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# USCIS Issues Guidance on L-1 One-Year Foreign Employment Requirement

UNITED STATES

## At a glance

- *USCIS has not previously provided comprehensive guidance on how the three-year period is defined for purposes of determining whether a foreign national has met the “one-year within three-year” abroad employment requirement for L-1 nonimmigrant status.*
- *Periods of time in the U.S. not working, working for an unrelated employer, attending school or working in dependent status could limit or delay a foreign national's eligibility for L-1 status.*

## A closer look

U.S. Immigration and Citizenship Services (USCIS) today issued a [policy memorandum](#), effective immediately, providing guidance on how it will calculate qualifying employment abroad when adjudicating a foreign national's eligibility for L-1 intracompany transferee temporary worker status. With limited exceptions, an L-1 applicant must now be employed abroad by a qualifying L organization for one continuous year within the three years **before the filing of the employer's initial L-1 petition**.

This is the first time USCIS has provided comprehensive guidance on how a foreign national can meet the one-year of continuous foreign employment requirement necessary for L-1 status. In the past, the agency offered varying interpretations, sometimes calculating the “one year within three years” requirement from the date of admission to the United States, regardless of what status that admission was in, and sometimes calculating it from the date of the filing of L-1 petition.

## Key points in the guidance

The key elements of the new interpretation follow:

- **Qualifying employment abroad:** The L-1 beneficiary must be physically outside the United States during the required one continuous year of employment, except for brief trips to the United States for business or pleasure.
- **Brief U.S. trips for business or pleasure during qualifying employment period:** While brief trips to the U.S. for business or pleasure do not interrupt the one continuous year of abroad employment, these trips will toll the one year clock, adding time that must continue to be spent in qualifying employment abroad. The memo appears to identify only trips in B-1 or B-2 status as non-interruptive of the one-year continuity; it is unclear how brief trips in other types of status with the L employer during the qualifying period might be treated with respect to continuity.
- **Nonimmigrants in U.S. as principal beneficiary of employment-based petition:** Time spent in the U.S. by a foreign national as the **principal beneficiary** of an employment-based nonimmigrant petition for a qualifying L employer will be treated differently for determining whether the foreign national has met the one-year foreign employment requirement. In these instances, USCIS will look to the date upon which the foreign national was initially admitted to work for the qualifying organization rather than the date of the L-1 petition filing.
- **Nonimmigrant dependents and students employed in the U.S.:** Periods of employment with the L qualifying organization in the U.S. as a **dependent or student** will not result in an adjustment of the three-year period for the purposes of determining whether the foreign national has met the one-year continuous foreign employment requirement. The dependent or student must have had the qualifying foreign employment within three years of the initial L petition filing.

- **Periods of unemployment or employment unrelated to L employer:** Periods of time in the U.S. not working, or working for an unrelated employer will not result in an adjustment of the qualifying L three-year period during which the foreign national must have been continuously employed for one year abroad. The foreign worker must have had the qualifying foreign employment within three years of the initial L petition filing.

#### **What this means for employers and foreign nationals**

Because the new policy guidance may delay L-1 eligibility for some potential transferees, a foreign national's time abroad must be carefully calculated before applying for L-1 status. This means an L-1 employer must keep track of a worker's brief visits to the United States during employment abroad. For foreign nationals already in the United States, the L-1 employer should confirm that the amount of time they have been in the United States or the status they have been in does not preclude them from L-1 sponsorship.

Fragomen will monitor the implementation of the policy guidance and provide updates as appropriate.

*The policy change is effective immediately. If your organization has questions about its impact, please contact the immigration professional with whom you work at Fragomen. This alert is for informational purposes only.*