

POSITION STATEMENT

The L-1 Visa for Intra-Company Transfers

***Adopted by the IEEE-USA
Board of Directors, 25 June 2010***

IEEE-USA supports the legitimate use of the L-1 visa to facilitate intra-company transfers within multinational corporations, and allow foreign executives, managers and employees with specialized knowledge to work temporarily in a U.S.-based office, subsidiary, or affiliated company. We are troubled, however, by continuing reports that some companies are using the program to provide low cost, labor-for-hire workers under contract to U.S. employers. Such practices can and do adversely affect employment opportunities, wages and working conditions for U.S. workers, including citizens, legal permanent residents, and foreign nationals who have been legally admitted to work temporarily in the United States.

IEEE-USA believes that the use of L-1 visa holders to provide low cost, labor-for-hire is a violation of the spirit, if not the letter, of the nation's immigration laws.

IEEE-USA recommends that Congress examine the extent to which the L-1 visa is being used to facilitate the provision of low cost, labor-for-hire, and assess the impact of this practice on employment opportunities, wages and working conditions for U.S. and foreign engineers, as well as other technical professionals in the United States.

In addition, we urge Congress to consider enacting legislation that will help establish a bright-line distinction between legitimate and illegitimate uses of the L-1 intra-company transfer visa program. Such legislation should:

- Reform the L-1 visa approval process to ensure that visas are granted to foreign nationals with specialized knowledge of proprietary products, processes and services; and that use of the L-1 visa program by their employers and clients does not adversely affect U.S. workers
- Clarify statutory and regulatory language defining “specialized knowledge”

- Authorize regular random audits of L-1 employers, and provide for timely investigation and adjudication of complaints about alleged abuses
- Require publication of annual statistical reports on L-1 visa issuances and utilization by types of employers, industry sectors and occupations
- Authorize civil and monetary penalties to help deter fraud and abuse

This statement was developed by the IEEE-USA Career & Workforce Policy Committee and represents the considered judgment of a group of U.S. IEEE members with expertise in the subject field. IEEE-USA advances the public good and promotes the careers and public-policy interests of the more than 210,000 engineers, scientists and allied professionals who are U.S. members of the IEEE. Positions taken by IEEE-USA do not necessarily reflect the views of the IEEE, or its other organizational units.

BACKGROUND

Section 101(a)(15)(L) of the *U.S. Immigration and Nationality Act* provides for issuance of L-1 intra-company transfer visas to eligible foreign nationals employed by corporations to work in the United States for up to seven years in an executive or managerial position, or from three to five years in a position requiring specialized knowledge.

In a 2006 report, *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, the Inspector General (IG) at the U.S. Department of Homeland Security identified four major areas of concern about the program. The IG said:

“The L-1 program is vulnerable in the following respects. First, the program 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. Second, the program 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. Third, 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. Fourth, the program encompasses petitioners who do not yet have, but are merely in the process of establishing, their first U.S. office, and it also permits petitioners to transfer themselves to the United States. These two provisions, separately and in combination, represent *windows of opportunity* for some of the abuse that appears to be occurring.” [1]

In addition, the General Accountability Office has observed that “.In recent years, certain employers have increasingly turned to the L-1 visa, an intra-company transfer visa that can be used by companies to bring their foreign professional workers to the United States on a temporary basis. L-1 visas (unlike H-1B specialty occupation visas) do not have an annual cap and are not subject to prevailing wage laws.” [2]

Regarding L-1 visa issuances, the U.S. Department of State's Bureau of Consular Affairs has reported that the number of L-1 visas issued to principals has increased steadily from 59,384 in FY 2001 to an all-time high of 77,880 in FY 2008 [3].

Reports about abusive practices in the L-1 visa program appear with considerable regularity in newspapers and business journals. A particularly troubling report about such practices – and the resulting displacement of U.S. workers – appeared in a 2003 edition of *Business Week*, and in an award winning investigative report produced by WKMG in Orlando [4].

More recently, *Business Week* ran a cover story on “America's High Tech Sweat Shops,” describing how U.S. companies may be contributing to the exploitation of foreign workers on H-1B and L-1 visas in October 2009 [5].

References:

[1] 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, January 2006.

[2] U.S. General Accountability Office, *H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce*. GAO-03-883, 10 September 2003.

[3] U.S. Department of State, Bureau of Consular Affairs, Report of the Visa Office, 2009.

[4] Brian Grow, “A Main-Frame Sized Visa Loophole; more companies are using L-1 visas to bring in low cost info-tech workers and replace Americans” *Business Week*, 06 March 2003.

[5] Steve Hamm and Moira Herbst, “America's High Tech Sweatshops: How U.S. companies may contribute unwittingly to the exploitation of foreign workers,” *Business Week*, 12 October 2009.