



INNOVATIVE

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IMMIGRATION

STRATEGIES

NEW OFFICE L1: ELIGIBILITY & DOCUMENTATION GATHERING

L1 nonimmigrant visa classification applies to intracompany transferees 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. in a managerial, executive, or specialized knowledge capacity.

L1 beneficiary employees may also include individuals who are coming to the United States to open or be employed in a new office in the United States (“New Office L1”).

ESTABLISHING ELIGIBILITY FOR NEW OFFICE L1

ELIGIBILITY:

New Office L1 beneficiary employees may enter the United States in either an executive or managerial capacity (L1A) **OR** in a specialized knowledge capacity (L1B).

- **L1A Executive or Manager:** If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the United States petitioning employer must submit evidence that:
 - (1) Sufficient physical premises to house the new office have been secured;
 - (2) The L1 beneficiary employee has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed L1 employment involved executive or managerial authority over the new operations in the United States; AND

- (3) The intended United States operation, within one year of the approval of the L1 petition, will support an executive or managerial position. This should be supported by information regarding:
- a. The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - b. The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; AND
 - c. The organizational structure of the foreign entity.
- **L1B Specialized Knowledge Professional:** If the L1 beneficiary employee is coming to the United States in a specialized knowledge capacity to open or be employed in a new office in the United States, the United States petitioning employer must submit evidence that:
 - (1) Sufficient physical premises to house the new office have been secured;
 - (2) The business entity in the United States is or will be a qualifying organization (ie: branch, parent, affiliate, or subsidiary of the foreign entity);
 - (3) The United States petitioner employer has the financial ability to remunerate the L1 beneficiary employee and to commence doing business in the United States.

L1 BENEFICIARY EMPLOYEE IS SOLE OWNER OR MAJOR STOCKHOLDER:

If the L1 beneficiary employee is an owner or major stockholder of the company, the petition must be accompanied by evidence that the L1 beneficiary employee's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

Such evidence can include: documentation of the L1 beneficiary employee's other business activities abroad; active participation with the foreign entity's operations; corporate records of business ventures abroad that the L1 beneficiary employee is involved in; statements from corporate officers attesting to the business ventures that the L1 beneficiary employee is involved in, etc.

AUTHORIZED PERIODS OF STAY FOR NEW OFFICE L1 PETITIONS:

While L1 visas are typically granted initially for a 3 year period of time, New Office L1 petitions are granted a one (1) year period of stay initially.

NEW OFFICE L1 EXTENSION OF STAY PETITIONS: New Office L1 Extension Petitions are filed with the USCIS. The USCIS grants extensions of L1 stay in 2 year increments until the maximum period of L1 stay is reached. The L1A category has a 7 year maximum period of stay. The L1B category has a 5 year maximum period of stay.

To demonstrate the United States operation's viability and the need for the L1 beneficiary employee's continued employment in the United States after the first year of L1 employment, USCIS requires that New Office L1 Extension petitions be accompanied by the following:

- (1) Evidence that the United States and foreign entities are still qualifying organizations (ie: branch, parent, affiliate, or subsidiary of the foreign entity);
- (2) Evidence that the United States entity has been "doing business" which is defined as the regular, systematic, and continuous provision of goods and/or services (does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad);
- (3) A statement of the duties performed by the L1 beneficiary employee for the previous year and the duties the L1 beneficiary employee will perform under the extended petition;
- (4) A statement describing the staffing of the new United States operations, including the number of employees and types of positions held accompanied by evidence of wages paid to employees;
- (5) Evidence of the financial status of the United States operation.

NEW OFFICE L1 DOCUMENTATION GUIDE

Before being able to commence preparation of a New Office L1 petition, the United States petitioner employer will need to ensure that the correct documentation is in place and may be submitted to the USCIS with the initial petition filing to establish eligibility for the New Office L1 classification.

COMPANY FORMATION & REGISTRATION:

The United States petitioner employer should first form the United States entity. This will require corporate filings with the Secretary of State and compliance with certain business formation requirements that are specific to the state where the business will be located. It is advisable to consult with an attorney that specializes in formations of businesses so that the United States petitioner employer can make informed decisions about issue such as: here to register the business; what type of business entity should be formed (ie: corporation, limited liability company, etc); what tax implications are involved, etc.

The corporate formation documents and related documentation such as state/county/city-issued business licenses may be submitted with the USCIS New Office L1 petition filing as evidence of formation and the nature of the business activity of the United States operations. As referenced above, United States petitioner employer must demonstrate that the United States petitioner will be “doing business” in the United States and abroad for the duration of the L1 employment. “Doing business” is defined as the regular, systematic, and continuous provision of goods and/or services. It does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. As referenced above, to justify the need of the L1 beneficiary employee’s continued employment after the first year, evidence of the United States petitioner employer “doing business” will also need to be submitted for the New Office L1 extension of stay petition.

EVIDENCE THAT PHYSICAL PREMISES HAVE BEEN SECURED:

USCIS typically accepts copies of leases or purchase agreements to demonstrate that physical premises have been secured by the United State petitioner employer for the new operations in the United States. USCIS will usually want to see evidence of the fact that the office space is large enough to support the United States business activities and planned expansion in the first year of business activity so the documentation should include floor plans of the premises as well as a description of the property/space.

Additional items to document business premises could include the United States entity’s company letterhead listing the company address, business cards with the company address listed on them, copies of utility bills issued to the United States entity at the business premises address, photographs of the building and signage indicating the company’s existence at that premises, etc.

BUSINESS PLAN FOR UNITED STATES ENTITY:

USCIS will want to review the United States petitioner employer’s business plan. This document may be less detailed than what would be submitted to an investor, but would need to summarize and describe aspects of the United States business operations such as: a mission statement or description of the business activity; short and long term business goals; a staffing

plan that describes how many employees the United States petitioner employer will hire in the first year and over the next five years; the financial projections of the United States entity including anticipated revenue and costs; expected customers and/or business contracts, etc.

EVIDENCE OF STAFFING:

The United States petitioner employer will need to demonstrate that the United States entity is staffed with employees. While there is no specific number of hires specified in the regulations, a company should hire as many individuals as is needed to conduct United States business operations so as to meet its financial goals. USCIS requires that within the first few months of operation, the United States entity demonstrates a growth in personnel.

For the initial New Office L1 petition filing, it may be advisable to hire some United States Citizens or Legal Permanent Residents for required positions. The balance of United States workers with foreign national employees on the company payroll may demonstrate to USCIS that the newly formed United States entity will be anchored in the United States but that the L1 beneficiary employee from the foreign entity is required to be present in the United States to grow and expand the entity's business activity in the United States.

The hiring of staff should continue after the initial New Office L1 petition filing is approved as the New Office L1 Extension filing requires documentation of the company's personnel growth in the first year of business. For L1 Executives and Managers it also demonstrates that there is the existence of a staff that needs to be directed or managed.

To document staffing, the United States petitioner employer can submit an organizational chart of the existing United States entity that describes the managerial hierarchy and staffing levels as well as an organizational chart that describes the projected growth and expansion of staffing levels throughout the first years of business activity. For L1A Executives or Managers, the organizational chart will also serve as evidence of the management or direction of other employees.

The United States petitioner employer can also submit quarterly wage reports submitted to the State Workforce Agency or federal quarterly wage reports (Form 941) for each employee to demonstrate the number of employees on payroll.

EVIDENCE OF CORPORATE RELATIONSHIP BETWEEN UNITED STATES PETITIONER AND FOREIGN ENTITY EMPLOYER:

For any L1 petition, USCIS will require evidence of the relationship between the United States petitioner employer and the foreign entity employer. The United States entity must be a branch, parent, affiliate, or subsidiary of the foreign entity in order to be considered a qualifying organization.

Evidence of a qualifying corporate relationship can include articles of incorporation, minutes of Board meetings showing stock distribution, stock certificates demonstrating ownership interests, letters from corporate officers of the parent company attesting to ownership/relationships, etc.

It is also recommended to provide an organizational chart for the foreign entity employer that describes the managerial hierarchy and staffing levels. This is especially the case if the L1 beneficiary employee is required to report to executive management based in the foreign entity during the beginning of the L1 employment. The organizational chart will evidence the L1 beneficiary employee's position both in the United States and abroad.

EVIDENCE OF FINANCIAL VIABILITY OF UNITED STATES ENTITY:

Although New Office L1 petitions involve businesses that are just forming, USCIS requires that the United States petitioner employer demonstrate its financial ability and/or initial capital to sustain business operations. For the New Office L1 Extension petition, this ability will have to be further documented.

Such documentation can include: United States federal income tax returns filed for the most recent tax year; corporate bank statements; existing contracts, purchase orders, or accounts payable; accountant statements describing financial projections; articles of incorporation, corporate by-laws, corporate resolutions relating to capital; statements from the foreign entity attesting to the foreign entity's commitment to financing United States operations with annual report from the foreign entity, etc.

YOUNOSSI LAW'S PROCESSING STEPS FOR NEW OFFICE L1 PETITION FILINGS

For New Office L1 USCIS Petition filings, below is an outline of Younossi Law's processing of the application.

Step 1-- Initiation & Fact Gathering: Upon employer's request to initiate an L1 petition, Younossi Law will send out fact gathering information to the employer and L1 candidate.

Step 2-- Preparation of and Sending Documents to Employer for Signature: Younossi Law will assess the fact gathering information and supporting documentation and apprise the employer of any issues or concerns.

Step 3-- USCIS L1 Petition Filing: Younossi Law will prepare L1 petition documentation and send it to the employer for signature. Upon receipt of signed documents, Younossi Law will file

the L1 petition with USCIS. USCIS processing time is approximately 2-3 months. However, the USCIS also allows premium processing of the petition which entails the submission of a \$1225 premium processing fee (in addition to regular L1 fees) in order to obtain an adjudication within 15 days of USCIS' receipt of the petition filing. L1 employers often opt for premium processing when submitting USCIS petitions for L1 candidates.

Once the L1 petition is approved, the L1 candidate will then need to apply for an L1 visa stamp to be placed in their passport at a U.S. consulate. The L1 visa stamp application process will vary per consulate, but typically entails an appointment be made with the consulate, submission of Form DS 160 (or Form DS 156 and DS 157 for consulates that still use these versions of the forms---applicants should check directly with the consulate as to which form is required by the particular consulate) as well as an in-person interview. Photo requirements, payment of visa fees, as well as passport validity requirements will also apply as with any visa stamp application. Visa issuance timeframes also vary by consulate.

Upon issuance of the L1 visa stamp, the L1 candidate can enter the United States in L1 status and commence employment with the U.S. petitioning employer. At entry, the port-of-entry officer will issue the L1 applicant a Form I-94 Arrival and Departure Record (I-94 card) which indicates L1 status, the date of entry, and the date of expiration of the L1 status. It is key that the L1 applicant forward Younossi Law a copy of the I-94 card after each entry or at least advise Younossi Law of each re-entry into the U.S. so that status and expiration dates may be accurately tracked for employment authorization and status purposes.

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Should further questions arise regarding New Office L1 classification, please contact the immigration professional at Younossi Law with whom you usually work to discuss.