

Recruiting Trends®

Leading Edge Insight and Strategies for the Recruiting Professional

Foreign Workers with “Specialized Knowledge”

In today's economy, vast numbers of people work for international companies that have offices all over the globe.

These include tens of thousands of foreign-born workers who are employed by companies overseas that have a parent, subsidiary, branch, or affiliate in the United States. Under U.S. immigration law, workers from international companies transferring to the U.S. fall into the L-1 visa category and are known as “intra-company transferees.” They may work in the U.S. on a temporary basis to perform services in one of two capacities:

- * In a managerial or executive capacity (L-1A) or
- * In a position requiring specialized knowledge (L-1B)

The L-1B category has always been somewhat tricky because the statutory language defining “specialized knowledge” is not simple or clear. It defines someone with specialized knowledge as a person who has special knowledge of a company's products, processes or procedures – a not very useful definition for recruiters and human resource personnel involved in talent acquisition or transfer.

However, the government has listed certain criteria that can be used to confirm that an applicant possesses specialized knowledge. These can be useful for recruiters seeking to help their companies maintain a free flow of talent. They include:

- **The proprietary nature of the knowledge.** Though it is not strictly required that the L-1B applicant have knowledge of the company's systems, procedures, or techniques that is proprietary, the possession of proprietary knowledge can in itself meet the specialized knowledge requirement. Propriety knowledge may meet the application requirement if it “would be difficult to impart to another without significant economic inconvenience.”



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- **The selective nature of personnel with proprietary knowledge.** Knowledge of company systems and products should be limited to select individuals. If everyone is specialized, then no one is. The term “more than ordinary” is invoked when determining who has specialized knowledge. Specialized knowledge does not require an “extraordinary” level of skills, merely more than that of the ordinary employee in the company or the field.
- **Employer/employee relationship.** L is a status for persons being transferred to work within a company structure and not for another company. An employee with specialized knowledge who is stationed primarily at a worksite of an employer other than the petitioning employer or its affiliate, subsidiary or parent shall not be eligible for classification as an L-1B. The essential element in determining the existence of an “employer-employee” relationship is the right of control, that is, the right of the employer to order and control the employee in the performance of his or her work. Possession of the authority to engage or the authority to discharge is considered very strong evidence of the existence of an employer-employee relationship. However, the source of the employee's remuneration, whether paid by the U.S. or foreign affiliate of the petitioning company, is not a factor in establishing eligibility for L-1B status.

The L-1 visa category has a key advantage over other employment-based visa categories such as the H-1B and the H-2B because there is no numerical cap on the number of L-1 petitions which may be approved each year. As many applicants as are qualified may obtain L-1 status.

However, as with all other immigration categories, it is important to understand and follow the rules.

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