LEGAL UPDATES

PUBLISHED: APRIL 8, 2015

# USCIS Releases New L-1B Policy Memorandum

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On March 24, 2015, the United States Citizenship and Immigration Services (USCIS) released a draft L-1B policy memorandum to clarify the standards used to determine whether an employee has the "specialized knowledge" required to qualify for L-1B status. The release of the memorandum is part of the Obama administration's effort to encourage business growth by making business-based immigration procedures more predictable. The public comment period on the proposed policy statement will close on May 8, 2015. The final policy will go into effect on August 31, 2015, and will govern L-1B adjudications after that date.

### Background

The L-1B visa is designed to provide U.S. companies the opportunity to hire employees of its foreign affiliates (parent, subsidiary or sister companies) if the employees have "specialized knowledge" of company products, processes or procedures. Increasingly restrictive definitions of "specialized knowledge" by USCIS in recent years have led to inconsistent adjudications of L-1B petitions and a high rate of denials. The National Foundation for American Policy recently reported that the denial rate for L-1B petitions rose to a historic high of 35 percent in 2014. Many employers have simply stopped applying for the classification because of unpredictable results and the high failure rate.

### New Policy Guidance on L-1B Visas

The draft policy memorandum provides a non-exhaustive list of factors that USCIS may consider when deciding whether an employee's knowledge is "specialized." It specifically rolls back some of the restrictive criteria that had found their way into recent USCIS L-1B decisions, for example:

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To be specialized, knowledge is not required to be proprietary or unique to the U.S. employer.

No test of the U.S. labor market is required to determine that the employee's knowledge is uncommon and not generally held in the industry.

The L-1B employee need not be the only employee in the organization with the specialized knowledge.

The L-1B employee need not be employed in a managerial or similar position, nor have a high salary.

For L-1B employees stationed at a third-party worksite, an unaffiliated employer is not prohibited from giving day-to-day assignments to the employee if the petitioning employer principally controls the employee.

This memorandum comes as a direct result of President Obama's executive actions on immigration announced in November 2014 and will supersede and rescind existing policy memoranda on L-1B adjudications.

**What This Means to You**

Employers may give renewed consideration to the L-1B classification for qualified employees. Now that USCIS is proposing to scale back the restrictive criteria that have previously made the classification difficult to obtain, L-1B petitions may once again be a productive option for retaining qualified candidates in other areas of your company.

The public comment period for the USCIS's L-1B policy memorandum ends on May 8, 2015. If you have questions related to these initiatives or would like to discuss an immigration matter, please contact Toni Blackwood at 816.983.8152 or Kelli Stout at 816.983.8309.

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