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State Department Clarifies Standard of Review for Blanket L Visa Applications

UNITED STATES

At a glance

- *In new instructions to consular officers, the State Department reminds officers to require that blanket L visa applicants show their eligibility by “clear and convincing evidence” and directs officers to deny applications where questions about the applicant’s eligibility cannot be resolved quickly.*
- *Though blanket L visa applications have long been subject to a heightened standard of review, the new State Department guidance to consular officers could result in even greater scrutiny and higher rates of application denials.*

The issue

The State Department has updated its guidelines for adjudication of blanket L visa applications, reminding consular officers that blanket L visa applicants must demonstrate their eligibility by “clear and convincing evidence.” According to the updated guidance, officers are directed to deny blanket L applications if questions about the applicant’s eligibility cannot be quickly and easily resolved during the interview.

What this means for employers and foreign nationals

Blanket L applications at U.S. consulates have long been subject to a higher legal standard of review than L visa petitions at USCIS. Under longstanding guidelines, blanket L-1 visa applicants must demonstrate that their applications are “clearly approvable,” while USCIS petitions are subject to a less stringent “preponderance of the evidence” standard. The State Department’s new guidelines do not alter the clearly approvable standard, but the new and detailed instructions to officers could result in more frequent application denials.

Employers and foreign nationals should be prepared for tougher blanket L visa adjudications under the new guidelines. During the visa interview, applicants should be prepared to describe their work experience, skills and job responsibilities in clear and succinct language to minimize the risk of denial.

Fragomen continues to monitor blanket L visa issuance closely and will provide updates as the new guidance is implemented.

This alert is for informational purposes only. If you have any questions, contact the immigration professional with whom you work at Fragomen.

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