



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.

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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,

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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.

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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



















