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Immigration Policy for Intracompany Transfers (L Visa): 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 five to seven years. The number of L visas issued has increased by 363.5% over the past 25 years. The U.S. Department of State (DOS) issued only 26,535 L visas in FY1980. L visa issuances began increasing in the mid-1990s and peaked at 122,981 in FY2005.

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 United States, as well as undermine reciprocal agreements that currently permit U.S. corporations to transfer their employees abroad.

Title IV of P.L. 108-447, the Consolidated Appropriations Act for FY2005, renders ineligible for L visa status those aliens who serve in a capacity involving specialized knowledge at the worksite of an employer other than the petitioning employer or its affiliate if (1) the alien will be controlled principally by the unaffiliated employer; or (2) the placement with the unaffiliated employer is part of an arrangement merely to provide labor rather than to use the alien’s specialized knowledge. It also requires the Secretary of Homeland Security to impose a fraud prevention and detection fee of \$500 on H-1B (foreign temporary professional workers) and L (intracompany business personnel) petitioners.

In the 109th Congress, the Comprehensive Immigration Reform Act (S. 2611/S. 2612) would add certain requirements for L visa applicants seeking to come to the United States to work in new or unopened facilities and would expand the staffing resources of DHS, DOS, and DOL to investigate abuses and enforce violations of the L visa. Other bills that would reform the L visa include H.R. 3322 and H.R. 3381.

Earlier, the House Committee on the Judiciary reported H.R. 3648, which would impose additional fees with respect to immigration services for L visa intracompany transferees. The bill would require the Secretaries of State and Homeland Security to each charge fees of \$1,500 to employers filing certain visa applications and nonimmigrant petitions for L visas. These provisions were included in Title V of H.R. 4241, the Deficit Reduction Act of 2005, which the House passed on November 18, 2005. The Senate version (S. 1932) would raise the minimum fee for L-1 visas by \$750. The conference report on S. 1932 did not include these L visa provisions. This report tracks legislative activity and will be updated as action warrants.

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

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 their subsection in §101(a)(15), for example, 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 largely 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 one year prior to seeking the L visa.²

¹ For background information, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, and CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, both by (name redacted).

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.

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 five 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

The 107th Congress enacted a change to the INA that reduced the length of time an L-1 would have to work for certain multinational firms abroad from one year to six 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

During the 108th Congress, Title IV of P.L. 108-447, the Consolidated Appropriations Act for FY2005, included a provision that renders ineligible for L visa status those aliens who serve in a capacity involving specialized knowledge at the worksite of an employer other than the petitioning employer or its affiliate if (1) the alien will be controlled principally by the unaffiliated employer; or (2) the placement with the unaffiliated employer is part of an arrangement merely to provide labor rather than to use the alien's specialized knowledge. It also added a provision that requires the Secretary of Homeland Security to impose a fraud prevention and detection fee of \$500 on H-1B (foreign temporary professional workers) and L (intracompany business personnel) petitioners.⁶

Trends

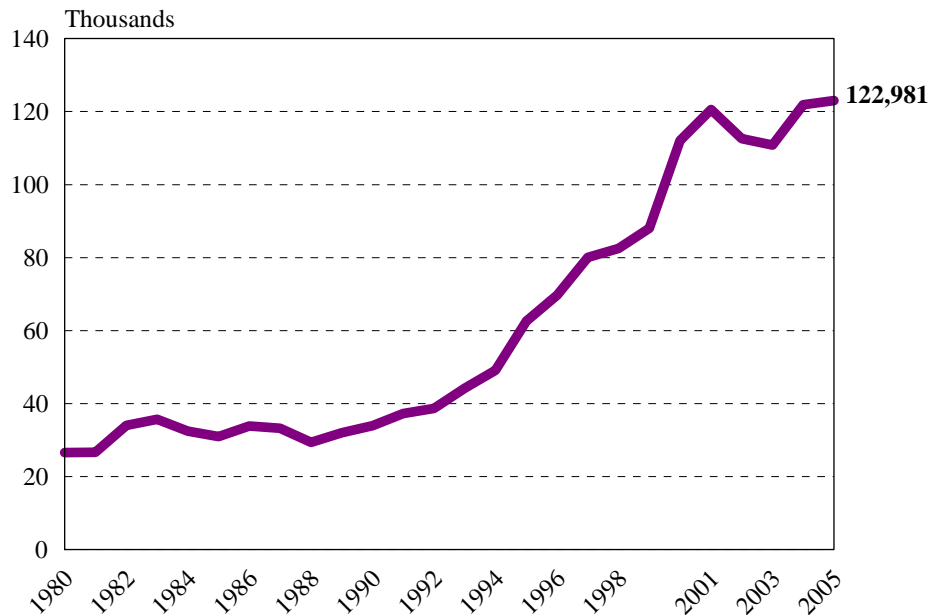
The number of L visas issued has increased by 363.5% over the past 25 years. The U.S. Department of State (DOS) issued only 26,535 L visas in FY1980. L visa issuances began increasing in the mid-1990s and peaked at 122,981 in FY2005, as **Figure 1** depicts. Typically, over half of the L visas issued 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. Of the 122,981 L visas issued in FY2005, a total of 65,458 are L-1 visas for the qualifying (principal) nonimmigrant.

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).

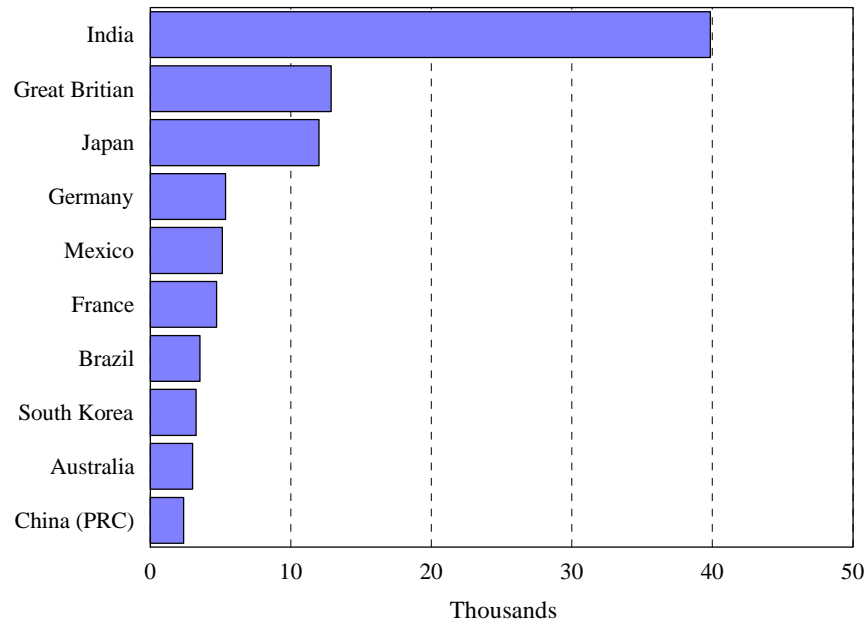
⁶ §426(b) of P.L. 108-447.

Figure 1. Intracompany L Visas Issued, FY1980 to FY2005

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

The country sending the most intracompany transfers in FY2005 was India, as **Figure 2** illustrates. Almost two-thirds (39,849 or 32.4%) of the 122,981 L visas were issued to aliens from India in FY2005. Great Britain (including Northern Ireland) and Japan followed with 12,869 (10.5%) and 11,998 (9.8%) respectively of all L visas issued. **Figure 2** depicts the top 10 countries that are the source country for L nonimmigrants in FY2005, and these 10 countries comprise 74.9% of all L visas issued in FY2005. Canadians coming as intracompany transfers are not required to have L visas to enter the United States, according to longstanding agreements with Canada.

Data on the number of L nonimmigrants who enter the United States, according to statistical reports of the Department of Homeland Security (DHS) Office of Immigration Statistics, evidence a growth pattern steeper than the number of visas issued by DOS. The admission of L nonimmigrants grew sixfold over the past 24 years, from 65,044 in FY1981 to 102,555 in FY1990 to 456,583 in FY2004. When the analysis is limited to L-1 visa holders, the number of admissions has grown from 63,180 in FY1990 to 314,484 in FY2004, an increase of almost 400% in 14 years. 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 visa holders increased, but these L visa holders travel abroad more frequently now than a decade ago.

Figure 2. Top Ten Source Countries for L Visas in FY2005

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

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 United States Citizenship and Immigration Services (USCIS) in the DHS, and may file blanket petitions under specified circumstances.⁷ Once the employer's petition is approved, the alien residing abroad applies for a visa with the DOS Bureau of Consular Affairs.⁸ The DOS consular officer, at the time of application for a visa, as well as the DHS immigration inspectors, at the time of application for admission, must be satisfied that the alien is entitled to a nonimmigrant status.⁹

⁷ A "blanket" L petition allows employers to have a petition on file that certifies that the organization meets the requirements of the blanket L visa program. P.L. 107-125 reduced the one-year period of continuous employment abroad requirement to six months if the U.S. business entity has obtained approval of an L-1 blanket petition. The blanket L visa program is available to companies that have obtained approval of petitions for at least 10 L-1 managers, executives, or specialized knowledge professionals during the previous 12 months; are U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a U.S. work force of at least 1,000 employees. 8 C.F.R. §214.2(l)(4)(i)(D).

⁸ 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.

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

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 six months in the preceding three 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.¹⁰ The INA does not require firms who wish to bring L intracompany transfers into the United States to meet any labor market tests (e.g., demonstrate that U.S. employees are not being displaced or that working conditions are not being lowered) in order to obtain a visa for the transferring employee.¹¹

For employers to sponsor LPRs who are members of the professions holding advanced degrees, persons of exceptional ability, skilled workers with at least two years 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 USCIS and the Employment and Training Administration (ETA) in Department of Labor (DOL).¹²

While working in the United States, L visa holders are generally required to pay federal income taxes, provided they meet the "substantial presence test" that determines whether the foreign national is considered a resident alien for tax

¹⁰ 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).

¹¹ Intracompany transfers from Mexico or Canada may be denied in the case of certain labor disputes. 8 CFR §214.2(l)(18).

¹² 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 (name redacted).

purposes.¹³ Moreover, L visa holders are not exempt from the requirements to pay Social Security and Medicare (often referred to as FICA) taxes on compensation from work within the United States.¹⁴ Tax treaties, however, may override the resident alien tax rules in limited instances, especially with respect to double taxation of earnings. If a nonimmigrant is defined as a resident of a foreign country under a tax treaty, then he or she is a nonresident alien regardless of whether the substantial presence test is met.¹⁵

Current 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

¹³ The substantial presence test is that the individual is physically present in the United States for at least 31 days during the current year and at least 183 days during the current year and previous two years. 26 U.S.C. § 7701(b)(1)(A)(ii) and (b)(3). For more information, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States*, by Erika Lunder.

¹⁴ 26 U.S.C. 3121(b). For more information, see CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by (name redacted) and (name redacted).

¹⁵ The tax treaty provisions vary and typically include the reduction of the 30% flat rate applied to “non-effectively connected” U.S. source income and the exemption of gain from the sale of personal property. Treaties often exempt personal service compensation from taxation if the nonresident individual is in the United States for less than a stated period of time or the compensation is less than a specified amount (generally between \$3,000 and \$10,000) and is paid by a foreign employer. The United States has tax treaties with the following countries: Australia, Austria, Barbados, Belgium, Canada, China, Commonwealth of Independent States, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, and Venezuela.

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.¹⁶ 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.¹⁷ 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 “outsource” them to other firms. Advocates of reforming current law warn that the L visa is replacing the H-1B visa for information technology positions and that L admissions will soar in numbers because H-1B admissions are numerically limited.¹⁸

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, reducing investment in the United States and ultimately resulting in multinational firms moving jobs off shore. Some observe that L-1 employees do not technically constitute new hires who could displace U.S. workers; they maintain instead that the L-1 employee is being transferred temporarily within the firm to add value or provide expertise based on their international experience with the firm.¹⁹

Inclusion in Free Trade Agreements

Critics of current law on L visas are concerned that 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

¹⁶ 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.

¹⁷ See CRS Report RL30498, *Nonimmigrant Professional Specialty (H-1B) Workers*, by (name redacted).

¹⁸ The current H-1B ceiling of 195,000 visas annually is set to revert to 65,000 in FY2004.

¹⁹ Testimony of Stephen Yale-Loehr, Adjunct Professor, Cornell Law School, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Citizenship and Border Security, *The L-1 Visa and American Interests in the 21st Century Global Economy*, hearings, 108th Cong., 1st sess., July 29, 2003.

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.²⁰ Similar language is also in the U.S.-Chile Free Trade Agreement.²¹

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. The House passed H.R. 2738 and H.R. 2739, legislation that respectively would implement the Chile and Singapore FTAs, on July 24, 2003. The Senate followed, passing the implementing language for both FTAs on July 31, 2003.

The North American Free Trade Agreement (NAFTA) has immigration provisions concerning intracompany transferees similar to the Chile and Singapore FTAs. NAFTA requires the three signatory countries — Canada, Mexico, and the United States — to grant temporary entry to business persons employed by a foreign enterprise who seek to render services to that enterprise or its affiliate or subsidiary, in a capacity that is managerial, executive or that involves special knowledge. These intracompany transferees must have worked continuously for one year out of the past three in a foreign country for the same firm that they are seeking to serve in the United States. No party to NAFTA may impose numerical limits or labor market tests as a condition of entry for intracompany transferees.²²

Negotiators for the Uruguay Round Agreements of the General Agreement on Trade and Tariffs (GATT), completed in 1994 and known as the General Agreement on Trade in Services (GATS), included very specific language on “intra-corporate transfers.”²³ This language is similar but not identical to the definitions of intracompany transferee found in the regulations governing the L visa.²⁴

Given the issues being raised about the L visa, some are concerned that these trade agreements constrain Congress as it considers revisions of immigration law and policy on the L visa. Since the GATS and FTAs provide specific definitions of intracompany transferees, prohibit labor certification or similar labor condition tests for intracompany transferees, and prohibit numerical limits on intracompany

²⁰ Chapter 11, §3 of the U.S.-Singapore Free Trade Agreement, Annex 11A, signed May 6, 2003.

²¹ Chapter 14, §3 of the U.S.-Chile Free Trade Agreement, Annex 14.3, signed June 6, 2003.

²² Chapter 16, of the North American Free Trade Agreement, Annex 1603 §C, signed Dec. 17, 1992.

²³ For example, the GATS Schedule of Specific Commitments defines the specialist type of intra-corporate transferees as “persons within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization’s services, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions.)”

²⁴ 8 CFR §214.2(l)(1)(ii).

transferees, some of the options being considered in legislation discussed below, if enacted, may violate GATS or the FTAs.²⁵

Visa Abuses

The DHS Office of the Inspector General (OIG) examined the potential vulnerabilities and abuses in the L-1 visa at the request of Congress.²⁶ The DHS OIG issued a report in January 2006 that reached the following conclusions about the L visa:

- The visa allows for the transfer of managers and executives, but adjudicators often find it difficult to be confident that a firm truly intends to use an imported worker in such a capacity.
- The visa allows for the transfer of workers with “specialized knowledge,” but the term is so broadly defined that adjudicators believe they have little choice but to approve almost all petitions.
- The transfer of L-1 workers requires that the petitioning firm is doing business abroad, but adjudicators in the United States have little ability to evaluate the substantiality of the foreign operation.
- The visa encompasses petitioners who do not yet have, but are merely in the process of establishing, their first U.S. office.
- The visa permits petitioners to transfer themselves to the United States.

The DHS OIG also found that “though the L-1 visa program is not specifically tailored for the computer or information technology (IT) industries, the positions L-1 applicants are filling are most often related to computers and IT. From 1999 to 2004, nine of the ten firms that petitioned for the most L-1 workers were computer and IT related outsourcing service firms that specialize in labor from India.”²⁷

In this 2006 report, the DHS OIG made three recommendations: (1) establish a procedure to obtain overseas verification of pending H and L petitions; (2) explore whether ICE Visa Security Officers abroad could assist in checking L petitions in the countries where the ICE officers are assigned; and (3) seek legislative clarification on the concepts of manager and executive and the term “specialized knowledge.”²⁸

²⁵ For further analysis, see CRS Report RL32982, *Immigration Issues in Trade Agreements*, by (name redacted).

²⁶ Consolidated Appropriations Act of 2005, P.L. 108-447, §415.

²⁷ U.S. Department of Homeland Security, Office of Inspector General, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, OIG 06-22, Jan. 2006, pp. 1-4 (hereafter DHS OIG, *Vulnerabilities and Potential Abuses of the L-1 Visa Program*).

²⁸ DHS OIG, *Vulnerabilities and Potential Abuses of the L-1 Visa Program*, p. 16.

Legislation

Activity in the 108th Congress

On May 19, 2003, Representative John Mica introduced H.R. 2154, which would have amended the INA to prevent an employer from placing a nonimmigrant who is an intracompany transfer with another firm. H.R. 2154 would have required the employer to file with DOL 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.

Representative Rosa DeLauro introduced the L-1 Nonimmigrant Reform Act (H.R. 2702) on July 10, 2003, which would have amended the INA to require employers of L-1 visa holders to submit labor condition applications attesting that the employer is offering comparable wages, that the conditions of other workers will not be adversely affected, that there is no strike or lockout, and that U.S. workers were not laid off 180 days prior and would not be laid off 180 days after the hiring of the L visa holder. H.R. 2702 also would have prohibited the employer from outsourcing, leasing, or otherwise contracting for the placement of the L visa holder with another firm. The bill further would have given DOL authority to investigate complaints made against a firm hiring L visa holders, and would establish fines and penalties for violators. Many of these attestation requirements were comparable to the requirements for the H-1B visa.

On July 24, 2003, Senator Christopher Dodd and Representative Nancy Johnson introduced the USA Jobs Protection Act of 2003 (S. 1452/H.R. 2849), which would have made several changes to current law on L visas. Foremost, S. 1452/H.R. 2849 would have added labor attestation requirements to the L visa, would have had lay-off protections for U.S. workers employed by firms using L visas, would have restricted the outsourcing of L-1 visa holders to other firms, would have given DOL authority to investigate complaints, and would have authorized DOL to assess a fee to process the application. More specifically, S. 1452/H.R. 2849 would also have required — only in the case of the specialized knowledge provision of the L-1 visa — that the employer, prior to filing the petition, file with DOL an application stating that the employer has taken good faith steps to recruit (using procedures that meet industry-wide standards) U.S. workers for the jobs for which the L-1 nonimmigrants are sought. Among other provisions, S. 1452/H.R. 2849 would have reduced by two years the total time an L visa holder could remain in the United States. S. 1452/H.R. 2849 also would have revised the law on H-1B visas.

Senator Saxby Chambliss, then-chair of the Senate Judiciary Subcommittee on Immigration, Border Security, and Citizenship, introduced legislation entitled the L-1 Visa (Intracompany Transferee) Reform Act of 2003 (S. 1635), on September 17, 2003. This bill would have amended the INA so that L-1 visa holders entering through the specialized knowledge provision must be controlled and supervised by petitioning employer, or its affiliate, subsidiary or parent company. It also would have made the placement of a prospective L-1 nonimmigrant entering through the specialized knowledge provision ineligible for the visa if the placement of the alien

at a work site that was unaffiliated with the petitioning employers was merely to provide labor for that unaffiliated employer. S. 1635 would have reinstated the one-year period of continuous employment abroad that had been reduced to six months by P.L. 107-125.

The Save American Jobs Through L Visa Reform Act of 2004 (H.R. 4415) would have eliminated “specialized knowledge” as a basis for obtaining an L (intracompany transferee) nonimmigrant visa and would have imposed an annual numerical limitation of 35,000 on the number of L visas that may be issued to principal aliens. As introduced by Representative Henry Hyde, H.R. 4415 also would have removed L nonimmigrants from those classes of aliens that are not presumed to be immigrants under §214(b).

Representative Lamar Smith introduced H.R. 4166, the American Workforce Improvement and Jobs Protection Act, which would have required the Secretary of Homeland Security to impose a fraud prevention and detection fee on H-1B or L (intracompany business personnel) petitioners for use in combating fraud and carrying out labor attestation enforcement activities. It also would have rendered ineligible for L visa status those aliens who serve in a capacity involving specialized knowledge at the worksite of an employer other than the petitioning employer or its affiliate if (1) the alien will be controlled principally by the unaffiliated employer; or (2) the placement with the unaffiliated employer is part of an arrangement merely to provide labor rather than to use the alien’s specialized knowledge. Additionally, it would have eliminated the current reduction in the continuous employment requirement for aliens seeking L visa status pursuant to an employer’s blanket petition. H.R. 4166 was introduced on April 2, 2004.

On July 29, 2003, the Senate Committee on the Judiciary Subcommittee on Immigration held a hearing titled “The L1 Visa and American Interests in the 21st Century Global Economy.”²⁹ The House Committee on International Relations held a hearing on “L Visas: Losing Jobs Through Laissez-Faire Policies?” on February 4, 2004.³⁰

L Visa Reform and Fraud Prevention. Provisions of H.R. 4166 were incorporated into Title IV of P.L. 108-447, the Consolidated Appropriations Act for FY2005. Specifically, it states that an alien is ineligible for an L visa if

(i) the alien will be controlled and supervised principally by such unaffiliated employer; or (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.³¹

²⁹ For testimony, see [<http://judiciary.senate.gov/hearing.cfm?id=878>].

³⁰ For testimony, see U.S. Congress, House Committee on International Relations, *L Visas: Losing Jobs Through Laissez-faire Policies?*, hearing, Serial No. 108-78, Feb. 4, 2004.

³¹ §412 of P.L. 108-447; 8 USC 1101.

The act also requires the Secretary of Homeland Security to impose a fraud prevention and detection fee of \$500 on H-1B (foreign temporary professional workers) and L (intracompany business personnel) petitioners. The act requires that the H-1B and L fraud prevention and detection fee be divided equally among DHS, the DOS and DOL for use in combating fraud in H-1B and L visa applications with DOS, investigating H-1B and L petitions with USCIS, and carrying out DOL labor attestation activities.³²

Activity in the 109th Congress

L Visa Reform. The Comprehensive Immigration Reform Act (S. 2611/S. 2612) includes a substantial revision of the law on L visas. Most importantly, §411 of S. 2611/S. 2612 would add certain requirements for L visa applicants seeking to come to the United States to work in new or unopened facilities and would expand the staffing resources of DHS, DOS, and DOL to investigate abuses and enforce violations of the L visa. The identical language was introduced by Senator Specter (S. 2611) and Senator Hagel (S. 2612) and is expected to be debated on the Senate floor before the Memorial Day recess.³³

Representative Nancy Johnson has introduced the USA Jobs Protection Act of 2005 (H.R. 3322), which would do the following: add labor attestation requirements to the L visa, enact lay-off protections for U.S. workers employed by firms using L visas, restrict the outsourcing of L-1 visa holders to other firms, give DOL authority to investigate complaints, and authorize DOL to assess a fee to process the application. More specifically, H.R. 3322 would require — only in the case of the specialized knowledge provision of the L-1 visa — that the employer, prior to filing the petition, file with DOL an application stating that the employer has taken good faith steps to recruit (using procedures that meet industry-wide standards) U.S. workers for the jobs for which the L-1 nonimmigrants are sought.

Representative Rosa DeLauro has introduced the L-1 Nonimmigrant Reform Act (H.R. 3381), which would amend the INA to require employers of L-1 visa holders to submit labor condition applications attesting that the employer is offering comparable wages, that the conditions of other workers will not be adversely affected, that there is no strike or lockout, and that U.S. workers were not laid off 180 days prior and would not be laid off 180 days after the hiring of the L visa holder. H.R. 3381 also would prohibit the employer from outsourcing, leasing, or otherwise contracting for the placement of the L visa holder with another firm. The bill further

³² §426(b) of P.L. 108-447; 8 USC 1101.

³³ The Senate debated immigration reform from late March through early April 2006, but efforts to invoke cloture failed. At that time the leading proposals included S. 2454, the Securing America's Borders Act, which Senate Majority Leader Bill Frist introduced on Mar. 16, 2006, and S.Amdt. 3192 to S. 2454, the Comprehensive Immigration Reform Act, which Judiciary Chairman Arlen Specter offered on Mar. 30, 2006. The legislative proposal reportedly coming to the Senate floor as early as next week is based upon a compromise that Senators Chuck Hagel and Mel Martinez shaped and introduced Apr. 7, 2006, along with co-sponsors Sam Brownback, Lindsey Graham, Ted Kennedy, John McCain and Arlen Specter.

would give DOL authority to investigate complaints made against a firm hiring L visa holders, and would establish fines and penalties for violators. Additionally, H.R. 3381 would establish an annual 35,000 L-1 visa limit, eliminate L-1 blanket visa authority, and require (1) an L-1 worker to have a bachelor's degree or higher in his or her area of special knowledge; and (2) verification by the Secretary of State.

L Visa Fees. The House Committee on the Judiciary Chairman James Sensenbrenner has introduced H.R. 3648, which would impose additional fees with respect to immigration services for L visa intracompany transferees. More specifically, H.R. 3648 would require the Secretaries of State and Homeland Security to each charge additional fees of \$1,500 to employers filing for visa applications and nonimmigrant petitions for L visas. The House Committee on the Judiciary ordered H.R. 3648 reported on September 29, 2005. These provisions were included in Title V of H.R. 4241, the Deficit Reduction Act of 2005, which the House passed on November 18, 2005.

On October 20, 2005, the Senate Committee on the Judiciary approved compromise language that would raise the minimum fee for L-1 visas by \$750, to a total of \$1,440. This language was forwarded to the Senate Budget Committee for inclusion in the budget reconciliation legislation. On November 18, 2005, the Senate passed S. 1932, the Deficit Reduction Omnibus Reconciliation Act of 2005, with these provisions as Title VIII.

The conference report (H.Rept. 109-362) on S. 1932, which was renamed the Deficit Reduction Act of 2005, was reported on December 19 (during the legislative day of December 18). It did not include the Senate provisions that would recapture H-1B visas unused in prior years. On December 19, the House agreed to the conference report by a vote of 212-206. On December 21, the Senate removed extraneous matter from the legislation pursuant to a point of order raised under the "Byrd rule," and then, by a vote of 51-50 (with Vice President Cheney breaking a tie vote), returned the amended measure to the House for further action.

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