

# IMMIGRATION LAW OFFICES OF RON KATIRAEI

MANHATTAN, NEW YORK

Phone (212) 760-4400



## L-1 VISA (Intracompany Transferee)

Nonimmigrant visas, unlike the EB visas (i.e., EB-1, EB-2), do not confer Lawful Permanent Residency upon their holders; instead, non-immigrant visas allow individuals to reside in the U.S. for a specific amount of time and for a specific purpose. There are various categories of nonimmigrant visas for a person who wishes to work temporarily in the United States. Individuals require specific visas based on the purpose of their travel and the type of work they will be doing. One such category of visas is the L-1 category. The L-1 Intracompany Transferee category is concerned with individuals who, within the three preceding years, have been employed abroad continuously for one year, and who will be employed by a branch, parent, affiliate, or subsidiary of that same employer in the U.S. There are two types of L-1 visas: one category for employees who will work in a managerial or executive capacity, and one category for employees with specialized knowledge.

### **Executives or Managers (L-1A)**

The L-1A nonimmigrant classification enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company, which does not yet have an affiliated U.S. office, to send an executive or manager to the United States with the purpose of establishing one. The employer must file Form I-129, Petition for a Nonimmigrant Worker, on behalf of the employee. L-1A employees will be allowed a maximum initial stay of three years; requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the maximum limit of seven years.

### **Specialized Knowledge (L-1B)**

The L-1B nonimmigrant classification enables a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization's interests from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company that does not yet have an affiliated U.S. office to send a specialized knowledge employee to the United States to help establish one. The employer must file Form I 129, Petition for a Nonimmigrant Worker, on behalf of the employee. L-1B employees will be allowed a maximum initial stay of three years; requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the maximum limit of five years.

### **Employer Qualification Requirements**

To qualify for L-1 classification, the employer must:

- Have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as qualifying organizations); and

- Currently be, or will be, doing business as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-1. While the business must be viable, there is no requirement that it be engaged in international trade. 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.

## **Employee Qualification Requirements**

To qualify for L-1 classification, you must:

- Generally, have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding your admission to the United States; and
- Be seeking to enter the United States to render services in an executive or managerial capacity\*, or in a specialized knowledge capacity\*\*, to a branch of the same employer or one of its qualifying organizations.

\*Executive capacity generally refers to the employee's ability to make decisions of wide latitude without much oversight. Managerial capacity generally refers to the ability of the employee to supervise and control the work of professional employees and to manage the organization, or a department, subdivision, function, or component of the organization. It may also refer to the employee's ability to manage an essential function of the organization at a high level, without direct supervision of others.

\*\*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 expertise in the organization's processes and procedures. Such knowledge is beyond the ordinary and not commonplace within the industry or the petitioning organization. In other words, the employee must be more than simply skilled or familiar with the employer's interests.

## **New Offices**

For foreign employers who are seeking to send an employee to the United States as an executive or manager to establish a new office, it must also be shown that:

- Sufficient physical premises to house the new office have been secured
- The employee has been employed as an executive or manager for one continuous year in the three years preceding the filing of the petition; and
- The intended U.S. office will support an executive or managerial position within one year of the approval of the petition.

For foreign employers who are seeking to send an employee with specialized knowledge to the United States in order to be employed in a qualifying new office, it must also be shown

- Sufficient physical premises to house the new office have been secured; and
- The employer has the financial ability to remunerate the employee and begin doing business in the United States.

Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year.

## Application Process

Before applying for a temporary worker visa at a U.S. Embassy or a Consulate abroad, you must obtain an approved Form I-129, Petition for Nonimmigrant Worker, from USCIS. This form must be submitted by your prospective employer at USCIS's Temporary Workers webpage, no earlier than 6 months prior to the proposed employment start date. Once approved the employer will be sent Form I-797, Notice of Action. Once approval is received, you may apply for visa issuance at a consulate or embassy of the United States in the country having jurisdiction over your residence. Although an I-797, Notice of Action, showing the approval of the visa petition does not guarantee that a visa will be issued at the U.S. consulate or embassy, L-1 visas are normally approved if the consular officer concludes that you are qualified and that both the U.S. company and the foreign parent, subsidiary, affiliate or branch are legitimate.

## Families of L-1 Workers

As an L-1 employee, you may bring your spouse and any unmarried children under 21 to live with you while you are in the U.S. These family members may seek admission under L-2 nonimmigrant classification and, if approved, generally will be granted the same period of stay as you, the L-1 employee, will be. Furthermore, spouses of L-1 workers may apply for work authorization by filing Form I-765 and, if approved, there is no specific restriction as to where an L-2 spouse may work.

## Blanket Petitions

Certain organizations may establish the required intracompany relationship in advance of filing individual L-1 petitions by filing a blanket petition. To establish eligibility for blanket L certification, the employer:

- And each of the qualifying organizations must be engaged in commercial trade or services.
- Must have an office in the United States which has been doing business for one year or more;
- Must have three or more domestic and foreign branches, subsidiaries, and affiliates; and
- Must meet one of the following criteria:
  - o Along with the other qualifying organizations, have obtained at least 10 L-1 approvals during the previous 12-month period; or
  - o Have U.S. subsidiaries or affiliates with combined annual sales of at least \$25million; or
  - o Have a U.S. workforce of at least 1,000 employees.

The approval of a blanket L petition does not guarantee that an employee will be granted L-1 classification. It does, however, provide the employer with the flexibility to transfer eligible employees to the United States quickly and with short notice without having to file an individual petition with USCIS. In most cases, once the blanket petition has been approved, the employer need only complete Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, and send it abroad to the employee along with a copy of the blanket petition Approval Notice and other required evidence, so that the employee may present it to a consular officer.