

SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

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What is an L Visas?

An L-1 visa is a good option for a foreign company that seeks to send an employee to work at an existing U.S. company. An L visa is also a good option for a foreign company trying to send an employee to open a new office in the United States. The employee must have a particular set of skills and either be a manager/executive or have particular specialized knowledge. In the past, L visas were relatively easy to get approved but the past few years have seen a rampant increase in Requests for Evidence (RFE's) and denials of L petitions. This is particularly the case for applicants applying under the specialized knowledge category or those seeking to extend a visa that was granted for a new office. The relatively new scrutiny makes an L visa an extremely document intensive visa that must be navigated carefully.

There are four main requirements to obtain an L visa outlined below. Remember that even if a foreign company is opening a new office in the U.S., it is always the U.S. entity or employer that will actually apply for the L visa.

1. The U.S. employer must have a "qualifying relationship" with a foreign company. This means that the foreign company and the entity in the U.S. have a relationship such as parent, branch, subsidiary or affiliate and the U.S. entity and foreign company share common ownership and control.
2. The company must be doing business in the United States and at least one foreign country, either directly or through a company with a qualifying relationship to the U.S. employer (parent, branch, subsidiary or affiliate).
3. The employee must have been working for the foreign company for one continuous year out of the preceding three years (normally you show payroll records to prove this) and
4. The employee must be entering the United States to work at the U.S. company as a manager, executive or specialized worker.

There are two types of L-1 visas, corresponding to different job functions.

L-1A Visa

The first type of visa is the L-1A, which is used for managers and executives who are responsible for running the business and managing professional workers, among other things. The Code of Federal Regulations provides strict definitions of “managers” and “executives” and the visa application must include a detailed job description as evidence that the executive or manager has the authority to plan, direct, supervise and control the company’s main functions. While beneficial, managers need not supervise employees necessarily and can manage functions or processes instead. That being said, the case for managing employees is much easier to document.

L-1B Visa

The second type of visa is the L-1B, which is appropriate for workers who possess special knowledge of an organization’s product, services, research techniques or policies and procedures. A specialized knowledge worker refers to someone who is a key member of the organization and has proprietary knowledge that can only be gained through experience with that particular employer. An example of specialized knowledge is knowledge of an exclusive software owned solely by the company or any other knowledge that has an impact on the competitiveness of the business.

New Offices

If a foreign company wants to establish a new office in the U.S., they may create a U.S. business entity and then apply for an L-1A visa to send an executive or manager to run the new U.S. office. When a new office is being established, the employer must submit additional evidence in the L visa application. Namely, the employer must show that they have obtained physical office space and that the business is going to be profitable such that it can support the new employee brought to start the operations. Normally a business plan is submitted with this application in addition to the lease agreement for the premises obtained. While obtaining an approval for a new office L visa is manageable, the visa is only issued for one year and getting an extension is difficult. Normally you must show significant growth in the first year in order to get an extension and you should have hired a number of employees.

Timing & Cost

The L-1A visa can be extended for a maximum period of 7 years, while an L-1B visa can be extended for a maximum period of 5 years. For managers, executives and specialized knowledge workers transferring to an established company in the U.S., the L-1 visa will be granted for an initial period of 3 years and then can be extended in 2 year increments. However, executives and

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managers who are being transferred to start a new office in the U.S. will only be granted an L visa for an initial period of 1 year. As noted above, it is quite difficult to get an extension after one year if your company has not experienced significant growth.

L visas are all processed by USCIS and after the approval notice is obtained, the employee must get a visa in his/her own country. To file an L petition, you must pay a \$325 filing fee plus a number of additional filing fees. (eg. Possibly Premium processing & Fraud Prevention fees). Remember that when you submit documents to USCIS, they must be translated and include the appropriate translation declarations.

Should I get an E-2 Visa or an L Visa?

The analysis of which visa is appropriate for a particular candidate depends on the facts and circumstances of the case. That being said, as long as an applicant is from a Treaty Country and can show the “significant investment” that is required for an E-2 visa (usually not less than \$50,000) an E visa provides good flexibility. For example, the E-2 visa can be issued for 5 years and the filing fees are substantially less than for L visas. (See above) Also, given the increased scrutiny associated with L visas, E visas are often selected over L visas. As India and China are not treaty country members, many of the L visas that we process are from nationals of those two countries. One benefit of an L Visa though is that it is a dual intent visa so it is easier to apply for a green card while on an L Visa.

Can I Bring My Family?

Spouses and unmarried children under 21 may apply for an L-2 classification, which allows them to stay in the U.S. for the duration of the L-1 visa holder’s stay. Spouses of the L-1 visa holder may apply for work authorization, which will allow them to work anywhere in the U.S. and unmarried children under 21 will be able to attend school.

For more practical or legal advice contact **Scott Legal Services, P.C.**. We offer services in a number of business areas including, Immigration, New Business set up, Contract review and development and entrepreneurial support. Call 212-223-2964 or email **iscott@legalservicesincorporated.com** for a consultation.

If you considering starting a business or need strategic advice, contact Scott Legal Services, P.C. for a consultation. You can call us at 212-223-2964 or email us at **iscott@legalservicesincorporated.com**.