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Establishing Mobility Programs Is Essential for a Global Workforce

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As the economy becomes increasingly globalized, it is important for financial services industry employers to maintain their competitive edge by developing a robust toolkit of cross-border capabilities. The ability to transfer managers, executives, and other key personnel to the United States expeditiously for short-term or long-term projects or assignments is a growing business necessity. Fortunately, U.S. immigration law contains nonimmigrant (temporary) and immigrant (permanent) visa classifications specifically for managers and executives, and provides a potential fast-track to permanent residency.

Employers, however, must be careful in selecting a visa classification appropriate to the terms and conditions of employment, noting that classifications carry different tax, benefit, and short-term and long-term employment implications. Employers should also be aware of the potential mechanisms that they can utilize to facilitate the international transfer of their vital managerial and executive resource population, making short-notice transfers as quick and seamless as possible.

The L-1A Nonimmigrant Visa Program

Most often, companies transfer their managers and executives from their operations abroad to their U.S. operations through the L-1A nonimmigrant visa program. As a general rule, L-1A classification requires that (1) the U.S. and foreign entities have a qualifying parent, subsidiary, or affiliate relationship; (2) the employee has been employed abroad by the foreign entity for at least one of the last three years in a managerial, executive, or specialized knowledge capacity; and (3) the employee will be transferring to the United States to serve as a manager or executive.

Criteria for Obtaining an L-1A Nonimmigrant Visa

To take advantage of the L-1A program, employers should carefully document their corporate organizational structure in a manner demonstrating that the size and scope of their operations warrants the services of an L-1A manager or executive. Employers that apply for an L-1A visa without a clearly documented structure may be faced with requests for additional evidence that can delay the application process substantially.

Employers should also take care in defining a manager or executive's role and responsibilities. The U.S. Citizenship and Immigration Services ("USCIS") and the U.S. Department of State tend to focus on particular factors in adjudicating L-1A applications, including whether the individual has any direct reports, budgetary authority, and discretionary decision-making authority in policy formation and/or day-to-day company operations.

While these criteria are seemingly straightforward, the financial services industry's increasing tendency toward heavily matrixed management structures does not always align with the USCIS's understanding of a personnel manager. Therefore, it is important in these cases to strengthen the managerial argument by carefully identifying a discrete and organizationally important "function" or area of operations that will be managed by the employee.

Drawbacks to L-1A Classification

When considered as part of a larger global mobility strategy, L-1A classification can have notable long-term and programmatic benefits, including:

- the possibility of an expedited green card process (foregoing the often lengthy and expensive labor certification ("PERM") process) for managers and executives who were also employed in managerial or executive positions with the qualifying entity abroad;
- the avoidance of annual quotas associated with the H-1B visa program;
- the ability to streamline the transfer of managers and executives by obtaining L-1 Blanket Petition approval from the USCIS, which reduces onboarding time by enabling employees to apply for L-1 visas directly at a U.S. Consulate or Embassy;
- high predictability for senior managers and executives so that organizations can plan for transfers and rely on set timelines; and
- the potential for keeping L-1A managers and executives transferred to the United States on a foreign payroll, facilitating relocation packages and the retention and continuity of social benefits.

Alternatives to L-1A Classification

L-1A classification is not a one-size-fits-all category, however, and the filing costs, time limitations (including an overall seven-year period of stay), and tax implications (L-1 holders are generally held to the same tax standards as U.S. citizens and green card holders) may not make business sense for managers and executives traveling to the United States on a short-term basis. In developing an internal immigration program, employers should be aware that there may be alternative solutions available, including:

- Intermittent L-1A status for managers and executives who spend less than half their time in the United States during the year, which eliminates the seven-year time limitation and may lessen or eliminate U.S. income tax liability by qualifying them as nonresident aliens; and
- B-1 Business Visitor or Visa Waiver classification for managers and executives travelling to the United States on a very short-term basis to attend business meetings or conferences,

participate in short-term trainings, negotiate contracts, or perform activities related to membership on a U.S. board of directors.

In sum, it is increasingly important for financial services industry employers to establish an internal immigration program to streamline the global mobility of business-critical employees as an essential tool in the cross-border toolkit. These steps can be just as vital to long-term growth as the development of cutting-edge analytics, IT capabilities, and portfolio management techniques.

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