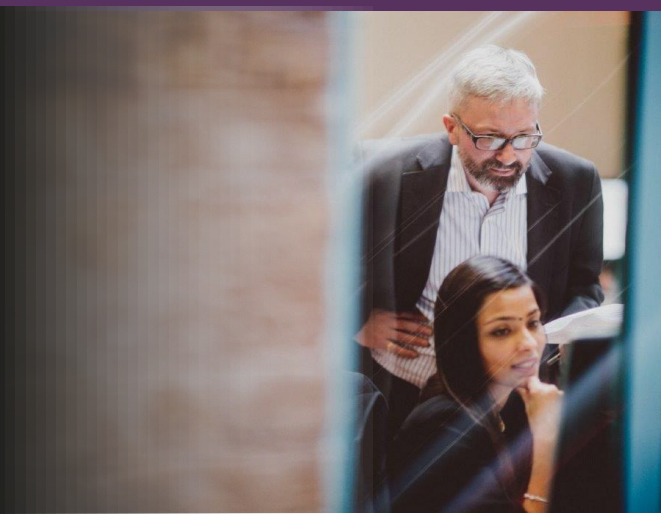
RIAA Barker Gillette

Insight

EB1 Green Card via an L1A



Immigration

EB1 Multinational Manager/Executive Green Card via an L1A Intracompany Transfer Visa

What is an L-1A visa?

The L-1A intracompany transfer non-immigrant visa allows foreign national executive/managerial employees located outside the U.S. to work in the U.S. for an affiliated entity. An L-1A visa is a non-immigrant status and does not automatically give the foreign employee permanent residency or a "green card". But it may in certain circumstances be a very useful gateway for a green card.

What is the EB-1C Multinational Manager/Executive?

The Employment-Based Immigration Petition, or EB-1C green card, is an employment-based petition for permanent residence. The EB-1C was designed for the most proficient and skilled foreign managers and executives. Some of the EB-1C criteria are similar to those of an L-1A visa. Persons who come to the U.S. as L1A workers can usually apply for an EB-1C green card after being in the U.S. for one year on the L1A status, provided they are not also an owner of the business. In some cases qualified L1A executives/managers can apply for EB-1C green cards prior to the one year anniversary of their L1A status, if the U.S. entity has been operational for over a year.

L-1A Visas – The Intracompany Transfer

Basic Requirements L-1A

For the Employee (Alien) to be eligible for an L-1A non-immigrant visa, the following conditions must be met:

- The employee must have worked abroad for the overseas company for a continuous period of one year in the preceding three years.
- The company for which the employee has worked for a year abroad must be related to the U.S. company in a specific manner.
- The sponsoring company must be doing business both in the United States and another country throughout the period of the transfer. Or the employee must be opening a startup in the U.S.
- The employee to be transferred must have been employed abroad in an "executive" or "managerial" position.
- The employer must be coming to the U.S. company to fill one of these capacities (executive or managerial).
- The employee must be qualified for the position by virtue of his or her prior education and experience.
- The L-1A alien must intend to depart the United States upon completion of his or her authorized stay (including extensions) but may also pursue permanent residence at the same time.

One-year Continuous Employment Requirement

The one-year continuous employment requirement gives rise to several questions.

- Does the petitioner have to meet the one-year requirement within three years immediately preceding to filing the L-1A petition or entry into the

United States or initial application for entry into the United States?

- The statutes and regulations are unclear and contradicting on this issue. Reading the Immigration and Nationality Act ("INA") on its face, the statute refers to the 3 years preceding the time of application for admission into the United States. Following this interpretation, the Code of Federal Regulations ("CFR") defines intracompany transferee as "an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year" by a qualifying company.[1] However, later in the same section, the CFR provides contradicting interpretation, stating that L-1A petition need to be supported by evidence that "the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition".[2]

- In Matter of Kloeti, the court looked at the beneficiary employee's initial application for entry into the United States.[3] The beneficiary first applied for admission to the United States as a nonimmigrant visitor for business (B-1); he then applied to change status to L-1. The court said that his application for change of status is not an application for admission to the United States under INA section 101(a)(15)(L). As the beneficiary had not employed for one year by the qualifying overseas company before his B-1 visitor application, he did not meet the one-year employment requirement for L-1 petition.

- The INS (USCIS) discussed that if a beneficiary works in the U.S. on H-1B visa before filing for L-1 and the H-1B is related to the qualifying foreign employer, they count the qualifying employment time prior to the H-1B application when considering the one-year employment requirement.[4] The INS provides a scenario where a beneficiary has worked in the U.S. for 3 years on H-1B nonimmigrant visa before filing for L-1. The INS officer says that for the L-1 petition, they consider whether the beneficiary has acquired one-year of qualifying employment within three years immediately preceding his H-1B application. The INS requires, however, that "the time spent in the U.S. as an H-1B be for a firm related in a qualifying capacity to the alien's previous foreign employer."[5]

- If the employee gets work-related training in the U.S. for a few months, does the training break his/her continuous employment at the overseas company?

- In Matter of *Continental Grain,* the foreign national stayed in the U.S. for 28 months as a nonimmigrant trainee in pursuit of further training related to his qualifying employment.[6] Within the twelve months immediately preceding his petition, the beneficiary had spent over four months in the United States. He had worked at his overseas company for over 5 months immediately preceding the training and immediately after the training, he worked there for more than 7 months. Under such circumstances, the foreign national met the one-year continuous employment requirement. (This case was decided before the current L-1 regulations came in force. "Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted towards fulfillment of that requirement."[7]

EB-1C GREEN CARD - Multinational Executives and Managers

EB-1C stands for the first preference employment-based immigrant classification for multinational executives or manages. This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

In order to establish eligibility for EB-1C, the employee must have worked for a qualifying entity abroad for one year in the three years preceding the filing of the petition or preceding his or her admission to work for the petitioner as a non-immigrant. If the beneficiary is outside the United States at the time of filing, the

[1] 8 C.F.R. § 214.2(l)(1)(ii)(A).
[2] 8 C.F.R. § 214.2(l)(3)(iii).
[3] See Matter of Kloeti, 18 I&N Dec. 295 (Reg'l Comm'r 1982).
[4] Letter, Bednarz, Chief, NIV Branch Adjudications, CO 214 L-C (Mar. 25, 1994), reprinted in 71 No. 27 Interpreter Releases 936, 938 (July 18, 1994).
[5] Id.
[6] See Matter of Continental Grain, 14 I&N Dec. 140 (D.D. 1972)
[7] 8 C.F.R. § 214.2(l)(1)(ii)(A).

petitioner must demonstrate that the beneficiary's one year of qualifying foreign employment occurred within the three years immediately preceding the filing of the petition.[8] If the beneficiary is already working in the United States for the petitioner, or its affiliate or subsidiary, at the time of filing, the petitioner must demonstrate that the beneficiary's year of foreign employment occurred in the three years preceding his or her entry as a non-immigrant.[9]

In its recent Policy Memorandum issued on March 19, 2018, USCIS states that for the one-in-three employment requirement, it only looks at the three years immediately preceding the EB-1C petition. A period of employment with a different U.S. employer would not automatically disqualify a beneficiary. However, a break in qualifying employment longer than two years will interrupt a beneficiary's continuity of employment with the petitioner's multinational organization. Such breaks may include, but are not limited to, intervening employment with a non-qualifying U.S. employer or periods of stay in a non-immigrant status without work authorization.

Please consult RIAA Barker Gillette (USA) on issues related to L-1A or EB-1C petitions.

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[8] 8 C.F.R. § 204.5(j)(3)(i)(A).

[9] See 8 C.F.R. § 204.5(j)(3)(i)(B).