

# Changes to L-1 Intracompany Transferee Visas: DOS Will Issue Them for Full Validity Based on Reciprocity Schedule

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The Department of State (DOS) published a rule in the Federal Register on Tuesday, February 14, 2012, permitting the issuance of L visas, for intracompany transferees, with validity periods based on the visa reciprocity schedule. Previously, L visas were limited to the validity of the L-1 petition approved by USCIS.

This rule will allow L visas to be issued for up to five years based on visa reciprocity. Although this may facilitate intracompany transfers, it also will result in confusion.

The L-1 Visa Process:

In order to work in the U.S. as an international transferee, the U.S. employer must first submit a Form I-129 petition to USCIS at a Service Center in the U.S. In that petition, the employer outlines the foreign national employee's service to a parent, affiliate, or subsidiary abroad for at least one year in an executive, managerial or specialized knowledge position. Further, the U.S. employer must demonstrate that the employee will be coming to the U.S. to work in an executive, managerial or specialized knowledge position. If USCIS approves the petition, they grant the L petitions in three-year increments for initial L petitions and two years for extensions as required by the regulations. (L-1As for multinational managers may be granted for up to a total of seven years; specialized knowledge employees on L-1B visas are eligible for up to a total of five years.)

Visa Application at the U.S. Consulate Abroad:

Upon receiving an L-1 petition approval, the L-1 visa applicant is required (except for Canadian citizens who are visa-exempt) to apply at a U.S. Consulate for an L visa to be stamped in the passport. Once the visa is in the passport, the employee may appear at a U.S. border for inspection and admission under L-1 status.

## Visa Reciprocity:

The Foreign Affairs Manual states, "The goal of visa reciprocity is to obtain progressive visa regimes, consistent with U.S. national interests, laws and regulations, to encourage international travel that benefits U.S. travelers and business." Specifically, the U.S. Government seeks to accord visa applicants with the same visa eligibility that foreign governments afford U.S. applicants when applying for similar status. Reciprocity governs the validity of nonimmigrant visas and the fees charged on a reciprocal basis as required by INA 221(c) and INA 281. As such, the DOS maintains a "schedule" based on country of citizenship and limits the visa duration, number of entries and additional fees based on reciprocity. Previously, the rules required the visas to be granted based on reciprocity, but were limited to petition validity (the I-129 petition approved by USCIS above). As such, initial L-1 visas generally were valid for three years; unless reciprocity dictated a shorter duration. For example, a Chinese national is limited to two years based on visa reciprocity.

## Admission to the U.S. after Inspection by CBP:

Once L employees have the L visa in their passports, they may present themselves at a port of entry to the Customs & Border Protection (CBP). For nonimmigrant visitors entering the United States with a visa, there is a requirement to complete a CBP Form I-94. The I-94 form is stamped by the CBP Officer and indicates the authorized period of stay. Generally, this period matches the expiration of the L-1 visa. However, if the employee has an I-797 Approval Notice for a longer duration, CBP can grant the full petition amount. Therefore, the Chinese national who has a visa valid for two years and an I-797 approval for three years, can be admitted for the full three-year period.

## Changes after the New Rule:

The DOS will no longer link visa validity with petition validity. Instead, the nonimmigrant visa will have the validity prescribed in the schedules provided to Consular Officers, which reflect the reciprocal treatment the visa applicant's country accords U.S. nationals. DOS believes this will reduce the number of visa applications an individual in L status will need to make, assuming their country of citizenship affords the U.S. applicant more than three years. Instead, the underlying L petition will need to be extended at USCIS in the U.S. and the L visa holder could then be readmitted into the United States after international travel with the new L-1 petition I-797 approval notice and the prior visa.

#### Conclusion:

Although this may reduce the number of visa applications an L-1 holder may be required to make, it will likely create confusion for the L-1 nonimmigrant and the CBP Officers admitting them at the border. For nonimmigrant visitors entering the United States with a visa, the I-94 form is stamped by the CBP Officer and indicates the authorized period of stay. Generally, this period matches the expiration of the L-1 visa. Going forward, the I-94 and period of authorized stay will often be two years less than the visa validity. This could create confusion with the CBP Officer admitting the L-1 visa holder, as well as to a well-intentioned L-1 visa holder who believes he is entitled to remain in the U.S. so long as the visa is valid. As such, it will be more important than ever to educate L-1 visa holders regarding the significance of visa and I-94 card validity so that they can comply with U.S. immigration laws, as well as identify any possible errors made by CBP Officers at the port of entry as they become accustomed to this new procedure. Please contact Proskauer's Immigration & Nationality Group with any concerns regarding this new procedure.