



Visa Pages: U.S. TEMPORARY FOREIGN WORKER VISAS

L-1 VISA

Updated January 2015

The L-1 nonimmigrant visa program allows multinational employers to bring to the U.S. as intracompany transfers their current or former foreign employees who are managers or executives or who have specialized knowledge.

TABLE OF CONTENTS

I. L-1 VISA	3
A. History	3
B. Duration	3
C. Nonimmigrant Intent Not Required	4
D. No Annual Cap	5
E. L-2 Visa for Dependents	5
II. L-1 HIRING PROCESS	7
A. Steps For Employers.....	7
B. Steps for Workers	11
III. L-1 WORKERS IN THE U.S. – DATA.....	13
A. Number of L-1 Workers in the U.S.....	13
B. L-1 Worker Demographics	16
C. L-1 Job Characteristics	18
D. L-1 Employer Demographics	18
IV. L-1 WORKERS’ RIGHTS.....	21
V. ENFORCEMENT.....	22
A. U.S. Department of Homeland Security.....	22
B. Private Litigation.....	22
VI. L-1 WORKERS – ISSUES	24
A. Job Tied to Immigration Status	24
B. Discrimination Against U.S. Workers.....	24

I. L-1 VISA

The L-1 nonimmigrant visa is for intracompany transfers. Multinational employers petition the U.S. Department of Homeland Security for permission to hire foreign workers who are their current or former employees. Employers must do business both in the U.S. and abroad, either directly or through affiliates, throughout the duration of the foreign workers' stay in the United States. There are two subclasses within L-1: L-1A for executives and managers and L-1B for workers with specialized knowledge. However, both of these subclasses receive the same L-1 visa and rules for each vary only slightly. A total of 62,430 L-1 visas were issued in 2012. Half of all L-1 workers are from Asia and almost 30% are from India. The largest employers of L-1 workers are in the computer and technical industries. There is no role for the U.S. Department of Labor in the L-1 visa program, no labor market test, and no prevailing wage required. L-1 visas are only valid for work with the petitioning employer and are valid for up to five or seven years. Employers may sponsor their L-1 workers for legal permanent residence. Because L-1 visas are for individuals that are already employed by the importing companies, the program does not have the same issues with respect to foreign recruitment as other nonimmigrant visas. The L-1 regulations contain virtually no worker protections and as such, there is no coordinated enforcement scheme.

A. HISTORY

Congress created the L-1 visa in 1970.¹ It was intended to help multinational companies temporarily transfer important foreign managers, executives and highly skilled employees to their U.S. operations. In 1990, Congress modified the L-visa category in several ways.² Most importantly, the new law no longer required prospective L-1 workers to prove that they intended to return home, instead allowing them to intend to later apply for employment-based lawful permanent resident status.³ Additionally, the 1990 amendments broadened the definition of manager,⁴ set time limits for the period of stay,⁵ and allowed employers to petition for groups of workers at a time to speed up the application process,⁶ among other changes. The L-1 visa program then saw no changes for over a decade, until Congress grew concerned about the practice of companies importing foreign workers to contract out to business clients, which undercut U.S. worker employment. The L-1 Visa Reform Act of 2004 aimed to restrict the use of these so-called body shops.⁷ Since 2004, while some commentators have outlined the benefits of skilled immigration,⁸ others have called for [extensive reform](#) of the L-1 visa program.

B. DURATION

L-1 visas are initially valid for up to three years and may be extended in two-year increments.⁹ L-1A executives and managers may stay for up to seven years total while L-1B specialized workers may stay for five years. L-1 visa holders who do not live in the U.S. for more than six months each year may be eligible to work intermittently, indefinitely.¹⁰ There are exceptions to this general rule.¹¹

C. NONIMMIGRANT INTENT NOT REQUIRED

The L-1 visa does not require nonimmigrant intent. Unlike with most other temporary visas, prospective L-1 workers do not have to prove they intend to return home when they are applying for their visas.¹² In other words, they may intend to and in fact attempt to permanently immigrate to the United States. Because employment-based permanent immigration depends on an employer's sponsorship, this is of course only an option for an L-1 worker if the employer chooses to sponsor the worker.¹³ While most employment-based applications for legal permanent residence (LPR) are contingent on U.S. Department of Labor (USDOL) approval, L-1A executives and managers are in the highest priority category and as such do not even require permanent labor certification.¹⁴ Employers who seek to convert their L-1B workers to LPR status must apply for permanent labor certification through USDOL as they are in a lower priority level.

1. EMPLOYMENT-BASED LPR STATUS

There are five priority levels for employment-based (EB) immigration.¹⁵ The first level, known as EB-1, is reserved for the highest-skilled workers with extraordinary ability, outstanding professors or researchers, and multinational executives or managers. L-1A visa holders are in this EB-1 category, because by definition they are executives and managers. The second level, EB-2, is for professionals with either advanced degrees or exceptional ability. The third level, EB-3, is for skilled workers, professionals or unskilled workers for jobs that are neither temporary nor seasonal. L-1B workers are either in the EB-2 or EB-3 level.

The fourth level, EB-4, is for various special immigrants specified in the regulations, including for example religious workers, broadcasters, members of the armed forces, and Iraqi/Afghan translators. The fifth level, EB-5, is for immigrants who invest a certain minimum amount of money in projects or enterprises that create U.S. jobs. Depending on the nationality of the immigrant, there may be a longer waiting period of several years before an employment-based visa is available once a completed application is submitted. Two factors determine this: the priority level and the country of origin.

DIGGING DEEPER: WAIT TIMES FOR EMPLOYMENT-BASED GREEN CARDS

Employment-based permanent immigration categories are numerically limited. The U.S. Department of State issues visas in the order in which the petitions were filed, until the annual limit is reached for that category. The filing date of a petition becomes the applicant's priority date. Immigrant visas cannot be issued until the priority date is reached. Visa wait times are published quarterly in the [Visa Bulletin](#).

DOS explains the per-country limits as follows:

The annual per-country limitation of 7% is a cap, which visa issuances to any single country may not exceed. Applicants compete for visas primarily on a worldwide basis. The country limitation serves to avoid monopolization of virtually all the annual limitation by applicants from only a few countries. This limitation is not a quota to which any particular country is entitled, however.¹⁶

Currently, EB-2 applicants from India would have to wait about 9 years to get their green card after their application is complete. The wait time for an EB-2 applicant from China is 5 years. The wait time is commonly referred to as the "line." If an employer timely applies for an EB-

2 or EB-3 visa for an H-1B worker, it is possible for the worker to extend his status as an H-1B worker for up to six years until the application for permanent residency is decided and the visa is available.¹⁷

DIGGING DEEPER: PERM LABOR CERTIFICATION FOR EB GREEN CARDS

The first step for employers who sponsor workers for an employment-based green card is to file a Permanent Labor Application (PERM) with the U.S. Department of Labor. The PERM is similar to the Labor Condition Application submitted for H-1B workers; however, there are extra requirements. For example, PERM requires a certification that:

[t]here are not sufficient workers who are able, willing, qualified . . . and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.¹⁸

Employers sponsoring employment based permanent visas for their workers must show that they have tested the labor market for U.S. workers and demonstrate their recruitment efforts. The LCA required for H-1B workers does not require this. In other words, PERM is more difficult.

D. NO ANNUAL CAP

There is no limit to the number of L visas that may be issued in any given year. This differs from the H-1B nonimmigrant visa for specialty occupations that has an annual cap often reached early each fiscal year.¹⁹

E. L-2 VISA FOR DEPENDENTS

An L-1 worker's spouse and children are eligible to apply for L-2 visas to come to the United States.²⁰ The duration of an L-2 visa is the same as the principal L-1 worker's.²¹ The L-2 visa allows employment.²² There are no restrictions on where an L-2 spouse may work, on the type of work he or she may perform, or on his or her employment terms. No government agency tracks the employment of individuals with L-2 visas. Because the L-2 visa numbers include both spouses and children, they do not translate directly to the number of additional foreign workers in the United States.

DIGGING DEEPER: ADVANTAGES OF USING L-1 VISA OVER OTHER NONIMMIGRANT VISAS

There are several reasons why multinational employers would choose to use the L-1 visa over other nonimmigrant visa programs. For instance, there is no requirement that employers pay L-1 workers a certain wage. Employers do not have to meet any labor market test, including the U.S. Department of Labor's prevailing wage test, prove any recruitment efforts to hire U.S. workers, or show that U.S. workers have not been displaced. Furthermore, L-1 employers are not required to have any signed contract with L-1 workers. Some of these advantages are explained by the fact that the L-1 visa is for workers who already have an employment relationship with the importing employer. However, given the fact that some larger multinational employers are only multinational insofar as they have a U.S. consulting office that farms out foreign workers to various clients, the use of L-1 rather than an H-1B visas may be suspect. Some business immigration lawyers point out to potential clients the benefits of the L-1 visa over the H-1B, for example.²³ Nevertheless, the L visa program "was not intended to alleviate or remedy a shortage of U.S. workers; [the H visas] provide the appropriate means for the admission of workers who are in short supply in the United States."²⁴

L-1 Employer Benefits

1. No limit on the number of visas that can be issued
2. No approval needed from USDOL
3. No labor market test or U.S. worker recruitment required
4. No rule against U.S. worker displacement
5. No prevailing wage
6. No job transferability
7. Worker's spouse authorized to work in the U.S.
8. Expedited path to green card for L-1A managers and executives

II. L-1 HIRING PROCESS

As with several other temporary work visas, employers petition the government for permission to hire nonimmigrants under the L-1 visa classification. Two agencies are involved with L-1 visas: the U.S. Department of Homeland Security (DHS), and the U.S. Department of State. The U.S. Department of Labor is not involved. The employer files a petition for nonimmigrant status with DHS's U.S. Citizenship and Immigration Services (USCIS) on behalf of an individual worker and designates him or her as either an L-1A manager or executive or L-1B worker with specialized knowledge. Large multinational companies may file blanket petitions for many workers at one time, which is a quicker process.²⁵ USCIS approves most employers' L-1 visa status requests for their workers. Once USCIS approves the petition, prospective L-1 workers personally appear at the designated U.S. consulate in their home countries to apply for the actual visa.²⁶ USCIS approval is considered "prima facie" evidence of entitlement to an L-1 visa.²⁷ The U.S. Department of State also approves most L-1 visa applications.²⁸ Once the worker has the visa and travels to the U.S., he or she presents for admission at the U.S. border or port of entry. DHS's Customs and Border Protection makes the final decision about whether to allow an individual with an L-1 visa enter the United States.

A. STEPS FOR EMPLOYERS

The first step for employers is to file a petition for an L-1 nonimmigrant worker, [Form I-129](#), with USCIS.²⁹ There must already be an employment relationship between the petitioning employer and the prospective L-1 worker.³⁰ Beneficiaries must be currently employed by the petitioning employer and must have worked abroad continuously for the employer for at least one of the last three years.³¹

L-1 Employment Relationship Rules

- | Rules | |
|-------|--|
| 1. | L-1 worker has been working abroad for the same employer for one continuous year within the last three years; and |
| 2. | The employer and the L-1 applicant have an employer-employee relationship; and |
| 3. | The employer either: |
| a) | currently does business in the U.S. directly or through a parent, branch, affiliate or subsidiary and at least one other country, or |
| b) | it meets minimum federal requirements for opening a new business in the U.S.; and |
| 4. | The employer is regularly conducting ongoing business in the U.S. |

Source: See 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. § 214.2(l); 9 FAM 402.12
Intracompany Transferees

While the prospective L-1 worker must be qualified for the job, no particular academic degree is required.³² On the [L Classification Supplement to Form I-129](#), petitioning employers select the L-1 subclass depending on whether the beneficiary is A) coming to perform services as a manager or executive, or B) coming to perform services that involve specialized knowledge. Petitioning employers must submit evidence to USCIS with Form I-129 that documents the worker's job, credentials for the sub-classification designated, and the qualifying relationship.³³ USCIS will notify the employer if more information is required.

1. INTERNATIONAL SCOPE

Petitioning employers may be U.S. or foreign entities. To qualify, the entity must conduct business as an employer in both the United States and at least one other country.³⁴ The qualifying U.S. presence must include conducting ongoing business.³⁵ L-1 program regulations define doing business as “the regular, systematic, and continuous provision of goods and/or services.”³⁶ Employers must only have an international scope - they do not have to be engaged in international trade.³⁷ Indeed, it may well be possible for a company to set up a foreign branch for the sole purpose of hiring workers at lower salaries and then transferring some of them to a U.S. office with an L-1 visa.³⁸

2. NEW U.S. OPERATIONS ALLOWED

Employers may initiate business operations in the U.S. with an L-1 worker under certain circumstances.³⁹ Operations are considered new if they have been open for less than one year at the time the employer files its Form I-129.⁴⁰ L-1 visas for work in new operations are only issued for one year.⁴¹

3. EMPLOYER DESIGNATES SUBCLASS

A) L-1A MANAGERS AND EXECUTIVES

[L-1A managers and executives](#) are high-level employees. Managers are in charge of the organization or one of its subunits, such as a department, and supervise “the work of other supervisory, professional, or managerial employees, or manages an essential function” for the employer.⁴² Managers have the authority to hire and fire and have “discretion over the day-to-day operations” of the company. Executives direct the organization, establish its goals and policies, exercise wide latitude in discretionary decision-making, and receive only general supervision from other higher-level executives, the board, or stockholders.⁴³

B) L-1B WORKERS WITH SPECIALIZED KNOWLEDGE

[L-1B workers must possess specialized knowledge](#) “of the company product and its application in international markets . . . [or] processes and procedures of the company.”⁴⁴ A simple skill is not enough.⁴⁵ Specialized knowledge is [beyond ordinary knowledge](#) and requires significant experience with the particular employer, for example, proprietary knowledge.⁴⁶ The term has been [criticized](#) and one federal court even described it as “a relative and empty idea, which cannot have a plain meaning.”⁴⁷ In practice, the term is so broadly defined that most petitions are approved.⁴⁸

4. NO L-1S FROM CANADA OR MEXICO IF LABOR DISPUTE

An employer may not bring in L-1 workers from Canada and Mexico when there is a labor dispute involving a strike or lockout at its U.S. worksite.⁴⁹ There is no published information about whether and when this rule has come into play. There is no similar rule for L-1 workers from any other countries.

5. BLANKET PETITIONS: LIMITED SCRUTINY OF WORKER QUALIFICATIONS

In order to expedite the application process, certain employers may file a single “blanket petition” on behalf of a limitless amount of unnamed L-1 workers.⁵⁰ In order to qualify for the blanket petition process, an employer must be engaged in commercial trade or services, have had U.S. operations for one year or more, have three or more branches, and either have obtained approval of at least ten L-1 workers within the past year or have annual sales of \$25 million or a U.S. workforce of at least 1,000 workers.⁵¹

The eligibility requirements for L-1 workers under blanket petitions are the same as for workers who are beneficiaries of a single petition.⁵² However, because individual workers are not named in the blanket petitions, the U.S. Department of Homeland Security (DHS) sub agency U.S. Citizenship and Immigration Services (USCIS) does not examine each worker’s eligibility. The question of whether a beneficiary of the blanket petition qualifies for the L visa is reviewed by the U.S. Department of State when the individual submits [Form I-129S](#) and applies for the visa at the U.S. consular office.⁵³ If there is an issue with any worker’s qualifications for the L-1 visa, the U.S. Department of State addresses it without involving USCIS.⁵⁴ If the individual is visa-exempt, DHS’s Customs and Border Protection reviews the matter at the border or port of entry.⁵⁵

6. THIRD PARTY WORKSITES AND THE “BODY SHOP” EMPLOYER

Some L-1 workers are employed at a third party worksite that is neither owned, operated nor controlled by the employer.⁵⁶ In those situations, the petitioning employer is in the role of a middleman or staffing company. This is commonly referred to as a “body shop” or “offshore outsourcing firm.” These companies will place their L-1 workers, particularly L-1B workers, at third-party U.S. worksites for a fee. Some body shops import thousands of workers and farm them out to several businesses during their period of stay, charging a separate fee to each corporate client every time a worker is re-deployed.⁵⁷ This practice has led to ongoing problems.⁵⁸ Since 2005, there have been two restrictions in place to limit body shops from obtaining L-1B visas.⁵⁹ L-1B workers may not work primarily at a third party worksite (1) if the work is controlled or supervised by a different employer⁶⁰ or (2) if the work arrangement is essentially to provide labor-for-hire, “rather than service related to the specialized knowledge” of the petitioning employer.⁶¹

The functioning of L-1 “body shops”



DIGGING DEEPER: ARE L-1 BODY-SHOP RESTRICTIONS EFFECTIVE?

The attempt to limit the use of body shops within the L-1 visa program has not been entirely successful. Employers that hire out L-1 workers as consultants still dominate the program because they have found ways to work within the restrictions. For example, employment at third party worksites is still allowed. Some staffing companies describe themselves as 'IT solutions' companies.⁶² "In addition to providing labor-for-hire, such companies sell the development of a product, and therefore are not barred from the use of L-1 visas."⁶³ Economists studying the matter found that most L-1 employers were still body shops. In 2010, five years after the body-shop restrictions, eight of the top ten L-1 employers were still "offshore outsourcing firms or had significant offshoring operations."⁶⁴

7. USCIS PETITION FEES

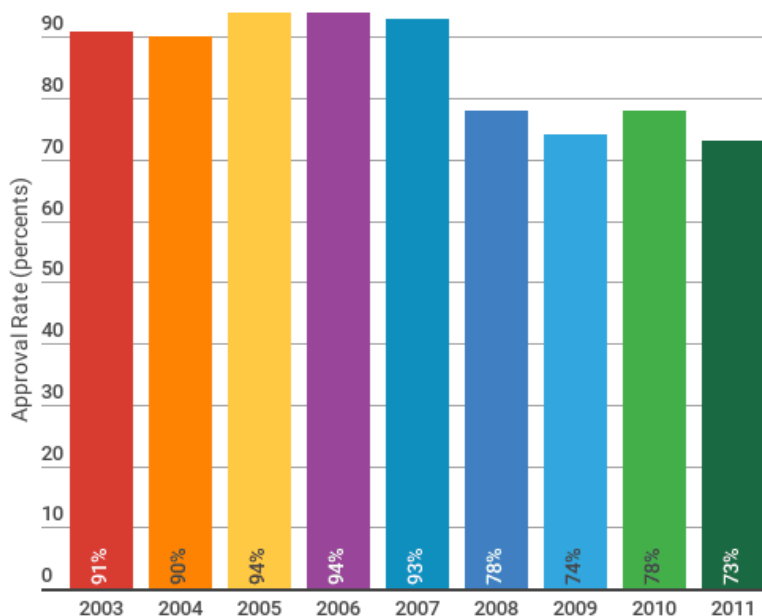
The USCIS imposes a processing fee of \$325 and a fraud prevention fee of \$500 for all L-1 nonimmigrant worker petitions.⁶⁵ Since 2010, certain large L-1 employers have to pay an additional fee of \$2,250, which must be paid by the employer and not the worker.

8. DECLINING APPROVAL RATE

Beginning in the year 2006, there was an increase in USCIS adjudicators requesting additional information with respect to Form I-129 petitions.⁶⁶ While this was true for both the L-1A and L-1B subclasses, the increase was more striking for L-1B petitions. The increased scrutiny was matched by a falling approval rate. Indeed, the approval rate for L-1 petitions declined in the past decade, from 91% in 2003 to 73% in 2011.⁶⁷ The approval rate continued to decline to a 64% approval rating in 2013.⁶⁸

In March 2015, the Obama administration released a draft memo aimed at clarifying the use of the L-1 visas by businesses in the United States. While many in the business community lauded the memo for its attempt to reduce the number of L-1 visa rejections by clarifying the requirements for USCIS adjudicators, worker advocates criticized the failure to address concerns over the program's outsourcing of U.S. jobs and to increase regulations to protect U.S. workers.

L-1B Specialized Knowledge Subclass Approval Rate

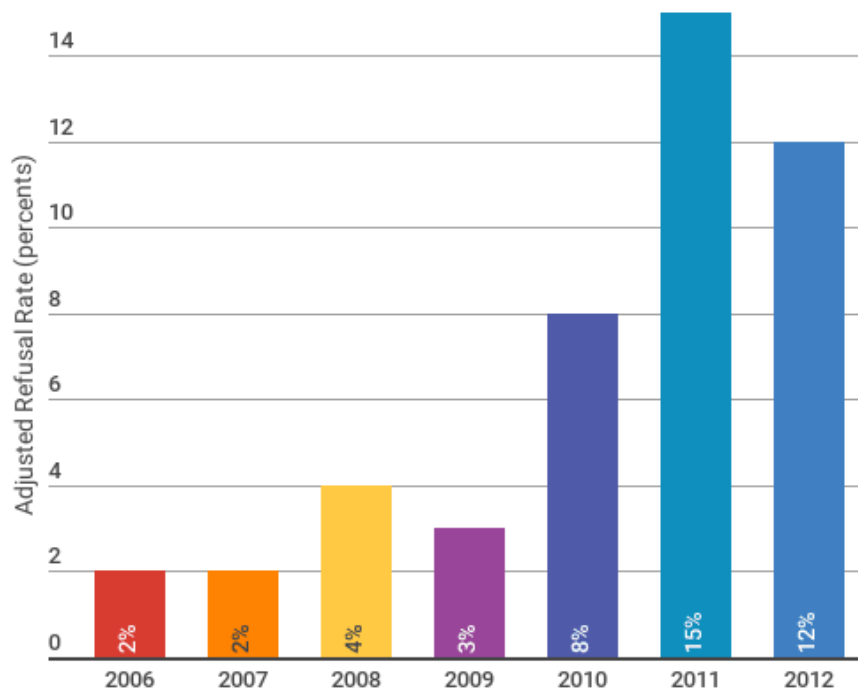


Source: This data is from one document and does not appear to be published annually. See U.S. Department of Homeland Security, USCIS, available at <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/i-129-l-1b-performance.pdf> (last visited September 2013).

B. STEPS FOR WORKERS

Once Form I-129 is approved by USCIS, the worker applies for the L-1 visa from the Department of State at the U.S. visa processing location abroad, which is usually the U.S. embassy or consulate in the worker's home country. There are additional fees that a worker will have to pay when applying for the visa, including the visa application fee, border-crossing card, and fraud fee.⁶⁹ Workers applying for an L-1 visa under a blanket petition must pay an additional Border Security Act fee of \$2,250.⁷⁰ Consular officers do not question the approval of L petitions unless they discover information that was unavailable to USCIS.⁷¹ However, the worker still has the burden of establishing eligibility for the L-1 visa.⁷² While data suggest that most visa applications are approved, the adjusted refusal rate has been rising since 2009.

L-1 Visas Approved by State Department with Refusal Rate



Source: [1] U.S. Department of State, Nonimmigrant Visa Statistics, NIV Workload by Category, 2006-2012, available at http://www.travel.state.gov/visa/statistics/nivstats/nivstats_4582.html (June 2013). [2] Adjusted Visa Refusal Rate = (Refusal – Overcome) / ((Refusal-Overcome) + Issuances). See U.S. Department of State, Guidelines of the Visa Waiver Program, available at <http://www.travel.state.gov/pdf/refusalratelanguage.pdf> (June 2013)

1. ADMISSION TO THE UNITED STATES

A visa does not guarantee admission to the United States. The U.S. Department of Homeland Security's Customs and Border Protection will either permit or deny entry after their own inspection and will determine the permitted time allowed in the U.S., which may be less time than what is listed on the visa itself.⁷³

III. L-1 WORKERS IN THE U.S. – DATA

The exact number of L-1 workers that are present in the United States at any given time is unknown. Both the U.S. Department of Homeland Security and the Department of State maintain data about L-1 workers. Over the last five years, between 60,000 and 80,000 new L-1 visas were issued annually. This number does not count the number of L-1 workers whose periods of stay may span more than one year and are thus already in the United States. Neither agency regularly publishes information that breaks down the number of L-1A and L-1B subclasses. Canada, India, United Kingdom, Mexico, Japan, and France were the largest sending countries based on I-94 admissions in 2013, the most recent year for which data is available.⁷⁴ India, Great Britain and Northern Ireland, Japan, Mexico and China were the largest sending countries based on visa issuances in 2014.⁷⁵ The age and gender of L-1 workers is not published. Employer demographics are only intermittently published. By all indications, companies that hire the most L-1 workers are multinational consulting firms who import workers and then contract them out as consultants.

A. NUMBER OF L-1 WORKERS IN THE U.S.

L-1 Numbers at a Glance: 2011

Agency	Data collected	Number	Date Range	Notes
U.S. Department of Labor	Nothing	-	-	USDOL has no role in the L-1 program.
U.S. State Department	Number of L-1 visas actually issued to foreign workers at US Consulates abroad	70,728 L-1 visas granted[1]	FY 2011	<ul style="list-style-type: none"> This number does not count Canadian L-1 workers because they are not required to apply for L-1 visas through the State Department; but they do get I-94s and are counted in the admissions number below. This number includes workers who receive visas; receiving a visa does not mean that the worker in fact was admitted to the U.S. at the border or port of entry. Statistics on workers who are turned away at the border are not disaggregated by visa classification.
U.S. Department of Homeland Security – U.S. Citizenship and Immigration Services	Number of Form I-129 Petitions for L-1B specialized knowledge subclassification	14,246 L-1B approvals[2]	CY 2011	<ul style="list-style-type: none"> This number represents petitions approved, not the number of individual workers – it may include blanket petitions that are for multiple workers. This number does not include Form I-129 approvals for L-1A managers and executives.
U.S. Department of Homeland Security – U.S. Customs and Border Patrol	Number of L-1 admissions and readmissions at the border with a I-94 entry document	562,776 admissions counted for individuals with L-1 visas[3]	FY 2011	Individuals may be counted more than once in the admissions numbers because some workers depart and re-enter the U.S. in the same year. First-time and repeat entries are not distinguished. All admissions are counted regardless if the L-1 worker was admitted on a new I-94 or a valid I-94 that was previously used.

Source: [1] U.S. State Department, FY 1997-2012 NIV Detail Table, available at http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html (May 2013). Because the U.S. Department of Homeland Security has not yet published its admissions data for FY 2012, this chart is using data from FY 2011 to aid in comparing the data. [2] U.S. Department of Homeland Security, USCIS, Petition for Nonimmigrant Worker L-1B Class Preference Approvals and Denials, available at <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/i-129-i-1b-performance.pdf> (May 2013). [3] Randall Monger, U.S. Department of Homeland Security, Office of Immigration Statistics, Nonimmigrant Admissions to the United States: 2011 (July 2012), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2011.pdf (May 2013).

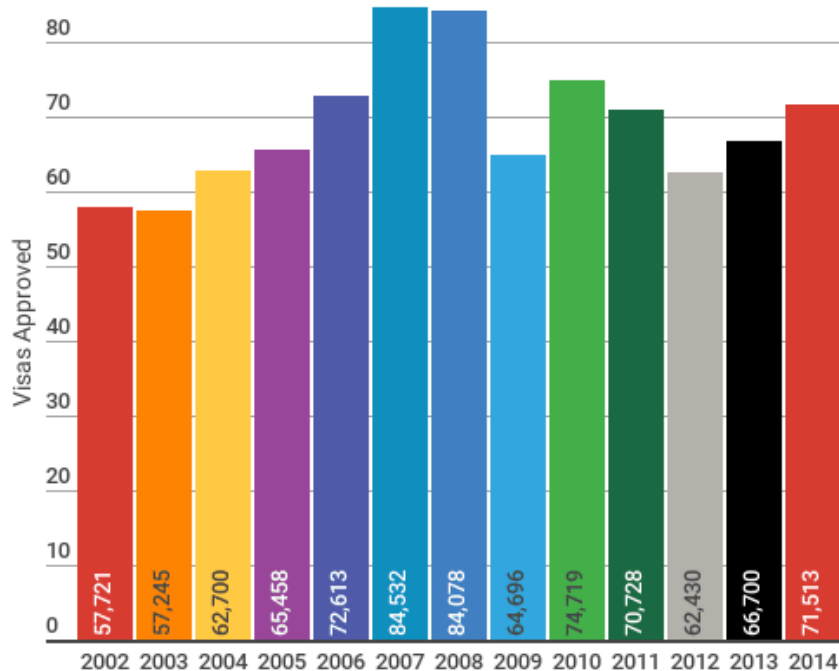
1. U.S. DEPARTMENT OF LABOR

The U.S. Department of Labor (USDOL) does not have any role in the administration of the L-1 visa program. As such, USDOL neither collects nor maintains data regarding the number of L-1 workers present in the U.S.

2. U.S. DEPARTMENT OF STATE

The Department of State publishes select L-1 data but does not break down the number of workers per subcategory. In 2014, it issued 71,513 L-1 visas.⁷⁶ This is much higher than the 5-year low number of 62,430 in 2012.

L-1 Visas Approved by State Department



Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html (November 2015).

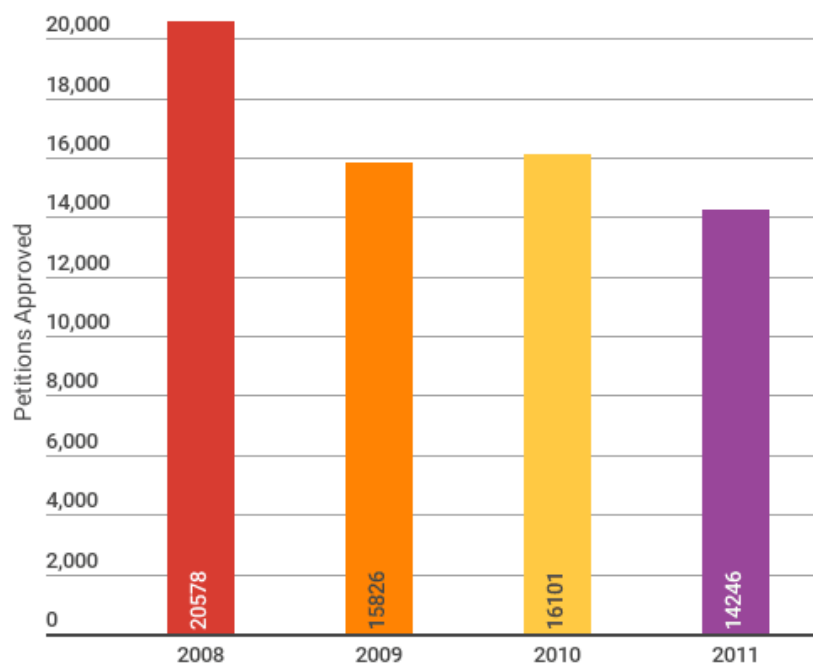
3. U.S. DEPARTMENT OF HOMELAND SECURITY

The U.S. Department of Homeland Security has two agencies involved in the L-1 program and thus two sets of data pertaining to the number of L-1 workers. The U.S. Citizenship and Immigration Services (USCIS) receives the petition for nonimmigrant status, Form I-129, submitted by the employer or agent. At the border or port of entry, the Customs and Border Patrol (CBP) interviews workers who have received L-1 visas, decides whether to grant their admission, and issues the I-94 entry document.

A) U.S. CITIZENSHIP AND IMMIGRATION SERVICES

USCIS does not publish information on the number of approved Form I-129s for L-1 workers or the number of beneficiaries who obtain L-1 status based on those petitions. Unlike with the H-1B program, USCIS is not required to submit reports to Congress or publish any details on L-1 workforce.⁷⁷ Nevertheless, USCIS has published data on the number of Form I-129 L-1B class preference approvals and denials from 2003 through 2011.⁷⁸ (There is no breakdown of L-1A status, nor is there a global number.) In 2011, L-1B nonimmigrant status was approved on 14,246 Form I-129 petitions. It is not clear whether this number represents petitions or actual workers. Because blanket petitions are allowed for multiple workers, the number of L-1B approvals cannot simply be subtracted from the number of visas issued to get the number of L-1A workers, for example. However, because the number of L-1B petitions may represent both individual worker beneficiaries as well as blanket petitions, the number of petitions does not necessarily correlate to the number of workers.

L-1 Nonimmigrant Petitions (I-219) Approved by Department of Homeland Security



Source: This data is from one document and does not appear to be published annually. See U.S. Department of Homeland Security, USCIS, available at <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/i-129-l-1b-performance.pdf> (last visited September 2013).

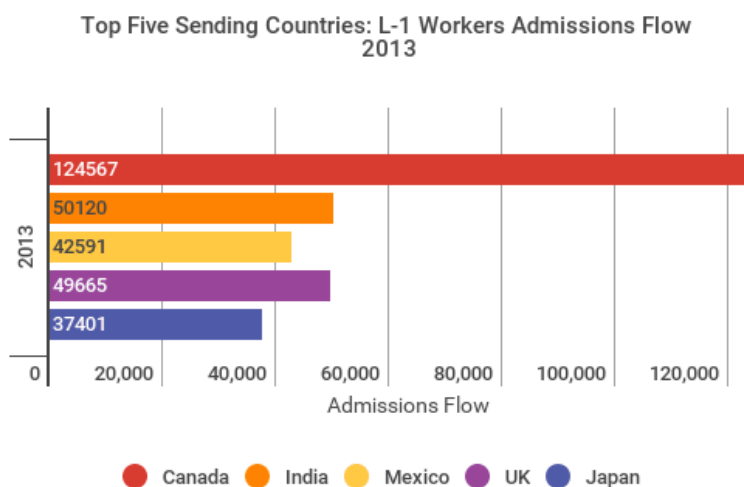
B) U.S. CUSTOMS AND BORDER PATROL

Each time a nonimmigrant worker enters the United States, DHS's Customs and Border Patrol counts the entry as an admission. The agency annually publishes the admissions number. However, the data represents "admissions" rather than the number of individuals.⁷⁹ In other words, one single individual may be counted many times over in an annual count because each admission is recorded.⁸⁰ In 2013, there were 503,206 admission events for individuals with an L-1 visa.⁸¹

B. L-1 WORKER DEMOGRAPHICS

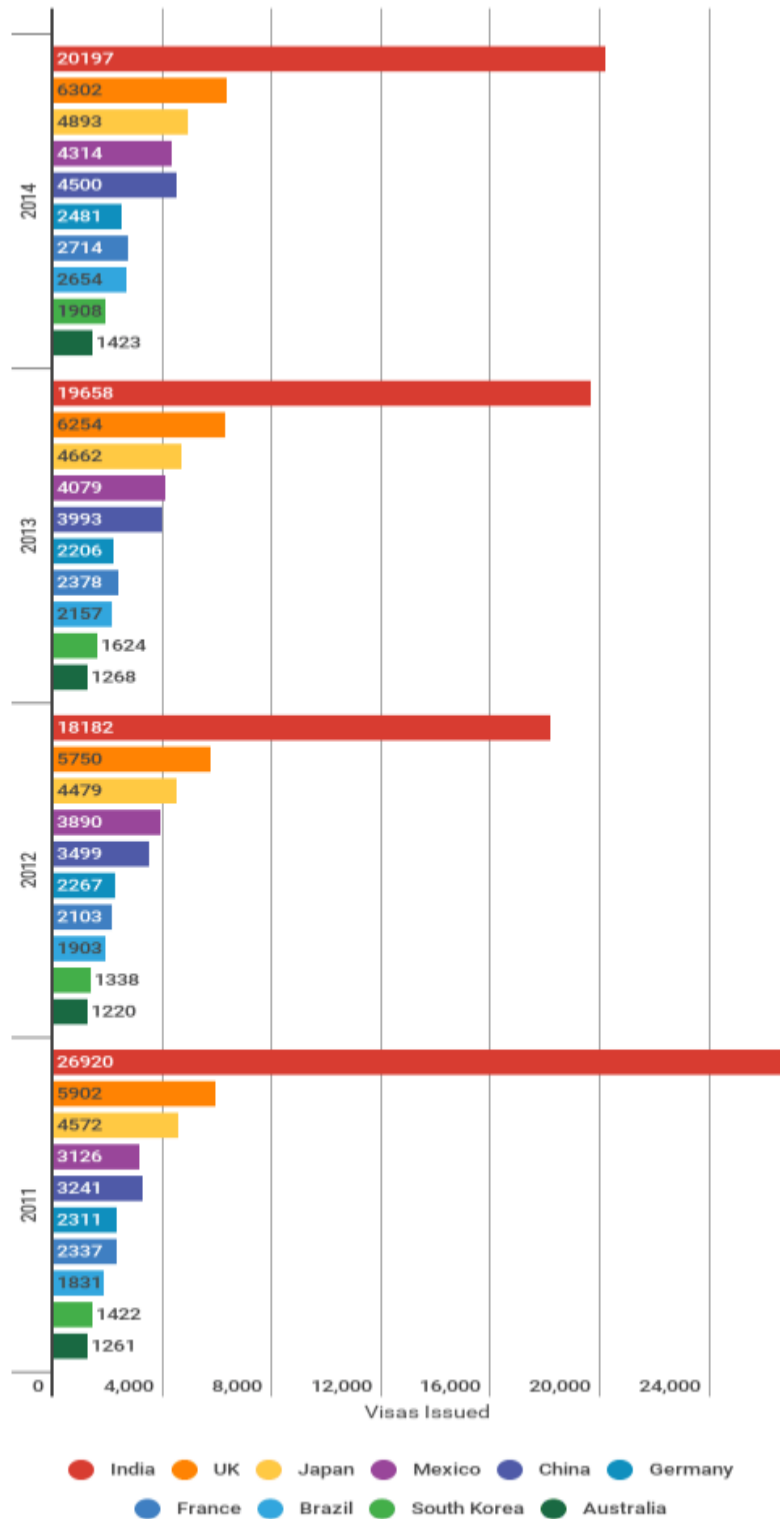
1. NATIONAL ORIGIN

India is the largest sending country for L-1 workers, with 20,197 visas issued in 2014.⁸² The UK (Great Britain and Northern Ireland), Japan, China, and Mexico round out the top five sending countries for L-1 workers, as accounted for by visas issued. Canada is one of the largest sending countries as well. Because Canadian L-1 workers are not required to obtain an L-1 visa, however, they are not counted in the Department of State data set.⁸³ DHS's admission numbers show Canadian L-1 workers representing the largest admissions flow.⁸⁴ While it may be the case that Canada is a considerable source country for L-1 workers, due to the potential multiple crossings of a single individual, this doesn't necessarily mean that Canada is the largest sending country. The rest of the top five sending countries by admission are the same as for visas issued.



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2012 (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-nonimmigrant-admissions> (October 2013) and Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013 (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (November 2015).

Top Ten Sending Countries: L-1 Visas Issued



Source: U.S. Department of State, FY 1997-2014 NIV Detail Table, available at http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html (November 2015). Note that Spain was in the top ten sending countries in 2013, overtaking Australia with 1434 visas issued.

DIGGING DEEPER: AGE, GENDER AND EDUCATION DATA NOT AVAILABLE

Information about the age, education level, and gender of L-1 workers is not published. Biographical information such as the beneficiary's age and gender is listed on the Form I-129 filed with the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), except when the employer submits a blanket petition on behalf of multiple workers.⁸⁵ The L-1 worker's level of education is not requested on the Form I-129.⁸⁶ DOS gathers and records gender and age as part of each worker's visa application at the U.S. consular posts abroad. However, there is no data collection or reporting requirement with respect to the L-1 program, and neither the USCIS nor DOS publishes the information.

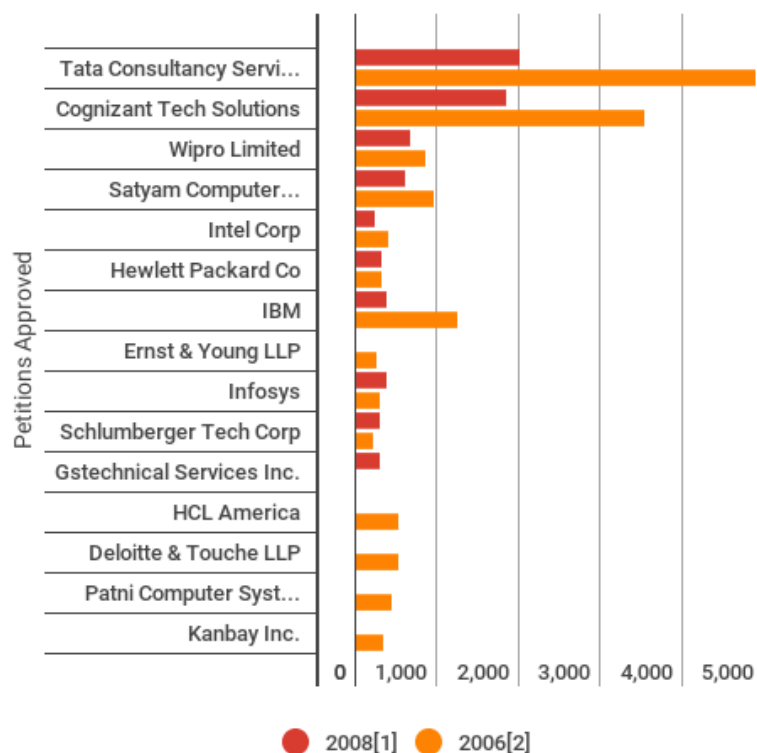
C. L-1 JOB CHARACTERISTICS

Most L-1 workers are in the L-1B sub-classification – intracompany transfers possessing specialized knowledge. This has been true since 2004 when the number of L-1B petitions approved by USCIS exceeded for the first time the number of approvals for L-1A managers and executives.⁸⁷ USCIS has the numbers for each subclass because employers must designate the beneficiary as an L-1A or L-1B on the Form I-129.⁸⁸ However, while USCIS tracks this distinction internally,⁸⁹ complete numbers have apparently not been published since 2006.⁹⁰ DOS issues one single L-1 visa; the L-1 nonimmigrant subcategory is not broken down into L-1A and L-1B visas.

D. L-1 EMPLOYER DEMOGRAPHICS

USCIS does not publish a list of employers who petition for L-1 workers. However, this information is obviously known. Employer data reported in several studies reveals that while the L-1 visa program has been crafted generically to apply across all sectors of the economy, in practice it is dominated by the information technology (IT) industry specializing in labor from India.⁹¹ From 1999 to 2004, nine of the top ten firms submitting the most petitions for L-1 workers were computer and IT companies.⁹² In 2006, two Senators disclosed information from USCIS that the top 20 L-1 visa sponsors were overwhelmingly IT and software companies.⁹³ Subsequent data from 2008 demonstrates that the same information technology companies still lead the pack of L-1 employers.⁹⁴

Top L-1 Employers by Approved Nonimmigrant Petitions (USCIS)



Source: [1] Data is from Ron Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper, No. 280, Table 2, at 5, (Oct. 14, 2010) available at http://epi.3cdn.net/490c30d8f9f16bc16c_b0m6b5b9c.pdf (last visited June 2013). [2] Data is from the "top 20 companies using the L visa" provided to Senators Grassley and Durbin in June 2007, available at http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=9252 (last visited June 2013). Note that while, according to this table, the numbers represent the number of visas, it is more likely that this number represents the number of petitions that were approved.

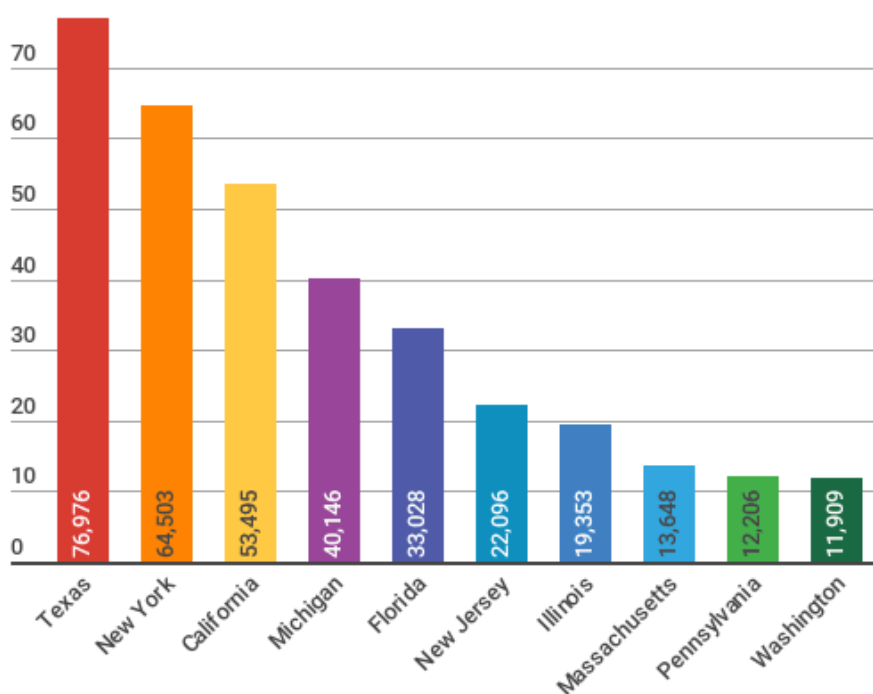
DIGGING DEEPER: OVERLAP BETWEEN L-1 AND H-1B EMPLOYERS

It appears that the biggest employers of L-1 workers are also the biggest employers of H-1B workers.⁹⁵ The overlap in visas issued to certain company's employees calls into question whether L-1 visas are being used appropriately. Several U.S. Senators have encouraged the U.S. Department of Homeland Security to investigate all aspects of the L-1 program, including to what extent companies seek L-1 visas instead of H-1B.⁹⁶ Some suspect employers use the L visa program to get around the stricter H-1B rules, particularly because the L-1 program "does not include protections for American workers."⁹⁷ Some economists point out that the L-1 program suffers from a lack of oversight and regulation similar to the Optional Practical Training (OPT) component of the F-1 program. In a 2003 report, the Government Accountability Office found that employers were "increasingly turn[ing] to the L-1 visa" instead of H-1B, noting that "L-1 visas (unlike H-1B specialty occupation visas) do not have an annual cap and are not subject to prevailing wage laws" and that employers find it "less cumbersome."⁹⁸ The same finding was reiterated in a 2011 report.⁹⁹

1. JOB LOCATION

DHS publishes information about the destination states of nonimmigrants based on information gathered when L-1 workers are admitted.¹⁰⁰ The five states with the largest flow of L-1 workers are Texas, New York, California, Michigan and Florida.

L-1 Worker Admissions by Top Ten States: 2013



Source: U.S. Department of Homeland Security, Nonimmigrant Admissions (I-94 Only) by Class of Admission and State or Territory of Destination: Fiscal Year 2012, available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-nonimmigrant-admissions> (October 2013); and U.S. Department of Homeland Security, Nonimmigrant Admissions (I-94 Only) by Class of Admission and State or Territory of Destination: Fiscal Year 2013, (Supplemental Table 3), available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (November 2015).

IV. L-1 WORKERS' RIGHTS

L-1 program regulations do not contain any significant worker protection rules. There is no specific wage to be paid to the L-1 worker, no work period guarantee, no rule regarding who should pay for transportation expenses, and no remedies for workers when their job is terminated early. The dearth of regulatory rights for L-1s may be due in part to the perception that managers, executives and other skilled multinational professionals generally command high wages and do not need such safeguards. Just because accomplished L-1s may be faring well generally, however, does not mean they all are. Moreover, because U.S. workers' jobs are not tied to immigration status, they are in a better position to demand more favorable wages and working conditions. Employers who offer foreign workers the same job as U.S. workers with below-market benefits adversely impact the U.S. workers.

DIGGING DEEPER: NO KNOW-YOUR-RIGHTS MATERIALS FOR L-1 WORKERS

During the visa application process, the U.S. Department of State is not required to inform L-1 workers about their legal rights in the United States. The agency developed an anti-trafficking [brochure](#) to inform temporary nonimmigrant workers about their legal rights, but it refers only to certain visa categories, to wit, A-3, G-5, B-1, J-1, H-1B, H-2A and H-2B workers.¹⁰¹ L-1 workers are not included.¹⁰²

V. ENFORCEMENT

Given the lack of regulatory rights for L-1 workers, it is not surprising that there is no enforcement scheme. There is no formal administrative complaint procedure, no private right of action, and no anti-retaliation protection. There is no regulatory mechanism to hold L-1 employers liable for lost wages and benefits, or the return cost of transportation for terminated employees. Both the U.S. Department of State and the U.S. Department of Homeland Security have anti-fraud commissions. However, no agency is charged with enforcement employment and civil rights of L-1 workers. Because there is no specific role for the U.S. Department of Labor in the application process, its enforcement authority with regard to L-1 is the same as with the workforce in general: if one of the laws that USDOL is charged with enforcing is in play, the agency may investigate. If there is any sort of discrimination, the Equal Employment Opportunity Commission may be able to pursue the case. State agencies customarily will have the authority to enforce any state laws that apply. To the extent that there is an employment contract or applicable federal or state statute allowing a private lawsuit, L-1 workers may enforce their rights in court, just like any other U.S. worker.

DIGGING DEEPER: NO ENFORCEMENT ROLE FOR U.S. DEPARTMENT OF LABOR

The U.S. Department of Labor (USDOL) has no defined enforcement role regarding the L-1 visa program. To be sure, the lack of any wage-based rules or labor certification process for the L-1 program leaves USDOL with little to enforce. In other nonimmigrant visa programs, companies that violate the labor certification process may face stiff penalties. Obviously, L-1 employers who do not need to meet those labor market tests are not included within that enforcement system. If an L-1 worker claims that there has been a violation of federal minimum wage overtime laws, though, USDOL may get involved as the agency charged with enforcing those laws. Even so, the federal wage law enforced by USDOL, the Fair Labor Standards Act, will rarely be in play for multinational executives, managers and other high-level professional employees.¹⁰³

A. U.S. DEPARTMENT OF HOMELAND SECURITY

DHS has a Fraud Detection and National Security unit as part of USCIS. Fraud prevention fees paid by visa applicants have funded a USCIS worksite verification program to check the accuracy of visa petitions of employers who have sponsored visa workers.¹⁰⁴ To date, the program apparently is focused on H-1B rather than L-1 site inspections.¹⁰⁵

B. PRIVATE LITIGATION

L-1 workers themselves do not have the authority to enforce the scant L-1 regulations in court. However, to the extent that there is an enforceable employment contract, applicable federal or state statute, or common law claim, an L-1 worker may file a lawsuit to enforce their rights and have their day in court just like any other U.S. worker.

1. ACCESS TO COUNSEL

L-1 workers have similar access to counsel issues as other groups of nonimmigrant workers in that lawyers may not be as willing to take their cases. When clients have to return home while cases are pending, pursuing legal claims in the U.S. is a logistical

challenge. However, because L-1 workers are managers, executives or those with specialized skills and work in urban areas, their access to counsel issues are not as serious as their lower-wage, unskilled counterparts in other visa programs such as H-2A, H-2B, and J-1 who may work in rural areas.

A) LEGAL SERVICES LAWYERS

Federally funded lawyers may represent individuals with an income below a certain financial level (usually between 125-200% of the federal poverty guideline depending on the legal services organization) and only certain classes of immigrants.¹⁰⁶ In many cases individuals with L-1 visas will not be eligible for legal services because of these immigration and financial restrictions. However, there are exceptions when the worker is a victim of domestic violence, sexual assault, human trafficking, fraud in foreign labor contracting or another crime.¹⁰⁷

VI. L-1 WORKERS – ISSUES

Issues involved with the L-1 program involve the treatment of foreign workers and the effect of their employment on U.S. workers. Critics consistently point to **four flaws** with the L-1 program. First and foremost, because the L-1 worker's immigration status is tied to a single employer, the relationship is ripe for abuse. Because of the nature of the intracompany transfer, there is little chance for an L-1 worker to change jobs once he or she is in the U.S. Moreover, there are no wage requirements for L-1 workers and there is no labor market test. This creates a situation where overt discrimination against U.S. workers is possible. Deficient program oversight and enforcement exacerbate these issues.

A. JOB TIED TO IMMIGRATION STATUS

L-1 workers are dependent on their employers because their immigration status is tied to their visa. This **unequal power relationship** is problematic, as one economist explains:

If the employee does not agree with the salary or working conditions being offered, or feels that he or she has been discriminated against, the employee can legally be fired, which automatically terminates the employee's L-1 visa and requires that they immediately return to their home country, unless the fired employee can acquire another visa that allows him or her to remain in the United States while searching for another employer (e.g., a tourist visa). The L-1 beneficiary cannot quit and go in search of a better job with an L-1 visa, unless there is already another employer willing to sponsor a new application for a different category of work visa. Applying for another L-1 visa with a different employer is not an option because of the requirement that the employee be working abroad for a specific employer for one year during the last three years. This insulates the employer from wage competition and the normal supply and demand for workers. Thus, employers have nearly complete control over these temporary workers, and can offer lower salaries and benefits than they would to workers who are U.S. citizens or permanent residents.¹⁰⁸

B. DISCRIMINATION AGAINST U.S. WORKERS

Some U.S. workers have lost jobs to L-1 workers, and even had to train their lower-paid replacements.¹⁰⁹ Most of the concern surrounding U.S. workers' job loss "is focused on L-1B specialized knowledge workers, not L-1A managers and executives."¹¹⁰ There are reports of companies, such as Pfizer, Siemens, Nielsen, Wachovia, and Bank of America, directing their U.S. workers to train lower-paid foreign workers, including L-1 visa holders.¹¹¹ However, it is unclear whether such discrimination is widespread.¹¹² The government has not formally studied L-1 wage rates or their effect on U.S.

workers. Much more wage information is available about the H-1B program and a number of studies have found that those H-1B wage rates are lower (in some cases up to 25% less) than wages for similarly situated U.S. workers.¹¹³ Whether the same holds true in the L-1 visa context remains to be seen.

ENDNOTES

- ¹ See INA § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L), as added by Pub. L. No. 91-225, Sec.1(b), 84 Stat.116.
- ² The Immigration Act of 1990 (IMMACT), Pub. L. No. 101-649.
- ³ Pub. L. No. 101-649 § 205(b), codified at 8 U.S.C. § 1184(b).
- ⁴ Pub. L. No. 101-649 § 123, codified at 8 U.S.C. § 1101(a)(44)(A).
- ⁵ Pub. L. No. 101-649 § 206(b)(2), codified at 8 U.S.C. § 1184(c)(1)(D).
- ⁶ Pub. L. No. 101-649 § 206(b)(2), codified at 8 U.S.C. § 1184(c)(2)(A).
- ⁷ Pub. L. No. 108-649 § 412(a), codified at 8 U.S.C. § 1184(c)(2)(F).
- ⁸ See, e.g., National Foundation for American Policy, *Understanding L-1 Visas and the Recent OIG Report*, (March 2006) available at <http://www.nfap.com/researchactivities/articles/NFAPPolicyBriefUnderstan...>
- ⁹ 8 U.S.C. § 1184(c)(2)(D); 8 C.F.R. § 214.2(l)(12); 9 FAM 402.12-16 Length of Stay; 9 FAM 403.9-4(E) Maximum Initial Periods of Admission and Extension of Stay.
- ¹⁰ 9 FAM 402.12-16(E).
- ¹¹ Id. However if an L-1 worker has maintained his or family in the U.S. in L-2 status, there are no exceptions from the limitation of period of stay. See 9 FAM 402.12-18(A)c.
- ¹² 8 U.S.C. § 1184(h); Department of State instructs consular officials that they must not focus on the issue of immigrant intent when they are reviewing L-1 visa applicants. See 9 FAM 402.12-15.
- ¹³ For a detailed discussion of the data and trends involved in L-1s converting to LPR status through an employment-based petition, see R. Hira, *Bridge To Immigration or Cheap Temporary Labor?*, EPI Briefing Paper #257 (February 17, 2010).
- ¹⁴ 8 U.S.C. § 1153(b)(1)(C). Employers of L-1A workers are eligible for EB-1 priority and not required to seek permanent labor certification, and thus, do not appear in the USDOL database which counts those applications. The amount of L-1B workers who actually convert to LPR status is relatively low, accounting for only 3.6% of the total PERM applications. Hira, *Bridge to Immigration* at 3-4.
- ¹⁵ U.S. Department of Homeland Security, USCIS, *Permanent Workers*, available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7...>. The USCIS website has a page dedicated to each of the five employment based visa (green card) categories.
- ¹⁶ U.S. Department of State of State, *The Operation of the Immigrant Numerical Control System*, available at http://www.travel.state.gov/pdf/Immigrant%20Visa%20Control%20System_oper... (June 2013).
- ¹⁷ See generally 8 C.F.R. § 214.2(h)(15), (16).
- ¹⁸ 20 C.F.R. § 656.1(a).
- ¹⁹ U.S. Department of Homeland Security, USCIS, *H-1B Fiscal Year (FY) 2016 Cap Season*, available at http://www.uscis.gov/h-1b_count (November 2015).
- ²⁰ 9 FAM 402.12-18.
- ²¹ Id.
- ²² 8 U.S.C. § 1184(c)(2)(E); 9 FAM 402.12-18(C).
- ²³ See, e.g., Yacub Law Offices, LLC, *L1 Visa*, available at <http://www.yacublaw.com/L1-Visa.html> (L-1 visa is “extremely beneficial for employers” compared to the H-1B where “employer must pay the prevailing wage;” however, under the L-1 “the company and the employee are free to negotiate the terms of any salary offered”); Murthy Law Firm, *L-1 & H1B Visas: A Comparison* (April 11, 2003) available at <http://www.murthy.com/news/ukL1H1B.html> (the L-1 wins out in a number of other comparisons with the H-1B and “[a] key feature of L-1 petitions is that they do not have a prevailing wage requirement”); and VisaPro, *Specialized Knowledge: How the L-1B Can Work For You*, available at <http://www.visapro.com/Immigration-Articles/?a=1096&z=48> (advantages of the L-1 include “no annual cap, no prevailing wage requirements, dual intent, and employment authorization for spouses – far outweigh many of the alternatives available”).
- ²⁴ 9 FAM 402.12-14(E).
- ²⁵ Requirements include employing at least ten L visa workers in the past year, annual sales of \$25 million or a U.S. work force of at least 1,000 employees. 8 C.F.R. §§ 214.2(l)(4)(i)(D) and (l)(5). See also 22 C.F.R. § 41.54; and 9 FAM 402.12-4(B) and 402.12-8 Processing Blanket L Petitions.
- ²⁶ L-1 visa applicants from Canada follow a simplified process.
- ²⁷ 9 FAM 402.12-5(B). See also D. North, *H-1B Applicants: Purer than Ivory Soap?*, Center for Immigration Studies (Jul. 4, 2011) available at <http://www.cis.org/north/USCIS-approval-statistics> (citing FY 2009 data for USCIS’s 99% approval rate for non-immigrant visa requests obtained via FOIA).
- ²⁸ DOS reports that 78% of L-1 visa applications were granted. See U.S. Department of State, *NIV Workload by Visa Category FY 2010*, available at <http://www.travel.state.gov/pdf/FY2010NIVWorkloadbyVisaCategory.pdf>.
- ²⁹ 8 C.F.R. § 214.2(l)(2)(i).
- ³⁰ 8 C.F.R. § 214.2(l)(1)(i); 9 FAM 402.12-9 and 402.12-12.

³¹ See 8 U.S.C. § 1101(a)(15)(L); 22 C.F.R. § 41.54(f); and 9 FAM 402.12-13.

³² 8 U.S.C. § 1101(a)(15)(L). L-1 visas are available for executives, managers and employees with “specialized knowledge.”

³³ See Form I-129 Instructions, p. 10-11.

³⁴ 8 C.F.R. § 214.2(l)(1)(i)(G).

³⁵ 9 FAM 402.12-10(A).

³⁶ 8 C.F.R. § 214.2(l)(1)(i)(H).

³⁷ 9 FAM 402.12-10(C).

³⁸ R. Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper #280 (Oct. 14, 2010).

³⁹ 9 FAM 402.12-9(A).

⁴⁰ 8 C.F.R. § 214.2(l)(1)(ii)(F).

⁴¹ 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

⁴² 8 C.F.R. § 214.2(l)(1)(ii)(B).

⁴³ 8 C.F.R. § 214.2(l)(1)(ii)(C).

⁴⁴ 8 U.S.C. § 1184(c)(2)(B); 8 C.F.R. § 214.2(l)(1)(ii)(D).

⁴⁵ 9 FAM 402.12-14(E).

⁴⁶ 9 FAM 402.12-14(C).

⁴⁷ *1756, Inc. v. Attorney General*, 745 F. Supp. 9, 15 (D.D.C. 1990) (upholding INS determination denying L-1 visa for Kuwaiti cook because agency’s interpretation was reasonable given that the phrase is “meaningless by itself, undefined by the statute, unclear from context, and barely mentioned in the legislative history.”).

⁴⁸ U.S. Department of Homeland Security, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, at 1, (Jan. 24, 2006), available at http://www.dhs.gov/xoig/assets/katovrsqht/OIG_06-22_Jan06.pdf.

⁴⁹ 8 U.S.C. § 1184(j); C.F.R. § 214.2(l)(18); 22 C.F.R. § 41.54(e).

⁵⁰ 8 U.S.C. § 1184(c)(2)(A).

⁵¹ 8 C.F.R. § 214.2(l)(4)(i).

⁵² Between the years 2002 and 2004, worker beneficiaries on a blanket L-1 petition only needed to work for the petitioning employer for 6 months instead of a year. See Pub. L. 107–125 § 2(a) (2002) (adding special 6-month rule in subsection (c)(2)(A)) and Pub. L. 108–447 § 413(a) (2004) (deleting special 6 month rule).

⁵³ 8 C.F.R. § 214.2(l)(1)(i) (“Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, affiliates, or subsidiaries specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.”).

⁵⁴ 9 FAM 402.12-5(C). (“For the proper procedure on how to refuse a Blanket L-based visa and how to dispose of the petition, you should reference 9 FAM 402.12-8(G).”).

⁵⁵ 9 FAM 402.12-8(C); see also U.S. Department of Homeland Security, USCIS, *Adjudicator’s Field Manual*, section 32.4(a), available at <http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-15111/0-0-....>

⁵⁶ When multiple places of employment are contemplated, the USDOL regulations state that “[a]ll intended places of employment shall be identified on the LCA; the employer may file one or more additional LCAs to identify additional places of employment.” 20 C.F.R. § 655.730(c)(5).

⁵⁷ R. Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper #280, at 5, (Oct. 14, 2010).

⁵⁸ P. Chakravarty, *Weak Winners of Globalization: Indian H-1B Workers in the American Information Economy*, AAPI Nexus, Vol. 3, No. 2, p. 59, 64-67 (Winter 2005) (Describing first-hand exploitation of Indian H-1B employed by body shops); S. Hamm and M. Herbst, *America’s High Tech Sweatshops*, Business Week (Oct. 1, 2009), available at http://www.businessweek.com/magazine/content/09_41/b4150034732629.htm. With respect to H-1B workers, USDOL has reported that staffing employers were a significant source of wage and hour complaints: “nearly all of the complaints” in the agency’s Northeast region office, “involve staffing companies” and “the number of complaints is growing.” See GAO 11-26, at 53-54.

⁵⁹ L-1 Visa Reform Act of 2004 codified at 8 U.S.C. § 1184(c)(2)(F).

⁶⁰ 8 U.S.C. § 1184(c)(2)(F)(i). The most important element to determine the validity of an employer-employee relationship is the “right of control,” including the power to hire and fire. U.S. Department of State, *Guidance on L Visas and Specialized Knowledge*, at 3, (Jan. 2011), available at http://travel.state.gov/pdf/Guidance_on_L_Visas_and_Specialized_Knowledg...

⁶¹ 8 U.S.C. § 1184(c)(2)(F)(ii). U.S. Department of Homeland Security, USCIS, *Hiring a Foreign National for Short-Term Employment*, at 97, available at <http://www.uscis.gov/USCIS/About%20Us/Electronic%20Reading%20Room/Custom...> W.R. Yates, Assoc. Dir. of Operations, U.S. Department of Homeland Security, USCIS, *Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004*, (July 28, 2005) available at <http://www.uscis.gov/files/pressrelease/LVisaReform072805.pdf>.

- ⁶² Government Accountability Office, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, No. GAO-11-26, at 55-56, (Jan. 2011), available at <http://www.gao.gov/new.items/d1126.pdf>.
- ⁶³ *Id.*
- ⁶⁴ R. Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper No. 280, at 4-5, (Oct. 14, 2010) available at http://epi.3cdn.net/490c30d8f9f16bc16c_b0m6b5b9c.pdf.
- ⁶⁵ U.S. Department of Homeland Security, USCIS, I-129 Petition for Nonimmigrant Worker, available at <http://www.uscis.gov/i-129> (last visited June 2013).
- ⁶⁶ U.S. Department of Homeland Security, USCIS Ombudsman, Annual Report 2010, p. 40, 45-46 (June 30, 2010), available at http://www.dhs.gov/xlibrary/assets/cisomb_2010_annual_report_to_congress....
- ⁶⁷ U.S. Department of Homeland Security, USCIS, Petition for Nonimmigrant Worker L-1B Class Preference Approvals and Denials, available at <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration...>.
- ⁶⁸ See USCIS Ombudsman, *Annual Report to Congress: 2014*, graph on p. 25, available at <http://www.dhs.gov/sites/default/files/publications/cisomb-annual-report-2014.pdf> (last visited May 2015).
- ⁶⁹ For current list of fees, see U.S. Department of State, Fees for Visa Services, available at http://travel.state.gov/visa/temp/types/types_1263.html (last visited June 2013); 8 U.S.C. 1184(c)(12)(A).
- ⁷⁰ 8 U.S.C. § 1184(c)(12)(B); 9 FAM 402.12-8(A).
- ⁷¹ 9 FAM 402.12-5(B).
- ⁷² If the consular officer discovers information during the visa interview indicating that the worker is not be entitled to status “the consular officer may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.” *Id.*
- ⁷³ 8 U.S.C. §1225; 8 C.F.R. Part 235, Inspection of Persons Applying for Admission; see also A. Fragomen, Jr., A. Del Rey, Jr., and S. Bernsen, *Immigration Law and Business* § 2:11 (2010) (“The issuance of a nonimmigrant visa gives the alien permission to apply for admission to the United States at a port of entry... The visa does not assure an alien that he or she will be admitted to the United States, however; it merely indicates that a consular officer has found the alien eligible for temporary admission to the United States and not inadmissible under § 212(a) of the INA, 8 U.S.C.A. § 1182(a).”).
- ⁷⁴ U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2013, Supplemental Table 1. “Non-Immigrant Admissions (I-94 Only) by Class of Admission and Country of Citizenship: Fiscal Year 2013.” Available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (May 2015).
- ⁷⁵ U.S. Department of State, FY 1997-2014 NIV Detail Table, available at <http://travel.state.gov/content/visas/english/law-and-policy/statistics/non-immigrant-visas.html> (November 2015).
- ⁷⁶ *Id.*
- ⁷⁷ 8 U.S.C. § 1184, Note “Improving Count of H-1B and H-2B Nonimmigrants.”. American Competitiveness and Workforce Improvement Act of 1998, Pub. L. 105–277, div. C, title IV, §416(c)(2), Oct. 21, 1998, 112 Stat. 2681–655, amended by REAL ID 2005, Pub. L. 109–13, div. B, title IV, §406, May 11, 2005, 119 Stat. 320).
- ⁷⁸ U.S. Department of Homeland Security, USCIS, Petition for Nonimmigrant Worker L-1B Class Preference Approvals and Denials, available at <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration...> (September 2013).
- ⁷⁹ U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2012 (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2012-nonimmigrant-adm...> (September 2013).
- ⁸⁰ Many L-1 workers return to their home countries for holidays or vacations during the year, which is one of the reasons why the number of admissions is almost six times higher than the number of visas issued.
- ⁸¹ U.S. Department of Homeland Security, Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013 (Supplemental Table 1), available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (November 2015).
- ⁸² U.S. Department of State, FY 1997-2014 NIV Detail Table, available at http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html (November 2015).
- ⁸³ Canadian citizens generally do not require a nonimmigrant visa in order to enter the United States. See http://travel.state.gov/visa/temp/without/without_1260.html (November 2015). For this reason, U.S. Department of State data revealing the nationality of individuals receiving visas does not include Canada. However, employers who want to hire L-1 workers from Canada must follow the same steps filing paperwork with USCIS, and workers must present for admission at the border through CBP. Therefore, data from those agencies does include Canada.
- ⁸⁴ U.S. Department of Homeland Security, *Nonimmigrant Admissions by Class of Admission and Country of Citizenship: Fiscal Year 2013 (Supplemental Table 1)*, available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (November 2015).
- ⁸⁵ See Form I-129, p. 3, Part 3, Fields e and f.

- ⁸⁶ H-1B petitions, on the other hand, do require a statement of the beneficiary's education level specifically for data collection purposes. See Form I-129, H-1B Data Collection Supplement, p. 17-19.
- ⁸⁷ OIG report page 7.
- ⁸⁸ See Form I-129, L Supplement, p. 20, Section 1.
- ⁸⁹ U.S. Department of Homeland Security, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, at 3, fn 14, (Jan. 24, 2006), available at http://www.dhs.gov/xoig/assets/katovrsqht/OIG_06-22_Jan06.pdf.
- ⁹⁰ Id.
- ⁹¹ Id. at 4.
- ⁹² Id. at 4.
- ⁹³ Office of U.S. Senator Charles Grassley, *Grassley and Durbin Release New Information on L Visas: List of Companies Using the L Visa*, Press Release (June 26, 2007), available at http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=9252.
- ⁹⁴ R. Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper #280, at 5, (Oct. 14, 2010).
- ⁹⁵ Office of U.S. Senator Charles Grassley, *Grassley and Durbin Release New Information on L Visas: List of Companies Using the L Visa*, Press Release (June 26, 2007), available at http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=9252.
- ⁹⁶ Office of U.S. Senator Charles Grassley, *Grassley Concerned about Fraud and Abuse in L-1 Visa Program*, Press Release (Mar. 30, 2011), available at http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=33437.
- ⁹⁷ Id.; See, e.g., R. Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper #280, (Oct. 14, 2010).
- ⁹⁸ Government Accountability Office, *H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce*, No. GAO-03-883, at 24 (Sept. 2003), available at <http://www.gao.gov/new.items/d03883.pdf>.
- ⁹⁹ Government Accountability Office, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, No. GAO-11-26, at 59 (Jan. 2011), available at <http://www.gao.gov/new.items/d1126.pdf>.
- ¹⁰⁰ U.S. Department of Homeland Security, *Nonimmigrant Admissions by Class of Admission and State or Territory of Destination: Fiscal Year 2013 (Supplemental Table 3)*, available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-nonimmigrant-admissions> (November 2015).
- ¹⁰¹ The U.S. Department of State was required to produce the anti-trafficking brochure by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. See 8 U.S.C. § 1375b.
- ¹⁰² The statute outlines specific nonimmigrant visas to be included in the education effort. That list does not include L-1 visas. See 8 U.S.C. § 1375b(f)(1)(A).
- ¹⁰³ 29 U.S.C. § 213(a)(1) (executive and professional exemption).
- ¹⁰⁴ U.S. Department of Homeland Security, Administrative Site Visit and Verification Program, (Aug. 18, 2010), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176...>
- ¹⁰⁵ D. Neufeld, *H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers*, Testimony Before the House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, U.S. House of Representatives, (Mar. 31, 2011), available at http://www.dhs.gov/ynews/testimony/testimony_1301573306439.shtm.
- ¹⁰⁶ 45 C.F.R. Part 1611 (Financial Eligibility) and Part 1626 (Restrictions on Legal Assistance to Aliens).
- ¹⁰⁷ 45 C.F.R. § 1626.2 et seq (2014); Legal Services Corporation, *Program Letter 14-3* (Oct. 29, 2014) and *Program Letter 05-2* (Oct. 6, 2005).
- ¹⁰⁸ D. Costa, *Abuses in the L-1 visa Program: Undermining the U.S. Labor Market*, Economic Policy Institute Briefing Paper #275, p. 8-9 (August 13, 2010).
- ¹⁰⁹ U.S. workers at Siemens Technology trained their L-1 replacements that were paid much lower wages; Tata Consultancy Services brought those L-1 workers to the United States. See K. Schoenberger, *Offshoring giant tries spiffing up its image*, Seattle Times (Dec. 12, 2004), available at http://seattletimes.nwsourc.com/html/business/technology/2002116733_tata...
- ¹¹⁰ Office of Inspector General, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, p. 9 (Jan. 24, 2006).
- ¹¹¹ R. Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper #280, p. 5 (Oct. 14, 2010); see, e.g., S. Greenhouse, *The Big Squeeze: Tough Times for the American Worker* at 207-08 (Anchor Publishing 2008) (At WatchMark, a software company near Seattle, the company required displaced U.S. workers, earning \$80,000 per year, to train their Indian replacements, paid at the rate of \$5,000 per year, in order to receive any severance pay); M. Kruse and T. Blackwell, *How Oldsmar got global influence*, St. Petersburg Times (Sept. 21, 2008), available at <http://www.tampabay.com/news/business/article818379.ece> (relying on outsourcers such as TCS saves "significant" money); and L. Howard, *Pfizer to Ax IT Contractors?*, The Day (Nov. 3, 2008),

available at <http://www.cwainc.org/outsourcing/binarydata/Howard.pdf> (reporting on arrangement of outsourcers to lease guest workers to Pfizer “at rates in many cases much lower than American contractors have been making”).

¹¹² *Id.* at 10. The DHS Office of Inspector General found that while “many of the claims that appear in the media about L-1 workers displacing American workers and testimony may have merit, they do not seem to represent a significant national trend.”

¹¹³ R. Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute Briefing Paper #280, p. 11 (Oct. 14, 2010); J. Miano, *Testimony Before the House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims*, U.S. House of Representatives (Mar. 23, 2006) available at <http://www.aila.org/content/default.aspx?bc=18960>|18964; and U.S. Department of Labor, Office of Inspector General, *The Department of Labor's Foreign Labor Certification Programs: The System is Broken and Needs to be Fixed*, No. 06-96-002-03-321 (May 22, 1996).