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Immigration Policy for Intracompany Transfers (L Visas): Issues and Legislation



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Summary

Concerns are growing that the visa category that allows executives and managers of multinational corporations to work temporarily in the United States is being misused. This visa category, commonly referred to as the L visa, permits multinational firms to transfer top-level personnel to their locations in the United States for 5 to 7 years. Although the number of L visas issued has tripled in the past 20 years, the number of L visas that the Department of State issued in FY2002 (112,624) is down from a high of 120,538 in FY2001. Some are now charging that firms are using the L visa to transfer “rank and file” professional employees rather than limiting these transfers to top-level personnel, thus circumventing immigration laws aimed at protecting U.S. employees from the potential adverse employment effects associated with an increase in the number of foreign workers. Proponents of current law maintain that any restrictions on L visas would prompt many multinational firms to leave the U.S., as well as undermine reciprocal agreements that currently permit U.S. corporations to transfer their employees abroad. Legislation that would amend the L-1 visa has been introduced (H.R. 2154). This report tracks legislative activity and will be updated as action warrants.

Background

Overview of Nonimmigrants. Foreign nationals may be admitted to the United States temporarily or may come to live permanently. Those admitted on a permanent basis are known as immigrants or legal permanent residents (LPRs), while those admitted on a temporary basis are known as nonimmigrants.¹ Nonimmigrants include a wide range of people, such as tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, internationally-known entertainers, foreign media representatives, business personnel, and crew members on foreign vessels. Most of these nonimmigrant visa categories are defined in §101(a)(15) of the Immigration and Nationality Act (INA). These visa categories are commonly referred to by the letter and numeral that denotes

¹ For background, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, and CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, both by Ruth Ellen Wasem.

their subsection in §101(a)(15), e.g., B-2 tourists, E-2 treaty investors, F-1 foreign students, and H-1B temporary professional workers. Intracompany transferees who work for an international firm or corporation in executive and managerial positions or have specialized product knowledge are admitted on the L-1 visas. Their immediate family (spouse and minor children) are admitted on L-2 visas.

Legislative History of L Visa. Congress established the L visa in 1970 in response to unintended consequences of the Immigration Amendments of 1965 that made multinational corporations unable to transfer top-level personnel to offices in the United States as easily as they had prior to the implementation of the 1965 Immigration Amendments. Because many of the employees that firms sought to bring into the United States were not intending to stay in the United States and were likely to be transferred abroad in a few years, Congress opted to create a nonimmigrant (i.e., temporary) category for aliens who performed in managerial/executive capacity or who had specialized knowledge. These aliens had to have been employed in that capacity by that firm for at least 1 year prior to seeking the L visa.²

As part of the Immigration Amendments of 1990, Congress made several changes to the L visa category, most notably clarifying that specialized knowledge meant specialized knowledge of the firm's product. Congress placed time limits on the L visas, allowing managers and executives holding L visas to stay for up to seven years and those having specialized product knowledge to stay for up to 5 years. Congress also amended the INA to permit aliens with L visas to petition to become LPRs, allowing for what is known as "dual intent" in immigration policy.³ In the 1990 Act, Congress further added managers and executives to the priority worker (also known as first preference) category of employment-based LPR admissions, facilitating the adjustment of L nonimmigrants to LPR status.⁴

Most recently, the 107th Congress enacted a change to the INA that reduced the length of time an L-1 would have to work for the multinational firm abroad from 1 year to 6 months prior to transferring to a U.S. location. This legislation also amended the INA to permit the spouses of L-1 nonimmigrants (i.e., L-2 nonimmigrants) to work while they are in the United States.⁵

² P.L. 91-225; 84 Stat. 116. For historical background, see Elizabeth J. Harper, *Immigration Laws of the United States*, 1975, pp. 304-306.

³ §214(b) of INA presumes that, in general, aliens seeking admission to the United States are coming to live permanently, barring aliens who intend to become LPRs from obtaining nonimmigrant visas. Only the holders of H-1 workers, L intracompany transfers, and V family member visas are exempt from the requirement that they prove that they are not coming to live permanently.

⁴ P.L. 101-649; 104 Stat. 4978.

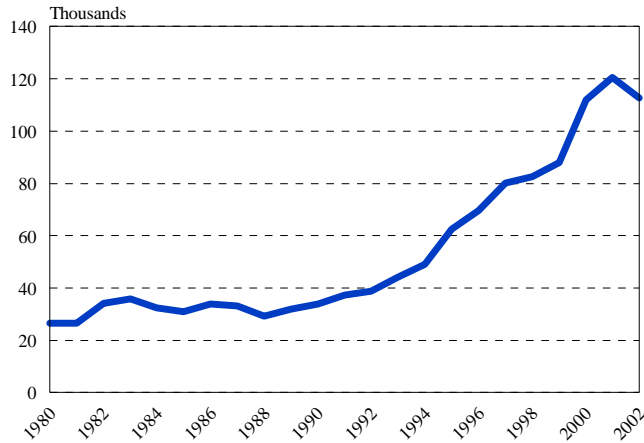
⁵ P.L. 107-125. 8 U.S.C. §1184(c)(2).

Trends

There has been a tripling in the number of L visas issued over the past 20 years. L visa issuances began increasing in the mid-1990s and peaked at 120,538 in FY2001, as **Figure 1** depicts. Thus far in FY2003, the U.S. Department of State (DOS) has issued 69,105 L visas through May 31, 2003. For that same period last year (October 1, 2001 through May 31, 2002), DOS issued 70,454 L visas.

The 112,624 L non-immigrants comprise only 0.02% of the 5.8 million visas DOS issued in FY2002. Typically, just over half of the L visas issued any given year are L-1 visas to the individual qualifying as an intracompany transfer, and the remainder are immediate family coming on L-2 visas.

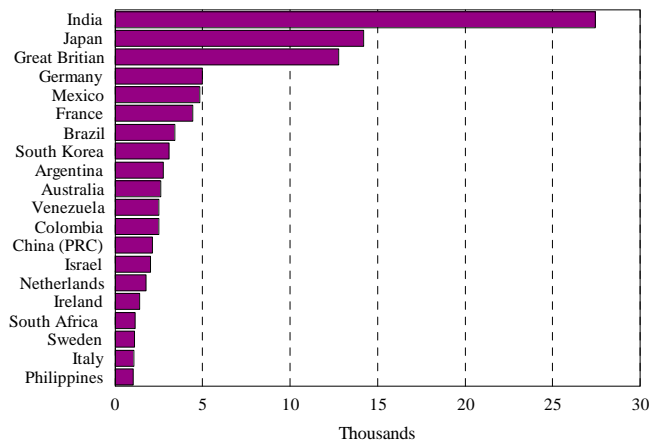
Figure 1. L Visas Issued, FY1980 to FY2002



Source: U.S. Department of State, Office of Consular Affairs, Report of the Visa Office.

The country sending the most intracompany transfers in FY2002 was India, as **Figure 2** illustrates. About one-quarter (27,458 or 24.4%) of the 112,624 L visas were issued to aliens from India in FY2002. Japan and Great Britain (including Northern Ireland) followed with 14,214 (12.6%) and 12,763 (11.3%) respectively of all L visas issued. **Figure 2** depicts all countries that are the source country for at least 1,000 L nonimmigrants in FY2002. Canadians coming as intracompany transfers are not required to have L visas to enter the United States, according to longstanding agreements with Canada.

Figure 2. Top Source Countries for L Visas Issued in FY2002



Source: U.S. Department of State, Office of Consular Affairs, Report of the Visa Office.

Data on the number of L nonimmigrants who enter the United States, according to statistical reports of the former INS, evidence a growth pattern steeper than the number of visas issued by DOS. The admission of L nonimmigrants grew sixfold over the past 20 years, from 65,044 in FY1981 to 102,555 in FY1990 to 473,391 in FY2001. These admissions data, however, include multiple entries by the

same person over the course of a fiscal year. Given the purpose of their visas, L nonimmigrants may travel back and forth from the United States more than once a year for business. A comparison of the admission data with the visa issuance data suggest that not only have the number of L visaholders increased, but these L visaholders travel abroad more frequently now than a decade ago.

Procedures

A firm or corporation that seeks to have an L-1 nonimmigrant enter the United States must file an I-129 petition with the Bureau of Citizenship and Immigration Services (BCIS) in the Department of Homeland Security (DHS), and may file blanket petitions under specified circumstances. Once the employer's petition is approved, the alien residing abroad applies for a visa with the DOS Bureau of Consular Affairs.⁶ The DOS consular officer, at the time of application for a visa, as well as the Department of Homeland Security (DHS) immigration inspectors, at the time of application for admission, must be satisfied that the alien is entitled to a nonimmigrant status.⁷

The prospective L nonimmigrant must demonstrate that he or she meets the qualifications for the particular job as well as the visa category. The alien must have been employed by the firm for at least 6 months in the preceding 3 years in the capacity for which the transfer is sought. The alien must be employed in an executive capacity, a managerial capacity, or have specialized knowledge of the firm's product to be eligible for the L visa.⁸

The INA does not require firms who wish to bring L intracompany transfers into the United States to meet any labor market tests in order to obtain a visa for the transferring employee.⁹ For employers to sponsor LPRs who are members of the professions holding advanced degrees, persons of exceptional ability, skilled workers with at least 2 years

⁶ Aliens already in the United States on another nonimmigrant visa may petition to change to L-1 status with the Bureau of Citizenship and Immigration Services.

⁷ 22 CFR §41.11(a). For more on the visa issuance process, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

⁸ The regulations define "executive capacity" as directing the management of the organization or a major component or function of the organization, establishing the goals and policies of the organization, component, or function, exercising wide latitude in discretionary decision-making, and receiving only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. "Managerial capacity" is defined as: managing the organization, or a department, subdivision, function, or component of the organization; supervising the work of other supervisory, professional, or managerial employees, or managing an essential function within the organization, or a department or subdivision of the organization; having the authority to hire and fire or other personnel actions; and exercising discretion over the day-to-day operations of the activity or function for which the employee has authority. The regulations define "specialized knowledge" as special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures. 8 CFR §214.2(l)(1)(ii).

⁹ Intracompany transfers from Mexico or Canada may be denied in the case of certain labor disputes. 8 CFR §214.2(l)(18).

training, professionals with baccalaureate degrees, and unskilled workers or to hire H nonimmigrants as temporary workers, they must demonstrate that U.S. workers are not adversely affected by the hiring of these foreign workers. To do so, the employer who seeks to hire a prospective foreign worker petitions with the BCIS and the Employment and Training Administration (ETA) in Department of Labor (DOL) on behalf of the alien.¹⁰

Issues

Effects on U.S. Personnel. Some are arguing that foreign managers and specialized personnel should not be brought into the United States if there are qualified U.S. managers and specialized personnel currently in that position or in that local labor market. Some of those advocating reform maintain that L-1 visas should be limited to only top-level executives of multinational firms and that mid-level managers and specialized personnel should be admitted only after a determination that comparable U.S. personnel are not adversely affected. Some argue that the L-1 visa currently gives multinational firms an unfair advantage over U.S.-owned businesses by enabling multinational corporations to bring in lower-cost foreign personnel.

Supporters of current law argue that it is essential for multinational firms to be able to assign top personnel to facilities in the United States on an “as needed basis” and that it is counterproductive to have government bureaucrats delay these transfers to perform labor market tests. They warn these multinational firms will find it too burdensome and unprofitable to do business in the United States. Some point out that U.S. corporations who do business abroad might well lose the reciprocal benefit of transferring top U.S. personnel overseas if restrictions are added to the L visa.

Alternative to H-1B Visa. There have been a series of media reports that firms are opting to bring in foreign professional workers on L-1 visas rather than the H-1B visa for professional specialty workers.¹¹ Critics cite the law on H-1B visas in which employers seeking to hire H-1B nonimmigrants must attest to the DOL that they are paying the foreign workers the same wages as similarly employed U.S. workers and that have not laid off U.S. workers 90 days before or after hiring the H-1B.¹² Some are asserting that certain employers are “end running” the labor attestation requirements of the H-1B visa by exaggerating the specialized product knowledge of their professional workers so that they qualify for an L visa and that some firms are bringing in L-1 nonimmigrants expressly to “out source” them to other firms. Advocates of reforming current law warn that the L visa is replacing the H-1B visa for information technology

¹⁰ For more on labor market tests, see CRS Report RS21520, *Labor Certification for Permanent Immigrant Admissions*; CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers* (hereafter cited as RL30498, *Nonimmigrant Professional Specialty (H-1B) Workers*); and CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*, all by Ruth Ellen Wasem.

¹¹ For examples, see “L1s Slip Past H-1B Curbs,” *eWeek*, Jan. 6, 2003; “A Loophole as Big as a Mainframe,” *Business Week*, Mar. 10, 2003; “Displaced Americans,” *Washington Times*, Mar. 14, 2003; and, “Magna Cum Unemployed,” *Computerworld*, Apr. 28, 2003.

¹² See RL30498, *Nonimmigrant Professional Specialty (H-1B) Workers*.

positions and that L admissions will soar in numbers because H-1B admissions are numerically limited.¹³

Supporters of current law assert that intracompany transfers are essential personnel that do not need to be subjected to the labor market tests designed for foreign workers filling “rank and file” positions. They maintain that corporate flexibility and control on issues of staffing top-level management are essential to success. They warn that labor attestation for L visas would make it more costly and time-consuming to do business in the United States, ultimately resulting in multinational firms moving jobs off shore.

Inclusion in Free Trade Agreements. Critics of current law on L visas are concerned that upcoming free trade agreements retain the current language on L visas and would bar the United States from statutory changes to L visas as well as other temporary business and worker nonimmigrant categories. For example, the U.S.-Singapore Free Trade Agreement states that the United States shall not require labor certification or other similar procedures as a condition of entry and shall not impose any numerical limits on intracompany transfers from Singapore.¹⁴ Given the recent concerns raised about the L visa, some are voicing opposition to trade agreements that would prevent Congress from subsequently revising immigration law and policy.

Proponents of these trade agreements point out that they are merely reflecting current law and policy and that such agreements on the flow of business people and workers are essential to U.S. economic growth and business vitality.¹⁵

Legislation

On May 19, 2003, Congressman John Mica introduced H.R. 2154, which would amend the INA to prevent an employer from placing a nonimmigrant who is an intracompany transfer with another firm. H.R. 2154 would require the employer to file with the Secretary of Labor an application stating that the employer will not place the L-1 nonimmigrant with another firm where the nonimmigrant performs duties (in whole or in part) at one or more work sites owned, operated, or controlled by the other firm. H.R. 2154 is aimed at prohibiting the outsourcing of L-1 visa holders.

¹³ The current H-1B ceiling of 195,000 visas annually is set to revert to 65,000 at the end of FY2003.

¹⁴ Chapter 11, §3 of the U.S.-Singapore Free Trade Agreement, Annex 11, signed May 6, 2003.

¹⁵ For a more on these trade agreements, see CRS Report RS21373, *Trade Negotiations During the 108th Congress: An Overview*, by Ian Fergusson and Lenore Sek; and the CRS Electronic Briefing Book on Trade at [<http://www.congress.gov/brbk/html/ebtra1.shtml>].