

Transferring Talent from Facilities Abroad as Option for Skilled Workers for Manufacturing Companies

By Nicola Ai Ling Prall

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Meet the Authors



Nicola Ai Ling Prall

Principal

919-760-6467

Nicola.Prall@jacksonlewis.com

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Using [treaty of commerce and navigation visas as a possible option](#) for manufacturing companies searching for talent is a great way for manufacturing companies to explore. Companies with affiliates abroad have another option: the L-1 visa.

The L-1 visa is available for foreign nationals who have worked at least one year abroad for a foreign affiliate of the U.S. employer. To establish that a U.S. organization is to sponsor L-1 workers, it must show it has a qualifying relationship with a foreign entity and the organization is actively doing business as an employer in the United States and abroad. U.S. Citizenship and Immigration Services (USCIS) regulations indicate that a qualifying relationship exists if the foreign entity is a parent, branch, subsidiary, or affiliate of the U.S. petitioner.

Affiliates include organizations where each entity is owned and controlled by the same parent or individual or one of two legal entities owned and controlled by the same group of individuals, with each individual owning and controlling approximately the same proportion of each entity. In joint ventures where two (and only two) parent companies own 50 percent of a company, the joint venture is considered a subsidiary of *both* parent companies and can qualify for the L-1 as the U.S. petitioner or foreign entity.

If the organization can meet the employer requirements, then it can consider whether employees can qualify for L-1 status.

There are two types of L-1 visas: L-1A and L-1B. L-1As are for managers and executives and L-1Bs are for specialized knowledge workers. L-1A managers are managers who manage the organization, department, subdivision, function, or component; supervise the work of other professional employees or manage an essential function within the organization; have the authority to hire and fire; and exercise discretion over the day-to-day operations of the activity or function. First-line supervisors are not considered managers, unless the employees they supervise are professionals.

While some potential manufacturing industry transferees may be managers, they are more likely specialized knowledge workers. “Specialized knowledge” is where the alien has “special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.” This definition has been explained in USCIS guidance to mean knowledge that is “distinct or uncommon in comparison to that generally found in the particular industry.” “Advanced knowledge” is knowledge or expertise not commonly found in the relevant industry and is “greatly developed or further along in progress, complexity and understanding than that generally found within the employer.”

The L-1B option opens the possibility of transferring experienced and knowledgeable

manufacturing workers from abroad who have deep familiarity with an organization's equipment, product, processes, and procedures. This could include workers such as manufacturing engineers, service technicians, industrial engineers, or mechanical engineering technologists. The workers must have worked for the organization abroad for at least one year and be able to prove they possess "special knowledge" or "advanced knowledge" and will be coming to the United States to work in a position that requires "special" or "advanced" knowledge.

L-1 workers are approved for an initial period of three years. L-1A workers can renew twice for two years for a total of seven years in the United States. L-1B workers can renew once for a total of five years in the United States. Both L-1A or L-1B workers can be sponsored for permanent residence in the United States by the U.S. petitioner without risking the L-1 status. An added advantage of the L-1 visas is that the spouse of the L-1 worker is allowed to work in the United States.

If you are interested in learning more, please contact your Jackson Lewis attorney or our Immigration Group.

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