9 FAM 41.54 Notes

(TL:VISA-490; 11-15-2002)
(Office of Origin: CA/VO/L/R)

9 FAM 41.54 N1 Introduction

(TL:VISA-73; 02-05-1993)

a. Section 1(b) of Public Law 91-225 of April 7, 1970, created a nonimmigrant visa classification at INA 101(a)(15)(L) for intracompany transferees. An individual or blanket petition, approved by INS, is a prerequisite for L visa issuance.

b. The L nonimmigrant classification was created to permit international companies to temporarily transfer qualified employees to the United States for the purpose of improving management effectiveness, expanding U.S. exports, and enhancing competitiveness in markets abroad. Prior to the enactment of Public Law 91-225, no nonimmigrant classification existed which fully met the needs of intracompany transferees. Those who did not qualify as E nonimmigrants were forced to apply for immigrant visas to the United States, even if there was no intent to reside permanently.

c. INA 101(a)(15)(L) was amended for the first time by the Immigration Act of 1990 (Public Law 101-649 of November 29, 1990), to provide that the required one-year period of continuous prior employment with the petitioner take place within three years, rather than immediately, preceding the time of the alien's application for admission into the United States.

9 FAM 41.54 N2 Classification Criteria for Intracompany Transferees

9 FAM 41.54 N2.1 Individual Petitions

(TL:VISA-73; 02-05-1993)

The following elements are considered in evaluating entitlement to L-1 classification in individual petition cases:

(1) The petitioner is the same firm, corporation, or other legal entity, or parent, branch, affiliate or subsidiary thereof, for whom the beneficiary has been employed abroad [see 9 FAM 41.54 N7 below];

(2) The beneficiary is a manager, executive, or an alien having specialized knowledge, and is destined to a managerial or executive position or a position requiring specialized knowledge [see 9 FAM 41.54 N8 below];

(3) The petitioner and beneficiary have the requisite employer-employee relationship [see 9 FAM 41.54 N9 below];

(4) The petitioner will continue to do business in the United States and at least one other country [see 9 FAM 41.54 N10 below];

(5) The beneficiary meets the requirement of having had one year of prior continuous qualifying experience within the previous three years [see 9 FAM 41.54 N11 below];

(6) If the beneficiary is coming to open, or be employed in, a new office, the requirements described in 9 FAM 41.54 N12 are met;

(7) The beneficiary is not subject to the limitation on readmission for former L and H aliens [see 9 FAM 41.54 N19 below], or the two-year foreign residence requirement for former exchange visitors [see 9 FAM 41.54 N24 below]; and

(8) The beneficiary is not subject to the intending immigrant presumption of INA 214 A [see 9 FAM 41.54 N4 below].

9 FAM 41.54 N2.2 Blanket Petitions

(TL:VISA-73; 02-05-1993)

In addition to those elements listed in 9 FAM 41.54 N2.1 above, the characteristics considered in evaluating entitlement to L-1 classification in blanket petition cases are specified below. [See 9 FAM 41.54 N14 below for a full description of the qualifying requirements and processing procedures for blanket petition cases.]

(1) The petitioner and its entities meet the requirements of size, structure, and scope of business activities for approval of L blanket petitions [see 9 FAM 41.54 N14.2 below];

(2) The petitioner is a manager, executive, or specialized knowledge professional and is destined to a position for a manager, executive or specialized knowledge professional [see 9 FAM 41.54 N14.3 below];

(3) The beneficiary is not coming to open or be employed in a new office [see 9 FAM 41.54 N14.3 below]; and

(4) The petitioner has not filed an individual L petition for the alien [see 9 FAM 41.54 N14.3 below].

9 FAM 41.54 N3 Significance of Approved Petition

9 FAM 41.54 N3.1 INS is Responsible for Adjudicating L Petitions

(TL:VISA-323; 10-10-2001)

a. By mandating a preliminary petition, Congress placed responsibility and authority with INS to determine whether the requirements for L status, which are examined in the petition process, have been met. An approved Form I-129, *Petition for Nonimmigrant Worker*, or evidence that the L petition has been approved (an acceptable Form I-797A, *Notice of Action* [see 9 FAM 41.54 N13.4 below], or telegraphic or telephonic notification from INS or the Department) is, in itself, to be considered by consular officers as prima facie evidence that in the case of a(n):

(1) Individual petition, the petitioner and alien beneficiary meet the requirements for L status; or

(2) Blanket petition [see 9 FAM 41.54 N14 below], the petitioner and its parent, branches, affiliates, or subsidiaries specified in the petition are qualifying organizations under INA 101(a)(15)(L).

b. The large majority of approved L petitions is valid, and involve bona fide establishments, relationships, and individual qualifications which conform to the INS regulations in effect at the time the L petition was filed.

9 FAM 41.54 N3.2 Consular Officers' Responsibilities

9 FAM 41.54 N3.2-1 Verifying Qualifications of Blanket Petition Beneficiaries

(TL:VISA-73; 02-05-1993)

Since the individual beneficiaries of blanket petitions are not named in the petition, their eligibility for L status is not examined by INS. Consequently, consular officers (or, in the case of visa-exempt aliens, immigration officers) are responsible for verifying the qualifications of alien applicants for L classification in blanket petition cases [also see 9 FAM 41.54 N14.5 below].

9 FAM 41.54 N3.2-2 Determining Visa Eligibility

(TL:VISA-73; 02-05-1993)

Consular officers do not have the authority to question the approval of L petitions without specific evidence, unavailable to INS at the time of petition approval, that the requisites of INA 101(a)(15)(L) have not been met. On the other hand, the approval of a petition by INS does not relieve the alien of the burden of establishing visa eligibility. If the consular officer has reason to believe, based upon information developed during the visa interview or other evidence which was not available to INS, that the petitioner or beneficiary may not be entitled to status, the consular officer may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with INS interpretation of the law or the facts, however, is not sufficient reason to ask INS to reconsider its approval of the petition.

9 FAM 41.54 N3.2-3 Referring Approved L Petition to INS for Reconsideration

(TL:VISA-436; 07-09-2002)

Posts shall consider all approved L petitions in light of these Notes, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving INS office for reconsideration. Posts should refer cases to INS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by INS. Consular officers must have specific evidence of either misrepresentation in the petition process or of previously unknown facts, which might alter INS' finding, before requesting review of a Form I-129, *Petition for a Nonimmigrant Worker,* approval. When seeking reconsideration, the consular officer shall, under cover of *Form DS-3096, Consular Return/Case Transfer Cover Sheet,* forward the petition, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the approving INS office. A copy of all material must be retained at post.

9 FAM 41.54 N4 Issue of Temporariness of Stay

(TL:VISA-73; 02-05-1993)

L aliens are specifically excluded from the intending immigrant presumption of section 214(b) of the INA and are, furthermore, not required to have a residence abroad which they have no intention of abandoning. In addition, INA 214(h) provides the fact that an alien has sought permanent residence in the United States does not preclude him or her from obtaining an L nonimmigrant visa or otherwise obtaining or maintaining that status. The alien may legitimately come to the United States as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and, at the same time, lawfully seek to become a permanent resident of the United States. Consequently, the consular officer's evaluation of an applicant's eligibility for an L visa shall not focus on the issue of temporariness of stay or immigrant intent.

9 FAM 41.54 N5 L Versus E Classification

(TL:VISA-73; 02-05-1993)

The L-1 classification may be appropriate in certain cases where the E visa is unavailable because the trade, nationality, and/or treaty criteria specific to E visas have not been met [see 9 FAM 41.51 Notes]. L-1 classification may not be granted, however, if the essential requirements, which apply to L status are lacking. Such criteria include:

(1) The intended position is executive or managerial in nature or requires specialized knowledge;

(2) The applicant has the required period of employment with the petitioner abroad; and

(3) There is a qualifying relationship between the business entities involved.

9 FAM 41.54 N6 "Intracompany Transferee"

(TL:VISA-73; 02-05-1993)

"Intracompany transferee" means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm, corporation, or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

9 FAM 41.54 N7 Status of Petitioner

(TL:VISA-73; 02-05-1993)

For the purposes of the L classification, a petitioner is a qualifying organization desiring to bring an alien to the United States as an L-1 nonimmigrant. It must be a parent, branch, affiliate, or subsidiary of the same employer for whom the alien has been employed abroad prior to entry. The petitioner may be either a U.S. or foreign organization.

9 FAM 41.54 N7.1 "Business Entities"

(TL:VISA-73; 02-05-1993*)*

The Immigration and Naturalization Service uses the following definitions and descriptions of business entities in adjudicating L petitions.

9 FAM 41.54 N7.1-1 "Qualifying Organization"

(TL:VISA-73; 02-05-1993)

"Qualifying organization" means a U.S. or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country, directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of INA 101(a)(15)(L).

9 FAM 41.54 N7.1-2 "Parent"

(TL:VISA-13; 05-19-1988)

"Parent" means a firm, corporation, or other legal entity, which has subsidiaries. Any business entity, which has subsidiaries, is a parent. However, a subsidiary may own other subsidiaries and also be a parent, even though it has an ultimate parent.

9 FAM 41.54 N7.1-3 "Branch"

(TL:VISA-73; 02-05-1993)

"Branch" means an operating division or office of the same organization housed in a different location. Any such office or operating division, which is not established as a separate business entity, is considered a branch.

9 FAM 41.54 N7.1-4 "Subsidiary"

(TL:VISA-73; 02-05-1993)

a. "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly:

(1) More than half of the entity and controls the entity; or

(2) Half of the entity and controls the entity; or

(3) 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or

(4) Less than half of the entity, but in fact controls the entity.

b. The 50-50 joint venture can be owned and controlled by only two legal entities; all other combinations of a joint venture do not qualify as a subsidiary. A contractual joint venture does not qualify as a subsidiary. A parent may own less than half of the entity but have control because the other stock is widely dispersed among minor stockholders; for example, when an individual or company acquires sufficient shares of a publicly held company to be able to nominate and elect the board of directors.

9 FAM 41.54 N7.1-4 "Affiliate"

(TL:VISA-464; 09-23-2002)

a. "Affiliate" means:

(1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual; or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the U.S. partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.

b. Subsidiaries are affiliates of each other. The affiliate relationship arises from the common ownership and control of both subsidiaries by the same legal entity. Affiliation also exists between legal entities where an identical group of individuals owns and controls both businesses in basically the same proportions or percentages. Associations between companies based on factors such as ownership of a small amount of stock in another company, exchange of products or services, licensing or franchising agreements, membership on boards of directors, or the formation of consortiums or cartels do not create affiliate relationships between the entities for L purposes.

9 FAM 41.54 N7.2 Relationship between Petitioner and Other Business Entities

(TL:VISA-73; 02-05-1993)

For L classification purposes, ownership and control are the factors, which, establish a qualifying relationship between a petitioner and other business entities. Both the U.S. and foreign businesses must be legal entities. In the United States, a business is usually in the form of a corporation, partnership, or proprietorship. "Ownership" means the legal right of possession with full power and authority to control. "Control" means the right and authority to direct the management and operations of the business entity.

9 FAM 41.54 N7.3 Nonprofit Organizations

(TL:VISA-73; 02-05-1993)

An organized religious, charitable, service, or other nonprofit organization must demonstrate that it is "...a firm or corporation or other legal entity or an affiliate or subsidiary thereof..." just as commercial businesses must do to qualify for L status. Nonprofit organizations are eligible to file individual petitions but not blanket petitions [see 9 FAM 41.54 N14.2 (b) below].

9 FAM 41.54 N7.4 Evidence Required by INS in Determining Petitioner's Status

(TL:VISA-73; 02-05-1993)

INS regulations do not ordinarily require submission of extensive evidence of the petitioning organization's corporate structure. In questionable cases, however, INS may seek whatever evidence is deemed necessary, including certified audits, balance sheets, profit and loss statements, non-certified audits (reviews, compilations), annual reports, tax records, etc.

9 FAM 41.54 N7.5 Size and Scope of Operation

(TL:VISA-73; 02-05-1993

While the petitioner's size does not limit its use of the intracompany transferee category (except for access to the blanket petition provision), INS regulations do require that the petitioning organization demonstrate its ongoing international nature by continuing to do business in the United States and abroad. [See 9 FAM 41.54 N10 below.]

9 FAM 41.54 N7.6 Corporation is Separate Legal Entity From Owners

(TL:VISA-73; 02-05-1993)

A corporation is a separate legal entity from its owners or stockholders for the purpose of qualifying an alien beneficiary as an intracompany transferee under INA 101(a)(15)(L). A corporation may employ and petition for its owners, even a sole owner.

9 FAM 41.54 N8 Nature of Services Performed

(TL:VISA-73; 02-05-1993)

In order to be classifiable under INA 101(a)(15)(L), the services performed by the alien abroad, and those to be performed in the United States, must involve either “managerial capacity”, “executive capacity”, or “specialized knowledge”. The beneficiary of a blanket petition must meet the higher standard of being a “specialized knowledge professional”, rather than merely possessing specialized knowledge.

9 FAM 41.54 N8.1 “Qualifying Positions”

(TL:VISA-73; 02-05-1993)

The following definitions are used by INS in evaluating the positions to which L aliens are destined.

9 FAM 41.54 N8.1-1 “Managerial Capacity”

(TL:VISA-73; 02-05-1993)

“Managerial capacity” means an assignment within an organization in which the employee primarily:

(1) Manages the organization, or a department, subdivision, function, or component of the organization;

(2) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(3) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised. If no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional.

9 FAM 41.54 N8.1-2 “Executive Capacity”

(TL:VISA-73; 02-05-1993)

“Executive capacity” means an assignment within an organization in which the employee primarily:

(1) Directs the management of the organization or a major component or function of the organization;

(2) Establishes the goals and policies of the organization, component, or function;

(3) Exercises wide latitude in discretionary decision-making; and

(4) Receives only general supervision, or, direction from higher level executives, the board of directors, or stockholders of the organization.

9 FAM 41.54 N8.1-3 "Specialized Knowledge"

(TL:VISA-73; 02-05-1993)

"Specialized knowledge" means 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.

9 FAM 41.54 N8.1-4 "Specialized Knowledge Professional"

(TL:VISA-73; 02-05-1993)

"Specialized knowledge professional" means an individual who has specialized knowledge as defined above and is a member of the professions as specified in INA 101(a)(32).

9 FAM 41.54 N8.2 Guidelines for Determining Managerial, Executive, Specialized Knowledge, and Specialized Knowledge Professional Capacity

9 FAM 41.54 N8.2-1 Managerial or Executive Capacity

(TL:VISA-73; 02-05-1993)

a. An executive or managerial capacity requires a high level of authority and a broad range of job responsibilities. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. In determining whether an alien supervises others, independent contractors as well as company employees can be considered. The duties of a position must primarily be of an executive or managerial nature, and a majority of the executive's, or manager's time must be spent on duties

relating to policy or operational management. This does not mean that the executive or manager cannot regularly apply his or her professional expertise to a particular problem. The definitions do not exclude activities that are common to managerial or executive positions such as customer and public relations, lobbying, and contracting.

b. An executive or manager may direct a function within an organization. In general, however, individuals who control and directly perform a function within an organization, but do not have subordinate staff (except perhaps a personal staff), are more appropriately considered specialized knowledge employees.

c. If a small or medium-sized business supports a position wherein the duties are primarily executive or managerial, it can qualify under the L category. However, neither the title of a position nor ownership of the business, are, by themselves, indicators of managerial or executive capacity. The sole employee of a company may qualify as an executive or manager, for L visa purposes, provided his or her primary function is to plan, organize, direct and control an organization's major functions through other people.

9 FAM 41.54 N8.2-2 Specialized Knowledge Capacity

(TL:VISA-73; 02-05-1993)

a. To serve in a specialized knowledge capacity, the alien's knowledge must different from or surpass the ordinary or usual knowledge of an employee in the particular field, and must have been gained through significant prior experience with the petitioning organization. A specialized knowledge employee must have an advanced level of expertise in his or her organization's processes and procedures or special knowledge of the organization, which is not readily available in the United States labor market.

b. Some characteristics of an employee who has specialized knowledge are that he or she:

(1) Possesses knowledge that is valuable to the employer's competitiveness in the market place;

(2) Is uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions;

(3) Has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position; and

(4) Possesses knowledge, which can be gained only through extensive prior experience with the employer.

c. The questionnaire used by INS adjudicators in evaluating the merits of "specialized knowledge" petitions is found in 9 FAM 41.54 Exhibit I.

9 FAM 41.54 N8.2-3 Specialized Knowledge Professional Capacity

(TL:VISA-323; 10-10-2001)

A specialized knowledge professional must possess the special or unusual knowledge specified in 9 FAM 41.54 N8.2-2 above, and a member of a profession as described in INA 101(a)(32). To qualify under the blanket petition provision [see 9 FAM 41.54 N14 below], an alien must be a manager, executive or specialized knowledge professional.

9 FAM 41.54 N8.3 L Status Not Applicable to Skilled Workers

(TL:VISA-73; 02-05-1993)

Petitions to accord L status may be approved for persons with specialized knowledge, but not for persons who are merely skilled workers. Being a "skilled worker" (i.e., one whose skill and knowledge enable one to produce a product through physical or skilled labor) does not in itself qualify an alien for the "specialized knowledge" category. Specialized knowledge capability is based on the beneficiary's special knowledge of a business firm's product or service, management operations, decision-making process, or similar elements that is not readily available in the U.S. labor market, rather than on his or her level of training or skill. INA 101(a)(15)(L) was not intended to alleviate or remedy a shortage of U.S. workers; the temporary worker provisions of INA 101(a)(15)(H) provide the appropriate means for the admission of workers who are in short supply in the United States.

9 FAM 41.54 N8.4 Beneficiary Need Not Perform Same Work in United States as Abroad

(TL:VISA-73; 02-05-1993)

To qualify for an L visa, the beneficiary must be assigned to a position in the United States in either the same category (i.e., managerial, executive, or involving specialized knowledge) as the position held abroad, or in one of the other qualifying categories. The beneficiary need not be coming to perform the same work that was performed abroad. Promotions within the qualifying categories are possible (e.g., from specialized knowledge employee to manager).

9 FAM 41.54 N8.5 Full-time Service Required but Not Entirely in United States

(TL:VISA-323; 10-10-2001)

In general, the intent of the L-1 classification is the intracompany transfer to the United States of full-time executive, management, or specialized knowledge personnel. However, while full-time employment by the beneficiary is anticipated, INA 101(a)(15)(L) does not require that the beneficiary perform full-time services within the United States. An executive of a company with branch offices in Canada and the United States, for example, could divide normal work hours between those offices and still qualify for an L-1 visa. The alien's principal purpose while in the United States, however, must be consistent with L status. Therefore, if an alien lived in the United States and commuted to employment in Canada or Mexico, and only occasionally worked in the United States, the alien would normally not qualify for L-1 status since the principal purpose for being in the United States would not relate to L employment. An alien who lived in Canada and came to the United States occasionally to work as an executive for the U.S. branch operation, however, would normally qualify for L-1 status since that alien's principal purpose for coming to the United States would be consistent with L classification.

9 FAM 41.54 N9 Employer-Employee Relationship

(TL:VISA-73; 02-05-1993)

The essential element in determining the existence of an “employer-employee” relationship is the right of control, that is, the right of the employer to order and control the employee in the performance of his or her work. Possession of the authority to engage or the authority to discharge is very strong evidence of the existence of an employer-employee relationship.

9 FAM 41.54 N9.1 Source of Remuneration and Benefits Not Controlling

(TL:VISA-73; 02-05-1993)

The source of the beneficiary’s salary and benefits while in the United States (i.e., whether the beneficiary will be paid by the U.S. or foreign affiliate of the petitioning company) is not controlling in determining eligibility for L status. In addition, the employer-employee relationship encompasses a situation in which the beneficiary will not be paid directly by the petitioner, and such a beneficiary is not precluded from establishing eligibility for L classification.

9 FAM 41.54 N9.2 Employment in United States Directly by Foreign Company Not Qualifying

(TL:VISA-73; 02-05-1993)

A beneficiary who will be employed in the United States directly by a foreign company and who will not be controlled in any way by (and thus, in fact, not have any employment relationship to) the foreign company's office in the United States does not qualify as an intracompany transferee.

9 FAM 41.54 N10 Petitioner Must be Doing Business in United States and at Least One Other Country

9 FAM 41.54 N10.1 "Doing Business"

(TL:VISA-73; 02-05-1993*)*

"Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

9 FAM 41.54 N10.2 Criteria for "Doing Business"

(TL:VISA-73; 02-05-1993)

A qualifying organization under INA 101(a)(15)(L) must, for the duration of the intracompany transferee's stay in the United States, be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country. [For employees coming to open or be employed in a new office in the United States, see 9 FAM 41.54 N12 below]. Company representatives and liaison offices which provide services in the United States, even if the services are to a company outside the United States, are included in the "doing business" definition and aliens who perform such services may qualify for L-1 status.

9 FAM 41.54 N10.3 Transfer to United States of Employees Unattached to Foreign Entity

(TL:VISA-73; 02-05-1993)

A U.S. company, which is doing business, as an employer in the United States and in at least one foreign country, can utilize the L classification to transfer to the United States, employees abroad who are unattached to a foreign entity. The reverse of this situation, however, is not appropriate. A foreign organization must have, or be in the process of establishing, a legal entity in the United States which is, or will be, doing business as an employer in order to transfer an employee under section 101(a)(15)(L).

9 FAM 41.54 N10.4 Organization Must Demonstrate Ongoing International Nature

(TL:VISA-73; 02-05-1993)

INS regulations require a qualifying organization to demonstrate its ongoing international nature. The L classification was not created for self-employed persons to enter the United States to continue self-employment (unless they are otherwise qualified for L status), nor was the L classification intended to accommodate the complete relocation of foreign businesses to the United States.

9 FAM 41.54 N11 Qualifying Experience Requirement

(TL:VISA-464; 09-23-2002)

INA 101(a)(15)(L) requires the beneficiary of an intracompany transferee petition to have been employed continuously by the petitioner, or by an affiliate or subsidiary thereof, for one year within the three years preceding the beneficiary's application for admission into the United States. The beneficiary of an intracompany transferee petition does not pertain to those aliens listed under a blanket petition whose employment must have been with the organization abroad for six months within the last three years. [See 9 FAM 41.54 N14.5.]

9 FAM 41.54 N11.1 Requiring Prior Continuous One-year, Full-time Employment

(TL:VISA-73; 02-05-1993)

a. While not expressly stated in the INA or regulations, INA 101(a)(15)(L) contemplates that the beneficiary's qualifying experience with the petitioner must have been continuous full-time employment, and not continuous part-time employment. Several years of part-time employment equaling one year in aggregate cannot be viewed as meeting the requirement.

b. Full-time services divided among affiliated companies, each using the employee on a part-time basis, however, constitute full-time employment if the aggregate time meets or exceeds the hours of a full-time position.

9 FAM 41.54 N11.2 Requiring Prior Continuous One-year Employment Abroad

(TL:VISA-73; 02-05-1993)

The beneficiary's one year of qualifying experience with the petitioner must be wholly outside the United States. Time spent working for the petitioning firm in the United States does not qualify.

9 FAM 41.54 N11.3 Time in United States for Foreign Employer or Brief Business/Pleasure Trips Not To Interrupt Continuity of Employment Abroad

(TL:VISA-73; 02-05-1993)

Periods spent in the United States in any authorized capacity on behalf of the foreign employer or a parent, branch, affiliate, or subsidiary thereof, and brief trips to the United States for business or pleasure, do not interrupt the continuity of the one year of continuous employment abroad for L-1 status, but do not count toward fulfillment of that requirement. Such periods spent in the United States may follow the year of employment abroad and immediately precede application for L-1 status, so long as the required one-year of qualifying employment during the past three years has been served abroad.

9 FAM 41.54 N12 Opening of New Office

9 FAM 41.54 N12.1 "New Office"

(TL:VISA-73; 02-05-1993

"New office" means an organization, which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

9 FAM 41.54 N12.2 Qualified Employees of New Offices May Receive L Status

(TL:VISA-73; 02-05-1993)

INA 101(a)(15)(L) does not require the beneficiary of an L petition to be coming for employment at a pre-existing, U.S. based office of the employer. A petition may be approved for a beneficiary who is otherwise classifiable under INA 101(a)(15)(L) and who is coming to establish an office (i.e., commence business) in the United States for the petitioner. An alien in a managerial, executive, or specialized knowledge capacity may come to open or be employed in a new office.

9 FAM 41.54 N12.3 Managers and Executives Establishing or Joining New Office

(TL:VISA-73; 02-05-1993)

a. A petitioner who seeks L status for a manager or executive coming to open or to be employed in a new office must submit evidence:

(1) That sufficient physical premises to house the new office have been secured;

(2) That the beneficiary was employed for one continuous year in the three-year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and

(3) That the intended U.S. operation, within one year of approval of the petition, will support an executive or managerial position.

b. While it is expected that a manager or executive in a new office will be more than normally involved in day-to-day operations during the initial phases of the business, he or she must also have authority and plans to hire staff and have wide latitude in making decisions about the goals and management of the organization.

9 FAM 41.54 N12.4 Aliens with Specialized Knowledge Establishing or Joining New Office

(TL:VISA-73; 02-05-1993)

A petitioner seeking the entry of an alien with specialized knowledge to open or be employed in a new office must demonstrate that:

(1) Sufficient physical premises to house the new office have been secured;

(2) The business entity in the United States is or will be a qualifying organization as described in 9 FAM 41.54 N7.1-1; and

(3) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

9 FAM 41.54 N12.5 Petition Validity for Employees of New Offices Limited to One Year

(TL:VISA-323; 10-10-2001)

A petition for a qualified employee of a new office will be approved for a period not to exceed one year, after which the petitioner must demonstrate that it is doing business as defined in 9 FAM 41.54 N10 above in order for the petition and alien's stay to be extended beyond one year.

9 FAM 41.54 N13 Individual Petition Procedures

9 FAM 41.54 N13.1 Using Form I-129, Petition for Nonimmigrant Worker to File Individual Petition

(TL:VISA-73; 02-05-1993)

An employer must file Form I-129, *Petition for Nonimmigrant Worker*, with INS to accord status as an intracompany transferee. Form I-129 is also used to request extensions of petition validity and extensions of stay in L status. The form must be filed with the INS Service Center, which has jurisdiction over the area where the alien will perform services.

9 FAM 41.54 N13.2 Filing of Individual Petitions for Canadian Citizens

(TL:VISA-73; 02-05-1993)

a. A U.S. or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition in duplicate on Form I-129, *Petition for Nonimmigrant Worker* in conjunction with the Canadian citizen's application for admission. A Canadian citizen may present Form I-129, along with supporting documentation, to an immigration officer at a Class A port of entry, a U.S. airport handling international traffic, or a U. S. pre-clearance or pre-flight station at the time of applying for admission. The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner.

b. The availability of the above procedure does not preclude the advance filing of an individual petition with INS, in which case the beneficiary may present a copy of the approved Form I-797, *Notice of Action*, at a port of entry.

9 FAM 41.54 N13.3 Notifying Petitioner of Petition Approval

(TL:VISA-464; 09-23-2002)

INS uses Form I-797*A*, *Notice of Action*, to notify the petitioner that the L petition filed by the petitioner has been approved. INS must notify the petitioner of the approval of an individual or blanket petition within 30 days after a completed petition has been filed. Form I-797*A* is also used to advise the petitioner that an extension of petition validity and extension of stay in L status for the employee has been granted. The petitioner may furnish Form I-797*A* to the employee for the purpose of applying for his or her L visa, or to facilitate the employee's entry into the United States, either initially or after a temporary absence abroad during the employee's stay in L status.

9 FAM 41.54 N13.4 Evidence Forming Basis for L Visa Issuance

(TL:VISA-464; 09-23-2002)

The appropriate evidence forming the basis for L visa issuance consists of an approved Form I-129, *Petition for Nonimmigrant Worker*, telegraphic or telephonic notification from INS or the Department of the approval of such a petition, or a Form I-797*A*, *Notice of Action*, presented by the visa applicant, which shows that the petition on his or her behalf has been approved or that his or her authorized stay in L status has been extended. This Form I-797, printed on blue paper, must include the date of the notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving INS office. It is a computer-generated form and is not signed. The only Form I-797*A*, which is valid for visa issuance, is one which, at minimum, contains the above information. If a post has any question regarding the bona fides of a particular Form I-797*A*, it should query the originating INS office directly.

9 FAM 41.54 N14 Blanket Petition Procedures

9 FAM 41.54 N14.1 Using Form I-129, Petition for Nonimmigrant Worker, to File Blanket Petition

(TL:VISA-464; 09-23-2002)

Certain petitioners seeking the classification of multiple aliens as intracompany transferees may file a single blanket petition with INS. Qualified petitioners must use Form I-129, *Petition for Nonimmigrant* Worker, to file for approval of a blanket petition with the INS Service Center having jurisdiction over the area where the petitioner is located. Form I-129 must also be filed in advance with the appropriate INS Service Center for

Canadian citizens who wish to enter the United States as L nonimmigrants under the blanket petition provision [also see 9 FAM 41.54 N14.4-2 below]. The INS Service Center is required to notify the petitioner of the approval of a blanket petition within 30 days after a completed petition has been filed.

9 FAM 41.54 N14.2 Requirements for Petitioners

(TL:VISA-73; 02-05-1993)

a. A U.S. petitioner, which meets the following requirements, may file a blanket petition seeking continuing approval of itself and its specified parent, branches, subsidiaries and affiliates as qualifying organizations under INA 101(a)(15)(L):

(1) The petitioner and each of the specified qualifying organizations are engaged in commercial trade or services;

(2) The petitioner has an office in the United States that has been doing business for one year or more;

(3) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(4) The petitioner and the other qualifying organizations:

(a) Have obtained approval of petitions for at least ten “L” managers, executives, or specialized knowledge professionals during the past 12 months; or

(b) Have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or

(c) Have a U.S. work force of at least 1,000 employees.

b. The blanket petition provision is meant to serve only relatively large, established companies having multi-layered structures and numerous related business entities. Such companies usually have an established program for rotating personnel and, in general, are the type of companies for which the L classification was created. The criteria to qualify for blanket petitions are formulated to exclude small and nonprofit organizations. Such organizations must continue to file an individual petition for each beneficiary.

9 FAM 41.54 N14.3 Requirements for Beneficiaries

(TL:VISA-73; 02-05-1993)

The blanket petition provision is available only to managers, executives, and specialized knowledge professionals [see 9 FAM 41.54 N8.1-4 and 9

FAM 41.54 N8.2-3 above] who are destined to work in an established office in the United States (i.e., aliens seeking to open or be employed in a "new" office [see 9 FAM 41.54 N12 above] do not qualify). Aliens who possess specialized knowledge, but who are not specialized knowledge professionals, must obtain L-1 status through an individual petition. An alien may not apply for a visa under the blanket petition procedure if an individual petition has been filed on his or her behalf.

9 FAM 41.54 N14.4 Documents Required to Apply for Visa or Admission to United States Under Blanket Petition

9 FAM 41.54 N14.4-1 Aliens Requiring Visas

(TL:VISA-464; 09-23-2002)

a. When a qualifying organization listed in an approved blanket petition wishes to transfer an alien abroad who requires a visa to another listed qualifying organization in the United States, that organization must complete a Form I-129S, *Certificate of Eligibility for Intracompany Transferee under a Blanket Petition*, in an original and three copies. The qualifying organization shall retain one copy for its records and send the original and two copies to the alien beneficiary. A copy of the Form I-797*A*, *Notice of Action* notifying the petitioner of the approval of the blanket petition (which will identify the organizations included in the petition) must be attached to the original and each copy of Form I-129S.

b. After receipt of Form I-797*A* and Form I-129S, a qualified employee who is being transferred to the United States, may use these documents to apply at a consular office for visa issuance within six months of the date on Form I-129S.

9 FAM 41.54 N14.4-2 Canadian Citizens Seeking L Classification Under Blanket Petitions

(TL:VISA-464; 09-23-2002)

Citizens of Canada seeking L status under a blanket petition shall present the original and two copies of Form I-129S, *Certificate of Eligibility for Intracompany Transferee under a Blanket Petition*, along with three copies of the Form I-797A, *Notice of Action Petition Approval Notice*, to an immigration officer at a Class A port of entry, a U. S. airport handling international traffic, or a U.S. pre-clearance/pre-flight station. The availability of this procedure does not preclude the advance filing of Form I-129S with the INS Service Center where the blanket petition was approved.

9 FAM 41.54 N14.5 Evaluating Qualifications of Blanket L Petition Beneficiaries Requiring Visas

(TL:VISA-490; 11-15-2002)

Consular officers have the authority and responsibility for verifying the qualifications of individual managers, executives, and specialized knowledge professionals who are seeking L classification under the blanket petition provision, and who are outside the United States and require visas. In addition to presenting the required number of copies of Forms I-129S, *Certificate of Eligibility for Intracompany Transferee under a Blanket Petition*, and I-797A, *Notice of Action,* [see 9 FAM 41.54 N14.4 above], the alien must establish that he or she is either a manager, executive, or specialized knowledge professional employed by a qualifying organization. The consular officer must determine that the position in the United States is with the organization named on the approved petition, that the job is for a manager, executive, or specialized knowledge professional, and that the applicant has the requisite employment with the organization abroad for *six months* within the previous three years.

9 FAM 41.54 N14.6 Issuing L Visa under Blanket Petition Procedure

(TL:VISA-73; 02-05-1993)

Consular officers may grant L classification only in clearly approvable applications. If the visa is issued, the visa is annotated “Blanket L-1” for the principal alien and “Blanket L-2” for any derivative spouse or child. The consular officer shall also endorse all copies of the alien’s Form I-129S, *Certificate of Eligibility for Intracompany Transferee under a Blanket Petition,* with the blanket L-1 classification, retain one copy, and return the original and other copy to the applicant. At the port of entry, INS will stamp the original and copy of Form I-129S to show a validity period not to exceed three years and send the copy to the appropriate INS Regional Service Center for control purposes.

9 FAM 41.54 N14.7 Denying L Visas under Blanket Petition Procedure

(TL:VISA-73; 02-05-1993)

If the consular officer determines that an alien has not established his or her eligibility for an L visa under a blanket petition, his or her decision shall be final. The consular officer shall record the reasons for the decision on all copies of Form I-129S, *Certificate of Eligibility for Intracompany Transferee under a Blanket Petition,* retain one copy, give one copy to the alien, and return the original Form I-129S to the INS Regional Service Center which approved the blanket petition. The petitioner may continue to seek L classification for the alien by filing a Form I-129, *Notice of Action,* individual petition on his or her behalf with the INS Service Center having jurisdiction over the area of intended employment. The petition must state the reason why the alien was denied an L visa under the blanket procedure, and must specify the consular office, which made the determination and the date of the decision.

9 FAM 41.54 N14.8 Filing Individual L Petition Instead of Using Blanket Petition Procedure

(TL:VISA-73; 02-05-1993)

Although an alien might qualify to be a beneficiary of an L blanket petition, the petitioner may file an individual L petition on behalf of that alien in lieu of using the blanket petition procedure. When exercising this option, the petitioner must certify that the alien will not apply for a blanket L visa. The petitioner and other qualifying organizations listed on a blanket petition may not seek L classification for the same alien under both procedures, unless a consular officer first denies eligibility under the blanket petition provision.

9 FAM 41.54 N14.9 Reassigning L Blanket Petition Beneficiary

(TL:VISA-73; 02-05-1993)

An alien admitted under an approved L blanket petition may be reassigned to any organization listed in the approved petition during his or her authorized stay, without referral to INS, if the alien will be performing virtually the same job duties. If the alien will be performing different duties, the petitioner must complete a new Certificate of Eligibility Form I-129S, *Certificate of Eligibility for Intracompany Transferee under a Blanket Petition*, and file it with the INS Regional Service Center, which approved the blanket petition.

9 FAM 41.54 N15 Validity of Approved Petitions

9 FAM 41.54 N15.1 Individual Petitions

(TL:VISA-464; 09-23-2002)

a. Approved individual L petitions, except those involving new offices, are initially valid for the period of established need for the beneficiary's services, not to exceed three years. If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year [also see 9 FAM 41.54 N12.5 above].

b. To extend the validity of an individual L petition, the petitioner must file Form I-129, *Petition for Nonimmigrant Worker,* with the jurisdictional INS Regional Service Center. Supporting documentation is not required except in petitions involving new offices, in which case the petitioner must demonstrate that it is doing business, as described in 9 FAM 41.54 N10 above, in order to extend the petition to indefinite validity. A petition extension may be filed only if the validity of the original petition has not expired.

9 FAM 41.54 N15.2 Blanket Petitions

(TL:VISA-464; 09-23-2002)

a. An approved L blanket petition is valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with the regulations governing the blanket petition provision. To request indefinite petition validity, the petitioner must file a new Form I-129, *Petition for Nonimmigrant Worker,* along with a copy of the previous approval notice Form I-797A, *Notice of Action,* and a report of admissions during the preceding three years. This report shall include a list of the aliens admitted during the preceding three-year period, the positions held, the employing entity(ies), and the dates of initial admission and final departure of each alien. The petitioner must establish that it still meets the criteria for filing a blanket petition, and must document any changes in the business relationships listed on the original petition and any additional qualifying organizations it wishes to include.

b. Once the initial three-year validity period of a blanket petition has expired, if the petitioner fails to request an indefinite validity blanket petition, or if the request for indefinite validity is denied, the petitioner and its other qualifying organizations must file individual petitions on behalf of its employees until another three years have elapsed. Thereafter, the petitioner may seek approval of a new blanket petition.

9 FAM 41.54 N16 Length of Stay

(TL:VISA-73; 02-05-1993)

a. A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual L petition shall be admitted for the duration of the approved petition. The beneficiary of a blanket petition may be admitted for three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. If the blanket petition will expire before the end of the three-year period, the burden is on the petitioner to file for indefinite validity of the blanket petition, or to file an individual petition on the alien's behalf to support the alien's L status in the United States.

b. The admission period for any alien under INA 101(a)(15)(L) shall not exceed three years unless an extension of stay [see 9 FAM 41.54 N17 below] is granted.

9 FAM 41.54 N17 Extensions of Stay

(TL:VISA-73; 02-05-1993)

a. For the beneficiary of an individual L petition, the petitioner shall request an extension of the alien's stay in the United States on the same Form I-129, *Petition for Nonimmigrant Worker,* used to file for the extension of the alien's petition. The effective dates of the petition extension and the beneficiary's extension of stay shall be the same.

b. When the alien is a beneficiary under a blanket petition, the petitioner must file a new Certificate of Eligibility Form I-129S, *Certificate of Eligibility for Intracompany Transferee under a Blanket Petition,* accompanied by a copy of the previous Certificate of Eligibility, and must concurrently request extension of the blanket petition to indefinite validity if such validity has not already been granted.

c. Extensions of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The beneficiary must be physically present in the United States at the time the extension of stay petition is filed. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may ask INS to cable notification of the petition extension to the consular office abroad where the alien will apply for a visa. When the maximum allowable period of stay in L classification has been reached [see 9 FAM 41.54 N18 below], no further extensions may be granted.

9 FAM 41.54 N18 Limitations on Total Periods of Stay

(TL:VISA-73; 02-05-1993)

a. The total period of stay for L aliens employed in a specialized knowledge capacity may not exceed five years. The maximum allowable period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted once these limits have been reached.

b. When an alien was initially admitted in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months in order to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by INS in an amended, new, or extended petition at the time that the change occurred.

9 FAM 41.54 N19 Readmission after Maximum Total Period of Stay Reached

(TL:VISA-73; 02-05-1993)

a. When an nonimmigrant has spent the maximum allowable period of stay in the United States in L and/or H status, the alien may not be issued a visa or be readmitted to the United States under the L or H visa classification, nor may a new petition, extension, or change of status be approved for that alien under INA 101(a)(15)(L) or (H), unless the alien has resided and been physically present outside the United States for the immediate past year.

b. Brief trips to the United States for business or pleasure do not interrupt the one-year period abroad, but do not count towards fulfillment of that requirement. Periods when the alien fails to maintain status shall be counted towards the applicable limitation; an alien may not circumvent the limit by violating his or her status.

9 FAM 41.54 N20 Exceptions to Limitations on Readmission

(TL:VISA-73; 02-05-1993)

The limitations on readmission described in 9 FAM 41.54 N19 above shall not apply to aliens who did not reside continually in the United States, and, whose employment in the United States was seasonal or intermittent, or was for an aggregate of six months or less per year, nor to aliens who resided abroad and regularly commuted to the United States to engage in part-time employment. The alien must provide clear and convincing proof (e.g., evidence such as arrival and departure records, copies of tax returns, records of employment abroad) that he or she qualifies for these exceptions. The exceptions to limitations on readmission will not apply if the principal alien's dependents have been living continuously in the United States in L-2 status.

9 FAM 41.54 N21 Validity of L Visas

9 FAM 41.54 N21.1 Maximum Validity of L Visa

(TL:VISA-73; 02-05-1993)

a. The validity of an L visa may not exceed the period of validity of an individual petition approved to accord L status or the period for which the alien's authorized stay in L status was extended. If the period of reciprocity shown in 9 FAM Appendix C is less than the validity period of the approved petition or extension of stay, it shall prevail.

b. Consular officers may issue an L visa with a maximum validity of three years to the beneficiary of a blanket petition, reciprocity permitting, even though the initial validity period of the blanket petition may expire before the end of the three-year period.

9 FAM 41.54 N21.2 Limiting Validity of L Visas

(TL:VISA-73; 02-05-1993)

a. Consular officers may restrict visa validity in some cases to less than the period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the other notations required on the L visa, posts shall insert the following:

"PETITION VALID/STAY AUTHORIZED
(whichever is applicable) TO (date)."

b. See 9 FAM 41.113 PN8.7 for the required notations on L visas. MRV posts should use appropriate operating instructions for annotating visas.

9 FAM 41.54 N21.3 Reissuing Limited L Visas

(TL:VISA-73; 02-05-1993)

When an L visa has been issued with a validity of less than the validity of the petition or authorized period of stay, consular officers may reissue the visa any number of times within the period allowable. If a fee is prescribed in 9 FAM Appendix C, posts must collect the fee for each re-issuance of the L visa.

9 FAM 41.54 N22 Spouse and Children of L-1 Aliens

9 FAM 41.54 N22.1 Derivative Classification

(TL:VISA-464; 09-23-2002)

a. The spouse and children of an L-1 nonimmigrant who are accompanying or following to join the principal alien in the United States are entitled to L-2 classification and are subject to the same visa validity, period of admission, and limitation of stay as the L-1 alien. For a general discussion of the classification of the spouse and children of a nonimmigrant, see 9 FAM 41.11 N4 and 9 FAM 41.11 N5.

b. A Canadian citizen spouse or child who is accompanying or following to join a Canadian citizen in L-1 status shall be admitted as an L-2 nonimmigrant without requiring a visa. A non-Canadian citizen spouse or child must have an L-2 visa when applying for admission. [See 9 FAM Appendix D, Automated Visas Systems.]

c. If an L-1 nonimmigrant has maintained his or her family in the United States in L-2 status, he or she cannot qualify for exception from the five to seven-year limitation on total period of stay [see 9 FAM 41.54 N20 above].

9 FAM 41.54 N22.2 Verifying Principal Alien is Maintaining Status

(TL:VISA-464; 09-23-2002)

When an alien applies for an L-2 visa to follow-to-join a principal alien already in the United States, the consular officer must be satisfied that the principal alien is maintaining L-1 status before issuing the visa. If the consular officer has any doubt about the principal alien's status and if there are no other readily available means of verification, the consular officer may suggest to the applicant that the L-1 alien in the United States obtain Form I-797*A, Notice of Action,* from INS and forward it to the applicant for presentation to the consular officer.

9 FAM 41.54 N22.3 Employment in United States Authorized for L-2 Dependent Aliens

(TL:VISA-464; 09-23-2002)

Public Law 107-125, provides for work authorization for nonimmigrant spouses (L-2) of intracompany transferees (L-1). Therefore, in the case of an L-2 spouse who is accompanying or following to join the L-1 principal alien, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an 'employment authorized' endorsement or other appropriate work permit.

9 FAM 41.54 N23 Servants of L Nonimmigrants

(TL:VISA-73; 02-05-1993)

Personal or domestic servants seeking to accompany or follow to join L nonimmigrant employers may be issued B-1 visas, provided they meet the requirements of 9 FAM 41.31 N6.3-3.

9 FAM 41.54 N24 Former Exchange Visitor Subject to Two-Year Foreign Residence Requirement

(TL:VISA-464; 09-23-2002)

For instructions regarding requests for waivers of the two-year foreign residence requirement by L visa applicants who are former exchange visitors and subject to the two-year requirement of INA 212(e), see 9 FAM 40.202 Notes.