

L-1 STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

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1. What is an L-1 visa?

An L-1 intra-company transferee visa can be issued to a foreign national employee who has worked abroad for at least one continuous year within the three years immediately preceding the transfer to the U.S. for a qualifying, related business entity (e.g., parent, subsidiary, or affiliate company). The employment abroad must have been in an executive, managerial or “specialized knowledge” capacity. The company must be “doing business” in at least one other country in addition to the United States in order to transfer employees under the L-1 category. Simply hiring an individual overseas is not sufficient to demonstrate that the entity is “doing business”; further, even after the individual transfers to the U.S., the company must continue to have overseas operations and remain multinational.

The employee must be transferred to the U.S. to work for the same employer, or a parent, subsidiary or affiliate company; again, the employment must be in an executive, managerial or “specialized knowledge” capacity. Persons transferred to the U.S. to hold managerial or executive positions are classified as L-1A nonimmigrants while persons transferred to the U.S. to hold specialized knowledge positions are classified as L-1B nonimmigrants. The minimum qualifying experience is one year out of the three years immediately preceding the transfer to the U.S.—note that the more years of experience with the company, particularly for L-1B specialized knowledge positions, the stronger the case, as the USCIS or the Consular Officer is more likely to agree that the individual possesses knowledge and expertise that is specialized.

2. How does the procedure for filing an L-1 work?

In most cases, an L-1 visa petition must be filed with a USCIS Service Center prior to the individual applying for a visa and entering the U.S. There are two exceptions to this rule: (1) those applying under a blanket L-1 approval for the company, and (2) Canadian citizens. The vast majority of cases must be processed through a USCIS Service Center. Once the petition is adjudicated, and approved, the employee then must apply for the actual L-1 visa at a U.S. Consulate or Embassy, typically in his/her home country.

The petition must include documentation showing that the relationship between the U.S. company and the foreign company from which the employee is being transferred is a qualifying relationship. The L-1 petition must also include a description of the managerial, executive or specialized knowledge position that the employee held abroad and the proposed U.S. position. The petition must include a description of the individual’s experience with the company that qualifies him/her for the transfer. For managerial/executive transfers, it is helpful to submit organizational charts to show the individual’s position in the corporate hierarchy, both abroad and in the proposed U.S. position.

If the employee is already in the U.S. in another valid nonimmigrant status, a change of status can be requested as long as the employee met the requirements for L-1 classification prior to his/her entrance into the U.S. and has maintained valid nonimmigrant classification up to the time of filing the request for change of status. If the change of status is granted, then the individual acquires valid L-1 status in the U.S., but must apply for the L-1 visa (unless a visa exempt Canadian) at a U.S. Consulate or Embassy abroad during their next trip outside the U.S.

3. Is the procedure any different if the alien is a citizen of Canada?

For Canadian citizens, the L-1 petition may be filed directly with a Class A port of entry located on the U.S.-Canada land border, or at a U.S. pre-clearance/pre-flight station in Canada. The same documentation as mentioned above must be submitted. If the L-1 visa petition is approved, the individual will be issued a Form I-94 card, or a passport admission stamp indicating L-1 classification, which will specify the end date of the visa petition period. If a paper I-94 card is not issued, the electronic I-94 admission record must be retrieved from <http://www.cbp.gov/I94>. These documents serve as the approval notice. Procedurally, the CBP inspector will forward the petition to the USCIS. The USCIS will issue a fee receipt evidencing that the fees have already been received at the border/preflight inspection. Eventually, the USCIS is required to issue a Form I-797 approval notice, which is sent to the petitioner or to the attorney of record.

4. How long can an alien on an L-1 stay in the U.S.?

Managers and executives may be admitted for up to seven years. Specialized knowledge employees may be admitted for up to five years. If specialized knowledge employees are promoted to a managerial or executive position after admission (and if USCIS is properly notified of the promotion) they may remain for up to seven years. Note that prior L-1 or H-1B time is counted against the maximum seven or five year limit unless the individual has spent a full year outside the U.S. since holding L-1 or H-1B status. The initial L-1 visa petition approval will be valid for up to 3 years; extensions are granted in 2-year increments. For blanket L-1 admissions (based on pre-certification of corporate relationship), visas are issued based on (1) the validity of the visa petition,

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and (2) visa reciprocity for the individual's country of citizenship. This means that some individuals may be granted visas that are valid for 5 years, however upon applying for admission, the individual can only be admitted for up to 3 years at time. The admission period (stated on the I-94 card/record) is controlling over the individual's period of stay.

L-1A PETITION – MANAGER / EXECUTIVE

A1. What are the criteria for classifying an individual as an L-1A Manager?

The definition of "manager" includes those who manage either personnel or a "function" of an organization. USCIS has defined "managerial capacity" as an assignment in which the employee primarily:

- Manages the organization or a department, subdivision, function or some component of the organization;
- Supervises and controls the work of other supervisory, professional or managerial employees ~~–or–~~ manages an essential function within the organization or a department or subdivision of the organization;
- Has the authority to hire and fire ~~–or–~~ recommend those or other personnel actions; or if no employees are supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed;
- 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 supervisory duties unless the employees supervised are "professional."

A2. What are the criteria for classifying an individual as an L-1A Executive?

The definition of "executive" applies to those assignments where the employee:

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

A3. Are the qualifications for L-1A the same as the qualifications for the EB1 (employment based first preference) Multinational Managerial / Executive transfer for a Green Card?

Not exactly. In order to qualify for the EB-1 transfer, the individual's qualifying experience abroad must consist of at least one year as a manager or executive prior to the transfer to the U.S. The EB-1 multinational managerial/executive transfer allows for an individual to bypass the labor certification process (test of the labor market) and have their employer file an I-140 immigrant visa petition directly with USCIS. This is significantly different from the L-1A transfer, where the qualifying experience with the employer abroad can be as a manager/executive or as a specialized-knowledge employee. In the situation where the L-1A transferee's qualifying experience was not as a manager or executive but involved specialized knowledge, a PERM labor certification would be required.

L-1 PETITION – SPECIALIZED KNOWLEDGE

B1. How is L-1B specialized knowledge defined?

"Specialized knowledge" means an individual has special knowledge of the organization's products, services, research, methodologies, equipment, techniques, management or other interests and their applications in international markets. Alternatively, "specialized knowledge" can mean that the employee has an advanced level of knowledge or expertise in the organization's processes and procedures. Furthermore, this specialized knowledge must be necessary to carry out the duties of the position in the U.S.

With certain exceptions, L-1B specialized knowledge visas will not be issued to individuals working at a third-party employer site other than the petitioning employer's worksite. Off-site placement to provide labor to a third-party employer is not permitted. This provision applies to initial applications as well as to extensions or amendments.

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BLANKET L-1 PETITION

C1. What is a blanket L-1?

A blanket L-1 is a mechanism for obtaining an L-1 visa without filing an individual petition each and every time with USCIS. This amounts to “blanket certification” that a company meets all the requirements for transferring employees from abroad. Once a blanket L-1 is approved for a company by USCIS, that employer may submit petitions for L-1 visas directly at a Consulate or Embassy for its employees wishing to transfer to the U.S. Please note that even after a company obtains blanket L-1 approval, not all petitions will qualify for submission to the Consulate or Embassy. For example, the specialized knowledge category under the blanket L-1 requires that the individual is a “professional”. This means that the individual will be holding a role that typically requires a bachelor’s degree for entry into the position. Also, if the foreign office was not included in the list of offices approved on the blanket L-1 filing, then employees from that office cannot be transferred to the U.S. under the blanket L-1. In these types of situations, individual L-1 petitions would be required.

C2. What are the basic requirements the Petitioner must meet for the blanket L-1?

In addition to the normal requirements for an individual L-1, in order to qualify for the blanket L-1, a petitioner and each of its subsidiaries, branches or affiliates must be engaged in commercial trade or services, the petitioner must have an office in the United States that has been doing business in the United States for one year or more and the petitioner must have three or more domestic and foreign branches or subsidiaries. Moreover, the petitioner and the other qualifying organizations must satisfy one of the following criteria:

- The petitioner and its qualifying organizations have obtained approved petitions for at least ten L-1 managers, executives and/or specialized knowledge professionals during the previous year;
- The petitioner has annual sales in the U.S. of at least \$25 million; or
- The petitioner has a U.S. workforce of at least 1,000 employees.

C3. For the blanket L-1, are the definitions for manager, executive and specialized knowledge the same as what USCIS utilizes for individual L-1s?

The definitions are the same except that aliens transferring to the U.S. in specialized knowledge positions must be “professionals”. This generally means that the individual will be holding a role that typically requires a bachelor’s degree for entry into the position. The individual generally will have at least a bachelor’s degree or its equivalent in a related field through a combination of education and work experience.

C4. Is the qualifying period of experience abroad the same for the blanket L-1?

Yes, the blanket L requirement is also one year of continuous employment with an affiliate organization abroad.

C5. For how long is the blanket L-1 petition valid, and can the blanket L-1 be extended?

The blanket L-1 approval validity period is initially for three years, and can be extended for an indefinite period.

L-1 FILING FEES

D1. What are the filing fees for an L-1?

In addition to the appropriate USCIS filing fee for the L-1 petition, there is a \$500 anti-fraud fee to be paid by the employer at the time of initial application for all L-1 visas. In the case of applications under a blanket L-1, the fee will be paid at the U.S. Embassy/Consulate. Extensions of L-1 status for the same employer are not subject to this fee.

D2. Is premium processing with the USCIS available?

Yes. Petitioners can opt to file their L-1 petitions, including a blanket L-1, under premium processing. Premium processing is a service where, for an additional filing fee, currently \$2805, the USCIS will adjudicate the petition within 15 calendar days of the date the petition is received by USCIS. Please note that “adjudicate” means that USCIS will either approve, issue a Request for Evidence, or deny the petition.

L-2 STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

L1. What classification do family members of L-1 visa holders have?

Family members (spouses and unmarried children under 21 years of age) who derive their dependent nonimmigrant status from an L-1 nonimmigrant will be classified as L-2 nonimmigrants. To obtain L-2 visas (unless visa exempt) at a U.S. Consulate or Embassy, a copy of the L-1 approval notice along with passports and evidence of a qualifying relationship (marriage or birth certificates) will be required. If family members are already present in the U.S. in another valid nonimmigrant status that allows for change of status, they may be eligible to change status to L-2. The Consular or USCIS officer must be satisfied that a valid familial relationship exists for L-2 derivative classification to be granted.

L2. Can an individual in L-2 status work and/or attend school?

Yes. L-2 spouses can work while in the United States with an Employment Authorization Document (EAD)

To obtain an EAD card, a spouse on an L-2 visa is required to submit an Application for EAD (Form I-765) after he/she enters the U.S. in valid L-2 status. The Form I-765 should be submitted to the USCIS service center that has jurisdiction over the dependent spouse's place of residence, along with the appropriate USCIS filing fee. A copy of the Form I-94 card or I-94 record is required as part of the application.

An EAD may be issued in increments of up to two years at a time but cannot be issued for a period longer than an L-2's authorized period of stay (the Form I-94 card/record expiration date), which also corresponds with the L-1 principal's status in the United States. The L-2 spouse must first enter the U.S. in L-2 status before applying for the EAD card by mail through USCIS. The EAD card will be valid for two years from the date of approval, or until the Form I-94 card/record expiration date, whichever comes first. For example, if your L-2 status is valid until 08/01/2016 and your EAD application is approved on 03/01/2013, your EAD will be valid until 03/01/2015. However if your EAD application is approved on 03/01/2015, it will only be valid until 08/01/2016 (the date your status expires). Please note that extension of your EAD card does not extend your L-1 status and vice versa.

Please note that L-2 children do not have the ability to work in the U.S. L-2 children and spouses may attend school with no other documentation required.

L3. What are the requirements for the L-2 visa?

The requirements vary depending on the Consulate at which you apply and whether the L-1 worker was admitted to the U.S. as an L-1 under an individual petition or under a blanket L-1 petition for his/her company. However, the following are common requirements at all Embassies/Consulates:

- The "confirmation page" of your completed Department of State visa application form, the electronic State Department **Form DS-160**. You need not bring your entire DS-160 application; your DS-160 confirmation page is all the U.S. Embassy needs to retrieve your data. However, you must bring the DS-160 confirmation page with you during all phases of the application process. The DS-160 can only be submitted by you online; we cannot submit it for you. Please note that a DS-160 must be submitted not only for you, but for any and all family members who will accompany you to the United States. To create the DS-160 online, please visit the following URL: <https://ceac.state.gov/genniv>. To learn more about the DS-160, please review the State Department at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html>. If you encounter any difficulties creating the DS-160 form, please contact our office for assistance.
- **Photographs.** In most cases, a passport-style photo can be uploaded with the DS-160 application; however in the event that there is an issue with the upload, it is advisable to bring one passport style photograph for each applicant.
- **Valid passport.** Your passport must be valid for a minimum of six months, and preferably for a minimum of six months beyond the requested period of stay.
- **Fee.** All consulates charge a non-refundable visa application fee; in addition, depending on your country of citizenship, there may be a "reciprocity" fee. Check the appropriate section of the visa reciprocity schedule for the specific fees, on the DOS website at: <http://www.jackson-hertogs.com/?p=5956>. We suggest that, when provided the option, you select a multiple entry visa that is valid for the longest period available to you. You should also review the appropriate Consulate's website for information on how the fee must be paid (e.g., demand draft, etc.).
- **Proof of relationship to the L-1 worker.** If you are the spouse of the L-1 worker, you must provide your marriage certificate as proof. Other documentation that demonstrates the bona fides of the marriage (e.g. wedding photos, wedding invitation, etc.) may also be requested by the Consulate. If you are a child of the L-1 worker, you must bring your birth certificate as proof. The Consular Officer can insist on reviewing the original documents. Therefore, we suggest that you have the original documents to present along with copies, should the Consular Officer decide to ask for copies to keep in his/her file.

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[Special note for individuals who seek to secure entrance for family members who are not legally recognized by the U.S. as a spouse or other family members who are not spouses/children—the USCIS will allow such individuals to apply for B-2 visas to allow them entry to the U.S. in a quasi-derivative status. This is a complicated matter that requires individual consultation. If this is your situation, notify our office ASAP]

- **L-1 worker's approval notice.** We also recommend that you bring a copy of the L-1 petition and supporting documentation, which we filed on behalf of the L-1 worker either directly at a U.S. Consulate (if filed under an employer's blanket L-1) or with USCIS if filed as an individual L-1 petition. If you were also the beneficiary of a change to or extension of L-2 status you should also present your original approval notice showing that you were previously accorded L-2 status. Please note that if the L-1 worker, whose case was filed as an individual petition and not under an employer's blanket L-1, is applying for the L-1 visa at the same time that the L-2 applicants are applying for the L-2 visas, then the original L-1 petition I-797 approval notice must be presented. If the L-2 applications are being submitted separately from the L-1 visa application, then a copy of the L-1 Form I-797 approval notice must be submitted, in addition to a copy of the front and back of the L-1's Form I-94 record of admission card/printout, and the L-1 visa stamp.
- **Proof that the L-1 worker is in valid L-1 status in the U.S.** If the L-1 worker is in the U.S., then a copy of his/her Form I-94 record of admission card/printout evidencing status in the U.S. should be presented. In addition, a current employment verification letter from the employer on letterhead which confirms that the L-1 worker is still working for the L-1 employer and/or recent pay stubs from the L-1 employer should also be presented.

L4. How old must the child be in order to qualify?

The child must be under 21. It is important to note that if your child is in his/her late teens you will need to consider the impact of his/her "age-out" while you are in the U.S. If your family is unable to immigrate before the child turns 21 years of age, the child must either move into a different nonimmigrant category which is not dependent on your status (e.g., F-1 student) or depart the United States.

L5. Do I need an appointment at the Consulate and how can I find the Consulate's website?

Yes, an appointment is required. Go to <https://www.usembassy.gov/> and click on the specific country/consulate; information on making a visa appointment can be found under the "Nonimmigrant visas" section.

6. If my visa is approved, how long will it take to receive it?

This depends on consular workload and the length of any applicable security checks, the process may take a day, weeks or months. Check the Consulate's processing time report, accessible via <https://travel.state.gov/content/travel/en/us-visas.html>.

L6. Once issued, how long will the L-2 visa be valid?

Typically, L-2 visas are issued for the validity period of the underlying principal applicant's L-1 petition. However, depending on the country of nationality of the applicant, visas may be issued for less time. For example, Chinese nationals are issued visas for 24 months, valid for multiple entries to the U.S., regardless of the validity of the underlying L-1 petition. This limitation is based on the reciprocity agreement between the U.S. and China. Check the reciprocity table for your country on the DOS website, <http://www.jackson-hertogs.com/?p=5956>.