

9 FAM 41.54 INTRACOMPANY TRANSFEREES (EXECUTIVES, MANAGERS, AND SPECIALISTS)

*(CT:VISA-978; 06-27-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.54 RELATED STATUTORY PROVISIONS

(CT:VISA-978; 06-27-2008)

See INA 101(a)(15)(L) (8 U.S.C. 1101(a)(15)(L)), INA 101(a)(44) (8 U.S.C. 1101(a)(44)), INA 214(b) (8 U.S.C. 1184(b)), INA 214(c) (8 U.S.C. 1184(c)), INA 214(h) (8 U.S.C. 1184(h)), INA 214(j) (8 U.S.C. 1184(j)), SEC. 206 of Public Law 101-649 and Public Law 107-125.

INA 101(A)(15)(L)

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

- (L) subject to section 214(c)(2) of this title, an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who 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, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

INA 101(A)(44)

- (44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily—
 - (i) manages the organization, or a department, subdivision, function, or component of the organization;

- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
 - (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
 - (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.
A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.
- (B) The term "executive capacity" means an assignment within an organization in which the employee primarily—
- (i) directs the management of the organization or a major component or function of the organization;
 - (ii) establishes the goals and policies of the organization, component, or function;
 - (iii) exercises wide latitude in discretionary decision-making; and
 - (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.
- (C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

INA 214(B)

b. Every alien (other than a nonimmigrant described in subparagraph (L) or

(V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15) . An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act [22 U.S.C. 288, note], or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

INA 214(H)

h. Intention to abandon foreign residence

The fact that an alien is the beneficiary of an application for a preference status filed under section 214 of this title or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i)(b) or (c), (L), or (V) of section 101(a)(15) of this title or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

INA 214(J)

j. Labor disputes

(1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of

article 1603 of such Agreement. For purposes of this paragraph, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.

- (2) Notwithstanding any other provision of this chapter except section 212(t)(1) of this title, and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A) of this section, and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 101(a)(15) of this title if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

9 FAM 41.54 RELATED REGULATORY PROVISIONS

(CT:VISA-978; 06-27-2008)

See 22 CFR 41.54.

§ 41.54 Intracompany transferees (executives, managers, and specialists).

- (a) *Requirements for L classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:
 - (1) The consular officer is satisfied that the alien qualifies under that section; and either
 - (2) In the case of an individual petition, the consular officer has received official evidence of the approval by DHS of a petition to accord such classification or of the extension by DHS of the period of authorized stay in such classification; or
 - (3) In the case of a blanket petition, the alien has presented to the consular officer official evidence of the approval by DHS of a blanket petition

- (i) listing only those intracompany relationships and positions found to qualify under INA 101(a)(15)(L) or
 - (ii) to accord such classification to qualified aliens who are being transferred to qualifying positions identified in such blanket petition; or
 - (4) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.
- (b) *Petition approval.* The approval of a petition by DHS does not establish that the alien is eligible to receive a nonimmigrant visa.
- (c) *Validity of visa.*
- (1) The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2)(i) or (ii) of this section.
 - (2) The period of validity of a visa issued on the basis of paragraph (a) to this section is not limited to the period of validity indicated in the blanket petition, notification, or confirmation required in paragraphs (a)(2)(iii) or (iv) of this section.
- (d) *Alien not entitled to L-1 classification under individual petition.* The consular officer must suspend action on the alien's application and submit a report to the approving DHS office if the consular officer knows or has reason to believe that an alien applying for a visa as the beneficiary of an approved individual petition under INA 101(a)(15)(L) is not entitled to such classification as approved.
- (e) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Secretary of Homeland Security and the Secretary of Labor have certified that:
- (1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and
 - (2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.
- (f) *Alien not entitled to L-1 classification under blanket petition.* The consular officer shall deny L classification based on a blanket petition if

the documentation presented by the alien claiming to be a beneficiary thereof does not establish to the satisfaction of the consular officer that

- (1) The alien has been continuously employed by the same employer, an affiliate or a subsidiary thereof, for 1 year within the 3 years immediately preceding the application for the L visa;
 - (2) The alien was occupying a qualifying position throughout that year;
or
 - (3) The alien is destined to a qualifying position identified in the petition and in an organization listed in the petition.
- (g) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year foreign residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(L) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

[57 FR 31449, July 16, 1992, as amended at 58 FR 68527, Dec. 28, 1993; 61 FR 1833, Jan. 24, 1996]