



November 15, 2018

PM-602-0167

## Policy Memorandum

SUBJECT: Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM)

### Purpose

This policy memorandum (PM) clarifies the requirement that the qualifying organization employ the principal L-1 beneficiary abroad for 1 continuous year out of the 3 years before the time of petition filing ("one-year foreign employment requirement"). This clarification is intended to ensure consistent adjudications of L-1 petitions with respect to the 1-year foreign employment requirement.

Specifically, this PM explains that: 1) the L-1 beneficiary must be physically outside the United States during the required 1 continuous year of employment (although in certain cases brief trips to the United States do not interrupt, or break, the 1 continuous year); and 2) the petitioner and the beneficiary must meet all requirements, including the 1 year of foreign employment, at the time the petitioner files the initial L-1 petition.<sup>1</sup>

### Scope

This memorandum applies, and will be used, to guide determinations by all U.S. Citizenship and Immigration Services (USCIS) employees when adjudicating I-129 petitions for the L-1 classification.

The memorandum is intended *solely* for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner. This memorandum supersedes any prior guidance on this topic.

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<sup>1</sup> An "initial L-1 petition" refers to a petition for "new employment" in L-1 status and not necessarily the first L-1 petition filed on behalf of a given beneficiary.

## **Authorities**

- Immigration and Nationality Act (INA) section 101(a)(15)(L), Title 8, U.S. Code (8 U.S.C.) section 1101(a)(15)(L).
- INA section 214(c)(2)(A), 8 U.S.C. 1184(c)(2)(A).
- Title 8, Code of Federal Regulations (8 CFR) 214.2(l)(1)(i), 8 CFR 214.2(l)(1)(ii)(A), 8 CFR 214.2(l)(3)(iii), 8 CFR 214.2(l)(5)(ii)(D).

## **Background**

Subject to INA section 214(c)(2), an otherwise eligible foreign national may be classified as an L-1 nonimmigrant if, “within 3 years preceding *the time of his application for admission into the United States*, [the foreign national] has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and . . . *seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof* in a capacity that is managerial, executive, or involves specialized knowledge . . . .” INA section 101(a)(15)(L) (emphasis added).<sup>2</sup>

The regulation at 8 CFR 214.2(l)(1)(ii)(A) defines an intracompany transferee, in part, as one “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 entity], and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof . . . .” The regulation further states “[p]eriods 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 toward fulfillment of that requirement.” *Id.*

INA section 101(a)(15)(L) and 8 CFR 214.2(l)(1)(ii)(A) require that the beneficiary work abroad for one continuous year within the three years preceding the “application for admission into the United States.” The statute is silent about those beneficiaries who have already been admitted to the United States in a different classification. However, 8 CFR 214.2(l)(3)(iii) uses a different reference point and states that the one year of foreign employment must have occurred “within the three years preceding the filing of the petition.”<sup>3</sup> The difference in phrasing has led to questions about which point in time should be the appropriate reference point in determining whether the one-year foreign employment requirement has been satisfied. This has been particularly problematic when individuals were admitted into the United States in a status other than L-1 (for example, as an H-1B specialty occupation worker, an F-1 student, or an L-2

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<sup>2</sup> The INA and CFR also require one year of foreign employment out of the three preceding years prior to filing for immigrant classification as a multinational manager or executive. *See* INA 203(b)(1)(C) and 8 CFR 204.5(j)(3)(i). In this context, USCIS has clarified that a beneficiary who worked abroad for a qualifying multinational organization for at least one year, but left its employment for a period of two years or longer *after* being admitted to the United States as a nonimmigrant, does not satisfy the one-in-three foreign employment requirement for immigrant classification as a multinational manager or executive. *See Matter of S-P-, Inc.*, Adopted Decision 2018-01 (AAO Mar. 19, 2018).

<sup>3</sup> Title 8 CFR 214.2(l)(3)(iii) also requires that the employment abroad be full-time.

dependent spouse of an intracompany transferee) and request a change of status to the L-1 classification.

INA section 101(a)(15)(L) and the similar language of 8 CFR 214.2(l)(1)(ii)(A) do not limit the ability of companies to employ otherwise eligible personnel as L-1 nonimmigrants merely because such persons may have been initially admitted in a different nonimmigrant classification. However, the requirement that an L-1 beneficiary have worked abroad for at least one continuous year in the preceding three years ensures the continuity of a beneficiary's lawful employment with the same international qualifying organization, consistent with the purpose of the intracompany transferee visa classification. Therefore, USCIS is clarifying that the proper reference point for determining the one-year foreign employment requirement is the date the petitioner files the initial L-1 petition on the beneficiary's behalf, the starting point in the alien's application for admission in L-1 status.<sup>4</sup>

### **Policy**

#### **The one continuous year of qualifying employment must occur outside the United States**

The one-year foreign employment requirement is only satisfied by the time a beneficiary spends physically outside the United States working full-time for the petitioner or a qualifying organization.<sup>5</sup> A petitioner cannot use any time that the beneficiary spent in the United States to meet the one-year foreign employment requirement, even if the qualifying foreign entity paid the beneficiary and continued to employ the beneficiary while he or she was in the United States. Furthermore, the one continuous year of foreign employment must be qualifying; that is, the petitioner must demonstrate that the beneficiary worked abroad during that time period in a managerial, executive, or specialized knowledge capacity.

#### **Brief trips to the United States for business or pleasure do *not* interrupt the one continuous year**

While a qualifying foreign entity employs a beneficiary abroad, brief trips to the United States for business or pleasure in B-1 or B-2 status toll<sup>6</sup> the one continuous year of employment abroad. Therefore, in such cases, officers should subtract the number of days the beneficiary spent in the United States from the time the qualifying foreign entity employed the beneficiary abroad. For example, if the qualifying foreign entity began to employ the beneficiary on January 1, 2016, and the beneficiary made brief trips to the United States that year for a total of 60 days, the beneficiary would need to accrue at least an additional 60 days of qualifying employment abroad after January 1, 2017, in order to meet the one-year foreign employment requirement.

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<sup>4</sup> When a petitioner requests an extension of L-1 status (including a change from L-1A to L-1B status, or a change from L-1B to L-1A status), the requirement must have been met at the time of the filing of the *initial* L-1 petition.

<sup>5</sup> A qualifying organization is a United States or foreign firm, corporation, or other legal entity that: (1) meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii); and (2) is or will be doing business...as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and (3) otherwise meets the requirements of INA 101(a)(15)(L). 8 CFR 214.2(l)(ii)G).

<sup>6</sup> For the purposes of this memorandum, the term "toll" means that the beneficiary's time in the United States will count neither towards nor against the one-year foreign employment requirement.

Time the beneficiary spent working “for” the qualifying organization in the United States results in an adjustment of the three-year period for determining whether the beneficiary has met the one-year foreign employment requirement

By regulation, time a beneficiary spent working in the United States “for” a qualifying organization does not count towards the one-year foreign employment requirement; however, this time does result in an adjustment of the three-year period (8 CFR 214.2(l)(1)(ii)(A)). A nonimmigrant in the United States will be considered to have been admitted to work “for” the qualifying organization if he or she is employed by that organization as a principal beneficiary of an employment-based nonimmigrant petition or application, such as H-1B or E-2 executive, supervisory, or essential employee.<sup>7</sup> For example, if a beneficiary worked in the United States in valid H-1B status for a qualifying organization from January 2, 2017, through January 2, 2018, and the petitioner filed for L-1 nonimmigrant status for the employee on January 2, 2018, the pertinent three-year period will be from January 1, 2014, to January 1, 2017.

Periods of employment with the qualifying organization in the United States as a dependent or student do not result in an adjustment of the three-year period for purposes of determining whether the beneficiary has met the one-year continuous foreign employment requirement

Conversely, the time a beneficiary spent working while in a dependent status will not result in an adjustment of the three-year period.<sup>8</sup> For example, time spent by a beneficiary in L-2 status will not result in an adjustment of the three-year period, because the beneficiary was admitted as an L-2 to join the L-1 principal and not to work “for” a qualifying organization. Likewise, if a beneficiary was admitted as an F-1 nonimmigrant and later applies for optional practical training (OPT) employment with the qualifying organization, the time spent in F-1 nonimmigrant status will not result in an adjustment to the three-year period, because the purpose of admission was for study and not to work “for” the qualifying organization. Moreover, this would not change even if the qualifying organization financed the F-1 nonimmigrant’s studies. In neither of these instances should the three-year period be adjusted.<sup>9</sup>

Periods of time in the United States not working or working for an unrelated employer do not result in an adjustment of the three-year period during which the beneficiary must have been continuously employed for one year abroad

Periods of time the beneficiary spent in the United States without working (except for brief visits for business or pleasure in B-1 or B-2 status), or while working for an unrelated employer, interrupt the one continuous year foreign employment requirement, and officers should not

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<sup>7</sup> A beneficiary’s intervening U.S. employment for the qualifying organization need not be in a managerial, executive, or specialized knowledge capacity to affect the dates of the relevant three-year period.

<sup>8</sup> Under 8 CFR 214.2(l)(1)(ii)(A), a beneficiary must “seek[] to enter the United States temporarily *in order to continue to render his or her services* to a branch of the same employer or a parent, subsidiary or affiliate thereof ...[emphasis added].” Further, under this regulation, “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 toward fulfillment of that requirement.” Tolling of the one continuous year is therefore not available to persons who were admitted for other purposes, such as L-2 or F-1 nonimmigrants.

<sup>9</sup> In other words, such an L-2 spouse or F-1 student would be ineligible for L-1 classification if the last period of qualifying employment with the L-1 qualifying organization abroad was more than two years prior to the time of filing of the instant L-1 petition.

adjust the three-year period. The relevant point in time for an officer to determine whether a beneficiary satisfies the one-year foreign employment requirement is *the date on which the petitioner filed the initial L-1 petition*, regardless of when the beneficiary was, or will be, admitted to the United States.

Note, that if a beneficiary takes a break in employment with, or stops working for, the qualifying organization as a principal beneficiary for a period of more than two years during the three years preceding the petition filing, then he or she cannot meet the one-year foreign employment requirement and is disqualified for L-1 classification. An otherwise eligible alien may again qualify for the L-1 classification following a new one-year period during which such alien is employed in a managerial, executive, or specialized knowledge capacity by the qualifying organization abroad.

### **Application**

Officers should take the following steps when determining whether the petitioner has established the one-year foreign employment requirement.

#### **Always look back three years from the date the initial L-1 petition was filed and then:**

Step 1: Determine the dates the beneficiary worked for the qualifying organization abroad.

Step 2: Determine the lengths of any breaks in the beneficiary's qualifying employment during the three years before the petitioner filed the L-1 petition. If the beneficiary has lawfully worked for a qualifying organization in the United States as a principal beneficiary of an employment-based nonimmigrant petition or application, adjust the three-year period accordingly.

Step 3: Subtract the total length of all the breaks identified in Step 2 from the relevant three-year period. If the result is a continuous one-year period within the relevant three-year period, then the petitioner has met the one-year foreign employment requirement.

USCIS is issuing this guidance as a Final Policy Memorandum.

### **Implementation**

The AFM is updated by replacing chapter 32.3(b).

The AFM is amended as follows:

#### **32.3 Individual L Petition Process**

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##### **(a) General \* \* \* \***

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##### **(b) Basic Evidentiary Requirements for an L-1 Petition. \* \* \***

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- **Periods of employment in the United States for the petitioning organization may not be used to satisfy the requirement that one continuous year of the past three years (“one-year foreign employment requirement”) has been spent employed abroad by the organization.**
- **The one-year foreign employment requirement, where the alien must demonstrate continuous employment abroad for one year out of the three preceding years, must be met at the time that the petitioner files the L-1 petition. Note: brief visits for business or pleasure in B-1 or B-2 status do not interrupt the one-year foreign employment requirement.**
- **Time a beneficiary spent working in the United States “for” a qualifying organization does not count towards the one-year foreign employment requirement; however, this time does result in an adjustment of the three-year period. A nonimmigrant in the United States will be considered to have come to this country to work “for” the qualifying organization if he or she is employed by that organization as a principal beneficiary of an employment-based nonimmigrant petition or application, such as H-1B or E-2 executive, supervisory, or essential employee. As long as the beneficiary was admitted to work “for” the qualifying organization, his or her U.S. employment for the qualifying organization need not be in a managerial, executive, or specialized knowledge capacity.**
- **The time a beneficiary spent working while in a dependent status will not result in an adjustment of the three-year period. For example, time spent by a beneficiary in L-2 status will not result in an adjustment of the three-year period, because the beneficiary was admitted as an L-2 to join the L-1 principal and not to work “for” a qualifying organization. Likewise, if a beneficiary was admitted as an F-1 nonimmigrant and later applies for optional practical training (OPT) employment with the qualifying organization, the time spent in F-1 nonimmigrant status will not result in an adjustment to the three-year period, because the purpose of admission was for study and not to work “for” the qualifying organization.**
- **The time a beneficiary spent in the United States, either not working or working for an unrelated employer, will not result in an adjustment of the three-year period. A two-year break in employment with the qualifying organization during the three years preceding the filing of the L-1 petition will render the beneficiary unable to meet the one-year foreign employment requirement.**
- **When the petition requests an extension of L-1 status (including a change from L-1A to L-1B status, or a change from L-1B to L-1A**

status), the requirement must have been met at the time of the filing of the *initial* L-1 petition.

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**The AFM Transmittal Memorandum button is revised by adding a new entry, in numerical order, to read;**

AD_____ [date memo signed]	Chapter 32.3 (b)	This memorandum amends AFM Chapter 32.3(b) to address the requirement that an L-1 beneficiary must have spent one continuous year of the previous three years employed abroad by the petitioner.
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**Use**

This PM is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications and petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

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