working in a way that is connected to:
  - The Iranian government (excluding diplomatic and consular services),
  - An Iranian business,
  - An Iranian organization, or
  - Any person located in Iran.

[31 CFR 560.306(d)]

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## NAFTA Petitions

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**Introduction** VSC routinely receives L1 NAFTA petitions from POEs and PFIs in order for them to be updated into CLAIMS. These petitions have already been adjudicated and all the information on the petitions (including approval stamp) has been completed AND the beneficiaries have already entered the country.

---

**Where to File** The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or;
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

---

**Updating in CLAIMS/GUI** All approved NAFTA cases adjudicated at a Class A POE on the United States-Canada land border or PFI in Canada are forwarded to the Service Center within the same Service region for CLAIMS updating. The AST is responsible for the approval updating of these cases in CLAIMS. These files are routed directly from Data Entry to the AST.

If an approved NAFTA filing bearing the approval stamp and a bar code is received by an ISO and GUI does not show the approval notice as being sent, then a CFF should be prepared and the file placed in the CFF slot in the AST sort area.

The only time an ISO will need to take action on a NAFTA case is if the I-129L was not approved at the POE/PFI and was routed to the VSC with a memo recommending denial. The ISO would then prepare an Intent to Deny.

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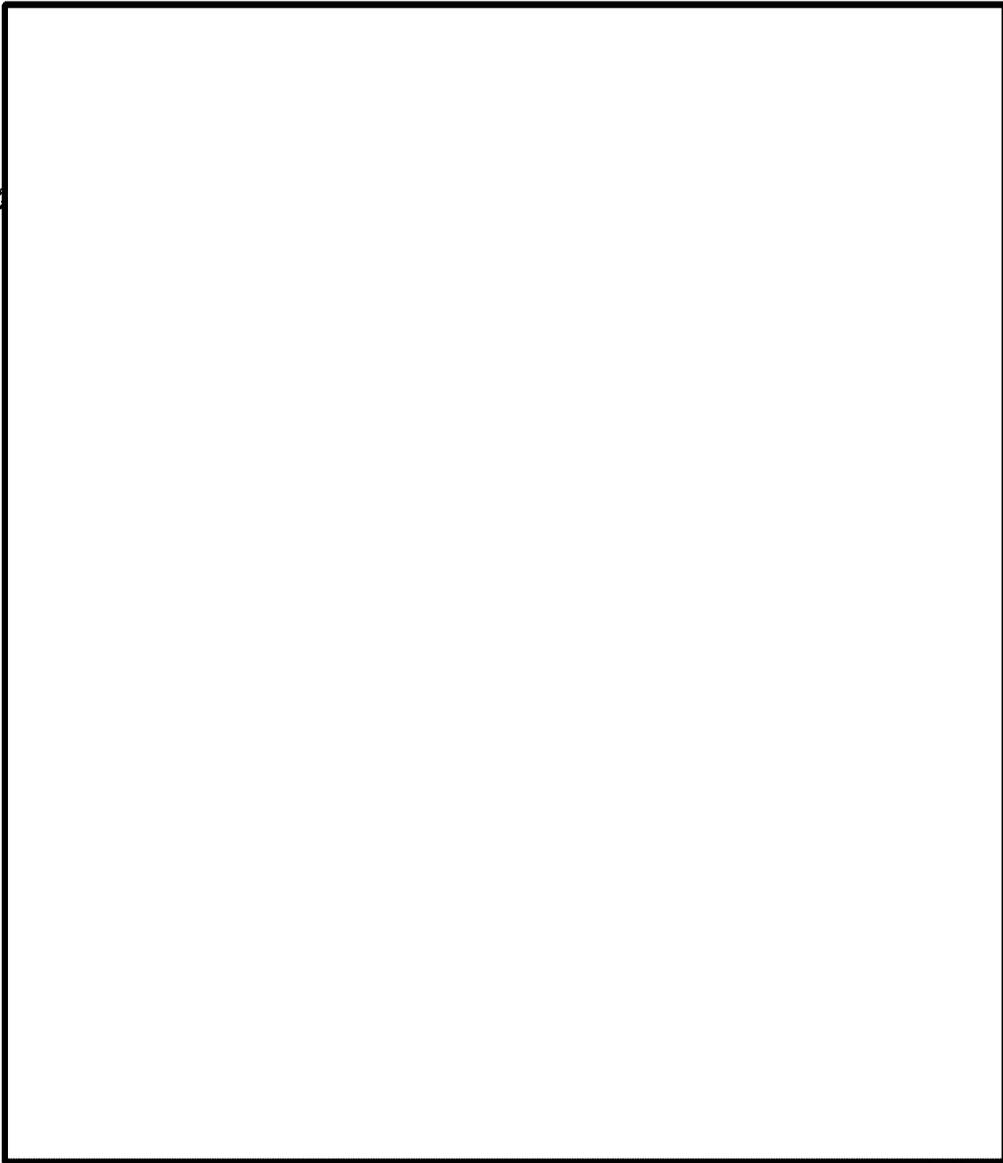
## Detecting L1 Fraud or Misrepresentation

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### Introduction

This section describes some of the fraud and misrepresentation indicators and approaches for L-1 petitions that might help reveal the presence fraud or misrepresentation in the record.

### Why is the L1 Classification an Attractive Vehicle for Benefits Fraud?



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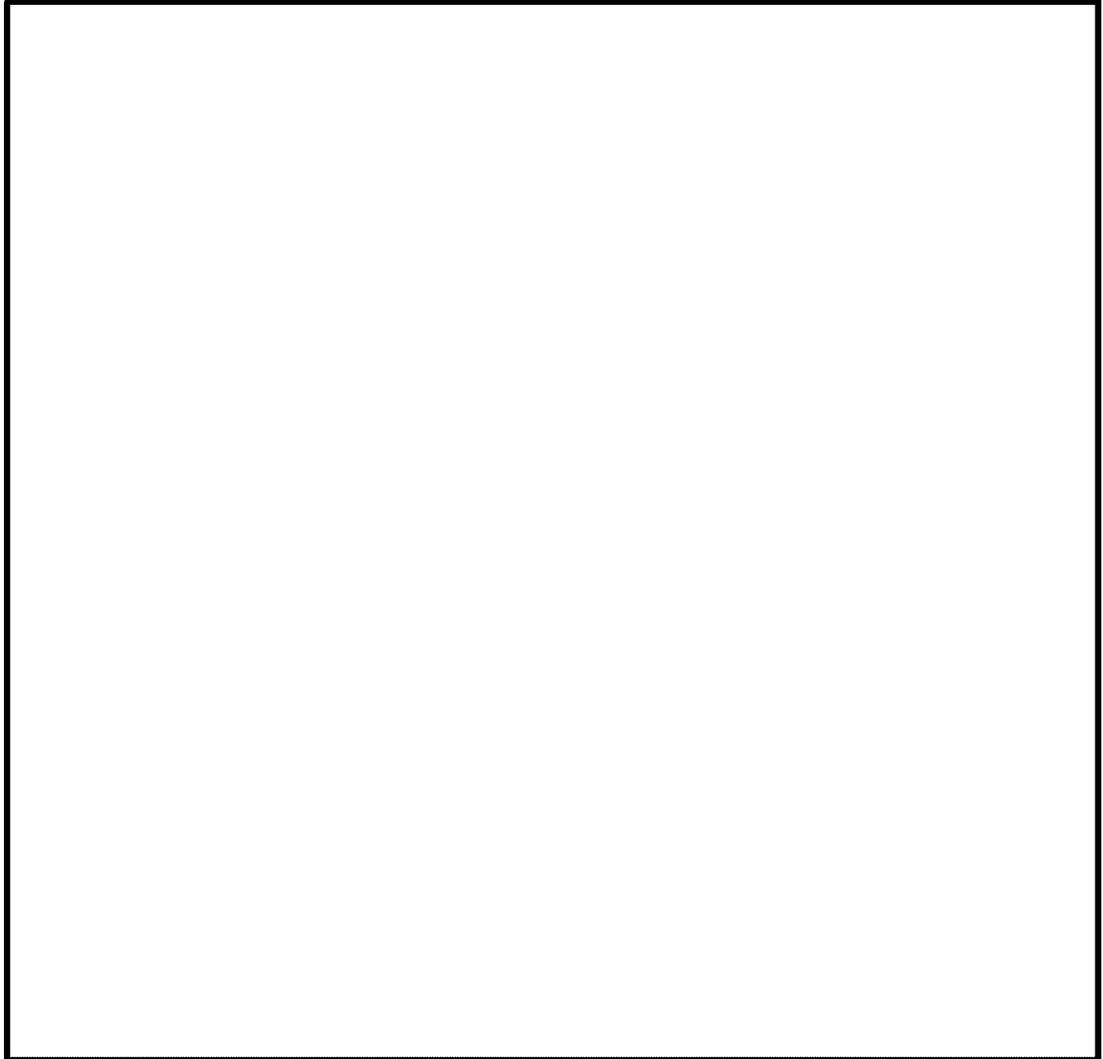
### Officer's Responsibility

## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Beneficiary**

Fraud and misrepresentation indicators relating to the beneficiary may include, but are not limited to:



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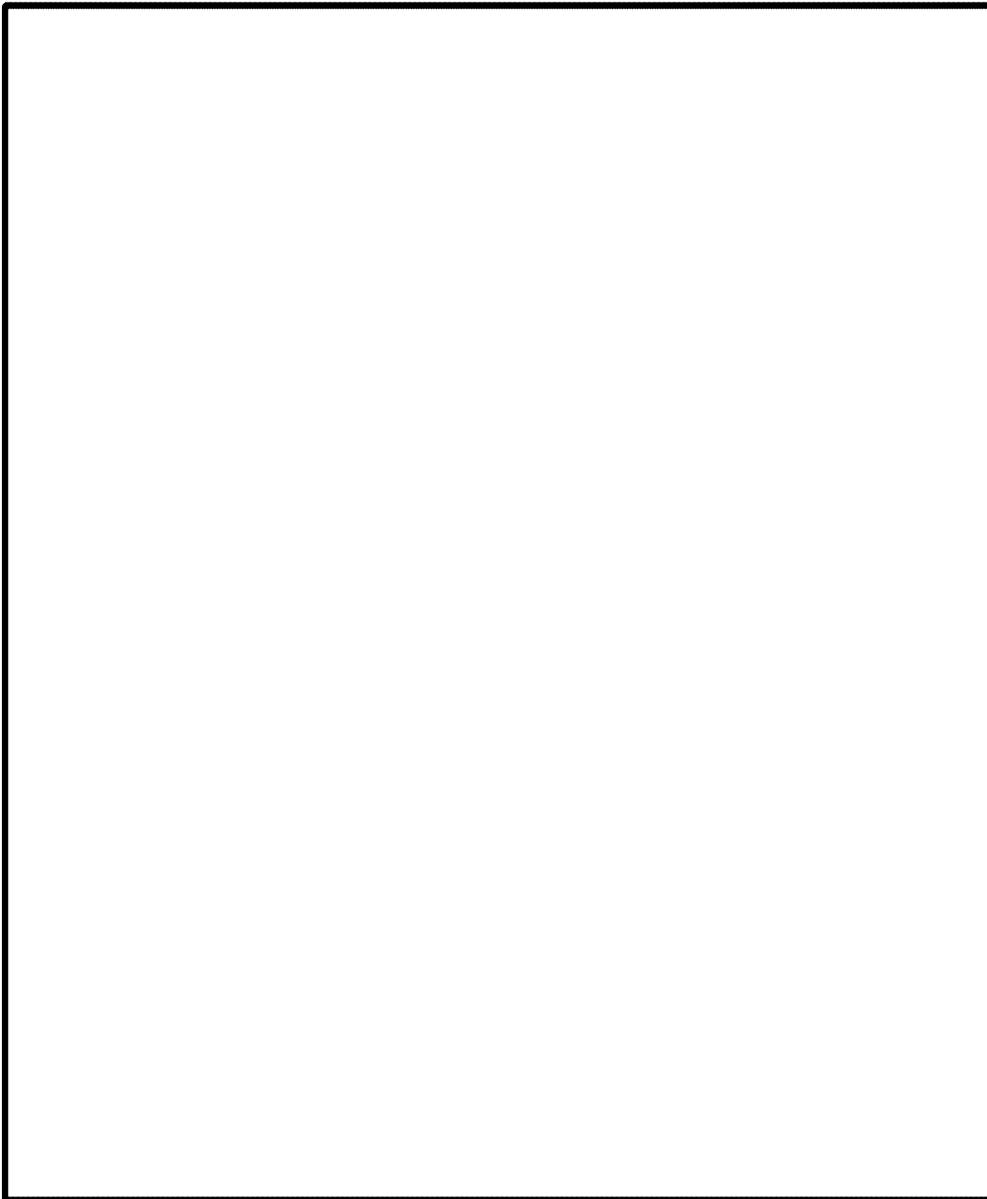
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## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
U.S or Foreign  
Business**

Fraud and Misrepresentation indicators relating to the U.S. or foreign business may include, but are not limited to:



(b)(7)(e)

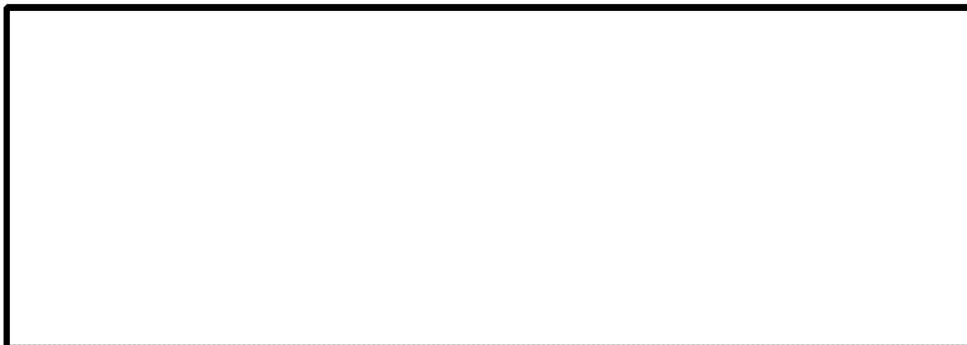
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## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Petitioner's  
Immigration  
History**

Fraud and misrepresentation indicators relating to the petitioner's immigration history may include, but are not limited to:



(b)(7)(e)

**Adjudicative  
Approaches**

There are a number of adjudicative approaches to take when there is a question of fraud or misrepresentation in the record.

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**Casebook**

**Fraud Database  
(Casebook)  
Definition**



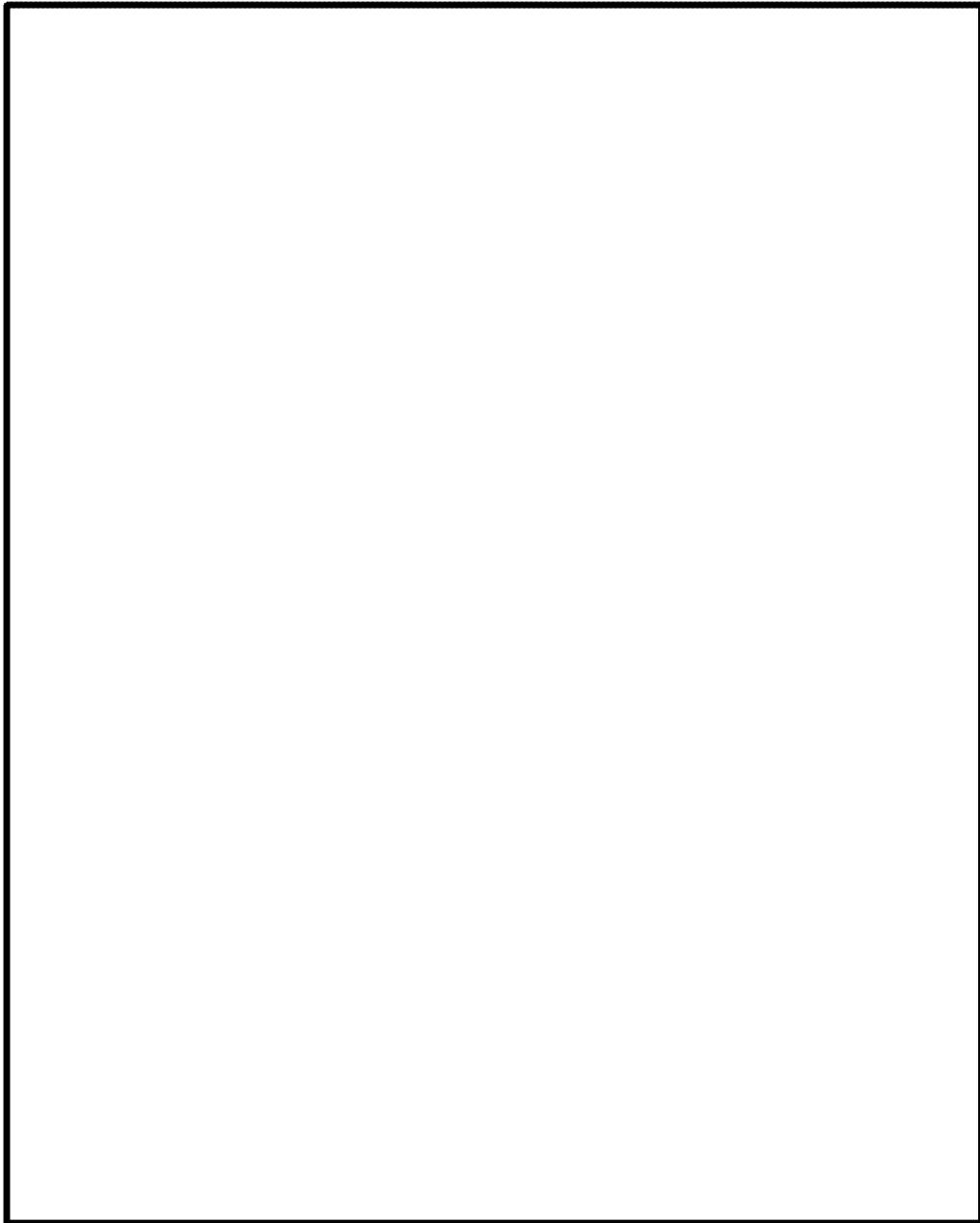
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**Casebook  
Query  
Requirements**

*Continued on next page*

**How to Access  
Casebook**

**How to Run a  
Query in  
Casebook**



**Systems Checks** There are several of electronic systems available to aid in the detection of fraud or misrepresentation including the following:

- GUI
- Mainframe CLAIMS
- SQ94/ADIS
- CIS

## Name Conventions for GUI, SQ94, ADIS and CIS

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**Petitioner's  
Name**

The petitioner's name should be entered exactly as it appears on the petition with the exception of the words "Inc., Ltd., LLC, PLC, or Corp". In addition, the words "International and Group" are usually abbreviated to "Intl and Gr".

If the petitioners name does not even bring up the petition that is being adjudicated, it might be helpful to wand in the receipt file number and see what conventions were used by Data Entry to enter the petition into GUI/CLAIMS.

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**Beneficiary's  
Name**

The beneficiary's name and date of birth should be entered exactly as it appears on the petition. However, keep in mind that some countries list the day of the month before the month, so June 8, 1999 may be listed either as 06/08/1999 or 08/06/1999. In some instances it may be wise to try it both ways.

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**Asian Names**

Asian first names may be listed in reverse order or the first name may or may not have a space in it. For example. Li Yu Wen may be Li Yu Wen, Liyu Wen, Yu Wen Li, or Yuwen Li.

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**Hispanic  
Names**

Hispanic names may or may not use the first or second last name. For example, Maria Lopez Garcia may be Maria Lopez Garcia, Maria Lopez or Maria Garcia.

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# Name Discrepancies

**Introduction** This section pertains to all I-129 petitions and I-539, I-765 and I-131 applications where there are discrepancies between the name the petitioner/applicant entered on the petition/application and the name shown on the applicant or beneficiary's passport and/or visa.

**Reconciling Name Discrepancies** Use the chart below to determine how to reconcile name discrepancies between the petition or application and a passport and/or visa.

**NOTES:**

- If a copy of the alien's passport or visa was not included with the filing, do not RFE for a copy of the passport or visa unless those documents are necessary to adjudicate the case.
- All name changes made in GUI and on an application or petition must be run in TECS Manifest.

Scenario	Resolution
<p>Visa and/or passport names are different than the Petition/Application name but it can be verified the individuals named are the same person.</p>	<p>Enter the visa and/or passport name in GUI and on the petition/application</p> <p><b>Example:</b>            GUI and petition/application show the alien's name is Sanchez, Juan. Passport shows the alien's name as Sanchez Diaz, Juan. Enter the passport name in GUI and on the petition/application</p>
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name different, and</li> <li>• Visa was issued <u>after</u> the passport</li> </ul>	<p>No changes necessary, visa was issued after the passport was issued.</p>
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name is different, and</li> <li>• Visa was issued <u>before</u> the passport</li> </ul>	<p>Change the name on the petition/application and GUI to match the passport.</p>

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## Name Discrepancies, Continued

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**Reconciling  
Name  
Discrepancies  
(continued)**

Scenario	Resolution
<ul style="list-style-type: none"><li>• Passport and petition/application names are the same,</li><li>• Visa name is different, and</li><li>• Visa was issued <u>after</u> the passport</li></ul>	Change the name on the petition/application and GUI to match the visa.
<ul style="list-style-type: none"><li>• Passport and petition/application names are the same,</li><li>• Visa name is different, and</li><li>• The passport was issued <u>after</u> the visa</li></ul>	Change the name on the petition/application and GUI to reflect the name on the passport.

**NOTE:** If the passport and visa show the alien has only one name, regardless of whether it is a given name or a family name, then:

- The name should be entered in the Last Name field in GUI, and
  - “No Name Given” should be entered in the First Name field in GUI
-

## National Systems

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### GUI

The GUI database can be searched by the name of the petitioner or by the beneficiary's name. In addition, it may be helpful to search by the name of the foreign entity as foreign petitioners may file L1 petitions.

GUI can identify the following information:

- The type and number of petitions and applications that have been filed,
  - Whether any other petitions or applications have been pending, and
  - Whether the petitioner or the beneficiary has had previous denials or revocations of petitions and applications.
- 

### Mainframe CLAIMS

Mainframe CLAIMS can be accessed through the National Systems and can provide the same information as GUI for all four Service Centers. In addition, it also provides information about petitions and applications filed at select district offices.

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### ADIS

Effective April 1, 2013, Officers are required to check the **Arrival Departure Information System (ADIS)** to confirm arrival and departure information. Officers are no longer required to check the TECS SQ94 system to confirm arrival and departure information.

Officers shall review Arrival/Departure information for all applicants/beneficiaries not more than 15 days prior to rendering a final decision on the following:

- Approvals and denials of a change of nonimmigrant status (i.e., Forms I-539 and Form I-129) and
- Denials only for extension of stay.

The file must include either a copy of the system printout or a notation indicating the date of the check or that there is no record of the applicant/beneficiary in the system. Screen prints should be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print.

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## National Systems, Continued

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**ADIS Access** ADIS can be accessed through the ECN Adjudications Home page on the right hand side of the page and provide the following information about the beneficiary's:

- Entries and departures from the United States
- Methods of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If a search by I-94 #, Passport # or Name/DOB does not produce a record, officer may still check SQ94 for a record.

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**SQ94** SQ94 can be accessed through the National Systems and can provide information about the beneficiary's:

- Entries and departures from the U.S.
- Method of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If SQ94 is used, a screen print of the query must be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print. The date of the SQ94 query must be within 15 days of the final adjudicative action.

If a search by I-94 # or Name and DOB does not produce a record, it may be helpful to search by the beneficiary's passport number. In addition, dated information may be archived in SQ94, so a search in the archive portion of SQ94 may produce a better result.

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## National Systems, Continued

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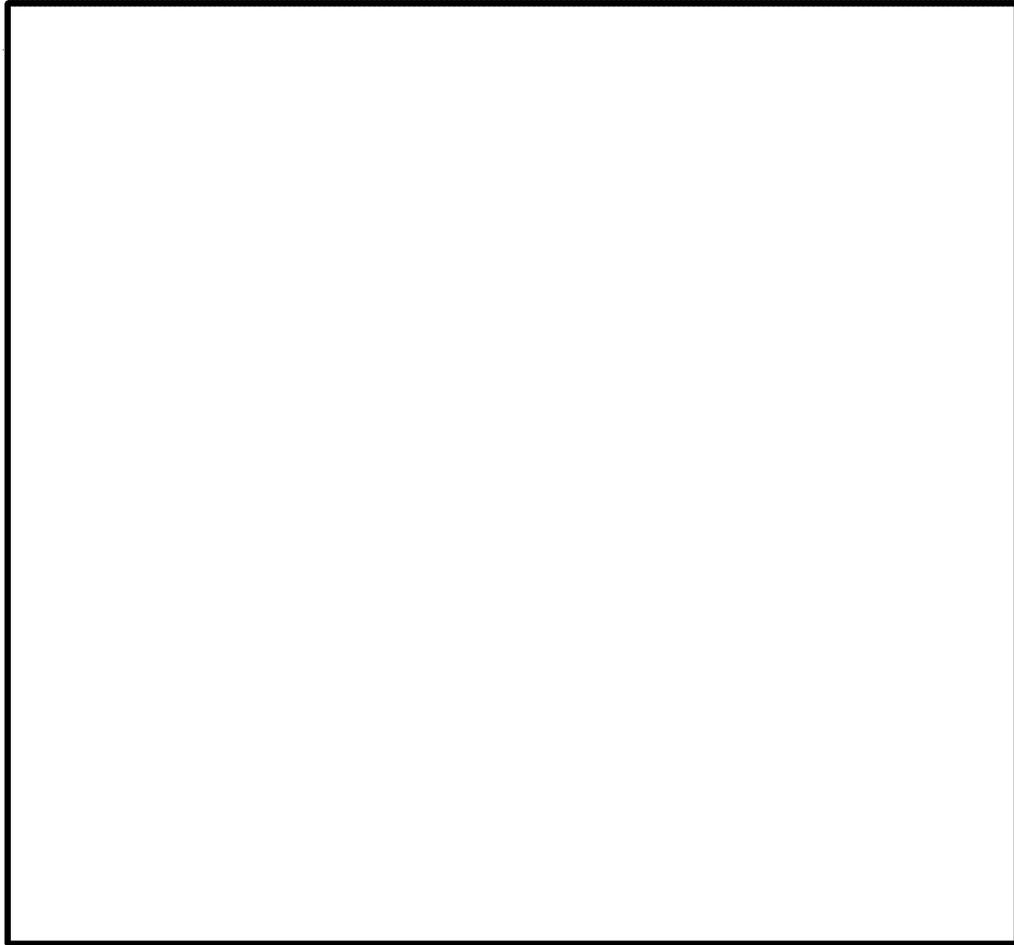
**CIS**

A CIS query is required if you discover that the beneficiary has an A-file number. CIS can be accessed through the National Systems and can provide information about the beneficiary's alien registration number and his or her pending or completed adjustment, asylum, or removal proceedings.

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**VIBE**

(b)(7)(e)



*Continued on next page*

## National Systems, Continued

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**VIBE**  
(continued)

If VIBE shows...	And Evidence in the Record...	Then...
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(b)(7)(e)



# I-129 L-1 Blanket Petition

## Overview

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**Introduction** Blanket L petitions are adjudicated based upon the same general principles used in adjudicating the qualifying relationship of individual L petitions. However, there are some differences. The following is a brief summary of blanket L petitions.

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**Who May File the Blanket L-1** The blanket L-1 procedure is intended for larger international organizations. Only entities involved in commercial trade or services may use the blanket petition. This means that noncommercial organizations, like churches, may not use the blanket petition.

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**Blanket Regulation** 8 CFR 214.2(l)(4)  
INA 214(c)(2)(A)

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**Appeal Rights** The denial of the Form I-129 Blanket petition is appealable to the AAO, just like the denial of any other L-1.

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## Qualifying Company Relationships

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**Introduction** A U.S. petitioner may file a blanket petition to receive continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations. The blanket petition is filed on Form I-129. When the Form I-129 is adjudicated to obtain approval of foreign and U.S. relationships, the adjudicator's only concern are the qualifying company relationships. No alien beneficiary is named on the Form I-129 blanket petition.

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**Petitioner Requirements**

- The petitioner and each of the entities included are engaged in commercial trade or services,
- The petitioner has an office in the United States that has been doing business for one year or more,
- The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates, **and**
- The petitioner and the other qualifying organizations have obtained approval of petitions for at least 10 "L" managers, executives, or specialized knowledge workers during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a U.S. work force of at least 1,000 employees.

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**Establish Ownership and Control of ALL Entities** The petitioner lists all the foreign entities and all of the U.S. entities that they want to have approved and establishes who has ownership and control of all of the entities. Only those entities meeting the definition of a qualifying organization can be approved.  
[See 8 CFR 214.2(l)(1)(ii)(G)]

If there is question about ownership and/or control for any of the petitioned entities issue an RFE for necessary documentation to help make a determination.

All approvable entities will be named on a list to be included with the released approval notice of the petition.

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**Approvals** If the petitioner meets the filing requirements and it is determined that there are qualifying entities, a list of all qualifying entities will be prepared. The lists will be sent with the released I-797 approval notice for the petition.

The approval notice means that it is permissible for any of the qualifying entities to petition to transfer an employee from any approved foreign entity to any approved U.S. entity.

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*Continued on next page*

## Qualifying Company Relationships, Continued

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### Extension of Blanket

A blanket extension may be filed six months prior to the expiration of the initial blanket on Form I-129.

**NOTE:** If the petitioner fails to file for the extension prior to the expiration of the initial blanket approval or if an extension request is denied, the petitioner and its qualifying organizations must wait three years to file another blanket. In the interim, individual petitions must be filed by these organizations for beneficiaries.

[I-129 Filing Instructions]

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### Blanket Extension Requirements

The documentation required to support the blanket extension include:

- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
    - Positions held during that period
    - The employing entity
    - The dates of initial admission and final departure, if applicable, of each beneficiary
  - A statement from the petitioner indicating whether it still meets the blanket criteria.
  - Documentation to support any changes in approved relationships or additional qualifying organizations.
-

## Approvals of L-1 Blanket Petitions

### Updating

When ...	Then ...
When approving a case, you must:	1. Complete the approval information blocks on the petition.
	2. Indicate on the petition the classification, LZ.
	3. Indicate the dates of approval/validity dates (either <b>three years (initial filing)</b> or <b>"INDEFINITELY" (extension)</b> ).
	4. Make a notation <b>"BLANKET PETITION"</b> in the block entitled <b>"PARTIAL APPROVAL."</b>
	5. Stamp the petition with your approval stamp and sign it.
	6. Forward the second copy of the LZ petition to the KCC along with a copy of the list of qualifying entities.

**NOTE:** Make a photocopy of the list of qualifying entities that the petitioner wishes to have on the blanket petition. This will be included with the approval notice mailing. Keep original copy of qualifying entities list in the file under the original petition.

If denying any of the qualifying entities on the list; place white out tape over the entities and photocopy the list. Notate in the **PARTIAL APPROVAL** block that some entities were deleted from the list.

### Validity Dates Overview

An initial blanket petition is approvable for three years. If amended blanket petitions are approved during this validity period, the validity period end date will be the same as the end date of the original approval. Blanket extension petitions may be filed six months prior to the expiration of the initial three year validity period. If the blanket extension is approved, the validity period will begin the day after the expiration of the initial approval to **"INDEFINITELY"**.

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## Approvals of L-1 Blanket Petitions, Continued

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**Validity Dates for Initial Admission**

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (if both the requested date and initial FROM date on the petition has passed)

**TO:**

- 1) the date listed on the petition or
- 2) the requested time (i.e., three years-from-date of approval)

---

**Validity Dates for Extension of Stay with no Changes/Amendments**

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (whichever is later)

**TO:**

- 1) the date listed on the prior approval notice if the prior approval is still within 3 year initial time period.
- 2) "INDEFINITELY"

---

**Validity Dates for Extension of Stay with Changes/Amendments**

**FROM:**

- 1) the date listed on the petition or
- 2) the date you approve the petition (whichever is later)

**TO:**

- 1) the date listed on the prior approval notice if prior approval is still within 3 year initial time period or
- 2) "INDEFINITELY" if prior approval was "INDEF"

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**Blanket Approval Notices**

ALL blanket approval notices will be a release so that the AST member can attach the list of qualifying entities to the blanket approval notice.

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**Routing Petition after Approval**

Following **APPROVAL**, the petition remains in the file and the file is placed on the shelf like any other approved nonimmigrant petition.

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## Beneficiaries of L-1 Blanket Petitions

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### Introduction

When one of the approved U.S. entities wants to employ a particular alien from an approved foreign entity, the U.S. entity completes a Form I-129S Nonimmigrant Petition Based on Blanket L Petition.

The information on the Form I-129S, and any supporting documents, must establish that the alien was employed abroad for the immediately prior year in a qualifying capacity, and must establish that the alien will be employed in a qualifying capacity in the United States.

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### Qualifying Capacity

For blanket L-1 purposes, a qualifying capacity is:

- 1) Managerial
- 2) Executive, or
- 3) Specialized knowledge professional

A specialized knowledge professional is what it appears to be, a specialized knowledge employee who is a professional.

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### Alien Abroad

The alien abroad uses the Form I-129S, with the Form I-797 approval notice for the approved Form I-129 blanket petition to apply for an L-1 visa at an **AMCON** or if **CANADIAN** at a **POE** or **PFI**.

---

### L-1 Beneficiary is in the US

If a blanket L-1 beneficiary is in the United States applying for an extension of stay, Form I-129 is required, **not** Form I-129S.

---

### Extension of Stay

For beneficiaries requesting an L-1 extension of stay, it is very similar to H-1B extensions of stay. The Form I-129 is used.

Remember that the time spent in the United States in H status is taken into consideration when you are deciding whether or not an L-1 has reached his/her maximum total stay.

- The **maximum stay** for a beneficiary in **L-1A** classification is **seven years**.
  - The **maximum stay** for a beneficiary in **L-1B** classification is **five years**.
- 

*Continued on next page*

## Beneficiaries of L-1 Blanket Petitions, Continued

### Processing I-129S Petitions

Though not common, the petitioner may file an individual I-129 petition for EOS and include an I-129S in the filing. The I-129S filing is to allow the beneficiary to move among the qualifying entities included in an approved Blanket petition.

Process the I-129S as follows:

<b>If ...</b>	<b>Then ...</b>
The individual I-129 petition is approved,	Remove the I-129S from the file.
	Stamp and annotate like the I-129.
	Place I-129S, loose, on non-record side of file with a note to mail with the approval.
	Place copy of approved I-129S on record side under the I-129 petition (may need to photocopy I-129S).
	Update CLAIMS/GUI as "Y" to AST.
	Complete appropriate ADJ worksheet indicating the AST: <ul style="list-style-type: none"> <li>• To release Approval Notice, and</li> <li>• That "Form I-129S must be mailed with the approval notice."</li> </ul>
The individual I-129 petition is denied,	No action required on I-129S.
	Leave I-129S on record side.

## Creating New Arrival-Departure Record (Form I-94)

**I-94 Not Issued** There will be times when the beneficiary of an I-129 seeking a change of status to L-1 was not issued an Arrival-Departure Record (Form I-94) upon his or her admission to the United States; e.g., a Canadian citizen admitted as a B-2 visitor. When granting a change of status to a beneficiary who was not issued an I-94 upon admission, you must issue a new I-94 to the beneficiary before an approval notice can be generated.

Follow the steps in the table below to create a new I-94. If you are unable to locate any information in ADIS, but there is evidence that the beneficiary made a lawful entry, such as:

- an admission stamp in the beneficiary's passport,
- an airline ticket,
- a boarding pass, or
- a check of crossing field in SQ11 in TECS.

Step	Action
1	Obtain a new I-94 card from Supply.
2	Discard the top and bottom sections of the new I-94 card.
3	Complete as much information in the middle section of the new I-94 card as possible. At the very minimum, indicate the beneficiary's full name, date of birth, and country of citizenship.
4	Stamp the new I-94 with a replacement I-94 stamp, on the back of the arrival record in the Itinerary/Comments field using security ink, and filling in the following fields on the stamp: <ul style="list-style-type: none"> <li>• "Admitted at:" Write the place of admission,</li> <li>• "On:" Write the date of admission,</li> <li>• "Until:" Write the date admitted to,</li> <li>• "Class:" Write the class of admission,</li> <li>• "This document prepared on" and "At:" Write the date you prepared the replacement I-94/VSC and your NFTS #.</li> <li>• "Last C/S Granted to Class" and "On:" Write new classification granted and date of COS was granted.</li> <li>• "Last E/S Granted to" and "On:" Write new ending date you granted the beneficiary and the date you approved the petition.</li> </ul>

*Continued on next page*

## Creating New Arrival-Departure Record (Form I-94), Continued

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### I-94 Not Issued (continued)

Step	Action
5	Notate the new I-94 number on the petition in Part 3, Item 2.
6	Forward the completed and stamped I-94 for entering into the TEC/NIIS System by: <ul style="list-style-type: none"><li>• Attaching the I-94 to an Adjudications Worksheet,</li><li>• Checking the "Other" block on the Worksheet,</li><li>• Writing "To NIIS" on the line next to "Other", and</li><li>• Placing on the "Mailroom-No Envelopes" shelf in FCU.</li></ul>
7	Enter the new I-94 number into the beneficiary screen in CLAIMS/GUI.

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# Approval Processing Procedures

## Validity Dates for Approval

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**Introduction** This section will outline the various time periods that a petition may be approved for, as well as the limitations of stay for L1 nonimmigrants.

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**Validity Dates** The following table describes the validity dates for L1 petitions.

<b>If the petition is an...</b>	<b>Then the petition may be approved for a period of time up to...</b>
Initial Filing	3 Years
* Initial Filing – New Office	1 Year
Extension Filing	2 Years

[See 8 CFR 214.2(l)(7)(i)(A)(2) and 8 CFR 214.2(l)(15)(ii)]

\* If the requested beginning date of employment has gone by, officers should grant a period of one full year from the date of approval for new office petitions, unless the period requested was for less than one year. In this scenario only the length of time requested would be granted from the date of approval.

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**Expired Dates** Guidance can be found for petitions with expired dates on the Business Division ECN page/Reference Materials/General/Expired Petitions Guidance 07022013. The guidance relates to pending cases that have never had a final decision, consular returns and appeals that have been affirmed by the AAO.

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## Validity Dates for Approval, Continued

### Starting and Ending Dates

Use the below table to determine the starting and ending validity dates of the L1 petition.

If...	Then starting validity date should be...	And ending validity date should be...
<ul style="list-style-type: none"> <li>• New employment, or</li> <li>• Initial L1A or L1B request (Consular notification)</li> </ul>	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed three years.
New Office L1A or L1B	Date of approval or date requested, whichever is later.	Date requested or one full year from starting date.
Change of Status	Date of approval or date requested, whichever is later.	Date requested on petition.
Extension of Stay	Day after expiration of previously approved L1 for that company, or date requested, whichever is earlier.	Date requested on petition, not to exceed two years.
Extension of Stay where there has been a change in the employment conditions	Date of approval or date requested, whichever is later.*	Date requested on petition, not to exceed two years.
Amended petitions where there was a USCIS error with the original notice	Same start date as initially approved petition.	Same expiration date as initially approved petition.
Amended petitions where there has been a change in the employment conditions	Date of approval, date requested, whichever is later.*	Same expiration date as initially approved petition, if no additional time is requested. Date requested on petition, not to exceed two years, if additional time is requested.

\*If the beneficiary's status has expired or will expire prior to the date that you selected as the "from" date, **AND** the petition was filed by the same employer, and then backdate the validity date to the day after the beneficiary's status expires to eliminate gaps. The petition must be timely filed.

# Approval Processing

## Approval Phrases

Use the chart below to determine the appropriate phrase to use when approving an L petition.

CLAIMS #	Approval Phrase	Purpose
1	Send to selected consulate	Petitioner has requested consulate to be notified of the approval.
2	Send to selected consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
3	Workers Visa Exempt-to POE	<ul style="list-style-type: none"> <li>• Beneficiary is not required to have a visa per [8CFR Section 212.1], and</li> <li>• Petitioner has requested POE or PFI be notified of the approval.</li> </ul>
4	Send to different consulate	The consulate requested by the petitioner does not issue the requested visa.
5	To different consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
9	Class and COS approved-Other	<ul style="list-style-type: none"> <li>• Petitioner has requested a change of status for the beneficiary and</li> <li>• Both the classification and change of status are approved.</li> </ul>
12	Class approved; COS denied; consulate/sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the change of status.</p>
13	Class approved; COS denied; POE notified; sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval may be sent together with the notice denying the change of status.</p>

*Continued on next page*

## Approval Processing, Continued

**Approval Phrases (continued)**

CLAIMS #	Approval Phrase	Purpose
16	Class and EOS approved-Other	<ul style="list-style-type: none"> <li>• Has requested an extension of stay for the beneficiary (same/same and change of employer requests), and</li> <li>• Both the classification and EOS are approved.</li> </ul>
17	Class approved-Extension denied; Send to consulate	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the extension of stay.</p>
18	Class approved; EOS denied; send to POE	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the extension of stay.</p>
19	Concurrent employment approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is in the United States in valid nonimmigrant status, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>

*Continued on next page*

## Approval Processing, Continued

Approval  
Phrases  
(continued)  
(continued)

CLAIMS #	Approval Phrase	Purpose
20	Change in employment conditions approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is physically present in the United States at the time of filing in a valid nonimmigrant status, <u>and</u></li> <li>• Petition is granting approval for work that has changed with the same employer since prior authorization; or</li> </ul> <p>Amended petitions when:</p> <ul style="list-style-type: none"> <li>• there is no request for additional time, but</li> <li>• there are changes in the employment, such as location, title, etc.</li> </ul> <p><b>NOTE:</b> Do not use this approval phrase when beneficiary will seek consular processing or when petitioner is filing to correct a service error.</p>
22	Concurrent employment approved (abroad)	<ul style="list-style-type: none"> <li>• Beneficiary is outside the United States, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>
24	Workers Visa Exempt-POE notified by Fax/Phone	<p>Beneficiary is not required to have a Visa per [8 CFR Section 212.1]</p> <p><b>NOTE:</b> We no longer fax to the POE. Duplicates are forwarded to the KCC priority overnight.</p>

*Continued on next page*

## Approval Processing, Continued

### Petition Annotations

Refer to the table below for proper annotations to be made on the Form I-129 petition and on any duplicate copy provided.

Item	Action
Passport name/visa name vs. Name on petition	The beneficiary's name on the petition should be exactly the same as the name appears on the beneficiary's passport/visa depending which was issued more recently. If it is not, you must change the name on the petition and in GUI to reflect the beneficiary's name as it appears on the passport/visa. All names should be run in TECS.
TECS and NSEERS	Perform all necessary TECS, NSEERS, and ADIS/SQ94 checks.
Annotate Classification	<ul style="list-style-type: none"> <li>• "L1A" for executive or manager.</li> <li>• "L1B" for Specialized Knowledge.</li> </ul>
Number employees	Always "1"
Validity Dates	Enter the validity dates. If the validity dates must be limited for any reasons, annotate the reasons in the "Remarks" block on the face of the petition. See <i>Validity Dates for Approval</i> section
Class Approved	Check "Classification Approved" box for all approvals.
Consulate/POE/PFI Notified	If notifying a consulate/POE/PFI: <ul style="list-style-type: none"> <li>• Check "Consulate/POE/PFI Notified" box,</li> <li>• Circle or underline which is being notified, i.e., either the consulate, the POE, or the PFI, and</li> <li>• Write the name of the consulate/POE/PFI on the blank line.</li> </ul>
Extension Granted	Check box if granting an extension of stay.
COS/Extension Granted	Check box if granting a change in classification and an extension of the beneficiary's stay.
Partial Approval	Annotate the partial approval block when denying COS or EOS.
Action Block	Stamp and sign in the action block

Continued on next page

## Approval Processing, Continued

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### Petition Annotations (continued)

**NOTE:** While it is recommended that the job code or approval phrase be annotated on the face of the petition to aid officers in updating, it is not required that the job code or approval phrase be written on the petition. Only GUI must reflect the correct job code and approval phrase. However, it is helpful to have such information on the petition for customer inquiries.

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### Duplicate Petition Copies

All duplicate copies of the I-129 petition and RFE responses, provided by the petitioner, must be sent to the Kentucky Consular Center (KCC) for entry into PIMS.

**NOTE:** You are not required to make a second copy for the KCC if the petitioner has not provided one.

Follow the steps below when forwarding duplicate petitions to the KCC.

Step	Action
1	Attach duplicate RFE response to duplicate petition. If a duplicate RFE response is not provided, attach a copy of the sent RFE to the duplicate petition.
2	Ensure that the EAC# is also on the face of the duplicate being sent to the KCC. Preferably, the EAC barcode should be placed in the lower, right-hand corner. If not, write the number on the duplicate copy.
3	Ensure that any required annotations are included on the duplicate copy, as directed in the <i>Petition Annotations Block</i> above.
4	Stamp and sign the duplicate copy.
5	Place the duplicate petition on the <b>"I-129 Approved KCC"</b> shelf in FCU.

### Expedite Requests

To forward duplicate petitions to the KCC for expedite requests, place the duplicate approved petition on the **"I-129 Priority Overnight"** shelf in FCU. The petition will be sent to the KCC via overnight delivery.

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## Processing Procedures (RFE/Denial/Intent)

### Request for Evidence

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**Introduction** There is no specific regulatory guidance for requests for evidence to support L1 petitions. Therefore, the guidance provided by 8 CFR 103 applies.

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**Officer's Responsibility** A request for evidence must be made when the initial review of the record does not establish that all of the eligibility requirements have been met. In addition, a request for additional evidence should be made when:

- The record contains evidence of material fraud or misrepresentation, or
- The officer has knowledge of previous mala fide petitions from the same petitioner.

---

**Contents of an Acceptable Request for Evidence** The request for evidence should:

- Identify each of the areas of eligibility that have not been met by the petitioner, and
- Discuss what is deficient with any evidence already provided, and
- Provide options as evidence that the petitioner could provide to meet the area of eligibility.

---

**Adjudication Tip** By requesting evidence to meet each area of eligibility in the same order each time a request for evidence is written, the officer can immediately identify the areas of eligibility that must be reviewed upon the response from the petitioner.

Areas of eligibility that are not mentioned in the request for evidence need not be re-adjudicated at the time of the submission of additional evidence.

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*Continued on next page*

## Request for Evidence, Continued

**Standard Call-Ups** The Request for Evidence (RFE) standards are contained within the 4000-4999 series of AutoText. They are available in MSWord.

Officers must use Correspondence Generator to prepare and send RFEs. The folders containing I-129L general call-ups and I-129L specific call-ups will appear for an RFE.

As of March 1, 2013, Officers must use the National RFE templates.

Follow the steps below to prepare and process an RFE in CG:

Step	Action
1	Access "Correspondence Generator."
2	Wand or enter the receipt number of the case.
3	Select "RFE"
4	Select initial, additional, or initial and additional.
5	Compose the RFE
6	Print a copy of the RFE and place on the record side
7	Place file on the shelf labeled "EB T/O Shelf" in FCU.

NOTE: Refer to the Correspondence Generator User Guide for more information.

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## Intent to Deny

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### Introduction

This section will discuss the regulatory guidance provided for adverse decisions on L1 petitions as specified by the 8 CFR 214.2(l) regulations.

Where there is no specific regulatory provision, 8 CFR 103 provisions apply.

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### Notice of Intent to Deny

When an adverse decision is proposed on the basis of the evidence submitted by the petitioner or other information available to the Service, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial.

The petitioner may inspect and rebut the evidence and will be granted 30 days from the date of the notice in which to do so (+ 3 days if by mail). All relevant rebuttal material will be considered in making a final decision.

[See 8 CFR 214.2(l)(8)(I)]

---

### Contents of Intent to Deny

The notice of intent to deny should contain a:

- Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met,
  - Description of the specific reasons for the Service's determination that the areas of eligibility have not been met, and
  - Discussion of the most persuasive evidence that could be submitted to overcome the reasons for denial.
-

## Denial

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### General

If the petition is denied, the Service will notify the petitioner of its decision within 30 days after the date a completed petition has been filed of:

- The denial,
- The reasons for the denial, and
- The right to appeal the denial.

[See 8 CFR 214.2(l)(8)(ii)]

The denial order should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met.

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### Denial of EOS/COS

In addition to requesting the classification of the beneficiary as an L1 beneficiary, petitioners frequently request an extension of stay or a change of status on behalf of their L1 beneficiaries.

A petition may be approved, but the evidence of record may reveal that the beneficiary is ineligible to extend or change his or her nonimmigrant status. In addition, the petition itself may be denied. In these instances, a separate denial notice must be prepared that addresses the ineligibility of the beneficiary for the requested change or extension of stay.

However, if the petition is to be approved, but the change or extension of status is to be denied solely due to the prior expiration of the beneficiary's status, GUI contains several modified approval notices that inform the petitioner that the petition is approved, but the requested change or extension of stay is denied. In this instance, the modified approval phrase can be used and a separate denial order is not needed.

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## Intent to Revoke and Revocation

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**Revocations** The director may revoke a petition at any time, even after the expiration of a petition. [See 8 CFR 214.2(l)(9)(i)]

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**Automatic Revocations** The approval of any petition is automatically revoked if the petitioner withdraws the petition.  
[See 8 214.2(l)(9)(ii)]

Automatic revocations may not be appealed. [See 8 CFR 214.2(l)(10)(ii)]

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**Revocation on Notice** The director shall send to the petitioner a notice of intent to revoke the petition if he or she finds that:

- One or more entities are no longer qualifying organizations;
- The beneficiary is no longer eligible under section 101(a)(L) of the Act;
- A qualifying organization(s) violated requirements of section 101(a)(L) of the act and 8 CFR 214.2(l);
- The statement of facts contained in the petition was not true and correct, or;
- Approval of the petition involved gross error.

[See 8 CFR 214.2(l)(9)(iii)(A)]

The director shall consider all relevant evidence in deciding whether the petition should be revoked. [See 8 CFR 214.2(l)(9)(iii)(B)]

---

**Contents of Intent to Revoke** The notice of intent to revoke shall contain:

- A detailed statement of the grounds for the revocation, and;
- The time period allowed for the petitioner's rebuttal (30 days + 3 if by mail).

**NOTE:** As with intents to deny, an intent to revoke notice should identify the most persuasive evidence that could be submitted to overcome the reasons for revocation. Be sure to include the specific reason for the Intent to Revoke.

[See 8 CFR 214.2(l)(9)(iii)]

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**Status of Beneficiaries** If a petition is revoked, the beneficiary is required to leave the United States, unless the beneficiary has obtained other work authorization from the Service.

[See 8 CFR 214.2(l)(9)(iv)]

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## Updating Cases

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**GUI Updating** Refer to the GUI Adjudication Updating Guide for instructions on updating approvals, RFEs, intents, denials, relocates, etc., in GUI

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## Appendices

### Appendix A - References

**References  
Used to Create  
SOP**

This table lists the references that were used in the creation of this SOP

Reference	Issue
Section 101(a)(15)(L) of the Act	Manager/Executive Statutes
Section 214(c)(2)(B)	Specialized Knowledge Statute
8 CFR 214.2(l)	L1 Regulations
Interpretation of Specialized Knowledge Memorandum, Dated 3/9/94	HQ Guidance on Specialized Knowledge
<i>Matter of M--</i> 8 I&N Dec. 24	Beneficiary is sole owner.
<i>Matter of Raulin</i> 13 I&N Dec. 618	Executive Secretary; Specialized Knowledge; Approved
<i>Matter of Schick</i> 13 I&N Dec. 647	Contractual relationship between companies does not qualify for L-1 purposes
<i>Matter of Leblanc</i> 13 I&N Dec. 816	New Office
<i>Matter of Continental Grain Co.</i> 14 I&N Dec. 140	Interruption in required year of continuous employment is ok sometimes.
<i>Matter of Pozzoli</i> 14 I&N Dec. 569	L-1 alien will be paid by the foreign company.
<i>Matter of Del Mar Ben, Inc.</i> 15 I&N Dec. 5	Personal understanding between presidents of the foreign and U.S. companies, plus U.S. company's ownership of a little stock in foreign company is not satisfactory for L-1 purposes.
<i>Matter of Chartier</i> 16 I&N Dec. 284	Requirement for existence of foreign entity while L-1 alien is in the United States.
<i>Matter of Michelin Tire Corp.</i> 17 I&N Dec. 248	Beneficiary must have the full one year of continuous experience before the L-1 petition is filed; Specialized Knowledge
<i>Matter of Aphrodite Investments</i> 17 I&N Dec. 530	Owner of a corporation can be an L-1 beneficiary, as long as he is employed.

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## Appendix A - References, Continued

Reference	Issue
<i>Matter of Penner</i> 18 I&N Dec. 49	Specialized Knowledge; gas and oil drilling rig crews. Need for U.S. entity as employer.
<i>Matter of Colley, et al</i> 18 I&N Dec. 117	Specialized Knowledge; aerial survey pilot; aerial photographer.
<i>Matter of Hughes</i> 18 I&N Dec. 289	De facto control; de jure control; affiliates; subsidiaries; ownership & control.
<i>Matter of Kloeti</i> 18 I&N Dec. 295	The one year of qualifying experience must be acquired entirely outside the United States.
<i>Matter of Siemens Medical Systems</i> 19 I&N Dec. 362	50-50 joint venture reasoning; negative control, etc.
<i>Matter of Church of Scientology</i> 19 I&N Dec. 593	Churches may use L-1 class if they meet L-1 criteria
<i>Matter of Safetran</i> Interim Dec. #3108	Time in H status counts toward maximum stay in L status

## Previous Revisions

### Revision History

Revision #	Date	Subject	Pages
25	3/29/13	Revised location of Revisions document.	5
		Revised <i>Required Evidence</i> block to indicate that evidence must show that beneficiary has been employed by a qualifying organization for one continuous year within the three years immediately preceding the filing of the petition.	10
		Added relative section of 8 CFR and clarified the use of "professional" in L1B Introduction.	48
26	7/16/13	Clarified location of prior revisions.	5
		Deleted link to list of banned employers and updated location description for this information on the ECN.	10
		Deleted "Additional Fee for Certain L-1 Petitions" section.	11
		Added "Border Security Fee" section.	
		Added "Determining Number of U.S. Employees" and "Who Can Pay the Fees" sections.	12
		Revised "Requests for Fraud and/or Border Security Fees" section.	
		Clarified that the 1 in 3 years of qualifying foreign employment must have been achieved before the petition filing date.	13
		Added reference source to Direction for I-129 Petition.	15
		Added location of Outsourcing information.	18
		Revised number of stockholders to 100	30
		Added description of ineligible corporations.	
		Added IRS definition of U.S. resident.	
		Added "that not all authorized shares need to have been issued."	33
		Clarified that stock certificates alone do not establish ownership and control.	34
		Clarified definition of "Managerial Capacity"	39
		Clarified definition of "Executive Capacity."	40
		Added that "hybrid executive/managers" do not qualify.	
		Deleted "persuasively."	45

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## Previous Revisions, Continued

Revision #	Date	Subject	Pages
		Deleted "NOTE: That specialized knowledge professional definitions apply to foreign employment."	46
		Deleted reference to Appendix to access Memos.	
		Added "may be" to sufficient evidence statement.	50
		Added <i>Matter of Brantigan</i>	51
		Clarified that there are sections of certain cites that are not to be used regarding L-1B correspondence.	52
		Clarified that the 1 in 3 years qualifying foreign employment must have been achieved before the filing date of the petition.	55
		Clarified when the foreign employment must be in the same capacity as the proposed U.S. employment.	
		Added "qualifying" to the organization abroad.	59
		Deleted "persuasive" and added "sufficient."	71
		Clarified that "hand carried" investments may be an indicator that the foreign entity may not exist.	72
		Clarified that petitioners must continue to meet all L1 eligibility requirements for New Office extensions.	74
		Added that no SISO authorization is needed for extension RFEs for beneficiaries who had entered the United States under a Blanket petition.	77
		Clarified limitations for changing from L-1B to L-1A.	80
		Replaced "a letter of denial" with "an Intent to Deny."	84
		Deleted "convincing" from Officer's Responsibility.	85
		Added "ADIS" in Systems Checks.	88
		Added "ADIS" in Name Conventions.	89
		Added requirements for using ADIS.	92-93
		Clarified when and how SQ94 is used.	93
		Added reference to "VIBE Qualifying Relationship Worksheet" and clarified VIBE drop-off location.	94-95
		Added reference to "VIBE Qualifying Relationship Worksheet" and clarified VIBE drop-off location.	95
		Clarified when to issue an RFE for VIBE concerns.	
		Added reference source to I-129 Filing Instructions.	98-99
		Changed "three" months to "six" months.	98

Continued on next page

## Previous Revisions, Continued

Revision #	Date	Subject	Pages
		Deleted reference to COS (Change of Status) and Added Expired Dates block.	102
		List Approval Phrases and when they should be used.	104-106
		Clarified which name should appear when passport/visa/petition names conflict.	107
		Deleted obsolete instructions for Consular/POE/PFI notifications and added current directions.	108
		Added that Officers must use National RFE templates.	110
		Deleted APPENDIX B: Corporate Status Websites.	117
		Deleted APPENDIX C: Memos.	
		Deleted examples and scenarios.	Various locations throughout SOP
		Made Plain Language changes	Various locations throughout SOP
27	1/9/14	Added section concerning not using Pre-IMMACT'90 Precedent Decisions.	51-52
		Revised definition of "New Office."	67
		Added Iranian Sanctions section.	83
		Added Casebook guidance.	88-89
		Revised VIBE directions.	95-96
		Added directions for second KCC copy for Blanket L approvals.	100
		Added requirement to annotate validity date limitations in "Remarks" block.	109
		Replaced "IBIS" with "TECS."	Various locations

*Continued on next page*

## Previous Revisions, Continued

Revision #	Date	Subject	Pages	
28	5/12/2014	Clarified New Office definition.	66	
		Clarified unanticipated circumstances for New Office extensions.	73	
		Added "General Processing" header and "L-1 Process for LPRs" section.	74	
		Added "Creating New Arrival-Departure Record (Form I-94) section.	103-104	
		Added clarification regarding the "Starting and Ending dates" for approved petitions.	106	
		Changed "Clerical" to "Adjudication Support Team (AST)."	Various locations	
Revision #	Date	Subject	Pages	KM #
29	7/1/14	Expansion and clarification on Blanket LZ description and processing.	97, 100-101	1813
30	9/17/14	Revised "Same/Same" RFE section.	76	1820
31	10/29/14	Revised VIBE instructions.	95	2244, 2245
		Clarified <i>Validity Dates for Extension of Stay With No changes/Amendments</i> section.	101	
		Revised CLAIMS numbers for Approval Phrases to reflect GUI changes.		
32	11/14/14	Added <i>Processing I-129S Petitions</i> section.	103	2291
33	11/25/14	Changed number of S Corp shareholders from 35 to 100.	28	2035



# U.S. Citizenship and Immigration Services

# BLANKET L-1 PETITION PROCESS



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# Blanket Petition Authority

INA § 214(c)(2)(A) is the statutory authority for blanket petitions.



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# Blanket Petitions

In order to bring a qualified L-1 alien into the United States under the L Blanket Petition process, two steps must occur:

- (1) The Petitioner must file the Form I-129 and L Supplement requesting Blanket Petition (LZ) Approval.
- (2) With a currently valid, approved LZ petition, the Petitioner may file Form I-129S on behalf of an employee in order to transfer him/her to the United States as an L-1 nonimmigrant.

NOTE: The approved LZ petition has established a qualifying relationship between the petitioner and foreign entities.



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# Filing an LZ Petition

A U.S. or foreign organization may file an I-129 requesting approval of an LZ petition on behalf of itself and its parent, branches, subsidiaries, and affiliated companies.

Officers should review Question 3 on Page 20 of the Form I-129 (the first page of the L Supplement) to determine if the Petitioner is seeking the LZ nonimmigrant classification.



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# Filing an LZ Petition, *continued...*

The LZ petition must include a list of all the organizations eligible to transfer L-1 workers under the blanket petition to include documentation establishing the qualifying relationships of the organizations as well as establishing that they are doing business.

The Petitioner will not submit evidence pertaining to a specific beneficiary as they will not be seeking classification of an employee as an L-1 nonimmigrant with the filing of an LZ petition.



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# Who May Use the Blanket Process

8 CFR § 214.2(1)(4)

A petitioner which meets the following requirements may file an LZ petition:

(A) The petitioner and each of those entities listed are engaged in commercial trade or services; AND

(B) The petitioner has an office in the United States that has been doing business for one year or more; AND

(C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; AND



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# Who May Use the Blanket Process,

*continued...*

(D) The petitioner and the other qualifying organizations have:

(1) obtained approval of at least 10 L-1 petitions during the previous 12 months; OR

(2) have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; OR

(3) have a United States work force of at least 1,000 employees.



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# LZ Petition Validity

An LZ petition to qualify a company as a blanket Petitioner (with no beneficiary listed) may be approved for an initial period of three years. A subsequent petition for extension may be approved indefinitely if all extension requirements are met.

See 8 CFR § 214.2(l)(7)(i)(B)  
and 8 CFR 214.2(l)(14)(iii)(A)

The LZ petition may be approved in part or in whole. You may approve some of the entities and deny others.

See 8 CFR § 214.2(l)(7)(i)(B)(3)



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# Blanket Extensions

- A blanket extension may be filed six months prior to the expiration of the initial blanket of Form I-129
- An extension must be filed in timely fashion or the company's LZ petition status will become invalid, and the Petitioner must then wait three years to file a new initial LZ petition.

See 8 CFR § 214.2(l)(14)(iii)(B)



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# Blanket Extension Requirements

- The documentation required to support the blanket extension include:
  - A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
    - Positions held during that period
    - The employing entity
    - The dates of initial admission and final departure, if applicable, of each beneficiary
  - A statement from the petitioner indicating whether it still meets the blanket criteria.



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# Blanket Extension Requirements,

*continued...*

- Documentation to support any changes in approved relationships or additional qualifying organizations.
- Petitioner must file an amended petition with fee if:
  - There are changes in approved relationships.
  - There are additional qualifying organizations.
- An amended petition may only be approved for the validity period of the petition it amends.
- A petition for an indefinite extension of a blanket petition that also contains amendments may be approved indefinitely.

See 8 CFR § 214.2(I)(7)(i)(C)



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# Approving an LZ Petition

When approving a case, you **must**:

- Complete the approval information blocks on the petition.
- Indicate on the petition the classification (which is **LZ**).
- Indicate the dates of approval/validity dates (which will either be **three years** from the date of approval (for an initial) or **“INDEFINITELY”** (for an extension)).
- Make a notation **“BLANKET PETITION”** in the block entitled **“PARTIAL APPROVAL.”**



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# Filing an I-129S for the Beneficiary

See 8 CFR § 214.2(l)(4)(ii)

- A U.S. Petitioner listed on an LZ petition approval notice may file a Form I-129S on behalf of an employee.
- The Petitioner bears the burden of establishing:
  - (1) that the beneficiary meets the 1 in 3 rule and,
  - (2) that the beneficiary will be employed in the United States in a managerial or executive capacity or as a specialized knowledge *Professional*.



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# Specialized Knowledge *Professional*

- INA § 101(a)(32) provides that the term “profession” includes but is not limited to “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”
- “Profession,” as defined by section 101(a)(32) of the Act, contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor.

see *Matter of Sea*, 18 I&N Dec. 817



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# Specialized Knowledge *Professional*,

*continued...*

- In order to be considered a professional, the alien must hold a U.S. bachelor's degree or equivalent (may include a work experience evaluation) and be working in a position that normally requires a minimum of a bachelor's degree.



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# Notes about the Form I-129S

- There is no filing fee required. However, the Petitioner must submit the \$500 fraud fee and the \$2,250 P.L. 111-230 fee if required.
- The Petitioner does not need to establish that they are a qualifying organization as this has already been established with the approval of the LZ petition. Instead, the Petitioner needs to submit a copy of the LZ approval notice with the I-129S filing documenting that the Petitioner is listed on the LZ approval notice.



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# I-129S Filing Options

The U.S. Petitioner may file the I-129S with:

- (a) DOS – If the beneficiary is abroad and requires a visa to seek admission to the United States, the I-129S should be submitted directly to the Consulate or Embassy with the beneficiary's L-1 visa application. If approved, the beneficiary may use the L-1 visa and apply for admission to the United States.

See 8 CFR § 214.2(l)(5)



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# I-129S Filing Options, *continued...*

- (b) USCIS – If the beneficiary is a visa exempt alien (Canadian citizens and certain aliens resident in the Caribbean) who is outside the United States, the I-129S may be filed with the appropriate USCIS Service Center. If approved, the alien may apply for admission to the United States with the approval notice. [Aliens currently present in the United States may not use Form I-129S to COS or EOS or amend a previously approved I-129S.]

See 8 CFR § 214.2(l)(5)(C)



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# I-129S Filing Options, *continued...*

- (c) CBP at a Port of Entry (POE) on the Canadian-U.S. land border or a pre-clearance/pre-flight station (PFI) in Canada-If the beneficiary is a citizen of Canada, the Form I-129S may be filed with the CBP at the POE or PFI in conjunction with the alien's application for admission to the United States as an L-1.

See 8 CFR § 214.2(l)(17)(ii)

It is the responsibility of the agency with whom the I-129S is filed to collect all required fees and adjudicate the I-129S properly.



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# Reassignment Benefits of an I-129S

An employee admitted under the blanket petition process may be reassigned to any organization on the blanket without filing a petition with USCIS if the employee will be performing virtually the same job duties. Such a reassignment will not be considered a violation of status.

Therefore, when adjudicating EOS petitions for L-1 aliens who were previously admitted by means of an approved I-129S, the Officer may not deny the petition if the employee has moved to a different organization *listed on the blanket LZ petition* without filing a new petition.



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# Reassignment Benefits of an I-129S,

*continued...*

Example: Bony-Japan has an approved LZ petition which includes Bony-US, Bony-CA, and Bony-VT. An I-129S completed by Bony-US is filed with the Japanese Consulate and Mr. Bones is issued an L-1 visa and is admitted to the United States as a Blanket L beneficiary for 3 years. After two years, Mr. Bones is reassigned to Bony-CA to perform the same work without requesting an amendment of the petition. One month prior to the expiration of the beneficiary's status, a Form I-129 requesting an EOS is filed on Mr. Bones' behalf. During adjudication, the Officer notes that Mr. Bones has switched employers without notifying USCIS. However, because the new employer was listed on the LZ petition for Bony-Japan, this is not a violation of status and the EOS can be approved if the beneficiary is otherwise eligible.



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# Notes About I-129S Filed with DOS

- Form I-129S filed with DOS will be adjudicated by a Consular Officer. If approved, the alien will be given copies of the I-129S. One copy should be collected by CBP upon the alien's admission to the United States at a POE and forwarded to USCIS for interfiling in the LZ petition.
- L-1 aliens admitted pursuant to an I-129S petition adjudicated by DOS may, instead of filing an EOS petition with USCIS, return to a Consulate and file a new Form I-129S with an L-1 visa renewal.
- I-129S petitions adjudicated by DOS are not tracked in GUI/CLAIMS and there will be no I-797 approval notice available. When reviewing EOS petitions filed on behalf of beneficiaries whose original I-129S was approved by DOS, Officers may need to review the L-1 visa issued to the beneficiary, CCD and/or SQ94 if additional information is required.



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# Notes About I-129S Filed with CBP

- I-129S petitions filed with CBP at a POE/PFI on behalf of a Canadian citizen will be adjudicated by a CBP Officer. If approved, a copy will be forwarded to the appropriate USCIS Service Center for data entry into GUI and interfiling into the LZ petition.
- CBP cannot issue a formal denial notice to the alien, they will forward the I-129S to the USCIS Service Center for issuance of an ITD and final action.
- L-1 aliens admitted pursuant to I-129S petition adjudicated by CBP may, instead of filing an EOS petition with USCIS, return to a POE on the U.S.-Canadian land border or a PFI inside Canada and file a new Form I-129S and seek readmission as an L-1 nonimmigrant.



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# I-129S Filings

All I-129S requests filed for an L-1 alien must contain the LZ petition approval notice to show the Petitioner has an approved LZ petition.



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# Filing For An L-1 Beneficiary Who is in the United States

- If an approved L-1 blanket employer wants to file a petition on behalf of an employee who is in the United States applying for either a change of nonimmigrant status (COS) or an extension of stay (EOS), **Form I-129 must be used, not the Form I-129S**. The petition must be adjudicated as an individual L-1 petition and all the requirements of an individual petition must be met.
- When a Petitioner files an I-129 Individual L-1 petition, they must submit documentation establishing the fact that they are a qualifying organization and are doing business. However, in the above instance, where a blanket L-1 Petitioner is filing an I-129 on behalf of an alien who is already inside the United States seeking an EOS or COS, a copy of the LZ Blanket approval notice is often submitted as proof that the qualifying relationship has already been established.



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# I-129S Validity Period

- An I-129S filed for a beneficiary under an initial LZ petition of three years or an indefinite blanket petition may be approved initially for a period of up to three years, even if the LZ petition will expire before the three-year validity period granted the beneficiary.

See 8 CFR 214.2(l)(11)

- Extensions may be granted in up to two year increments.

See 8 CFR 214.2(l)(15)(ii)

- It is the burden of the Petitioner to file a LZ petition extension in timely fashion and to timely file extensions for individual L-1 aliens approved under a blanket petition.



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# Blanket Petitions, *continued...*

- A blanket Petitioner can file an I-129S for an alien under the blanket petition or can file a normal individual petition for an alien.
- If an I-129S is filed for an alien at the consulate and is denied, the Petitioner may subsequently file an I-129 individual L-1 petition for that alien at the appropriate Service Center. The petition must contain evidence of the consulate denial including the date of denial, the office where it was denied and the reasons for denial.



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# I-129S Filed at a Service Center

- Cannot be with a Service center on its own.
- Will be filed and included with Form I-129 and supporting evidence.



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# I-129S Filed at a Service Center,

*continued...*

- If case is approved:
  - ISO will remove I-129S from the file, stamp and annotate the form just like the I-129.
  - Place I-129S, loose, in the file for the AST to send with approval notice.
  - Place a copy of the approved I-129S, on record side, under the I-129 Petition.
  - Update CLAIMS/GUI as Y to the AST.
- If case is denied, no action is required on Form I-129S.



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# U.S. Citizenship and Immigration Services

# Bundled Petitions



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# Bundled Petitions

Employers may petition for multiple L-1B nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”. The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.



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# Bundling Requirements

All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.



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# Adjudicating Bundled Petitions

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time.



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# Notes about Bundled Petitions

- L-1A petitions can be included with the bundle if the L-1A beneficiary will be managing the L-1B beneficiaries.
- If one or more of the petitions does not meet the bundle criteria these petitions will be removed from the bundle and adjudicated as single filings.

Example: different positions or different duties under the same position title.

- Bundled petitions must remain together.



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# U.S. Citizenship and Immigration Services

# Evidence of Ownership and Control

- The evidence must demonstrate ownership and control in order to establish the qualifying relationship.
- The petitioner may submit any evidence that it feels is appropriate. Officers must weigh the evidence submitted appropriately.
- Submission of Stock Certificates is a common way that Petitioners seek to establish the qualifying relationship. Stock ownership indicates that the owner has paid money or other capital into a company and in return owns the portion of the company stated on the stock.



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# Reviewing Stock

## Preferred Stock vs. Common Stock

Companies generally issue two types of stock; common stock and preferred stock.

- Preferred stock usually gives holders certain privileges regarding the assets of the corporation in the event of a bankruptcy, but usually does not give preferred stockholders any voting rights. For L-1 purposes, if control is an issue in determining ownership, the stockholders with preferred stock would not qualify if they lack “control in fact” of the corporation/entity. For this reason, preferred stock certificates are rarely submitted as evidence.



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# Preferred Stock vs. Common Stock,

*continued...*

- While common stock holders typically do not receive such privileges, they are, generally, the shareholders who have certain voting rights with respect to how the corporation may be managed. Common Stock holders generally do have various degrees of control over the corporation.



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# Reviewing Stock Certificates, *continued...*

- When reviewing stock certificates as evidence of ownership and control, an Officer should determine how much stock was issued in total and what percentage of the stock is owned by the entity seeking to establish control.



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# Are the Stock Certificates Genuine?

There is always a possibility that the submitted stock certificates may have been altered in order to make a qualifying relationship appear to exist and/or the possibility that the stock certificates were not issued in the normal course of business.



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# Genuine Stock Certificates? *Continued...*

If this is suspected, an Officer should review the stock certificates to determine if they (and the information contained on them) are genuine and were produced in the normal course of the company's business. Generally, an acceptable stock certificate includes the:

- Name of the shareholder,
- Number of shares of ownership the stock certificate represents,
- Date of issuance, and
- Signature of an authorized official of the corporation.



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**Certificate**

No. \_\_\_\_\_

For \_\_\_\_\_ Shares

Issued to \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Class \_\_\_\_\_

From whom transferred \_\_\_\_\_

\_\_\_\_\_

Class

is paid regular	is paid cash	is not paid
--------------------	-----------------	----------------

Capital Certificate No. \_\_\_\_\_

For \_\_\_\_\_ Shares

On \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

No. \_\_\_\_\_ Shares \_\_\_\_\_

**A. Datum Corporation**

*This certifies that \_\_\_\_\_ is the registered holder of \_\_\_\_\_ Shares of the Capital Stock payable only on the books of the Corporation by its holder hereinafter or by delivery upon surrender of this Certificate properly endorsed.*

*In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officer and the Corporate Seal to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_*



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# STOCK CERTIFICATE

THIS IS TO CERTIFY THAT

\_\_\_\_\_

IS THE OWNER OF \_\_\_\_\_ SHARES OF STOCK

OF \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ IN THE YEAR \_\_\_\_\_

AT: \_\_\_\_\_

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
SIGNED



Certificate provided by [www.uscis.gov/electronic](http://www.uscis.gov/electronic)



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# Genuine Stock Certificates? *continued...*

A comparison to the company's stock ledger may help validate the certificate.

A stock ledger is a document that is used by the corporation to record various stock transactions, including:

- Initial issuance of stock.
- Transfer of stock from one shareholder to another.
- Repurchase of stock by its own corporation (treasury shares).
- Retirement or "cancellation" of stock.



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# Genuine Stock Certificates? *continued...*

In those *limited* instances where the officer has *reason to question* the validity or authenticity of the stock certificate(s), it may also be appropriate to ask for evidence of the transfer of payment for the stock certificate(s) in question. Such evidence may include but is not limited to copies of cashed checks or documentation of wire transfers.



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# When to Ask for Financial Evidence of Ownership and Control

- As indicated previously - the officer has reason to question the validity or authenticity of submitted stock certificates.
- In the case of a new office, if the submitted evidence is insufficient to determine whether the size of the U.S. investment is sufficient to conduct business.
- If the entity is a type that does not issue stock certificates, such as a partnership or limited liability corporation.
- If the Officer can articulate a justifiable reason that necessitates asking for the evidence.



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# Examples of Financial Evidence

1. Evidence of the stock purchase or capital contribution (if stock has no par value or company is anything other than a corporation, i.e., partnership or LLC).
  - Wire transfer receipts
  - Copies of cancelled checks
  - Deposit receipts
  - Bank statements

This list is not all-inclusive.

2. Larger well-known companies may submit Annual Report/10-K or Federal Income Tax returns.



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# Issues Regarding Ownership & Control

- Ownership of a subsidiary need not be a majority ownership if *actual control* of the subsidiary exists. For more discussion on this principle, see *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).
- For instance, control may be obtained through a variety of means including proxy votes. A proxy is a person authorized to vote on the behalf of a stockholder of a corporation.

Example: Company A owns 49% of the voting stock of Company B and has proxy power over an additional 2% of Company B's voting stock. Company A has control of Company B by having the majority voting power (51%).



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# U.S. Citizenship and Immigration Services

# VIBE for I-129 L Adjudication



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# Introduction

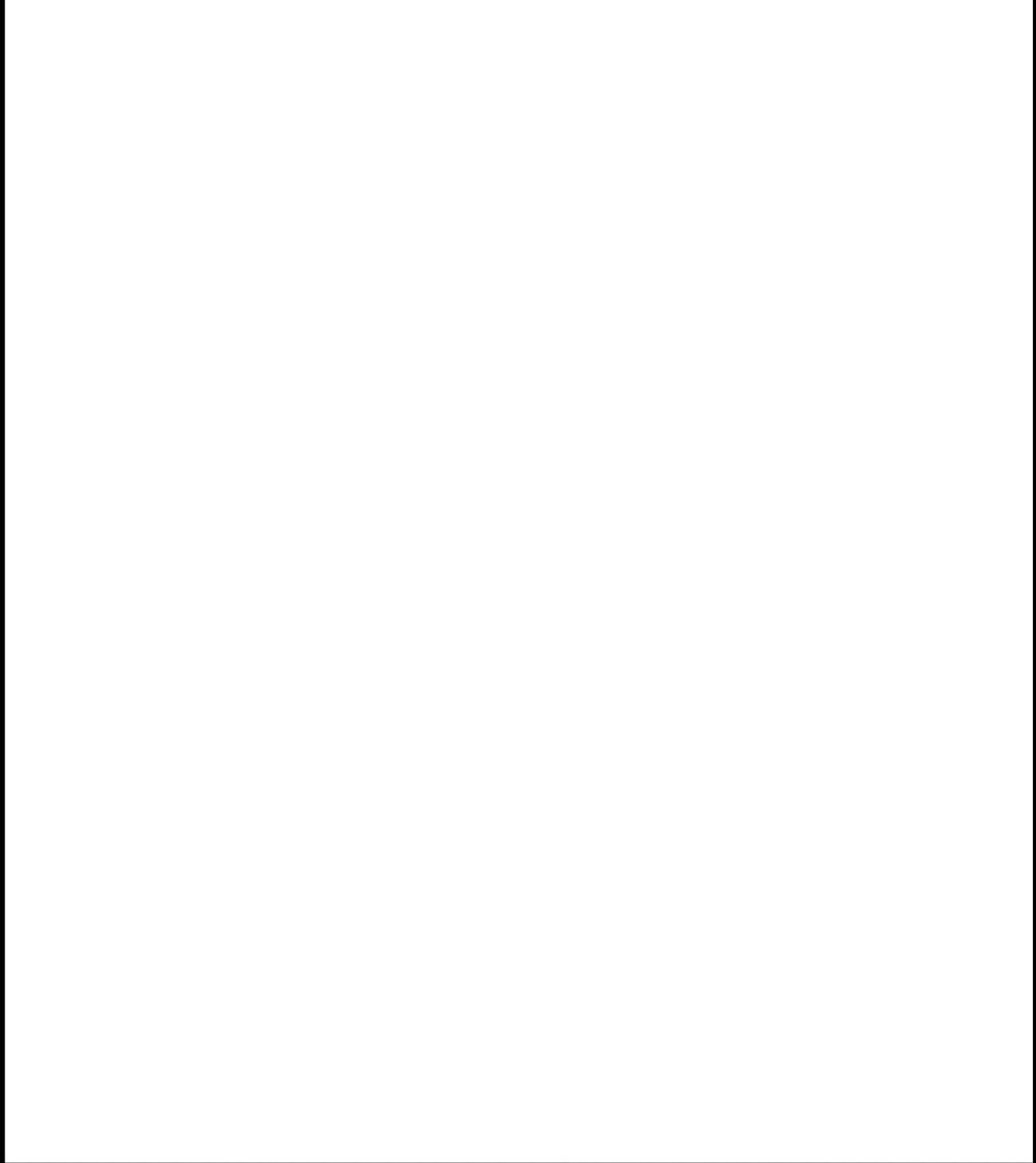
How VIBE differs for L-petitions?



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# VIBE Processing



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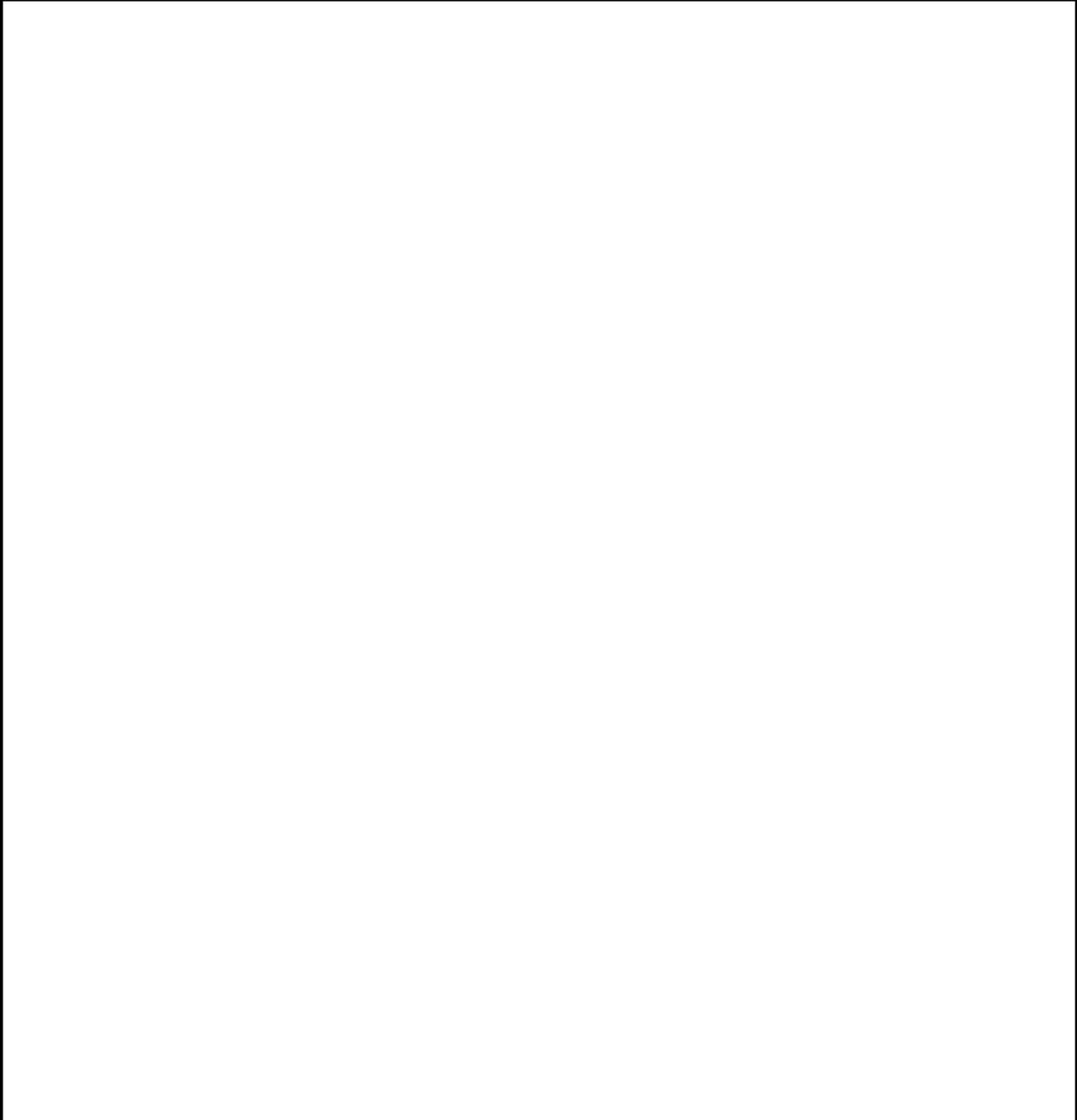
# VIBE Exceptions



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# VIBE and Foreign Relationships



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# VIBE and Foreign Relationships,

*continued...*



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# VIBE and Foreign Relationships,

*continued...*



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# VIBE and L Adjudication as it Relates to Foreign Relationships

Adjudicate on merits regardless of VIBE results, cases where the U.S. business has been in business for less than two years.

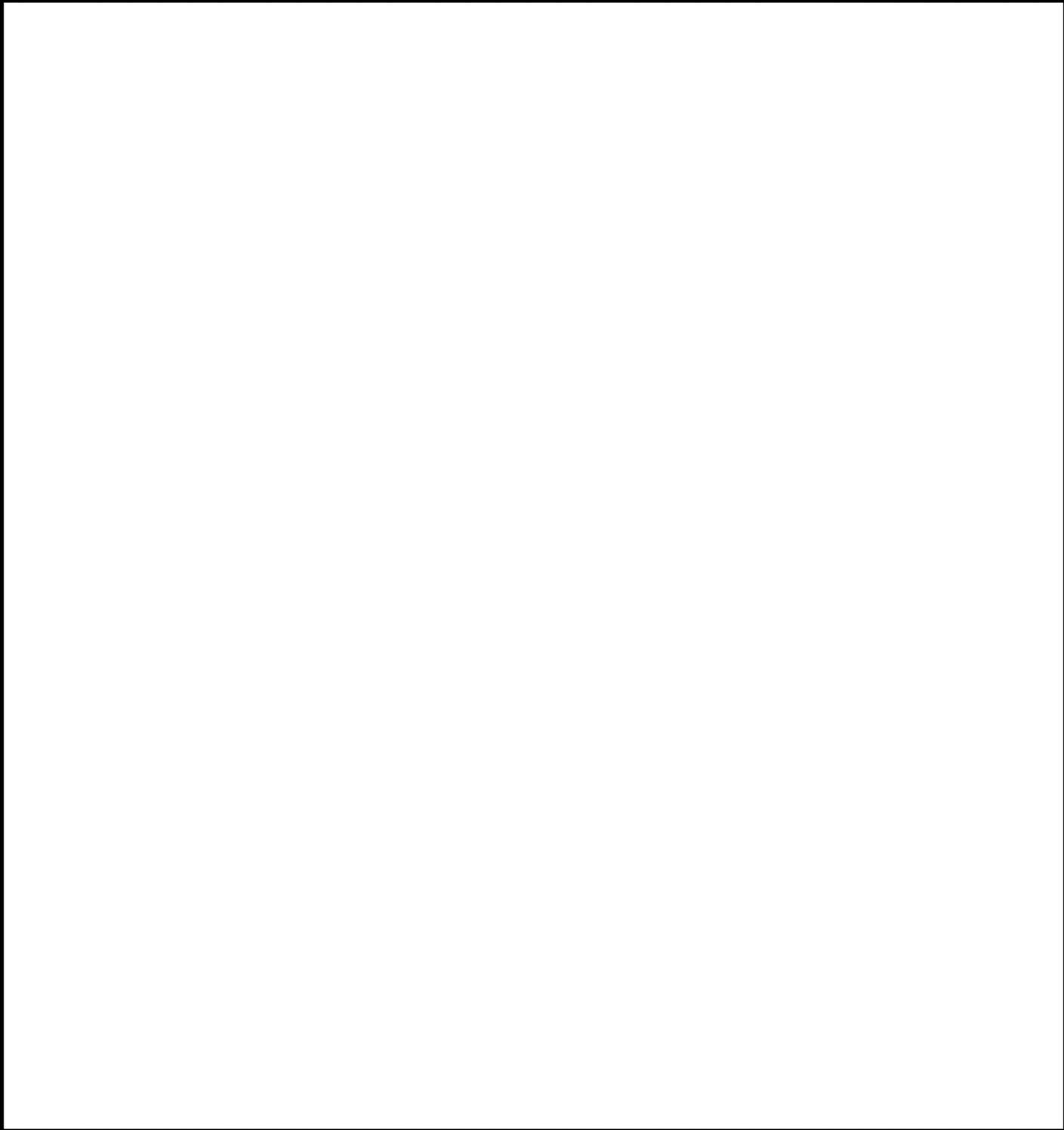


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# Preparing a Comment



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# Key Elements of a Comment



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# Preparing a Comment, *continued...*



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# U.S. Citizenship and Immigration Services

# Managerial and Executive Capacity



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# Managerial Capacity Defined

8 CFR § 214.2(l)(1)(ii)(B)

An assignment within an organization in which the employee *primarily*:

- (1) Manages the organization, or a department, subdivision, function or a 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;



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# Managerial Capacity Defined, *continued...*

(3) Has the authority to hire and fire or recommend those actions as well as other personnel actions, such as promotion and leave authorization if employees are supervised. If no employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.



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# Executive Capacity Defined

An assignment within an organization in which the employee primarily:

- (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, the board of directors or stockholders of the organization.

8 CFR § 214.2(l)(1)(ii)(C)



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# Managers/Executives

- A job description that uses partial definitions of both manager and executive does not qualify for an L-1A.
- An employee's job description must fulfill all four criteria of the definition of either manager or all four criteria of the definition of executive.

NOTE: This does not preclude the employee from performing duties that fall under the other definition.



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# Distinguishing Between Executives and Managers

- Generally, an executive may sign a company document, legally binding a corporation. Generally, a manager cannot, by signature, legally bind the corporation.
- An executive may direct multiple plants, sometimes in several different nations. A manager may oversee only one office or plant.
- Generally, executives make broader decisions over finance, manufacturing, marketing, legal, research, purchasing, engineering, and international departments, etc.



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# Evaluating Managerial or Executive Positions

In a large, well-known and well-established business entities:

A description of the position written by a high level executive of the company may be submitted as evidence. Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title. You must always look at the job duties.



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# Evaluating Managerial or Executive Positions, *continued...*

In small and/or young, unknown or less substantial business entities:

- The qualifications of the beneficiary and/or the eligibility of the proposed employment in the United States are more difficult to determine.
- Do not determine eligibility solely by the size of the company; rather, examine all the facts presented, including the nature of the duties to be performed, the nature of the petitioner's business, and the developmental stage of the company.



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# Staffing Levels as a Factor

INA § 101(a)(44)(C)

Officers should take into account the reasonable needs of the organization.

In the case where a petitioner claims that the beneficiary will be employed as a manager of personnel, look not just at the number of employees to be managed, but at their duties (e.g., are these professionals, etc.).

Evidence can include an organizational chart and State quarterly wage reports upon request.

The employees managed, as opposed to the beneficiary, perform the majority of the everyday duties.



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# Too Many Queen Bees Not Enough Worker Bees

- The petitioner indicates the majority of its employees are primarily engaged as managers and/or executive. Based on the evidence, this may be inconsistent with the nature of the business. An RFE may be warranted.
- Request more detailed position descriptions and payroll documentation to determine who is performing the non-qualifying, everyday operational duties of the business.



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# Queen Bees-Worker Bees, *continued...*

- Even though a beneficiary has a job title of manager, her or she may not be performing primarily managerial duties. This question must be determined on a case-by-case basis.

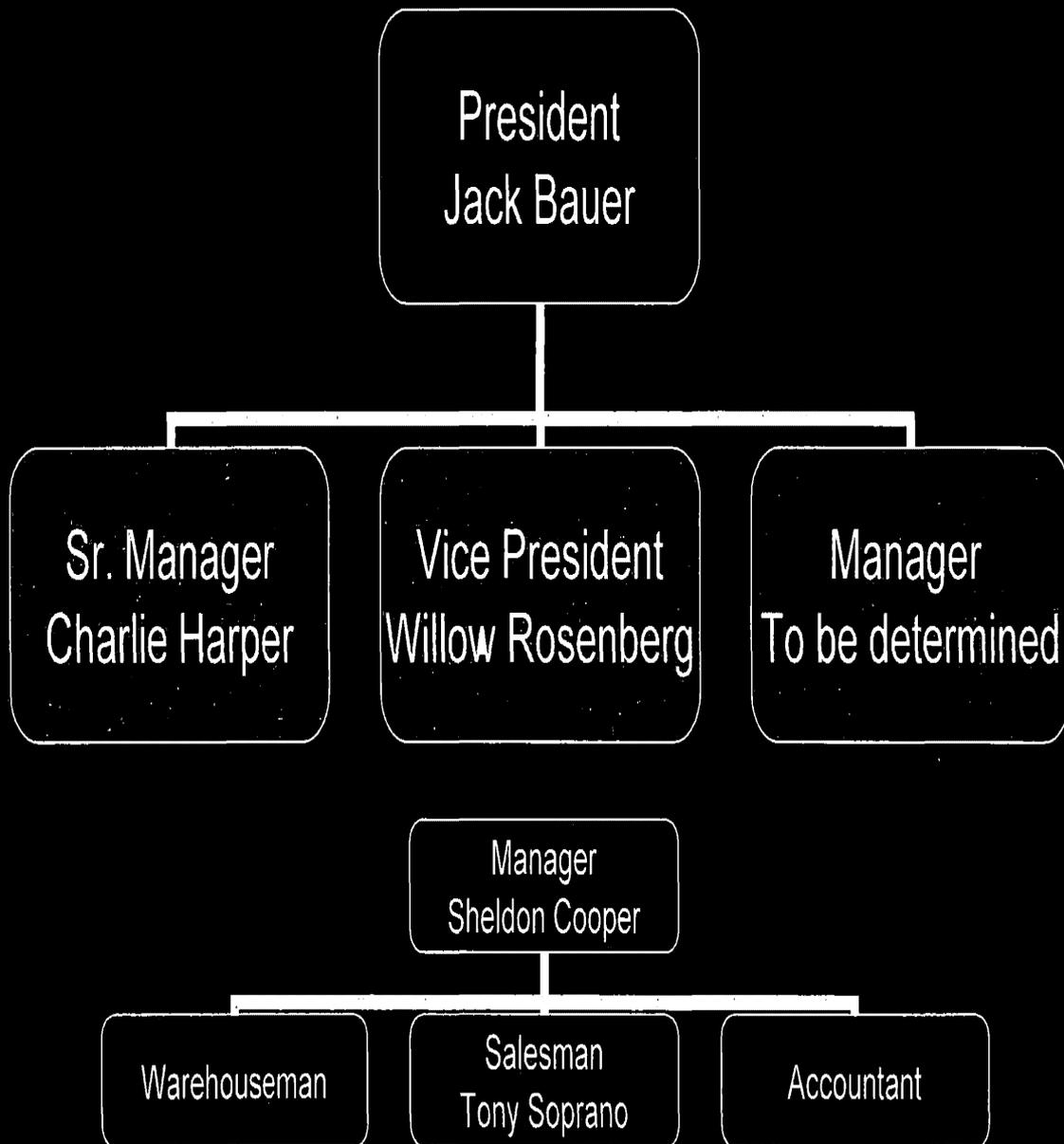


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# Example Organizational Chart

## Possible Example of a Business with too Many Queen Bees



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# L-1A Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include, depending on the specific petition:

- The organizational chart for the foreign office.
- The U.S. organizational chart for the U.S. office.
- Quarterly wage reports for the employees in the U.S. office.



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# L-1A Manager or Executive

Useful evidence to establish whether the beneficiary was a manager or executive abroad and/or will be acting in that position in the United States may include:

- The organizational chart for the foreign office.
- The organizational chart for the U.S. office.
- Quarterly wage reports for the employees in the U.S. office.



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# Managing a Function

- The organization is structured in such a way that the beneficiary is primarily *managing* a function, not primarily performing the duties of the function.
- Normally the beneficiary does not directly manage workers. The beneficiary directs or manages an essential function.



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# Conversion from L-1B to L-1A

- Must occur at least 6 months prior to reaching the L-1B 5 year mark to be eligible for the total period of stay of 7 years. Recapture of time can be used to go back 6 months.
- Must file petition at time of the promotion.
- If the promotion from L-1B to L-1A was not 6 months prior to the end of 5 years in L status, then you may approve the classification but deny the EOS request and send the case for consular processing.

[8 CFR § 214.2 (l)(15)(ii)]



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# New Offices



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# New Office Definition:

An organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

See 8 CFR § 214.2(l)(1)(ii)(F)



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# New Office

An organization seeking to establish a new business entity in the United States must meet different requirements than a petition for an established company.



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# Requirements for an L-1A New Office Petition

8 CFR § 214.2(1)(3)(v)

- The Petitioner is not required to establish that the U.S. entity is doing business.
- However, the Petitioner must submit evidence establishing that:
  - (A) Sufficient physical premises to house the new office have been secured;
  - (B) The beneficiary's one continuous year of employment abroad was in a managerial or executive capacity (prior employment abroad in specialized knowledge is not permitted); AND



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# New Office L-1A, *continued...*

(C) The intended United States operation will within one year of the approval of the petition support an executive or managerial position by submitting:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; AND

(2) The size of the United States investments and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND



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# New Office L-1A, *continued...*

(3) The organizational structure of the foreign entity.



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# Requirements for an L-1B New Office Petition

8 CFR § 214.2(1)(3)(vi)

With the filing of the initial new office petition, the Petitioner has to establish that the beneficiary is coming to the U.S. in a specialized knowledge capacity to open or to be employed in a new office.

To demonstrate eligibility the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization; AND

(C) The Petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.



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# Examples of New Office Evidence

- Evidence of the purchase, lease or rental of sufficient physical premises to house the proposed business.
- Evidence describing the proposed nature and scope of the business, its organizational structure and financial goals.
- Evidence of the amount of the U.S. investment, source of funds and ability of the foreign entity to pay the bills related to operating the U.S. office.



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# More Examples of New Office Evidence

- Evidence that the foreign entity owns the U.S. office (stock certificates, wire transfers, etc.).
- The organizational structure (e.g. chart) of the foreign entity.
- Ability of the proposed business venture to support this L-1 position within one year of the establishment of the business.



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# Purchase and Takeover of an Established Business

- If the Petitioner purchases and takes over the management of an established ongoing business, the petition should not be treated as a new office filing.
- Such a petition, if approvable, should be granted for an initial period of up to three years or the period requested by the petitioner, if less.



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# Dormant Business

- A U.S. company that stops operations and remains dormant for an extended period of time and is then reactivated should be treated as a “new office.” There is no rule of thumb as to whether to treat such a company as a “New office;” this is a fact-based question.
- All of the “new office” filing requirements must be met.



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# New Office Eligibility

Business plans and other documentary evidence must demonstrate the likelihood the business will have the ability to support a managerial or executive position within one year.



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# New Office Extensions

8 CFR § 214.2(l)(14)(ii)

To extend after the first year, the Petitioner must submit:

(A) Evidence that the United States and foreign entities are still qualifying organizations (a qualifying relationship exists);

(B) Evidence that the United States entity has been *doing business* for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition (to establish qualifying U.S. employment);



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# New Office Extensions, *continued...*

(D) In the case of a manager or executive, a statement describing the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees (such evidence may include an organizational chart and quarterly tax returns); AND

(E) Evidence of the financial status of the United States operation.



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# New Office Extensions, *continued...*

## Remember:

- In the initial petition for a new office, the Petitioner must meet different standards to qualify. The L-1A was given one year to set up the new office, hire a staff and initiate doing business.
- An L-1B was given one year for the Petitioner to set up the business and commence doing business.
- On extension, it must be demonstrated that the petitioner is doing business at a level that supports the beneficiary's position.



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# New Office Extensions, *continued...*

- If you are reviewing a petition requesting an extension and the previous approval was for only one year, it does not necessarily establish that the previous filing was a new office filing. You must review the petition and the facts presented in the EOS request to make that determination.
- Do not apply new office extension standards to long standing businesses.
- After one year of doing business, the “new office” will be treated as an existing company; usually there are no extensions of “new office” status beyond one year.



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# Unanticipated Circumstances to a New Office Extension

In instances where the start-up of the new office is hampered by circumstances that are beyond the petitioner's control, additional time may be granted. Time granted should only be the time effected by the unanticipated event. Some examples are:

- A substantial delay in the issuance of an L-1 visa by the consulate;
- A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
- Litigation involving the new office which prevented the normal functioning of the business.



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# U.S. Citizenship and Immigration Services

# Maintenance of Status and Validity Periods



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# Validity Periods for Individual Petitions

- Petitions filed by established Petitioners may be approved for a period not to exceed three years initially.
- Petitions filed to establish a new business may be approved for a period not to exceed one year.
- Extensions (EOS) are granted in increments of up to two years.



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# Limitations On Stay

- Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- Recapture time is permitted. Time spent by a beneficiary in H or L status, outside of the United States will not be counted against the maximum period of authorized stay and may be recaptured by the alien if documentation is presented.



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# Limitations On Stay, *continued...*

- Time in H-1B status counts toward the maximum validity period of stay allowed as an L-1.
- Time in H-4 or L-2 status does not count towards the maximum validity period of stay allowed as an L-1.
- An alien who has reached the maximum amount of time allowed in L-1A or L-1B status must depart the United States for at least one year (except for brief visits for business or pleasure) before a new L-1 petition may be approved on his/her behalf.

8 CFR § 214.2(l)(12)(i)



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# Limitations of Stay, *continued...*

- **Exceptions:** There is no limitation on period of stay for:
  - 1) Aliens who do not reside continually in the United States and whose L employment is seasonal, intermittent or in an aggregate of six months or less per year, and
  - 2) Aliens who reside abroad and commute to the United States to engage in part time employment.

8 CFR § 214.2(l)(12)(ii)



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# Dependents

- Dependents of L-1 principal aliens are L-2s. Their periods of stay depend on the principal alien.
- Dependents file for EOS/COS on Form I-539.
- Dependents do not require a pre-approved petition or application to consular process; all that is required is that there be a currently valid approved petition on behalf of the L-1 principal.



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# Requirements for Extension of Stay (EOS)

- Alien must be in the United States at the time of filing the petition.
- Alien does not have to be physically in the United States while the EOS is pending.
- Departure is not treated as abandonment.
- Must be maintaining status.



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# Requirements for Extension of Stay (EOS), *continued...*

- The petition must be filed prior to the expiration of the alien's stay.

Exception: failure to file before the previously authorized Period of stay expired may be excused per 8 CFR § 214.1(c)(4).

- If the I-129 requests consular processing, then the accompanying I-539 EOS or COS must be denied.



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# Part 6 of the I-129

- Petitioner must fill out the Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States section.
- If the section is not filled, RFE for the information.  
(call-up 1817)
- If the RFE response does not include the information deny the case.
- The denial to use is (I129CTECH).



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# RFEs and Denials on EOS Petitions

A prior determination by an adjudicator that an alien is eligible for the classification should be given deference unless one of the following conditions can be established.

- “Material Error”
- “Substantial Change in Circumstances”
- “New Material Information”

See Memo dated April 23, 2004, titled “The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity”.



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# RFEs and Denials on EOS Petitions,

*continued...*

A SISO must approve the issuance of an RFE or final decision for any case involving an extension of stay where the parties and facts involved have not changed, but where the current adjudicating Officer determines that it is necessary to issue an RFE or deny the request for extension

An exception is for an alien admitted under a Blanket petition (LZ). The alien's qualifications have not been examined by USCIS and SISO approval is not required for an RFE.



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# Requirements for Change of Status (COS)

- Must be maintaining status.
- Unlike EOS, alien must be physically present in the United States.
- Departure is treated as abandonment.
- The petition must be filed prior to the expiration of the alien's stay except that failure to file before the previously authorized period of stay expired may be excused per 8 CFR § 248.1(b).



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# General Things To Know

- A qualifying U.S. organization must employ the beneficiary for the entire duration of his or her L-1 nonimmigrant status.
- The qualifying foreign employer may file the petition on the beneficiary's behalf.

EXCEPTION: In the case of an I-129S filed on behalf of a blanket beneficiary, the Petitioner must be a U.S. Petitioner.

- The beneficiary may not directly perform services for a foreign employer.



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# General Things To Know, *continued...*

- The beneficiary's wages may be paid by the foreign employer.
- A foreign qualifying entity must be doing business the entire time the beneficiary is in L-1 status. The foreign qualifying entity need not be the exact same one as the one that employed the L-1 while he or she was abroad.



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# Things to Know:

## Independent Contractors as Employees

- In determining whether an employee meets the criteria of a manager, the persons who the manager supervises abroad or will supervise in the United States may include independent contractors.
- There is no regulation requiring that the employees supervised must be individuals on the company's payroll.
- If the claim is made that the beneficiary qualifies based on managing or supervising independent contractors, request evidence of contracts.

see 9 FAM 41.54 N 7.2-1



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# Company Owner as Petition Beneficiary

- An owner or majority stockholder of the petitioning or affiliated company may be the beneficiary of a petition for L-1 status if the petition is accompanied by evidence that the beneficiary's services are to be temporary and that the beneficiary will be transferred abroad at the completion of the temporary services in the United States.

See 8 CFR § 214.2(l)(3)(vii) and also

*Matter of M*, 8 I&N Dec. 24 (BIA 1958; Ass't Comm'r, AG 1958)



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# Company Owner as Beneficiary, *continued...*

- In these types of cases, the petitioner must establish that a foreign qualifying company will be doing business the entire time the owner or majority stockholder is in the United States in L-1 classification.



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# Required Systems Checks

- TECS
- ADIS/SQ94
  - EOS Denial within 15 days before
  - COS Approval within 15 days before
  - COS Denial within 15 days before
- SEVIS for F, J, or M COS printout on non-record side of file, within 30 days of final action



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# Required Systems Checks, *continued...*

- VIBE



- CIS A number check



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# No Appeal Rights

- Status denials – cases where the petition for classification as an L-1 is approved but the requested EOS or COS is denied (split decisions).
- Denial for failure to pay the Fraud Detection fee.
- Denial for failure to pay Border Protection fee.



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# U.S. Citizenship and Immigration Services

I-129 L-1

# Intra-Company Transferees



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# NOVA

- You will back out the time spent in the training presentation and time spent with your coach reviewing training cases under:

**“Group Activities” and “Production Trainee.”**

- Your coach will back out the time spent in the training presentation and time spent with you reviewing cases under:

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# Certification

- Trainee will make a decision on each training case and be prepared to discuss the documentation with their coach explaining the adjudicative decision.
- Coach will provide feedback and/or guidance.
- Coach will recommend certification when they feel the trainee is able to work cases with limited guidance.
- There is no set number of training cases that must be completed.



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# General Training Information

- This presentation was created to facilitate the training process.
- All information in this presentation is superseded by the relevant laws, regulations, SOPs, policies, and guidance from management.



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# Course Objective

To provide Officers with a strong foundation of knowledge upon which a quality, timely adjudicative decision can be made on a Petition for a Nonimmigrant Worker, Form I-129 Intracompany Transferee filing.



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# U.S. Citizenship and Immigration Services

# The History of the L Visa



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# Definition of Intracompany Transferee

According to 8 CFR 214.2 (I)(1)(ii)(A):

“Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States,

Has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and

Who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer of a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.”



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# Introduction

Prior to 1965, immigrants entered the United States based on their nationality, skills, and level of education. Nonimmigrant classifications did not exist for intra-company transferees.



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# Legislation

Congress enacted the following:

- Immigration and Nationality Act Amendments of 1965;
- Public Law 91-225 (April 7, 1970);
- Immigration Act of 1990;
- L-1 Visa Reform Act of 2004;
- Public Law 111-230



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# Immigration and Nationality Act Amendments of 1965

- Known as the Hart-Cellar Act.
- The Act abolished the national origins quota system that had structured immigration policy since the 1920s, replacing it with a preference system that focused on immigrants' skills and family relationships.



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# Immigration and Nationality Act Amendments of 1965, *continued...*

- Limited the ability of multinational corporations to transfer top-level personnel to offices in the United States.
- Forced foreign workers to apply for immigrant visas if they were not eligible for E nonimmigrant visas.



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# Public Law 91-225 (1970)

- Created the L nonimmigrant visa classification at INA 101(a)(15)(L) for intracompany transferees.
- Permitted international companies to temporarily transfer top-level managers and executives or employees with specialized knowledge to the United States.
- Prior to this Law, those who did not qualify as E nonimmigrants were forced to apply for immigrant visas even if there was no intent to remain permanently in the United States.



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# Public Law 91-225 (1970), *continued...*

- Required that the employee worked for the foreign company for at least one year prior to coming to the United States.
- Law was not intended to alleviate or remedy a shortage of U.S. workers.
- Created the L2 visa for dependents.



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# Immigration Act of 1990 (Public Law 101-649)

- Clarified the meaning of “specialized knowledge,” (knowledge of a company’s own product) by creating the following definition:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.



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# Immigration Act of 1990 (Public Law 101-649),

*continued...*

- Placed a seven (7) year time limit for managers and executives.
- Placed a five (5) year time limit for specialized knowledge employees.
- Required employee to work one continuous year abroad with the foreign employer within the three years immediately preceding admission.



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# Immigration Act of 1990 (Public Law 101-649),

*continued...*

- Permitted L employees and their dependents “dual intent” to apply as lawful permanent residents.
- Permitted L-2 (dependents) to work while in the United States.
- Established the L Blanket classification.



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# L-1 Visa Reform Act of 2004

Applies only to L-1Bs.

- Established that employees can no longer work primarily at a worksite other than their petitioning employer if the work will be controlled or supervised by a different employer; or
- Can not work if the offsite arrangement is essentially to provide labor for hire, rather than service related to the specialized knowledge of the petitioning employer.

(Applies to petitions filed on or after June 6, 2005.)



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# L-1 Visa Reform Act of 2004,

*continued...*

- Requires that all L-1 employees must have worked for a period of no less than one (1) year outside of the United States for an employer with a qualifying relationship to the petitioning employer.
- Created a new Fraud Prevention and Detection Fee of \$500 which must be paid by the petitioner.

(Applies for petitions filed on or after March 8, 2005).



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# Public Law 111-230

- Emergency Supplemental Appropriations for Border Security
  - Requires the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions.
  - The fee applies to petitions postmarked on or after August 14, 2010. Public Law 111-230 will remain in effect through September 30, 2015.



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# Public Law 111-230, *continued...*

- The additional fee applied to petitions:
  - that are requests for new employment or change of employer,
  - where the petitioners employ 50 or more employees in the United States,
  - the petitioners have more than 50% of their employees in the United States in H-1B or L-1A or L-1B nonimmigrant status.

Petitioners meeting these criteria must submit the additional fee when filing an H-1B or L-1 petition.



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# The History of the L-Visa

Questions?

Concerns?



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# U.S. Citizenship and Immigration Services

# L-1 Overview



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# Sources of Information

- INA §§ 101(a)(15)(L), 101(a)(32) and 101(a)(44)
- INA § 214(c)
- 8 CFR §§ 214.1, 214.2(l), & 248
- Adjudicator's Field Manual (AFM)
- *Interpretation of Specialized Knowledge*, Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS (March 9, 1994)
- Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004, Memorandum of William Yates, Associate Director of Operations
- Department of State Foreign Affairs Manual (FAM)
- Form I-129 with L Supplement and Form I-129S



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# Evidence

Preponderance of Evidence is the standard of proof required for I-129 L adjudication.

The petitioner has met the required burden of proof if the submitted evidence is “probably true” or “more likely true than not.”



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# Definition of L-1

...an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge...

INA § 101(a)(15)(L);

see also 8 CFR § 214.2(l)(1)(i)



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# L Classification

- L-1A classification is for managers and executives.
- L-1B classification is for specialized knowledge aliens.
- L-2 classification is for dependents (dependents use Form I-539).
- LZ is the designation given to an approved blanket petition. The Petitioner is referred to as a Blanket Petitioner, there is no individual beneficiary of an approved LZ.



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# L Classification, *continued...*

L-1A and L-1B are CLAIMS/GUI designations. When an intracompany transferee is admitted to the United States, the alien is admitted by CBP as an L-1, or, in the case of an extension of stay or change of status, is granted L-1 classification. Therefore, you will only see the classification “L-1” on the Form I-94 issued to the aliens.



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# 30 day Processing Time

INA § 214(c)(2)(C) of the Act states that USCIS shall provide a process for reviewing and acting upon L-1 petitions within 30 days after the date a completed petition has been filed.

8 CFR § 214.2(l)(7) indicates that a Petitioner should be notified of petition approval within 30 days of the receipt of the completed petition by USCIS. If an RFE is issued, the 30-day processing time begins again after receipt of the requested information.



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# Where to File the I-129

I-129 L-1 petitions are primarily filed at the CSC and VSC.

Exception:

- NAFTA & I-129S filings may be filed at a POE/PFI, Consulate/Embassy or Service Center.
- Blanket filings (LZ Petitions) are filed at a Service Center.

Jurisdiction is determined by the beneficiary's work location or (in the case of I-129S) the Service Center that adjudicated the Blanket petition.



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# Fees

- I-129 (L-1 and LZ) Petition filing fee: **\$325.00**. Note that there is no filing fee for an I-129S, *Nonimmigrant Petition Based on Blanket L Petition*.
- Fraud Prevention and Detection Fee: **\$500.00**. This fee is required to be paid by Petitioners seeking the initial approval of an I-129 or I-129S L-1 petition (including a change of status to L-1, or a petition for new concurrent L-1 employment). There are no exceptions or waivers available for the Fraud Prevention and Detection Fee. The Fraud Fee does not need be paid for a Blanket LZ petition.

See INA § 214(c)(12)



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## Fees, *continued...*

- P.L. 111-230 fee: **\$2,250.00**. Effective 8/13/2010, this law requires employers filing an L-1 petition prior to September 30, 2015, who are required to pay the \$500 Fraud Prevention and Detection fee as detailed above, to pay an additional \$2,250 if:
  - (1) they employ 50 or more employees in the United States; and
  - (2) more than 50% of those employees are in H-1B or L-1 status.



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# U.S. Citizenship and Immigration Services

# Basic Requirements for L-1 Petitions



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# Basic Requirements for an Individual L-1 Petition

8 CFR Section 214.2(l)(3) Evidence for individual petitions.

(3) Evidence for individual petitions. An individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.



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# Basic Requirements for an Individual L-1 Petition, *continued...*

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be in the same work which the alien performed abroad.



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8 CFR Section 214.2(l)

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# Qualifying Organization Defined

See 8 CFR § 214.2(l)(1)(ii)(G)

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Has a qualifying relationship between the U.S. entity and a foreign entity.

(2) Is or will be doing business as an employer in the United States and in at least one other country for the duration of the alien's stay in the United States.

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.



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# Employment Abroad

- The regulation indicates that a qualifying employee must have at least one continuous year of full-time employment abroad in a capacity that was managerial, executive, or involved specialized knowledge with a qualifying organization within the three years preceding the filing of the petition.

8 CFR § 214.2(l)(3)(iii) and (iv)

INA 101(a)(15)(L)

8 CFR § 214.2(l)(1)(ii)(A)



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# Employment Abroad, *continued...*

- This is referred to as the “1 in 3” rule.
- It is important to note that the 1 in 3 rule is a combination of two separate regulatory requirements which require two different but related analyses.



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# Employment Abroad, *continued...*

- The Petitioner must submit sufficient documentation establishing that:

1. The beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization with the three years preceding the filing of the petition.

See 8 CFR § 214.2(l)(3)(iii), and

2. For the entire one year of continuous employment abroad, the beneficiary was performing in a capacity that was managerial, executive, or required specialized knowledge.

See 8 CFR § 214.2(l)(3)(iv).



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# Employment Abroad, *continued...*

- The prior foreign employment and proposed U.S. employment capacities do not have to be the same. For example, the one year of employment abroad could have been completed by the beneficiary in a specialized knowledge position, but the beneficiary can qualify for an L-1A position in the United States.

See 8 CFR § 214.2(l)(3)(iv)

- Both previous foreign employment and the prospective U.S. employment must be in one of the qualifying capacities.



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# Employment Abroad, *continued...*

- Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement. See 8 CFR § 214.2(l)(1)(ii)(A)



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# Position in the United States

The Petitioner must submit sufficient documentation establishing that:

The position in the United States is in a capacity that is managerial, executive, or involves specialized knowledge.



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# Beneficiary's Qualifications for the Position in the U.S.

The regulation states that the employee need not be filling the same position in the United States that he/she occupied abroad. However, the regulation indicates that the employee must be qualified for the position in the United States.



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# U.S. Citizenship and Immigration Services

# Qualifying Relationships



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# Qualifying Organization

- Does a qualifying relationship exist?

The Petitioner can be either a foreign entity or a U.S. entity. However, the Petitioner must establish that a qualifying relationship exists between the U.S. entity and an entity in a foreign country. The qualifying relationships are:

- Parent 8 CFR § 214.2(l)(1)(ii)(I)
- Branch 8 CFR § 214.2(l)(1)(ii)(J)
- Subsidiary 8 CFR § 214.2(l)(1)(ii)(K)
- Affiliate 8 CFR § 214.2(l)(1)(ii)(L)



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# Parent

- Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 CFR § 214.2(l)(1)(ii)(I)

- A parent company is an entity which owns and controls the operations of a subsidiary by:

(1) Owning either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.

(2) Owns either directly or indirectly half of the subsidiary and controls the subsidiary.



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# Parent, *continued...*

- (3) Owns either directly or indirectly 50% of a joint venture and has equal control and veto power over the subsidiary.
- (4) Owns either directly or indirectly less than 50% of the entity but in fact controls the entity.



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# Branch

Branch means an operating division or office of the same organization housed in a different location.

See 8 CFR § 214.2(l)(1)(ii)(J)

- An “arm” of the parent organization.
- Not a separate entity.
- Part of the same organization housed in a different location.
- Registered as a foreign corporation operating in the United States.



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# Subsidiary

Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. 8 CFR § 214.2(l)(1)(ii)(K)

It must be established that the parent:

- (1) Owns either directly or indirectly more than 50% of the subsidiary and controls the subsidiary.
- (2) Owns either directly or indirectly half the subsidiary and controls the subsidiary.



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# Subsidiary, *continued...*

- (3) Owns either directly or indirectly 50% of the subsidiary in a joint venture with another company and has equal control and veto power over the subsidiary.
  
- (4) Owns either directly or indirectly, less than 50% of the subsidiary but in fact controls the subsidiary.



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# Issues Regarding Ownership and Control

Ownership and control can happen two ways:

1) De Jure = Of Law (By Law) Where a legal entity owns more than 50 percent of an entity and because of this controls the entity.

2) De Facto = Of Fact (In Fact): Where a legal entity owns 50 percent or less of an entity yet still controls the entity.



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# *Example:*

Subsidiary – More than 50%

Company A, the Parent

Company B, the Subsidiary is  
100% Owned and Controlled  
By Company A



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# *Example:*

Subsidiary – Exactly 50% and parent has control of the subsidiary

Company A, the Parent

Company B, the Subsidiary is 50%  
Owned and Controlled by Company A



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# *Example:*

## Parent Owns Less Than 50%

Subsidiary – Less than 50%  
owned by parent but  
controls the entity

Company A, the Parent

Company B, the Subsidiary  
Company A owns less than 50% but controls  
Company B



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# Joint Venture as Subsidiary

- Joint venture: Parent owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity.
- Neither parent has sole control. They must agree to all controlled aspects. Thus, both have control. This is called “negative control”.



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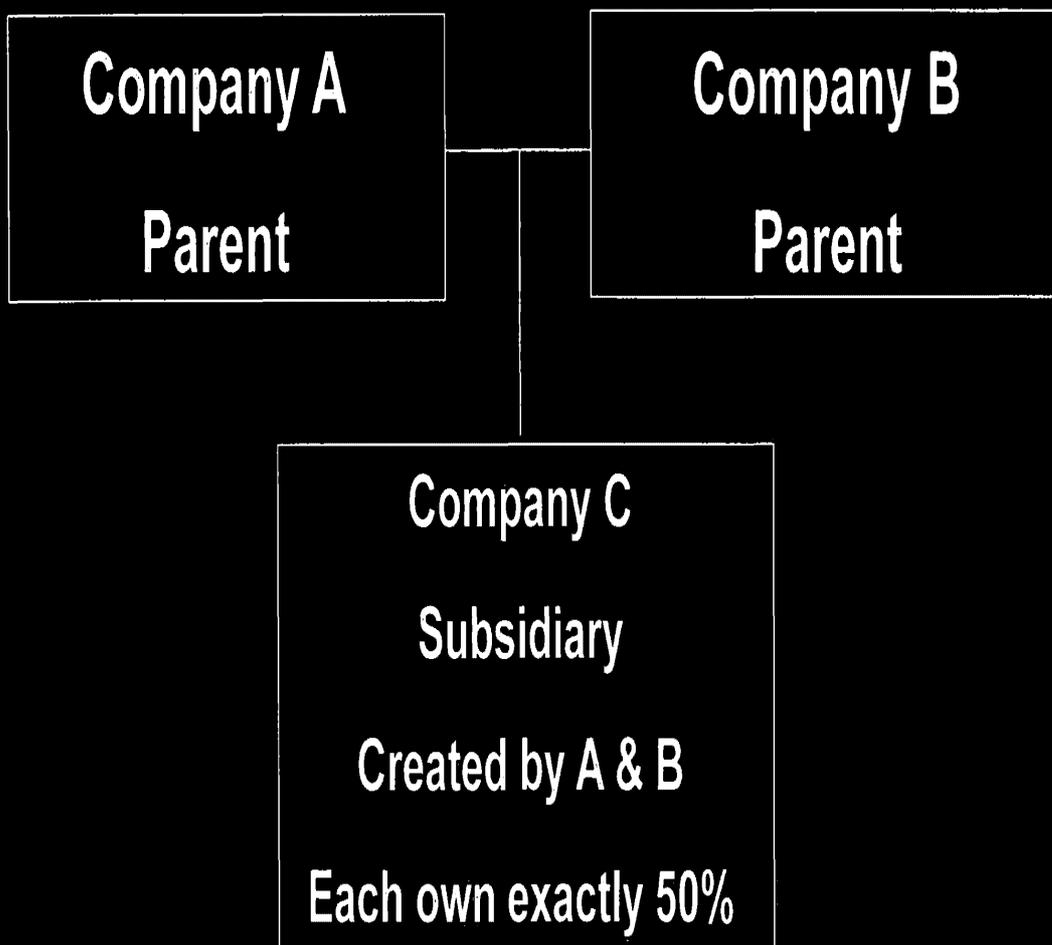
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# *Example:*

Two Parent Companies own 50% of a Subsidiary

Subsidiary – 50% of

50/50 Joint Venture



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# Joint Ventures – Two Parent Companies Own a Subsidiary

- An alien L-1 cannot be transferred through the joint venture.
- In the above chart:
  - An alien can be transferred from A to C or C to A.
  - An alien can be transferred from B to C or C to B.
  - But, an alien cannot be transferred from A to B or B to A.



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# Affiliate

Affiliate means:

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

8 CFR § 214.2(l)(1)(ii)(L)



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## Affiliate, *continued...*

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.



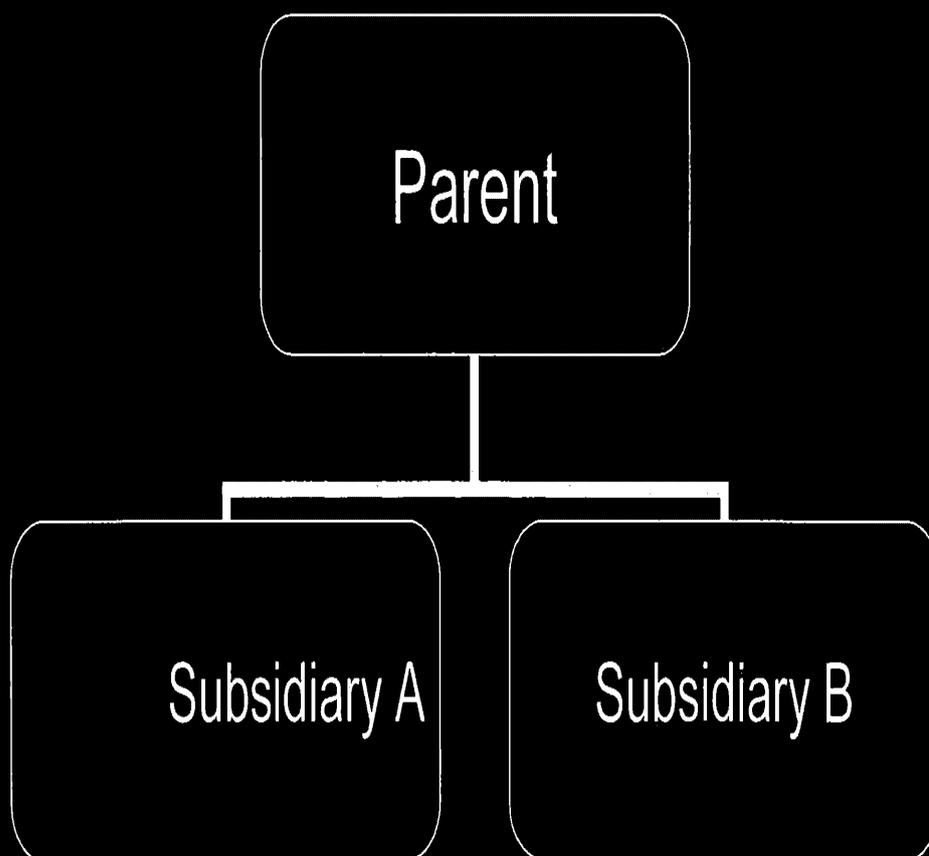
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8 CFR § 214.2(l)(1)(ii)(L)

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# A Note About Subsidiaries and Affiliates

An Affiliate is comparable to a sibling relationship. If this parent co. owns 100% of Subsidiary A and 75% of Subsidiary B, Subsidiaries A and B are affiliated.

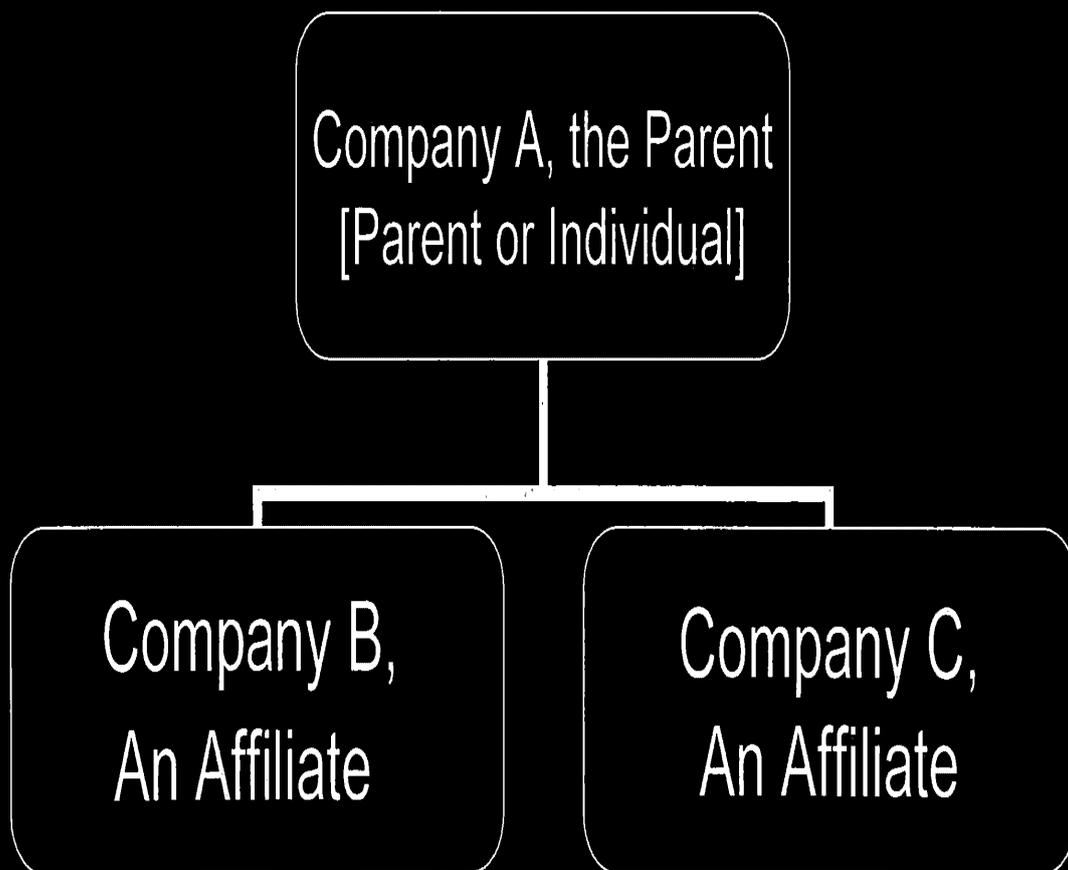


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# *Example:* How Two Separate Subsidiaries Can be Affiliates of Each Other

Parent Company A owns 100% of both subsidiaries B and C. Company A controls B and C. Companies B and C are affiliates.



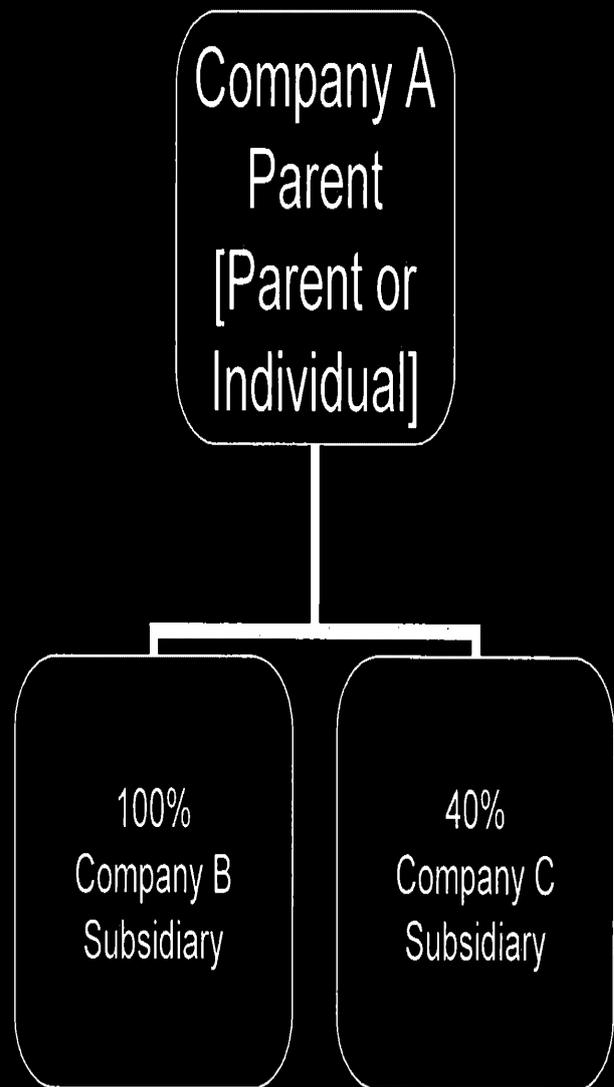
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# *Example:* When Separate Subsidiaries are Not Affiliates of Each Other

Parent Company A owns 100% of subsidiary B and 40% of subsidiary C.

Company A controls B but not C. Companies B and C are not affiliates. Company A's employee may qualify to work at B but not C.



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# Affiliates – Multiple Owners

One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.



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## *Example:* Multiple Owners of Qualified Affiliates

The two entities below are owned by individuals A, B, C, and D in the percentages indicated

These entities are affiliates as they are both owned by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity

A	B	C	D
25%	25%	24%	26%

A	B	C	D
26%	24%	25%	25%



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# Franchise Agreements

- Franchises are companies operating under franchise agreements. Franchise agreements are entered into to allow one independently owned company to license the name and/or product of another independently owned company.
- There is usually no qualifying relationship between a foreign entity and a U.S. entity associated by a franchise agreement or contract.
- Franchise agreements must be read carefully to determine whether or not they establish ownership and control.



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# Affiliate – Partnership Accounting

A partnership that is organized in the United States to provide accounting services along with managerial, and/or consulting services will be considered an affiliate of a foreign partnership (or similar organization) that provides accounting services in another country if:

- (1) They both market their services under the same internationally recognized name,
- (2) Under the agreement with a worldwide coordinating organization that is owned by member accounting firms,
- (3) Both the U.S. accounting partnership and the foreign accounting partnership are members of the worldwide coordinating organization.

8 CFR 214.2(l)(1)(ii)(L)(3)



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# Affiliate – Partnership Accounting,

*continued...*

- **Explanation:** Accounting firms such as *Deloitte Touche Tohmatsu Limited (Deloitte)* are large internationally branded accounting firms. However, the individual Deloitte firms in each respective country are single entity partnerships that do not normally own any part of the Deloitte firms in the other countries. [Deloitte-U.S. is an accounting firm set up as a partnership that is owned by the U.S. partners that in most instances do not own any part of Deloitte- Spain.] However, these firms are all part of an agreement to provide services under the same name and coordinated through a organization that is set up and owned by the member organizations with no actual control exerted by one member firm. This set-up has significant business benefits as it allows the individual member firms to refer their clients to other foreign member organizations and/or receive new clients through the same referral process. It also allows these firms to meet the different accounting regulations that are set up in each country and to cut ties with offending accounting firms without suffering financial losses.



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# Affiliate-Partnership Accounting,

*continued...*

- These accounting partnerships are considered affiliates even though they do not exert control on each other or actually own any significant portion of each other.



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# Well Known Examples of Accounting Service Affiliates

- Pricewaterhouse Coopers L.L.P.
- Ernest & Young L.L.P.
- KPMG Peat Marwick L.L.P.
- Deloitte & Touche, Tohmatsu Limited (Deloitte) L.L.P.
- Schneider Downs & Co. Inc.
- Alpern, Rosenthal & Co.
- Sisterson & Company L.L.P.



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# Qualifying Organization Doing Business

- Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

See 8 CFR §214.2(l)(1)(ii)(H)



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# Doing Business, *continued...*

- The U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an L-1 intracompany transferee.
- There are exceptions for new offices filings.



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# Corporate Titles

- Do not get confused by the type of company that is involved in the petition or the way in which it was formed. The criteria regarding qualifying organizations and establishing the qualifying relationship are the same regardless of the country where the company is set up and the form of company used.
- Companies may use different corporate titles/forms depending on where the company was set up. Example: In Great Britain, a “Limited” Company is a common form of business, where registration under the Companies Act is comparable to incorporation under state law in the United States. It is abbreviated Ltd.



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# U.S. Citizenship and Immigration Services

# Types of Business Entities



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# Types of Business Entities

- Sole Proprietorship
- Partnership
- C Corporation
- S Corporation
- Limited Liability Company
- Joint Venture



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# Sole Proprietorship

Someone who owns an unincorporated business by him or herself.



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# Sole Proprietorship Characteristics

- Easiest business to create.
- There is no legal distinction between the owner and the business.
- Liability



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# Sole Proprietorship Characteristics,

*continued...*

- Business income is not taxed separately from the owner.
- Business net income/loss is reported on Schedule C or C-EZ filed with Form 1040.
- Schedule C shows the profit or loss of the business.



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# Partnership

A partnership is the relationship existing between two or more persons who join to carry on a trade or business. Each person (partner) contributes money, property, labor or skill, and expects to share in the profits and losses of the business.



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# Types of Partnership

There are two types of partnership:

- General
- Limited



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# General Partnership:

Is two or more partners in which each partner is liable for any debts taken on by the business.

Since the partners do not enjoy limited liability, all the partners' assets can be involved in an insolvency case against the company.

No formal, written partnership agreement is required to create a general partnership.

However, general partnerships typically do execute agreements.



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# Limited Partnership

- Shared ownership of a business in which certain partners provide a capital investment, without being held personally liable for the debts of the partnership beyond their level of investment.
- Limited partners may not materially participate in the running of the business or attempt to control the business.



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# Limited Partnership, *continued...*

Requires:

- A formal, written partnership agreement.
- At least one general partner.
- An employer's identification number (EIN)

NOTE: General partners manage the business. Limited partners contribute only capital. If a limited partner participates in the managing of the business, he or she becomes a general partner.



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# Partnership-Ownership and Control

- Only general partners can be considered to have both ownership and control over a limited partnership. Limited partners are not allowed to participate in the business.
- Common documents provided to show ownership and control:

-Form 1065 Federal Tax Return

-Partnership Agreement



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# Partnership Agreements

A typical agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited interest,
- Each partner's initial percentage of ownership,
- The type of business conducted,
- How the partnership interest can be transferred,
- The conditions under which the partnership can be dissolved.



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# Partnership Tax Returns

The profits and losses of the partnership are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.



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# Partnership Tax Returns, *continued...*

The partnership's tax return provides information that is relevant to the adjudication of I-129s:

- Date the partnership started,
- The names and percentage of ownership of each partner at year end,
- Whether the partnership has limited partners, and
- Evidence of business activity in the U.S.



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# C Corporation

## Definition:

Is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.



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# Distinguishing Features of a Corporation

1. Limited Liability
2. Easy transfer of ownership
3. Continuity of ownership
4. Centralized management



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# Corporations, *continued...*

## Limited Liability:

The debts of the corporation are the responsibility of the corporation.

Shareholders cannot lose any more money than they paid for their stock.



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# Corporations, *continued...*

Easy transfer of ownership:

Ownership is transferred with the sale or transfer of stock.



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# Corporations, *continued...*

## Continuity of ownership:

Corporation doesn't end with the death of a owner like in a sole proprietorship or partnership.



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# Corporations, *continued...*

Centralized management:

Each corporation is made up of a board of directors who manage the business.



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# Ownership & Control of Corporations

Several documents can be used to demonstrate ownership and control:

- Certificate of Incorporation
- Articles of Incorporation
- By-Laws
- Stock Certificates; both common and preferred
- Stock ledger
- Tax Return
- Annual Report
- Form 10K (typically from large companies)



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# Certificate of Incorporation

The birth certificate for the corporation. It shows that the corporation exists as a legal entity.

Issued by the incorporating State.



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# Articles of Incorporation

Will identify the:

- Acceptable business activities that may be conducted.
- Type and number of stock shares that may be authorized and issued by the corporation.
- Par value, if any of the stock shares.



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# By-Laws

Rules made by the board of directors that govern how the corporation will function. The rules may not conflict with any provision of the articles of incorporation.

The bylaws cover such topics as:

- Location of the corporation
- Location of annual meeting and special meetings of the corporation
- For a stock certificate, information about stockholders and voting of shares of stock



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# By-Laws, *continued...*

- Date and place of the annual meeting
- Corporate officers and their duties
- Board of directors membership, meetings, compensation, selection and removal of board members
- Information about corporate records



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# Corporate Tax Returns

Most corporations file Form 1120, U.S. Corporation Income Tax Return.

A corporate tax return provides information that is relevant to the adjudication of I-129s:

- Date of incorporation
- Evidence of business activity
- The name of individuals or organizations that own the corporation



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# Structure of Corporations

Common terms in corporate structure:

- Parent
- Branch
- Subsidiary
- Affiliate

These terms refer to the degree of ownership.



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# S Corporations

Corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes.



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# S Corporations, *continued...*

S Corps are not taxable entities. They are required to file an informational tax return called a Form 1120S, U.S. S Corporation Income Tax Return.

Income and expenses flow to the shareholders' individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.



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# Schedule K

is comprised of various questions that the corporation needs to answer, including what accounting method is used, business activity codes, and type of product or service offered. This schedule also includes questions about foreign and other related companies.



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# To Qualify as a S Corporation

Corporation must:

- Be a domestic corporation.
- Have only one class of stock, common.
- Have no more than 100 shareholders.
- Have as shareholders only individuals, estates, and certain trusts.
- Have shareholders that are U.S. citizens or residents of the U.S.



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# Ownership & Control of S Corporations

Corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp. If this type of ownership is claimed, additional evidence will be needed.

If you are not able to determine if the owners are U.S. citizens, Permanent Residents, or U.S. corporations or partnerships, consult with a supervisor or senior.

**NOTE:** An U.S. S corporation may own a foreign entity which may create the required relationship.



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# Limited liability Company, (LLC)

A form of business organization with the liability-shield advantages of a corporation and the flexibility and tax pass-through advantages of a partnership.



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# LLC, *continued...*

## Advantages:

- Like a corporation, owners have limited liability for the debts and actions of the business
- Like a partnership, the profits and losses can pass through to the owners of the LLC. Allows owners to avoid double taxation.



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# LLC, *continued...*

## Disadvantages:

There is a “transferability restriction test” which means it is not as easy to transfer ownership of the company. This can make it hard for a growing company to get financing.



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# LLC, *continued...*

The federal government does not recognize an LLC as a classification for federal tax purposes.

An LLC business entity must file as a corporation, partnership or sole proprietorship.



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# LLC, *continued...*

## LLC Tax returns:

- LLC filing as a Corporation- Form 1120
- LLC filing as a Partnership- Form 1065
- LLC filing as a S-Corporation- Form 1120S
- LLC filing as a sole proprietorship, Form 1040



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# Joint Venture

- Two or more individuals or entities working together for a joint profit motive.
- A joint venture can be a corporation, a partnership, or a non-entity.
- Joint venture participants create a separate entity to carry on a trade, business, financial operation, or venture and divide the profits from the entity.



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# Joint Venture, *continued...*

- A joint venture created solely to share expenses does not create a separate entity.
- Joint ventures are typically created for a single project and are established for a defined period of time.



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# Joint Venture Advantages

- New capacity and expertise
- Access to new markets
- Access to greater resources
- The sharing of risks
- Flexibility



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# Joint Venture Disadvantages

- It takes time and effort to build the right relationships.
- Objectives of the venture are not always clear and/or communicated well.
- Imbalance in levels of expertise, investment or assets brought to the relationship.
- Differing cultures and management styles.



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# Joint Venture Agreement

A Joint Venture Agreement should cover:

- The parties involved.
- The objectives of the joint venture.
- The financial contribution of both parties.
- Intellectual property developed by the participants in the joint venture.
- Day to day management of finances.
- Dispute resolution.
- Terminating the agreement.
- The use of confidentiality or non-disclosure agreements.



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# Non-Profit Organizations

- A non-profit organization is one that is organized for a purpose other than generating a profit.
- A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization.
- A non-profit must be incorporated to obtain tax-exempt status and commence doing business as a legal entity.



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# Non-Profit Organizations, *continued...*

Are exempt from federal income tax. Examples of these organizations include:

- 501(c)(3) Charitable, religious, and educational organizations.
- 501(c)(4) Civic leagues and social welfare organizations.
- 501(c)(5) Labor/agricultural/horticultural organizations.
- 501(c)(6) Business and professional leagues.
- 501(c)(7) Social and recreational clubs.

NOTE: The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.



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# Non-Profit Organizations, *continued...*

- Non-Profits are rare in L filings but they do occur.
- Generally, these organizations have “branch” organizations or “sister” corporations abroad.
- Evidence of ownership and control will include incorporation document, audited or reviewed financial statements, or federal informational returns.



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# Non-Profit Organization, *continued...*

To establish a qualifying relationship, a non-profit organization may submit the following:

- A copy of the bylaws of the entity.
- A list of the entity's board of directors.
- Documentation showing who or what entity has the right to possession of, or the right to direct the disposition of, the assets of the entity.



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# Non-Profit Organization, *continued...*

- Documentation showing who or what entity provides the full or primary source of funding to the entity.
- Any documentation regarding the right to appoint a director or board member of the entity.



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# Non-Profit Organizations, *continued...*

Non-Profits file Form 990-Information Returns. There are five different Form 990s:

- Form 990, Return of Organization Exempt from Income Tax
- Form 990-EZ, Short Form Return of Organization Exempt for Income Tax
- Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as Private Foundation
- Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons



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~~Vermont Service Center~~ National

**Standard Operating Procedure (SOP)**

**L1A AND L1B  
INTRACOMPANY  
TRANSFEREES**

Prepared by:  
Center Training Unit

— Vermont Service Center SCOPS

July 1, 2014

Comment [U01]: Update when complete

Revised 7-1-2014

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## General

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**Purpose** This SOP prescribes procedures for the adjudication and processing of Form I-129, Petition for a Nonimmigrant Worker, filed under 8 CFR 214.2(l) at the Vermont Service Center (VSC).

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**Applicability/Scope** This SOP is applicable to all ~~VSC~~ SISOs, ISOs, and Adjudication Support Team (AST) personnel performing I-129L adjudicative or AST functions or review of those functions. Personnel performing other duties pertaining to I-129s will be similarly bound by the provisions of this SOP which apply to their specific tasks or duties.

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**Conflict Resolution** Any provision of the INA or 8 CFR that conflicts with this SOP will take precedence over the SOP. If you identify a conflict, report the matter immediately to your supervisor or to any SISO.

If any conflict is noted between this SOP and policy or guidance documents issued by HQSCOPS, report the matter through the supervisory chain for resolution.

This SOP supersedes all prior Vermont Service Center guidance documents, policy memoranda, training packets, or other material pertaining to I-129(L) cases; these documents should be discarded.

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**General, Continued**

**Revisions**

The Center Training Unit SCOPS will issue numbered revisions to this SOP. No other document will be considered a valid modification.

**Electronic and Print Copies**

All personnel who maintain a printed copy of the SOP will post the revisions upon receipt. Electronic copies of the SOP will be modified to reflect changes as they are issued. A listing of previous revisions will be linked to the SOP to serve as a summary of all applicable revisions.

**Proposed Changes**

Submit proposed changes with appropriate supporting documents through first-line supervisors to the Center Training Unit.

**Current Revisions**

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow.

**Prior Revisions**

A list of the most recent revisions made to this document is located after the Appendices. A complete list of previous revisions is located on the Add-Ins toolbar under Add'l Resources/ADJ SOPs/Revisions/I-129 SOP Revisions/I-129L SOP Revisions.

Revision #	Date	Subject	Pages	KM#
29	7/1/14	Expansion and clarification on Blanket LZ description and processing.	97, 100-101	1813

(b)(5)

## L1A AND L1B INTRACOMPANY TRANSFEREES

### Overview

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**Introduction** A qualifying United States or foreign employer may file a Form I-129 petition on behalf of an alien beneficiary requesting classification as an Intracompany Transferee.

---

**Statutory Basis** Section 101(a)(15)(L) of the Act makes provision for temporary positions for:

- Certain managers and executives, and
- Specialized knowledge professionals.

The nonimmigrant classifications for this section of law are L1A and L1B, respectively.

---

**Regulatory Basis** USCIS has responsibility for determining whether the alien beneficiary is eligible for admission and whether the petitioner is a qualifying organization.

Title 8, Code of Federal Regulations, Part 214.2(l), sets forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions.

---

**Dual Intent for L-1s** 8 CFR 214.2(l)(1)(i) states that an intracompany transferee can be admitted temporarily to the United States to be employed by a qualifying organization. However, the approval of a permanent labor certification or the filing of a preference petition for the beneficiary shall not be the basis for denying an L1 petition or the beneficiary's application for admission.

The beneficiary may legitimately come to the U.S. as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States. [See 8 CFR 214.2(l)(16)]

---

**Timely Adjudication** In general, Form I-129L petitions should be processed within thirty days of receipt. [Section 214(c)(2)(C) of the Act, 8 CFR 214.2(l)(7)(i)]

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## Overview, Continued

### Record of Proceeding

The record of proceeding for the L1 petition from top to bottom:

- G-28
- I-129
- I-129L Supplement
- Evidence of qualifying relationship between the United States and foreign organizations
- Evidence of the beneficiary's qualifying foreign employment
- Evidence that the foreign organization is doing business
- Evidence of the beneficiary's proposed employment in the United States
- Evidence that the United States organization is doing business, or evidence that meets the "new office" evidentiary requirements
- RFE notices and Intent to Deny Notices (if applicable)
- All evidence submitted in response to RFE and Intent to Deny Notices in the order dictated above.

(b)(5)

### Part 6 of Form I-129 is Not Completed

If Part 6 is not completed, you must provide the petitioner with the opportunity to submit the required response by issuing a Request for Evidence (RFE). Use standard 1817 which asks the petitioner to complete and submit Page 5, Part 6, of Form I-129 with a revision date of November 23, 2010 or later. You should not return the original signed petition to the petitioner.

**NOTE:** At this time, USCIS does not require a copy of the export control license as part of the nonimmigrant visa petition process. However, if the petitioner declines to respond to Part 6 in response to an RFE, deny the petition pursuant to 8 CFR 103.2(b)(1) for failure to properly complete and file the petition with any initial evidence required by applicable regulation and/or the form's instructions.

The standard denial to address this scenario is the I129CTECH letter.

*Continued on next page*

## Overview, Continued

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### **Banned Employers**

When DOL informs USCIS that certain organizations have violated the INA, DOL will provide USCIS with a list of these employers that are banned for a specific time period from having an immigrant and/or nonimmigrant petition approved. The ban does not affect petitions that were previously approved; however, new petitions may not be approved during the banned period for the listed employers.

**NOTE:** The Data Reporting Group (DRG) runs a scrape for banned employers. If you receive a petition filed by a banned employer, bring the petition to the appropriate form type ISO3.

---

### **List of Banned Employers**

The list of organizations ineligible for approval of immigrant and nonimmigrant petitions is found on the [VSC-SCOPS ECN](#) site under Adjudications/Policy Memos/Business.

**Important:** Be sure to view the most recent list of organizations ineligible for approval of immigrant and nonimmigrant petitions. There may be old lists still present on this page.

---

## Fees Required for L Petitions

### Fraud Prevention and Detection Fee

In addition to the base filing fee, a Fraud Prevention and Detection Fee of \$500 must be paid by:

- Petitioners seeking initial (H-1B) or L nonimmigrant classification,
  - A change of status to (H-1B) or L nonimmigrant classification, or
  - A change of employer in these classifications.
- [INA § 214(c)(12)]

This new \$500 fee applies to petitions filed on or after March 8, 2005 and may be paid by any party.

#### EXCEPTIONS:

- Amended petitions
- Successor in interest

### Border Security Fee

On August 12, 2010, President Obama signed Public Law 111-230, the Emergency Supplemental Appropriation for Border Security Act. The new fee is in addition to the Base Fee, Fraud Prevention and Detection Fee, as well as any Premium Processing Fee, if applicable.

Public Law 111-230 requires the submission of an additional fee of:

- \$2,000 for certain H-1B petitions and
- \$2,250 for certain ~~L-1A-L1A~~ and ~~L-1B-L1B~~ petitions.

An I-129 petition for ~~H-1B-H1B~~ of L status postmarked on or after August 14, 2010 through September 30, 2015 must pay the fee if the following criteria are met:

1) The petition is requesting:

- An initial grant of ~~L-1A-L1A~~ or ~~L-1B-L1B~~ status **OR**
- Authorization to change employers

#### AND

2) The petitioner meets both of the following conditions:

- Employs 50 or more U.S. employees **AND**
- More than 50% of those employees are in H1B or L1 status.

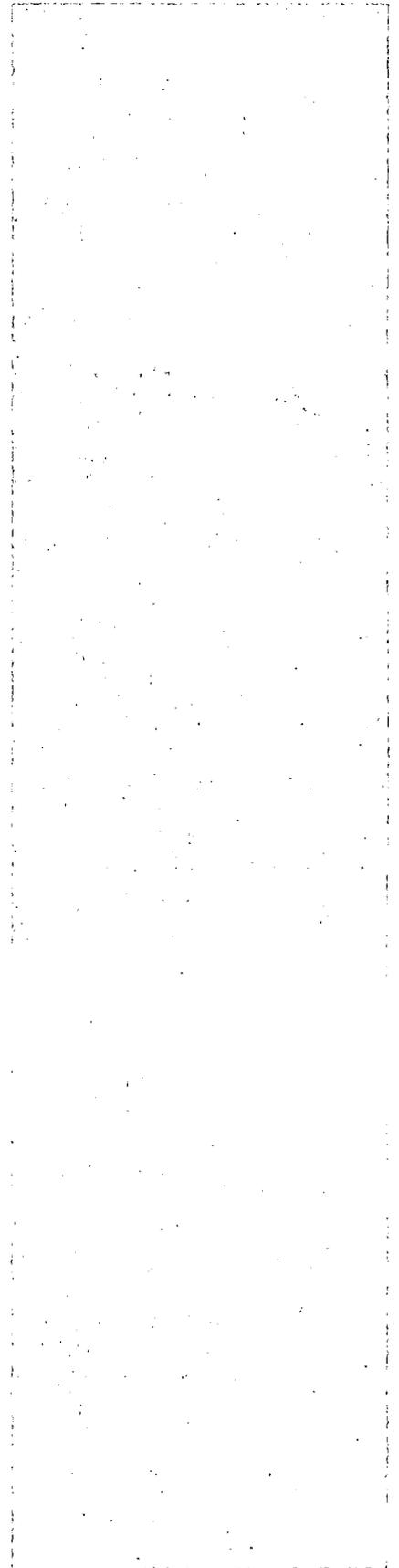
**NOTE:** The fee is required when the petitioner requests a change of status H1B to an "initial grant" ~~L-1-L1~~ for the same beneficiary to perform essentially the same job.

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Revised 7-1-2014

## Fees Required for L Petitions, Continued

**Determining Number of U.S. Employees** All of the petitioner's U.S. Employees should be counted when determining whether it is subject to the Border Security Fee. If a petitioner claims exemption from the Border Security Fee based on a combination of employees within a controlled group of corporations, an RFE using AutoText 2036 should be issued to request clarification about the number of the petitioner's U.S. employees.

When determining the total number of employees in the United States for the purpose of the Border Security Fee, petitioners should **not** include:

- Employees from partnerships, proprietorships, etc., which are under common control;
- Employees from affiliated service groups; and
- Leased employees.

**Who Can Pay the Fees?** Refer to the table below to determine which party can pay the different fees associated with the filing of an I-129.

Type of Fee	Must be paid by...
Base Filing Fee	The petitioner, attorney, or beneficiary
Premium Processing Fee/I-907	The petitioner, attorney or beneficiary. **If paid by the beneficiary, the I-907 still needs to be signed by the petitioner or attorney. An I-907 may be signed by the attorney, if there is a properly executed G-28 for the attorney signed by both the attorney and petitioner.
Fraud Fee	The petitioner, attorney, or beneficiary
Border Security Fee	The petitioner or attorney. **Cannot be paid by the beneficiary.

**Requests for Fraud and/or Border Security Fees** Refer to the chart below to determine which notice should be issued to request Fraud and/or Border Security Fees when the file does not contain acceptable evidence of an exemption.

When the file is missing the...	Issue an...	Using...
Fraud Fee	ITD	B3EXEMPT FRAUD
Border Security Fee	RFE	AutoText 2034

## Eligibility Requirements

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### Reviewing Evidence

This section identifies the initial evidence required in the adjudication of a Form I-129 L petition. Review all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted.

Each piece of evidence must meet the standard of acceptability as noted. If for any reason the evidence submitted is deemed to be unacceptable or is missing, the officer must request the submission of acceptable evidence.

---

### Required Evidence

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations,
- U.S. organization and the organization abroad are both actively engaged in doing business,
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the I-129 L petition.
- Beneficiary will be employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization in the United States.

[See 8 CFR 214.2(l)(3)]

- If the beneficiary will be in a specialized knowledge capacity and working at a location other than the petitioner's, evidence is also required that the beneficiary will be under the primary control and supervision of the petitioner and will be providing a product or service for which specialized knowledge specific to the petitioner is necessary.

(See July 28, 2005, William R. Yates memo "Changes to the L Nonimmigrant Classification made by the L-1-L1 Reform Act of 2004).

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## Eligibility Requirements, Continued

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**Exception: New Office** If the petitioning organization that is filing for an L1 beneficiary has been doing business for one year or less, it is not required to be actively engaged in doing business at the time of filing.

Instead, the petitioner must submit evidence that:

- Sufficient physical premises to house the new office have been secured, and
- The intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

---

**Date of Filing** All of the eligibility requirements must be met as of the date of filing of the petition. [See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

---

## Determination of Proper Filing

---

- Proper Filing** A petition is considered to be properly filed when it is:
- Completed and signed, in the original, by a designated representative of the qualifying employing organization, and
  - Accepted for processing with the correct fee, by the USCIS office having jurisdiction over the area of the beneficiary's intended employment.

[See 8 CFR 103.2(a)(7)(i)]

---

- Who may File the Petition** Form I-129 L petitions may be filed by either:
- The qualifying foreign organization or
  - The qualifying U.S. organization that intends to employ the beneficiary.

[See 8 CFR 214.2(l)(2)(ii)]

---

- Representation**
- A representative of the petitioner must complete and sign a Form G-28.
  - The petitioner and the representative must sign the Form G-28 in the original.
  - Facsimile stamped signatures for representatives are also acceptable.
  - E-filed cases state "certified by the internet."
  - Refer to the G-28 SOP for further information regarding G-28s and representatives/attorneys.

[See 8 CFR 103.2(a)(3), 292.1, and 292.2]

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- When to File** The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

[I-129 Filing Instructions and See Federal Register at 70 FR 21983-01 (April 28, 2005)]

In the event that a petition is accepted more than six months prior to the date of actual need, (i.e. requested employment start date), route the case, and any accompanying I-539, to an IS03 L POC. The case will be sent to the Case Resolution Unit where an appropriate letter will be prepared and the fee refunded.

---

## Jurisdiction

### General

In general, I-129L petitions must be filed at the Service Center that has jurisdiction over the area where the beneficiary is to be employed.

VSC will serve as the filing location for all individual I-129 L petitions filed directly with a Service Center where the beneficiary is or will be employed in the following locations:

Alabama	Maryland	Puerto Rico
Arkansas	Massachusetts	Rhode Island
Connecticut	Mississippi	South Carolina
Delaware	New Hampshire	Tennessee
District of Columbia	New Jersey	Texas
Florida	New Mexico	Vermont
Georgia	New York	Virginia
Kentucky	North Carolina	U.S. Virgin Islands
Louisiana	Oklahoma	West Virginia
Maine	Pennsylvania	

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The following link provides updates for filing locations that may not yet be captured in the I-129 filing instructions:

[USCIS – Direct Filing Addresses for Form I-129, Petition for Nonimmigrant Worker](#)

**IMPORTANT:** The petitioner shall advise USCIS whether they have filed a petition for the same beneficiary with another office, and certify that they will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed.

Failure to make a full disclosure of previous petitions filed may result in the denial of the petition.

[See 8 CFR 214.2(l)(2)(ii)]

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### Blanket L Petitions

Jurisdiction for Blanket L petitions remains at the Service Center that approved the blanket petition regardless of the geographic location of the beneficiary's employment in the United States.

[See 8 CFR 214.2(l)(2)(ii)]

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## **Jurisdiction, Continued**

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### **L1 Petitions for Citizens of Canada under NAFTA**

The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

---

### **Amended Petitions**

The petitioner must file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in:

- Approved relationships,
- Additional qualifying organizations under a blanket petition,
- Change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or
- Any information which would affect the beneficiary's eligibility under Section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(7)(i)(C)]

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## Qualifying Relationships

### Overview

---

**Introduction** When an employer wishes to transfer an employee of a foreign company to a U.S. company as an L1 nonimmigrant, a qualifying relationship must exist between the foreign employer and the U.S. employer.

---

**Qualifying Organizations** A qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- Meets exactly one of the qualifying relationships specified in 8 CFR 214.2(l)(ii),
- Is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the beneficiary's stay in the United States as an intracompany transferee, and
- Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

[See 8 CFR 214.2(l)(1)(ii)(G)]

---

**Outsourcing** An L1B nonimmigrant alien who has been employed by a firm with an affiliated entity in the United States, who comes to the United States to perform services for the international entity, can no longer work primarily at a worksite other than that of the petitioning employer.

**EXCEPTION:** The work is controlled and supervised by the ~~L1-B~~L1B petitioning employer. The petitioning employer must show they retain ultimate authority over the ~~L1-B~~L1B worker, and the ~~L1-B~~L1B worker must provide a product or service to the offsite employer for which specialized knowledge specific to the petitioner is necessary.

[See ~~L1~~L1 Visa Reform Act 2004]

---

**Commercial Enterprises** The majority of L1 petitioners are commercial enterprises, organized as corporations, partnerships, or sole proprietorships. They are called commercial enterprises because they are trying to make a profit.

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*Continued on next page*

## Overview, Continued

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### Non-Profit Enterprises

It is also possible for non-profit employers, such as religious or charitable organizations, to use the L1 classification. However, the petitioner must still demonstrate that all of the L1 eligibility requirements have been met:

[See *Matter of Church of Scientology*, 19 I&N Dec. 593]

---

### Ownership and Control

Regardless of whether a business is set up as a corporation, partnership, or sole proprietorship, somebody normally owns the business and somebody controls the business.

**Ownership and control** are the deciding factors used by the officer to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer and will be discussed thoroughly later.

---

### Foreign Employer Must Continue to do Business

There must be an organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist. [See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad but the relationship must continue to exist.

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## Ownership & Control

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**Definitions**      **Ownership** for L1 purposes means the legal right to have possession of an organization.

**Control** for L1 purposes means to exercise authority or influence over an organization.

---

**Deciding Factors for a Qualifying L1 Relationship**      **Ownership and control** are the deciding factors used to determine whether a qualifying L1 relationship exists between the foreign employer and the U.S. employer.

Both ownership and control must be present to have a qualifying relationship.

---

**Beneficiary May be the Sole Owner**      In many instances the beneficiary of the L1 petition may own both the foreign employer and the U.S. employer in whole or in part. There is no problem with this arrangement as long as all of the L1 eligibility requirements are met.

**NOTE:** The company in the foreign country must continue to do business.

[See *Matter of M 8 I&N* Dec. 618 and *Matter of Aphrodite Investments 17 I&N*, Dec. 530]

---

**De Jure Control**      Ownership of more than 50% of an organization is considered to be evidence of control. Control on the basis of ownership of more than 50% is called de jure control.

De jure simply means "by law", and it is a straightforward form of control.

---

**Negative Control - Joint Ventures**      In many instances, two individuals or organizations will create an organization in which each individual or organization has 50% ownership. This arrangement is called a joint venture.

Each of the owners could be said to exert de jure control over the joint venture. As they can each "block" any decision made by the other owner by virtue of their 50% control over the organization, their control can be described as a "negative control".

[See *Matter of Siemens Medical Systems 19 I&N* Dec. 362]

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## Ownership & Control, Continued

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### De Facto Control

It is possible for an owner of less than 50% of a company to exercise control over the organization.

De facto simply means "in fact". [See *Matter of Hughes* 18 I&N Dec. 289]

**NOTE:** If a petitioner argues that de facto control exists on some other basis than discussed previously or in *Matter of Hughes*, consider the argument with an open mind, and see if the argument makes sense.

---

### Contractual Relationships

A contractual relationship between the foreign employer and the U.S. employer is not sufficient. There must be both ownership and control.

[See *Matter of Schick* 13 I&N Dec., 647]

An executed contract between organizations may allow one organization to exert influence over the other, but a solely contractual relationship is not qualifying for L1 purposes.

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## Definitions of Qualifying Relationships

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**Introduction** The following definitions describe the qualifying L1 relationships.

[See 8 CFR 214.2(l)(1)(ii)(H), (I), (J), (K), and (L)]

---

**Substance Over Form** A petitioner may identify the qualifying relationship between the U.S. organization and the foreign organization in a manner that is not correct per USCIS' definition of that particular qualifying relationship. However, as long as the relationship conforms to one of the qualifying relationships defined in regulation, it is acceptable for L1 purposes.

There are times when the nature of the relationship between the two organizations is not clear based on the evidence in the record. In these instances, it is best to request an additional explanation from the petitioner, along with corroborative documentary evidence, if needed.

---

**Parent** Parent means a firm, corporation, or other legal entity, which owns and controls at least one subsidiary. An organization is said to be a parent to a subsidiary when:

- It owns more than half of the subsidiary, and
- Controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(I)]

**NOTE:** The definition of subsidiary includes other qualifying forms of parent/subsidiary relationships.

---

**Branch** Branch means an operating division or office of the same organization housed in a different location.

[See 8 CFR 214.2(l)(7)(ii)(J)]

---

**Subsidiary** Subsidiary means a firm, corporation, or other legal entity that is directly or indirectly owned and controlled by a parent. As stated in the definition for a parent, the parent owns more than half of the subsidiary and controls the subsidiary.

[See 8 CFR 214.2(l)(1)(ii)(K)]

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## Affiliates

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- Introduction** There are three categories of qualifying affiliate relationships, to include:
- (1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual.
  - (2) One of two legal entities owned and controlled by the same group of individuals, each owning and controlling approximate the same share or proportion of each entity.
  - (3) A partnership that is:
    - Organized in the United States
    - To provide accounting, managerial, and/or consulting services
    - Under an agreement with a worldwide coordinating organization
    - That is owned and controlled by member accounting firms.

[See 8 CFR 214.2(l)(1)(ii)]

---

- Partnership Organized Outside the US** A partnership (or similar organization) that is organized outside the United States to provide accounting services is considered an affiliate of the U.S. partnership if:
- It markets its accounting services under the same internationally recognized name;
  - Under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.
-

## Types of Businesses

### Sole Proprietorships

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**Definition**

A sole proprietorship is a business that is owned by one individual.

---

**Unlimited Liability**

A sole proprietorship is not legally separate from its owner. The owner is personally responsible for the debts of the business. Creditors can sue the owner to take his or her house, car, or other personal assets to pay off the sole proprietorship's debts.

---

**How a Sole Proprietorship is Created**

A sole proprietorship is the easiest business to create. An individual merely establishes a business, and the sole proprietorship is automatically created.

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**Evidence of Ownership & Control**

Generally, no special documents are executed when a sole proprietorship is created and commences doing business.

In the United States, a sole proprietorship is not required to execute or file any documents of creation, and may use the owner's own social security number as its EIN (employer's identification number).

The most common document that is provided as evidence of the ownership and control of a sole proprietorship is the owner's individual federal tax return. In addition, contracts, such as leases or sales agreements that were executed by the owner on behalf of the sole proprietorship may be submitted.

---

**Owner's Individual Federal Tax Return**

Sole proprietors located in the United States must report the income and expenses from their businesses in their individual Form 1040 federal tax returns each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return.

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## General and Limited Partnerships

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**Partnership Definition** A partnership means the shared ownership of a business.

---

**Limited Partnership Definition** A limited partnership is the shared ownership of a business in which certain partners provide a capital investment without being held personally liable for the debts of the partnership above the level of their investment.

The trade-off for having the limited liability is that the limited partner may not materially participate in the running of the business or attempt to control the business.

---

**General Partnership: Unlimited Liability** A partnership is not legally separate from its partners. The partners are personally responsible for the debts of the partnership. Creditors can sue the partners to take their houses, cars, or other personnel assets to pay off the partnership's debts.

---

**Limited Partnership: Both Unlimited and Limited Liability** All general partners of a limited partnership are personally responsible for the debts of the partnership. Creditors can sue the owners to take their houses, cars, or other personnel assets to pay off the partnership's debts.

Limited partners are only liable up to the amount of their capital investment in the partnership. The limited liability can be legally stripped from the limited partner if he or she is found to have materially participated in the business.

---

**How a General Partnership is Created** No formal, written partnership agreement is required to create a general partnership. However, many general partnerships do execute partnership agreements.

In the United States, partnerships must obtain an EIN (employer's identification number) for the partnership.

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## General and Limited Partnerships, Continued

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**How a Limited Partnership is Created**

A formal, written partnership agreement is required to create a limited partnership.

- Every limited partnership must have at least one general partner.
  - In the United States, limited partnerships must obtain an EIN (employer's identification number) for the partnership.
- 

**Only General Partners have BOTH Ownership & Control**

Only general partners can be considered to have both ownership and control over a limited partnership. When trying to establish qualifying affiliate relationships, only the percentage of ownership by each of the general partners should be considered.

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**Limited Partners have NO Control**

Limited partners may own a portion of a limited partnership, but they do not have any control over the partnership, as they cannot materially participate in the operation of the business.

---

**Evidence of Ownership & Control**

The most common documents that are provided as evidence of the ownership and control of a general or limited partnership are partnership agreements and the partnership's Form 1065 federal tax return.

In addition, contracts, such as leases or sales agreements that were executed by the partners on behalf of the partnership may be submitted.

---

**Partnership Agreements**

A partnership agreement identifies:

- The names of the partners,
- The amount and type of investment made by each partner,
- Whether the partners hold a limited partnership interest,
- Each partner's initial percentage of ownership,
- The type of business to be conducted by the partnership,
- How partnership interests can be transferred, and
- The conditions under which the partnership can be dissolved.

The partnership may not engage in business activities, transfer partnership interests, or dissolve in a manner that conflicts with the terms specified in the partnership agreement, if any.

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## General and Limited Partnerships, Continued

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### **Partnership Tax Returns**

In the United States, partnerships (including limited partnerships) are not taxable entities. The profits and losses of the partnerships are reported on a partnership tax return, Form 1065, and flow through to each partner's individual tax returns on Schedule K.

The partnership's tax return provides certain information that is relevant to the ownership and control of the partnership to include the:

- Date of origination of the partnership,
  - The names and % of ownership for each of the partners at year end,
  - Whether the partnership has limited partners, and
  - Evidence of the partnership's business activities in the United States.
- 

### **Ownership Percentage May Not Equal the Capital Investment**

A partner's percentage of ownership in a partnership is not always equal to the percentage of his or her capital investment in the partnership, nor does it mean that the ownership of the business will be equally shared.

- The partnership agreement will stipulate the percentage of ownership if it differs from the percentage of the capital investment.
  - Shared ownership of the business does not always mean shared ownership of the assets used in the business.
-

## Corporations

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**Definition** A corporation is a separate legal entity, owned by its shareholders. It is an association of individuals or organizations created by law that exists as an entity with powers and liabilities that are independent of its members.

Corporations are a taxable entity and must pay taxes on the income generated by them prior to distributing the income to its shareholders.

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**Limited Liability** The debts of the corporation are the responsibility of the corporation, not the individual shareholders. If a corporation goes bankrupt, the shareholders cannot lose any more money than they paid for their stock.

Normally, creditors cannot sue the shareholder to take his or her house, car, or other personal assets to pay off corporate debts. This limited liability is one of the big attractions of corporations.

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**Where a Business Incorporates** In the United States each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of businesses.

Businesses may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.

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**How a Business Incorporates** In order to incorporate a business in the United States, articles of incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a certificate of incorporation.

After the business is incorporated, the corporation may sell and issue shares of stock, and commence doing business as a legal entity apart from its owners.

The shareholders of the corporation will elect a board of directors, who may or may not be shareholders. The board of directors may enact by-laws for the corporation.

In the United States, corporations must obtain an EIN (employer's identification number).

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## Corporations, Continued

### Federal Tax Returns

Generally, corporations doing business in the United States must file a federal tax return each year, Form 1120, U.S. Corporation Income Tax Returns. The federal tax return provides certain information that is relevant to the ownership and control of the corporation to include the:

- Date of incorporation,
- Evidence of the corporation's business activities in the U.S., and
- In some instances, the name of the individuals or organizations that own the corporation will be noted (usually on the second page or in the supporting statements).

### Annual Reports

Some corporations submit annual reports as evidence of the qualifying relationship. Annual reports are only acceptable as evidence if they contain audited or reviewed financial statements. (For more information see the discussion of financial statements in the Doing Business portion of the SOP.)

### Evidence of Ownership & Control

The following table describes the typical documents that are submitted as evidence of the existence, rules, ownership and control of a corporation.

Document	Existence	Rules	Ownership	Control
Petitioner's Letter	X		X	X
Certificate of Incorporation	X	Generally, number and type of stock shares only		
Articles of Incorporation	Yes, if stamped by the Gov. agency	X		
by B-v-L laws		X		
Common Stock Shares			X	X
Preferred Stock Shares			X	
Stock Ledger			X	X
Tax Returns	X		Sometimes	Sometimes
Annual Reports	X	Sometimes	Sometimes	Sometimes

## S-Corporations

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**Definition** Sub-Chapter S corporations or "S Corps" as they are called ~~called~~ referred to, are a hybrid of the standard corporation.

The main difference between S Corps and regular corporations is that S Corps are not taxable entities and are limited to a certain type and number of shareholders.

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**S Corps are Not Taxable Entities** S Corps are not taxable entities. They are required to file an informational tax return, called a Form 1120S, U.S. S Corporation Income Tax Return. Income and expenses flows through to the shareholders' individual federal tax returns on a Schedule K, in the same manner as the income and expenses of a partnership.

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**Qualifying for S Corp Status** To qualify for S Corp status under IRS rules, a corporation must meet a number of requirements. It must:

- Be a domestic corporation, i.e. organized in the United States under federal or state law.
- Be an eligible corporation. Ineligible corporations may be certain financial institutions, insurance companies, and domestic international sales corporations.
- Have only one class of stock, common.
- Have no more than 35 shareholders.
- Have as shareholders only individuals, estates, and certain trusts (partnerships and corporations cannot be shareholders).
- Have shareholders that are U.S. citizens or residents of the United States (per the IRS definition of residents). Nonresident aliens cannot be shareholders.

The IRS defines a resident alien by establishing if the beneficiary has been physically present in the United States at least:

- 31 days during the current year, and
- 183 days during the 3 year period that includes the current year and the 2 years immediately before. To satisfy the 183 days requirement count:
  1. All of the days the beneficiary was present in the current year, **and**
  2. One-third of the days the beneficiary was present in the first year before the current year, **and**
  3. One-sixth of the days the beneficiary was present in the second year before the current year.

**NOTE:** If you believe the beneficiary is an unqualified shareholder, discuss with a SISO.

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*Continued on next page*

## **S-Corporations, Continued**

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### **Qualifying L1 Relationships for S Corps**

As noted above, corporations, partnerships, nonresident aliens, and aliens living abroad cannot be shareholders of an S Corp.

If such ownership is claimed on an L1 petition, additional evidence, such as a statement from an official of the IRS confirming the validity of the shareholders' S Corp ownership should be requested.

However, S Corps may own businesses abroad. So, if the claimed qualifying relationship involves a U.S. S Corp's ownership of a foreign employer, the relationship may be qualifying as long as it conforms to the defined L1 relationships.

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## **Incorporation**

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**Certificate of Incorporation**     The Certificate of Incorporation is the birth certificate for the corporation. It shows that the corporation exists as a legal entity.

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**Articles of Incorporation**     The Articles of Incorporation will identify the:

- Acceptable business activities that may be conducted by the corporation
- Type and number of stock shares that may be authorized and issued by the corporation
- Par value, if any, of the stock shares

This document is the constitution of the corporation and cannot be changed or amended without a majority vote of the shareholders.

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**Conformed Copy of the Articles of Incorporation**     A conformed copy of the Articles of Incorporation is a copy that agrees with the original and all amendments to it.

If the original document required a signature, the copy should be signed by a principal officer, or if not signed, be accompanied by a written declaration signed by an authorized officer of the corporation. With either option, the officer must certify that the document is a complete and accurate copy of the original.

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**By-Laws**     The By-Laws of a corporation are the lesser rules made by the board of directors that govern how the corporation will function. They may not conflict with any provision of the Articles of Incorporation.

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## Shares of Stock

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### Introduction

Stock shares are ownership certificates that are issued by a corporation when an individual or an organization makes an investment in the corporation. The number of shares of stock owned by an individual or organization relative to the number of shares issued determines their percentage of ownership in the corporation.

- The number of shares of stock issued by the corporation may not exceed the number of shares authorized by its articles of incorporation.
- Corporations can issue two classes of stock, common and preferred.

**EXAMPLE:** If one person owns 100 shares of stock in a corporation and the corporation has issued 200 shares of stock, that individual can be described as the owner of 50% of the corporation.

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### Stock Share Identification

Each stock share should identify the:

- Number of shares authorized
- Class of stock, either common or preferred
- Par value of the stock shares, if any
- Number of shares represented by the share certificate\*
- Name of the shareholder
- Date of stock issuance

**\*NOTE:** Number of shares authorized should be in Articles of Incorporation and not all authorized shares need to have been issued.

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## Shares of Stock, Continued

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**Stock  
Certificates are  
Internally  
Generated**

Stock share certificates can be purchased at any large office supply store. Stock certificates are issued by the corporation itself. The information provided on the stock certificates is internally generated by the issuing corporation and is not subject to scrutiny by any government agency, unless the corporation is publicly traded.

At a minimum, an acceptable stock certificate should include the:

- Name of the shareholder
- Number of shares of ownership that the stock certificate represents
- Date of issuance
- Signature of an authorized official of the corporation

Stock certificates alone are not sufficient evidence to determine ownership and control of a corporate entity. The stock ledger, stock certificate, corporate By-Laws, and the minutes of relevant annual meetings must also be examined. Without full disclosure of relevant documents; ownership and control cannot be determined.

[See *Matter of Siemens Medical Systems, Inc., supra*]

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## Shares of Stock, Continued

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**Common Stock** Common stock gives its holder voting rights. The significance of voting rights is control.

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**Preferred Stock** Preferred stock does not normally give its holder voting rights. While preferred stock may give its holder a percentage of ownership in a corporation, the holder does not have control over the corporation because the preferred stock does not give voting rights.

The Articles of Incorporation will identify whether the corporation is authorized to issue preferred stock.

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**Par Value of Stock** Par value is the nominal or face value of a share of stock. A corporation cannot issue a share of stock for less than the stated face value of the share.

The par value of a share of stock does not generally bear any relation to the amount of investment made by the shareholder at the time the stock was purchased, nor does it represent the value of the stock after the time of issuance.

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**Stock Ledger** The stock ledger is a document that is used by the corporation to record various stock transactions, to include the:

- Initial issuance of stock
  - Transfer of stock from one shareholder to another
  - Repurchase of stock by its own corporation (treasury shares)
  - Retirement or "cancellation" of stock
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## Non-Profit Organizations

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<b>Definition</b>	A non-profit organization is one that is organized for a purpose other than generating a profit. They are also frequently referred to as "tax-exempt" organizations as many of them qualify for an exemption from federal and state taxation.
<b>Limited Liability</b>	A non-profit organization is legally separate from its organizers. The organizers are not personally liable for the debts of the organization. Though they may be personally sued if they did not deal with the organization "at an arm's length" or as a disinterested third party would.
<b>Where a Non-Profit Incorporates</b>	<p>In the United States, each State, the District of Columbia, and the Commonwealth of Puerto Rico have statutory and regulatory provisions for the incorporation of non-profits.</p> <p>Non-profit may also become incorporated in foreign countries, in a manner that is generally similar to the process in the United States.</p>
<b>How a Non-Profit Incorporates</b>	<p>In order to incorporate a non-profit in the United States, Articles of Incorporation must be filed with the appropriate State, District, or Commonwealth government, who will issue a Certificate of Incorporation.</p> <p>After the non-profit is incorporated, the corporation may obtain tax-exempt status, and commence doing business as a legal entity.</p> <p>In the United States, non-profit corporations must obtain an EIN (employer's identification number).</p>

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*Continued on next page*

## Non-Profit Organizations, Continued

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**How a Non-Profit Obtains Tax-exempt Status**

In the United States, tax-exempt status must be obtained by requesting that designation from the Internal Revenue Service.

In order to qualify for tax-exempt status, the non-profit must be organized and operated exclusively for one or more of the following purposes:

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for public safety
- Fostering national or international amateur sports competitions, or
- The prevention of cruelty to children or animals.

The organization must be a corporation, community chest, fund, or foundation to qualify. An individual or partnership will not qualify.

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**Assets of Non-Profit Organization**

The assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose or to the local, state, or federal government for a public purpose.

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**Evidence of Ownership & Control**

Generally, L1 petitioning non-profit organizations are incorporated and have "branch" organizations or "sister" corporations abroad. Evidence of ownership and control will include incorporation documents, audited or reviewed financial statements, or federal informational returns.

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*Continued on next page*

## Non-Profit Organizations, Continued

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**Federal  
Informational  
Returns**

Most tax-exempt organizations (including private foundations) are required to file an annual informational return, called a Form 990 or 990EZ, Return of Organizations Exempt From Income Tax.

Tax-exempt organizations are required to file a yearly Form 990 or 990EZ if the organization's gross receipts exceed \$25,000.00 from sources other than the exempt purpose.

Most religious organizations are not required to file Form 990 or 990EZ, but many file them anyway in order to comply with state regulations.

Form 990 is organized very similarly to the Form 1120, U.S. Corporation Income Tax Return, and provides an abbreviated balance sheet as well as an analysis of excess revenue or (deficit) for the year.

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## Evaluating L1A and L1B Positions

### L1A: Managers and Executives

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**Introduction** The L1A classification is reserved for certain managers and executives. The definitions for L1 managers and executives can be found in section:

- 101(a)(44) of the Act,
- 8 CFR 214.2(l)(1)(ii)(B) and
- 8 CFR 214.2(l)(1)(ii)(C).

**NOTE:** The same managerial and executive capacity definitions apply to the nature of the beneficiary's position abroad and in the United States.

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**Manager  
Capacity  
Defined**

Managerial capacity means an assignment within an organization in which the employee **primarily**:

- Manages the organization, department, subdivision, function, or component of the organization;
- 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;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed, AND;
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

**NOTE:** All four criteria listed above must be met to qualify as a manager.

[See 8CFR 214.2(l)(ii)(B)]

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*Continued on next page*

## L1A: Managers and Executives, Continued

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### Executive Capacity Defined

Executive capacity means an assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making, **AND**;
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

**NOTE:** All four criteria must be met to qualify as an executive.

[See 8 CFR 214.2(l)(ii)(C)]

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### Evaluating Managerial or Executive Positions

When evaluating the nature of a claimed managerial or executive position, the petition and supporting evidence must be reviewed to establish that the beneficiary's employment qualifies for L1 purposes.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers and how the beneficiary's position fits into its organizational hierarchy.

A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, they must establish that the beneficiary meets each of the four criteria set forth in both the statutory definitions for "executive" *and* for "manager."

Frequently, the petitioner will merely reiterate the definitions of manager and executive as defined in statute and regulation.

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*Continued on next page*

**L1A: Managers and Executives, Continued**

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been, or will, be employed in a qualifying capacity becomes more difficult to determine.  In some instances, no individual position within the organization may involve duties that could be construed as being primarily managerial or executive in nature.

## Factors in Determining Managerial or Executive Capacity

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### Staffing Levels as a Factor

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, take into account the reasonable needs of the:

- Organization,
- Component, or
- Function.

**NOTE:** An individual will not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual:

- Supervises or has supervised, or
  - Directs or has directed.
- 

### Doing Business as it Relates to Managerial or Executive Positions

The employing organization must be doing business in a manner that would require the beneficiary to perform duties that are primarily managerial or executive in nature.

The petitioner should provide a statement that clearly describes:

- The business activities that the employing organization engages in, and
- How the beneficiary's position is, or was, required to further the organization's strategic or operational goals.

The record may also contain various documents as evidence of the organizations' business activities. The documentary evidence that is submitted should corroborate the petitioner's statements.

In order to make an accurate determination of the eligibility of the beneficiary's position, either abroad or in the United States, the description of his or her duties must be placed in the context of the:

- Personnel structure of the organization, and
  - Magnitude of the business that it conducts.
- 

*Continued on next page*

## Factors in Determining Managerial or Executive Capacity,

Continued

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### **Too Many Managers, not Enough Worker Bees**

It is not uncommon to encounter an organization that employs only a few people, yet claims that the majority of its employees are primarily engaged as managers or executives.

In these instances, it is often helpful to request complete position descriptions and hourly breakdowns for the duties performed by all of the individuals employed by the organization, including one for the beneficiary, as well as copies of corroborative payroll documentation.

The position descriptions and payroll documentation are used to determine who is performing the non-qualifying, operational duties of the business.

In addition, the entity may be substantial in size but the department or division where the beneficiary is, or will be, employed may be "top-heavy" with managers and executives.

If the employer is a large organization, detailed staffing inquiries should be limited to the department or division where the beneficiary has been or will be employed.

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### **Contract Employees**

The record may indicate that the business employs only one or two people, including the beneficiary. As mentioned previously, it may be helpful to try to determine who is performing the non-managerial operational duties of the business.

The business may not directly employ individuals to perform the non-managerial services of the business. Instead, the business may "contract out" some of its functions such as accounting, sales, warehousing, personnel, etc.

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## Factors in Determining Managerial or Executive Capacity,

Continued

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**Unpublished  
Decision by the  
AAO**

Representatives and petitioners occasionally refer to an unpublished decision by the AAO, (Irish Dairy Board, Inc.), in which a pre-IMMACT 90, Schedule A, Group IV beneficiary was found to be primarily engaged in a managerial/executive position, even though he was the sole employee of the petitioning entity.

In this case, the petitioning entity imported over \$90 million worth of goods to the United States while exporting in excess of \$50 million worth of goods in the year of filing. The business used independent contractors to perform all of its sales and import/export functions. The beneficiary did not directly perform the duties of these functions himself. Rather, he directed the work of the contractors in the furtherance of the operational duties related to the primary function of the business.

The AAO decided, in this unpublished decision, that if these contractors had been employed "in-house", that the beneficiary would have been clearly classifiable as an executive.

Pursuant to 8 CFR 103.3(e), Service precedent decisions are binding on Service employees; unpublished decisions are not binding. However, this decision outlines how substantial business activity and contractors may add up to a qualifying L1A position that is primarily managerial or executive in nature.

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**Beneficiary  
may Own the  
Organization if  
the  
Employment =  
L1**

The beneficiary may own the foreign and U.S. organizations in whole or in part. However, maintaining a "figure head" title and position, such as "Director" or "President", without being primarily engaged in the management of the organization is not qualifying for L1 purposes.

[See *Matter of Aphrodite Investments*, 17 I&N, Dec. 530]

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## Factors in Determining Managerial or Executive Capacity,

Continued

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### Managing a Function

L1 beneficiaries are commonly identified as the manager or executive of a “function” within the organization. Functional managers are included in the Service’s definitions for managers and executives.

However, it must be demonstrated that the organization is structured in such a way that the beneficiary is primarily managing the function, not primarily performing the duties of the function. The petitioner’s evidence must demonstrate that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will remove him or her from performing the services or duties of the company.

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## L1B: Specialized Knowledge

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**Introduction** The L1B classification is reserved for certain specialized knowledge individuals and professionals. The definitions for L1 specialized knowledge professionals can be found in section 214(c)(2)(B) of the INA and 8 CFR 214.2(l)(1)(ii)(D) and (E). The requirement that the individual is a professional only applies when the person is being petitioned for under a blanket petition.

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**Specialized Knowledge Defined** Specialized knowledge means special knowledge possessed by an individual of the organization's:

- Product
- Service
- Research
- Equipment
- Techniques
- Management, or other interests and its application in international markets, or
- An individual's advanced level of knowledge or expertise in the organization's processes and procedures.

---

**Specialized Knowledge Interpretation** Headquarters' memo CO 214L-P, dated March 9, 1994, provides additional guidance on the interpretation of "specialized knowledge" as defined by statute and regulation.

The memo notes that there are no statutory definitions or legislative history to provide guidance or insight as to the interpretation of the terms "special" or "advanced", and instructs adjudicators to rely on the common dictionary definitions. See the *Term "Special" Defined* section.

USCIS has several policy memorandums that provide guidance on how to interpret specialized knowledge for the L1B classification.

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## L1B: Specialized Knowledge, Continued

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**Term “Special” Defined** Webster’s II New Riverside University Dictionary defines the term “special” as “surpassing the usual; distinct among others of a kind.” Also, Webster’s Third New International Dictionary defines the term “special” as “distinguished by some unusual quality; uncommon; noteworthy.”

Based on the above definition, a beneficiary would possess specialized knowledge if the record demonstrated that the beneficiary’s knowledge is different from that found in the particular industry. The knowledge need not be proprietary or unique, but it must be different or uncommon.

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**Term “Advanced” Defined** Webster’s II New Riverside University Dictionary defines the term “advanced” as “highly developed or complex; at a higher level than others.” Also, Webster’s Third New International Dictionary defines the term “advanced” as “beyond the elementary or introductory; greatly developed beyond the initial stage.”

Again, based on the above definition, the beneficiary’s knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout an organization, only that the knowledge be advanced.

---

**No Test of the U.S. Labor Market Required** The determination of whether a beneficiary possesses specialized knowledge does not involve a test of the U.S. labor market.

Whether or not there are U.S. workers available to perform the duties is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the beneficiary, not whether there are similarly employed U.S. workers.

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## L1B: Specialized Knowledge, Continued

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**~~L-1~~L1 Visa  
Reform Act of  
2004**

The ~~L-1~~L1 Visa Reform Act of 2004 addresses ~~L-1B~~L1B workers stationed primarily outside the L organization. Beginning June 6, 2005, section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be “stationed primarily” at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent if the alien is under the “control and supervision” of the unaffiliated employer, or if the placement at the non-affiliated worksite is “essentially an arrangement to provide labor for hire.”

For this ground of ineligibility to apply:

- The alien worker must be a specialized knowledge worker as defined at 8 CFR 214.2(l)(1)(D) and (E), and
- The worker must be stationed primarily (more than 50%) offsite.

**NOTE:** If more than 50% of the total work time is spent offsite, the petition must establish “control and supervision” of the alien. (Yates memo)

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## Factors in Determining Specialized Knowledge

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### General Knowledge Does Not Equal Specialized Knowledge

Though there is no required test of the U.S. labor market, the officer must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly specialized knowledge.

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### Specialized Knowledge May Become General Knowledge

In this era of rapid technological advances, expertise in certain “cutting edge” technologies may become “general industry knowledge” in a rather short period of time. The true “advanced” nature of the beneficiary’s knowledge must be considered in relation to the current level of knowledge commonly held in the area of the beneficiary’s specialty.

**EXAMPLE:** In the early nineties, expertise in the creation and maintenance of internet websites was not commonly held in the computer industry. Today, many grade school children possess the ability to perform these tasks. Such knowledge is no longer thought of as “special” or “advanced”.

---

### Characteristics That May Equal Specialized Knowledge

The following are some of the possible characteristics of a beneficiary who may possess specialized knowledge. They are not all inclusive. The beneficiary:

- Possesses knowledge that is valuable to the employer’s competitiveness in the market place;
  - Is qualified to contribute to the U.S. employer’s knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
  - Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position;
  - Has knowledge which, normally, can be gained only through prior experience with that employer, or;
  - Has knowledge of a product or process that cannot be easily transferred or taught to another individual;
  - Has knowledge of a process or a product, which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States.
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**Factors in Determining Specialized Knowledge, Continued**

**Evaluating Specialized Knowledge Positions**

When evaluating the nature of the beneficiary's claimed specialized knowledge position, the petition and supporting evidence must be reviewed to establish that:

- The beneficiary's prior and proposed employment qualifies for LIB purposes, and
- He or she truly possesses knowledge that is special or advanced in relation to knowledge commonly held in the beneficiary's field.

The petitioner should describe the employer's business activities in a manner that allows for a clear understanding of the products and services that are provided by the employer to its customers, and how the beneficiary's position requires the services of an individual who possesses specialized knowledge.

**Petitioner's Allegations**

The mere fact that a petitioner alleges that a beneficiary's knowledge is somehow different does not, in and of itself, establish that the beneficiary possesses specialized knowledge.

Frequently, the petitioner will merely reiterate the definitions of specialized knowledge professionals as defined in statute and regulation.

<b>If the employer is a...</b>	<b>Then...</b>
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the nature of the employment. However, a determination of eligibility should not be made solely on the basis of a position title.
Small and/or young, unknown or less substantial business,	The issue of whether the beneficiary has been or will be employed in a qualifying capacity becomes more difficult to determine.

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## Factors in Determining Specialized Knowledge, Continued

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**Petitioner  
Bears Burden  
of Proof**

The petitioner bears the burden of establishing, through the submission of probative evidence, that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor.

Likewise, a petitioner's assertion that the beneficiary possesses an advanced knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others.

It is the quality and caliber of the evidence that establishes whether or not the beneficiary possesses specialized knowledge.

[See *Matter of Brantigan*]

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## Specialized Knowledge Language

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**Unacceptable Words and Phrases**      Words and phrases to avoid in specialized knowledge denials and call-ups.

- Narrowly held
- Key
- Key Personnel
- Proprietary
- Essential
- Essential Process

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**Acceptable Words and Phrases**      Words and phrases to use in specialized knowledge denials and call-ups.

- Different
- Uncommon
- Material different
- Noteworthy
- Distinguished by some unusual quality
- Highly developed
- Complex

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**Pre-IMMACT'90 Precedent Decisions**      *Matters of Colley, Penner, and Sandoz Crop Protection Corp.* should no longer be cited in decisions. While the overall premise in the decisions is sound and they are still considered good law, officers should avoid citing these decisions because they pre-date IMMACT'90. Citing these decisions may give the impression that USCIS is relying on the outdated aspects of the decisions.

In the fall of 2011, the Office of Policy and Strategy Service Center Operations and the Office of Chief Counsel provided an ~~L-1B-L1B~~ PowerPoint presentation/training. In this presentation, ~~VSC-SCOPS~~ was advised *Matters of Penner* and *Colley* predate the 1990 statutory amendments which eliminated this requirement that specialized be either "proprietary" or "unique" so use of this terminology should be viewed in this light. Based on this presentation/training it was expected that all citing of *Matters of Penner* and *Colley* would cease. *Matter of Sandoz Crop Protection Corp.* was later added as a decision not to cite.

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## Specialized Knowledge Language, Continued

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Pre-  
IMMACT'90  
Precedent  
Decisions  
(continued)

### History-

The term “key personnel” appears in the legislative history of the 1970 ACT that created the “specialized knowledge” subcategory and was used to generally describe all L+L personnel (i.e., executives, managers, and specialized knowledge). The term “essential” in turn, appears in a published decision, *Matter of Penner*.

*Matters of Penner and Colley* are often cited for their background discussion of the 1970 legislative history. It is important to note, however, that these decisions imposed a requirement that “specialized knowledge” be either “proprietary” or “unique” in nature (see examples below). The requirement was effectively overruled by Congress when it enacted the definition of specialized knowledge in section 214(c)(2)(B) of the Act. By enacting section 214(c)(2)(B), Congress declined to adopt the then-existing regulatory requirement that a person possess “proprietary” or “unique” knowledge as reflected in *Penner* and *Colley*.

*Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982)

An employee of “crucial importance” or “key personnel” must rise above the level of the petitioner’s average employee.

*Matter of Colley, et al*, 18 I&N Dec. 117 (Comm. 1981)

A distinction can be made between the person whose skills and knowledge enable him to produce a product and the person who is to be employed primarily for his ability to carry out a key process or function which is important or essential to the business firm’s operation.

*Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988)

Specialized knowledge involves proprietary knowledge and an advanced level of expertise not readily available in the United States job market. This knowledge and expertise must be clearly different from those held by others employed in the same or similar occupations. Different procedures are not a proprietary right within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.

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Continued on next page

## Specialized Knowledge Language, Continued

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**Pre-  
IMMACT'90  
Precedent  
Decisions  
(continued)**

The 1970 legislative history may contain the term “key personnel,” this language does not appear in the statute, regulations, or in any post-1990 precedent decision. Further, this term, taken from the legislative history, was not specifically applied to the “specialized knowledge” category. Similarly, the term “essential” does not appear in the statute, regulations, or in any post-1990 precedent decision.

In adjudicative decisions there should be a strong focus on the facts and regulations rather than citing precedent decisions, unless the precedent decision is needed to clarify gaps in the Act or regulations. Officers may use the language in some precedent decisions without necessarily citing the precedent decisions, when the verbiage is repeating a generally accepted principle that has other sources in law beyond the precedent.

**Using Cites**

Where not specified above, officers may use any cite pertinent to case. However, it is the responsibility of the officer to ensure all cites are still valid. Check with a supervisor to use cites not specified in this document.

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## Qualifying Employment

### Qualifying Foreign Employment

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**Introduction** The beneficiary must have one year of continuous employment in a primarily managerial, executive or specialized knowledge capacity with a qualifying organization abroad within the three-year period immediately preceding the filing of the petition.

[See 8 CFR 214.2(l)(1)(i), 8 CFR 214.2(l)(1)(ii)(A), 8 CFR 214.2(l)(3)(iii), and (iv), and *Matter of Michelin Tire Corp.* 17 I&N Dec. 248]

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**Foreign Capacity Does Not Have to Equal U.S. Capacity**

Generally, there is no requirement that the beneficiary has been employed abroad in the same capacity as he or she will have in the United States.

[See 8 CFR 214.2(l)(3)(iv)]

EXCEPTION: If the beneficiary is coming to open or be employed in a **new office** in the United States and will be employed in a managerial or executive capacity, he or she must have been employed in the same capacity abroad.

[See 8 CFR 214.2(l)(3)(v) and 8 CFR 214.2(l)(3)(vi)]

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**Employed Abroad**

Employed abroad means what it appears to mean. Experience acquired in the United States may not be counted as part of the required one year of experience, even if the U.S. experience was with a qualifying entity.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Kloeti* 18 I&N Dec. 295]

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*Continued on next page*

## Qualifying Foreign Employment, Continued

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### **One Year of Continuous Employment Abroad**

Continuously generally means an unbroken and uninterrupted year of qualifying work experience abroad.

The intracompany transferee definition seems to assume that all L1 beneficiaries will be outside the United States when an initial L1 petition is filed.

If the beneficiary has been outside the United States during the three-year period immediately preceding the filing of the petition, it is very easy to determine the three-year period to examine.

However, in some instances the beneficiary has been present in the United States for quite some time prior to the filing of the petition. In addition, the beneficiary may have been employed in the United States for part of the three-year period immediately preceding the filing of the petition. In these instances, the officer must determine whether the beneficiary's stay in the United States has "interrupted" his or her qualifying foreign employment.

Periods of employment in the United States in a lawful status for a qualifying entity and brief trips to the United States for business or pleasure are not considered to be interruptive of the beneficiary's foreign employment.

[See 8 CFR 214.2(l)(1)(ii)(A) and *Matter of Continental Grain Co.* 14 I&N Dec. 140]

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### **Successorship in Interest**

In some instances, the beneficiary's one year of continuous employment may be gained prior to a qualifying relationship between the foreign employer and the U.S. employer being established.

If all of the assets and liabilities of one entity are substantially acquired through sale, merger or reorganization by another entity such that a qualifying relationship is created between a U.S. employer and a foreign employer, then the beneficiary's foreign employment could have been gained prior to the creation of the qualifying relationship.

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## Qualifying U.S. Employment

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**Introduction** The qualifying U.S. employer must be offering the beneficiary a primarily managerial, executive, or specialized knowledge position in the United States.

[See section 101(a)(15)(L) of the ACT, 8 CFR 214.2(1)(I)(i), and 8 CFR 214.2(1)(I)(ii)(A), (B), (C), (D) and (E)]

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**U.S. Organization Must Directly Employ the Beneficiary** A qualifying U.S. organization must directly employ the beneficiary for the entire duration of his or her L1 nonimmigrant status. However, the qualifying foreign employer may file the petition on the beneficiary's behalf.

The beneficiary may not directly perform services for a foreign employer in the United States without maintaining a valid employment relationship with the U.S. organization. The test is which organization controls the beneficiary's employment.

[See *Matter of Penner*, 18 I&N Dec. 49]

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**Beneficiary May be Paid by the Foreign Employer** While a qualifying U.S. employer must directly employ the beneficiary, the beneficiary's wages may be paid by the foreign organization.

[See *Matter of Pozzoli*, 14 I&N, Dec. 569]

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**Required Evidence** At a minimum, the petitioner must provide:

- A detailed statement that describes the duties to be performed by the beneficiary in the United States, and;
- Evidence that the beneficiary prior education, training and employment qualify him or her to perform the intended services in the United States.

[See 8 CFR 214.2(l)(3)(ii) and 8 CFR 214.2(l)(3)(iv)]

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**Evaluating the U.S. position** For a thorough discussion of how to evaluate the offered position, refer to the manager and executive, or specialized knowledge professional sections of the SOP.

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## Doing Business

### Overview

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**Definition** Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization.

Doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

[See 8 CFR 214.2(l)(1)(ii)(H)]

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**Introduction** Both the U.S. employer and at least one qualifying organization abroad must be doing business for the entire duration of the beneficiary's stay in the United States as an intracompany transferee

[See 8 CFR 214.2(l)(1)(ii)(G)]

**EXCEPTION:**

A petitioner filing for an L1 beneficiary coming to be employed for a U.S. organization that has been doing business for less than one year does not have to be actively engaged in doing business at the time of filing of the petition.

Instead, the petitioner must submit evidence that sufficient physical premises to house the new office has been secured, and the intended U.S. operation, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position.

[See 8 CFR 214.2(l)(3)(v)]

**NOTE:** L1 "new office" petitions will be discussed thoroughly later.

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*Continued on next page*

## Overview, Continued

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**Foreign  
Employer Must  
Continue to do  
Business**

There must be a qualifying organization abroad that continues to engage in the regular, systematic, and continuous provision of goods and services for the entire duration of the L1 nonimmigrant's stay in order for a qualifying relationship to exist.

[See 8 CFR 214.2(l)(1)(ii)(G) and *Matter of Chartier* 16 I&N Dec. 284 (partially out-of-date)]

The presence of a dormant corporation, an agent, or a holding company abroad is not sufficient for establishing a qualifying relationship for L1 purposes. However, the organization does not have to be the same organization that employed the beneficiary abroad.

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**Organization  
Must have  
Sufficient  
Resources**

In addition to conducting business, the organization must be shown to have sufficient resources in order to compensate the beneficiary and to continue to conduct business into the foreseeable future.

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## Determination of Doing Business

### Introduction

While the organization must be shown to be involved in the continuous provision of goods or services, there is no statutory or regulatory minimum level of business activity that must be conducted in order for the U. S. and the Foreign organizations to meet this eligibility requirement.

However, the organization must be conducting business in a manner that would require the services of an individual **primarily** engaged in a managerial, executive, or specialized knowledge capacity.

In order to make a determination that the organization is conducting sufficient business to require the services of the beneficiary, the organization's personnel structure and the beneficiary's stated duties must be placed in the context of the level of business that is being conducted by the organization.

### Credible Evidence May Not Establish Eligibility

This section discusses the various categories of evidence that are routinely submitted to document an organization's business activities. It should be noted that the submission of what is considered to be "credible" evidence is not equivalent to meeting the eligibility criteria. The validity of the evidence must be evaluated. The evidence submitted may be negative as well as positive.

In other words, a tax return may be submitted by the petitioner and be considered credible evidence, but the information provided on the tax return may fail to establish that the eligibility requirement has been met.

### Evidence of Doing Business

A variety of documents may be submitted in order to establish that the U.S. and the foreign organizations are doing business.

Frequently, the petitioner will merely submit a letter that describes the nature and level of business activity conducted by the organization.

If the employer is a...	Then...
Large, well-known and well-established business entity,	Such a description may be sufficient evidence of the organization's business activities.
Small and/or young, unknown or less substantial business,	The issue of whether the organization is doing business requires the submission of credible, documentary evidence in order to make a determination.

*Continued on next page*

## Determination of Doing Business, Continued

**Calendar or Fiscal Year**

Organizations publish annual reports and financial statements, and file tax returns based on either a calendar or a fiscal year.

If the reporting year is a...	Then the year starts on...	And ends on...
Calendar year	January 1 <sup>st</sup>	December 31 <sup>st</sup>
Fiscal year	The 1 <sup>st</sup> day of any month other than January	The last day of any month other than December

**Change of Year for Tax Purposes**

An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.

## Primary Evidence of Doing Business

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### Primary Documentary Evidence

Primary documentary evidence of an organization's business activities includes:

- Annual Reports, containing audited or reviewed financial statements,
  - Audited financial statements,
  - Reviewed financial statements, or;
  - Federal Tax Returns.
- 

### Evaluating Primary Evidence

Primary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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### Annual Reports

Annual Reports are published by all publicly traded corporations in the United States. Many foreign organizations also publish annual reports.

Annual reports provide information describing the organization's:

- Products and Services
- Management and personnel structure on the macro level
- Ownership & Control
- Subsidiaries, affiliates, joint ventures, and branch offices
- Current and long-term objectives

In addition, annual reports should include audited or reviewed financial statements for the past year.

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*Continued on next page*

## Primary Evidence of Doing Business, Continued

### Federal Tax Returns

In general, organizations that are conducting business in the United States must file federal tax returns each year. Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format.

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a...	Then the Tax Return is Form...	And the tax return provides a modified...	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

### Foreign Tax Documentation

- The petitioner may provide copies of foreign tax returns as evidence of the business activities of the foreign entity.
- Canada and most Western European countries require tax returns that are very similar to the United States' tax returns and are usually credible.
- Many other countries rely on hand-written tax returns and receipts that are less reliable.

## Financial Statements

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**Introduction** Financial statements are used to convey a picture of the profitability and the financial position of a business. The two most important are the income statement and the balance sheet.

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**Income Statement** The income statement shows whether or not the business earned a “profit” or net income during a specific time period. Net income is earned when revenues exceed expenses, but a net loss is incurred if the expenses exceed the revenues.

Income statements provide useful information for the adjudication of L1 petitions such as the organization’s:

- Gross sales/revenues (and sometimes the source of the revenue),
  - Cost of goods or services sold,
  - Wages, salaries, and commissions expense,
  - Rental or mortgage expense,
  - Utility expenses,
  - Brokerage, freight, travel, and contractor expenses, and
  - Net income or net loss.
- 

**Balance Sheet** The balance sheet can be likened to a snap shot of the organization’s financial position. Financial position is shown by listing the organization’s:

- Assets,
- Liabilities, and
- The equity of the owners.

The balance sheet provides useful information for the adjudication of L1 petitions such as the organization’s:

- Type and amount of assets held,
  - Type and amount of the liabilities owed, and
  - Level of investment in the organization by its owners.
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## Financial Statements, Continued

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### **Internally Generated Financial Statements**

Internally generated financial statements are created by and are based on the representations of the management of the organization. Employees of the petitioning organization prepare the financial statements and they are not subject to the scrutiny of anyone outside the organization.

Internally generated financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Compiled Financial Statements**

A compilation is the preparation of financial statements from the accounting records and other representations of the management of the organization. The accountant who prepares the financial statements is not required:

- To verify any information provided by management, or
- Have any degree of independence from the organization.

Compiled financial statements are NOT a reliable type of evidence for the determination of whether the organization is doing business.

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### **Reviewed Financial Statements**

A review of financial statements involves:

- Obtaining an understanding of the entity's accounting system.
- Applying analytical procedures to financial data.
- Making inquiries of persons responsible for the organization's financial and accounting matters.

An accountant (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform a review.

The CPA will then either prepare the financial statements or review internally generated financial statements. The objective of a review is to express limited assurance that the information provided in the financial statements is in accordance with generally accepted accounting principles.

Reviewed financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Financial Statements, Continued

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### **Audited Financial Statements**

An audit is the examination of financial statements, the accounting records and other supporting evidence both within and outside the organization. It is more substantial in scope than a review, but involves many of the procedures that are performed during a review.

An auditor (who is a CPA) performs these examinations. The CPA must have an independent, arms-length relationship with an organization and its principal officers in order to perform an audit.

Auditors never express an opinion on the fairness of the financial statements without first performing an audit. The auditor's report will either contain an expression of opinion regarding the fairness of the financial statements taken as a whole, or an assertion to the effect that an opinion cannot be expressed.

Audited financial statements are a reliable type of evidence for the determination of whether the organization is doing business.

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## Secondary Evidence of Doing Business

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### Secondary Documentary Evidence

Secondary documentary evidence of an organization's business activities may include, but is not limited to:

- Commercial leases or title to commercial properties,
  - Form W-2s and Form 1099s,
  - Form 941, Employer's Quarterly Tax Return,
  - Internally generated payroll documentation,
  - Sales contracts and invoices,
  - Bills of lading, shipping receipts and brokerage bills,
  - Commercial loan agreements,
  - Bank Statements, or
  - Telephone and other utility bills.
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### Evaluating Secondary Evidence

Secondary evidence of an organization's business activities should corroborate the statements made in the petitioner's letter. In the instance where documentation conflicts with the petitioner's statements, further clarification should be requested, along with corroborative documentary evidence.

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## New Office

### Overview

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**Introduction** The L1 classifications have special eligibility requirements and approval limitations for L1 beneficiaries who are coming to open a new office in the United States.

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**New Office Defined** New office means an organization that has been doing business in the United States through a qualifying organization for less than one year.

[See 8 CFR 214.2(l)(1)(ii)(F)]

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**Doing Business Does Not Equal Legal existence** An organization may have a legal existence in the United States for more than one year, but if it has not engaged in the continuous provision of goods and services for more than a year, it must be defined as a new office.

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**Overview, Continued**

**New Office Eligibility Requirements**

The petition must be properly filed by a qualifying employer who intends to temporarily employ the beneficiary, and must be supported by evidence that the:

- U.S. organization and the organization abroad are qualifying organizations;
- Organization abroad must be actively engaged in doing business;
- U.S. organization must be shown to have sufficient physical premises to house the new office;
- Beneficiary has been employed in a primarily executive, managerial, or specialized knowledge capacity with a qualifying organization abroad for one continuous year within the three years immediately preceding the filing of the petition, and;
- Intended U.S. organization, within one year of the approval of the petition, will support an executive, managerial or specialized knowledge position supported by information regarding the:
  - Proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - Size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, and;
  - Organizational structure of the foreign entity

[See 8 CFR 214.2(l)(3)]

**NOTE:** All of the eligibility requirements must be met as of the date of filing of the petition.

[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

**Beneficiary's Qualifying Employment Abroad**

Use the table below for beneficiary's qualifications.

<b>If the petition indicates that the beneficiary is coming to the United States...</b>	<b>Then the beneficiary's qualifying employment abroad must have been in a primarily...</b>
As a manager or an executive to open or to be employed in a new office in the United States,	Managerial or executive capacity. [See 8 CFR 214.2(l)(3)(v)]
In a specialized knowledge capacity or to be employed in a new office in the United States,	Specialized knowledge, managerial or executive capacity. [See 8 CFR 214.2(l)(3)(vi)]

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## Overview, Continued

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**New Office Petitions May Only be Approved for One Year**

New office petitions may be approved for a period that does not exceed one year.

[See 8 CFR 214.2(l)(7)(i)(A)(3)]

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**Advantages for the Petitioner**

There are two main advantages of the new office designation for the petitioner.

1. The U.S. organization does not have to be actively engaged in the provision of goods and services as of the date of filing.
  2. The beneficiary does not have to be engaged in a primarily managerial, executive, or specialized knowledge capacity at the time of his or her change of status or entry into the United States as an L1 nonimmigrant. Instead, the petitioner must demonstrate that the U.S. organization, within one year of the approval of the petition, will support the beneficiary in a primarily executive, managerial or specialized knowledge position by providing:
    - A coherent plan in order to commence doing business in the United States,
    - The financial ability to compensate the beneficiary and invest sufficient resources in the U.S. organization in order to realize its proposed business plan, and
    - Acquired sufficient physical premises in the United States in order to start doing business as described in the business plan.
- 

**Disadvantages for the Petitioner**

There are two main disadvantages of the new office designation for the petitioner.

1. The beneficiary must be coming to provide services in a capacity that is similar to the position abroad. Hence, managers and executives must be classified as L1As and specialized knowledge employees must be classified as L1Bs; which limits the staffing options of the new office petitioners.
  2. The petition may only be approved for one year, while regular L1 petitions may be given initial approvals for up to three years.
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## Business Plans and Foreign Investments

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**Business Plans** While the new office's business plan may be entirely prospective, the petitioner's statement and supporting documentation should provide a clear picture of how the U.S. organization will conduct business to include:

- A description of the products and/or services that will be provided to its customers;
- The type and general location of the customers or clients to be targeted;
- A description of its short-term and strategic goals and the general time-frame during which these goals will be achieved;
- The amount of investment that will be required to fund the acquisition of sufficient plant, equipment and staffing in order to realize the goals, and;
- Why the beneficiary's services are needed during the start-up phase of the organization.

In addition, the petitioner's plans for the U.S. organization must demonstrate that the nature of the beneficiary's business will be such that he or she will be employed in a primarily managerial, executive or specialized knowledge capacity within one year of the approval of the petition.

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**Statement that Business Plan Cannot be Provided** In general, statements by the petitioner that no business plan can be provided, or that the investment and/or acquisition of a physical premises cannot be made until the approval of the L1 petition are not sufficient for the purposes of establishing the beneficiary's eligibility for a new office approval.

The petitioner must establish eligibility at the time of filing of the petition.

[See 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

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## Business Plans and Foreign Investments, Continued

### Evidence of the Foreign Organization's Investment

While there is no statutory or regulatory minimum investment required, the investment must be commensurate with the activities to be conducted by the business during its start-up phase.

The petitioner must identify the size of its financial investment in the new office and show that it has sufficient resources to pay the beneficiary's salary and implement its business plan.

Where documentary evidence is required, the record should contain:

- Bank statements for the new office, as well as the bank wire transfers, cancelled checks, or letters of credit that were executed by the foreign organization to execute the transfer of funds, or
- Evidence of commercial loans, enforceable promissory notes, or other such documentation that would show that sufficient funds are at the new office's disposal.

If the new office is being opened by a...	Then...
Large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of its investment in the new office.
Small and/or young, unknown or less substantial business,	The issue of the level of its investment and financial capabilities requires the submission of credible, documentary evidence in order to make a determination.

### Foreign Organization's Investment "Hand-Carried"

Occasionally, the petitioner will claim that the foreign organization's investment was "hand-carried" into the United States by the beneficiary or by another individual. Such claims should be corroborated with the submission of a Customs Form 4790. This is the document that is required when an individual is entering the United States in possession of \$10,000.00 or more in currency.

This claim is an indicator that the foreign organization may not exist, or is not actually involved in the start-up of the new office.

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## **Business Plans and Foreign Investments, Continued**

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**Evidence of  
Sufficient  
Physical  
Premises in the  
United States.**

There is no statutory or regulatory minimum for the size of the new office's physical premises. However, the size and nature of the physical premises must be of a sufficient size and type that would enable the new office to perform the initial activities outlined by the business plan during the start-up phase.

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## New Office Extensions

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**Introduction** The petitioner can request an extension of the L1B or L1A's nonimmigrant status prior to the expiration of his or her L1 nonimmigrant status.

A new office petitioner can frequently establish an L1 beneficiary's eligibility for an initial one year approval by the submission of documentation that is almost entirely prospective in nature. However, at the end of the L1 beneficiary's one-year approval, the new office must be shown to have grown to a point where he or she is primarily engaged in a managerial, executive or specialized knowledge capacity.

The petitioner must still continue to meet all of the regular L1 eligibility requirements.

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**Validity Dates** The petition may be approved for a period of time not to exceed two years.

[See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

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**Required Evidence**

The petitioner must provide the following evidence in support of a new office extension petition:

- Evidence that the U.S. and foreign entities are still qualifying organizations;
- Evidence that the U.S. entity has been actively engaged in the provision of goods and services for the previous year;
- A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- A statement describing the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees when the beneficiary is to be employed in a managerial or executive capacity, and;
- Evidence of the financial status of the U.S. operation.

[See 8 CFR 214.2(l)(14)(ii)]

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## New Office Extensions, Continued

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**Additional Evidence**

While the evidence described above is required by regulation, additional evidence may be requested in order to establish the beneficiary's eligibility for the extension.

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**Renewed New Office Approvals**

In general, a new office extension petition should be denied if the U.S. organization is not doing business in a manner that would require and support the employment of the beneficiary in a primarily managerial, executive or specialized knowledge capacity.

However, there are instances in which the start-up of the new office is hampered by circumstances that are beyond the petitioner's control. Some examples of these unanticipated circumstances are:

- A substantial delay in the issuance of an L1 visa by the consulate;
  - A fire, flood, or other catastrophic natural disaster that prevented the new office's business plan from being fully implemented, or;
  - Litigation involving the new office which prevented the normal functioning of the business.
- 

**Petitioner Cites Unanticipated Circumstances**

Regulations allow for new office filings to be approved for up to one year to establish a new office and commence doing business. In instances where the petitioner cites unanticipated circumstances that hampered the new office's ability to commence doing business, the new office petition may be classified as a new office extension and may be approved for the length of time of the initial new office approval that the beneficiary was not able to use, up to one year. This provides the petitioner with the full one year to establish the new office and commence doing business.

[See 8 CFR 214.2(l)(1)(ii)(F) and 8 CFR 214.2(l)(ii)(F)]

A limited approval should only be granted where the petitioner has adequately corroborated the nature of the events that led to the new office's difficulties. The limited approval should not be granted where there is evidence of fraud or misrepresentation.

**NOTE:** The Service should not request evidence of unanticipated circumstances, unless the petitioner has first made this claim.

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## General Processing

### E-4L1 Process for LPRs

**E-4L1 Process for LPRs**

Refer to the table below to determine the action to take on an E-4L1 petition when the beneficiary adjusts or has adjusted to Lawful Permanent Resident (LPR) status.

If the beneficiary...	Then ...	
Adjusts to LPR status after the requested start date on the petition,	Grant <u>E-4L1</u> validity up to date of adjustment.	
Adjusted prior to the requested start date, and seeks consular notification,	Adjudicate on merit. Notate the KCC copy to indicate the alien is an LPR.	
Adjusted prior to requested date start date, and seeks EOS/COS,	Send an RFE questioning the alien's intent to be a nonimmigrant;	
	If the response indicates...	Then ...
	Intent to abandon LPR status,	Change the petition to consular notification and indicate on the KCC copy that alien will abandon LPR status at consulate.
No intention to abandon LPR status,	Deny the EOS portion of the petition.	

## Extensions

**Introduction** The petitioner may request an extension of an L1B or L1A's nonimmigrant status by filing a petition prior to the expiration of the beneficiary's L1B or L1A status.

[See 8 CFR 214.2(l)(14)]

**Validity Dates** The petition may be approved for a period of time not to exceed two years.

[See 8 CFR 214.2(l)(15)]

For a complete discussion of validity dates and L1 limitations of stay, see the validity dates section of the SOP.

**Required Evidence** Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director.

[See 8 CFR 214.2(l)(14)]

<b>If the extension petition is being filed by...</b>	<b>Then...</b>
A large, well-known and well-established organization,	A statement from the petitioner may be sufficient evidence of the beneficiary's eligibility.
A small and/or young, unknown organization,	The issue of the beneficiary's eligibility may require the submission of credible, documentary evidence in order to make a determination.

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## L-1 Process for LPRs L-1 Process for LPRs, Continued

### Previously Approved Petition

Information that is discovered at the time of an L1 extension petition might show that the beneficiary was never eligible for the benefit that was previously received. The Service is under no obligation to establish that the previously approved petition was approved in gross Service error.

Further, the Service is not obligated to approve applications or petitions where eligibility has not been demonstrated.

- *Matter of M--*, 4 I&N Dec. 532 (A.G.1952; BIA 1952)
- *Pearson V. Williams*, 202 U.S. 281 (1906)
- *Mannerfrid V. Brownell*, 145 Supp. 55 (D.D.C. 1956), affirmed 238 F. 2<sup>nd</sup> 32 (D.C. Cir. 1956), *Lazarescu V. United States*, 199 F. 2<sup>nd</sup> 898 (4<sup>th</sup> Cir. 1952)
- U.S. Ex. Rel. *Vajta V. Watkins*, 179 F. 2<sup>nd</sup> 137 (2<sup>nd</sup> Cir. 1950)

### Same/Same RFEs

SISO authorization is needed if an RFE will be issued on a petition that is requesting an extension with the same petitioner for the same beneficiary. The officer must clearly articulate the reason the RFE is needed, such as; material error, changed circumstances or new material information.

SISO authorization is **not** needed in the following scenarios:

- New office extensions when there has been a change in the:
  - corporate relationship, or
  - nature of the beneficiary's employment, such as job duties, a change from L1B to L1A or vice versa, or a change in the organizational structure.
- L1B beneficiary (see William R. Yates memo dated July 28, 2005, regarding the L-1 Reform Act of 2004.)
- Beneficiary previously entered under a blanket petition. Although these extensions do not always require an RFE, these petitions may need closer scrutiny because USCIS has not previously examined the beneficiary's qualifications or the proposed U.S. position.

[See William R. Yates memo of April 23, 2004, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*.]

## L1 Limitations of Stay

---

**Introduction** An alien who has spent five years in the United States in a specialized knowledge capacity, or seven years in the United States in a managerial or executive capacity under section 101(a)(H) and/or (L) of the Act may not be readmitted to the United States under section 101(a)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior year.

- No new petitions may be approved where the alien has spent the maximum time period allowed in either the H or L classification.
- Brief trips to the United States for business or pleasure are not considered to interrupt the required one-year outside the United States.

[See 8 CFR 214.2(l)(12)(I)]

---

**L2 Dependents** Dependents are eligible for L-2 status extensions through the proper filing of a Form I-539 with fee, and whenever possible, filed concurrently with the principal's Form I-129.

Any time spent in L-2 status does not count against the maximum allowable periods of stay available to principals in ~~L-1~~ status.

*[See Aytes Memo of December 5, 2006, Guidance on Determining Periods of Admission for Aliens Previously in H-4 or O-2 Status; Aliens Applying for Additional Periods of Admission beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year]*

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*Continued on next page*

## L1 Limitations of Stay, Continued

### General L1 Limitations of Stay

The following table describes the general L1 limitations of stay for L1 nonimmigrants. No further extensions may be granted.

[See 8 CFR 214.2(l)(15)(ii)]

If the Classification is...	Then the Maximum Period of stay is...
L1A, Manager or Executive	7 years
L1B, Specialized Knowledge	5 years

### Limitation of Stay: Exception

The limitations of 8 CFR 214.2(l)(12)(i) do not apply to aliens who:

- Do not reside continually in the United States, and
- Whose employment in the United States is seasonal, intermittent, or consists of an aggregate of six months or less per year.

In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment.

[See 8 CFR 214.2(l)(12)(ii)]

### Evidence that Beneficiary Qualifies for Exception

The petitioner must provide clear and convincing proof that the beneficiary qualifies for an exception, to include:

- Arrival and departure records,
- Copies of tax returns, and
- Records of employment abroad.

### Memo Regarding Recapture of Time

Refer to the October 21, 2005, Michael Aytes memo, Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for ~~H-1B~~H1B and ~~L-1~~L1 Nonimmigrants, covering the recapture of time.

**NOTE:** To access the "Date calendar" online, type the following site into the address line of Internet

Explorer: <http://www.timeanddate.com/date/duration.html>.

Enter the start and end date and then click "Calculate duration"

*Continued on next page*

## L1 Limitations of Stay, Continued

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**Limitation of  
Change of  
Status from  
L1B to L1A**

When a beneficiary is initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years.

The beneficiary must qualify for the ~~L-1A-L1A~~ classification at the time of filing.

If the six month rule applies, and the beneficiary qualifies as an ~~L-1A-L1A~~, then approve the classification but deny the EOS request and send the case for consular processing. As long as the beneficiary is functioning as an ~~L-1A-L1A~~, the petition should be approved for consular processing.

If the petition is filed outside the six month window, but is now inside the window at the time of adjudication, despite how the regulation reads, approve the petition and EOS, if otherwise approvable.

There may be times the petitioner will request recapture of time to put themselves outside the six month window. This is permitted.

Beware of ~~L-1A-L1A~~ extensions where the prior approval was limited to a short period-this could be an indicator that they were not eligible to extend beyond the five year mark due to regulatory requirement.

The Service must have approved the change to managerial or executive capacity in an amended, new, or extended petition at the time the change occurred.

[See 8 CFR 214.2(l)(15)(ii)]

**NOTE:** A change from L1A to L1B or L1B to L1A is not a change of status. A change from one to the other with the same employer will be a change in employment and possibly an extension.

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## Dependent(s)

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**Dependent(s) of the ~~L-1~~L1** The spouse and unmarried dependent children (under the age of 21) of an L1 beneficiary may be granted the L2 classification and be given the same validity dates as the L1 principal.

L1 dependents are not included on the L1 petition. Rather, they must apply for an L2 visa at the consulate based on the L1 principal's petition, or they can file a Form I-539 in order to change or extend their nonimmigrant status.

Dependent minor children can be given the same validity dates as the L1 principal up until the day they marry or reach the age of 21.

The spouse and dependent minor children may not accept employment in the United States unless otherwise authorized under the Act.

[See 8 CFR 214.2(l)(17)(v)]

---

**Dependents May Attend School**

~~L-2~~L2 dependents may attend school without a COS to student status. This information is found in 8 CFR 248.3(e).

---

**L's Status Contingent upon Qualifying Employment**

The continuation of the L1 principal's status and the L2 dependent's status hinges on the L1's qualifying employment with the petitioner. When the employer/employee relationship is terminated, or the nature of the employment no longer qualifies for L1 purposes, the L's status is no longer valid.

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## Bundled Petitions

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### Introduction

Employers may petition for multiple ~~L-1B-L1B~~ nonimmigrant beneficiaries by filing the I-129 petitions in “bundles”. All petitions in the bundle must involve employees who will work:

- on the same project,
- at the same location, and
- have the same specialized knowledge duties.

The intent of bundling is to allow businesses needing to move multiple employees to the United States for particular projects that require specialized knowledge a streamlined adjudication process.

---

### Petitioner Submissions

Petitioners can submit:

- More than one bundle of ~~L-1B-L1B~~ petitions if there is more than one specialized occupation related to a project.
  - ~~L-1A-L1A~~ petitions with the bundle if the L1A will be managing the L1B beneficiaries.
  - Form I-539 for any qualifying dependents.
- 

### Adjudicating Bundled Petitions

Once received, a bundle, or a group of connected bundles, will be banded together as one unit and be included as part of an officer’s work order.

Bundled petitions should be adjudicated as any other I-129 L petition. Each petition included in the bundle will receive the same action at the same time. For example, if bundled petitions require RFEs, all of the RFEs will be issued the same day.

**NOTE:** A bundle of petitions must remain together and move throughout the ~~VSC~~ service center as one unit.

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### Does not meet bundle criteria

If one or more of the petitions in a bundle do not meet the bundling criteria or do not require the same officer action as the rest of the bundle, remove those petitions from the bundle and adjudicate as single filings.

**Example:** If it does not appear that one of the beneficiaries included in the bundle will be working on the same project as the other beneficiaries, remove that petition from the bundle.

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*Continued on next page*

## **Bundled Petitions, Continued**

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**Timely  
Adjudication**

If a bundle or group of related bundles is so large that you will not be able to timely adjudicate the petitions, notify your supervisor.

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## Iranian Sanctions

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### Iranian Sanctions

On May 6, 1995, the President of the United States promulgated Executive Order 12,959, entitled "*Prohibiting Certain Transactions With Respect to Iran*" [EO 12,959, 60 Fed. Reg. 27, 797 (1995)]. The Executive Order imposed economic sanctions against Iran that prohibit, among other things, the importation of Iranian services where the alien is performing such service as an agent, employee, or contractor of the Iranian government or a business or other organization in Iran. The Office of Foreign Assets Control (OFAC) published regulations in 1999, which clarified the sanctions, whereby an I-129 petition for an Iranian citizen may be approved as long as the Iranian is:

- Not normally a resident of Iran, **AND**
- Not working in a way that is connected to:
  - The Iranian government (excluding diplomatic and consular services),
  - An Iranian business,
  - An Iranian organization, or
  - Any person located in Iran.

[31 CFR 560.306(d)]

---

## NAFTA Petitions

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**Introduction** ~~VSC-Service Centers~~ routinely receives L1 NAFTA petitions from POEs and PFIs in order for them to be updated into CLAIMS. These petitions have already been adjudicated and all the information on the petitions (including approval stamp) has been completed AND the beneficiaries have already entered the country.

---

**Where to File** The filing of L1 petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA) may be made at a:

- Class A POE located on the United States-Canada land border, or;
- United States pre-flight station in Canada.

[See 8 CFR 214.2(l)(17)(i)]

---

**Updating in CLAIMS/GUI** All approved NAFTA cases adjudicated at a Class A POE on the United States-Canada land border or PFI in Canada are forwarded to the Service Center within the same Service region for CLAIMS updating. The AST is responsible for the approval updating of these cases in CLAIMS. These files are routed directly from Data Entry to the AST.

If an approved NAFTA filing bearing the approval stamp and a bar code is received by an ISO and GUI does not show the approval notice as being sent, then a CFF should be prepared and the file placed in the CFF slot in the AST sort area.

The only time an ISO will need to take action on a NAFTA case is if the I-129 L was not approved at the POE/PFI and was routed to the ~~VSC-service center~~ with a memo recommending denial. The ISO would then prepare an Notice of Intent to Deny (NOID).

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## Detecting L1 Fraud or Misrepresentation

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**Introduction** This section describes some of the fraud and misrepresentation indicators and approaches for ~~L-1~~L1 petitions that might help reveal the presence fraud or misrepresentation in the record.

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**Why is the L1 Classification an Attractive Vehicle for Benefits Fraud?** The L1 classification is an attractive avenue for benefits fraud for a number of reasons to include:

- The availability of multiple entry visas which provide global mobility to the L1 beneficiary.
- The L1 classification is the nonimmigrant equivalent of the E13 multinational executive or manager immigrant classification and can be used an interim step towards lawful permanent resident status.
- Immediate U.S. employment authorization.
- No required test of the U.S. labor market.
- No minimum education requirements.
- No prevailing wage requirements.
- No geographic limitations for employment within the United States.
- The flexibility of the L1 definitions which enable the description of “worker bee” or non-existent positions as being primarily managerial, executive, or specialized knowledge in nature.
- There is no “cap” (numerical limitation).

---

**Officer’s Responsibility** A request for additional evidence should be made when:

- The record contains evidence of material fraud or misrepresentation, or
- The officer has knowledge of previous mala fide petitions from the same petitioner.

The petition should be denied when the petitioner cannot provide, credible evidence or explanations that would overcome the evidence of material fraud or misrepresentation in the record.

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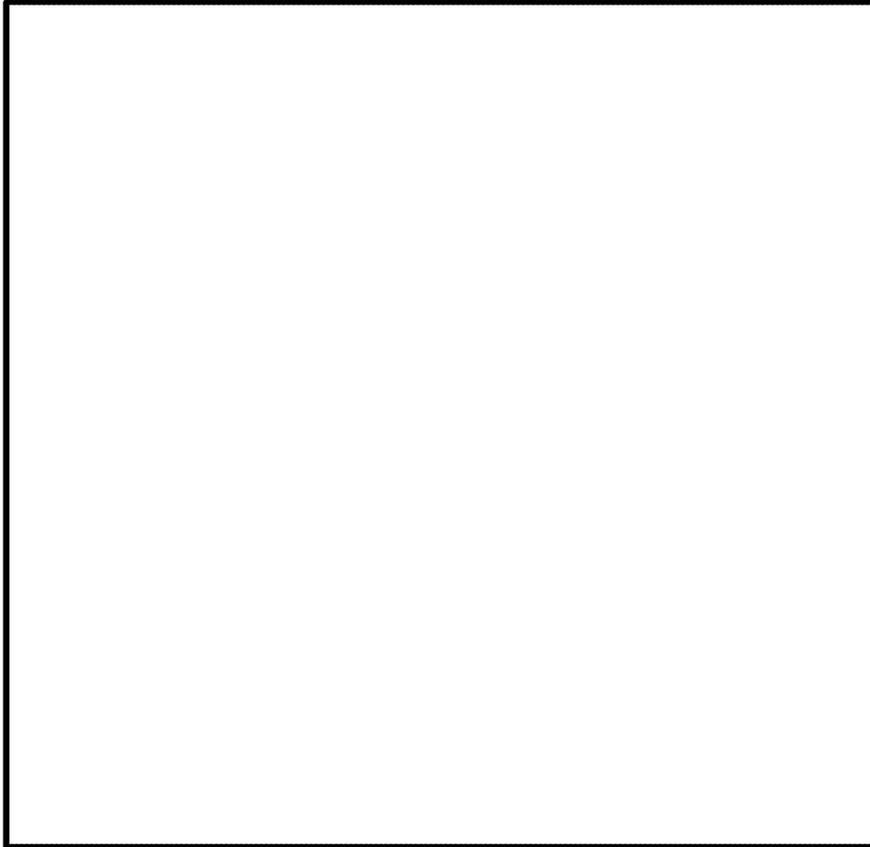
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## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
Beneficiary**

Fraud and misrepresentation indicators relating to the beneficiary may include, but are not limited to:



(b)(7)(e)

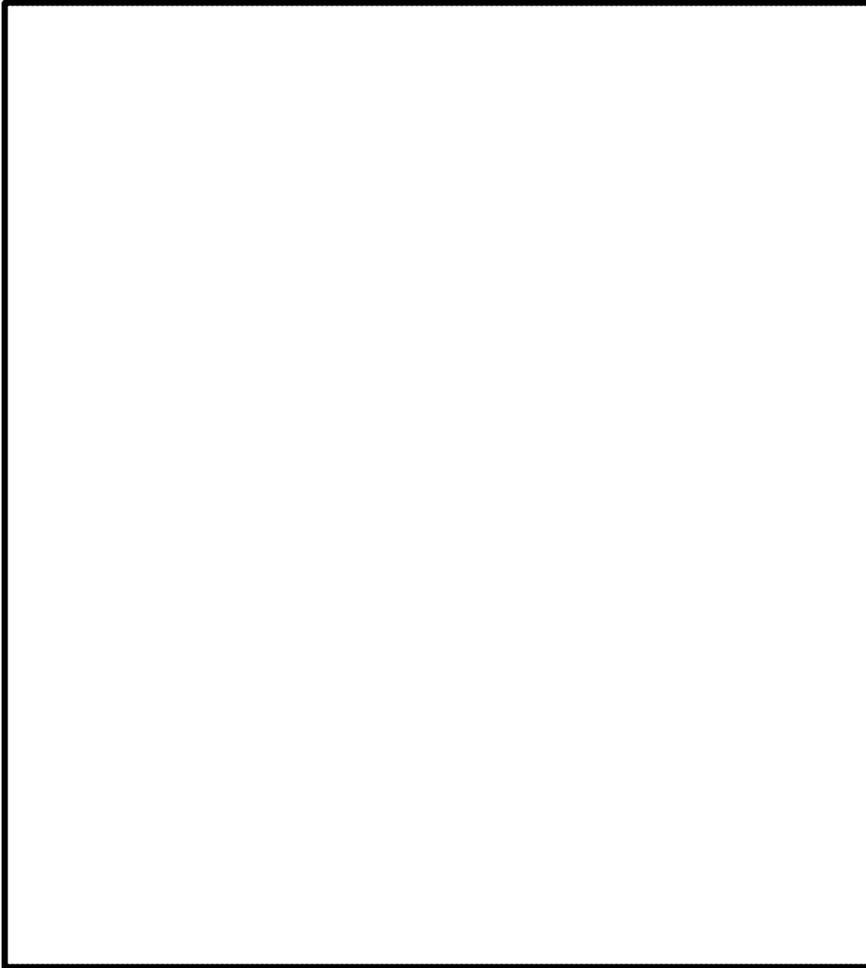
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## Detecting L1 Fraud or Misrepresentation, Continued

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**Indicators  
Relating to the  
U.S or Foreign  
Business**

Fraud and Misrepresentation indicators relating to the U.S. or foreign business may include, but are not limited to:



(b)(7)(e)

*Continued on next page*

## Detecting L1 Fraud or Misrepresentation, Continued

**Indicators  
Relating to the  
Petitioner's  
Immigration  
History**

Fraud and misrepresentation indicators relating to the petitioner's immigration history may include, but are not limited to:

(b)(7)(e)

**Adjudicative  
Approaches**

There are a number of adjudicative approaches to take when there is a question of fraud or misrepresentation in the record.

**Casebook**

**Fraud Database  
(Casebook)  
Definition**

(b)(7)(e)

**Casebook  
Query  
Requirements**

*Continued on next page*

## Detecting L1 Fraud or Misrepresentation, Continued

**How to Access  
Casebook**

**How to Run a  
Query in  
Casebook**



(b)(7)(e)

**Systems Checks** There are several of electronic systems available to aid in the detection of fraud or misrepresentation including the following:

- GUI
- Mainframe CLAIMS
- SQ94/ADIS
- CIS

## **Name Conventions for GUI, SQ94, ADIS and CIS**

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**Petitioner's Name** The petitioner's name should be entered exactly as it appears on the petition with the exception of the words "Inc., Ltd., LLC, PLC, or Corp". In addition, the words "International and Group" are usually abbreviated to "Intl and Gr".

If the petitioners name does not even bring up the petition that is being adjudicated, it might be helpful to wand in the receipt file number and see what conventions were used by Data Entry to enter the petition into GUI/CLAIMS.

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**Beneficiary's Name** The beneficiary's name and date of birth should be entered exactly as it appears on the petition. However, keep in mind that some countries list the day of the month before the month, so June 8, 1999 may be listed either as 06/08/1999 or 08/06/1999. In some instances it may be wise to try it both ways.

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**Asian Names** Asian first names may be listed in reverse order or the first name may or may not have a space in it. For example. Li Yu Wen may be Li Yu Wen, Liyu Wen, Yu Wen Li, or Yuwen Li.

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**Hispanic Names** Hispanic names may or may not use the first or second last name. For example, Maria Lopez Garcia may be Maria Lopez Garcia, Maria Lopez or Maria Garcia.

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## Name Discrepancies

**Introduction** This section pertains to all I-129 petitions and I-539, I-765 and I-131 applications where there are discrepancies between the name the petitioner/applicant entered on the petition/application and the name shown on the applicant or beneficiary's passport and/or visa.

**Reconciling Name Discrepancies** Use the chart below to determine how to reconcile name discrepancies between the petition or application and a passport and/or visa.

**NOTES:**

- If a copy of the alien's passport or visa was not included with the filing, do not RFE for a copy of the passport or visa unless those documents are necessary to adjudicate the case.
- All name changes made in GUI and on an application or petition must be run in TECS Manifest.

Scenario	Resolution
<p>Visa and/or passport names are different than the Petition/Application name but it can be verified the individuals named are the same person.</p>	<p>Enter the visa and/or passport name in GUI and on the petition/application</p> <p><b>Example:</b>            GUI and petition/application show the alien's name is Sanchez, Juan. Passport shows the alien's name as Sanchez Diaz, Juan. Enter the passport name in GUI and on the petition/application</p>
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name different, and</li> <li>• Visa was issued <u>after</u> the passport</li> </ul>	<p>No changes necessary, visa was issued after the passport was issued.</p>
<ul style="list-style-type: none"> <li>• Visa and petition/application names are the same,</li> <li>• Passport name is different, and</li> <li>• Visa was issued <u>before</u> the passport</li> </ul>	<p>Change the name on the petition/application and GUI to match the passport.</p>

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## Name Discrepancies, Continued

**Reconciling  
Name  
Discrepancies  
(continued)**

Scenario	Resolution
<ul style="list-style-type: none"> <li>• Passport and petition/application names are the same,</li> <li>• Visa name is different, and</li> <li>• Visa was issued <u>after</u> the passport</li> </ul>	Change the name on the petition/application and GUI to match the visa.
<ul style="list-style-type: none"> <li>• Passport and petition/application names are the same,</li> <li>• Visa name is different, and</li> <li>• The passport was issued <u>after</u> the visa</li> </ul>	Change the name on the petition/application and GUI to reflect the name on the passport.

**NOTE:** If the passport and visa show the alien has only one name, regardless of whether it is a given name or a family name, then:

- The name should be entered in the Last Name field in GUI, and
- “No Name Given” should be entered in the First Name field in GUI

## National Systems

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**GUI** The GUI database can be searched by the name of the petitioner or by the beneficiary's name. In addition, it may be helpful to search by the name of the foreign entity as foreign petitioners may file L1 petitions.

GUI can identify the following information:

- The type and number of petitions and applications that have been filed,
  - Whether any other petitions or applications have been pending, and
  - Whether the petitioner or the beneficiary has had previous denials or revocations of petitions and applications.
- 

**Mainframe CLAIMS** Mainframe CLAIMS can be accessed through the National Systems and can provide the same information as GUI for all four Service Centers. In addition, it also provides information about petitions and applications filed at select district offices.

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**ADIS** Effective April 1, 2013, Officers are required to check the **Arrival Departure Information System (ADIS)** to confirm arrival and departure information. Officers are no longer required to check the TECS SQ94 system to confirm arrival and departure information.

Officers shall review Arrival/Departure information for all applicants/beneficiaries not more than 15 days prior to rendering a final decision on the following:

- Approvals and denials of a change of nonimmigrant status (i.e., Forms I-539 and Form I-129) and
- Denials only for extension of stay.

The file must include either a copy of the system printout or a notation indicating the date of the check or that there is no record of the applicant/beneficiary in the system. Screen prints should be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print.

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## National Systems, Continued

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**ADIS Access** ADIS can be accessed through the ECN Adjudications Home page on the right hand side of the page and provide the following information about the beneficiary's:

- Entries and departures from the United States
- Methods of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If a search by I-94 #, Passport # or Name/DOB does not produce a record, officer may still check SQ94 for a record.

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**SQ94** SQ94 can be accessed through the National Systems and can provide information about the beneficiary's:

- Entries and departures from the U.S.
- Method of entry, i.e., plane, car, etc.
- POE or PFI used at the time of entry
- Date of entry and validity of stay
- Nonimmigrant class at the time of entry, and
- Intended destination

If SQ94 is used, a screen print of the query must be placed on the non-record side of the file. The *Unclassified, For Official Use Only* watermark or stamp must be included on the screen print. The date of the SQ94 query must be within 15 days of the final adjudicative action.

If a search by I-94 # or Name and DOB does not produce a record, it may be helpful to search by the beneficiary's passport number. In addition, dated information may be archived in SQ94, so a search in the archive portion of SQ94 may produce a better result.

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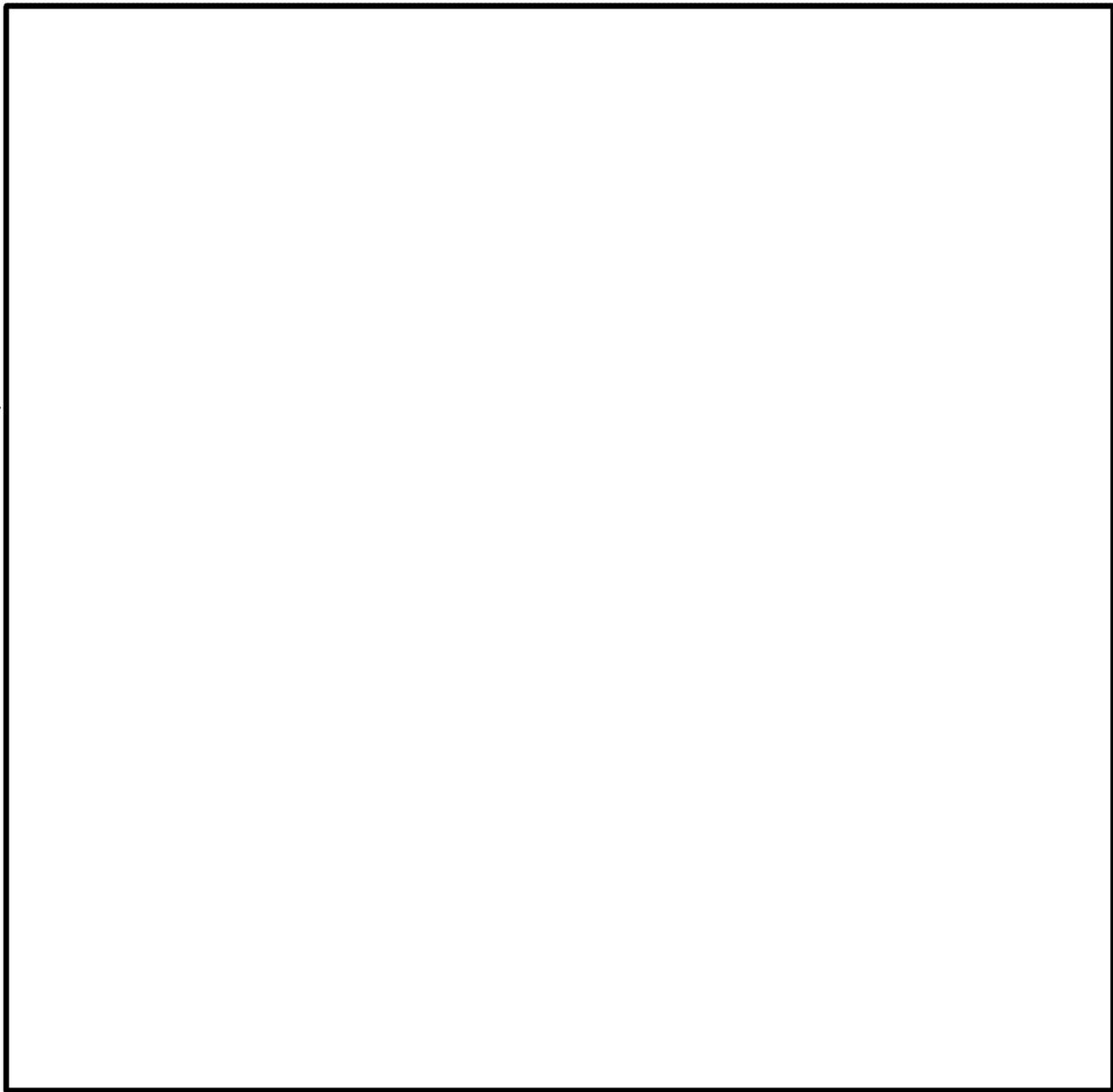
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**National Systems, Continued**

**CIS**

A CIS query is required if you discover that the beneficiary has an A-file number. CIS can be accessed through the National Systems and can provide information about the beneficiary's alien registration number and his or her pending or completed adjustment, asylum, or removal proceedings.

**VIBE**



(b)(7)(e)

(b)(7)(e)

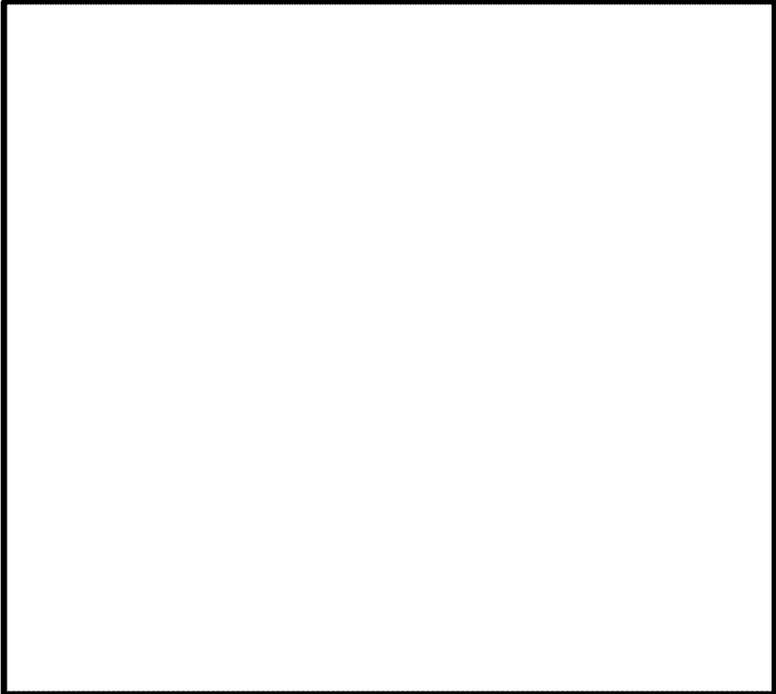


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**National Systems, Continued**

**VIBE**  
(continued)

If VIBE shows...	And Evidence in the Record	Then...
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(b)(7)(e)

## I-129 ~~E-1~~-L1 Blanket Petition

### Overview

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**Introduction** Blanket L petitions are adjudicated based upon the same general principles used in adjudicating the qualifying relationship of individual L petitions. However, there are some differences. The following is a brief summary of blanket L petitions.

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**Who May File the Blanket ~~E-1~~** The blanket ~~E-1~~ procedure is intended for larger international organizations. Only entities involved in commercial trade or services may use the blanket petition. This means that noncommercial organizations, like churches, may not use the blanket petition.

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**Blanket Regulation** 8 CFR 214.2(1)(4)  
INA 214(c)(2)(A)

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**Appeal Rights** The denial of the Form I-129 Blanket petition is appealable to the AAO, just like the denial of any other ~~E-1~~.

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## Qualifying Company Relationships

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**Introduction** A U.S. petitioner may file a blanket petition to receive continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations. The blanket petition is filed on Form I-129. When the Form I-129 is adjudicated to obtain approval of foreign and U.S. relationships, the adjudicator's only concern are the qualifying company relationships. No alien beneficiary is named on the Form I-129 blanket petition.

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**Petitioner Requirements**

- The petitioner and each of the entities included are engaged in commercial trade or services,
- The petitioner has an office in the United States that has been doing business for one year or more,
- The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates, **and**
- The petitioner and the other qualifying organizations have obtained approval of petitions for at least 10 "L" managers, executives, or specialized knowledge workers during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a U.S. work force of at least 1,000 employees.

---

**Establish Ownership and Control of ALL Entities** The petitioner lists all the foreign entities and all of the U.S. entities that they want to have approved and establishes who has ownership and control of all of the entities. Only those entities meeting the definition of a qualifying organization can be approved.  
[See 8 CFR 214.2(l)(1)(ii)(G)]

If there is question about ownership and/or control for any of the petitioned entities issue an RFE for necessary documentation to help make a determination.

All approvable entities will be named on a list to be included with the released approval notice of the petition.

---

**Approvals** If the petitioner meets the filing requirements and it is determined that there are qualifying entities, a list of all qualifying entities will be prepared. The lists will be sent with the released I-797 approval notice for the petition.

The approval notice means that it is permissible for any of the qualifying entities to petition to transfer an employee from any approved foreign entity to any approved U.S. entity.

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## Qualifying Company Relationships, Continued

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**Extension of  
Blanket**

A blanket extension may be filed six months prior to the expiration of the initial blanket on Form I-129.

**NOTE:** If the petitioner fails to file for the extension prior to the expiration of the initial blanket approval or if an extension request is denied, the petitioner and its qualifying organizations must wait three years to file another blanket. In the interim, individual petitions must be filed by these organizations for beneficiaries.

[I-129 Filing Instructions]

---

**Blanket  
Extension  
Requirements**

The documentation required to support the blanket extension include:

- A list of the beneficiaries admitted under the blanket during the preceding three years with the following information for each beneficiary:
    - Positions held during that period
    - The employing entity
    - The dates of initial admission and final departure, if applicable, of each beneficiary
  - A statement from the petitioner indicating whether it still meets the blanket criteria.
  - Documentation to support any changes in approved relationships or additional qualifying organizations.
-

## Approvals of L-4L1 Blanket Petitions

### Updating

When ...	Then ...
When approving a case, you must:	1. Complete the approval information blocks on the petition.
	2. Indicate on the petition the classification, LZ.
	3. Indicate the dates of approval/validity dates (either <b>three years (initial filing)</b> or <b>"INDEFINITELY" (extension)</b> ).
	4. Make a notation <b>"BLANKET PETITION"</b> in the block entitled <b>"PARTIAL APPROVAL."</b>
	5. Stamp the petition with your approval stamp and sign it.
	6. Forward the second copy of the LZ petition to the KCC along with a copy of the list of qualifying entities.

**NOTE:** Make a photocopy of the list of qualifying entities that the petitioner wishes to have on the blanket petition. This will be included with the approval notice mailing. Keep original copy of qualifying entities list in the file under the original petition.

If denying any of the qualifying entities on the list; place white out tape over the entities and photocopy the list. Notate in the PARTIAL APPROVAL block that some entities were deleted from the list.

### Validity Dates Overview

An initial blanket petition is approvable for three years. If amended blanket petitions are approved during this validity period, the validity period end date will be the same as the end date of the original approval. Blanket extension petitions may be filed six months prior to the expiration of the initial three year validity period. If the blanket extension is approved, the validity period will begin the day after the expiration of the initial approval to "INDEFINITELY".

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## Approvals of L-4L1 Blanket Petitions, Continued

---

**Validity Dates for Initial Admission**      **FROM:**

- 1) the date listed on the petition **or**
- 2) the date you approve the petition (if both the requested date **and** initial FROM date on the petition has passed)

**TO:**

- 1) the date listed on the petition **or**
- 2) the requested time (i.e., three years-from date of approval)

---

**Validity Dates for Extension of Stay with no Changes/Amendments**      **FROM - TO - should be "INDEFINITELY".**

---

**Validity Dates for Extension of Stay with Changes/Amendments**      **FROM:**

- 1) the date listed on the petition **or**
- 2) the date you approve the petition (whichever is later)

**TO:**

- 1) the date listed on the prior approval notice if prior approval is still within 3 year initial time period **or**
- 2) "INDEFINITELY" if prior approval was "INDEF"

---

**Blanket Approval Notices**      **ALL** blanket approval notices will be a release so that the AST member can attach the list of qualifying entities to the blanket approval notice.

---

**Routing Petition after Approval**      Following **APPROVAL**, the petition remains in the file and the file is placed on the shelf like any other approved nonimmigrant petition.

---

## Beneficiaries of L-1L1 Blanket Petitions

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**Introduction** When one of the approved U.S. entities wants to employ a particular alien from an approved foreign entity, the U.S. entity completes a Form I-129\_S, Nonimmigrant Petition Based on Blanket L Petition.

The information on the Form I-129\_S, and any supporting documents, must establish that the alien was employed abroad for the immediately prior year in a qualifying capacity, and must establish that the alien will be employed in a qualifying capacity in the United States.

---

**Qualifying Capacity** For blanket L-1L1 purposes, a qualifying capacity is:

- 1) Managerial
- 2) Executive, or
- 3) Specialized knowledge professional

A specialized knowledge professional is what it appears to be, a specialized knowledge employee who is a professional.

---

**Alien Abroad** The alien abroad uses the Form I-129\_S, with the Form I-797 approval notice for the approved Form I-129 blanket petition to apply for an L-1L1 visa at an AMCON or if CANADIAN at a POE or PFI.

---

**L-1L1 Beneficiary is in the US** If a blanket L-1L1 beneficiary is in the United States applying for an extension of stay, Form I-129 is required, **not** Form I-129\_S.

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**Extension of Stay** For beneficiaries requesting an L-1L1 extension of stay, it is very similar to H-1B extensions of stay. The Form I-129 is used.

Remember that the time spent in the United States in H status is taken into consideration when you are deciding whether or not an L-1L1 has reached his/her maximum total stay.

- The **maximum stay** for a beneficiary in L-1A-L1A classification is **seven years**.
  - The **maximum stay** for a beneficiary in L-1B-L1B classification is **five years**.
-

## Creating New Arrival-Departure Record (Form I-94)

**I-94 Not Issued** There will be times when the beneficiary of an I-129 seeking a change of status to ~~L1~~L1 was not issued an Arrival-Departure Record (Form I-94) upon his or her admission to the United States; e.g., a Canadian citizen admitted as a B-2 visitor. When granting a change of status to a beneficiary who was not issued an I-94 upon admission, you must issue a new I-94 to the beneficiary before an approval notice can be generated.

Follow the steps in the table below to create a new I-94. If you are unable to locate any information in ADIS, but there is evidence that the beneficiary made a lawful entry, such as:

- an admission stamp in the beneficiary's passport,
- an airline ticket,
- a boarding pass, or
- a check of crossing field in SQ11 in TECS.

Step	Action
1	Obtain a new I-94 card from Supply.
2	Discard the top and bottom sections of the new I-94 card.
3	Complete as much information in the middle section of the new I-94 card as possible. At the very minimum, indicate the beneficiary's full name, date of birth, and country of citizenship.
4	Stamp the new I-94 with a replacement I-94 stamp, using security ink, and filling in the following fields on the stamp: <ul style="list-style-type: none"> <li>• "Admitted at:" Write the place of admission,</li> <li>• "On:" Write the date of admission,</li> <li>• "Until:" Write the date admitted to,</li> <li>• "Class:" Write the class of admission,</li> <li>• "This document prepared on" and "At:" Write the date you prepared the replacement I-94/VSC<del>2</del> and your NFTS #.</li> <li>• "Last C/S Granted to Class" and "On:" Write new classification granted and date of COS was granted.</li> <li>• "Last E/S Granted to" and "On:" Write new ending date you granted the beneficiary and the date you approved the petition.</li> </ul>

*Continued on next page*

## Creating New Arrival-Departure Record (Form I-94), Continued

### I-94 Not Issued (continued)

Step	Action
5	Notate the new I-94 number on the petition in Part 3, Item 2.
6	Forward the completed and stamped I-94 for entering into the TEC/NIIS System by: <ul style="list-style-type: none"><li>• Attaching the I-94 to an Adjudications Worksheet,</li><li>• Checking the "Other" block on the Worksheet,</li><li>• Writing "To NIIS" on the line next to "Other", and</li><li>• Placing on the "Mailroom-No Envelopes" shelf in FCU.</li></ul>
7	Enter the new I-94 number into the beneficiary screen in CLAIMS/GUI.

## Approval Processing Procedures

### Validity Dates for Approval

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**Introduction** This section will outline the various time periods that a petition may be approved for, as well as the limitations of stay for L1 nonimmigrants.

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**Validity Dates** The following table describes the validity dates for L1 petitions.

<b>If the petition is an...</b>	<b>Then the petition may be approved for a period of time up to...</b>
Initial Filing	3 Years
* Initial Filing – New Office	1 Year
Extension Filing	2 Years

[See 8 CFR 214.2(l)(7)(i)(A)(2) and 8 CFR 214.2(l)(15)(ii)]

\* If the requested beginning date of employment has gone by, officers should grant a period of one full year from the date of approval for new office petitions, unless the period requested was for less than one year. In this scenario only the length of time requested would be granted from the date of approval.

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**Expired Dates** Guidance can be found for petitions with expired dates on the Business Division ECN page/Reference Materials/General/Expired Petitions Guidance 07022013. The guidance relates to pending cases that have never had a final decision, consular returns and appeals that have been affirmed by the AAO.

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*Continued on next page*

## Validity Dates for Approval, Continued

### Starting and Ending Dates

Use the below table to determine the starting and ending validity dates of the L1 petition.

If...	Then starting validity date should be...	And ending validity date should be...
<ul style="list-style-type: none"> <li>• New employment, or</li> <li>• Initial L1A or L1B request (Consular notification)</li> </ul>	Date of approval or date requested, whichever is later.	Date requested on petition, not to exceed three years.
New Office L1A or L1B	Date of approval or date requested, whichever is later.	Date requested or one full year from starting date.
Change of Status	Date of approval or date requested, whichever is later.	Date requested on petition.
Extension of Stay	Day after expiration of previously approved L1 for that company, or date requested, whichever is earlier.	Date requested on petition, not to exceed two years.
Extension of Stay where there has been a change in the employment conditions	Date of approval or date requested, whichever is later.*	Date requested on petition, not to exceed two years.
Amended petitions where there was a USCIS error with the original notice	Same start date as initially approved petition.	Same expiration date as initially approved petition.
Amended petitions where there has been a change in the employment conditions	Date of approval, date requested, whichever is later.*	Same expiration date as initially approved petition, if no additional time is requested. Date requested on petition, not to exceed two years, if additional time is requested.

\*If the beneficiary's status has expired or will expire prior to the date that you selected as the "from" date, AND the petition was filed by the same employer, and then backdate the validity date to the day after the beneficiary's status expires to eliminate gaps. The petition must be timely filed.

## Approval Processing

### Approval Phrases

Use the chart below to determine the appropriate phrase to use when approving an L petition:

CLAIMS #	Approval Phrase	Purpose
1	Send to selected consulate	Petitioner has requested consulate to be notified of the approval.
2	Send to selected consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
3	Workers Visa Exempt-to POE	<ul style="list-style-type: none"> <li>• Beneficiary is not required to have a visa per [8CFR Section 212.1], and</li> <li>• Petitioner has requested POE or PFI be notified of the approval.</li> </ul>
4	Send to different consulate	The consulate requested by the petitioner does not issue the requested visa.
5	To different consulate w/ cable	No longer used as we no longer fax or cable expedites to the KCC.
7	Class and COS approved-Other	<ul style="list-style-type: none"> <li>• Petitioner has requested a change of status for the beneficiary and</li> <li>• Both the classification and change of status are approved.</li> </ul>
10	Class approved; COS denied; consulate/sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p>NOTE: Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the change of status.</p>
11	Class approved; COS denied; POE notified; sep notice	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• A separate notice is prepared outlining the reasons for denial of the change of status.</li> </ul> <p>NOTE: Update as "Y" for Release to the AST so approval may be sent together with the notice denying the change of status.</p>

**Comment [S11]:** These #s changed with the most recent GUI update.

*Continued on next page*

## Approval Processing, Continued

Approval  
Phrases  
(continued)

CLAIMS #	Approval Phrase	Purpose
12	Class and EOS approved-Other	<ul style="list-style-type: none"> <li>• Has requested an extension of stay for the beneficiary (same/same and change of employer requests), and</li> <li>• Both the classification and EOS are approved.</li> </ul>
13	Class approved-Extension denied; Send to consulate	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• Notifying consulate abroad, and</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the extension of stay.</p>
14	Class approved; EOS denied; send to POE	<ul style="list-style-type: none"> <li>• Classification is approved,</li> <li>• A separate notice is prepared outlining the reasons for the denial of the extension of stay.</li> </ul> <p><b>NOTE:</b> Update as "Y" for Release to the AST so approval notice may be sent together with the notice denying the extension of stay.</p>
15	Concurrent employment approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is in the United States in valid nonimmigrant status, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>

Comment [S12]: See previous comment

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**Approval Processing, Continued**

**Approval Phrases (continued) (continued)**

CLAIMS #	Approval Phrase	Purpose
16	Change in employment conditions approved (in United States)	<ul style="list-style-type: none"> <li>• Beneficiary is physically present in the United States in valid nonimmigrant status, <u>and</u></li> <li>• Petition is granting approval for work that has changed with the same employer since prior authorization; or</li> </ul> <p>Amended petitions when:</p> <ul style="list-style-type: none"> <li>• there is no request for additional time, but</li> <li>• there are changes in the employment, such as location, title, etc.</li> </ul> <p><b>NOTE:</b> Do not use this approval phrase when beneficiary will seek consular processing or when petitioner is filing to correct a service error.</p>
26	Concurrent employment approved (abroad)	<ul style="list-style-type: none"> <li>• Beneficiary is outside the United States, and</li> <li>• Petition is granting approval to work concurrently for another employer.</li> </ul>
28	Workers Visa Exempt-POE notified by Fax/Phone	<p>Beneficiary is not required to have a Visa per [8 CFR Section 212.1]</p> <p><b>NOTE:</b> We no longer fax to the POE. Duplicates are forwarded to the KCC priority overnight.</p>

**Comment [S13]:** See preceding comments

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## Approval Processing, Continued

### Petition Annotations

Refer to the table below for proper annotations to be made on the Form I-129 petition and on any duplicate copy provided.

Item	Action
Passport name/visa name vs. Name on petition	The beneficiary's name on the petition should be exactly the same as the name appears on the beneficiary's passport/visa depending which was issued more recently. If it is not, you must change the name on the petition and in GUI to reflect the beneficiary's name as it appears on the passport/visa. All names should be run in TECS.
TECS and NSEERS	Perform all necessary TECS, NSEERS, and ADIS/SQ94 checks.
Annotate Classification	<ul style="list-style-type: none"> <li>• "LIA" for executive or manager.</li> <li>• "LIB" for Specialized Knowledge.</li> </ul>
Number employees	Always "1"
Validity Dates	Enter the validity dates. If the validity dates must be limited for any reasons, annotate the reasons in the "Remarks" block on the face of the petition. See <i>Validity Dates for Approval</i> section
Class Approved	Check "Classification Approved" box for all approvals.
Consulate/POE/PFI Notified	If notifying a consulate/POE/PFI: <ul style="list-style-type: none"> <li>• Check "Consulate/POE/PFI Notified" box,</li> <li>• Circle or underline which is being notified, i.e., either the consulate, the POE, or the PFI, and</li> <li>• Write the name of the consulate/POE/PFI on the blank line.</li> </ul>
Extension Granted	Check box if granting an extension of stay.
COS/Extension Granted	Check box if granting a change in classification and an extension of the beneficiary's stay.
Partial Approval	Annotate the partial approval block when denying COS or EOS.
Action Block	Stamp and sign in the action block

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## Approval Processing, Continued

### Petition Annotations (continued)

**NOTE:** While it is recommended that the job code or approval phrase be annotated on the face of the petition to aid officers in updating, it is not required that the job code or approval phrase be written on the petition. Only GUI must reflect the correct job code and approval phrase. However, it is helpful to have such information on the petition for customer inquiries.

### Duplicate Petition Copies

All duplicate copies of the I-129 petition and RFE responses, provided by the petitioner, must be sent to the Kentucky Consular Center (KCC) for entry into PIMS.

**NOTE:** You are not required to make a second copy for the KCC if the petitioner has not provided one.

Follow the steps below when forwarding duplicate petitions to the KCC.

Step	Action
1	Attach duplicate RFE response to duplicate petition. If a duplicate RFE response is not provided, attach a copy of the sent RFE to the duplicate petition.
2	Ensure that the EAC# is also on the face of the duplicate being sent to the KCC. Preferably, the EAC barcode should be placed in the lower, right-hand corner. If not, write the number on the duplicate copy.
3	Ensure that any required annotations are included on the duplicate copy, as directed in the <i>Petition Annotations Block</i> above.
4	Stamp and sign the duplicate copy.
5	Place the duplicate petition on the "I-129 Approved KCC" shelf in FCU.

### Expedite Requests

To forward duplicate petitions to the KCC for expedite requests, place the duplicate approved petition on the "I-129 Priority Overnight" shelf in FCU. The petition will be sent to the KCC via overnight delivery.

## Processing Procedures (RFE/Denial/Intent)

### Request for Evidence

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**Introduction** There is no specific regulatory guidance for requests for evidence to support L1 petitions. Therefore, the guidance provided by 8 CFR 103 applies.

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**Officer's Responsibility** A request for evidence must be made when the initial review of the record does not establish that all of the eligibility requirements have been met. In addition, a request for additional evidence should be made when:

- The record contains evidence of material fraud or misrepresentation, or
- The officer has knowledge of previous mala fide petitions from the same petitioner.

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**Contents of an Acceptable Request for Evidence** The request for evidence should:

- Identify each of the areas of eligibility that have not been met by the petitioner, and
- Discuss what is deficient with any evidence already provided, and
- Provide options as evidence that the petitioner could provide to meet the area of eligibility.

---

**Adjudication Tip** By requesting evidence to meet each area of eligibility in the same order each time a request for evidence is written, the officer can immediately identify the areas of eligibility that must be reviewed upon the response from the petitioner.

Areas of eligibility that are not mentioned in the request for evidence need not be re-adjudicated at the time of the submission of additional evidence.

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*Continued on next page*

## Request for Evidence, Continued

**Standard Call-Ups** The Request for Evidence (RFE) standards are contained within the 4000-4999 series of AutoText. They are available in MSWord.

Officers must use Correspondence Generator to prepare and send RFEs. The folders containing I-129\_L general call-ups and I-129\_L specific call-ups will appear for an RFE.

As of March 1, 2013, Officers must use the National RFE templates.

Follow the steps below to prepare and process an RFE in CG:

Step	Action
1	Access "Correspondence Generator."
2	Wand or enter the receipt number of the case.
3	Select "RFE"
4	Select initial, additional, or initial and additional.
5	Compose the RFE
6	Print a copy of the RFE and place on the record side
7	Place file on the shelf labeled "EB T/O Shelf" in FCU.

NOTE: Refer to the Correspondence Generator User Guide for more information.

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## Intent to Deny

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**Introduction** This section will discuss the regulatory guidance provided for adverse decisions on L1 petitions as specified by the 8 CFR 214.2(l) regulations.

Where there is no specific regulatory provision, 8 CFR 103 provisions apply.

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**Notice of Intent to Deny** When an adverse decision is proposed on the basis of the evidence submitted by the petitioner or other information available to the Service, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial.

The petitioner may inspect and rebut the evidence and will be granted 30 days from the date of the notice in which to do so (+ 3 days if by mail). All relevant rebuttal material will be considered in making a final decision.

[See 8 CFR 214.2(l)(8)(I)]

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**Contents of Intent to Deny** The notice of intent to deny should contain a:

- Statement that identifies the specific areas of eligibility that the petitioner does not appear to have met,
  - Description of the specific reasons for the Service's determination that the areas of eligibility have not been met, and
  - Discussion of the most persuasive evidence that could be submitted to overcome the reasons for denial.
-

## Denial

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### General

If the petition is denied, the Service will notify the petitioner of its decision within 30 days after the date a completed petition has been filed of:

- The denial,
- The reasons for the denial, and
- The right to appeal the denial.

[See 8 CFR 214.2(l)(8)(ii)]

The denial order should discuss ALL areas of eligibility that have not been met by the petitioner, and include a specific description of the reasons for the Service's determination that the areas of eligibility have not been met.

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### Denial of EOS/COS

In addition to requesting the classification of the beneficiary as an L1 beneficiary, petitioners frequently request an extension of stay or a change of status on behalf of their L1 beneficiaries.

A petition may be approved, but the evidence of record may reveal that the beneficiary is ineligible to extend or change his or her nonimmigrant status. In addition, the petition itself may be denied. In these instances, a separate denial notice must be prepared that addresses the ineligibility of the beneficiary for the requested change or extension of stay.

However, if the petition is to be approved, but the change or extension of status is to be denied solely due to the prior expiration of the beneficiary's status, GUI contains several modified approval notices that inform the petitioner that the petition is approved, but the requested change or extension of stay is denied. In this instance, the modified approval phrase can be used and a separate denial order is not needed.

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## Intent to Revoke and Revocation

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**Revocations** The director may revoke a petition at any time, even after the expiration of a petition. [See 8 CFR 214.2(l)(9)(i)]

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**Automatic Revocations** The approval of any petition is automatically revoked if the petitioner withdraws the petition. [See 8 CFR 214.2(l)(9)(ii)]

Automatic revocations may not be appealed. [See 8 CFR 214.2(l)(10)(ii)]

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**Revocation on Notice** The director shall send to the petitioner a notice of intent to revoke the petition if he or she finds that:

- One or more entities are no longer qualifying organizations;
- The beneficiary is no longer eligible under section 101(a)(L) of the Act;
- A qualifying organization(s) violated requirements of section 101(a)(L) of the act and 8 CFR 214.2(l);
- The statement of facts contained in the petition was not true and correct, or;
- Approval of the petition involved gross error.

[See 8 CFR 214.2(l)(9)(iii)(A)]

The director shall consider all relevant evidence in deciding whether the petition should be revoked. [See 8 CFR 214.2(l)(9)(iii)(B)]

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**Contents of Intent to Revoke**

The notice of intent to revoke shall contain:

- A detailed statement of the grounds for the revocation, and;
- The time period allowed for the petitioner's rebuttal (30 days + 3 if by mail).

**NOTE:** As with intents to deny, an intent to revoke notice should identify the most persuasive evidence that could be submitted to overcome the reasons for revocation. Be sure to include the specific reason for the Intent to Revoke.

[See 8 CFR 214.2(l)(9)(iii)]

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**Status of Beneficiaries**

If a petition is revoked, the beneficiary is required to leave the United States, unless the beneficiary has obtained other work authorization from the Service.

[See 8 CFR 214.2(l)(9)(iv)]

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## Updating Cases

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**GUI Updating** Refer to the GUI Adjudication Updating Guide for instructions on updating approvals, RFEs, intents, denials, relocates, etc., in GUI

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## Appendices

### Appendix A - References

**References  
Used to Create  
SOP**

This table lists the references that were used in the creation of this SOP

Reference	Issue
Section 101(a)(15)(L) of the Act	Manager/Executive Statutes
Section 214(c)(2)(B)	Specialized Knowledge Statute
8 CFR 214.2(l)	L1 Regulations
Interpretation of Specialized Knowledge Memorandum, Dated 3/9/94	HQ Guidance on Specialized Knowledge
<i>Matter of M--</i> 8 I&N Dec. 24	Beneficiary is sole owner.
<i>Matter of Raulin</i> 13 I&N Dec. 618	Executive Secretary; Specialized Knowledge; Approved
<i>Matter of Schick</i> 13 I&N Dec. 647	Contractual relationship between companies does not qualify for L-1 purposes
<i>Matter of Leblanc</i> 13 I&N Dec. 816	New Office
<i>Matter of Continental Grain Co.</i> 14 I&N Dec. 140	Interruption in required year of continuous employment is ok sometimes.
<i>Matter of Pozzoli</i> 14 I&N Dec. 569	L-1 alien will be paid by the foreign company.
<i>Matter of Del Mar Ben, Inc.</i> 15 I&N Dec. 5	Personal understanding between presidents of the foreign and U.S. companies, plus U.S. company's ownership of a little stock in foreign company is not satisfactory for L-1 purposes.
<i>Matter of Chartier</i> 16 I&N Dec. 284	Requirement for existence of foreign entity while L-1 alien is in the United States.
<i>Matter of Michelin Tire Corp.</i> 17 I&N Dec. 248	Beneficiary must have the full one year of continuous experience before the L-1 petition is filed; Specialized Knowledge
<i>Matter of Aphrodite Investments</i> 17 I&N Dec. 530	Owner of a corporation can be an L-1 beneficiary, as long as he is employed.

*Continued on next page*

**Appendix A - References, Continued**

<b>Reference</b>	<b>Issue</b>
<i>Matter of Penner</i> 18 I&N Dec. 49	Specialized Knowledge; gas and oil drilling rig crews. Need for U.S. entity as employer.
<i>Matter of Colley, et al</i> 18 I&N Dec. 117	Specialized Knowledge; aerial survey pilot; aerial photographer.
<i>Matter of Hughes</i> 18 I&N Dec. 289	De facto control; de jure control; affiliates; subsidiaries; ownership & control.
<i>Matter of Kloeti</i> 18 I&N Dec. 295	The one year of qualifying experience must be acquired entirely outside the United States.
<i>Matter of Siemens Medical Systems</i> 19 I&N Dec. 362	50-50 joint venture reasoning; negative control, etc.
<i>Matter of Church of Scientology</i> 19 I&N Dec. 593	Churches may use <del>E</del> +L1 class if they meet <del>E</del> +L1 criteria
<i>Matter of Safetran</i> Interim Dec. #3108	Time in H status counts toward maximum stay in L status

## Previous Revisions

### Revision History

Revision #	Date	Subject	Pages
25	3/29/13	Revised location of Revisions document.	5
		Revised <i>Required Evidence</i> block to indicate that evidence must show that beneficiary has been employed by a qualifying organization for one continuous year within the three years immediately preceding the filing of the petition.	10
		Added relative section of 8 CFR and clarified the use of "professional" in L1B Introduction.	48
26	7/16/13	Clarified location of prior revisions.	5
		Deleted link to list of banned employers and updated location description for this information on the ECN.	10
		Deleted "Additional Fee for Certain <del>L-1</del> L1 Petitions" section.	11
		Added "Border Security Fee" section.	
		Added "Determining Number of U.S. Employees" and "Who Can Pay the Fees" sections.	12
		Revised "Requests for Fraud and/or Border Security Fees" section.	
		Clarified that the 1 in 3 years of qualifying foreign employment must have been achieved before the petition filing date.	13
		Added reference source to Direction for I-129 Petition.	15
		Added location of Outsourcing information.	18
		Revised number of stockholders to 100	30
		Added description of ineligible corporations.	
		Added IRS definition of U.S. resident.	
		Added "that not all authorized shares need to have been issued."	33
		Clarified that stock certificates alone do not establish ownership and control.	34
		Clarified definition of "Managerial Capacity"	39
		Clarified definition of "Executive Capacity."	40
		Added that "hybrid executive/managers" do not qualify.	
		Deleted "persuasively."	45

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**Previous Revisions, Continued**

Revision #	Date	Subject	Pages
		Deleted "NOTE: That specialized knowledge professional definitions apply to foreign employment."	46
		Deleted reference to Appendix to access Memos.	
		Added "may be" to sufficient evidence statement.	50
		Added <i>Matter of Brantigan</i>	51
		Clarified that there are sections of certain cites that are not to be used regarding <del>L-1B-L1B</del> correspondence.	52
		Clarified that the 1 in 3 years qualifying foreign employment must have been achieved before the filing date of the petition.	55
		Clarified when the foreign employment must be in the same capacity as the proposed U.S. employment.	
		Added "qualifying" to the organization abroad.	59
		Deleted "persuasive" and added "sufficient."	71
		Clarified that "hand carried" investments may be an indicator that the foreign entity may not exist.	72
		Clarified that petitioners must continue to meet all L1 eligibility requirements for New Office extensions.	74
		Added that no SISO authorization is needed for extension RFEs for beneficiaries who had entered the United States under a Blanket petition.	77
		Clarified limitations for changing from <del>L-1B-L1B</del> to <del>L-1A-L1A</del> .	80
		Replaced "a letter of denial" with "an Intent to Deny."	84
		Deleted "convincing" from Officer's Responsibility.	85
		Added "ADIS" in Systems Checks.	88
		Added "ADIS" in Name Conventions.	89
		Added requirements for using ADIS.	92-93
		Clarified when and how SQ94 is used.	93
		Added reference to "VIBE Qualifying Relationship Worksheet" and clarified VIBE drop-off location.	94-95
		Added reference to "VIBE Qualifying Relationship Worksheet" and clarified VIBE drop-off location.	95
		Clarified when to issue an RFE for VIBE concerns.	
		Added reference source to I-129 Filing Instructions.	98-99
		Changed "three" months to "six" months.	98

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**Previous Revisions, Continued**

<b>Revision #</b>	<b>Date</b>	<b>Subject</b>	<b>Pages</b>
		Deleted reference to COS (Change of Status) and Added Expired Dates block.	102
		List Approval Phrases and when they should be used.	104-106
		Clarified which name should appear when passport/visa/petition names conflict.	107
		Deleted obsolete instructions for Consular/POE/PFI notifications and added current directions.	108
		Added that Officers must use National RFE templates.	110
		Deleted APPENDIX B: Corporate Status Websites.	117
		Deleted APPENDIX C: Memos.	
		Deleted examples and scenarios.	Various locations throughout SOP
		Made Plain Language changes	Various locations throughout SOP
27	1/9/14	Added section concerning not using Pre-IMMACT'90 Precedent Decisions.	51-52
		Revised definition of "New Office."	67
		Added Iranian Sanctions section.	83
		Added Casebook guidance.	88-89
		Revised VIBE directions.	95-96
		Added directions for second KCC copy for Blanket L approvals.	100
		Added requirement to annotate validity date limitations in "Remarks" block.	109
		Replaced "IBIS" with "TECS."	Various locations

*Continued on next page*

**Previous Revisions, Continued**

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<b>Revision #</b>	<b>Date</b>	<b>Subject</b>	<b>Pages</b>
28	5/12/2014	Clarified New Office definition.	66
		Clarified unanticipated circumstances for New Office extensions.	73
		Added "General Processing" header and "E-L1 Process for LPRs" section.	74
		Added "Creating New Arrival-Departure Record (Form I-94) section.	103-104
		Added clarification regarding the "Starting and Ending dates" for approved petitions.	106
		Changed "Clerical" to "Adjudication Support Team (AST)."	Various locations

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**From:** [Ramos, Diana](#)  
**To:** [Howrigan, Tanya L](#); [Steinhour, Wallace W](#); [Mossey, Joanna J](#)  
**Cc:** [Sweeney, Shelly A](#); [Moran, Karla](#); [Bazaire, Kevin J](#)  
**Subject:** "Project" Manager Teleconference  
**Date:** Wednesday, May 21, 2014 3:06:27 PM  
**Attachments:** [FAC0909651597.pdf](#)  
[WAC1000351981.pdf](#)

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Good Afternoon,

We would like to set up a teleconference on May 29<sup>th</sup> or 30<sup>th</sup> at 1 pm (EST) and discuss the "project" manager filings at VSC. Please let me know what date will work best for VSC.

The following are the topics/questions for discussion:

- VSC would like guidance as to whether these positions qualify as manager.
- Do these petitions satisfy prong one of the managerial definition?
  - Manages the organization, or a department, subdivision, function, or component of the organization.

In preparation for our discussion, I am attaching two AAO decisions for your review.

Respectfully,

*Diana Ramos*

Business Employment Services Team (BEST)

Service Center Operations Directorate

20 Massachusetts Ave N.W., Ste 2000

Washington D.C. 20529-2060

Office: (202) 272-1587  ✉: [diana.ramos@uscis.dhs.gov](mailto:diana.ramos@uscis.dhs.gov)

(b)(6)

**From:** Mayo, Paula J  
**To:** Collins, Richard A; Collins, Alexandra K; Young, Jennifer M; Pigeon, Elizabeth A; Ellsworth-Spooner, Kristina C; Baltzell, Miranda L; Palumbo, Peter D; Robtoy, Thayer K; Wood, Gloria G; Lawyer, Cynthia L; Parrotte, Janet A; Quizon, Teddie (Ted); Gleason, Julie A; Messier, Karla K; Fiske, Kimberly J; Mercy, Marlene J; Lemire, Carla M; Chagnon, Jason J; Langlais, Stephanie K; Abdelaziz, Tina L; Elwood, Shana M; Boyse, Linette A; Gonveau, Renee M; Frates, Hilary A; Quinn, John J; Johnson, Angella M (Angie); Tabacco, Errol J; Feeley, Candace S; Deaette, Joanne M; Liu, Samantha Y; Q'Dell, Gary K  
**Cc:** Bosley, Bonnie M; Nolette, Robert; Brouillette, Karen L; Reilly, Karen B; Mossey, Joanna J; Collins, Alexandra K; Piersa, Peter J; Barrow, David C; Steinhour, Wallace W  
**Subject:** Business Division "L" 129 Round Table minutes\_5.27.14  
**Date:** Wednesday, May 28, 2014 3:00:26 PM  
**Attachments:** Business Divison L 129 Round Table St. Albans 5.27.14.docx

---

Good afternoon~

Please view the attached minutes from our L I-129 Round Table Agenda meeting yesterday.

Thank you,  
Paula

**Paula J. Mayo | Immigration Services Assistant Business Division | Vermont Service Center | 802-527-4700 X5040 | Cube EX187**

**WARNING: This document is FOR OFFICIAL USE ONLY (FOUO). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information. This information shall not be distributed beyond the original addressees without prior authorization of the originator. If this message has reached you in error, please advise the sender and delete the message immediately.**

**From:** [Bouchard, Armanda M](#)  
**To:** [Whittier, Michelle J](#)  
**Cc:** [Steinhour, Wallace W](#); [Mossey, Joanna J](#)  
**Subject:** CBP L Training Mainframe CLAIMS Tutorial  
**Date:** Friday, July 11, 2014 3:49:22 PM  
**Attachments:** [Claims Supplemental Tutorial USCIS Revised.pptx](#)

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Hi Michelle,

I was asked by Karla to complete the attached Mainframe CLAIMS tutorial that CBP began to put together at some point in time. It will be used for the TN training. Karla mentioned on a call that it would also be used at the CBP L training at the CSC. I saw the Business Updates you put out a few minutes ago, so it made me think I should share this although SCOPS, Policy, or OCC may have changes before it is final.

I'm adding the L Seniors. I'm not if any SISOs are handling L form type POC duties. Please pass along if needed.

**Armanda (Mandy) Bouchard** | DHS | USCIS | VSC Business Division ISO3 | ☎ 802.527.4700 x1 x4906 |  
📠 802.527.4843 | ✉ [armanda.bouchard@dhs.gov](mailto:armanda.bouchard@dhs.gov)

---

**From:** Bouchard, Armanda M  
**Sent:** Friday, July 11, 2014 10:36 AM  
**To:** Moran, Karla  
**Cc:** Howrigan, Tanya L  
**Subject:** RE: TN Training

Karla,

Here is the PowerPoint for CLAIMS. I kept it in the CBP shell. Since the information before was not redacted I did not do any redacting. I added some slides for a TN case but because my screen shots are from a Windows 7 environment it did not have a good flow with the other screen shots that were taken from the old environment. I replaced all of the CLAIMS screen shots for consistency from the Windows 7 environment. I also added other case examples to explain the information.

I'm looking forward to presenting this!

The VIBE presentation and fraud presentation will be sent later today.

**Armanda (Mandy) Bouchard** | DHS | USCIS | VSC Business Division ISO3 | ☎ 802.527.4700 x1 x4906 |  
📠 802.527.4843 | ✉ [armanda.bouchard@dhs.gov](mailto:armanda.bouchard@dhs.gov)

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**From:** Moran, Karla  
**Sent:** Tuesday, July 08, 2014 8:53 AM  
**To:** Bouchard, Armanda M  
**Cc:** Mossey, Joanna J; Howrigan, Tanya L  
**Subject:** RE: TN Training

No problem. We had the same issue with ADIS training, live data was used. Once the power point is

complete, I will send to Privacy to ensure we have no issues. It should be ok.

Thank you,

*Karla Moran*

Special Assistant

Service Center Operations

202-272-1531 Desk

[Karla.Moran@uscis.dhs.gov](mailto:Karla.Moran@uscis.dhs.gov)

---

**From:** Bouchard, Armanda M

**Sent:** Tuesday, July 08, 2014 8:11 AM

**To:** Moran, Karla

**Cc:** Mossey, Joanna J; Howrigan, Tanya L

**Subject:** TN Training

Karla,

Can you add Joanna Mossey to the mailing list related to CBP TN training? She will be giving the VIBE presentation. She is working on modifying one of our existing VIBE PowerPoints. We use real case data in our VIBE presentations. It will be difficult to mask PII information because it defeats the purpose of determining a match and that the information relates to the company at hand. Hopefully this will not be a problem.

Mandy

**Armanda (Mandy) Bouchard** | DHS | USCIS | VSC Business Division ISO3 |  802.527.4700 x1 x4906 |

 802.527.4843 |  [armanda.bouchard@dhs.gov](mailto:armanda.bouchard@dhs.gov)

**From:** [Steinhour, Wallace W](#)  
**To:** [Mossey, Joanna J](#)  
**Subject:** Changes to I129L1M  
**Date:** Tuesday, April 22, 2014 11:08:18 AM  
**Attachments:** [I129L1M\\_04222014.doc](#)

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The changes are in red. The primary changes are at the beginning of the denial but I made a few changes throughout. Please review the changes.

Wally

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



(b)(6)

DATE: JUL 05 2011

Office: VERMONT SERVICE CENTER



IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



(b)(6)

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

[REDACTED]

(b)(6)

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a business information technology consulting company, states that it is a subsidiary of the beneficiary's foreign employer [REDACTED]. The petitioner has employed the beneficiary in L-1A status since March 2006 and seeks to extend his status for approximately 16 months so that he may serve in the position of Program Manager.

(b)(6)

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that it appears that the decision failed to take into consideration the petitioner's response to the director's request for evidence. Counsel asserts that the evidence of record demonstrates that the beneficiary qualifies for an extension of his status based on his management of 29 professional employees and his management of a customer program involving multiple projects worth in excess of \$22 million in contract value. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(b)(6)

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The sole issue in this matter is whether the petitioner established that the beneficiary will be employed by the U.S. entity in a primarily managerial capacity. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The petitioner filed the nonimmigrant petition on February 13, 2009. In a letter dated February 10, 2009, the petitioner indicated that the beneficiary was previously granted L-1A status to serve as a QA Project Manager for a client based in Rockville, Maryland, and is now being offered the role of Program Manager for the petitioner's client [REDACTED]. The petitioner indicated that it has 30 employees dedicated to the four projects under the beneficiary's supervision, and stated that the projects have a contract value of \$22,739,856. The petitioner provided a lengthy description of the beneficiary's proposed duties. Briefly, the petitioner indicated that the beneficiary's duties include identifying and hiring resources for each project based on reports from subordinate project managers; reviewing project progress; resolving escalated and prioritized issues; providing managerial direction to the ISP team by creating and publishing project metrics and monthly status reports for customer review; conducting performance appraisals; and communicating project achievements to the customer.

(b)(6)

The petitioner stated that the beneficiary "will also be an integral component" in determining the projects' success through supervision of subordinates, and will directly supervise and control thirty subordinates, including four project managers, 25 analyst programmers and a web administrator. The petitioner indicated that all of the beneficiary's subordinates possess a minimum of a Bachelor's degree in a related field and relevant IT experience.

The petitioner provided an organizational chart depicting the structure of the beneficiary's assigned projects. The beneficiary reports to a Business Relationship Manager, and oversees four project managers, each of which is responsible for a different project. Each project manager supervises five to eight analyst programmers, and the beneficiary also supervises a web administrator.

On February 24, 2009, the director issued a request for additional evidence (RFE). The director instructed the petitioner to provide additional information regarding the beneficiary's duties, and the management and personnel structure of the U.S. entity, including information regarding the number of subordinate supervisors working under the beneficiary's management, their job titles and job duties, the amount of time the beneficiary devotes to managerial duties versus non-managerial duties, and the degree of discretionary authority the beneficiary has over day-to-day operations. The director noted that the beneficiary appears to manage projects within a department or subdivision of the organization, rather than managing the organization, or a department, subdivision, function or component of the organization. The director also observed that the petitioning company has filed a number of L-1A petitions which have been approved by USCIS, but questioned whether "a company the size and scope identified in the instant petition could reasonably support that many managers."

In a response dated April 8, 2009, the petitioner emphasized that the beneficiary will be responsible for managing four significant projects for a client account valued at \$6.3 million. The petitioner provided a detailed description of the beneficiary's duties and the percentage of time he will allocate to each area of responsibility. Briefly, the petitioner indicated that the beneficiary's time will be allocated as follows:

- Responsible for internal review of project progress with the customer (30%)
- Manage resource utilization (15%)
- Monitor team performance (5%)
- Train and mentor team (5%)
- Interact with onsite and offshore program management (10%)
- Ensure proper utilization of Human Resources. (5%)
- Maintain responsibility for establishing and building relationship with Bank Leads/Managers: Manage escalation of issues. (15%)
- Manage the schedule, cost and quality of the project: Review the program profitability; monitor quality trends and intervene as needed. (5%)
- Prepare and present program quality audits (5%)
- Maintain responsibility for program billing (5%)

The petitioner stated that the beneficiary will supervise four subordinate supervisors (project managers) whose duties include:

[L]iaising with the client; ensuring coding standards; conducting quality reviews; resolving queries and coordinating activities between offshore and the client; preparing standards and checklists; conducting user trainings; training, planning and monitoring and supporting team; reviewing functional specifications, technical design documents and program specifications; allocating and coordinating work; interfacing with business managers for high impact problems; approving and implementing project deliverables; approving impact analysis of small enhancements; identifying and executing re-engineering and process improvement initiatives; sharing best practices with management; and managing the quality of deliverables.

The petitioner further stated that the 25 analyst programmers will be: liaising with the client; conducting quality reviews, resolving queries; coordinating activities between offshore and client; reviewing functional specifications, technical design documents, and program specifications; fixing base functionality testing bugs; resolving production process problems; and onsite/offshore coordination.

The petitioner stated that "the beneficiary's job duties are primarily managerial in nature and involve providing leadership and direction to the different projects under his oversight as well as key project delivery skills." The petitioner stated that the beneficiary will spend "100% of his time devoted to managerial duties."

In response to the director's inquiry regarding the beneficiary's degree of discretionary decision making authority over day-to-day operations, the petitioner stated that the beneficiary will be authorized to hire and fire members from the program, appraise the performance of his subordinates, as well as manage program costs within an approved cost budget and hold discretionary authority over the program budget, including the authority to purchase resources for team members.

The director denied the petition on April 30, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial capacity under the extended petition. The director acknowledged the letter submitted in response to the RFE, but noted that the petitioner did not submit any documentary evidence to bolster its claims. The director observed that the proffered position appears to contain some managerial components, but determined that the petitioner did not establish that the beneficiary would be primarily engaged in managerial duties. The director determined that the petitioner's response to the request for evidence included only a "generalized breakdown" of the beneficiary's activities, and failed to include detailed position descriptions for the beneficiary's team members.

The director emphasized that, in order to establish the beneficiary's eligibility as a manager, the petitioner must demonstrate that he primarily manages the organization, or a department, subdivision, function or component of the organization. The director noted that the activities associated with managing a client project can be distinguished from controlling a function or component of the organization. In this regard, the director noted that "a Program Manager" for IT workers often performs the day-to-day tasks which support the workers he coordinates" and further noted that overseeing a client project can be distinguished from

managing a component or function of the organization. Finally, the director noted that the beneficiary will "manage a team that works on a specific client project, engaging in activities directly associated with producing a product or providing a service."

On appeal, counsel asserts that "the Service has either misinterpreted or failed to consider the facts in evidence," noting that the director erroneously stated that the petitioner did not provide a detailed job description. Counsel asserts that the beneficiary "plays an integral role in managing 4 important projects for a significant customer [REDACTED] and the success of these projects hinges upon the Beneficiary's ability to manage them." (b)(6)

Counsel further objects to the director's finding that the beneficiary would be performing the tasks necessary to produce a product or provide services. Counsel suggests that the director mischaracterizes the program manager position as an administrative position, responsible for providing support to the project's resources. Counsel notes that "a Program Manager spends most of his or her time reviewing reports prepared by Project Managers, assessing resource needs, budgeting costs, analyzing schedules, escalating issues that could not be resolved at a lower level, liaising with senior level customer representatives and reporting to senior management." Counsel further states that "program management requires the management of multiple professionals working on multiple projects" and emphasizes that the beneficiary has nine years of experience within the petitioner's organization which has resulted in his assignment to significant personnel and budget management responsibilities.

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity. The director's determination appears to be based in part on the director's pre-conceived impression of what duties are typically performed by project managers or program managers for IT workers rather than on the evidence submitted by the petitioner. The director should not hold a petitioner to his undefined and unsupported view of the standard duties of an occupation in making a determination as to whether the beneficiary will be employed in a primarily managerial or executive capacity. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

The evidence submitted establishes that the beneficiary supervises and controls the work of professional employees and possesses authority to recommend personnel actions for employees under his supervision. See sections 101(a)(44)(A)(ii) and (iii) of the Act.

Furthermore, the AAO concurs with the petitioner's assertion that the beneficiary's overall management of a group of on-site/off-shore projects for a single client, within the context of the facts presented in this matter, can be equated to managing a subdivision, function or component of the organization. See section 101(a)(44)(A)(i) of the Act. The client account for which the beneficiary is responsible generates significant revenue, and the beneficiary manages more than half of the workforce assigned to the account. Further, the beneficiary does not directly oversee such projects, but rather oversees subordinate project managers, who, in turn, supervise the technical resources. Finally, the AAO is satisfied that the beneficiary exercises discretion

over the day-to-day operations of projects under his responsibility, as required by section 101(a)(44)(A)(iv) of the Act.

While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties and perform some administrative tasks, the AAO is persuaded that the vast majority of the day-to-day non-managerial tasks required to produce the products and provide services for the client are carried out by the beneficiary's subordinate project managers and technical staff. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden and the petition is approved.

The AAO notes that the beneficiary was initially admitted to the United States in H-1B status on March 22, 2003, and was subsequently granted a change of status to L-1A classification, and an extension of stay through March 5, 2009. The petitioner has requested that the beneficiary's L-1A status be extended until June 28, 2010, and provided documentary evidence of the beneficiary's absences from the United States since his initial date of admission. The petitioner indicates that the beneficiary is eligible to recapture 100 days during which he was physically present outside the United States. The AAO finds that the number of days the beneficiary is eligible to recapture is 92.<sup>1</sup> Therefore, the beneficiary is eligible for an extension of his L-1A status until June 20, 2010.

The regulation at 8 C.F.R. § 214.2(l)(12) provides, in relevant part, that an alien who has spent seven years in the United States in a managerial or executive capacity under section 101(a)(15)(L) and/or (H) of the Act may not be readmitted to the United States under section 101(a)(15)(L) or (H) of the Act unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, the immediate prior year. Thus, the beneficiary is ineligible for any extension of his L-1A status beyond June 20, 2010, and no new L-1 or H petition filed on his behalf can be approved until and unless these conditions are met.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Accordingly, the director's decision dated March 9, 2009 is withdrawn.

**ORDER:** The appeal is sustained.

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<sup>1</sup> The petitioner's calculations included days in which the beneficiary was traveling and spent a portion of his day physically present in the United States. The AAO's calculations include only full days on which the beneficiary was physically present outside the United States.

**From:** [Steinhour, Wallace W](#)  
**To:** [Mossey, Joanna J](#)  
**Subject:** FW: L1A Manager Flowchart  
**Date:** Monday, July 28, 2014 10:51:32 AM  
**Attachments:** [L1A Manager Diagram.docx](#)  
[L1A Manager Flowchart.docx](#)

---

I am still not sure about the wording in the NOTE section. What are your thoughts?

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**From:** Roach, Robert B  
**Sent:** Friday, July 25, 2014 9:11 AM  
**To:** Shuttle, Peter J; Steinhour, Wallace W  
**Cc:** Mossey, Joanna J  
**Subject:** RE: L1A Manager Flowchart

Wally/Joanna –

Have another look at the most recent edits we discussed. I've included the original diagram, and an actual flow chart, each with the same information. If you are satisfied, go ahead and distribute one or both to the L officers.

**Robert B Roach III**  
**Supervisory Immigration Services Officer (SISO)**  
**USCIS | VSC | 38 River Rd - Essex | Business Division**  
**Phone: (802) 871-3623 | [REDACTED] (b)(6)**

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**From:** Shuttle, Peter J  
**Sent:** Tuesday, July 22, 2014 11:34 AM  
**To:** Steinhour, Wallace W; Roach, Robert B  
**Cc:** Mossey, Joanna J; Howrigan, Tanya L  
**Subject:** RE: L1A Manager Flowchart

I think we should get this out to our L officers for use. Either in a Roundtable, or send it out in a general email to the L officers. Let me know.

-Pete

---

**From:** Steinhour, Wallace W  
**Sent:** Thursday, July 17, 2014 12:50 PM  
**To:** Roach, Robert B  
**Cc:** Mossey, Joanna J; Shuttle, Peter J; Howrigan, Tanya L  
**Subject:** RE: L1A Manager Flowchart

Rob,

I made one correction the chart(in red). Otherwise, it looked correct. I think it could be useful as a tool.

Wally

---

**From:** Roach, Robert B  
**Sent:** Thursday, July 17, 2014 12:28 PM  
**To:** Steinhour, Wallace W  
**Cc:** Mossey, Joanna J; Shuttle, Peter J; Howrigan, Tanya L  
**Subject:** L1A Manager Flowchart

Wally –

I bounced this off of Joanna a few minutes ago. She thought it looked accurate, but suggested getting your input before making it available to the floor.

Here is the background behind why I put this together...

Over the last couple of weeks I have gotten back a handful of denials with complaints from the attorney RE: requirements for L1A managers (part of this is on me too, as I should have noticed the difference in wording, but nonetheless). The most recent one, from Fragomen, presents an interesting argument, though the case would not be approvable anyways. We mistakenly stated that the beneficiary does not manage an essential function while noting that he does supervise other supervisory employees. The denial should have discussed that the beneficiary did not manage the organization, or a department, subdivision, function or component within, rather than the essential function. Based on this, I would say that the officer may have gotten the terminology of the two prongs mixed up. That said, if one officer is having issues, I would venture to say that others are as well. I thought it might be helpful to put this flow chart together to help out those officers who may be struggling to differentiate prongs 1 and 2a, as in the attachment.

Let me know if you have any suggestions, additions or amendments,  
Rob

**Robert B Roach III**  
**Supervisory Immigration Services Officer (SISO)**  
**USCIS | VSC | 38 River Rd - Essex | Business Division**  
**Phone: (802) 871-3623**  (b)(6)

**From:** Shuttle, Peter J  
**To:** Shuttle, Peter J  
**Subject:** FW: Project Manager Guidance  
**Date:** Thursday, February 05, 2015 3:32:05 PM  
**Attachments:** [L1A IT projects are components.pdf](#)  
**Importance:** High

---

**From:** Shuttle, Peter J  
**Sent:** Friday, September 26, 2014 2:54 PM  
**To:** VSC Business Division  
**Cc:** Zervic, Christopher M; Schmalz, Peter N; Hummel, Stephanie; Gratton, Raymond R; Kirkpatrick, Scott M  
**Subject:** FW: Project Manager Guidance  
**Importance:** High

The following guidance is being distributed to officers that process I-129 L petitions. If you do not work I-129 L's please disregard.

This guidance relates to how we process I-129 L-1A Project Manager and Functional Manager petitions, and is in affect as of today's date.

Section 101(a)(44)(A) of the Act defines a manager as an employee who primarily:

- (1) Manages the organization, or a 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 and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised, **or**, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

I-129 L-1A Project Managers have been a topic of discussion for a number of years now between HQ, CSC, and the VSC. Until now our local guidance has stressed that many of these cases have been deniable. However, a recent AAO non-precedent decision found that specific individual client projects can be distinct components of a company that require independent management and a significant level of responsibility on the part of the managers assigned to lead them.

This AAO decision is in line with recent discussions the VSC has had with HQ SCOPS leadership, who have instructed officers to look at the managerial definition collectively as is suggested by the use of the word "and" in the definition, and not evaluate each piece of the managerial definition separately.

Going forward recognized specific client projects can be treated as components of an organization.

In addition, recent AAO decisions have concluded that it is reasonable to consider employees (must be professionals, supervisory or managerial employees) the beneficiary manages abroad as part of his managerial duties in the United States.

As you adjudicate project manager filings, consider the evidence provided. If the evidence presented indicates the beneficiary manages a project, it is possible to consider the project a component or function of the organization and the petition may be approvable if the other three prongs of the managerial definition have been satisfied through the evidence of record

In addition, be open to considering the beneficiary's managerial staff in the U.S. and the beneficiary's staff abroad.

If you have questions regarding this guidance please see your supervisor. Also we plan to have this as a discussion item during upcoming I-129 L roundtables in October, stay tuned for more information regarding the roundtable plans.

Thanks,

**Peter Shuttle**

**Section Chief – Vermont Service Center - USCIS/DHS**

(802) 871-3644 (desk)  cell)

(b)(6)

**From:** Ramos, Diana  
**To:** "bakerd@state.gov"; BIGELOW, EILEEN; Canney, Keith J; Collins, Alexandra K; CORNELIUSEN, BRET C; DONLEY, MICHAEL A; DROLET, RICHARD G; HALL, JULIA E; HARRIS, DAVID M; "hecht-cronstedt@state.gov"; "hunthj@state.gov"; JOHANSON, DANA M; LIANG, WILLIAM; "mcdanielr@state.gov"; "millerat@state.gov"; Miller, Britney; Mossey, Joanna J; "nantaisjd@state.gov"; "alish@state.gov"; Pham, Mai-Lan; "phamv@state.gov"; "rothenbergl@state.gov"; "saylorma@state.gov"; Shuttle, Peter J; SOLANO, JOSEPH M; "vermillionr@state.gov"; WELLS, GARY W; Baltaretu, Cristina G  
**Cc:** Moran, Karla; Sweeney, Shelly A; Bazaire, Kevin J; Potter, Eric D  
**Subject:** IT projects / components  
**Date:** Wednesday, September 03, 2014 11:58:32 AM  
**Attachments:** LIA IT projects are components.pdf

---

Good Morning,

Attached is the AAO non-precedent decision discussed during the L joint conference.

The decision indicates the petitioner, an IT consulting and development services company, "within the context of its business, its client projects are in fact distinct components of the company that require independent management and a significant level of responsibility on the part of the managers assigned to lead them." (see Page 5, Part B)

Very Respectfully,

*Diana Ramos*

Business Employment Services Team (BEST) (b)(6)

Service Center Operations Directorate

24000 Avila Road, Laguna Niguel, CA 92677

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**From:** Brouillette, Karen L  
**To:** Parrotte, Janet A; Bergeron-Rousseau, Claire M; Moulton, Benjamin S; Lemire, Carla M; Mossey, Joanna J; Wood, Gloria G  
**Cc:** Nolette, Robert; Tabacco, Errol J; Steinhour, Wallace W; Shuler, Elizabeth A (Beth); Roach, Peter D; Lockerby, Beth A; Chadwick, Donna M; Klinefelter, Carrie L; Skerrett, William S  
**Subject:** L Adjudication Checklist  
**Date:** Monday, April 29, 2013 4:17:01 PM  
**Attachments:** L Adjudication Checklist Revised.docx  
**Importance:** High

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All,

The Business Division has developed an "L Adjudication Checklist". You have been selected to review the checklist and to provide comments about the possible effectiveness of using this checklist for future L training and/or as a possible reference to use while adjudicating. This checklist is by no means an "end all" type checklist where every possible scenario is identified; but merely as a training/guiding tool to help adjudicators in the adjudication of L's.

We would like you to review the checklist and provide feedback to the following questions:

1. In your opinion, do you think this checklist would be a helpful tool for new L adjudicators? Why/why not.
2. What would you modify/delete/add to make the document better? Remember, this is a guide and should not be any longer than 2 pages.

You will be allowed 30 minutes of back-out under Special Projects:

NOVA: Backout/Group Activities/Mgt-Projects-Committee/Unit Projects

Epas: ADMINISTRATIVE - GENERAL - LABOR HRS TO SPECIAL PROJECTS

**Please review the document and provide feedback by COB Friday 5/3.**

Thanks!

Karen Brouillette |USCIS|DHS|VSC-Essex|Senior Immigration Services Officer-Business

Division|Cube EA4H| ☎ 802.288.7870 x7757| 📠 802.288.7853|

✉ [Karen.L.Brouillette@uscis.dhs.gov](mailto:Karen.L.Brouillette@uscis.dhs.gov)

**From:** [Steinhour, Wallace W](#)  
**To:** [Mossey, Joanna J](#)  
**Subject:** L Denial Training Presentation  
**Date:** Tuesday, November 12, 2013 1:29:52 PM  
**Attachments:** [L Denial Training 3-13-13.ppt](#)

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Joanna,

Attached is the L Denial Training PowerPoint presentation I promised last week. This was modified from the H1B denial training presentation. The first half is rather generic. The second half is geared more to L specifically. Let me know if you have any suggestions. I am still waiting for the lesson plan. I will forward it when I get it.

Wallace W. Steinhour  
Business Division Senior  
802-527-4700 ext 4620

**From:** [Steinhour, Wallace W](#)  
**To:** [Dezotelle, Jennifer L](#)  
**Cc:** [Mossey, Joanna J](#)  
**Subject:** L SOP update regarding LPRs  
**Date:** Tuesday, February 18, 2014 7:31:55 AM  
**Attachments:** [L LPR section.doc](#)

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Jen,

Please forward the attached document to CTU for inclusion in the L SOP. I am requesting that the CTU create a "General Processing" chapter on page 74 of the SOP and place this section along with the following sections in the newly created chapter:

Extensions  
L1 Limitations of Stay  
Bundled Petitions  
Iranian Sanctions  
NAFTA Petitions  
Detecting L1 Fraud or Misrepresentation  
Name Discrepancies  
National Systems

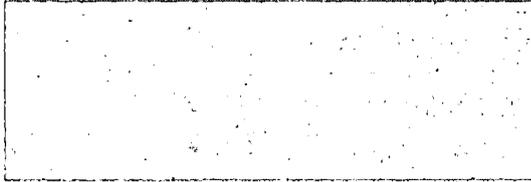
Thanks,

Wally



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: AUG 04 2014

Office: VERMONT SERVICE CENTER

FILE



IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center's director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, an IT consulting and development services company, is an affiliate of the beneficiary's foreign employer, [REDACTED] located in India. The petitioner seeks to employ the beneficiary as a Development Manager for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed abroad, or would be employed in the United States, in a qualifying managerial or executive capacity. The director further found that the petitioner's placement of the beneficiary at the worksite of an unaffiliated employer "is essentially an arrangement to provide labor for hire for the unaffiliated employer."

On appeal, counsel for the petitioner contends that the director mischaracterized the nature of the beneficiary's position and disregarded portions of the statutory definition of "managerial capacity" in evaluating the beneficiary's qualification for the requested classification. Counsel asserts that the beneficiary has managed and will manage a distinct component or subdivision of the organization and supervises a staff of professional employees. Counsel submits a brief in support of the appeal.

### I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

## II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner has established that the beneficiary has been employed abroad and will be employed in the United States in a primarily managerial capacity.

### A. Facts

On the Form I-129, the petitioner stated that the beneficiary would work off-site in Windsor, Connecticut, as a development manager "responsible for managing and directing the allocation of materials and resources to Petitioner's large on-site/off-site software development projects in the United States." The petitioner indicated that the beneficiary has been employed by its foreign affiliate since 2005 and currently performs the same duties as a development manager based in India.

In a letter in support of the petition, the petitioner included a detailed description of the beneficiary's current and proposed responsibilities, which include: managing, directing, and planning of projects; approving financial matters relating to the projects; overseeing project documentation; and managing and directing all project resources including materials and personnel.

The petitioner stated that the beneficiary would directly supervise one subordinate supervisor and four professionals in the United States. The petitioner also stated that he would continue to supervise his current team of eight professionals based in India pursuant to the company's "Global Delivery Model" whereby software is developed at its center in India and remotely managed and coordinated by on-site project management staff in the United States. In support of these assertions, the petitioner submitted its organizational charts for both entities which identified the beneficiary's subordinates by name and job title.

The director subsequently issued a Request for Evidence (RFE) instructing the petitioner to provide additional evidence relating to the beneficiary's U.S. and foreign employment.

In response, the petitioner provided more detailed descriptions of the beneficiary's current and proposed duties along with information regarding the amount of time the beneficiary allocates and would allocate to specific duties in his role as development manager. The petitioner included documentary evidence demonstrating the educational qualifications of the beneficiary's subordinates, and provided brief descriptions of their job duties and evidence of their employment. The petitioner also provided evidence that the beneficiary conducts performance appraisals for all employees identified as his subordinates on the foreign entity's organizational chart.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or would be employed in a qualifying managerial capacity. The director observed that the evidence submitted indicated that the beneficiary will manage a team that works on a specific project and engages in activities directly associated with producing a product or providing a service to the client. The director concluded that "[m]anaging a small team on a specific client project is not evidence that the beneficiary is managing an 'essential function' or component of your organization," and added that "it appears . . . your business would continue to conduct business if this individual client project ceased."

The director ultimately concluded that the beneficiary has not been employed abroad and will not be employed in the United States in a managerial or executive capacity because his role does not involve managing the organization or a "department, subdivision, function, or component of the organization." Finally, the director observed that the beneficiary's physical placement working at an unaffiliated employer's location is essentially an arrangement to provide labor for hire for that unaffiliated employer.

On appeal, counsel asserts that the beneficiary's role involves managing a distinct component of the organization and supervising a staff of professional and supervisory employees, consistent with the definition of "managerial capacity" at section 101(a)(44)(A) of the Act. Counsel objects to the director's determination that the beneficiary's management of client projects is not of sufficient

consequence to qualify as a component or function of the organization, and provides an additional explanation from the petitioner as follows:

[E]ach "project" is the most distinct, independent and readily identifiable component of our organization. In addition to the engineering expertise, it requires direct management of professional teams, budgets, client liaison, supply, transportation, training, H.R. etc. . . . Each project has its own management team, its own budget, client liaison and offshore development teams. . . . Each Project Manager functions as a Chief Operations Officer within the matrix of the project. . . . While a single project may only be valued at 2 to 3 million dollars, it is the failure of the project that could easily lead to loss of a valuable client with severe financial consequences for the company . . . . [The petitioner] is the sum of its projects."

Counsel emphasizes that the director did not contest that the beneficiary's subordinates are professionals or that his current and proposed duties are otherwise not in compliance with the applicable regulations.

#### B. Analysis

Upon review, the petitioner has established that the beneficiary has been employed abroad and would be employed in the United States in a managerial capacity. Accordingly, the director's decision will be withdrawn and the appeal will be sustained.

As a preliminary matter, the director erred by denying the petition, in part, based on a finding that the beneficiary's placement at the worksite of an unaffiliated employer is essentially an arrangement to provide "labor for hire." The director inappropriately applied Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act") to this petition to classify the beneficiary as an L-1A nonimmigrant. The restrictions on off-site employment imposed by section of the Act are applicable only to L-1 petitions filed on behalf of L-1B specialized knowledge personnel.

The director's finding that the beneficiary's role is not in a managerial capacity was based on a finding that his management of a "client project" cannot qualify as management of "a department, subdivision, function, or component of the organization," pursuant to section 101(a)(44)(A)(i) of the Act.

The petitioner has provided sufficient support for a conclusion that, within the context of its business, its client projects are in fact distinct components of the company that require independent management and a significant level of responsibility on the part of managers assigned to lead them. The record establishes that the beneficiary has been and would be providing such management for client projects, and that he exercises discretion over the day-to-day operations of the activities for which he has authority as required by 101(a)(44)(A)(iv) of the Act.

Further, the petitioner established that the beneficiary has supervised and will supervise a subordinate team of software professionals employed by the petitioner and its foreign affiliate, and

that he has the authority to hire and fire or recommend those as well as other personnel actions. See sections 101(a)(44)(A)(ii) and (iii).

Finally, the petitioner has described the beneficiary's current and proposed duties in sufficient detail to establish that he has been and will be primarily performing managerial duties, and will not allocate a significant portion of his time to duties that do not fall within the statutory definition of managerial capacity.

Based on the foregoing the petitioner has established that the beneficiary has been and will be employed in a managerial capacity. The appeal will be sustained.

### III. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has sustained that burden. Accordingly, the director's decision dated July 18, 2013 is withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained.

**From:** [Beauregard, Pamela R](#)  
**To:** [Mossey, Joanna J](#)  
**Subject:** New Denial standards/inserts  
**Date:** Monday, November 24, 2014 2:34:06 PM  
**Attachments:** [For Joanna - 1.docx](#)

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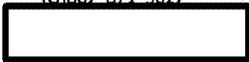
Hi Joanna,

Please review and let me know if you have any issues or suggestions, I will check to make sure these are not duplicates.

Thanks,

*Pam Beauregard*

Supervisory Immigration Services Officer  
USCIS/DHS/VSC  
Business Division/Essex/EVO127  
Email: [Pamela.R.Beauregard@USCIS.DHS.GOV](mailto:Pamela.R.Beauregard@USCIS.DHS.GOV)  
(O)802-871-3672



(b)(6)

**From:** [Steinhour, Wallace W](#)  
**To:** [Mossey, Joanna J](#)  
**Subject:** Possible new L denials  
**Date:** Monday, April 21, 2014 4:10:05 PM  
**Attachments:** [L1A New Office Physical Premises not addressed.doc](#)  
[L1B IT WITH REFORM ACT.doc](#)  
[L1B NON IT.doc](#)  
[New Office EXT Function Mgr..doc](#)  
[New Office.doc](#)  
[Qualifying Relationship.doc](#)  
[New Office EXT-Functional Manager.doc](#)

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Joanna,

Attached are the new potential L denials. I was good at reviewing the cases early in the day but I lost it later in the day. I made my changes in red. Let me know what you think of the denials.

Wally

**From:** [Steinhour, Wallace W](#)  
**To:** [Mossey, Joanna J](#)  
**Subject:** New L Standards and L Definitions  
**Date:** Tuesday, February 18, 2014 10:06:37 AM  
**Attachments:** [L\\_Standards\\_02182014.doc](#)  
[L\\_Definitions\\_02182014.doc](#)

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Some new L inserts for your review. These are part of a long project I have been working on. This started when Todd Woodward was reviewing all AAO decisions. He took what he thought was the best material and made call-ups. Let me know what you think before I forward it.

**From:** Howrigan, Tanya L  
**To:** Howrigan, Tanya L; Boudreau, Lynn A; Rakowski, Paula E; Ryan, Carrie A; Bosley, Bonnie M; Brouillette, Charlene M  
**Cc:** Perkins, Robert M; Kane, Daniel J; Bolog, Marguerite M; Bouchard, Armanda M  
**Subject:** RE: I-129 L Refresher Training 10-7-08  
**Date:** Thursday, October 09, 2008 11:25:55 AM

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(b)(5)

I will keep you posted.

**Tanya L. Howrigan | Immigration Services Officer 3 | Vermont Service Center | USCIS | ☎ : 802-527-4700**  
ext 5060 | 📠 802.527.4843 | ✉ : tanya.howrigan@dhs.gov

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**From:** Howrigan, Tanya L  
**Sent:** Monday, October 06, 2008 10:36 AM  
**To:** Boudreau, Lynn A; Rakowski, Paula E; Ryan, Carrie A; Bosley, Bonnie M  
**Cc:** Perkins, Robert M  
**Subject:** FW: I-129 L Refresher Training 10-7-08

Please refer to the traffic below regarding CSC's approach to the "new office" as described in the GST decision. CSC has not made any changes in light of the AAO stating "If a petitioner is part of a larger corporate organization that has been doing business in the United States for more than one year through a parent, branch, affiliate, or subsidiary, that petitioner will not qualify to file as a new office petitioner. 8 CFR Sec. 214.2(l)(1)(ii)(F)."

Rob has asked that Mary Burford look into this and get back to us. I plan on meeting with Mary today or tomorrow morning and will let you all know what she says.

**Tanya L. Howrigan | Immigration Services Officer 3 | Vermont Service Center | USCIS | ☎ : 802-527-4700**  
ext 5060 | 📠 802.527.4843 | ✉ : tanya.howrigan@dhs.gov

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**From:** Kane, Daniel J  
**Sent:** Friday, October 03, 2008 1:57 PM  
**To:** Howrigan, Tanya L  
**Cc:** Perkins, Robert M; Bolog, Marguerite M  
**Subject:** FW: I-129 L Refresher Training 10-7-08

FYI

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**From:** Gooselaw, Kurt G  
**Sent:** Fri 10/3/2008 1:25 PM  
**To:** Kane, Daniel J  
**Cc:** Williams, Carol L; Prince, Rose M  
**Subject:** RE: I-129 L Refresher Training 10-7-08

Dan,

We view the scenario below as a new office. We have made no changes subsequent the decision except in the "doing business" aspect.

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**From:** Kane, Daniel J  
**Sent:** Friday, October 03, 2008 9:42 AM  
**To:** Gooselaw, Kurt G; Prince, Rose M  
**Cc:** Williams, Carol L  
**Subject:** FW: I-129 L Refresher Training 10-7-08

Kurt/Rose,

As you may know, I am currently on detail to HQ and the following question came to SCOPS from VSC. I would appreciate it you could let me know how CSC is handling the new office scenario discussed in the message below, especially in light of the recent AAO L1B decision for GST.

I would also appreciate it if you could let me know if you made any changes in the way that you process this scenario subsequent to the AAO decision or if you have remained status quo on this issue.

Thanks  
Dan

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**From:** Howrigan, Tanya L  
**Sent:** Fri 10/3/2008 10:39 AM  
**To:** Kane, Daniel J  
**Cc:** Woodward, Todd K  
**Subject:** RE: I-129 L Refresher Training 10-7-08

The one topic that we have asked Mary Burford to review is the issue of the new office. This is definitely something that HQ could weigh in on. The GST decision states "If a petitioner is part of a larger corporate organization that has been doing business in the United States for more than one year 'through a parent, branch, affiliate, or subsidiary,' that petitioner will not qualify to file as a new office petitioner. 8 CFR Sec. 214.2(l)(1)(ii)(F)."

At one of the roundtables we had in October or 2007 there was a document which provided the following guidance:

**Q: Is a company that is already established in the U.S. considered to be a "new office" if they open another U.S. office at a different geographic location?**

**EXAMPLE:** If IBM (which currently has an office located in Essex) opens a new office in Concord, NH (a place where there is no previous IBM presence), would the NH office be considered to be a "new office" as set forth in 8 CFR 214.2(l)?

**A:** Yes, any office that has been doing business for less than one year, regardless of whether the company previously had a presence in the U.S., should be considered to be a new office under 8 CFR 214.2(l). Do not focus on the existing relationship with the foreign entity, but the relationship between the foreign entity and the new office.

I would love to have HQ input on this issue.

Thanks for your interest.

**Tanya L. Howrigan | Immigration Services Officer 3 | Vermont Service Center | USCIS | ☎: 802-527-4700  
ext 5060 | 📠 802.527.4843 | ✉: tanya.howrigan@dhs.gov**

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**From:** Bolog, Marguerite M (Mack)  
**To:** Mossey, Joanna J; VSC Business Division ISO3  
**Subject:** RE: L questions  
**Date:** Thursday, December 19, 2013 4:24:29 PM  
**Attachments:** RE I-129 L Refresher Training 10-7-08.msg

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The attached is the most recent information I have on the first issue regarding opening a new office when another location in the United States has already been doing business for more than a year. I have no information about the outcome of the OCC discussion, so the last I knew in 2008, a new office is a new office, regardless of other offices in the United States.

My understanding on the second issue is that we are precluded by regulation from granting more time to get the new office up and running.

As for advanced vs. special, since the regulatory definition states specialized knowledge can be either special or advanced, the evidence only needs to meet one. If the petitioner is claiming the knowledge is both special and advanced, each should be addressed separate in an RFE or Denial; i.e., why does the evidence fail to show the knowledge is special, and why does the evidence fail to show the knowledge is not advanced.

My 2 cents.

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**From:** Mossey, Joanna J  
**Sent:** Thursday, December 19, 2013 2:55 PM  
**To:** VSC Business Division ISO3  
**Subject:** L questions

Hi,

During the L crash course a few questions came up and I have not been able to find answers to the questions. I have reviewed the regulations and law as well as policy memos and updates on the VSC ECN. No luck. Here are the questions.

Is a petitioner considered filing for a new office when the foreign entity is opening an office in Texas, even though they already have an office in California that has already been doing business in that State for more than a year (subsidiary, branch, affiliate)? Slide 85 of the crash course says no, however, discussion was had that it was or at least used to be considered a new office since it is in a new State.

New office extenuating circumstances....Newly trained officers are being instructed that if the beneficiary was not able to enter the United States and complete a one year period for the new company due to extenuating circumstances, then they could file a petition for the remaining time... i.e. came in for 6 months, now wants an additional 4 months to finish the start up. However, there is no law or regulation saying we can give them extra time under extenuating circumstances and I was not able to find any policy memos or local memos regarding this. If we are to give them the

remaining time, this should be put out to the floor and not just new trainees. Also, if this is not in the regulations and we are supposed to be adjudicating based upon the regulations then in reality we should not be giving them any extra time of that first year??

Advanced and/or Specialized knowledge: How should this be addressed in RFE's and denials? Can the petitioner use a combination of both and if so should both be addressed in an RFE and denial, if needed. Or....should they be addressed separately, either the beneficiary meets advanced or specialized knowledge, they can't meet both? Review of the Master L1B RFE separates them.

Thanks

Joanna Mossey  
ISO 3 Business Metro

**From:** Mossey, Joanna J  
**To:** Steinhour, Wallace W; Coburn, Garry F  
**Subject:** RE: L-2 Dependent Presentation  
**Date:** Monday, January 13, 2014 12:41:00 PM  
**Attachments:** Forms I-539 I-824 I-765.ppt

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Hi,

Attached is my corrected version of the presentation. My comments are on the slides as needed/suggested.

Joanna Mossey

ISO 3 Business Metro

*Joanna.J.Mossey@usis.dhs.gov 802-288-7870 ext. 7757*

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**From:** Steinhour, Wallace W  
**Sent:** Monday, January 13, 2014 11:45 AM  
**To:** Coburn, Garry F; Mossey, Joanna J  
**Subject:** L-2 Dependent Presentation

Attached is the modified dependent presentation. I am also having the DRG scrape for an L-2 EOS and a L-2 COS filings so I can identify some possible training cases.

Wallace W. Steinhour

Business Division Senior

802-527-4700 ext 4620

**From:** [Steinhour, Wallace W](#)  
**To:** [Mossey, Joanna J](#); [Beauregard, Pamela R](#)  
**Subject:** RE: Lroundtable.pptx  
**Date:** Thursday, May 22, 2014 10:08:34 AM  
**Attachments:** [Lroundtable \(3\).pptx](#)

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Latest draft.

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**From:** Mossey, Joanna J  
**Sent:** Thursday, May 22, 2014 8:37 AM  
**To:** Steinhour, Wallace W; Beauregard, Pamela R  
**Subject:** Lroundtable.pptx

Hi

Attached is the new and improved powerpoint. Please review and return back to me today.

Thank you.

Joanna Mossey

**From:** [Steinhour, Wallace W](#)  
**To:** [Mossey, Joanna J](#); [Shuttle, Peter J](#)  
**Subject:** RE: Newest L SOP  
**Date:** Tuesday, October 28, 2014 7:31:13 AM  
**Attachments:** [Newest L SOP.docx](#)

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I added a few additional comments. Most notably, the approval phrases #s shown on pages 109-111 changed with the new GUI update.

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**From:** Mossey, Joanna J  
**Sent:** Monday, October 27, 2014 3:22 PM  
**To:** Shuttle, Peter J  
**Cc:** Steinhour, Wallace W  
**Subject:** Newest L SOP

Hi,

Attached are my suggested changes to the L SOP.

Joanna Mossey

**From:** Moran, Karla  
**To:** Steinhour, Wallace W; Mossey, Joanna J  
**Cc:** Howrigan, Tanya L; Sweeney, Shelly A  
**Subject:** RE: Non-Profits  
**Date:** Wednesday, April 30, 2014 10:42:47 AM  
**Attachments:** RE Non-profit Case World Impact Ministries Ltd - WAC1410450838.msg  
Non-profit Case World Impact Ministries Ltd - WAC1410450838.msg

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Wally & Joanna,

I apologize that I had not reviewed the two Word documents you uploaded. I've attached a sample of a non-profit CSC requested assistance with. SCOPS does not require you to detail all of your non-profit petitions. However, if you have a non-profit petition in which you need us (SCOPS, OP&S, and OCC) to assist with the qualifying relationship – we would require a scanned copy of the petition.

Thanks  
Karla

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**From:** Steinhour, Wallace W  
**Sent:** Wednesday, April 30, 2014 10:29 AM  
**To:** Moran, Karla  
**Subject:** RE: Non-Profits

Karla,

Joanna Mossey and myself have both uploaded several non-profits to the SCOPS ECN page. How long would you like use to continue to review and upload non-profit information?

Wally

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**From:** Moran, Karla  
**Sent:** Monday, April 14, 2014 1:01 PM  
**To:** Steinhour, Wallace W  
**Subject:** RE: Non-Profits

Hi Wally,

I did add a link:

[http://ecn.uscis.dhs.gov/team/scops/HOSCOPS/VSCCCLiaison/Employment\\_Based\\_Senior\\_Calls/Forms/AllItems.aspx](http://ecn.uscis.dhs.gov/team/scops/HOSCOPS/VSCCCLiaison/Employment_Based_Senior_Calls/Forms/AllItems.aspx)

It was added to the VSC/CSC Liaison page. Let me know if you can't access it.

Thanks

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**From:** Steinhour, Wallace W  
**Sent:** Monday, April 14, 2014 12:10 PM  
**To:** Moran, Karla  
**Subject:** Non-Profits

Karla,

At our L round table a few weeks ago, there was discussion about adding a link to the SCOPS ECN page to enter information about non-profits. Has this been done? I couldn't find anything looking at the SCOPS web page. Attached is a listing of a few non-profits and the evidence provided to establish QR. The first few are from a list of non-profits I started late last summer. The rest are new with the last few weeks.

Wally

**From:** Mossey, Joanna J  
**To:** Adam, Ann M; Gilmore, Jeffrey R; Cook, Alexander N; Sheehan, Susan W; Dickinson, Conor S; Chan, Janet M; Forscher, Sharon; Glock, William J; Pilling, Steven E; Lee, In P; Rabideau, Carissa L; Suwandy, Felix S; Ortega, Eva A; Mason, Brian E; Fowler, Ladarius J; Dechert, Tony M; Suryanata, Joseph P; Moulton, Benjamin S; Young, Jennifer M; Pigeon, Elizabeth A; Messier, Karla K; Abdelaziz, Tina L; Baltzell, Miranda L; Elwood, Shana M; Boyse, Linette A; Fraties, Hilary A; Johnson, Angelia M (Angie); Langlais, Stephanie K; Lemire, Carla M; Robtoy, Thayer K; Palumbo, Peter D; Muehl, Gerald L; Tabacco, Errol J; Parrotte, Janet A; Quizon, Teddie (Ted); Ellsworth-Spooner, Kristina C; Fiske, Kimberly J; Gleason, Julie A; Lawyer, Cynthia L; Briggs, Dennis K; Moulton, Benjamin S; Suryanata, Joseph P; Dechert, Tony M; Collins, Richard A; Feeley, Candace S; Liu, Samantha Y; Mercy, Marlene J; Quinn, John J; Deaette, Joanne M; Rousseau, Claire M  
**Cc:** Shuttle, Peter J; Howrigan, Tanya L; Whittier, Michelle J; Piersa, Peter J; Barrow, David C; Krouse, John A; Dickerson, Michael N; Beauregard, Pamela R; Roach, Robert B; Collins, Alexandra K; Larose, Ronald W; Steinhour, Wallace W  
**Subject:** RE: Notes from L Roundtable  
**Date:** Friday, October 31, 2014 3:20:58 PM

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Please see a change in red below. Sorry.

Joanna Mossey  
ISO3 Business Division, Essex, EXT 3791  
([Joanna.J.Mossey@uscis.dhs.gov](mailto:Joanna.J.Mossey@uscis.dhs.gov))

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**From:** Mossey, Joanna J  
**Sent:** Thursday, October 30, 2014 3:30 PM  
**To:** Adam, Ann M; Gilmore, Jeffrey R; Cook, Alexander N; Sheehan, Susan W; Dickinson, Conor S; Chan, Janet M; Forscher, Sharon; Glock, William J; Pilling, Steven E; Lee, In P; Rabideau, Carissa L; Suwandy, Felix S; Ortega, Eva A; Mason, Brian E; Fowler, Ladarius J; Dechert, Tony M; Suryanata, Joseph P; Moulton, Benjamin S; Young, Jennifer M; Pigeon, Elizabeth A; Messier, Karla K; Abdelaziz, Tina L; Baltzell, Miranda L; Elwood, Shana M; Boyse, Linette A; Fraties, Hilary A; Johnson, Angelia M (Angie); Langlais, Stephanie K; Lemire, Carla M; Robtoy, Thayer K; Palumbo, Peter D; Muehl, Gerald L; Tabacco, Errol J; Parrotte, Janet A; Quizon, Teddie (Ted); Ellsworth-Spooner, Kristina C; Fiske, Kimberly J; Gleason, Julie A; Lawyer, Cynthia L; Briggs, Dennis K; Moulton, Benjamin S; Suryanata, Joseph P; Dechert, Tony M; Collins, Richard A; Feeley, Candace S; Liu, Samantha Y; Mercy, Marlene J; Quinn, John J; Deaette, Joanne M; Rousseau, Claire M  
**Cc:** Shuttle, Peter J; Howrigan, Tanya L; Whittier, Michelle J; Piersa, Peter J; Barrow, David C; Krouse, John A; Dickerson, Michael N; Beauregard, Pamela R; Roach, Robert B; Collins, Alexandra K; Larose, Ronald W; Steinhour, Wallace W; Mossey, Joanna J  
**Subject:** FW: Notes from L Roundtable

As mentioned at the L Roundtable on October 28, 2014. Below are minutes from the meeting.

**CBP Errors:**

If you are seeing the below scenario in your L filings, please bring the file to Wally or I, post adjudication.

- The beneficiary's Petition End Date (PED) on the VISA expires;
- The beneficiary has a valid I-94 given to him/her upon entry;
- Petitioner is filing a petition requesting an EOS even though the I-94 is still valid for another year or more; and
- The beneficiary is continuing to work in L status.

You would adjudicate your case based upon the requested action and EOS dates. CBP is issuing I-94's beyond the PED dates and sometimes after the actual VISA has expired. We will not penalize the beneficiary/petitioner for our error(s). The fact that the beneficiary has a valid/current I-94 at

the time of filing the petition and they are in the U.S. at the time of filing the petition, is sufficient for us to make a favorable decision on the case as long as all other eligibility requirements have been met.

EXAMPLE: The beneficiary's PED date is November 15, 2014. Beneficiary first entered the U.S., using a blanket L, on November 16, 2011. Beneficiary left the U.S. briefly and re-entered on October 23, 2013. Beneficiary's I-94 validity dates, received upon such return, shows validity dates of October 23, 2013 – October 22, 2016. The petitioner has filed an EOS request asking for validity dates of September 15, 2014 – September 14, 2016.

Why would the petitioner file an EOS when they already have an I-94 valid until 10/22/16? While the I-94 is valid, the PED date on the VISA has expired and the beneficiary does not have a valid Form I-797 approval notice to use if he/she decides to travel. What would you do with the filing? You will work the case and as long as all other eligibility requirements have been met, you would approve the case and give the validity dates as follow: Date of adjudication or date requested by petitioner (whichever is earlier) to 9/14/16 as requested by petitioner. Now the beneficiary has an approval notice that can be used for traveling.

**VISA/Passport Validity dates:** If the beneficiary has obtained an L VISA Stamp in the passport, which is required for entry, we will not be concerned with the visa dates or PED dates listed on the VISA page when adjudicating EOS cases. The VISA is issued by the DOS and will need to be updated/valid at the time the beneficiary applies for entry into the United States.

When processing your cases you only need to be concerned with the validity of the passport:

**General Passport Requirements - 8 CFR 214.1(a)(3)(i) states in pertinent part that:**

Upon application for admission, the alien must present a valid passport and valid visa unless either or both documents have been waived...The passport of an alien applying for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien must agree to abide by the terms and conditions of his or her admission.

An alien applying for an extension of stay must present a passport, only if requested to do so by the Department of Homeland Security, valid at the time of application for extension. The alien must agree to maintain the validity of the passport and to abide by all the terms and conditions of extension of stay.

**ROP:**

**Record Side:**

Pink Cover Sheet (if applicable)  
included from contractor)  
Copy of Denial (If applicable)  
applicable)  
G-28 (if included)  
Original petition

**Non-Record Side:**

FOUO Worksheet (if  
Resolution (if  
ROIT (if applicable)  
TECS Manifest

Initial supporting documentation  
RFE Request  
Response to RFE

ADIS/SEVIS Printouts  
Data Entry Printouts

PLEASE NOTE: If there is a mailer in the file, after final action, place the mailer on the top on the non-record side for use by AST (good internal customer service). Also, if you keep drafts of the RFE or denial, you can place those on the non-record side as well. Do not leave your personal worksheets in the file after final action.

**Required Checks and Validity of System Prints/Checks:**

TECS Manifest/SQ94 – within 180 days of final action  
ADIS – within 15 days of final action  
SEVIS – within 30 days of final action  
VIBE – within 30 days if case is yellow or green and within 48 hours if case is red or orange  
CASEBOOK  
CIS (if A number for beneficiary /applicant)

**MISC:**

Please feel free to use the L Worksheet that has been placed on the ECN when adjudicating your cases. The worksheet also contains a listing of required processes/system checks, at the bottom of the worksheet, which is very helpful.

Do not leave any screen prints on the record side of the file and remove the NFTS printout attached to an RFE response.

Thanks

Joanna Mossey  
Wally Steinhour  
ISO3 Business Division

**From:** Steinhour, Wallace W  
**To:** Mossey, Joanna J; Coburn, Garry F  
**Subject:** RE: PPT's  
**Date:** Monday, November 03, 2014 8:53:40 AM

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Below are my comments/edits for the PPTs Joanna made edits to.

Module 3- Slide 3- last bullet knowledge instead of knowledge  
Slide 16-second bullet that are a.....

Module 7 Slide 10 - Can we split the slide? The slide says a lot.  
Slide 11- This slide says some of what 10 does...  
Slides-34 and 35 say almost the same thing. Can they be merged?  
Slide 48- I know we discussed non-profits a while ago with SCOPS and sent examples of some. Did SCOPS ever provide guidance?

Module 9.1 Slide 9-Why delete the note? Is it not valid guidance? Or is it because all cases need a comment now.

Module 12 Slide 13- Any idea why we discuss nunc pro tunc in the comment block on this slide? ...It doesn't seem to relate to the slide.

Module 13 Slide 21-I am not sure what you are asking in your comment? Matter of Penner and Colley are referenced in the slide.

Module 14 Slide 28- With the changes discussed in slides 29 and 30, should we delete or modify the first bullet on slide 28?

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**From:** Mossey, Joanna J  
**Sent:** Friday, October 31, 2014 3:10 PM  
**To:** Coburn, Garry F; Steinhour, Wallace W  
**Cc:** Mossey, Joanna J  
**Subject:** PPT's

Hi,

I have completed my review of the presentation. Attached you will find the modules where I have made changes/additions for your review.

Please note that I have various changes to make to Module 2. However, since we are not giving that as part of the training I have not worked on it yet. Also, I have added some slides to the Blanket module due to the fact that management is in the process of deciding to have our L officers start notating and mailing out the concurrently filed I-129S when it is filed within an individual I-129 L filing. I have sent that PPT to Pete Shuttle for review and changes as well as Wally. As soon as we hear from management, if it's a go to start processing, we will change the SOP as well.

The following Modules I did not have any changes:

Module 5

Module 8

Module 10

Module 11

Module 15

Module 16

Joanna Mossey

ISO3 Business Division, Essex, EXT 3791

*([Joanna.I.Mossey@uscis.dhs.gov](mailto:Joanna.I.Mossey@uscis.dhs.gov))*

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

(b)(6)

DATE: FEB 08 2012

Office: CALIFORNIA SERVICE CENTER

[Redacted]

IN RE:

Petitioner:

Beneficiary:

[Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[Redacted]

(b)(6)

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

[REDACTED]

(b)(6)

Page 2

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner was formed as a limited partnership under the laws of the State of Maryland in 2004, and is a business information technology consulting firm. It claims to be an affiliate of

(b)(6) [REDACTED] The petitioner is seeking L-1A status for the beneficiary as Business Development Manager for an additional period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the evidence of record is sufficient to satisfy the petitioner's burden of proof and establishes that the beneficiary is, and will be, employed in the United States in a managerial capacity.

#### I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended

services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

## II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a managerial capacity. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 5, 2009. The petitioner established that it is a member of a group of affiliated companies that provides product development and consulting services in all aspects of systems and software engineering to companies throughout the world.

(b)(6)

Specifically, the petitioner is a subsidiary of [REDACTED] [REDACTED] has approximately 160 offices operating in more than 30 countries and development centers in 10 countries. Annual revenues for [REDACTED] in the fiscal year prior to filing exceeded \$6 billion.

(b)(6)

The petitioner stated the beneficiary will be working as a Business Development Manager for its client, [REDACTED]. The beneficiary held this position since July of 2008. The beneficiary will be responsible for "managing and coordinating the engagement that [the petitioner] has with [REDACTED] through four of these different projects: Enterprise Environment Management, Network Information Systems, Enterprise Data Warehousing, and Application Development and Testing." The project is valued at \$800,000. The petitioner provided a lengthy explanation of the beneficiary's duties in a letter dated September 29, 2009. In part, the petitioner described the proposed managerial position in the United States as follows:

(b)(6)

[The beneficiary] will manage the overall delivery between [REDACTED] and [REDACTED] and will be responsible for setting, reviewing, and managing client expectations. He will ensure that the service level agreements are adhered to, and will work with the client in order to develop a required staffing plan.

(b)(6)

[The beneficiary] will be responsible for interacting with [REDACTED] including IT Directors and IT Managers, in order to discuss the overall strategy, current projects, and future requirements/projects and to study the entire application management process, procedures, and identify areas for improvement, including best practices and implementation. . . . He will monitor the overall program plans and ensure that all of the development projects are completed on time. . . .

(b)(6)

The petitioner stated that the beneficiary will be responsible for supervising a team of four onsite managerial employees, who will each in turn be responsible for supervising three professional employees. The petitioner stated that the beneficiary is responsible "for making critical personnel decisions such as estimating the number of resources and skill set levels required to bring the project to fruition." Furthermore, the beneficiary will make "decisions to promote subordinates to the suitable position or role which will benefit both the employee and the project." Specifically, the beneficiary has responsibility for approving leave and time off as well as conducting the employee performance evaluations on a six month basis. Finally, the beneficiary will make recommendations regarding salary increases, promotions, or removal from the projects if necessary.

The petitioner described the beneficiary's decision making authority as follows:

[The beneficiary] will be required to exercise discretion over the day-to-day operations of the project under his discretion. He will be responsible for developing the project plan and timeline and for defining the scope of the project by reviewing and approving the requirements provided by his subordinate team. He will delegate work among members of the team based upon their workload and the nature of the requests and will set a deadline for each task. He will be responsible for sequencing project events based on the availability of resources and the priorities defined through discussions with the client.

[REDACTED]

(b)(6)

Page 5

The petitioner submitted an organizational chart for the project in the United States, details on the beneficiary's subordinates, and an annual report. The organization chart showed the beneficiary reporting to the Business Relationship Manager. Reporting to the beneficiary were three project managers and one project leader. In turn, each of the project managers and the project leaders supervised three subordinates. The subordinates held various titles including project leader, developer, tester, lead analyst, and technical architect.

The petitioner provided the name, title, educational background, years of experience, current immigration status, and job description for each of the beneficiary's direct subordinates. Three of the subordinates are listed as Project Managers and one as a Project Leader. The petitioner described both the Project Manager's and Project Leader's job duties to include: reviewing business and functional requirements to scope projects; planning, coordinating, and managing projects; tracking status of projects, risk mitigation, and resource planning for each project; assigning work to project team members and participating in strategy and periodic business meetings; appraising performance of subordinates and recommending pay increases, promotions, and hiring required for each project. The beneficiary is also responsible for supervising one offshore Project Manager with the same duties as those listed above.

The director issued a request for additional evidence ("RFE") on October 26, 2009. The director requested that the petitioner provide, *inter alia*: (1) a more detailed description of the beneficiary's duties in the U.S. including percentage of time spent on each of the listed duties; (2) copies of work product of the beneficiary; and (3) evidence of the number of hours the beneficiary supervised the employees for the last six months and college transcripts for each employee supervised.

In response, the petitioner submitted a letter providing a detailed overview of the position and how the beneficiary will be functioning in a managerial capacity. The petitioner states the following with respect to the beneficiary's managerial duties:

In his Business Development Manager role, the Beneficiary facilitates the execution of any NIS project being performed as part of the [REDACTED] IT support program. He holds overall responsibility for managing the group within budget, determining and controlling the resource requirements, supervising the allocation of tasks to his project team, and coordinating between the client and senior-level [REDACTED] management. (b)(6)

The petitioner provided a multi-page detailed explanation of the beneficiary's job duties as Business Development Manager. The petitioner further explains with respect to the beneficiary's managerial decision making authority that:

As Business Development Manager, the Beneficiary has discretionary authority over critical program resources and personnel matters, which enables him to ensure the successful completion of each NIS engagement. For example, he possess managerial responsibility for determining, planning, and reviewing project resource requirements based on each NIS project's projected activities. He also coordinates with [REDACTED] management team to determine and identify [REDACTED] resources for allocation to the [REDACTED] program. The allocation or hiring or any managerial professionals to an NIS project requires the beneficiary's approval. (b)(6)

[REDACTED]

(b)(6)

Page 6

The petitioner also submitted a list of eleven job duties with percentage breakdown of each duty, with each duty further broken down into sub-duties. The duties of the beneficiary were listed generally as follows: interact with [REDACTED] management; monitor program plans and lead the preparation of project documents; provide strategic and tactical direction for the project; track and mitigate risks; appraise the performance of subordinates; and review the status of all account projects.

(b)(6)

The petitioner included evidence of the beneficiary's managerial duties including the beneficiary's monitoring chart showing in progress tasks for each project, the subordinate, the assign date, and the completion date. Also included are e-mails to and from the beneficiary and [REDACTED] management team to determine the scope of proposed enhancement activities.

(b)(6)

The petitioner provided evidence with respect to the management of the beneficiary's subordinates. Included in the response were e-mails from the beneficiary regarding recommendations and approvals on subordinate promotions; subordinate performance appraisals; and implementation and coordination of training programs. The petitioner included the bachelor's or master's degrees for each of the direct subordinates as well as degree certificates for the beneficiary's indirect subordinates. The petitioner submitted additional evidence that the [REDACTED] employees are serving in a managerial capacity by providing detailed descriptions of the subordinates' job duties with percentage breakdown of time spent in each of the listed duties.

(b)(6)

The director denied the petition on December 15, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director determined that the beneficiary does not function at a high level within the organization as the beneficiary appears to be two levels above the lowest level employee. The director found that the beneficiary's duties are primarily to perform the day-to-day work to "ensure that the projects for which the beneficiary is responsible are performing correctly."

On appeal, counsel asserts that the evidence establishes that the beneficiary's role is in a managerial capacity pursuant to section 101(a)(44)(A) of the Act and that the denial is based on a misapplication of law and "because the Service failed to fully consider the facts in evidence when making the determination." Specifically, counsel states that the denial "incorrectly relies on a comparison between the size of [REDACTED] overall global organization and the Beneficiary's sixteen-member project team to conclude that he does not meet the statutory definition of managerial capacity." Counsel states that the decision must take into account the "reasonable needs of the organization in light of the overall purpose and stage of development in the organization."

(b)(6)

Furthermore, counsel concludes that the beneficiary meets the four-part definition of managerial capacity under 8 U.S.C. § 1101(a)(44)(A). Specifically, counsel states that the petitioner's response to the request for evidence demonstrates how the beneficiary's position meets each of the four criteria. Finally, counsel asserts that the "Service erroneously concludes that the Beneficiary's job duties are primarily to perform the day-to-day services we are providing to our client." Counsel explains that "through its finding that project planning, resource management, and operational management are not managerial duties as defined by the regulations 'the Service has adopted such a narrow interpretation of this primary purpose' test that only a manager at the most senior organizational level could satisfy."

### III. Conclusion

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity. The director's determination appears to be based in part on the director's pre-conceived impression of what duties are typically performed by project managers or program managers for IT workers rather than on the evidence submitted by the petitioner. The director should not hold a petitioner to his undefined and unsupported view of the standard duties of an occupation in making a determination as to whether the beneficiary will be employed in a primarily managerial or executive capacity. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

The evidence submitted establishes that the beneficiary supervises and controls the work of professional employees and possesses authority to recommend personnel actions for employees under his supervision. See sections 101(a)(44)(A)(ii) and (iii) of the Act.

Furthermore, the AAO does not agree with the director that "given the number of employees the petitioner employs, the beneficiary cannot possibly function at a high level within the organization when the beneficiary only controls sixteen employees." The record indicates that the client account for which the beneficiary is responsible generates significant revenue, and the beneficiary manages four major projects assigned to the account. Sec. 101(a)(44)(C) of the Act. The petitioner established a reasonable need for a managerial level employee to manage projects delivered to this account. In addition, the beneficiary does not directly oversee such projects, but rather oversees subordinate project managers, who, in turn, supervise the technical resources. Finally, the AAO is satisfied that the beneficiary exercises discretion over the day-to-day operations of the projects under his responsibility, as required by section 101(a)(44)(A)(iv) of the Act.

While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties and perform some administrative tasks, the petitioner has established by a preponderance of the evidence that the majority of the day-to-day non-managerial tasks required to produce the products and provide services for the client are carried out by the beneficiary's subordinate project managers and technical staff. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Accordingly, the director's decision dated December 15, 2009 is withdrawn.

**ORDER:** The appeal is sustained.

Wednesday, February 25, 2015  
1:03 PM