US brings in new norm on L-1 visa, provides leeway

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Lubna Kably | TNN | Updated: Dec 3, 2018, 10:57 IST

Representative image

MUMBAI: The US Immigration and Citizenship Services (USCIS) clarified last week that an L-1 beneficiary (employee for whom the application is filed by the sponsoring company) must be employed outside the US by the company for one continuous year, within three years before filing of the visa application.

However, a leeway has been built in for employees already working for the sponsoring company on an H-1B visa, as they may be able to adjust the time requirement.

"The new L-I policy guidance clarifies ambiguities between the provisions of the Immigration and Nationality Act and the implementing regulations. It confirms what a cautious immigration attorney has always been advising clients," says Cyrus D Mehta, founder of a New York-based law firm.

"Now it is clear that eligibility must be met at the time of filing. This may require some employers to delay their application for L-1 visas until the full one year is met, but having a clear policy at least puts employers on notice so that they can comply and avoid unnecessary denial," Emily Neumann, immigration advocate and partner at Reddy & Neumann told TOI.

The L-1A visa is for intra-company transferees who work in managerial or executive positions in a company located outside US, whereas the L-1B visa applies for those employees who work in positions that require specialised knowledge. Companies such as TCS, Infosys and Tech Mahindra are among the top applicants for L-1 visas. TCS topped the list with 1,802 L-1 petitions being approved during the twelve month period ended September 2017.

"The other portion of the memo clarifies when the one-year requirement must be met for employees who are already in the US working for the L-1 sponsoring company in another status, such as H-1B. It allows these employees to meet the criteria within three years 'prior to entry' into the US rather than three years 'prior to filing' of the L-1 application," adds Neumann.

Arlington-based immigration attorney, Rajiv S Khanna, further explains, "However, under this new interpretation, a highly technical reading of the regulations is implemented. If the beneficiary came to the US on any other kind of visa, such as a derivative spouse visa or a student visa, such adjustment benefit is not available." Mehta agrees that the interpretation is narrow, but states that only a few people are likely to be adversely affected.

There is another dimension to the USCIS guidance note. In its newsletter, Fragomen, a global firm specialising in immigration laws, points out that while brief trips to the US for business or pleasure do not interrupt the one continuous year of employment abroad, such trips will add to the one-year clock, extending the time to be spent in the stint abroad. "This means an L-1 sponsoring employer must keep track of an employee's brief visits to the United States during employment abroad," it adds.

Emerging challenges in L-1 visas

USCIS is closely scrutinising L-1 visa applications. "For new companies, petitioning for L-1A visas, earlier a one year lease proved to be sufficient evidence that physical premises have been secured for a new office. Lately, USCIS is scrutinising the leases and checking if the total square footage space of the lease premise is considered adequate to house the employees in year one. In many cases, the executive/manager is coming to the US to start up operations and not much space is required in initial years. To avoid applications from being rejected it is best to have a clause in the lease agreement that additional space will be available, should the company need it in the future," says Snehal Batra, immigration attorney at NPZ Law Group.

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