Policy Guidance on the Interpretation of the L-1B Specialized Knowledge Classification

Office of Policy and Strategy

Service Center Operations

Office of Chief Counsel

U.S. Citizenship 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

U.S. Citizenship and Immigration Services

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I-129 L-1

Adjudication

September 2011

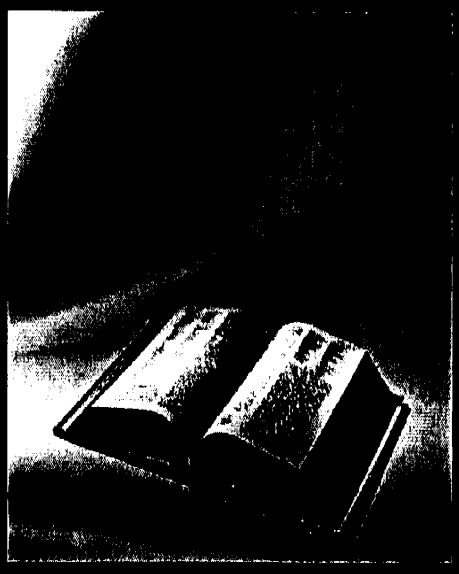
Training Matters Today

- 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

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

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 involves 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(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)

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)(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)(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.

(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

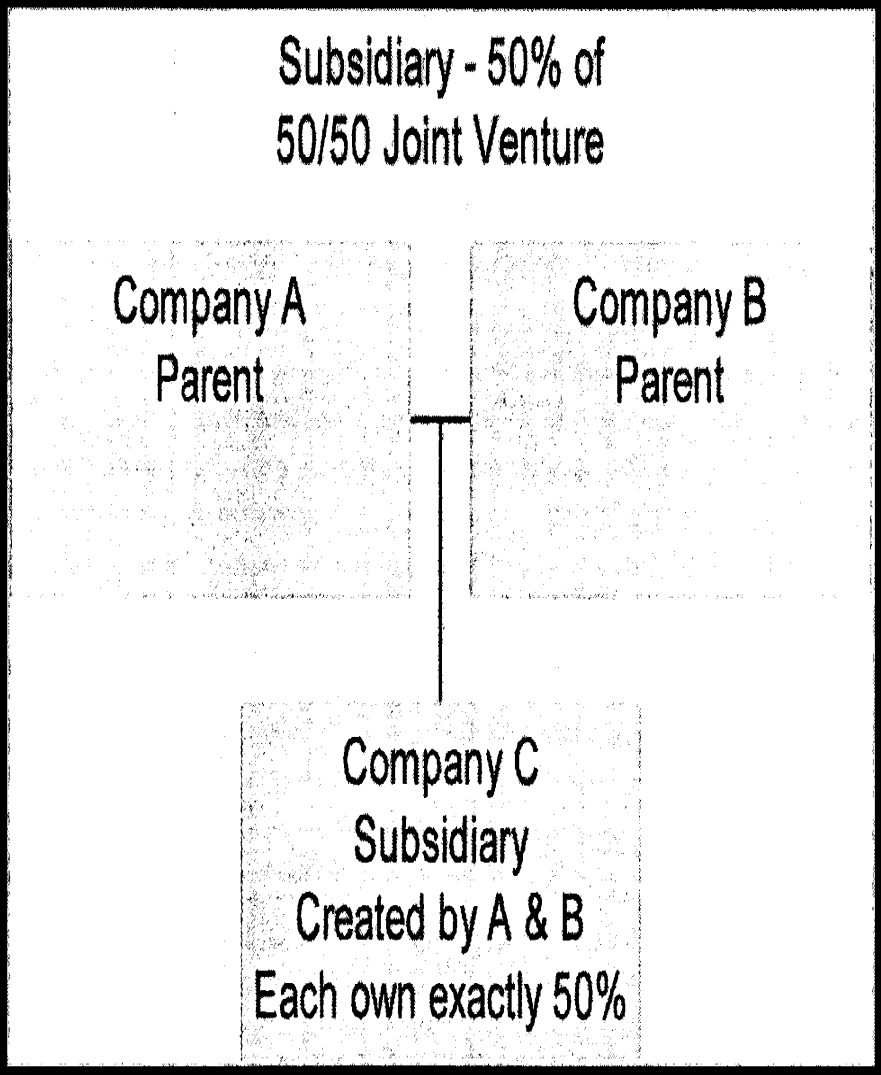
Company B
Subsidiary
50% Owned

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".

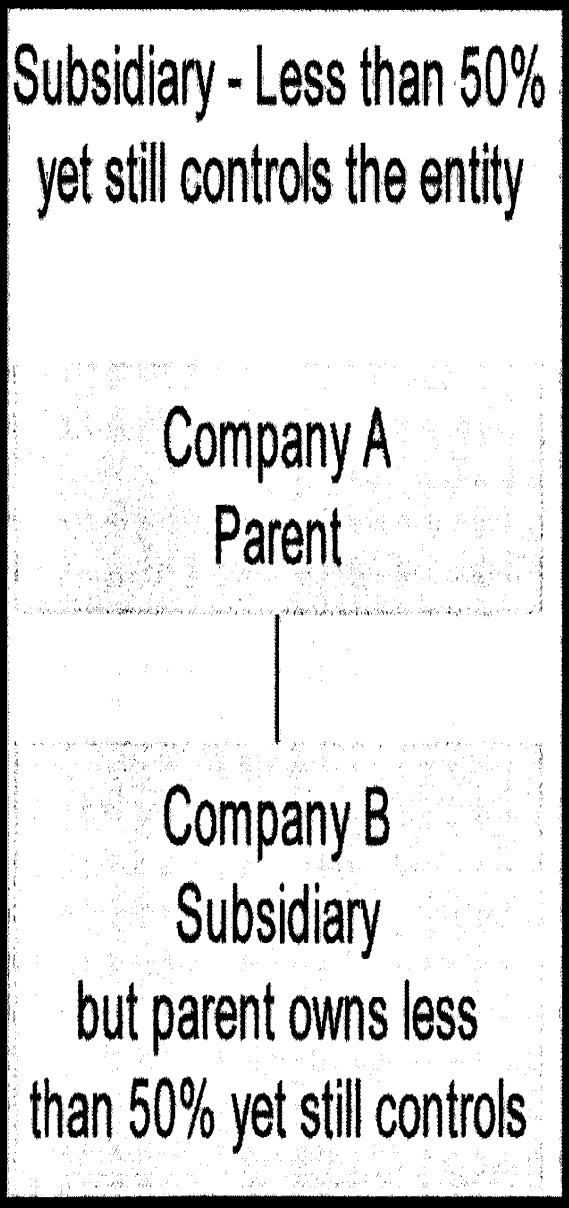
Joint Venture – Two Parent Companies own 50% of a subsidiary



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%



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.

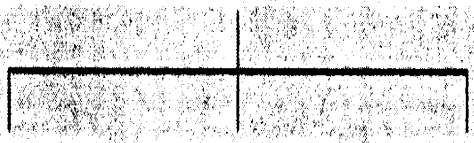
  8 CFR § 214.2(l)(1)(ii)(L)

A Note About Subsidiaries and Affiliates

Think of this as a parent/child relationship between a parent/subsidiary. An affiliate would be 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.

Parent Co.

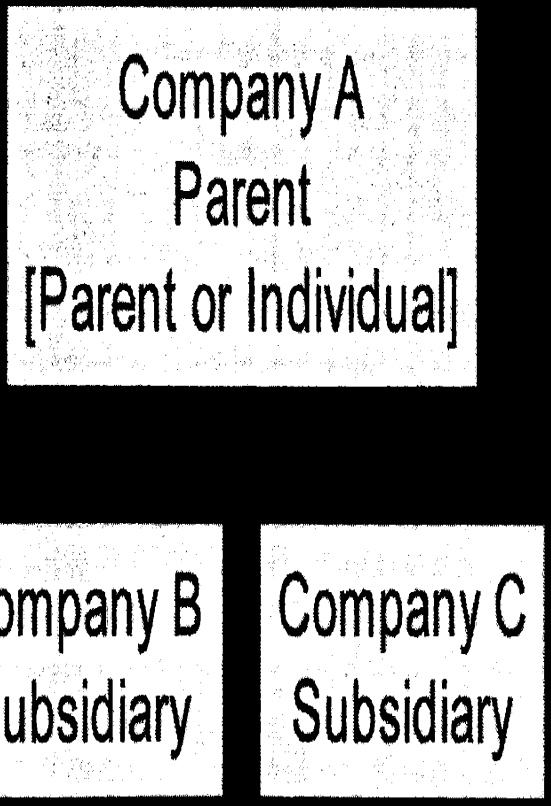
Usually owns at least 50% of subsidiary



Subsidiary A Subsidiary B Subsidiary C

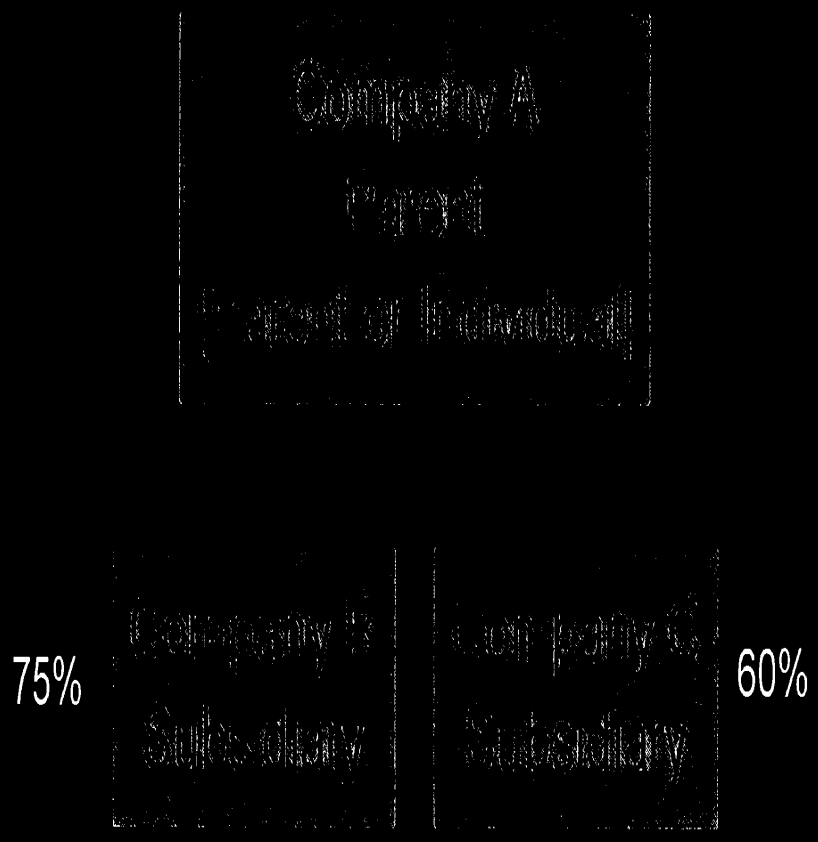
Example – How two separate subsidiaries can be affiliates of each other

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



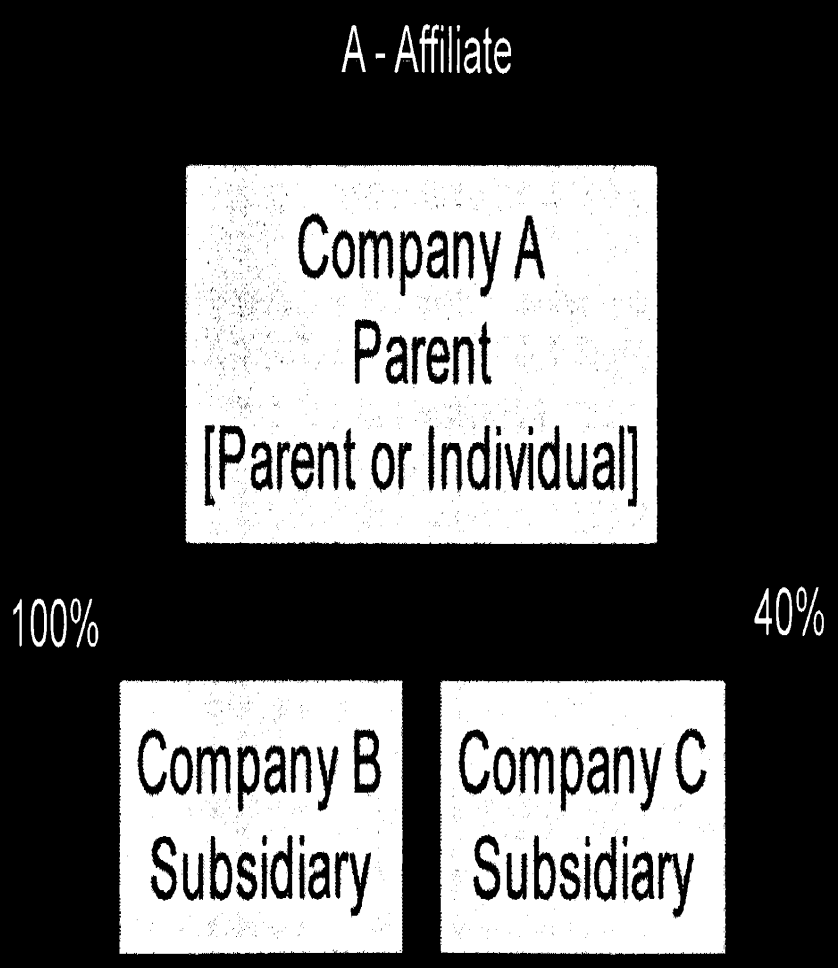
Example 2 – How two separate subsidiaries can be affiliates of each other

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.



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

- 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 distributer 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-subsidiary.

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

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

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.

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.

Non-Profits
Tax Forms as Evidence

- 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.

- 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.

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

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.

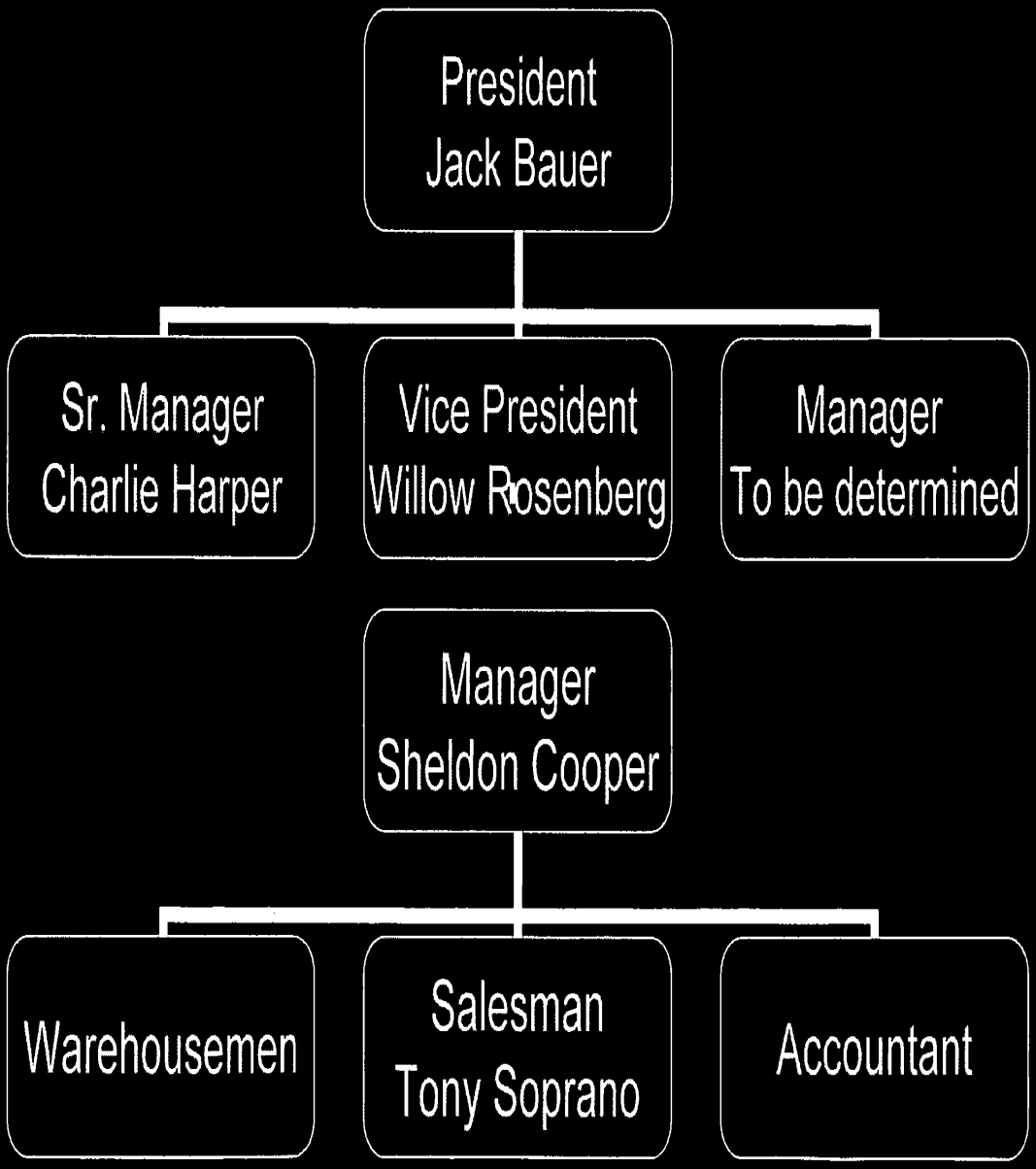
- Even though a beneficiary has a job title of a manager, he or she may or may not be performing primarily non-managerial duties. This is a fact question which you must determine on a case-by-case basis.

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

(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

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 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 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 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.

I-129S Filings

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

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)

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

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(l)(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)

- In all cases, a prerequisite to filing the initial new office is that the Petitioner demonstrate that the U.S. entity – even if it is not yet doing business – is or will be in a qualifying relationship with the foreign entity

- Further, the L-1B new office 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

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".

RFEs and Denials on EOS Petitions

The Deputy Director will review and clear in writing, prior to the issuance of an RFE or final decision, any case involving an extension of stay of petition validity in a nonimmigrant classification where the parties and facts involved have not changed, but where the current adjudicating Officer determines nonetheless that it is necessary to issue an RFE or deny the application 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

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.

EXHIBIT 7B—INS Memorandum from Fujie O. Ohata Regarding Definition of Manager, HQSCOPS 20/7.1.8 (Dec. 20, 2002)

U.S. Department of Justice
Immigration and Naturalization Service

HQSCOPS 20/7.1.8

800 K Street NW #1000
Washington, DC 20536

DEC 20 2002

MEMORANDUM FOR ALL SERVICE CENTER DIRECTORS

FROM: Fujie O. Ohata Fujie O. Ohata
Associate Commissioner
Service Center Operations
Immigration Services Division

SUBJECT: Definition of Manager

Service Center employees are reminded to utilize the definition of managerial capacity as outlined in the Immigration Naturalization Act (INA) in adjudicating cases for L-1 or E1-3 managers.

The INA at 101(a)(44)(A) defines the term "managerial capacity" to mean 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.

These requirements are also outlined in 214.2(l)(1)(ii)(B)(1) through (4).

In adjudicating cases where the definition of manager is in question, be sure to refer to all elements outlined above in making a determination. Additional procedures for adjudicating I-140 E1-3 cases are articulated in the I-140 SOP. Questions regarding this memorandum may be directed to Joe Holliday at Immigration Service Division (ISD) at (202) 616-7546.

DOS on L-1 Visa for Short-term Assignments

Cite as "AILA InfoNet Doc. No. 98060591 (posted Jun. 5, 1998)"

R 281656Z MAY 98
FM SECSTATE WASHDC
TO ALL DIPLOMATIC AND CONSULAR POSTS
SPECIAL EMBASSY PROGRAM
JAKARTA POUCH
SURABAYA POUCH
BUJUMBURA POUCH

UNCLAS STATE 095200
VISAS FOR CONSULS
E.O. 12958: N/A
TAGS: CVIS

Subject: L-1 Visas For Employees Coming For Short Term Assignments

Ref: 9 FAM 41.54 Note 8.5

1. It has recently come to the Visa Office's attention that some posts have misinterpreted the Ref Note to mean that L applicants cannot come to the U.S. on an L to take up short term assignments. VO did not intend to preclude short term assignments on L status. A discussion and the revised note follows.

2. Ref Note explains that while an L visa applicant must be employed by the company on a full-time basis, the alien does not have to be engaged on a full-time basis in the U.S., and may divide work between the U.S. and another country. It also says that a significant portion of the alien's time must be spent on productive employment in the U.S. of an L nature.

3. This note was written principally to address the problem which mainly arose in the context of Mexican "maquiladoras", where alien commuters wanted to live in the U.S., work in Mexico, and justify L status by occasionally engaging in business activities in the U.S. Since an alien's principal intent must be consistent with status, an alien whose principal place of residence was the U.S. but who only worked in the U.S. on a part-time or intermittent basis would not qualify for L status.

4. On the other hand, an alien who is principally employed out of the U.S. and resides out of the U.S. may receive an L visa for the purpose of coming to work on a short term basis. For example, an alien employed in the PRC may receive an L visa for the purpose of coming to the U.S. for one or two week intervals every several months, provided that the work is of L caliber. The key issue is whether the alien's principal intent is consistent with L status, not the amount of time spent in the U.S.

5. The revised note reads as follows:

In general, the intent of the L-1 classification is the intracompany transfer to the United States of full-time, executive, management, or specialized knowledge personnel. However, while full-time employment of the beneficiary is anticipated, INA 101(a)(15)(L) does not require that the beneficiary perform full-time services within the United States. An executive of a company with branch offices in Canada and the United States, for example, could divide normal work hours between those offices and still qualify for an L-1 visa. The alien's

principal purpose while in the U.S., however, must be consistent with L status. Therefore, if an alien lived in the U.S. and commuted to employment in Canada or Mexico, and only occasionally worked in the U.S., the alien would normally not qualify for L-1 status since the principal purpose for being in the U.S. would not relate to l employment. An alien who lived in Canada and came to the U.S. occasionally to work as an executive for the U.S. branch operation, however, would normally qualify for L-1 status, since that alien's principal purpose for coming to the U.S. would be consistent with L classification.

Talbott

EXHIBIT 7D—INS Memorandum from James A. Puleo Regarding Interpretation of Specialized Knowledge, CO 214L-P (Mar. 9, 1994)

Memorandum

CO 214L-P

Subject	Date
Interpretation of Special Knowledge	MAR - 9 1994

To
All District Directors
All Officers in Charge
All Service Center Directors
Director Administrative Appeals Unit
Office of Operations

From
Office Of
Operations

The Immigration Act of 1990 contains a definition of the term "specialized knowledge" which is different in many respects than the prior regulatory definition. The purpose of this memorandum is to provide field offices with guidance on the proper interpretation of the new statutory definition.

The prior regulatory definition required that the beneficiary possess an advanced level of expertise and proprietary knowledge not available in the United States labor market. The current definition of specialized knowledge contains two separate criteria and, obviously, involves a lesser, but still high, standard. The statute states that the alien has specialized knowledge if he/she has special knowledge of the company product and its application in international markets or has an advanced level of knowledge of the processes and procedures of the company.

Since the statutory definitions and legislative history do not provide any further guidelines or insight as to the interpretation of the terms "advanced" or "special", officers should utilize the common dictionary definitions of the two terms as provided below.

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, 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.

Further, 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 alien's knowledge need not be proprietary or unique, merely advanced. Further, the statute does not require that the advanced knowledge be narrowly held throughout the company, only that the knowledge be advanced.

The determination of whether an alien possesses specialized knowledge does not involve a test of the United States labor market. Whether or not there are United States workers available to perform the duties in the United States is not a relevant factor since the test for specialized knowledge involves only an examination of the knowledge possessed by the alien, not whether there are similarly employed United States workers. However, officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized. There is no requirement in current legislation that the alien's knowledge be unique, proprietary, or not commonly found in the United States labor market.

The following are some of the possible characteristics of an alien who possesses specialized knowledge. They are not all inclusive. The alien:

- Possesses knowledge that is valuable to the employer's competitiveness in the market place;
- Is qualified to contribute to the United States 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;
- Possesses knowledge which, normally, can be gained only through prior experience with that employer;
- Possesses knowledge of a product or process which cannot be easily transferred or taught to another individual.

The following are provided as general examples of situations where an alien possesses specialized knowledge.

- The foreign company manufactures a product which no other firm manufactures. The alien is familiar with the various procedures involved in the manufacture, use, or service of the product.

- The foreign company manufactures a product which is significantly different from other products in the industry. Although there may be similarities between products, the knowledge required to sell, manufacture, or service the product is different from the other products to the extent that the United States or foreign firm would experience a significance interruption of business in order to train a new worker to assume those duties.

- The alien beneficiary has knowledge of a foreign firm's business procedures or methods of operation to the extent that the United States firm would experience a significant interruption of business in order to train a United States worker to assume those duties.

A specific example of a situation involving specialized knowledge would be if a foreign firm in the business of purchasing used automobiles for the purpose of repairing and reselling them, some for export to the United States, petitions for an alien to come to the United States as a staff officer. The beneficiary has knowledge of the firm's operational procedures, e.g., knowledge of the expenses the firm would entail in order to repair the car as well in selling the car. The beneficiary has knowledge of the firm's cost structure for various activities which serves as a basis for determining the proper price to be paid for the vehicle. The beneficiary also has knowledge of various United States customs laws and EPA regulations in order to determine what modifications must be made to import the vehicles into the United States. In this case it can be concluded that the alien has advanced knowledge of the firm's procedures because a substantial amount of time would be required for the foreign or United States employer to teach another employee the firm's procedures. Although it can be argued that a good portion of what the beneficiary knows is general knowledge, i.e., customs and EPA regulations, the combination of the procedures which the beneficiary has knowledge of renders him essential to the firm. Specifically, the firm would have a difficult time training another employee to assume these duties because of the inter-relationship of the beneficiary's general knowledge with the firm's method of doing business. The beneficiary therefore possess specialized knowledge.

- An alien beneficiary 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.

- An alien beneficiary 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.

A specific example of the above is if a firm involved in processing certain shellfish desires to petition for a beneficiary to work in the United States in order to catch and process the shellfish. The beneficiary learned the process from his employment from an unrelated firm but has been utilizing that knowledge for the foreign firm for the past year. However, the knowledge required to process the shellfish is unknown in the United States. In this instance, the beneficiary possesses specialized knowledge since his knowledge of processing the shellfish must be considered advanced.

The common theme which runs through these examples is that the knowledge which the beneficiary possesses, whether it is knowledge of a process or a product, would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm. The knowledge is not generally known and is of some complexity.

The above examples and scenarios are presented as general guidelines for officers involved in the adjudication of petitions involving specialized knowledge. The examples are not all inclusive and there are many other examples of aliens who possess specialized knowledge which are not covered in this memorandum.

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of 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 weight and type of evidence which establishes whether or not the beneficiary possesses specialized knowledge.

In closing, this memorandum is designed solely as a guide. It must be noted that specialized knowledge can apply to any industry, including service and manufacturing firms, and can involve any type of position.

James A. Puleo
Acting Executive Associate Commissioner

EXHIBIT 7E—INS Memorandum from Fujie O. Ohata Regarding Interpretation of Specialized Knowledge, HQSCOPS 70/6.1 (Dec. 20, 2002)

U.S. Department of Justice
Immigration and Naturalization Service

HQSCOPS 70/6.1

800 K Street NW #1000
Washington, DC 20536

DEC 20 2002

MEMORANDUM FOR ALL SERVICE CENTER DIRECTORS

FROM: Fujie O. Ohata
Associate Commissioner
Service Center Operations
Immigrations Service Division

SUBJECT: Interpretation of Specialized Knowledge

Service Center employees are reminded to follow the procedures concerning specialized knowledge as outlined in the March 9, 1994 James Puleo memo on the Interpretation of Specialized Knowledge. That memo outlines the criteria for adjudicating Specialized Knowledge cases.

The INA at 214 (c)(2)(B)states that an alien has specialized knowledge if he/she has special knowledge of the company product and its application in international markets or has an advanced level of knowledge of the processes and procedures of the company. See also 8 CFR 214.2(1)(ii)(D)

The alien should possess a type of specialized or advanced knowledge that is different from that generally found in the particular industry. The knowledge need not be proprietary or unique. Where the alien has specialized knowledge of the company product, the knowledge must be noteworthy or uncommon. Where the alien has knowledge of company processes and procedures, the knowledge must be advanced. Note, the advanced knowledge need not be narrowly held throughout the company. Further, there is no test of the US Labor Market in determining whether an alien posses specialized knowledge. Only an examination of the knowledge possessed by the alien is necessary.

There are multiple examples outlined in the March 1994, memo. A common type of specialized knowledge is knowledge of a process or a product, which would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm. The knowledge is also not generally known and is advanced. The petitioner bears the burden of

MEMORANDUM FOR ALL SERVICE CENTER DIRECTORS
SUBJECT: Interpretation of Specialized Knowledge Page 2

Establishing through the submission of probative evidence that the alien's specialized knowledge is distinguished by some unusual qualification and not generally known by practitioners in the alien's industry. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge must be supported by evidence describing and setting apart the knowledge from elementary knowledge possessed by others.

Requests for additional evidence for specialized knowledge cases should not run contrary to the 1994 Memorandum on specialized knowledge. Please refer to the attached March 9, 1994 memo for more information. If you have questions in regards to this memorandum, please contact Joseph Holliday at (202) 616-7546.

U.S. Department of Homeland Security
Washington, DC 20529

U.S. Citizenship and Immigration Services

Interoffice Memorandum

To: Service Center Directors

From: Fujie O. Ohata
Director
Service Center Operations

Date: SEP - 9 2004

Re: Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L-1B status

PURPOSE

To provide guidance to Citizenship and Immigration Services (CIS) staff on the adjudication of L-1B petitions for aliens seeking to obtain a Chef and Specialty Cook position. This memorandum clarifies that Chefs or Specialty Cooks generally are not considered to have "specialized knowledge" for L-1B purposes, even though they may have knowledge of a restaurant's special recipe or food preparation technique.

BACKGROUND

Section 214(c)(2)(B) of the Immigration and Nationality Act (Act) states that 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.

The regulations at 8 CFR 214.2(l)(1)(ii)(D) further define specialized knowledge to mean 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.

The March 9, 1994 Legacy INS Policy Memorandum

The March 9, 1994 Legacy INS policy memo "Interpretation of Specialized Knowledge," CO 214L-P, provides general guidance for adjudicating specialized knowledge cases. That memo still remains in effect.

As stated in the 1994 memo, in addition to demonstrating the complexity of the knowledge and the fact that the knowledge is not generally found in the industry, it is necessary to determine the extent to which the

petitioning entity would suffer economic inconvenience or disruption to its U.S. or foreign-based operations if it had to hire someone other than the particular overseas employee on whose behalf the petition was filed.[1] In other words, an important factor, for L-1B purposes, is the degree to which the alien's knowledge contributes to the uninterrupted operation *of the specific* business for which the alien's services are sought. In adjudicating a petition involving a chef, it is therefore necessary to consider not only how skilled the chef is and whether or not his or her skills are common to other chefs, but also the role the chef plays within the petitioning organization and the impact his or her services would have on the operations of the U.S.-based affiliate. For example, a chef in a themed restaurant may be required to perform functions ancillary to cooking food such as singing or entertaining in a particular manner. In deciding whether those responsibilities constitute specialized knowledge, it would be necessary to assess the length and complexity of in-house training required to perform such duties. This assessment is necessary in order to determine the amount of economic inconvenience, if any, the restaurant would undergo were it required to train another individual to perform the same duties.[2]

GUIDANCE

When adjudicating petitions for L-1B Chefs or Specialty Cooks, adjudicators should assess the extent of the alien's experience in that profession, the levels of training and education or technical expertise, whether the product is noteworthy and uncommon, or if the knowledge of the process and procedure is advanced. In addition, it should be determined whether the knowledge would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign entity. To qualify as "specialized knowledge," the knowledge of the product or the process must be of the sort that is not generally found *in the particular industry*, although it need not be proprietary or unique. Further, the knowledge must be of a certain complexity. None of the above factors is necessarily controlling. As in all cases, in adjudicating L-1B petitions, officers should consider all of the facts presented in determining whether the alien possesses the required specialized knowledge.

The following are examples of scenarios in which a Chef or Specialty Cook would *not* be considered to possess specialized knowledge:

Example 1

> The petitioner claims that a particular type of ethnic cooking represents the culmination of centuries of cooking practices and that some dishes are at least a millennium old. The petitioner also states that there are subtle nuances in cooking the same item that give the dish with the same name a different taste. The petitioner further lists the process in order to explain the expertise needed to accomplish these tasks and the need for a highly trained chef, starting from choosing the ingredients until the final product is delivered.

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[1] Legacy INS memo, HQSCOPS, 70/6.1, "Interpretation of Specialized Knowledge" (December 20, 2002), clarified that, in determining whether an alien possesses specialized knowledge, there is no test of the U.S. labor market; only an examination of the knowledge possessed by the alien is necessary. As noted in the March 9, 1994 memo, it is relevant, however, to determine whether the knowledge is different from that generally held by persons in the particular profession and industry.

[2] Note that the advanced knowledge need not be narrowly held throughout the company. A restaurant may provide advanced training to several chefs, each of whom contribute significantly to the successful operations of the company.

Recipes and cooking techniques that can be learned by a chef through exposure to the recipe or cooking techniques for a brief or moderate period of time generally do not constitute specialized knowledge. Despite the petitioner's claims that this particular style of cooking is ancient and has subtle nuances to it that must be learned, these claims do not generally establish that these skills are so uncommon or complex that other chefs in the industry could not master them within a reasonable period of time.

The petitioner, therefore, has failed to show that it would cause significant economic inconvenience were it not allowed to employ the alien in L-1B classification.

Example 2

> The petitioner, a restaurant known locally for its baked goods, and in particular, its pastries, seeks to transfer a baker to its affiliated-U.S. restaurant. The petitioner claims that its restaurant employs a particular method of preparing pastries goods, which sets it apart from other restaurants. While acknowledging that no two bakers prepare pastries in exactly the same way, the petitioner claims that knowledge of its particular method of pastry preparation is instrumental to its success in the field. The petitioner states that it typically requires its bakers to have obtained experience working as a baker at other restaurants, since experienced bakers are able to master the restaurant's method of preparing pastries and other baked goods quickly. In fact, any competent baker could quickly and sufficiently master the process to avoid loss to the business.

Based on the above facts, the petitioner has failed to establish that the baker possesses "specialized knowledge" for L-1B purposes. All bakers can generally be expected to know how to prepare baked goods. Although those skills are typically acquired through a period of hands-on training, , they are nevertheless common to the baking industry, and therefore, are not, standing alone, sufficiently specialized to meet the requirements of the L-1B category. Similarly, the mere fact that each baker has his or her own unique or special way of preparing baked goods, or that the baker has gained knowledge, by virtue of his or her employment with the company, of particular techniques or procedures employed by the company in making its baked goods, does not mean, in and of itself, that the chef's knowledge is sufficiently uncommon *within the field* of baking.[3] Further, the fact that the knowledge may be closely held within a company, without more, does not establish that the knowledge is specialized. All persons and companies are different, and it generally can be expected that no two bakers or restaurants will employ the same method of preparation or procedures. Standing alone, however, an alien's knowledge of minor variations in style or manner of operations cannot be considered "specialized." A fast-food restaurant may provide one-day training for all new employees with respect to its unique practices and procedures, but such easily imparted knowledge cannot be considered to be sufficiently complex to meet the requirements of the L-1B statute.
The result might be different if the petitioner were able to show: (1) that the individual's set of skills or knowledge of the company's processes and procedures is so complex that it contributed directly to the success of the foreign entity (for example, the alien designed a pastry menu and a method of pastry presentation that earned the entity an international reputation) or that all of its chefs must undergo rigorous in-house training in

[3] Similarly, the fact that a baker has achieved distinction in his or her field is not, standing alone, sufficient to establish specialized knowledge for L-1B purposes. As noted above, the petitioner must also establish that the alien has such specific knowledge of the employer's product or processes that it would be burdensome, or counterproductive to the petitioner's business plan, to hire someone other than the alien to fill this position in the United States.

order to satisfactorily perform their duties, and (2) that the company now wishes to replicate this success in the United States by transferring this person to its United States affiliate and using the person to establish a substantially similar operation in this country. In either of these cases, the petitioner might be able to demonstrate that it would suffer economic disruption if it were necessary to hire someone other than the beneficiary.

Summary

To summarize, the fact that a petitioner alleges that an alien's knowledge is somehow different from that of others in the same field does not, in and of itself, establish that the alien possesses specialized knowledge. It is important to consider how the alien's knowledge relates to the specific U.S. entity seeking to employ the alien and the impact, if any, on the U.S. or foreign entity, were the petitioner required to fill the position with someone other than the alien. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge of a product or process is: (a) uncommon or not generally shared by practitioners in the alien's field of endeavor; (b) not easily or rapidly acquired, but is gained from significant experience or in-house training, and (c) is necessary and relevant to the successful conduct of the employer's operations.

POINT OF CONTACT

If there are any questions concerning this memorandum, please contact Irene Hoffman in the Office of Program and Regulation Development or Joe Holliday in Service Center Operations, through appropriate channels.

U.S. Department of Homeland Security
20 Massachusetts Ave., NW
Washington, D.C. 20529

U.S. Citizenship and Immigration Services

HQ 70/8
AD 05-26

Interoffice Memorandum

To: Regional Directors
District Directors
Officers-in-Charge
Administrative Appeals Office Director

From: William R. Yates /S/
Associate Director of Operations

Date: July 28, 2005

Re: Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004

Revisions to *Adjudicator's Field Manual (AFM)* Chapters 32.3, 32.4(a), and 32.5 (*AFM* Update AD05-26)

On December 8, 2004, the President signed the Omnibus Appropriations Act (OAA) for Fiscal Year 2005, Public Law 108-447, 118 Stat. 2809. Among the provisions of the OAA is the L-1 Visa Reform Act of 2004 (L-1 Reform Act). Among other things, the L-1 Visa Reform Act makes two significant changes to the L Visa Classification, which, as discussed below, necessitates revisions to Chapters 32.3, 32.4(a), and 32.5 of the AFM.

The first significant change effected by the L-1 Visa Reform Act is that an alien is now explicitly ineligible for classification as a specialized knowledge worker nonimmigrant (L-1B) visa if the worker will be "stationed primarily" at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either of the following occurs: (a) the alien 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," 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. *This new ground of ineligibility applies to all petitions filed on or after June 6, 2005, and includes petitions for initial, amended, or extended L-1B classification.* We have revised Chapters 32.3 by adding new paragraphs (c) and (h), and Chapter 32.5 by adding a new paragraph (b) to reflect these new anti-job shop restrictions on obtaining L-1B classification.

The second significant change effected by the statute involves a modification to the eligibility requirements for L-1 intracompany transferees covered by a blanket petition filed pursuant to section 214(c)(2)(A) of the Act. Specifically, the new law amends section 214(c)(2)(A) of the Act to restore prior law requiring that the L-1 beneficiary of a blanket petition have been employed abroad by the L entity for a period of 12 months. In doing so, the L-1 Reform Act eliminates the 6-month exception that had been the law for blanket beneficiaries since 2001. This amendment is reflected by deleting the existing notes in Chapter 32.3(b) and (d) and Chapter 32.5(a) which referred to the 6-month exception that had been the law for blanket beneficiaries since 2001, and by revising Chapter 32.4(a) and adding a note to Chapter 32.4(a) of the AFM. The additions noted above are marked in yellow highlight for ease of use.

Unless otherwise stated in this memorandum, the effective date of the provisions of the L-1 Reform Act is June 6, 2005.

This memorandum and the above-noted AFM revisions provide guidance to U.S. Citizenship and Immigration Services (USCIS) officers in the field regarding amendments made by the L-1 Reform Act. This guidance is effective immediately. Please direct any questions concerning these changes through appropriate supervisory channels to Irene Hoffman, Office of Program and Regulations Development, via electronic mail.

Accordingly, the *AFM* is revised as follows:

1. Chapter 32.3 is revised to read as follows:

32.3 Individual L Petition Process.

(a) General. (Chapter 32.3 Revised July 28, 2005; *AFM* 05-26)Section 101(a)(15)(L) of the Act and regulations at 8 CFR 214.2(l) are designed to facilitate the temporary transfer of foreign nationals with management, executive, and specialized knowledge skills to the United States to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate. Petitioners seeking to classify aliens as intracompany transferees must file a petition on Form I-129 (including the L supplement) with USCIS for a determination on whether the alien is eligible for L-1 classification and whether the petitioner is a qualifying organization. An individual L-1 petition is filed at the service center having jurisdiction where the alien will be employed, except that NAFTA cases (discussed in Chapter 37) may be filed at Class A ports of entry. General adjudicative principles and procedures described in Chapter 10 apply. For statistical purposes executives and managers are internally coded (in CLAIMS) L-1A and specialized knowledge employees are coded L-1B, although only "L-1" is used for visa issuance and admission purposes.

(b) Basic Evidentiary Requirements for an L-1 Petition. Evidence of the following must be submitted to support all petitions filed for L classification:

- There must be a qualifying relationship between the business entity in the United States and the foreign operation which employs the alien abroad;

- For the duration of the alien's stay in the United States as an intracompany transferee, the petitioner must continue to do business both in the United States and in at least one other country, either directly or through a parent, branch, subsidiary, or affiliate.

- The alien must have been employed abroad by the foreign operation for at least one of the last three years. Such one year of employment outside the U.S. must have been continuous. Although authorized periods of stay in the United States for the foreign employer are not interruptive of the prior year of employment, such periods may not be counted towards the qualifying year of employment abroad. See *Matter of Kloeti,* 18 I&N Dec. 295.

- The alien's prior year of employment abroad must have been in a managerial, executive, or specialized knowledge capacity. The prospective employment in the United States must also be in a managerial, executive, or specialized knowledge capacity. However, the alien does not have to be transferred to the United States in the same capacity in which he or she was employed abroad. For example, a manager abroad could be transferred to the United States in a specialized knowledge capacity or vice versa. See *Matter of Vaillancourt,* 13 I&N Dec. 654.

The burden is on the petitioner to provide the documentation required to establish eligibility for L classification. The regulations do not require submission of extensive evidence of business relationships or of the alien's prior and proposed employment. In most cases, completion of the items on the petition and supplementary explanations by an authorized official of the petitioning company will suffice. In doubtful or marginal cases, the director may require other appropriate evidence which he or she deems necessary to establish eligibility in a particular case.

Note: Section 214(h) of the Act eliminates the need to adjudicate the issue of whether an L nonimmigrant is actually being transferred on a temporary basis. Many such nonimmigrants eventually adjust status or procure an immigrant visa. Also, section 214(b) eliminates L nonimmigrants from the classes of persons "presumed to be an immigrant." (However,

even before the addition of section 241(h), an L-1 nonimmigrant was not required to maintain a foreign residence which he/she had no intention of abandoning.)

(c) Anti "Job-Shopping" Provisions of the L-1 Visa Reform Act. Among the provisions of Public Law 108-447 at Division J, Title IV, is the L-1 Visa Reform Act. Section 412(a) of Title IV adds a new section 214(c)(2)(F) to the Immigration and Nationality Act, as amended (Act). New 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 and either (1) the alien will be "principally" under the "control and supervision" of the unaffiliated employer, or (2) the placement at the non-affiliated worksite 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.

Several conditions must be met in order for this ground of ineligibility to apply:

First, the alien worker must be a specialized knowledge worker. The term "specialized knowledge" should be familiar to adjudicators and is defined at 8 CFR 214.2(l)(1)(D) and, with respect to professionals, at 8 CFR 214.2(l)(1)(E). The change does not apply to other (i.e., managers and executives) L nonimmigrants.

Second, the worker must be stationed primarily at a worksite *outside* the L organization. Thus, so long as the worker is to be stationed and actually employed within the L organization, this particular ground of ineligibility does not apply. Moreover, even if the worker is stationed outside the L organization, the worker must be "stationed primarily" outside the organization. We interpret this provision to mean that, as a threshold matter, in order for the section 214(c)(2)(F) bar to L classification to apply, a majority of the alien's work-related activities must occur at a location other than that of the petitioner or its affiliates. In this regard, even if the majority of an alien's time is physically spent at the petitioner or its affiliates' location, to the extent that such time can be considered to be "down time" rather than time actually performing the services described in the petition, an alien might be subject to the section 214(c)(2)(F) bar (since, in this example, the majority of the alien's actual work time is spent at an unaffiliated company or companies' work site). The number of non-affiliated worksite locations where the alien might be stationed, by itself, is not relevant; what is relevant is the location where the alien will be actually be engaged in employment as specified in the underlying petition.

If the alien worker is "stationed primarily" outside the L organization, as described above, then there are two independent means by which the alien worker may be rendered ineligible for L status.

The first means relates to the control and supervision of the worker. Even if the alien worker is to be stationed "primarily" outside the L organization, that fact alone does not establish ineligibility for L classification. In order for the ground of ineligibility to apply, "control and supervision" of the worker at the non-affiliated worksite must be "principally" by the unaffiliated employer. Again, adjudicators should use the common dictionary meaning of the term "principally," which means "first and foremost." Thus, even if the non-affiliated entity exercises some control or supervision over the work performed, as long as such control and supervision lies first and foremost within the L organization, and the L organization retains ultimate authority over the worker, the ground of ineligibility does not apply. For example, an L-1 worker may be stationed primarily outside the L organization, but receives all direction and instruction from a supervisor within the L organization structure. The non-L organization client may provide input, feedback, or guidance as to the client's needs, goals, etc., but does not control the work in the sense of directing tasks and activities. So long as the ultimate authority over the L-1 worker's daily duties remains within the L organization, the fact that there may be some intervening third party supervision or input between the worker and the L organization does not render the worker ineligible for L-1B classification.

The second means relates to the nature of the alien worker's placement outside the L organization. Such an alien worker is ineligible for L classification if the placement at the unaffiliated worksite 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. What constitutes "essentially" such an arrangement is inherently a fact question, and adjudicators therefore must look at the all aspects of the activity or activities in which the alien will be engaged away from the petitioner's worksite. In general, if the off-site activity or activities do not require specialized knowledge of the petitioner's product or services, or if such knowledge is only tangentially related to the performance of such off-site activities, the alien will fall within the ambit of the section 214(C)(2)(F) bar. For example, an alien would be ineligible for L classification if a petitioner is essentially in the business of placing workers with various unaffiliated companies, irrespective of the alien's specialized knowledge of the petitioner's particular product or service, where the off-site activities to be performed do not require such specialized knowledge. On the other hand, if the petitioner is primarily engaged in providing a specialized service, and typically sends its specialized knowledge personnel on projects located on the work site of its unaffiliated

U.S. Citizenship and Immigration Services

BASIC

NONIMMIGRANTS

PARTICIPANT GUIDE

USCIS ACADEMY
NONIMMIGRANT

September 2011

SYLLABUS

COURSE TITLE: Nonimmigrant

COURSE NUMBER: 207/209

COURSE DATE: September 2011

LENGTH AND METHOD OF PRESENTATION:

Lecture	Lab	P.E.	Total	Program
7:00	1:00	0:00	8:00	BASIC

DESCRIPTION:

This is an 8-hour course of lecture, discussion, and practical exercises with emphasis on the various nonimmigrant alien classifications. In addition the officer will identify the criteria needed for an approval of an extension of stay and change of status. Types of forms filed by nonimmigrant aliens and the documentary requirements are also discussed.

TERMINAL PERFORMANCE OBJECTIVE (TPO):

When adjudicating an application or petition, reviewing agency files/databases, providing information to a customer, or in the conduct of an interview, the officer will be able to make an accurate determination of an alien's current nonimmigrant status or assess the alien's eligibility for the nonimmigrant classification requested, according to applicable laws, regulations, and policies.

ENABLING PERFORMANCE OBJECTIVES (EPOs):

EPO #1: Classify applicants based on established criteria for the "A", "G", "C" and "D" nonimmigrant classifications, and identify the documentary requirements for such classifications.

EPO #2: Classify applicants based on established criteria for the "B", "WB", or "WT" nonimmigrant classifications, and identify the documentary requirements for such classifications.

EPO #3: Classify applicants based on established criteria for "F", "M" and "J" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

EPO #4: Classify applicants based on established criteria for "H" and "L" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

EPO #5: Classify applicants based on established criteria for "O", "P" and "Q" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

EPO #6: Classify applicants for admission to the U.S. based on established criteria for "E", "R", "TN" and "I" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

EPO #7: Classify applicants for admission to the U.S. based on established criteria for "K" and "V" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

EPO #8: Classify applicants for admission to the U.S. based on established criteria for "S", "T" and "U" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

EPO #9: Specify the purpose of Form I-539, Application to Extend/Change Nonimmigrant Status and Form I-129, Petition for a Nonimmigrant Worker, and determine eligibility requirements for nonimmigrant extension of stay under an existing nonimmigrant classification.

EPO #10: Specify forms and eligibility requirements for a change from one nonimmigrant classification to a different nonimmigrant classification.

STUDENT SPECIAL REQUIREMENTS:

1. Review the "Pocket Field Guide" reference tool to become familiar with its presentation of nonimmigrant classifications.

2. Review the appendix and Reference materials.

   Optional: Read pages 148 - 199 in *Immigration Law and Procedure in a Nutshell, 5th Edition,* by David Weissbrodt and Laura Danielson.

   NOTE: Like other reference guides and textbooks, *Immigration Law and Procedure in a Nutshell* is written by a private author, and is **not** a U.S. Government publication. Accordingly, any opinions expressed in the text are those of the author, and not those of U.S. Citizenship and Immigration Services or the Department of Homeland Security. This text is being used to provide background information on the law to the student, in order that the student may apply that background to the duties performed by USCIS adjudicators.

   Additionally, the Fifth Edition of this book was published in 2005. Since the immigration law and policy is constantly changing and evolving, it is always important to verify whether there have been changes to the law or procedures when using this or other reference materials.

METHOD OF EVALUATION:

Written Examination

TABLE OF CONTENTS

OUTLINE OF INSTRUCTION

I. INTRODUCTION

Nonimmigrant aliens are individuals who enter the U.S. for a temporary period of stay for a variety of reasons. These may include attending school, employment, tourism, or for diplomatic reasons.

There are provisions under many classifications that (1) permit spouses and children to derive status from the principal visa holder, (2) provide employment authorization and/or (3) provide the opportunity to extend nonimmigrant status or to change to a different nonimmigrant classification. In most cases aliens require a passport and nonimmigrant visa, unless they are exempt by a reciprocal agreement between the U.S. and the alien's home country. Generally, if a passport is required, it must be valid for at least six (6) months beyond the date of intended departure.

II. PRESENTATION

A. EPO #1: Classify applicants based on established criteria for the "A", "G", "C" and "D" nonimmigrant classifications, and identify the documentary requirements for each classification.

1. A-1 AMBASSADORS, PUBLIC MINISTERS, CAREER DIPLOMATS, CONSULAR OFFICERS, AND CAREER COURIERS, INA § 101(a)(15)(A)(i); 8 CFR § 214.2 (a)

   This classification is granted to officials, diplomats, and employees of foreign governments coming to the U.S. for official business. Initial A-visa requests are made at a U.S. consulate overseas (no petition or application is filed with USCIS). Requests to change to A or G status in the United States is done on Form I-539 (Application to Extend/Change Nonimmigrant Status). Any request to change to or from A or G status requires the submission of Form I-566 (Inter-Agency Record of Individual Requesting Change/Adjustment to, or from, A or G status; or Requesting A, G or NATO Dependent Employment Authorization).

   These aliens must be accredited by a foreign government which has been recognized de jure by the United States and who are accepted by the President or by the Secretary of State. As used in INA § 101(a)(15)(A) and 101(a)(15)(G), "de jure" means to recognize by right or legal establishment. De jure recognition is not synonymous with having diplomatic relations with a foreign government. De jure recognition may continue even though diplomatic relations with that government have been severed. (Example: Cuba)

   a. As used in INA § 101(a)(15)(A) and 101(a)(15)(G), accredited means an alien holding an official position, other than an honorary official position, with a government or international organization and possessing a travel document or

other evidence of intention to enter or transit the U.S. to transact official business for that government or international organization.

b. Examples include:

1) Ambassadors, Ministers, Heads of State (kings, queens, presidents, emirs, etc.)
2) Consulate General arriving to take official post in the U.S.
3) Secretary – (as in Secretary of State – not a clerk)
4) Attaché – (as in military, commercial, financial, agricultural, or scientific).
5) High ranking diplomats on official business
6) Aliens employed permanently as professional couriers for a foreign government.
7) A-1 includes family members

c. A determination by a U.S. consular officer abroad and recognition by the U.S. Secretary of State establishes eligibility for the class.

d. A-1 aliens are admitted for duration of status (D/S). Therefore, extensions of stay are not needed.

2. A-2 OTHER ACCREDITED OFFICIALS OR EMPLOYEES OF FOREIGN GOVERNMENTS AND ACTING COURIERS, INA 101(a)15)(A)(ii), 8 CFR § 214.2(a)

a. Upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government de jure by the U.S. who have been accepted by the Secretary of State

b. Examples include:

1) Embassy or consulate employees such as: secretaries, interpreters, aides, land support staff of A-1 or A-2

2) An alien not regularly and professionally employed as a courier and proceeding to the U.S. on official business by the government of the country to which he owes allegiance.

3) Foreign military personnel and civilian employees of foreign military coming to the U.S. for education or training at any armed forces training facility.

4) A-2 classification includes family members.

c. Requests to change from another nonimmigrant status are adjudicated on Form I-539. A-1's are admitted for duration of status, so there is no provision for extensions of stay.

d. Requirements for this classification are similar to those for A-1.

3. A-3 ATTENDANTS, SERVANTS, AND PERSONAL EMPLOYEES OF A-1 OR A-2, INA 101(a)(15)(a)(iii); 8 CFR § 214.2(a)

a. Attendants, as used in INA 101(a)(15)(A)(iii) and 101(a)(15)(G)(v) means aliens paid from the public funds of a foreign government or from the funds of an international organization, accompanying or following to join the principal alien to whom a duty or service if owed. Examples of attendants include:

1) Secretaries
2) Chauffeurs
3) Security personnel

b. Servants and Personal Employees, as used in INA §§ 101(a)(15)(A)(iii) and 101(a)(15)(G)(v), means aliens employed in a domestic or personal capacity by a principal alien, are paid from the private funds of the principal alien, and seek to enter the U.S. solely for the purpose of such employment. Examples of servants and personal employees include:

1) Cooks
2) Nannies
3) Housekeepers

c. A-3 classification includes family members.

d. Aliens in the A-3 classification are admitted for three-year duration. Requests for extension are made on Form I-539 with a letter from the A-1 or A-2 explains the nature of the employment along with a copy of the employer's certified Form I-566.

4. G-1 PRINCIPAL RESIDENT REPRESENTATIVE TO A DESIGNATED INTERNATIONAL ORGANIZATION, INA § 101(a)(15)(G)(i), 8 CFR § 214.2(g)

This classification is granted to aliens seeking to enter the U.S. on official business as a foreign government representative to an international organization. International Organization, as used in INA § 101(a)(15)(G), means any public international organization which has been designated by the President in an Executive Order entitled to enjoy the privileges, exemptions, and immunities as provided for in the International Organizations Immunities Act. (See 8 C.F.R. § 316.20.)

Initial G-visa requests are made at a U.S. consulate overseas (no petition or application is filed with USCIS). Requests to change to A or G status in the United States is done on Form I-539, (Application to Extend/Change Nonimmigrant Status). Any request to change to or from A or G status requires the submission of Form I-566 (Inter-Agency Record of Individual Requesting Change/Adjustment to, or from, A or G status; or Requesting A, G or NATO Dependent Employment Authorization).

a. Examples include:

1) Representative assigned permanently to a designated international organization in the U.S. such as:

a) United Nations
b) World Health Organization
c) International Atomic Energy Agency
d) Organization of American States
e) International Monetary Fund

2) Representatives who reside regularly in the U.S. for the duration of their assignment.

b. The U.S. must recognize the foreign government de jure.

c. The foreign government must be a member of the designated international organization.

d. A determination by a U.S. consular officer abroad and recognition by the U.S. Secretary of State establishes eligibility for the class. Included in this classification are accredited resident staff members of the G-1 representative.

e. G-1 classification includes family members.

5 G-2 OTHER REPRESENTATIVES TO A DESIGNATED INTERNATIONAL ORGANIZATION, INA § 101(a)(15)(G)(ii), 8 CFR § 214.2(g)

a. Examples include:

1) Representative assigned temporarily to a designated international organization.

2) Other accredited representatives who do not reside regularly in the U.S. during their assignment.

3) G-2 classification includes family members

b. Requirements for this classification are similar to those for G-1.

c. Admitted for duration of status and therefore are ineligible for extensions.

6. G-3 PRINCIPAL OR OTHER ACCREDITED REPRESENTATIVE FROM A NONRECOGNIZED OR NONMEMBER COUNTRY, INA § 101(a)(15)(G)(ii), 8 CFR § 214.2(g)

a. Examples include those listed under G-1 and G-2.

b. The U.S. does not recognize the foreign government de jure or the foreign government is not a member of the designated international organization.

c. A determination by a U.S. consular officer abroad and recognition by the U.S. Secretary of State establishes eligibility for the class.

d. G-3 classification includes family members.

e. Other requirements for this classification are similar to those for G-1.

f. Admitted for duration of status and are ineligible for extension of stay.

7. G-4 OFFICERS OR EMPLOYEES OF A DESIGNATED INTERNATIONAL ORGANIZATION, INA § 101(a)(15)(G)(iv), 8 CFR § 214.2(g)

a. Examples include:

1) Chief Officers of designated international organizations.

2) Officers on the managing boards of designated international organizations

3) Staff members and employees employed by the international organization:

a. Office Managers

b. Secretaries

c. Interpreters

b. G-4 classification includes family members.

c. The G-4 alien must be on the payroll of the designated international organization.

d. Determination by a U.S. consular officer abroad and recognition by the U.S Secretary of State establishes eligibility for the class.

e. Other requirements for this classification are similar to those for G-1.

f. Admitted for duration of status and are ineligible for extension of stay.

8. G-5 ATTENDANTS, SERVANTS AND PERSONAL EMPLOYEES OF G-1 THROUGH G-4, INA § 101(a)(15)(G)(v), 8 CFR § 214.2(g)

a. Attendant, as used in INA §§ 101(a)(15)(A)(iii) and 101(a)(15)(G)(v), means aliens paid from the public funds of a foreign government or from the funds of an international organization; who will accompany or follow to join the principal alien to whom a duty or service is owed.

b. Examples of attendants:

1) Secretaries
2) Chauffeurs
3) Security personnel

c. Servants and Personal Employees, as used in INA §§ 101(a)(15)(A)(iii) and 101(a)(15)(G)(v), means aliens employed in a domestic or personal capacity by a principal alien, are paid from the private funds of the principal alien, and seek to enter the U.S. solely for the purpose of such employment.

d. Examples of servants and personal employees include:

1) Cooks
2) Nannies
3) Housekeepers

e.. Personal employees are individuals considered as dependent aliens based upon employment. These individuals are generally support personnel. Usually a dependant alien may not precede the principal alien into the U.S. (there are exceptions).

f. A determination by a U.S. consular officer abroad and recognition by the U.S. Secretary of State establishes eligibility for the class.

g. G-5 classification includes family members.

h. Aliens in the G-5 classification are admitted for three-year duration. Requests for extension are made on Form I-539 with a letter from the G-1, G-2, G-3 or G-4 which explains the nature of the employment, along with a copy of the employer's certified Form I-566.

9. C-1 ALIEN IN TRANSIT THROUGH U.S., INA § 101(a)(15)(C), 8 CFR § 214.2(c) This classification is for aliens whose primary and principal purpose for entering is to transit through the U.S. Initial C-visa requests are made at a U.S. consulate overseas (no petition or application is filed with USCIS).

   a. The C-1 alien must demonstrate ability to effect transit (tickets, sufficient funds, and documents to enter the next country)

   b Includes C-1 "deadhead" who is arriving as a passenger to join a vessel or aircraft as a crew member.

   c. The C-1 alien's maximum period of admission is 29 days; no extensions of stay or changes of status are permitted by law.

10. C-2 ALIEN IN TRANSIT TO UNITED NATIONS HEADQUARTERS, INA § 101(a)(15)(C); 8 CFR § 214.2(c)

   a. Primary purpose is to proceed directly to United Nations Headquarters and remain in the immediate vicinity until departure from the U.S. The immediate vicinity of the United Nations Headquarters District is the area lying within a 25-mile radius of Columbus Circle, in New York City, New York.

   b. This classification is used for aliens from non-recognized countries who are not members of the U.N. but who need to visit the U.N. for their government.

   c. The C-2 alien must possess documents establishing ability to enter another country after their trip to the U.N. Headquarters.

   d. The C-2 alien is admitted D/S, so extensions of stay are not necessary; changes of status are not permitted by law.

11. C-3 FOREIGN GOVERNMENT OFFICIAL IN TRANSIT THROUGH U.S., INA § 101(a)(15)(C

   a. Aliens in C-3 classification are accredited officials of a foreign government who would normally qualify in the A or G nonimmigrant classification if they were assigned in the U.S.

   b. The C-3 alien must be passing immediately and continuously through the U.S., traveling on official business.

   c. Included in this classification are members of the immediate family, attendants, servants, or personal employees of such an official.

d. The maximum period of admission is 29 days; no extensions of stay or changes of status are permitted by law.

12. D-1 CREWMEN DEPARTING ON VESSEL OR AIRLINE OF ARRIVAL, INA § 101(a)(15)(D)(i), 8 CFR § 214.2(d)

This classification is for aliens arriving in the U.S. as crewmen aboard a vessel or aircraft. The term "crewman" means a person serving in any capacity on board a vessel or aircraft. Also see 8 CFR § 252.1(d)(1).

a. Crewmen must apply for permission to land, which is not considered an admission.

b. Crewmen arriving on vessels must depart as a working crewmember on the same vessel.

c. Crewmen arriving on an aircraft must depart as a working crewmember on the same transportation line but not necessarily on the same aircraft.

d. If shore leave is granted, the crewman is issued an endorsed Crewman's Landing Permit (Form I-95) for a maximum period of 29 days. No extensions of stay or changes of status are permitted by law.

13. D-2 CREWMEN DEPARTING ON ANOTHER VESSEL OR AS A PASSENGER, INA § 101(a)(15)(D)(i), 8 CFR § 214.2(d)

a. Crewmen must apply for permission to land, which is not considered an admission.

b. Crewman must intend to depart the U.S. on a different airline, vessel, or other means of transportation as arrival. They may depart as working crew or as a passenger 8 CFR § 252.1(d)(2).

c. If shore leave is granted the crewman is issued an endorsed Crewman's Landing Permit (Form I-95) for a maximum period of 29 days. No extensions of stay or changes of status are permitted by law.

B. EPO #2: Classify applicants based on established criteria for the "B", "WB", or "WT" nonimmigrant classifications, and identify the documentary requirements for such classifications.

1. B-1 VISITOR FOR BUSINESS, INA § 101(a)(15)(B), 8 CFR § 214.2(b)

a. The intention of the B-1 alien is to temporarily visit the U.S. for business purposes.

b. Applications are adjudicated by U.S. Consular Officers at the consulate (no USCIS petitioning process is involved).

c. A nonimmigrant alien may be classified as a B-1 (visitor for business) to engage in the following activities:

1) Participate in scientific, educational, professional or business conventions, seminars

2) Installers, repair and maintenance personnel, and supervisors possessing specialized knowledge essential to the seller's contractual obligation

3) Tourism personnel (tour and travel agents, tour guides and tour bus operators) conducting tours in the U.S.

4) A professional athlete, such as a golfer or tennis player, who receives no salary or payment other than prize money for his or her participation in a tournament or sporting event

5) An athlete or team member who seeks to enter the U.S. as a member of a foreign based team in order to compete with another sports team

6) An amateur team sports player who is seeking to join a professional team during the course of the regular professional season or playoffs for brief try-outs (the teams may provide only for such expenses as round-trip fare, hotel room, meals, and other try-out transportation costs)

7) An alien coming to perform services on behalf of a foreign-based employer as a jockey, sulky driver, trainer, or groom

8) Personal and domestic servants of non-immigrant aliens (B-1A), or USC's (B-1B), who are subject to frequent international transfers.

d. The B-1 alien must maintain a residence abroad.

e. Aliens in the B-1 category are admitted for the time necessary to complete business, but not to exceed one (1) year.

2. B-2 VISITOR FOR PLEASURE, INA § 101(a)(15)(B), 8 CFR § 214.2(b)

a. The intention of the B-2 alien is to temporarily visit the U.S. for the purpose of pleasure.

b. Visa applications are adjudicated by U.S. Consular Officers at the consulate (no USCIS petitioning process is involved).

c. A nonimmigrant alien generally may be classified as a B-2 (visitor for pleasure) to engage in the following activities. This list is not comprehensive, but serves as common examples of acceptable activities.

1) Aliens participating in conventions, conferences or convocations of fraternal, social, or service organizations.

2) Aliens traveling to the U.S. for purposes of tourism or to visit with relatives or friends.

3) Aliens coming to the U.S. for health purposes.

4) An alien who is an amateur in an entertainment or athletic activity. The amateur or group of amateurs will not be paid for performances but will perform in a social and/or charitable context, or as a competitor in a talent show, contest, or athletic event. The alien may be reimbursed for incidental expenses associated with the visit.

5) An alien entering the U.S. as a prospective student. Effective April 12, 2002, for national security reasons, nonimmigrant aliens admitted in a B-2 classification who are prospective students may not enroll or begin school until after Form I-539 (Application to Change /Extend Stay Non-Immigrant Status) is approved or the status is changed from visitor to student classification.

d. The B-2 alien must show maintenance of a residence abroad.

e. The maximum initial period a B-2 may be admitted is one (1) year.

f. The B-2 alien is usually admitted for a minimum period of six (6) months whether of not less time is requested. Exceptions to the minimum six-month admission may be made on a case-by-case basis. Generally, extensions of temporary stay may not be granted for more than six months each.

3. WB/WT VISA WAIVER PROGRAM, INA § 217, 8 CFR § 214.2(b)(3), 8 CFR § 217

The Visa Waiver Program contains two nonimmigrant classifications, WB and WT. In 1986, the Immigration Reform and Control Act (IRCA) incorporated the Visa Waiver Pilot Program into the Act. The pilot program became effective on July 1, 1988. On October 30, 2000, the program was changed from a pilot or test program to the Visa Waiver Permanent Program (VWPP), also known as the Visa Waiver Program (VWP), which permits nationals from designated countries noted in 22 C.F.R. § 217.2(a), to apply for admission into the U.S. without a nonimmigrant visa. See also the Pocket Field Guide for further reference.

As of January 12, 2009, all passengers traveling under the Visa Waiver Program are required to have an approved travel authorization prior to traveling to the U.S. by air or sea. On-line application is made through the CBP Visa Waiver Program Electronic System for Travel Authorization (ESTA).

a. WB VISITOR FOR BUSINESS (VISA WAIVER PROGRAM)

1) The alien must intend to be a temporary visitor for business.

2) The alien must be a national of a designated Visa Waiver country.

3) VWP applicants must complete an Arrival/Departure Record, (Form I-94W). By signing Form I-94W, applicants agree to abide by the restraints of the program as well as waive any right to administrative review if refused admission.

4) Aliens arriving by air or sea must have a round-trip ticket on a transportation carrier that is also a signatory of the VWP Agreement.

5) Aliens arriving at a land border are required to produce evidence of economic solvency. Aliens must have the ability to support themselves financially during the duration of their stay and have the means to depart the U.S.

6) The alien must maintain a residence abroad.

7) The maximum period of admission for WB is 90 days. No extensions are allowed by law.

b. WT VISITOR FOR PLEASURE (VISA WAIVER PROGRAM)

1) The alien must intend to be a temporary visitor for pleasure.

2) The alien must be a national of a designated Visa Waiver country

3) VWP applicants must complete Form I-94W. By signing Form I-94W, applicants agree to abide by the restraints of the program and waive any right to administrative review if refused admission.

4) Aliens arriving by air or sea must have a round-trip ticket on a transportation carrier that is also a signatory of the VWP Agreement.

5) Aliens arriving at a land border are required to produce evidence of economic solvency. In other words, aliens have the ability to support themselves financially during the duration of their stay and have the means to depart the U.S.

6) The WT alien must maintain a residence abroad.

7) The maximum period of admission for WT is 90 days. No extensions are allowed by law.

C. EPO #3: Classify applicants based on established criteria for "F", "M" and "J" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

The "F" classification is assigned to aliens coming to the U.S. as students to attend established academic institutions. Some examples are colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, or a language-training program designated and approved by the Attorney General.

Foreign students typically apply for a student visa at a U.S. consulate abroad. See 22 CFR § 41.61. However, there are provisions to request a change to F-1 status on Form I-539. A USCIS adjudicator is also likely to encounter students who need to apply for employment authorization on Form I-765. Schools that receive foreign students are included in the Student Exchange Visitor Information System (SEVIS), which is administered by ICE.

1. F-1 ACADEMIC STUDENTS, INA § 101(a)(15)(F)(i), 8 C.F.R. § 214.3(a)(2)(i).

   a. This is a principal classification when the alien's primary intent is to attend an academic school in the U.S. as a full time student.

   b. An alien may not attend a publically funded elementary school or a publically funded adult education program. An alien may attend twelve months in the aggregate at a public secondary school, if reimbursement has been made to the school for the fullcost of providing such education.

   c. An alien may attend a public or private college, university, seminary, or conservatory without restriction. An alien may attend a privately funded high school, junior high, or elementary school without restriction. An alien may also attend a privately funded adult education program without restriction.

   d. Must be in possession of SEVIS Form I-20 A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Students. Must have evidence of financial support in the amount indicated on the Form I-20 A-B.

      1) Must be maintaining a full course of study at an approved school. Service regulations define a full course of study in various contexts. (Exceptions apply). See 8 CFR § 214.2(f).

      2) Aliens in the F-1 category are required to maintain a residence abroad

3) Spouses and children of F-1 aliens are granted F-2 classification, once they establish the relationship to the F-1. The status of such derivative aliens is dependent on the principle F-1 alien, and the dependents must accompany the principal F-1 alien or follow to join them.

3. F-3 BORDER COMMUTER STUDENT

BRIEF HISTORY: When the primary purpose for entering the U.S. is to attend school, the law requires that aliens be classified as nonimmigrant students (F-1 or M-1) not as "B" visitors for business or pleasure. 8 U.S.C. § 1101(a)(15)(B) defines a nonimmigrant visitor for business or pleasure as:...an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the U.S. temporarily for business or temporarily for pleasure.

It was commonplace, for aliens residing in Mexico and Canada to regularly enter the U.S. across a land border for the purpose of studying part-time at a college or university. They were classified as "B" nonimmigrant aliens. As a result of the terrorist attacks on September 11, 2001, the Immigration and Naturalization Service (INS) faced increased scrutiny, particularly with the use of the "B" visitor classification. The INS responded by announcing that it would bar part-time commuter students from Mexico and Canada. After an outcry from students, universities, and members of Congress, the INS proposed amending existing regulations that would take into account the unique educational circumstances of these students. Amended regulations found at 8 C.F.R. § 214.2(f)(18) permit border commuter students to maintain a lesser course load than is required of nonimmigrant F-1 and M-1 students.

On November 2, 2002, President Bush signed into law the "Border Commuter Student Act" which created the new F-3 and M-3 nonimmigrant classifications (Public Law 107-274). *Note:* According to the *IFM, Chapter 15.4(f)(1)(D), Reduced Course Load Commuter Students from Canada and Mexico*, CBP officers at land borders are admitting these students as F-1 in lieu of F-3.

a. The alien must be a citizen of Canada or Mexico.

b. Aliens classified as F-3 may be part-time or full-time academic students, as long as they commute to and from a residence in their country of nationality to a school located in the U.S. within 75 miles of the border.

c. The F-3 must be in possession of SEVIS Form I-20 A-B.

d. The alien is enrolled in a full course of study at the school. That is, a course of study that leads to the attainment of a specific educational or professional objective.

e. Admitted for a fixed period, semester, quarter, or term, rather than D/S. The Designated School Official, DSO, will be required to specify on SEVIS Form

I-20 A-B the term-by-term completion date. A new SEVIS Form I-20 A-B will be required for each new quarter or semester of attendance.

3. M-1 VOCATIONAL STUDENT, INA § 101(a)(15)(M)(i), 8 C.F.R. § 214.2(m), 8 C.F.R. § 214.3(a)(2)(ii).

   a. M-1 nonimmigrant aliens, as defined in INA § 101(a)(15)(M), are foreign nationals pursuing a full course of study at an approved vocational or other recognized nonacademic institution in the U.S. The alien must attend full time. Examples of vocations include:

      1) Air conditioning repair.
      2) Automobile mechanics
      3) Flight training schools
      4) Gemology
      5) Diesel mechanics

   b. The M-1 alien must maintain a full course of study. Service regulations define a full course of study" in various contexts. (Exceptions apply) See 8 CFR §214.

   c. The M-1 alien cannot change educational objectives, such as changing from air conditioning repair to gemology, without reapplying for the new objective.

   d. The alien must be in possession of SEVIS Form I-20 M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status - For Vocational Students.

   e. The M-1 alien must maintain a residence abroad.

   f. The M-1 student is admitted for duration of the course, plus 30 days, not to exceed 1 year.

      f. Spouses and children of M-1 aliens are granted M-2 classification. The status for each of these derivatives is dependent on the status of the principle M-1 alien, and they must accompany the principle M-1 alien or follow to join them.

4. M-3 BORDER COMMUTER STUDENTS

Note: According to the *Inspectors Field Manuel (IFM), Chapter 15.4(m)(1)(B), ReducedCourse Load Commuter Students from Canada and Mexico*, CBP officers at land borders admit these students as M-1 instead of M-3.

   a. Aliens classified as M-3 may be part-time or full-time vocational students, as long as they commute to and from a residence in their country of nationality to a school located in the U.S. within 75 miles of the border.

   b. The alien must be a citizen of Canada or Mexico.

c. The alien is enrolled in a full course of study at the school. That is, a course of study that leads to the attainment of a specific educational or professional objective.

d. The M-3 must be in possession of SEVIS Form I-20 M-N.

5. J-1 EXCHANGE VISITOR, INA § 101(a)(15)(J), 8 C.F.R. § 214.2(j)

This classification allows aliens the opportunity to participate in an exchange visitor program in the U.S. In 1999 the U.S. Information Agency (USIA) was consolidated into the Department of State under the Bureau of Educational and Cultural Affairs Unit.

a. The J-1 alien's intention is to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or receiving graduate medical education or training.

b. Examples of Exchange Visitors include:

1) Professors or scholars
2) Research assistants
3) Students
4) Trainees
5) Teachers
6) Specialists
7) Leaders in a field of specialized knowledge or skill

c. The alien must be in possession of a Certificate of Eligibility for Exchange Visitor (J-1) Status, Form DS-2019 (formerly Form IAP-66).

d. The program must be approved by the Department of State.

e. Exchange visitors may be subject to a two-year foreign residence requirement under INA § 212(e). This means that they may be required to reside in their home country for two years following the completion of their program, in order to be eligible for change of status (COS) or adjustment of status (AOS). Form DS-2019 includes a block which is endorsed by the consular official issuing the nonimmigrant visa (if required), the ISO adjudicating an I-539 requesting change to J-1, or by the CBP officer at a port-of-entry. The requirement applies if:

1) The program is financed in whole or in part, directly or indirectly, by either the sending government or the U.S. Government, and
2) The alien receives graduate medical education or training
3) The alien's occupation is on the Skills List for country of nationality or last residence.

NOTE: Since 1972 the Secretary of State has identified a list of fields of specialized knowledge or skill, and a list of developing countries which requires persons trained in one of the named areas.

f. Aliens admitted as or changed to J nonimmigrant classification, who are subject to the foreign residence requirement, are ineligible to change or adjust status, unless they have been granted a waiver of such requirements. Requests for waiver are filed on **Form I-612, Application for Waiver of Foreign Residence Requirement of Section 212(e)** of the Immigration and Nationality Act, as amended.

g. The J-1 alien must maintain a residence abroad.

h. Spouses and children of J-1 aliens are granted J-2 classification. The status for each of these derivatives is dependent on the status of the principle J-1 alien, and they must accompany the principle J-1 alien or follow to join them.

D. EPO #4: Classify applicants based on established criteria for "H" and "L" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

The H and L nonimmigrant classifications are designated for eligible aliens entering the U.S. as temporary workers, and require the filing of a Form I-129, Petition for Nonimmigrant Worker. The adjudication of Form I-129 determines if the beneficiary is eligible for initial classification and to extend a period of authorized stay. Form I-129 is currently filed with the California Service Center or the Vermont Service Center.

Once the petition is approved, the employer or agent is sent a Notice of Approval, Form I-797. A copy of the approved petition is sent to the U.S. consulate or embassy where the alien will apply for a visa. When an alien is exempt the visa requirement, a copy of the approved petition is sent to the port-of-entry where the beneficiary intends to apply for admission. Approval of a petition does not guarantee visa issuance or admission into the U.S. In most cases the beneficiary of an approved Form I-129 may be admitted up to ten days before the validity period of the petition and remain ten days after it ends. However, the alien may not work except during the validity period of the petition. In the case of aliens who are already in the U.S. in a valid nonimmigrant status, the authorization to change status to H or L will be adjudicated at the same time as the petition.

1. H-1B SPECIALTY OCCUUPATIONS, INA § 101(a)(15)(H) ; 8 C.F.R. § 214.2(h)
   The H-1B classification includes specialty occupations, an alien coming to perform services of an exceptional nature relating to a project administered by the U.S. Department of Defense, or a fashion model who has national and international acclaim.

   Congress has set numerical limitations of 65,000 per fiscal year for H-1B visas, with some specific circumstances that are exempt from this cap (e.g., where the beneficiary has a Master's or higher degree from a U.S. institution of higher education).

a. H-1B SPECIALTY OCCUPATION – IDENTIFIED AS H-1B1

Specialty Occupation - means an occupation which requires theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry level into the occupation in the U.S.

The alien must hold a U.S. baccalaureate or higher degree required by the specialty occupation, or a foreign degree determined to be equivalent, hold an unrestricted license to immediately perform the specialty occupation if a license is required, or have education, specialized training and/or progressively responsible experience that is equivalent to a U.S. baccalaureate degree.
The alien does not need to retain their foreign residence abroad. The doctrine of dual intent applies. The alien may, at the same time they are in the U.S. as a H-1B nonimmigrant, seek to become a permanent resident.
8 C.F.R. § 214.2(h)(4)(iii)(A) requires for H-1B petitions involving a "specialty occupation" that the position meet one of the following criteria:

A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that only an individual with a degree can perform it. For example, as an Industry-wide Standard, a bachelor's degree in Accounting is normally a minimum prerequisite for a Certified Public Accountant position with an accounting firm.

The employer normally requires a degree or its equivalent for the position; OR
The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In a case where a bachelor's degree is less directly related to the occupation in question, it would be beneficial for the petitioner to list:

> Relevant course work of the beneficiary in order to further establish the direct relevance of the degree to the position, and
> Show that the position is indeed professional in nature.

Job Duties: The petitioner must provide a detailed description of the job duties to be performed. While both the job and the beneficiary must meet the above stated requirements, the mere fact that the beneficiary meets the requirements of the position does not necessarily mean that the duties to be performed require an individual of that caliber.

If the detailed description does not persuade you that the job offered meets the requirements of a "specialty occupation", useful guidance may be found in the Reference Library or on-line. A good reference is the Department of Labor's Occupational Outlook Handbook (OOH). The OOH outlines the duties normally performed and basic educational and experience requirements.

Note: If the alien does not have a U.S. degree or its equivalent, must have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Petitions filed for H-1B classification must be accompanied by a Labor Condition Application (LCA), Form ETA 9035, for the alien's occupational specialty with evidence of having been seen and stamped by the Department of Labor (DOL). On Form ETA 9035 the petitioner (employer) certifies that:

- The alien hired in a specialty occupation (or as a fashion model) will be paid the higher of the actual or prevailing wage for the occupation in the local area of employment
- The alien will be provided with working conditions which will not adversely affect the working conditions of workers similarly employed;
- There is no strike or lockout;
    - No U.S. worker has been or will be displaced as a result of the alien's employment
- The LCA contains the following information:

1. Number of alien workers sought,
2. The occupational classification,
3. The wage rate,
4. Working conditions, and
5. Period of intended employment

Certification by the DOL of a Labor Condition Application (LCA) in an occupational classification does not constitute a determination by that agency that the occupation is a specialty occupation. DOL Certification is evidence that the employer filing the LCA has agreed to:

1. Offer the actual wage level for the occupational classification at the place of employment, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, determined at the time of filing the LCA.

2. Provide working conditions for such aliens that will not adversely affect the working conditions of United States workers similarly employed.

3. Attest on the day the application was signed and submitted to DOL that there was not a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification at the place of employment, and if such a strike, lockout, or work stoppage occurs after submitting the application, the employer will notify the Employment and Training Administration (ETA) within three days of such occurrence and the application will not be used in support of a petition filed with USCIS for H-1B nonimmigrant to work in the same occupation at the place of employment until the ETA determines the strike, lockout, or work stoppage has ceased.

4. Provide notice of filing to the bargaining representative (if any) or have a posted notice of filing in conspicuous locations at the place of employment.

    a. Must be filed by a U.S. employer (or agent thereof).
    b. The maximum initial period of admission is the validity of Form I-129 but may not exceed 3 years.

b. H-1B DEPARTMENT OF DEFENSE (DOD) WORKER – IDENTIFIED AS H-1B2

1. Department of Defense Workers – The alien is coming temporarily to the U.S. to perform services of an exceptional nature relating to DOD cooperative research and development projects or co-production projects which require a baccalaureate or higher degree, or its equivalent, to perform the duties.

2. An LCA is not required for the H-1B2 DOD worker.

3 The petition must contain a verification letter from the Department of Defense project manager for the project the alien will be working on.

    a) DOD is limited to100 visas per year. The number of DOD visas does not affect the cap of 65,000 set for the H-1B classification.

    b) The maximum initial period of admission is the validity of the I-129 petition, but not to exceed 5 years.

c. H-1B FASHION MODEL – IDENTIFIED AS H-1B3

1. Fashion Model - Any alien of distinguished merit and ability in the field of fashion modeling coming temporarily to the U.S. to perform services in that field.

2. Services to be performed must involve events or productions that have a distinguished reputation, or the services are to be performed for an organization or establishment that has a distinguished reputation for, or record of, employing prominent persons.

3. An LCA is required for the H-1B3 classification.

4. Maximum initial period of admission is the validity of the I-129 petition, not to exceed 3 years.

2. H-1C REGISTERED NURSE

a. According to the Department of Labor there are only fourteen facilities in the U.S. that were initially determined to qualify to apply for H-1C registered nurses. The DOL acknowledges that other facilities might qualify, but have yet to be identified

b. The facility of intended employment must meet DOL eligibility requirements and have an un-expired attestation from the Department of Labor filed on Form ETA 9081.

c. The alien must be employed at a facility located in a Health Professional Shortage Area (HPSA) as designated by the Department of Health and Human Services (DHHS).

d. Registered Nurses must:

1) Have a full and unrestricted license to practice nursing in the country where they were educated or trained, or they were educated in the U.S.

2) Have passed the exam given by the Commission on Graduate Foreign Nursing Schools (**CGFNS** – Examination given to foreign nurses seeking employment in the U.S. The exam is given by selected certified agencies in various parts of the country bi-annually. There are two components to the exam, competency and English proficiency.

3) Be fully qualified and eligible under the laws governing the place of intended employment.

e. Multiple named beneficiaries are allowed.

f. Visas in this classification may not exceed 500 in a fiscal year. States with a population of fewer than nine million, according to the 1990 Census, are limited to 25 H-1C nurses. States with a population over nine million are limited to 50 nurses.

g. The maximum initial period of admission is the validity of the I-129 petition, not to exceed 3 years.

Labor Certification - A petition to import an alien, as an H-2A or H2B worker may not be approved by the Service unless the petitioner has applied (on Form ETA 9035) to the Secretary of Labor for a certification that:

1. There are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

2. The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

3. H-2A TEMPORARY AGRICULTURAL WORKER

a. The H-2A alien is coming to the U.S. to engage in temporary or seasonal agricultural employment.
b. For H-2A classification, temporary and seasonal employment generally means seasonal planting, thinning, harvesting, etc., when labor levels are far above those necessary for normal ongoing operations. This need generally lasts less than a year. It can also apply to a longer cycle.
c. This classification requires temporary labor certification from the DOL.
d. The alien must be the beneficiary of an approved I-129 petition.
e. The I-129 petition may include multiple beneficiaries either named or unnamed.
f. The petitioner may be a single U.S. entity, or an agent representing several U.S. entities, or representing foreign entities.
g. In the case of an agent petitioner, the beneficiary may work for multiple employers.
h. Congress has not set any annual numerical limits to this classification.
i. The H-2A alien must maintain a residence abroad.
j. The maximum initial period of admission is the validity of the I-129 petition, not to exceed 1 year.

4. H-2B TEMPORARY WORKER OTHER THAN AGRICULTURE

a. The alien is coming to the U.S. to perform temporary services or labor other than agricultural.
b. For the H-2B classification, temporary services or labor generally means any job (other than agricultural) in which the petitioner's need for the duties to be performed by the alien workers are temporary, rather than the job itself. Ordinarily, this means that the need must be a year or less. It may be a one-time occurrence, a seasonal need, a peak load need or an intermittent need. Examples would include but are not limited to:

c. Fighting massive forest fires
d. Rebuilding homes after natural disasters
e. Catalog company during a busy holiday season
f. Winter ski lodge during peek season
g. Aliens that are coming to work in the medical profession are prohibited from H-2B classification.
h. This classification requires temporary labor certification from the DOL.
i. The alien must be the beneficiary of an approved I-129 petition.
j. The I-129 petition may include multiple beneficiaries all of whom must be named.
k. The petitioner may be a single U.S. entity, or an agent representing several U.S. entities or representing foreign entities.
l. In the case of an agent petitioner, the beneficiary may work for multiple employers.
m. Congress has set an annual numerical limit of 66,000 visas.
n. The alien must maintain a residence abroad.
o. Maximum initial period of admission is the validity of the I-129 petition, not to exceed one (1) year.

5. H-2R RETURING H-2B WORKER

a. The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 created the classification of H-2R. The alien is returning to the United States to perform temporary services or labor other than agricultural.
b. The alien must have had a H-2B visa at least one (1) of the previous three (3) years prior to the fiscal year of the approved start date. In addition, they must have certification from petitioning employer that the alien is a returning worker.
c. Approved occupations and restrictions are the same as H-2B.
d. This classification requires temporary labor certification from the DOL
e. The alien must be the beneficiary of an approved I-129 petition..
f. The I-129 petition may include multiple beneficiaries all of whom must be named.
g. The petitioner may be a single U.S. entity, or an agent representing several U.S. entities or representing foreign entities.
h. In the case of an agent petitioner, the beneficiary may work for multiple employers
i. Visas issued are not counted against the H-2B limits.
j. The alien must maintain a residence abroad.
k. Maximum initial period of admission is the validity of the I-129 petition, not to exceed one (1) year.

6. H-3 TRAINEE

a. There are two distinct sub-categories to the H-3 trainee classification.
b. The first sub-category is an alien who is coming to the U.S. temporarily to receive training in any field of endeavor. The alien is in the U.S. at the invitation of an organization or individual for the purpose of receiving training in any field of endeavor, such as, agriculture, commerce, communications, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category does not apply to physicians, who are statutorily ineligible to use H-3 classification in order to receive any type of graduate medical education or training.
c. The second sub-category is an alien who is participating in a special education exchange visitor program for children with physical, mental, or emotional disabilities. The facility providing the training program must have professionally trained staff and a structured program for providing education to children with disabilities, and for providing training and hands-on experience to participants in the program.
d. The H-3 classification does not require a labor certification or LCA.
e. The alien must be the beneficiary of an approved I-129 petition.
f. Multiple named beneficiaries are allowed.
g. There are no annual numerical limits for the H-3 trainee classification. However, Congress has set a numerical limitation of 50 per fiscal year for the Special Education trainee.
h. The alien must maintain a residence abroad.
i. For the alien trainee the maximum initial period of admission is the validity of the I-129 petition, not to exceed 2 years. For the alien participating in a Special Education program, the maximum initial period of admission is the validity of the I-129 petition, not to exceed 18 months.

7. H-4 Derivatives

Spouses and children of H-1, H-2 and H-3 aliens are granted H-4 classification. The status for each of these derivatives is dependent on the status of the principle alien, and they must accompany the principle alien or follow to join them.

8. L-1 INTRACOMPANY TRANSFEREE

This classification, which originated in 1970, was designed to facilitate the temporary transfer of aliens to the U.S. to continue employment with a parent, branch, subsidiary or affiliate of the same employer that employed the alien abroad. INA § 101(a)(15)(L); 8 C.F.R. § 214.2(*l*)(1)(i).

An alien who within the preceding three (3) years has been employed abroad for one (1) continuous year by a qualifying organization may be admitted temporarily to the United States to be employed by a parent, branch, affiliate or subsidiary of that employer in a managerial, or executive capacity, [L-1A], or in a position requiring specialized knowledge [L-1B].

Managerial - directs the organization, a department or a function of the organization. Like executives, a qualifying manager will not be overseeing the primary performance of a task. Also see 8 C.F.R. § 214.2(I)(1)(ii)(B))

Executive - is one who directs the management of the company or a major part of the function of the organization. Typical executive positions are presidents, vice-presidents and controllers. An executive is expected to have a supervisory role in the company (either over personnel or a function) and would not include people who are primarily performing the specific tasks of production or providing service to customers. (Also see 8 C.F.R. § 214.2(I)(1)(ii)©)

Specialized Knowledge - refers to employees with a special knowledge of the company's products and their applications in world markets; an advanced or proprietary of the company's processes or procedures. (Also see 8 C.F.R. § 214.2(I)(1)(ii)(D)).

- The alien must be the beneficiary of an approved I-129 petition. There are two (2) types of petitions for L-1 intra-company transferees:

Individual petition – an I-129 petition filed by a qualifying organization on behalf of a single named alien granting approval for that specific petitioner to import the named L-1 employee to work in the U.S. **Qualifying Organization** - means a U.S. or foreign firm, corporation, or other legal entity which has a qualifying relationship as a parent, branch, affiliate, or subsidiary who is or will be doing business as an employer in the U.S. and in at least one (1) other country for the duration of the alien's stay in the U.S. as an L-1.

a. Blanket petition – an I-129 petition filed by a qualifying organization without specific beneficiaries that serves to grant continuing approval for itself and some or all of its parents, branches, subsidiaries, and affiliates to import L-1 alien employees to work in the U.S.

b. The petitioner filing Form I-129 may file for a single L-1 beneficiary or file a Blanket Form I-129. The alien may be employed in an established office or come to the U.S. to open or be employed temporarily in a new office on behalf of the qualifying organization abroad. **New Office** - means an organization that has been doing business in the U.S. through a parent, branch, affiliate, or subsidiary for less than one (1) year

c. The petitioner must establish that:

1) The petitioner and the organization, which employed or will employ the alien, are qualifying organizations.
2) The alien will be employed in an executive, managerial, (L-1A) or specialized knowledge (L-1B) capacity.
3) The alien has at least one (1) continuous year of full-time employment abroad with the qualifying organization within the three (3) years preceding the filing of the petition
4) The alien's prior one (1) year of employment was in an executive, managerial, or specialized knowledge capacity.

d. In addition to the above, the petitioner filing a Blanket Form I-129 must also establish that:

1) The petitioner and all qualifying entities are engaged in commercial trade.
2) The petitioner's office in the U.S. has been doing business for one (1) year or more.
3) The petitioner has three (3) or more domestic and foreign branches, subsidiaries, or affiliates.
4) The petitioner and all qualifying organizations have obtained approval for at least a total of 10 L nonimmigrant aliens; or have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or have a U.S. workforce of at least 1000 employees.

i. Labor certification or LCA is not required.
j. Congress has not set any annual numerical limits.
k. Aliens in the L-1A or L-1B classification do not need to retain their foreign residence. The doctrine of dual intent applies.
l. The maximum initial period of admission is the validity of the I-129 petition, not to exceed three (3) years. For those aliens establishing or coming to work in a new office the validity of the petition is one (1) year.
m. Spouses and children of L-1 aliens are granted L-2 classification. The status for each of these derivatives is dependent on the status of the principle L-1 alien, and they must accompany the principle L-1 alien or follow to join them.

EPO #5: Classify applicants based on established criteria for "O", "P" and "Q" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

Background: The O, P, and Q nonimmigrant classifications are designated for specific types of eligible aliens entering the U.S. as temporary workers. Hiring foreign workers for employment in the U.S. normally requires approval from several government agencies. Certain classifications of temporary nonimmigrant workers require employers to seek written advisory opinions from the appropriate peer group, labor organization, or management organization (commonly called letters of consultation). **Advisory Opinion** – AKA consultation letter – means a consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in

the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications. It shall be in the form of a written advisory opinion. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts, which supports the conclusion reached in the opinion. Advisory opinions must be submitted in writing and must be signed by an authorized official of the group or organization. Consultations are advisory and are not binding on the Service.

> Once the consultation is issued, the employer may petition USCIS to classify an alien as a temporary worker by filing Form I-129. In most cases the beneficiary of an approved I-129 petition may be admitted up to ten days before the validity period of the petition and remain ten days after it ends. However, the alien may not work except during the validity period of the petition

1. O-1 ALIENS OF EXTRAORDINARY ABILITY

The Immigration Act of 1990 created the O nonimmigrant classification. It specifically provides for the admission of persons with extraordinary abilities in the sciences, arts, education, business, and athletics - **Extraordinary Ability in the Field of Art** - means distinction at a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered. **Extraordinary Ability in the Field of Science, Education, Business, or Athletics** - means a level of expertise indicating that the person is one of the small percentage who have risen to the very top of the field of endeavor.
or extraordinary achievement in motion picture and television production and their essential support personnel. **Extraordinary Achievement with Respect to Motion Picture and Television Productions** - means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and r **Arts** - includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. It includes not only the principal creators and performers but also other essential persons.

INA § 101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(1)(ii)(A).

a. An alien who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim and who is coming temporarily to the U.S. to continue work in the area of extraordinary ability, or;

b. An alien who has extraordinary ability with respect to motion picture and television production as demonstrated by a record of recognized extraordinary achievement in the field and who is coming to the U.S. to continue working in that field.

c. The O-1 classification relates to individual aliens not groups.

d. The alien must be the beneficiary of an approved Form I-129 petition. Documentary requirements and other evidence for establishing eligibility for the O-1 classification include, but are not limited to:

e Receipt of a major, internationally recognized award such as the Nobel Prize or similar, OR;

1) At least three of the following types of documentary evidence:
2) Receipt of nationally or internationally recognized prizes or awards for excellence;
3) Membership in associations in the field for which classification is sought, which require outstanding achievements of their members;
4) Published material in professional or major trade publications or major media about the alien, relating to the alien's work;
5) Participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization;
6) Original scientific, scholarly, or business-related contributions of major significance;
7) Authorship of scholarly articles in the field, in professional journals, or other major media;
8) Employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
9) Commanded a high salary or will command Event - means an activity such as, but not limited to. A scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. It could also include short vacations, promotional appearances, stopovers, or professional athletic contract a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
10) Extraordinary ability in the Arts requires evidence of being nominated for or receipt of a significant national or international award or prize in the particular field such as an Academy Award, Grammy, or Director's Guild Award, or similar, OR;
11) At least three of the following types of documentary evidence:

a) Performed, and will perform, services as a lead or starring participant in a production or event which has a distinguished reputation;
b) Achieved national or international recognition for achievements;
c) Performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation;
d) Has a record of major commercial or critically acclaimed successes;
e) Has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts; or
f) Has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field.

12) Extraordinary achievement in the motion picture or television industry requires evidence of being nominated for or receipt of a significant national or international award or prize in the particular field such as an Academy Award, Grammy, or Director's Guild Award, or similar, OR;
13) At least three of the following types of documentary evidence:

a) Has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation;
b) Has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
c) Has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation;
d) Has a record of major commercial or critically acclaimed successes;
e) Has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field; or
f) Has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field.

14) A consultation with an appropriate U.S. peer group, labor organization, or management organization in the area of the alien's ability regarding the nature of the work to be done and the alien's qualifications must also accompany the petition. **Peer Group** - means a group or organization, which is comprised of practitioners of the alien's occupation. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for the purpose of consultation.

15) Additional documentary requirements necessary to support the petition:
16) The employer must file Form I-129 with the proper fee, before the alien employee's previously authorized status expires. Form I-129 is filed with the California Service Center or the Vermont Service Center.
17) The alien must not be the subject of removal proceedings.
18) A letter from the employer must indicate the alien's position, duties and responsibilities, and remuneration.
19) Evidence the alien has maintained previously accorded nonimmigrant status, as evidenced by the alien's Form I-94.
20) Congress has not set any annual numerical limits.
21) Aliens in the O-1 classification do not need to retain their foreign residence. The doctrine of dual intent applies.
22) The alien may be admitted up to 10 days prior to the validity of the petition and may remain up to 10 days after the validity of the petition expires. Even so, the alien may only engage in employment during the validity period of the I-129.
23) The maximum period of initial admission is the validity of the I-129 petition, but not to exceed three (3) years.

24) The O-2 classification is available for aliens who are coming temporarily to the U.S. solely to assist an O-1 in the field of arts, athletics, or the field of motion picture or television production. See 8 C.F.R. § 214.2(o)(1)(ii)(B) for the eligibility and evidentiary requirements for this classification.
25) Spouses and children of O-1 and O-2 aliens are granted O-3 classification. The status for each of these derivatives is dependent on the status of the principle alien, and they must accompany the principle alien or follow to join them.

2. P-1 INTERNATIONALLY RECOGNIZED ATHLETES / ENTERTAINMENT GROUP

The P classification was created by the Immigration Act of 1990, specifically to provide for certain athletes, entertainers, and artists who are coming to the U.S. to compete, hold an event, or perform. INA § 101(a)(15)(P); 8 C.F.R. § 214.2(p)(1)(i).

The alien is coming temporarily to the U.S. as an internationally recognized athlete in an individual capacity **Internationally Recognized** means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading or well known in more than one country.or as a member of a team, **Team** means two(2) or more persons organized to perform together as a competitive unit in a competitive event.

OR members of an internationally recognized entertainment group **Entertainment Group** - means two (2) or more persons established as one entity or unit to perform or to provide a service. This "group" relates only to performing P-1 aliens. It does not include individuals who assist in the presentation who are not on the stage (e.g., lighting or sound technicians). These support aliens would need to be petitioned for as essential support P-1's and a separate petition must be filed for them. If a solo artist or entertainer traditionally performs on stage with the same group of aliens, e.g., back-up singers or musicians, the act may be classified as a group. commensurate with activities such as competition, event, or performance. **Competition, Event, or Performance** – means an activity such as an athletic competition or season, tournament, tour, exhibit, project or entertainment event or engagement. Such activity could include short vacations, promotional appearances and stopovers, which are incidental and/or related to the activity. An athletic competition or entertainment event could include an entire season of performances. A group of related activities shall also be considered an event. Members of a group **Member of a Group** means a person who is actually performing the entertainment services and must meet the 75% rule **The "75% rule"** - means that 75% of the members of the group must have been performing services for such group for a minimum of one (1) year or more. (Special provisions apply for certain entertainment groups including but not limited to alien circus personnel). If a group does not meet the 75% rule, the artist or entertainer would need to qualify as an O-1 and the back-up band as O-2's.

The alien is the beneficiary of an approved Form I-129 petition classifying the alien as a P-1. The petitioner of the I-129 may or may not necessarily be the alien's sponsor. **Sponsor** - means an established organization in the U.S. that will not directly employ a P-1, P-2 or P-3 alien but will assume responsibility for the accuracy of the terms and the conditions specified in the petition.

1) Form I-129 filed for an alien athlete entering the U.S. individually or as part of a team (P-1A) to perform at a specific athletic competition, at an internationally recognized level of performance, must establish:

2) The athlete (competing individually or as a member of a U.S. team) has achieved international recognition in the sport based on his or her reputation.
3) The athlete or athletic team has a contract with a major U.S. sports league or team or a contract in an individual sport commensurate with international recognition. Contract - means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits
4) The athlete or athletic team meets at least two (2) of the following documentary requirements:

    a. Evidence of having participated, to a significant extent, in a prior season with a major U.S. sports league;
    b. Evidence of having participated in international competition with a national team;
    c. Evidence of having participated, to a significant extent, in a prior season for a U.S. college or university in intercollegiate competition;
    d. A written statement from an official of a major U.S. sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized;
    e. A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;
    f. Evidence that the individual or team is ranked if the sport has international rankings; or
    g. Evidence that the alien or team has received a significant honor or award in the sport. Form I-129 filed for an alien member of an internationally recognized entertainment group (P-1B) entering the U.S. temporarily to perform with, or as an integral and essential part of the performance of an entertainment group must establish:

        1) The group has been established and performing regularly for at least one (1) year.
        2) The names of each member of the group and the exact dates each member has been employed on a regular basis by the group.

3) The group has been internationally recognized in the discipline for a sustained and substantial period of time.
4) The group meets at least three (3) of the following documentary requirements:

    a. Evidence that the group has performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation;
    b. Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field;
    c. Evidence that the group has performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation;
    d. Evidence that the group has a record of major commercial or critically acclaimed successes;
    e. Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field; or
    f. Evidence that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to others similarly situated in the field.

5) The petitioner may be a single U.S. entity, or an agent representing several U.S. entities or representing foreign entities. In the case of an agent petitioner, the beneficiary may work for multiple employers.
6) The alien member of a group or athletic team may not perform services separate and apart from the group or team.

The essential support personnel for a P-1A or P-1B are given the same classification as the principal individual athlete, an athletic team, or an entertainment group. Essential support personnel require a separate I-129 petition to be filed on their behalf. **Essential Support Alien** - means a highly- skilled, essential person determined by USCIS to be an integral part of the performance of a P-1, P-2 or P-3 alien because he or she performs support services which cannot be readily performed by a U.S. worker and which are essential to the successful performance of services by the P-1, P-2 or P-3 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed and experience in providing support to the P-1, P-2 or P-3 alien.

The P-1A athletes and P-1B members of entertainment groups do not need to retain their foreign residence. The doctrine of dual intent applies. P-1A and P-1B essential support personnel, however, are required to maintain a residence abroad.

The alien must be the beneficiary of an approved Form I-129. The maximum period of initial admission is the validity of the I-129 petition but cannot exceed the following restrictions:

a. For P-1A individual athletes and their essential support personnel – not to exceed five (5) years.

b. For P-1A members of athletic teams and their essential support personnel – not to exceed one (1) year.

c. For P-1B members of entertainment groups and their essential support personnel – not to exceed one (1) year.

d. The restrictions above are the maximum allowable time for the alien to remain in the U.S. Consequently, an extension of stay will be the remaining part of five (5) years for the P-1A athlete and essential personnel; one (1) year for the P-1A athletic team and essential personnel; and one (1) year for P-1B entertainment group and essential personnel.

3. P-2 RECIPROCAL EXCHANGE VISITOR

a. An artist or entertainer performing individually or as part of a group entering the U.S. temporarily to perform as an artist or entertainer under a reciprocal exchange program between an organization in the U.S. and an organization in another country.
b. The exchange of artists and entertainers must be similar in terms of caliber of artist or entertainer, terms and conditions, and number of aliens involved in the exchange.
c. Examples of negotiated reciprocal agreements include:

    1) The American Federation of Musicians (U.S.) with the American Federation of Musicians (Canada)
    2) The Actor's Equity Association (U.S.) with the Canadian Actor's Equity Association
    3) The Actor's Equity Association (U.S.) with the British Actor's Equity Association.

d. The alien must be the beneficiary of an approved Form I-129 petition classifying him or her as a P-2. The I-129 petition is filed by the sponsor and may include multiple named beneficiaries.
e. The petitioner may be a single U.S. entity, or an agent representing several U.S. entities or representing foreign entities. In the case of an agent petitioner, the beneficiary may work for multiple employers.
f. The I-129 petition for a P-2 alien or aliens must include:

1) A copy of the formal reciprocal exchange agreement between the U.S. organization and the foreign organization.
2) A statement from the sponsoring organization describing the reciprocal exchange of U.S. artists and entertainers.
3) Evidence that an appropriate labor organization was involved in negotiating the reciprocal exchange program.
4) Evidence that the alien or aliens seeking the classification have comparable skills and similar employment terms and conditions.
5) A consultation with an appropriate U.S. peer group, labor organization, or management organization in the area of the alien's ability regarding the nature of the work to be done and the alien's qualifications must be on file.

g. The P-2 classification includes the essential support personnel for the artist or entertainer. They will also receive P-2 classification; however, a separate I-129 petition must be filed on behalf of the essential support personnel.

h. The alien or aliens in the P-2 classification must maintain a residence abroad.

i. The maximum period of initial admission is the validity of the I-129 petition, but may not exceed one (1) year.

4. P-3 ARTIST OR ENTERTAINER IN CULTURALLY UNIQUE PERFORMANCE

Artists or entertainers individually or as a group, coming temporarily to the U.S. for the purpose of developing, interpreting, representing, coaching, or teaching a culturally unique traditional, ethnic, folk, musical, theatrical, or artistic performance or presentation.
Culturally Unique - means a style of artistic expression, methodology or medium that is unique to a particular country, nation, society, class, ethnicity, religion, tribe or other group of persons.

a. The cultural event or events will further the understanding or development of the alien's art form.
b. The program may be commercial or noncommercial in nature. It does not need to be sponsored by an educational, cultural, or government agency.
c. The alien must be the beneficiary of an approved Form I-129 petition classifying them as a P-3. The I-129 petition is filed by the sponsor, and may include multiple named beneficiaries.
d. The petitioner may be a single U.S. entity, or an agent representing several U.S. entities or representing foreign entities. In the case of an agent petitioner, the beneficiary may work for multiple employers.
e. The I-129 petition for a P-3 alien must establish:

1) The authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching a unique or traditional art form.
2) The documentation must come from recognized experts who have direct knowledge of the alien or group.
3) The performance of the alien or group is culturally unique.
4) All performances or presentations in the U.S. will be culturally unique events.
5) A consultation with an appropriate U.S. peer group, labor organization, or management organization in the area of the alien's ability regarding the nature of the work to be done and the alien's qualifications must be on file.

6) The P-3 classification includes the essential support personnel for the artist or entertainer. They will also receive P-3 classification;, however, a separate I-129 petition must be filed on behalf of the essential support personnel.
7) The alien or aliens in the P-3 classification must maintain a residence abroad.
8) The maximum period of initial admission is the validity of the I-129 petition, but may not exceed one (1) year.
9) The artist or entertainer must not be in removal proceedings.

5. P-4 Derivatives

Spouses and children of P-1, P-2 and P-3 aliens are granted P-4 classification. The status for each of these derivatives is dependent on the status of the principle alien, and they must accompany the principle alien or follow to join them.

6. Q-1 INTERNATIONAL CULTURAL EXCHANGE PROGRAM PARTICIPANT

The Q nonimmigrant classifications were established to allow eligible aliens temporary entry into the U.S. for the purpose of working under the specific terms of a program. INA § 101(a)(15)(Q)(i); 8 C.F.R. § 214.2(q)(2)(i). The Q-1 classification was created in 1990. The Q-2 classification (and Q-3 for their dependents) was created in 1998. Q-2 and Q-3 have sun setted.

a. The alien is coming temporarily to the U.S. to take part in an approved international cultural exchange program that provides practical training and employment for the purpose of sharing the history, culture, and traditions of the alien's country of nationality.

b. The alien Q-1 must meet the following qualifications:

1) Be at least 18 years of age at the time the petition was filed.

2) Is qualified to perform the service or labor; or receive the type of training stated in the petition.

3) Possesses the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public.
4) Has resided and been physically present outside the U.S. for the immediate prior year, if the alien was previously admitted as a Q-1.

c. The request for approval of the international cultural exchange program and the request to classify the alien as a Q-1 are filed simultaneously on Form I-129.

d. The international cultural exchange program must be approved by USCIS. The program must meet the following qualifications:

1) Accessibility to the public. The program must take place in a public setting such as a school or museum. Activities that take place in a private home or an isolated business do not qualify.
2) Cultural component. The program must have a cultural component, which is an essential and integral part of the alien's employment or training. It may include structured instructional activities such as seminars, courses, lecture series, or language camps.
3) Work component. The alien's employment or training in the U.S. may not be independent of the cultural component of the program.

e. The alien must be the beneficiary of an approved Form I-129 petition classifying him or her as a Q-1. The petition for a Q-1 alien must establish:

1) The employer in the U.S. is an eligible and qualified employer to participate in the program.
2) There is a qualified employee designated to administer the program.
3) The employer is actively doing business in the U.S.
4) The employer has the ability to pay the proffered wage.
5) The alien's wages and working conditions are comparable to local domestic employees.
6) The dates of birth, nationality, education, title, and job description for the alien participants.

f. Petitioner must be a U.S. entity and the petition may be for multiple named beneficiaries.

g. The alien must maintain a residence abroad.

h. Maximum period of initial admission is the validity of the I-129 petition, not to exceed 15 months.

EPO #6: Classify applicants for admission to the U.S. based on established criteria for "E", "R", "TN" and "I" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

NOTE: Initial visa requests for these classifications are made at a U.S. consulate overseas (no petition or application is filed with USCIS), except the TN classification for a citizen of Canada is requested at a U.S. port of entry. USCIS adjudicators are more likely to encounter these classifications upon the filing of an application to extend nonimmigrant status or application to change to a different nonimmigrant classification.

The "E" categories are designated for an alien of any of the countries with which the U.S. maintains an appropriate Treaty of Friendship, Commerce, or Navigation, who is coming to the U.S. to carry on substantial trade, including trade in services or technology, principally between the U.S. and the treaty country, or to develop and direct the operations of an enterprise in which the alien has invested, or is actively in the process of investing a substantial amount of capital. **INA §101(a)(15)(E)(i)**; 8 C.F.R. § 214.2(e)(1).

1. E-1 TREATY TRADER

a. An alien who is coming to the U.S. solely to carry on substantial trade either on his own behalf or as an employee of a foreign person or organization engaged in trade principally between the U.S. and the foreign state of which the alien is a national.
b. The alien must be a national of the treaty country.
c. The trading firm the alien works for or represents must have the nationality of the treaty country.
d. The alien must be employed in a supervisory or executive capacity, or possess skills essential to the efficient operation of the enterprise.
e. The international trade must be "substantial" in the sense that there is a sizable and continuing flow of international trade items.
f. The alien's country must be a signatory to the trade agreement and carry on a substantial proportion of trade or services with the U.S. A substantial proportion means over 50% of the volume of international trade of the treaty trader is conducted between the U.S. and the treaty country of the treaty trader's nationality.
g. Trade is the existing international exchange of items of trade for consideration between the U.S. and the treaty country. Title to the trade items must pass from one treaty party to the other. Items of trade include, but are not limited to, goods, international banking, data processing, advertising, accounting, design, engineering, tourism, etc.
h. No petition or labor certification is required. Aliens outside the U.S. seeking this classification may apply directly to the U.S. consular office abroad. Form I-129 is used only if the alien is already in the U.S. and is applying for a change of status, extension of stay, or change of employment.
i. The alien must intend to depart the U.S. upon the expiration or termination of the E-1 visa.

j. The alien does not need to retain a foreign residence. The doctrine of dual intent applies.

2, E-2 TREATY INVESTOR

a. An alien who has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the U.S. and is coming to the U.S. solely to develop and direct the investment enterprise.
b. The alien must be a national of the treaty country.
c. The trading firm the alien works for or represents must have the nationality of the treaty country.
d. If the petitioner is not the principal investor, the alien may be an employee but must be employed in a supervisory or executive capacity or possess special qualifications that are essential to the successful or efficient operation of the treaty enterprise.
e. The investment must be in an actual operating commercial enterprise or one that is in the active process of formation, not merely constituting a paper corporation. **Paper Corporation** – refers to an entity (usually a company) invested with legal powers granted to them by a state to conduct lawful business. The idea of a "paper corporation" is a company identified as a legal enterprise, which has not conducted any meaningful business. It is a corporation in paper, only.
f. The investor must be in possession of and have control over the capital invested or being invested.
g. Passive speculative investment in stock or real estate held for appreciation in value is not sufficient.
h. The investment must be at risk. The capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets.
i. The investment must be substantial. An investment of a relatively small amount of capital in a marginal enterprise for the sole purpose of earning a livelihood is not substantial.
j. A petition or labor certification is not required. Aliens outside the U.S. who are seeking this classification may apply directly to the U.S. consular office abroad. Form I-129 is used only if the alien is already in the U.S. and if applying for change of status, extension of stay, or change of employment.
k. The alien must intend to depart the U.S. upon the expiration or termination of the E-2 visa.
l. The alien does not need to retain a foreign residence. The doctrine of dual intent applies.

3. E-3 SPECIALTY OCCUPATION WORKERS FROM AUSTRALIA

On May 11, 2005 President Bush signed into law the REAL ID Act, which created the new E-3 visa category. INA § 101(a)(15)(E)(iii).

a. An alien who is solely coming to the U.S. to perform services in a specialty occupation. This classification has similar requirements as an H-1B – alien that performs services in a specialty occupation.
b. The alien must be a national of the Commonwealth of Australia.
c. The alien must hold a U.S. baccalaureate or higher degree required by the specialty occupation or a foreign degree determined to be equivalent; or have education, specialized training and/or progressively responsible experience that is equivalent to a U.S. baccalaureate degree.
d. The alien must hold an unrestricted license to perform the specialty occupation, if a license is required.
e. Congress has limited the number of visas to 10,500 per year.
f. The E-3 classification requires a LCA.
g. The E-3 alien must maintain a residence abroad.
h. The maximum initial period of admission is two (2) years.

4. R-1 TEMPORARY RELIGIOUS WORKERS

This nonimmigrant classification was created in 1990, specifically for aliens seeking admission to the U.S.to perform the duties of a religious worker. The alien must be coming to the U.S. solely to carry on the vocation of a minister of tej religious denomination or to work in a professional capacity in a religious vocation or religious occupation. (INA §101(a)(15)(R); 8 C.F.R. 214.2(R)(1). USCIS has identified a significant level of fraud in this classification in recent years, and specific protocols are in place to address these issues.

Religious Occupation - means an activity, which relates to a traditional religious function. Examples include liturgical workers, religious instructors or cantors, workers in religious hospitals or religious health care facilities, missionaries, religious broadcasters. It does not include janitors, maintenance workers, clerks, fundraisers or persons involves solely in the solicitation of donations.
Religious vocation - means a calling to religious life, evidenced by the demonstration of a lifelong commitment, such as taking vows. Examples include nuns, monks, and religious brothers and sisters.

Minister - means an individual duly authorized by a recognized denomination to conduct religious worship and perform other duties usually performed by members of the clergy, such as administering the sacraments, or their equivalent. Deacons, practitioners of Christian Science and officers of the Salvation Army may be deemed ministers. The term does not include a lay preacher not authorized to perform such duties.

Professional Capacity - means an activity in a religious vocation or occupation for which the minimum of a U.S. baccalaureate degree or a foreign equivalent degree is required. An alien coming temporarily to the U.S. for the purpose of carrying on the activities of a religious worker in the vocation of a minister of a religious denomination, in a professional capacity for a religious organization, or in another religious vocation or occupation at the request of a religious organization.

a. No petition or labor certification is required. Aliens outside the U.S. seeking this classification may apply directly to the U.S. consular office abroad. Form I-129 is used if the alien is already in the U.S. and is applying for a change of status, extension of stay, or change of employment.
b. The alien must maintain a residence abroad.
c. Change of employer may be authorized with the filing of a new I-129 by the new religious organization for the alien classified as R-1.
d. The maximum initial period of admission is three (3) years. Extensions of stay are authorized in the 2-year increments. Total time in the U.S. as an R-1 is limited to five (5) years. The alien may return to the U.S. in R-1 status after remaining outside the U.S. for one (1) year.
e. Spouses and children of R-1 aliens are granted R-2 classification. The status for each of these derivatives is dependent on the status of the principle alien, and they must accompany the principle alien or follow to join them.

5. TN – NAFTA

On January 1, 1994 the North American Free Trade Agreement (NAFTA) was established creating one of the largest trading areas in the world. Besides trade, it allows eligible Canadian and Mexican citizen business persons to seek temporary entry into the U.S. to engage in business activities at a professional level in one of the professions set forth in Appendix 1603.D.1 of the NAFTA. INA § 214(e). List of professions from Appendix 1603.D.1 of the NAFTA reprinted in 8 C.F.R. § 214.6 (c).

Examples include, but are not limited to:

a. Accountant
b. Economist
c. Hotel Manager
d. Scientist
e, Medical Professions
f. Computer Systems Analyst
g. Engineer
h. Landscape Architect
i. Technical Publications Writer

6. TN - CANADIAN OR MEXICAN CITIZEN

a. A citizen of Canada or Mexico who seeks to temporarily enter the U.S. pursuant to the provisions of Section D of Annex 1603 of the NAFTA to engage in business activity at a professional level.
b. No labor certification or LCA is required.
c. Congress has not set any numerical limitations to this classification.
d. Temporary entry, as defined in the NAFTA, means entry without the intent to establish permanent residence, so the alien must retain a residence abroad. The doctrine of dual intent does not apply.

e. A citizen of Canada seeking entry into the U.S. as TN under the provisions of the NAFTA may apply for that classification directly at a "Class A" port-of-entry (U.S. airports handling international flights or a pre-flight inspection airport abroad) where they are seeking admission. A citizen of Mexico seeking entry into the U.S. as TN under the provisions of the NAFTA may apply for that classification at a U.S. consulate or embassy in Mexico. An approved Form I-129 petition for initial entry from outside the U.S. is not required. The TN applicant must provide the following:

f. Canadian Citizen:

1) Evidence of Canadian citizenship.
2) A valid passport is required if the Canadian citizen is arriving from outside the Western Hemisphere.
3) A copy of their college degree/diploma and employment records which establishes qualification for the prospective job.
4) A statement or letter from their prospective U.S.-based employer offering the alien a job in the U.S. in one of the professions listed in Appendix 1603.D.1 of the NAFTA. Included in the letter is a brief summary of the alien's job duties and responsibilities, anticipated stay in the U.S., and arrangements for remuneration for services.
5) The appropriate processing fee.
6) Canadian citizens inside the U.S. in another valid nonimmigrant classification may be granted TN status by having the prospective U.S. employer request the classification by filing Form I-129 on their behalf.

g. Mexican Citizen:

1) Evidence of Mexican citizenship.
2) A copy of their college degree/diploma and employment records which establish qualification for the prospective job.
3) A statement/letter from their prospective U.S.-based employer offering the alien a job in the U.S. in one of the professions listed in Appendix 1603.D.1 of the NAFTA. Included in the letter is a brief summary of the alien's job duties and responsibilities, anticipated stay in the U.S., and arrangements for remuneration for services.
4) The appropriate processing fee.
5) Mexican citizens outside the U.S. must apply for a nonimmigrant visa in the TN classification directly to a consular office abroad.
6) Mexican citizens inside the U.S. in another valid nonimmigrant classification may be granted TN status by having the prospective U.S. employer request the classification by filing Form I-129 on their behalf.
7) Mexican citizens require a valid passport and nonimmigrant visa in the TN classification.

8) Maximum initial period of admission not to exceed one (1) year. Extensions of stay are authorized in one-year increments. There are no limits on number of extensions.

7. I - REPRESENTATIVE OF FOREIGN INFORMATION MEDIA, SPOUSE, AND CHILD

a. On the basis of reciprocity with the foreign country, an alien who is a bona fide representative of the foreign press, radio, film, or other foreign information media, who seeks to enter the U.S. solely to engage in such vocation, and the spouse and children of such representative. INA § 101(a)(15)(I).
b. The I classification also includes freelance media in possession of a valid contract of employment.
c. Employees in the U. S. offices of organizations that distribute technical industrial information.
d. Accredited representatives of tourist bureaus, controlled, operated, or subsidized in whole or in part by a foreign government, who engage primarily in disseminating factual tourist information about that country.
e. The representative's employer must have its home office in a foreign country, the government of which grants reciprocity for similar privileges to representatives of such information media having home offices in the U.S.
f. The representative cannot change from one type of information media to another or change employers without permission from USCIS.
g. This classification does not include film or television media producing commercial entertainment (such as feature films or television shows).
h. The exception to this rule is only for informational or educational productions.
i. The spouse or child of the principal alien also receives the same I classification.

EPO #7: Classify applicants for admission to the U.S. based on established criteria for "K" and "V" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

The K classification was originally reserved for aliens and children (if any) who were entering the U.S. as the fiancé/fiancée of a U.S. citizen. The Legal Immigration Family Equity Act (LIFE Act) of December 21, 2000 expanded the K classification to include the spouse of a U.S. citizen who is waiting for approval of the petition filed on their behalf, and the spouse's children.

66 Fed. Reg. 19390 (April 16, 2001) implemented the new nonimmigrant visa categories including the K-3 and K-4, and allowed consular officers to issue nonimmigrant visas. Issuance of nonimmigrant visas will permit these aliens to apply for admission into the U.S. where they may await the completion of the immigration process with their U.S. citizen family member. INA § 101(a)(15)(K)(i); 8 C.F.R. § 214.2(k)(1).

1. K-1 FIANCÉES AND FIANCÉS OF UNITED STATES CITIZENS

a. An alien who seeks entry into the U.S. solely for the purpose of concluding a valid marriage to the U.S. citizen petitioner within 90 days of admission.

b. The alien must be the beneficiary of an approved Petition for Alien Fiancé or Fiancée (Form I-129F) pursuant to INA § 214(d). Documentary requirements to be submitted with the I-129F are as follows:

c. The U.S. citizen petitioner and alien beneficiary must have met in person within the two (2) years immediately preceding the filing of the I-129F petition. Such evidence may include airline tickets, hotel receipts, car rental receipts, etc, showing the citizen and the alien were at the same place at the same time. The meeting requirement may be waived if it is determined that compliance would violate strict and long established customs or social practices of either the citizen or the alien.

d. The alien must be able to conclude a legal marriage with the petitioner. Evidence of the termination of any prior marriages - divorce decree or death certificate of the previous spouse.

e. The alien must be eligible to receive an immigrant visa or the K-1 visa will not be issued.

f. The approval of Form I-129F shall be valid for four (4) months to allow the alien to secure a K-1 nonimmigrant visa and enter the U.S. An I-129F that has expired may be revalidated under certain conditions. The approval of any I-129F petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the U.S.

g. An Alien may not obtain K-1 status while inside the U.S.

h. Both the U.S. citizen and alien fiancé (e) must remain unmarried until the arrival of the alien in the U.S.

i. The marriage between the U.S. citizen petitioner and the fiancé (e) must take place within 90 days of the beneficiary's entry into the U.S. for the alien to remain in status.

j. After the K-1 alien enters the U.S. and concludes a valid marriage within 90 days to the U.S. citizen petitioner, the K-1 may apply to adjust status to that of a Lawful Permanent Resident (LPR).

k. Foreign residence is not required because the alien is intending to immigrate.

l. Period of admission is 90 days.

m. Under the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act" or "AWA"), Pub. L. 109-248, the adjudication of Form I-130, Petition for Alien Relative and I-129F Petition for Alien Fiancé(e), now include a discretionary component regarding the criminal history of the U.S. citizen or LPR petitioner.

n. The Act prohibits U.S. citizens and LPRs, who have been convicted of a specified offense against a minor, from filing a family-based immigrant petition on behalf of any beneficiary, unless USCIS determines in its discretion that the petitioner poses no risk to the beneficiary.

o. The Act also bars U.S. citizens convicted of these offenses from filing nonimmigrant visa petitions to classify their fiancé(e)s, spouses, or minor children as eligible for "K" nonimmigrant status, unless USCIS determines in its discretion that the petitioner poses no risk to the beneficiary.

2. Children of K-1 aliens are granted K-2 classification. The status for each of these derivatives is dependent on the status of the principle alien, and they must accompany the principle alien or follow to join them. Such derivatives must meet the definition of a "child" and must be listed on their parent's I-129F petition. They may be admitted up to one (1) year after entry of the K-1.

3. K-3 SPOUSE OF A U.S. CITIZEN

a. An alien spouse of a U.S. citizen who is the beneficiary of a Petition for Alien Relative Form I-130 filed by the U.S. citizen spouse that is still pending. **Form I-130** – Petition for Alien Relative, a citizen or lawful permanent resident of the United States may file this form to establish the relationship to certain alien relatives who wish to immigrate to the United States. A separate form must be filed for each eligible relative. The Service processes Form I-130 as a visa number becomes available. The alien is seeking entry into the U.S. solely for the purpose of waiting for the approval of such petition and the availability of an immigrant visa. INA § 101(a)(15)(K)(iii).

b. The K-3 alien must have a valid marriage to the U.S. citizen petitioner.

c. The U.S. citizen must file Form I-129F. After approval, the alien spouse must apply for the K-3 visa at the U.S. Embassy or Consulate having jurisdiction over the place where the marriage took place, or if married in the U.S., the Embassy or Consulate having jurisdiction over the spouse's residence abroad.

d. A K-3 nonimmigrant visa will not be issued to an alien who is the beneficiary of an approved I-130 filed by the U.S. citizen spouse.

e. An alien may not obtain K-3 status while inside the U.S.

f. K-3 status will be automatically terminated 30 days after any of the following events:

1) Denial or revocation of the I-130.
2) Denial or revocation of the immigrant visa application.
3) Denial or revocation of the alien's application for adjustment of status.
4) Divorce from the U.S. citizen petitioner.

Note: For purposes of this section, there is no denial or revocation of a petition or application until the administrative appeal applicable to that application or petition has been exhausted.

1) Once the Form I-130 is approved and an immigrant visa is available, the alien must file for adjustment of status.
2) Foreign residence is not required because the alien is intending to immigrate.
3) Period of admission is two (2) years.
4) Children of K-3 aliens are granted K-4 classification. The status for such derivatives is dependent on the status of the principle alien, and they must accompany the principle alien or follow to join them. Such derivatives must meet the definition of a "child" and must be listed on their parent's I-129F petition. K-4 status may not be obtained in the U.S.

4. V-1 SPOUSE OF AN LPR **Pending** - for the purposes of this section a pending petition is defined as a petition to accord a status under INA § 203(a)(2)(A) that was filed with the Service under INA § 204 on or before 12/21/2000, that has not been adjudicated.

   a. The alien spouse of a LPR who is the beneficiary of an approved Petition for Alien Relative (Form I-130), filed by the LPR seeking entry into the U.S. solely for the purpose of waiting for the availability of an immigrant visa. INA § 101(a)(15)(V)(i).

   b. Eligible persons residing outside the U.S. may apply for a V-1 visa at the Consular office having jurisdiction over the alien spouse's residence abroad.

   c. The alien must have a valid marriage to the LPR petitioner.

   d. To establish eligibility for V-1 status, the alien must show the following:

      1) Form I-130 filed with the Service on the alien's behalf by the LPR spouse was filed on or before December 21, 2000; and
      2) Form I-130 filed with the Service on the alien's behalf by the LPR spouse remains pending after three years from the date the petition was filed, or;
      3) Form I-130 was approved and more than three years have passed since the filing date, and either of the following circumstances exist:
      4) Eligible persons residing inside the U.S. may apply for V-1 status while inside the U.S. Request for change of status is filed on Form I-539, with special instructions found on Supplement A to Form I-539.

The application packet must also include the boimetric fee and Form I-693, Medical Examination of Aliens Seeking Adjustment of Status.

5) there is no immigrant visa immediately available,
6) there is a pending application for an immigrant visa, or
7) there is a pending application for adjustment of status.
8) The alien need not be maintaining a valid immigration status in the U.S. to be granted V-1.
9) The alien is eligible to apply for adjustment of status when an immigrant visa becomes available.
10) Aliens who were granted V-1 status inside the U.S. may travel abroad during the pendency of their application for adjustment of status. If they travel without permission, they will not be in danger of abandonment of the adjustment of status application. However, they must obtain a new V-1 visa at the consular office in order to return to the U.S. in V-1 status.
11) Under 8 C.F.R. § 215.1(j), V-1 status will be automatically terminated 30 days after any of the following events:

a. Denial, withdrawal, or revocation of the I-130.
b. Denial or withdrawal of the immigrant visa application.
c. Denial or withdrawal of the alien's application for adjustment of status.
d. Divorce of the V-1 from the LPR petitioner.

e. If the alien appeals the denial of the I-130, the alien retains V nonimmigrant status until 30 days after the administrative appeal is dismissed.
f. Foreign residence is not required because the alien is intending to immigrate.
g. The period of admission is usually two (2) years but restricted to six (6) months if:

i. The priority date of the I-130 is current, and;
ii. No application for an immigrant visa or adjustment of status has been filed.

5. Children of V-1 LPRs are granted V-2 classification. Such derivatives must meet the definition of a "child". The child is admitted for two (2) years or until the day before his or her 21st birthday (limited to six (6) months in certain circumstances). The child must be the beneficiary of an I-130 filed on or before December 21, 2000. The I-130 petition must:

a. Have been pending with legacy INS or USCIS for at least three (3) years, Or
b. Have been approved and three (3) years have passed since the filing date and a Second Preference visa number is not yet available, OR
c. Currently have a pending application for an immigrant visa or adjustment of status.
d. Derivative children of V-1 or V-2 LPRs are granted V-3 classification. Such derivatives must meet the definition of a "child" and satisfy the same requirements of the V-1 or V-2 classifications. The child is admitted for two (2) years or until the day before his or her 21st birthday (limited to six (6) months in certain circumstances).

EPO #8: Classify applicants for admission to the U.S. based on established criteria for "S", "T" and "U" nonimmigrant classifications, identify the periods of admission, and identify the documentary requirements for such classifications.

1. S-5 CERTAIN ALIENS SUPPLYING CRITICAL INFORMATION RELATING TO A CRIMINAL ORGANIZATION OR ENTERPRISE

The Violent Crime Control and Law Enforcement Act of 1994, also known as the "Crime Bill" created this classification. This new "S" nonimmigrant classification allows a federal or state law enforcement authority, which includes a state or federal court or U.S. Attorney's Office, to request "S" nonimmigrant classification of certain alien witnesses and informants.

Applications using **Form I-854** may be made for aliens who are in other countries awaiting entry into the U.S., or for aliens who are already in this country but, whose immigration status would not otherwise permit them to remain in the U.S. Form I-854 is used by law enforcement agencies (LEA's) to bring alien witnesses and informants to the United States in a "S" nonimmigrant classification. This form provides the Department of State (DOS) and the USCIS with information necessary to identify the requesting LEA, the alien witness and/or informant, and others, e.g., the United States Attorney, needing the information or testimony of that alien. It assists DOS and USCIS in the exercise of their joint responsibility to adjudicate requests by LEAs for S classification. INA § 101(a)(15)(S)(i); 8 C.F.R. § 214.2(t)(1).

a. An alien witness or informant coming to the U.S. for the purpose of providing critical information relating to a criminal matter.

b. To qualify for S-5 classification the alien must be sponsored by an interested federal or state Law Enforcement Agency (LEA), and it must be determined by the Director, USCIS, that the alien:

c. Possesses critical and reliable information concerning a criminal organization or enterprise

d. Is willing to supply, or has supplied, such information to federal or state LEA; and

e. Is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

f. The interested LEA must complete Form I-854 with all necessary endorsements and attachments. The I-854 must be filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward properly certified applications to the Director of USCIS.

g. The LEA or U.S. attorney must certify there is a need for the alien in the U.S. and that no promises may be, have been, or will be made indicating the alien may remain in the U.S. in S or any other nonimmigrant classification, parole, adjust status to LPR, or otherwise attempt to remain in the U.S. beyond a period of three (3) years.

h. The alien, including any derivative beneficiary who is 18 years of age or older, must sign a statement agreeing to the conditions of the S-5 status.

i. The interested LEA assumes responsibility for the S-5 alien. The alien must:

1) Report quarterly to the LEA on whereabouts and activities,
2) Notify the LEA of changes in home and work telephone numbers and any travel plans.
3) Abide by the law and all conditions of the S-5 status, Cooperate with the LEA.

j. Limited to 200 principal alien's per fiscal year.

k. The responsible LEA will coordinate the admission of the alien with the Service as to the date, time, place, and manner of the alien's arrival.

l. Maximum initial period of admission not to exceed three (3) years.

m. Aliens in S-5 status may be eligible for adjustment of status to LPR only if the information supplied substantially contributed to the success of an authorized criminal investigation or prosecution.

2. S-6 CERTAIN ALIENS SUPPLYING CRITICAL INFORMATION RELATING TO TERRORISM

g. An alien witness or informant coming to the U.S. for the purpose of providing critical information relating to a counterterrorism matter.

h. To qualify for S-6 classification the alien must be sponsored by an interested federal LEA, and it must be determined by the Secretary of State and the Director, USCIS, that the alien:

i. Possesses critical and reliable information concerning a terrorist organization, enterprise or operation

j. Is willing to supply or has supplied such information to a federal LEA

k. Is in danger or has been placed in danger as a result of providing such information; and

l. Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956

m. The interested federal LEA must complete Form I-854 with all necessary endorsements and attachments. The I-854 must be filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward properly certified applications to the Director of USCIS.

n. The federal LEA or U.S. attorney must certify there is a need for the alien in the U.S. and no promises may be, have been, or will be made indicating the alien may remain in the U.S. in S or any other nonimmigrant classification, parole, adjust status to LPR, or otherwise attempt to remain in the U.S. beyond a period of three (3) years.

o. The alien, including any derivative beneficiary who is 18 years of age or older, must sign a statement agreeing to the conditions of the S-6 status.

p. The interested LEA assumes responsibility for the S-6 alien. The alien must:

1) Report quarterly to the LEA on whereabouts and activities,
2) Notify the LEA of changes in home and work telephone numbers and any travel plans,
3) Abide by the law and all conditions of the S-6 status,
4) Cooperate with the LEA.

q. Limited to 50 principal aliens per fiscal year who qualify for a reward under the Secretary of State's anti-terrorist reward program.

r. The responsible LEA will coordinate the admission of the alien with the Service as to the date, time, place and manner of the alien's arrival.

s. Maximum initial period of admission is not to exceed thee (3) years.

t. Aliens in S-6 status may be eligible for adjustment of status to LPR only if the information supplied substantially contributed to:

1) The prevention or frustration of an act of terrorism against the U.S., or;
2) The success of an authorized criminal investigation or prosecution involving an act of terrorism against the U.S., and
3) The alien received a reward under section 36(a) of the State Department Basic Authorities Act of 1956.

3. T-1 VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS

This classification was created on October 28, 2000 when the Victims of Trafficking and Violence Protection Act was signed into law. An alien in the U.S. who is or has been a victim of a severe form of trafficking in persons as defined in INA § 101(a)(15)(T)(i).

The "T" classification allows victims of severe forms of trafficking in persons to remain in the U.S. if they have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons (unless under 15 years of age), and would suffer extreme hardship involving unusual and severe harm upon removal. **Victim of a Severe Form of Trafficking** - is anyone who has been subjected to:

a. Sex trafficking in which a **commercial sex** act is induced by force, fraud or **coercion**, or in which the person induced in the commercial sex act is under 18 years of age, or

b. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to **involuntary servitude**, **debt bondage**, or slavery.

c. **Coercion** - means threats of serious harm to, or physical restraint against, any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person.

d. **Commercial Sex Act** - means any sex act on account of which anything of value is given to or received by any person.

e. **Debt bondage** - means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those service as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited or defined.

f. **Involuntary servitude** – also known as peonage, means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that the person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. INA § 101(a)(15)(T)(i); 8 C.F.R. § 214.11(a).

g. To qualify for T-1 nonimmigrant status, it must be demonstrated that the alien:

1) Is a victim of a severe form of trafficking in persons;
2) Is physically present in the U.S., (American Samoa, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands), territories and possessions of the U.S. or at a port-of-entry thereto, on account of such trafficking in persons;
3) Has complied with any reasonable request for assistance in the investigation and prosecution of acts of trafficking in persons, unless the applicant is less than 15 years old;
4) Would suffer extreme hardship involving unusual and severe harm upon removal from the U.S.

h. Any alien is ineligible if there is evidence that the alien has ever engaged in a severe form of trafficking in persons.
i. The alien must also be admissible to the U.S. or obtain a waiver of inadmissibility from the Service. (Exceptions apply).
j. Aliens requesting T-1 status must apply directly to the Vermont Service Center (VSC) on Form I-914, Application for T Nonimmigrant Status. **Form I-914** - Provides temporary immigration benefits to aliens who are victims of severe forms of trafficking in persons, and to their immediate family members, as appropriate.
k. The applicant must provide the following:
l. A completed Form I-914 with the proper filing fee.
m. Three (3) current photographs
n. Proper biometric fee
o. Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons as set forth in 8 C.F.R § 214.11(f)
p. Evidence that the alien is in the U.S. as a result of an act of a severe form of trafficking in persons as set forth in 8 C.F.R. § 214.11(g)
q. Evidence that the alien (15 or older) has complied with reasonable requests for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons as set forth in 8 C.F.R. § 214.11(h)
r. Evidence that the alien would suffer extreme hardship involving unusual and severe harm if he or she were removed from the U.S., as set forth in 8 C.F.R. § 214.11(i)
s. All applicants for T-1 status must be physically present in the U.S. at the time of application.
t. Limited to 5,000 principal aliens granted T-1 status each fiscal year.
u. T-1 status is granted for a maximum period of three (3) years.

4. Spouses of T-1 aliens are granted T-2 classification, once they establish the relationship to the principle T-1. Children of T-1 aliens are granted T-3 classification, once they establish the relationship to the principle T-1 alien. Parents of a minor T-1 alien (under 21 years old) are granted T-4 classification, once they establish the relationship to the principle T-1 alien. The T-1 must list each of these relatives on his or her Form I-914 or file an I-914 on the relative's behalf. The status for each of these derivative classifications may be obtained inside or outside of the U.S.

5. U-1 VICTIMS OF CRIMINAL ACTIVITY

a. This classification was created on October 28, 2000 when the Victims of Trafficking and Violence Protection Act was signed into law. The "U" classification allows victims of crimes involving "criminal activity" (who have suffered substantial physical or mental abuse) to remain in the U.S. and assist law enforcement in the prosecution of these crimes by serving as material witnesses. **Criminal Activity** - referred to in this section is that involving one or more of the following mentioned crimes, or any similar activity in violation of federal, state or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary

servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. **INA § 101(a)(15)(U)**; INA § 101(a)(15)(U)(i)(I); INA § 214(p)(1). USCIS published the governing regulations as an "interim final rule" in September 2007.

b. An alien who has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in this section.

c. To qualify for U-1 status the applicant must establish that:

d. The alien has suffered substantial physical or mental abuse as a result of having been the victim of a qualifying criminal activity.

e. The alien (or if the alien is a child under 16, the parent, guardian or friend) possesses information about the criminal activity involved.

f. The alien (or if the alien is a child under 16, the parent, guardian or friend) has been helpful, is being helpful, or is likely to be helpful to a Federal, State or local law enforcement official, to a Federal, State or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State or local authorities investigating or prosecuting the criminal activity. The criminal activity violated the laws of the U.S. or occurred in the U.S. (including in Indian country and military installations) or in the territories and possessions of the U.S.

g. An alien who has suffered substantial physical or mental abuse as a result of designated criminal activity must file a Form I-918 Petition for Nonimmigrant U Status directly with the Vermont Service Center for U-1 nonimmigrant status.

h. The petition must be accompanied by a U Nonimmigrant Status Certification (Form I-918, Supplement B) from a federal, state, or local law enforcement official, prosecutor, judge, or other federal, state, or local authority investigating the criminal activity. The certification may also come from a Service official in certain circumstances. The certification shall state that the alien has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the designated criminal activity.

i. Limited to 10,000 principal alien (U-1) visas per fiscal year, although this limit does not apply to spouses, children, parents, and unmarried siblings who are accompanying or following to join the principle alien victim.

j. U-1 status is granted for a maximum period of four (4) years, although extensions are permitted upon certification from a certifying agency that the alien's presence in the U.S. is required for the investigation or prosecution.

k. Aliens in U-1 status are eligible for adjustment of status to LPR after they have been physically present in the U.S. for a continuous period of three (3) years in U-1 status and their continued presence in the U.S. is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

6. Spouses of U-1 aliens are granted U-2 classification, once they establish the relationship to the U-1. Children of U-1 aliens are granted U-3 classification, once they establish the relationship to the U-1. Parents of a minor U-1 alien (under 16 years old) are granted U-4 classification, once they establish the relationship to the U-1. The status for each of these derivative classifications may be obtained inside or outside of the U.S.

II. I Specify the purpose of Form I-539, Application to Extend/Change Nonimmigrant Status and the Form I-129, Petition for a Nonimmigrant Worker, and determine eligibility requirements for nonimmigrant extension of stay under an existing nonimmigrant classification.

l. Nonimmigrant, other than temporary workers, can use Form I-539 to request an extension of stay or change from one nonimmigrant classification to another nonimmigrant classification. With some exceptions, Form I-539 should be filed with the Service Center having jurisdiction over the applicant's place of residence.

2, Employers may use Form I-129 to petition for all aliens in the H, L, O, P and Q categories. Employers may also use this form to request an extension of stay for persons in the above classifications, or for a change of status from one nonimmigrant classification to one of the classifications shown above, as well as to E-1, E-2, R-1 or TN nonimmigrant classifications.

3. There are 6 basic questions that must be answered in the affirmative for an applicant to be eligible to apply for an extension of stay:

a. When the applicant was admitted, was a Form I-94, Arrival-Departure Record, issued?

NOTE: Aliens admitted from Canada as nonimmigrant visitors without a Form I-94 may file Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

b. Does the applicant's current nonimmigrant classification allow an extension of stay? (Consult the applicant's Form I-94, Arrival-Departure Record).
The following are never eligible for an extension of stay:

Nonimmigrant Classification	
C1 C2 C3	Persons transiting the U.S.
D	Crewmembers
K1 or K2	Fiancé (e) of a U.S. Citizen and dependents
S	Informants
WB or WT	A temporary visitor in the United States through the Visa Waiver Program

c. Was the applicant's Form I-94 still valid (unexpired) at the time the application was filed, regardless of the expiration date of the visa?

   If no, then the applicant is usually not eligible for extension. If the period of authorized stay as shown on the Form I-94, Arrival-Departure Record, has already expired, USCIS will not usually grant an extension of stay. There are limited exceptions.

   Applicants who believe compelling unforeseen circumstances beyond their control prevented a timely filing must include documentation.

   NOTE: The visa only needs to be valid when the alien applies for entry into the U.S.

d. Has the applicant complied with all the terms and conditions of nonimmigrant status? Some examples of noncompliance are: working or going to school in the U. S. without authorization or committing a crime since coming to the U.S.

   If no, the applicant is not eligible for extension.

e. Has the applicant complied with all U.S. laws since entry?

   If no – this means the applicant has committed a crime or broken a law and is generally not eligible for extension.

f. Is the reason for requesting an extension consistent with the purpose of the applicant's current status?

   For example, does the applicant intend to return to the foreign residence when status terminates, intend to comply with all the terms of nonimmigrant status, and has the means for material support if the nonimmigrant status does not authorize working here?

   If no, an extension of stay cannot be granted.

If you answered YES to each question, and the applicant's current nonimmigrant classification is eligible for an extension, then the applicant is prima facie eligible for the requested extension of stay.

5. The form the applicant will use to apply depends on the current nonimmigrant status. If the applicant's current status is within any of the following nonimmigrant classifications, the extension request can usually be granted.

E	H	L	O	P	Q	R	TN

1) The employer must file a Form I-129, Petition for Nonimmigrant Worker.

Please note: Form I-129 petitions for certain kinds of workers may require a labor condition application (LCA) from the U.S. Department of Labor or other documents. Employers should carefully read the instructions and consider the time required to obtain the necessary documents that must be filed with the application.

2) Dependents cannot be included in the Form I-129. The worker's spouse and unmarried children under 21, who are in the United States as derivative beneficiaries, can use Form I-539 to apply to extend their stay to remain with the principal.

3) USCIS recommends filing the Form I-539 application with the Form I-129 petition for the principal.

4) The principal's spouse and unmarried children under 21 can file a single Form I-539 as co-applicants, if they are all in the same nonimmigrant status, or derivative status, and they are all requesting an extension to the same date. For example, if an H1B applicant has four family members and all four are in H-4 status, then one Form I-539 application should be filed, not four separate applications.

b. If NO – the applicant has a different nonimmigrant status and should apply on Form I-539. A family, including unmarried children under 21, can file a single Form I-539 together if:

They each have the same nonimmigrant status and all want an extension to the same date. The evidence that must be submitted as part of the petition/application will be indicated in the instructions to each form. The validity of the evidence will be evaluated by the Immigration Services Officer at the time of review.

II. J Specify forms and eligibility requirements for requests to change from one nonimmigrant classification to a different nonimmigrant classification.

m. Nonimmigrants, other than temporary workers, may use Form I-539 to request a change from one nonimmigrant classification to another nonimmigrant classification. All H, L, O, P and Q-1 change of status requests are submitted on Form I-129.

2. There are 8 basic questions that must be answered in the affirmative for an applicant to be eligible to apply to change current nonimmigrant status to another nonimmigrant status.

a. When the applicant was admitted, was a Form I-94, Arrival-Departure Record issued?

If no, then unless the applicant entered the U.S. as a nonimmigrant from Canada, and has proof of his/her admission, the alien is usually not eligible to change to another nonimmigrant status.

Applicants admitted from Canada may still be eligible if they can show that they were admitted as nonimmigrants.

b. Is the applicant's current nonimmigrant classification one which allows an extension of stay? This information is located on the Form I-94. While most nonimmigrants may be granted a change to another nonimmigrant classification if other conditions are met, the following are never eligible to change their status:

Nonimmigrant Classification	
C1 C2 C3	Persons transiting the U.S.
D	Crewmembers
K1 or K2	Fiancé (e) of a U.S. Citizen and dependents
S	Informants
WB or WT	A Visitor here temporarily under the Visa Waiver Program

J-1 exchange visitors subject to the two-year foreign residence requirement under INA 212(e) can only change to A or G. A J-1 whose status was for the purpose of receiving graduate medical education or training, who has not received the appropriate waiver, is ineligible for any change of status.

c. Is the applicant's nonimmigrant classification one which allows a change of status, and is the requested classification one which allows for a change of status?

Just as the applicant cannot change status FROM any of the classifications listed above, neither can the applicant change status TO any of those classifications.

USCIS receives the most change of status requests for a nonimmigrant student, i.e., F-1, to a nonimmigrant worker, i.e., H-1B.

d. Has the applicant completed any required preliminary steps to change to the desired nonimmigrant status?

In many circumstances, applicants must file separate applications with the request to change status. For example, a visitor for pleasure, a B-2, may want to change status to become an academic or vocational student.

1) The applicant must first be accepted by a U.S. school that is authorized to accept nonimmigrant students;

2) The school will then issue the student a Form I-20 enrollment document;

3) Then the student must file a Form I-901, pay the nonimmigrant student fee and

4) When students receive proof of payment, they may apply to change status.

e. At the time the Form I-539 was accepted for filing, was the applicant's Form I-94 still valid.

If no, then the applicant is usually not eligible to change to another nonimmigrant status. If the period of authorized stay as shown on the Form I-94, Arrival-Departure Record, has already expired – then, USCIS usually will not grant a change of status. There are limited exceptions.

1) Applicants who believe compelling unforeseen circumstances beyond their control prevented timely filing, these applicants will need to explain those circumstances in the application and include any documents to support the claim.

2) If the applicant's visa is expiring or has expired, remember, the visa simply lets the applicant come to the U.S. to apply to enter. The visa doesn't control the length of stay. The period for which the applicant can stay was determined upon admission to the U.S. That information if located on the Form I-94, Arrival-Departure Record, issued to the applicant upon admission to the U.S.

f. Has the applicant complied with all the terms and conditions of status?

For example, not working or going to school in the United States unless the current status authorizes or allows it, and not committing a crime since coming to the U.S.?

If no, this means that the applicant has not complied with all the terms of status and is not eligible to change to another nonimmigrant status.

g. Has the applicant complied with all the laws of the U.S. since entering the U.S.?

If no, this means the applicant has committed a crime or broken a law is not eligible to change to another nonimmigrant status.

h. Is the reason the applicant wants to remain in the U.S. consistent with the purpose of the new requested status?

For example, does the applicant still intend to live abroad at the termination of status, still intend to comply with all the terms of the current nonimmigrant status, and has the means of support if current nonimmigrant status does not authorize working in the U.S.?

If no, USCIS will not grant a change of status.

If you answered YES to each question, it appears the alien is eligible for a change of status from one nonimmigrant classification to another.

3. The form used to request a change of status depends on the status being sought. A nonimmigrant who is in the U.S. and seeks a change of status to temporary worker in the E, H, L, O, P, Q, R or TN classifications cannot personally request to change status The temporary worker's employer must file for the alien on Form I-129, Petition for a Nonimmigrant Worker. A nonimmigrant seeking to change status to that of a spouse, unmarried child under the age of 21 of a temporary worker or to classifications other than those shown above should file Form I-539, Application to Extend/Change Nonimmigrant Status. Family members of temporary workers should file the Form I-539 at the same time the employer is filing the Form I-129 for the temporary worker.

4. Nonimmigrants seeking a change of status cannot begin engaging in the activities that the new status authorizes until USCIS grants the change of status. The applicant must comply with all the terms and conditions of the current status until the application for change of status is approved. If the applicant does not comply with the terms and conditions of status, the alien will not be eligible for a change of status. Typically, if the applicant changes status in the U.S. and then leaves the country, a nonimmigrant visa in the new category must be obtained before reentry.

III. SUMMARY –Non immigrant

Nonimmigrants constitute the largest group of people admitted to the U.S. each year. While some nonimmigrants come under categories that do not require adjudication of a petition by USCIS, many nonimmigrants must request classification through the petitioning process. Nonimmigrant categories include both employment-based classifications as well as those that are not employment-based. USCIS adjudicators need to be familiar with the purposes of the different classifications, as well as the documentation or qualifications required for each. Adjudicators may encounter these classifications through the adjudication of a newly-filed petition, or through a request to change from one nonimmigrant classification to another. In some instances, the alien's nonimmigrant status or qualifications may impact their eligibility for a different nonimmigrant classification, or their eligibility for an immigrant petition that has been filed on their behalf. This Course attempts to provide an overview of purposes and requirements for each nonimmigrant classification, as well as specific issues of relevance for adjudicators.

IV. SUMMARY - EOS/COS

In general, most nonimmigrants may be able to request to extend their stay in the nonimmigrant classification using the Form I-539, Application to Extend/Change Nonimmigrant Status. However, there are a number of requirements, and this benefit is not available to all nonimmigrant classifications or in all circumstances.

A nonimmigrant worker in the E, H, L, O, P, Q, R or TN classifications must be the beneficiary of an approved Form I-129, Petition for Nonimmigrant Worked, filed by the prospective employer. Spouses and children (unmarried and under the age of 21) of temporary workers must apply for extensions of stay on Form I-539.

All nonimmigrants seeking an extension of stay will need to prove that the purpose of the extension is consistent with their status.

V. APPLICATION

A. Laboratory

VI. Unit 1: TRAINING EXERCISE

Determine the correct answer from the choices below.

Q1:

Aliens who are in C-2 nonimmigrant status:

a) are eligible to extend their stay.
b) are eligible for employment.
c) can transit through the U.S.
d) can change status.

Q2:

The Swiss chauffeur employed by the International Atomic Energy Agency (IAEA), a recognized international organization of which Switzerland is a member, is assigned to the principal delegate to the IAEA from Switzerland and was admitted to the U.S. The chauffeur's wife, their children, and the children's nanny accompanied him. The nanny is a citizen of Mexico. Consider the nanny.

a) G-5, D/S b) G-5, 3 Years c) G-4, D/S d) G-4, 3 Years

Q3:

A Greek flight attendant for Olympic Airlines arrived as a "deadhead crewman" aboard British Airways Flight 212 from Argentina. She was scheduled to work Olympic Flight 901 back to Frankfurt, Germany the following evening.

a) C-1, D/S b) C-1, 29 Days c) C-2, D/S d) C-2, 29 Days

Q4:

Amanda, the Master of the tour ship Carnival, presented evidence that she had been transferred to the tour company's sister ship, the Princess, which is located at the same port. The ship's agent had completed all of the necessary paperwork for her to take command of the vessel.

a) D-1, D/S b) D-1, 29 Days c) D-2, D/S d) D-2, 29 Days

VII. Unit 2: TRAINING EXERCISE

Q1:

Gordon entered the United States as a B-2 visitor four (4) months ago. Last week he was offered a job that he would like to accept. Is Gordon eligible for employment?

a) Yes b) No

Q2:
Zachary, a civil engineer, was approved for a B-1 visa as a Temporary Visitor for Business. He continues to be employed by his company back in England, but he would also like to earn extra money working for an unrelated company during his visit. Is Zachary eligible to work for a U.S. employer during his visit?

a) Yes b) No

VIII. Unit 3: TRAINING EXERCISE

Determine the correct answer from the choices below.

Q1:

A Greek national entered the United States as a B-2 "prospective student" to look for a college to attend. He was accepted at Harvard University School of Law, and he will begin classes in two months. He has now submitted his Form I-539 with the following documentation: Form I-94, copies of his passport pages, a completed and signed copy of SEVIS Form I-20, proof of residence abroad, and financial documentation. Based on the information provided, what will you do?

a. RFE for additional evidence
b. Approve the alien as a J-1, D/S
c. approve the alien as a F-1, D/S
d. Deny

Q2:

A citizen of South Korea was admitted to study English full time at a prominent language institute in Philadelphia, PA. After completion of the one year English course the student is prepared to continue his education at Drexel Institute for a degree in electrical engineering. What will be the alien's next course of action in maintaining his nonimmigrant classification?

a. Do Nothing.
b. Ask the DSO to extend his stay to continue his education.
c. File Form I-539 to change his status to F-1.
d. File Form I-539 to change his status to M-1.

Q3:

A J-1 exchange visitor may be subject to a two-year residence requirement in their home country upon completion of their exchange program if:

a. a private institution funded the program.
b. the alien's occupation is on the Skills List.
c. the purpose of the program is to receive graduate-level education or training in literature.
d. they changed nonimmigrant status to A or G.

IX. Unit 4: TRAINING EXERCISE

Determine the correct answer from the choices below.

Q1:

A citizen of Singapore was admitted for three years to model the latest fall fashions for a top designer at their preview show. She has appeared on many magazine covers and billboards. Her employer filed Form I-129 requesting an extension to her stay. If approved, her nonimmigrant classification and length of her stay will be:

a) H-1B, 1 Year. b) H-1B, 2 Years. c) H-2B, 3 Years. d) H-1B, 3 Years.

Q2:

Sue Lee, a citizen of Korea, has worked for several years as a top-level production manager for Hyundai. Last week the company filed Form I-129 for her to assume the position of Vice President of Production for the Americas with Hyundai Corporation. If approved, her nonimmigrant classification and length of her stay will be?

a) L-1A, 1 Year b) L-1A, 3 Years c) L-1B, 1 Year d) L-1B, 3 Years

Q3:

An agent, working in consultation with the Elaborate Construction Company, filed Form I-129 for 100 employees to work in New Orleans as carpenters and rebuild homes devastated by Hurricane Katrina. If approved, the aliens' nonimmigrant classifications and length of stay will be:

a) H-2A, 3 Years. b) H-1B, 1 Year. c) H-3, 3 Years. d) H-2B, 1 Year.

Q4:

An agent for the ABC Produce Company filed Form I-129 for 100 workers to pick produce throughout Florida. The aliens will be admitted as agricultural contract laborers for the time needed to harvest the crops. If approved, the aliens' nonimmigrant classification and length of stay will be:

a) H-2A, 3 Years. b) H-2A, 1 Year. c) H-2B, 3 Years. d) H-2B, 1 Year.

Q5:

The Children's Hospital in Los Angeles filed Form I-129 for Marcus, a national of Poland. Marcus would participate in a training program at the hospital with children who have physical disabilities. If approved, his nonimmigrant classification and length of stay will be:

a) H-3A, 12 Months. b) H-3B, 18 Months. c) H-2A, 12 Months. d) H-3, 18 Months.

Q6:
A citizen of Brazil has been employed for the past six years as a chemist with the UR-A-Beauty Cosmetic Company, whose home office is in Rio de Janeiro. He, along with fellow chemists, successfully developed a line of skin care products that eliminate all signs of aging and make the user appear 10 years younger. Two years ago the company opened a new office in the U.S. and recently filed Form I-129 to transfer the chemist there to continue developing innovative skin care products. If approved, his nonimmigrant classification and length of stay will be:

a) L-1A, 3 Years. b) L-1A, 1 Year. c) L-1B, 3 Years. d) L-1B, 1 Year.

Q7:

In which one of the following "H" classifications does the doctrine of dual intent apply?

a) DOD Workers b) Agricultural Workers c) Traineesd) Unskilled Workers

X. Unit 5: TRAINING EXERCISE

Determine the correct answer from the choices below.

Q1:

Members of the London Symphony Orchestra were admitted for six months as part of an exchange program. Their counterparts, members of the Los Angeles Philharmonic, are currently performing at the Palladium. Both orchestras are planning additional tours to various other cities in the respective countries. The sponsor submitted Form I-129 with supporting documentation. If approved, the aliens' nonimmigrant classifications and length of stay will be:

a) P-1A, Six Months. b) P-2, Six Months. c) P-1B, 1 Year. d) P-3, 1 Year.

Q2:

A citizen of Japan has signed a contract to play for the Los Angeles Dodgers. Three weeks ago he was in the U.S. trying out for the team and thoroughly amazed the coaching staff. His employer filed Form I-129 to change the alien's status. If approved, his nonimmigrant classification and length of his stay will be:

a) P-1A, 1 Year. **b) P-1A, 5 Years.** c) P-1B, 1 Year. d) P-1B, 5 Years.

Q3:

A citizen of Indonesia was admitted as a tourist. He delighted the management at the Grand Adventure Casino at the MGM Grand Hotel where he demonstrated a unique gambling game only found in Indonesia. The game has been a component of Indonesian culture for centuries. The Grand Adventure Casino offered the alien a job and filed Form I-129 on his behalf. If approved, his nonimmigrant classification and length of his stay will be?

a) Q-1, 15 Months b) P-3, 1 Year c) P-1B, 1 Year d) Q-2, 3 Years

Q4:

While vacationing with friends in Florida, a German citizen was interviewed for a position with the German Pavilion of Epcot Center at Disney World. She would participate in sharing the culture and some culinary delights of her homeland to the American public. Her employer filed Form I-129. If approved, her nonimmigrant classification and length of her stay will be?

a) Q-1, 15 Months b) P-3, 1 Year c) Q-1, 24 Months d) P-3, 24 Months

Q5:

The doctrine of dual intent applies to which one of the following aliens?

a) P-1 b) P-2 c) Q-1 d) Q-2

XI. Unit 6: TRAINING EXERCISE

Determine the correct answer from the choices below.

Q1:

Sahrik Tengunsiana, a Buddhist monk from Thailand, was admitted to the U.S. as a B-1 to help establish a Temple in Seattle. He has completed extensive work as a Buddhist monk in Bangkok over the past ten years and has agreed to stay as the head of the Seattle Washington order. The Temple filed Form I-129. If approved, the alien's nonimmigrant classification and length of stay will be:

a) R-1, 3 Years. b) R-1, 5 Years. c) R-2, 1 Year.d) R-2, 2 Years.

Q2:

Which one of the following statements is correct concerning an investment made by an E-2 treaty investor?

a) The investment may be in a commercial enterprise formed as a "paper" corporation.
b) The investor does not need to be in possession of and have control over the capital invested or capital being invested.
c) The investor may invest in speculative assets such as stock or real estate held for appreciation in value.
d) The investor's capital must be placed at risk and subject to partial or total loss if investment fortunes reverse.

XII. Unit 7: TRAINING EXERCISE

Determine the correct answer from the choices below.

Q1:

A Mexican national who is the beneficiary of a pending I-130 filed by her U.S. citizen husband. Since she wants to wait in the U.S. until the I-130 is adjudicated, her spouse filed Form I-129F. What will be her classification, and period of admission, when the I-129F is approved?

a) K-1, 90 Days b) K-2, 90 Days c) K-3, 2 Years d) K-4, 2 Years

Q2:

The beneficiary of an approved I-129F is coming to the U.S. for the purpose of concluding a valid marriage. What will be her classification at entry?

a) K-1 b) K-2 c) K-3 d) K-4

Q3:

A Form I-129F was filed by a United States citizen for her alien fiancée. Submitted with the petition is evidence that:

a) The beneficiary is in the U.S.
b) A visa is immediately available.
c) The couple met in person three months ago.
d) They intend to marry within one year of admission.

Q4:

A USC concluded his marriage to his alien fiancé two years ago. The child of the K-1 remained behind in order to complete his schooling. He was born 17 years, 3 months, and 15 days ago. Which one of the following statements is correct?

a) The son can pick-up his K-2 visa at the consulate abroad.
b) The son is ineligible because he delayed too long to immigrate to the U.S.
c) The son is ineligible because he is now over the age of 18.
d) The son does not need a visa.

Q5:

Which nonimmigrant classification allows an eligible spouse of an LPR to immigrate to the U.S. while waiting for the I-130 petition filed on their behalf to be approved?

a) K-1 b) K-3 c) V-1 d) V-2

XIII. Unit 8: TRAINING EXERCISE

Determine the correct answer from the choices below.

Q1:

ICE agents raided the We-Pluck-M Chicken factory and discovered 50 men and women locked in an open-bay style barracks located on the premises. Another alien, considered to be the contact, indicated they were all brought to the United States as a result of involuntary servitude. He also stated he would be happy to assist in the investigation and prosecution of the criminal enterprise. The 50 aliens may be eligible for?

a) S-5, 3 Years b) S-6, 3 Years c) T-1, 3 Years d) U-1, 4 Years

Q2:

Referring to Question 1, above, what benefit might be available for the alien contact?

a) S-5, 3 Years b) S-6, 3 Years c) T-2, 3 Years d) U-1, 4 Years

Q3:

Jose Escobar, a citizen of Colombia, was admitted to the U.S. to testify at a DEA trial in New York City. He was a pilot for the Cali cartel who flew drugs from Colombia to Miami.

a) S-5, 3 Years b) S-6, 3 Years c) T-1, 3 Years d) U-1, 4 Years

Q4:

Referring to Question 3, above, what were the classifications given to the pilot's spouse and child?

a) S-7, 3 Years b) T-2, 3 Years c) T-3, 3 Years d) U-3, 4 Years

Q5:

An alien with an approved I-914, granting her T-1 status, files a subsequent I-914 on behalf of her spouse and child. When the child enters the U.S., her classification will be:

a) S-7, 3 Years. b) T-4, 3 Years. c) T-2, 3 Years. d) T-3, 3 Years.

Q6:

A German national living in Canada possesses critical information on international terrorist cells operating in North America. At the request of the FBI the alien is entering the U.S. to assist them in their investigation. The alien's life could be in danger due to his cooperation with the FBI in the U.S.

a) S-5, 3 Years b) S-6, 3 Years c) T-1, 3 Years d) U-1, 4 Years

Q7:

An alien may be eligible for T-1 status provided:

a) They did not suffer hardship as a result of being a victim of a severe form of trafficking in persons.
b) They were not in the U.S. at the time of the trafficking in persons.
c) They will comply with reasonable requests for assistance from the LEA.
d) They engaged in the severe form of trafficking in persons.

Q8:

Which one of the following lists of relatives can derive their status from a 23-year-old alien granted U-1 status?

a) Spouse, and Parents
b) Spouse, and Children under 21
c) Spouse, and Siblings
d) Spouse, and Married Children of any age

Q9:

Of the following nonimmigrant classifications, which one can be sponsored by a state LEA?

a) S-5 b) S-6 c) T-1 d) U-1

XIV. Unit 9: TRAINING EXERCISE

Determine the correct answer from the choices below.

1. Extensions of stay cannot be granted for persons who entered the U.S. under which of the following:

   a) Visa Waiver Program b) Informants c) Crewmembers d) All of the above

2. A nonimmigrant who is in the U.S. as a temporary worker in the E, H, L, O, P, Q, R or TN classifications may file a request for his or her extension of stay. True or False?

   (FALSE: The temporary worker's employer must file for the alien on Form I-129, Petition for a Nonimmigrant Worker.)

3. A nonimmigrant seeking an extension of stay does not need to prove that the purpose of the extension is consistent with his/her status. True or False?

4. A nonimmigrant is eligible to change nonimmigrant classification, or apply for an extension of stay, even if the alien has committed a crime during the period of authorized stay. True or False?

5. Change of nonimmigrant classification cannot be granted for persons who entered the U.S. under which of the following:

   a) K-1 Fiancée b) D Crewmember c) Visa Waiver Program d) All of the above

XV. REFERENCES

A. INA § 101(a)(15), § 211, § 214, § 248

B. 8 C.F.R. § 214, § 248

C. INA §101(a) (15), § 211, § 214, § 248.

D. 8 CFR § 214, § 248

B. Practical Exercises

2. NONE.

XV. REFERENCES

A. Unit 1

1. General

102 INA

214(a), (b) INA
8 C.F.R. 214.1(a)

22 C.F.R. 41.11

203(d) INA
22 C.F.R. 41.1, 41.2, and 41.3

2. International Organization Aliens

101(a)(15)(G) INA
8 C.F.R. 214.2(g)

8 C.F.R. 316.20
22 C.F.R. 41.24

3. Foreign Government Officials

101(a)(15)(A) INA
8 C.F.R. 214.2(a)
22 C.F.R. 41.21 and 41.22

4. Transits

101(a)(15)(C) INA
8 C.F.R. 214.2©(2), (3)

22 C.F.R. 41.71

5. Crewmen

101(a)(15)(D) INA
8 C.F.R. 252.1(b), (c), (d), (e), (f), (g), & (h)

8 C.F.R. 252.2

8 C.F.R. 252.4
22 C.F.R. 41.41 and 41.42

B. Unit 2

1. Temporary Visitor

101(a)(15)(B) INA
8 C.F.R. 214.2(b)

22 C.F.R. 41.31, .32, .33

8 C.F.R. 214.1(a)

9 FAM 41.31

2. Visa Waiver Program

8 C.F.R. 217.2(a)

8 C.F.R. 217

8 C.F.R. 212.1(e)

C. Unit 3

1. Academic Students and Dependents
   101(a)(15)(F) INA
   8 C.F.R. 214.2(f)

22 C.F.R. 41.61

2. Vocational Students and Dependents
   101(a)(15)(M) INA
   8 C.F.R. 214.2(m)

22 C.F.R. 41.61

3. Exchange Visitor
   101(a)(15)(J) INA
   8 C.F.R. 214.2(j)

22 C.F.R. 41.62
212(e) INA
8 C.F.R. 212.7©

22 C.F.R. 514.23

D. Unit 4

1. Temporary Workers And Trainees
   101(a)(15)(H) INA
   8 C.F.R. 214.2(h)

22 C.F.R. 41.55

2. Intra-Company Transferees
   101(a)(15)(L) INA
   8 C.F.R. 214.2(l)

22 C.F.R. 41.54
214© INA

3. Form I-129 Petitioner for a Nonimmigrant Worker
4. U.S. Dept. of Labor Forms and website

(http://www.foreignlaborcert.doleta.gov/hiring.cfm)

E. Unit 5

1. Aliens with extraordinary ability or achievement
   101(a)(15)(O) INA
   8 C.F.R. 214.2(o)

2. Members of entertainment groups and internationally recognized athletes
   101(a)(15)(P) INA
   8 C.F.R. 214.2(p)

3. Cultural Exchange Participant
   101(a)(15)(Q) INA
   8 C.F.R. 214.2(q)

22 C.F.R. 41

F. Unit 6

1. Treaty Trader and Treaty Investor
   101(a)(15)(E) INA
   8 C.F.R. 214.2(e)

22 C.F.R. 41.51

2. Religious Workers
   101(a)(15)® INA
   8 C.F.R. 214.2®

3. NAFTA

8 C.F.R. 214.6

4. Media
   101(a)(15)(I) INA

G. Unit 7

1. Fiancé/Fiancée
   101(a)(15)(K) INA
   8 C.F.R. 214.2(k)

22 C.F.R. 41.81

2. Spouse & Child of
   101(a)(15)(V) INA

3. Legal Permanent Resident Alien
   8 C.F.R. 214.2(v)

8 C.F.R. 214.15

H. Unit 8

1. Alien Witnesses Or Informants
   101(a)(15)(S) INA
   8 C.F.R. 214.2(t)

22 C.F.R. 41.83

2. Victim of Severe Form Of Trafficking in Persons
   101(a)(15)(T) INA
   214(n) INA
   245(l) INA
   8 C.F.R. 214.11

Trafficking Victims Protection Act of 2000, Division A of Pub. L. 106-386, 114 Stat. 1464, Victims of Trafficking and Violence Protection Act

3. Victim of Criminal Activity
   101(a)(15)(U) INA
   214(o) INA
   245(l) INA
   1101 (a)(15)(U) 8 U.S.C.
   1184(o) 8 U.S.C.
   1255(l) 8 U.S.C.

I. Other References

1. **Immigration and Nationality Act (INA)**: 101(a)(15); 101(b); 102; 212, 214, 217, 218, 245 and 248.
2. **Regulations: Title 8 Code of Federal Regulation** (8 C.F.R.) 212; 214; 217; 248; 316.20, and 22 C.F.R. 41
3. **Citations to major Public Laws** affecting or amending the Immigration and Nationality Act of 1952:
4. **IMMACT 90** - Immigration Act of 1990, Pub. L. 101-649, Stat. (Nov. 29, 1990).
5. **IIRIRA** - Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (Sep. 30, 1996).
6. **NRDAA** - Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95, 113 Stat. 1312 (Nov. 12, 1999).
7. **VTVPA** - Victims of Trafficking and Violence Protection Act of 2000 (includes the Battered Immigrant Women Protection Act of 2000 (BIWPA) (114 Stat. 1518) Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000).
8. **LIFE** - Legal Immigration Family Equity Act, Title XI of H.R. 5548, enacted by reference in Pub. L. 106-553, 114 Stat. 2762A-142 (Dec. 21, 2000) as amended by the LIFE Act Amendments of 2000, Title XV of HR 5666, enacted by reference in Pub. L. 106-554, 114 Stat. 2763A-324 (Dec. 21, 2000).
9. **USA PATRIOT Act** - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. Law. 107-56, 115 Stat. 272 (Oct. 26, 2001).
10. **The Homeland Security Act of 2002,** P.L.107-296, 116 Stat. 2135 (Nov. 25, 2002), which re-designated the INS and its authority to the Department of Homeland Security.
11. **The Homeland Security Act of 2002 Amendments, P.L. 108-7, 117 Stat. 526 (Feb. 20, 2003).**
12. **Refer to the Appendix for information regarding the new CW-1 and CW-2 classifications for transitional workers in the Commonwealth of Northern Mariana Islands.**
13. **Adjudicator's Field Manual (AFM)**

    http://onlineplus.uscis.dhs.gov/lpBinplus/lpext.dll/Infobase/afm/afm1?f=templates&fn=document-frame.htm#afm-afm-95-menu

14. **Operational Policy Memos and Guides**

    http://onlineplus.uscis.dhs.gov/graphics/lawsregs/handman/policypro.htm

15. **Inspector's Field Manual (IFM)**

http://onlineplus.uscis.dhs.gov/lpBinplus/lpext.dll/Infobase/m450/m450-1?f=templates&fn=document-frame.htm#m450-ifm-95-menu

16. Department of State's Foreign Affairs Manual (FAM)

http://www.state.gov/m/a/dir/regs/

17. Department of Labor's website

http://www.foreignlaborcert.doleta.gov/hiring.cfm

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1 **I-129 L-1**
Adjudication

2 **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

3 **General Information**

4 **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

5 **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)

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.

7 **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.

8 **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.

9 **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.
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.
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.

10 **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.

11 **Individual L-1 Petition**

12 **Where to File the I-129**

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

13 **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)

-

14 **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)

15 **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.

16 **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)

17 **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.
-

18 **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.

19 **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).

20 **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 involves 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.)

21 **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).

22 **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.

23 **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).

24 **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.)

25 **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)

26 **Qualifying Relationships**

27 **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)

28 **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.

29 **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.

30 **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.

31 ***Example***

32 ***Example***

33 **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".

34

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

35 **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 <u>can</u> be transferred from A to C or C to A.
  - An alien <u>can</u> be transferred from B to C or C to B.
  - But, an alien <u>cannot</u> be transferred from A to B or B to A.

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

37 **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)

38 **A Note About Subsidiaries and Affiliates**

39

Example – How two separate subsidiaries can be affiliates of each other

40 ***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.

41 ***Example 3– How two separate subsidiaries <u>will not</u> 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 <u>not</u> affiliates. Company A's employee may qualify to work at B but not C.

42 **Affiliates – Multiple Owners**

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

43 **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

44 **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 distributer 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)

45 **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)

46 **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.

47 **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.

48 **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.

49 **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.

50 **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.

51 **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.

52 **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-subsidiary.

-

53 **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

54 **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.

55 **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.

56 **When to Ask for Financial Evidence of Ownership and Control**

1. As indicated above - the officer has reason to question the validity or authenticity of submitted stock certificates.
2.
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.
3. If the entity is a type that does not issue stock certificates, such as a partnership or limited liability corporation.
4.
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.

57 **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.

58 **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%).

59 **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.

60 **Non-Profits**
Tax Forms as Evidence

■ 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.

■ 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.

61 **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.*

62 **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.

63 **MANAGERIAL and EXECUTIVE CAPACITY**

64 **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;

65 **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.

66 **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.

67 **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.
-

68 **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.

69 **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.

70 **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."

71 **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.

72 **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.

73 **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.

74

75 **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.

76 **Specialized Knowledge**

(SK)

77 **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.

78 **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.

79 **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."

80 **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.

81 **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.

82 **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.

83 **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

84 **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)
-

85 **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?

86 ***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.

87 **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.

88 **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.

89 **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.

■

90 **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.

91 **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.

92 **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.

93 **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".

94 **BLANKET L-1 PETITION PROCESS**

95 **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.

96 **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.

97 **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.

98 **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.

99 **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.

100 **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).

101 **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).

102 **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.

103 **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.

104 **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.)

105 **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.

106 **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.

107 **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)

108 **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)

(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.

109 **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.

110 **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 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.

111 **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.

112 **I-129S Filings**

- All I-129S requests filed for an L-1 alien must contain the LZ petition approval notice

to show the Petitioner was previously approved as a blanket Petitioner.

113 **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).

114 **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.

115 **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, 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.

116 **NEW OFFICES**

117 **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)

118 **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.

119 **Requirements for an L-1A**
New Office petition

see 8 CFR § 214.2(l)(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

120 **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.
-

121 **Requirements for an L-1B**
New Office Petition

See 8 CFR § 214.2(l)(3)(vi)

- In all cases, a prerequisite to filing the initial new office is that the Petitioner demonstrate that the U.S. entity – even if it is not yet doing business – is or will be in a qualifying relationship with the foreign entity

- Further, the L-1B new office 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.

122 **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.

123 **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.

124 **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.

125 **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.

126 **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.

127 **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

128 **Things to Know**

129 **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.

130 **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.

131 **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).

132 **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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133 **RFEs and Denials on EOS Petitions**

The Deputy Director will review and clear in writing, prior to the issuance of an RFE or final decision, any case involving an extension of stay of petition validity in a nonimmigrant classification where the parties and facts involved have not changed, but where the current adjudicating Officer determines nonetheless that it is necessary to issue an RFE or deny the application for extension of petition validity.

134 **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).

135 **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.

136 **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.

137 **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.

138 **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

139 **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.

140 **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.

141 **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.

142 **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

143 **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).

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144 **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).

145 **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.

146 **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.

147 **Thank You,**

The End

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2 **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

- To ensure consistent adjudication on petitions filed by businesses requesting L-1B nonimmigrant intracompany transferees with specialized knowledge (SK).
- Service Centers have requested clarification of the current policy on L-1B SK.
- Feedback from the May 12, 2011 USCIS public engagement with L-1B stakeholders indicated that current USCIS policy guidance on L-1B SK is clear and sufficient. Stakeholders suggested that USCIS reaffirm existing policy guidance through training. While stakeholders generally find present USCIS policy guidance useful, refresher training will benefit both adjudicators and petitioners.
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4 **Statutory and Regulatory 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*.

8 CFR 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.

-

5 **L-1B Visa Classification**

- Designed to *facilitate* the temporary transfer of foreign nationals' specialized knowledge skills to the United States in order to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate
- Critically important to multi-national companies' *request to transfer* personnel from

country to country

- 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
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6 **Characteristics of Specialized Knowledge**

- Knowledge that is valuable to U.S. employer's competitiveness
- 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
- Knowledge of a product or process which cannot easily be transferred to another individual
- Knowledge of a product or process not generally known in U.S.
- No requirement for a labor market test, i.e., a test whether there are U.S. workers available to fill the position.

7 **Evaluation of Specialized Knowledge**

The three criteria that should be evaluated:

1. Employment abroad was in a position that was managerial, executive, or involved specialized knowledge for the requisite full year;
2. Whether the beneficiary possesses specialized knowledge; and
3. Whether the beneficiary's position in the United States involves specialized knowledge.

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.

8 **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 process or procedure does not have to be narrowly held within the petitioning company and instead, is based on advanced knowledge in comparison to others in the industry.
- "Advanced knowledge" would be knowledge of a process used by the petitioning company and others in the industry that goes beyond the "ordinary" level of

knowledge held by others in the field. For instance, in the case of a petitioner which is involved in the extraction of high grade ore, only a few persons in the field may have attained a sufficiently high level of knowledge above that of others in the industry, whether working for the petitioner or elsewhere, of the best process for extracting such ores in a cost-efficient manner. In such a case, the L-1B petitioner might be able to show that it would face significant economic disruption – a factor relevant to whether the worker possesses specialized knowledge - were it unable to use this person's advanced knowledge in its U.S. operations.

9

Distinction Between Advanced and Special Knowledge (Cont.)

Special Knowledge

- Beneficiary has specialized 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.
- Special knowledge" would be that which relates to the petitioning company's product, etc., but need not be "proprietary" or "unique" insofar as such knowledge could have been gained by the beneficiary while working elsewhere, for example, by virtue of having worked with the product in question while employed for a client of the petitioning company.

10

Specialized Knowledge Professionals

- 8 CFR 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 section 101(a)(32) of the Act.
- In order to be admitted as a specialized knowledge professional, the beneficiary must be a professional; however, there is no requirement that the beneficiary have been employed abroad as a specialized knowledge professional. He or she must, however, have been employed for the requisite year as either a manager, executive, or specialized knowledge employee.

11 **New Office Specialized Knowledge**

8 CFR 214.2(l)(2)(vi)

If the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, 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 as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

12 **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 on officers.*

13 **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 from 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

14 **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
- 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
- Examination of the *alien's knowledge only, no comparison to other company employees*
- *No* U.S. labor market test
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15 **2004 Ohata Memo on Chefs and Specialty Cooks**

- Provides guidance on adjudication of L-1B petitions involving 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

16 **2004 Ohata Memo Continued**

- 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.

17 **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 when:
- Worker 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) alien 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
-

18 **L-1B Case Examples**

- A foreign company manufactures a product which no other firm manufactures, and the alien is familiar with the various procedures involved in the manufacture, use, or service of the product.
- A foreign company manufactures a product which is significantly different from other products in the industry. Despite the similarities between products, the knowledge required to sell, manufacture, or service the product is different from the other products to the extent that the U.S. or foreign firm would experience a *significant interruption of business* in order to train a new worker to assume those duties.
- Alien beneficiary has knowledge of a foreign firm's business procedures or methods of operation to the extent that the U.S. firm would experience a *significant interruption of business* in order to train a U.S. worker to assume those duties.
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19 **L-1B Case Examples Continued:**

- Company seeks to transfer an employee who has had many years of experience and advanced training in harvesting and processing shellfish . Firm is involved in processing certain shellfish and petitions for a beneficiary to work in the United States in order to catch and process the shellfish. Beneficiary learned the process from his employment from an unrelated firm but has been utilizing that specialized knowledge for the foreign firm for the past year; however, the knowledge required to process the shellfish is unknown in the United States.
  - Even though others in the industry abroad have similar knowledge to that of the beneficiary, there is no requirement that the specialized knowledge be proprietary to the petitioning company.
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20 **L-1B Case Examples Continued:**

- Foreign firm is in the business of purchasing used foreign automobiles for repair and resale and/or export to the United States, and petitions for an alien beneficiary engineer who has designed a new engine compartment. The new engine compartment significantly lessens exhaust emissions so that the purchased foreign vehicles are in compliance with EPA regulations in order to import the foreign vehicles into the United States. The beneficiary's knowledge of the company's product is not commonly held by others in the industry, and without the beneficiary's services, the petitioning company's ability to sell such foreign automobiles in the U.S. market would be severely hindered. Under these facts, it appears that the alien possesses the requisite specialized knowledge.

21 **Examples of No Specialized Knowledge**

- Petitioner claims that a particular type of ethnic cooking requires the specialized knowledge of a beneficiary chef. Petitioner lists the food processing order in order to explain the expertise needed to accomplish the tasks and the need for a highly trained chef. However, recipes and cooking techniques that can be learned by a chef through exposure to the recipe or cooking techniques for a brief or moderate period of time generally do not constitute specialized knowledge because other chefs in the industry could master them within a reasonable period of time.
- Short-order cook at a barbeque restaurant or an employee with basic job-related skills or knowledge that were acquired in a very short time through employment does not possess specialized knowledge.

22 **Distinguished From O-1/EB-1 Extraordinary Ability Aliens and EB-2 Exceptional Ability Aliens**

- Specialized knowledge aliens *need not* be extraordinary or exceptional ability aliens
- Specialized knowledge aliens *need not* demonstrate sustained national or international acclaim or a degree of expertise significantly above that ordinarily encountered
- Specialized knowledge aliens *need not* seek entry to work in an area of extraordinary or exceptional ability
- Specialized knowledge aliens *need not* represent a small percentage of individuals who have risen to top of their field
- Specialized knowledge aliens *need not* command a higher salary

23 **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.

24 **Factors for Consideration (Cont.)**

- The statute and regulations do not specify that the petitioner is required to own or produce the product or equipment that a beneficiary will use/operate in an extensive or customized manner, which is specialized knowledge of that product or equipment.
- Specialized knowledge is not only limited 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 not the mere fact that the beneficiary received some training or took coursework while employed, that is determinative.
- Even if such specialized knowledge may be gained on the job, the petitioner must still show that the beneficiary had the requisite one-year 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.

25 **"Key" Personnel/Process and "Essential Process"**

✍ 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.

➔ Both 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 should be avoided. Instead, all of the facts presented in a particular case should be reviewed when determining if the beneficiary possesses specialized knowledge.

26 **Burden of Proof**

- In visa petition proceedings, the issue is whether or not an alien is eligible for a particular visa classification.
- In visa petition proceedings, the petitioner has the burden of proof to establish the claimed relationship between the petitioner and beneficiary. *Matter of Brantigan*, 11 I&N 493 (BIA 1966).
- Burden of proof can be defined as the necessity or duty to affirmatively prove a fact or

facts in dispute in an issue. *Black's Law Dictionary*, 178 (5th ed. 1979)

- Petitioner has the burden of proof to establish that the alien has the requisite "specialized knowledge."

27 **Standard of Proof**

- Standard of proof means the degree of certainty with which the petitioner must establish certain facts, and specifies how convincing or probative the evidence must be.
- The standard of proof for most administrative immigration proceedings, including L-1B specialized knowledge adjudications, is the "*preponderance of the evidence*" standard. *See Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010).*
- Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "*more likely than not*" *or* "*probably*" *true*, petitioner has satisfied the standard of proof. *Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989); see also U.S. v. Cardozo-Fonseca, 480 U.S. 421 (1987)* (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place.)

28 **Application of the Preponderance of the Evidence Standard**

- If the petitioner submits 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.)
- *Even if the ISO has questions regarding eligibility, if the overall evidence provided is in favor of the petitioner (50.1%), the petition should be approved*
- If a petitioner provides supporting documentation that satisfies the regulatory criteria, and such documentation is probative (i.e. not forged, erroneous, not inaccurate, etc.), USCIS may not impose novel substantive or evidentiary requirements beyond those set forth in the regulations.
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Distinguished from Clear and Convincing Standard of Proof

- Clear and convincing standard of proof can be defined as a degree of proof that produces "a firm belief or conviction as to allegations sought to be established."
- Clear and convincing is a *higher standard* than the "more likely than not" preponderance of the evidence standard.

30 **Standard of Proof Examples**

- There may be several documents submitted to establish a petitioner's claim that an individual is a judge. However, if there is one reliable document showing that the other documents are false, then it may, depending on the facts, be found by a *preponderance of the evidence* that the individual is not a judge.
- However, even in situations where the adjudicator may have some doubt, if the petitioner submits relevant, probative, and credible evidence that leads the adjudicator to believe that the facts are "*probably true*" or "*more likely than not*," the petitioner has met its burden of proof.

31 **Requests for Evidence (RFE)**

- RFE is recommended when material or necessary evidence is missing from the record
- RFE should point out with sufficient specificity any material discrepancy/discrepancies in order to provide the petitioner a reasonable opportunity to address the issue(s) in question
- RFE should be clear and concise
- RFE should be tailored to request the missing evidence
- RFE should only request evidence *relevant to the classification* being adjudicated and not be overly broad
- RFE should explain or state why the evidence already submitted is insufficient
- RFE should NOT be issued for the purpose of seeking clear and convincing proof of eligibility. Rather, the *preponderance of evidence* standard applies.
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32 **Reminder Regarding L-1B Denial Language**

- Non-precedent AAO decisions are not binding on officers; therefore, language should not be lifted/taken directly from non-precedent decisions. However, officers who agree with the reasoning of a particular non-precedent AAO decision can apply that reasoning, but must reach their own independent decision.
- In denying a petition, officers should be careful not to enter into a debate with the petitioner about logic or interpretations of the law. Instead, a denial should state the standard, the deficiencies in the facts presented, and that the facts failed to meet the standard of proof required for approval.
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33 **QUESTIONS?**

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