



U.S. Citizenship
and Immigration
Services

HQ 70/8
AD 05-26

Interoffice Memorandum

To: Regional Directors
District Directors
Officers-in-Charge
Administrative Appeals Office Director

From: William R. Yates /S/
Associate Director of Operations

Date: July 28, 2005

Re: Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004

Revisions to *Adjudicator's Field Manual (AFM)* Chapters 32.3, 32.4(a), and 32.5
(*AFM* Update AD05-26)

On December 8, 2004, the President signed the Omnibus Appropriations Act (OAA) for Fiscal Year 2005, Public Law 108-447, 118 Stat. 2809. Among the provisions of the OAA is the L-1 Visa Reform Act of 2004 (L-1 Reform Act). Among other things, the L-1 Visa Reform Act makes two significant changes to the L Visa Classification, which, as discussed below, necessitates revisions to Chapters 32.3, 32.4(a), and 32.5 of the AFM.

The first significant change effected by the L-1 Visa Reform Act is that an alien is now explicitly ineligible for classification as a specialized knowledge worker nonimmigrant (L-1B) visa if the worker will be "stationed primarily" at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either of the following occurs: (a) the alien will be "principally" under the "control and supervision" of the unaffiliated employer, or (b) the placement at the non-affiliated worksite 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. *This new ground of ineligibility applies to all petitions filed on or after June 6, 2005, and includes petitions for initial, amended, or extended L-1B classification.* We have revised Chapters 32.3 by adding new paragraphs (c) and (h), and Chapter 32.5 by adding a new paragraph (b) to reflect these new anti-job shop restrictions on obtaining L-1B classification.

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The second significant change effected by the statute involves a modification to the eligibility requirements for L-1 intracompany transferees covered by a blanket petition filed pursuant to section 214(c)(2)(A) of the Act. Specifically, the new law amends section 214(c)(2)(A) of the Act to restore prior law requiring that the L-1 beneficiary of a blanket petition have been employed abroad by the L entity for a period of 12 months. In doing so, the L-1 Reform Act eliminates the 6-month exception that had been the law for blanket beneficiaries since 2001. This amendment is reflected by deleting the existing notes in Chapter 32.3(b) and (d) and Chapter 32.5(a) which referred to the 6-month exception that had been the law for blanket beneficiaries since 2001, and by revising Chapter 32.4(a) and adding a note to Chapter 32.4(a) of the AFM. The additions noted above are marked in yellow highlight for ease of use.

Unless otherwise stated in this memorandum, the effective date of the provisions of the L-1 Reform Act is June 6, 2005.

This memorandum and the above-noted AFM revisions provide guidance to U.S. Citizenship and Immigration Services (USCIS) officers in the field regarding amendments made by the L-1 Reform Act. This guidance is effective immediately. Please direct any questions concerning these changes through appropriate supervisory channels to Irene Hoffman, Office of Program and Regulations Development, via electronic mail.

Accordingly, the *AFM* is revised as follows:

1. Chapter 32.3 is revised to read as follows:

32.3 Individual L Petition Process.

(a) General. (Chapter 32.3 Revised July 28, 2005; AFM 05-26) Section 101(a)(15)(L) of the Act and regulations at 8 CFR 214.2(l) are designed to facilitate the temporary transfer of foreign nationals with management, executive, and specialized knowledge skills to the United States to continue employment with an office of the same employer, its parent, branch, subsidiary, or affiliate. Petitioners seeking to classify aliens as intracompany transferees must file a petition on Form I-129 (including the L supplement) with USCIS for a determination on whether the alien is eligible for L-1 classification and whether the petitioner is a qualifying organization. An individual L-1 petition is filed at the service center having jurisdiction where the alien will be employed, except that NAFTA cases (discussed in Chapter 37) may be filed at Class A ports of entry. General adjudicative principles and procedures described in Chapter 10 apply. For statistical purposes executives and managers are internally coded (in CLAIMS) L-1A and specialized knowledge employees are coded L-1B, although only "L-1" is used for visa issuance and admission purposes.

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(b) Basic Evidentiary Requirements for an L-1 Petition. Evidence of the following must be submitted to support all petitions filed for L classification:

- There must be a qualifying relationship between the business entity in the United States and the foreign operation which employs the alien abroad;
- For the duration of the alien's stay in the United States as an intracompany transferee, the petitioner must continue to do business both in the United States and in at least one other country, either directly or through a parent, branch, subsidiary, or affiliate.
- The alien must have been employed abroad by the foreign operation for at least one of the last three years. Such one year of employment outside the U.S. must have been continuous. Although authorized periods of stay in the United States for the foreign employer are not interruptive of the prior year of employment, such periods may not be counted towards the qualifying year of employment abroad. See *Matter of Kloeti*, 18 I&N Dec. 295.
- The alien's prior year of employment abroad must have been in a managerial, executive, or specialized knowledge capacity. The prospective employment in the United States must also be in a managerial, executive, or specialized knowledge capacity. However, the alien does not have to be transferred to the United States in the same capacity in which he or she was employed abroad. For example, a manager abroad could be transferred to the United States in a specialized knowledge capacity or vice versa. See *Matter of Vaillancourt*, 13 I&N Dec. 654.

The burden is on the petitioner to provide the documentation required to establish eligibility for L classification. The regulations do not require submission of extensive evidence of business relationships or of the alien's prior and proposed employment. In most cases, completion of the items on the petition and supplementary explanations by an authorized official of the petitioning company will suffice. In doubtful or marginal cases, the director may require other appropriate evidence which he or she deems necessary to establish eligibility in a particular case.

Note: Section 214(h) of the Act eliminates the need to adjudicate the issue of whether an L nonimmigrant is actually being transferred on a temporary basis. Many such nonimmigrants eventually adjust status or procure an immigrant visa. Also, section 214(b) eliminates L nonimmigrants from the classes of persons "presumed to be an immigrant." (However,

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even before the addition of section 241(h), an L-1 nonimmigrant was not required to maintain a foreign residence which he/she had no intention of abandoning.)

(c) Anti "Job-Shopping" Provisions of the L-1 Visa Reform Act. Among the provisions of Public Law 108-447 at Division J, Title IV, is the L-1 Visa Reform Act. Section 412(a) of Title IV adds a new section 214(c)(2)(F) to the Immigration and Nationality Act, as amended (Act). New section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be "stationed primarily" at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either (1) the alien will be "principally" under the "control and supervision" of the unaffiliated employer, or (2) the placement at the non-affiliated worksite 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.

Several conditions must be met in order for this ground of ineligibility to apply:

First, the alien worker must be a specialized knowledge worker. The term "specialized knowledge" should be familiar to adjudicators and is defined at 8 CFR 214.2(l)(1)(D) and, with respect to professionals, at 8 CFR 214.2(l)(1)(E). The change does not apply to other (i.e., managers and executives) L nonimmigrants.

Second, the worker must be stationed primarily at a worksite *outside* the L organization. Thus, so long as the worker is to be stationed and actually employed within the L organization, this particular ground of ineligibility does not apply. Moreover, even if the worker is stationed outside the L organization, the worker must be "stationed primarily" outside the organization. We interpret this provision to mean that, as a threshold matter, in order for the section 214(c)(2)(F) bar to L classification to apply, a majority of the alien's work-related activities must occur at a location other than that of the petitioner or its affiliates. In this regard, even if the majority of an alien's time is physically spent at the petitioner or its affiliates' location, to the extent that such time can be considered to be "down time" rather than time actually performing the services described in the petition, an alien might be subject to the section 214(c)(2)(F) bar (since, in this example, the majority of the alien's actual work time is spent at an unaffiliated company or companies' work site). The number of non-affiliated worksite locations where the alien might be stationed, by itself, is not relevant; what is relevant is the location where the alien will be actually be engaged in employment as specified in the underlying petition.

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If the alien worker is “stationed primarily” outside the L organization, as described above, then there are two independent means by which the alien worker may be rendered ineligible for L status.

The first means relates to the control and supervision of the worker. Even if the alien worker is to be stationed “primarily” outside the L organization, that fact alone does not establish ineligibility for L classification. In order for the ground of ineligibility to apply, “control and supervision” of the worker at the non-affiliated worksite must be “principally” by the unaffiliated employer. Again, adjudicators should use the common dictionary meaning of the term “principally,” which means “first and foremost.” Thus, even if the non-affiliated entity exercises some control or supervision over the work performed, as long as such control and supervision lies first and foremost within the L organization, and the L organization retains ultimate authority over the worker, the ground of ineligibility does not apply. For example, an L-1 worker may be stationed primarily outside the L organization, but receives all direction and instruction from a supervisor within the L organization structure. The non-L organization client may provide input, feedback, or guidance as to the client’s needs, goals, etc., but does not control the work in the sense of directing tasks and activities. So long as the ultimate authority over the L-1 worker’s daily duties remains within the L organization, the fact that there may be some intervening third party supervision or input between the worker and the L organization does not render the worker ineligible for L-1B classification.

The second means relates to the nature of the alien worker’s placement outside the L organization. Such an alien worker is ineligible for L classification if the placement at the unaffiliated worksite 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. What constitutes “essentially” such an arrangement is inherently a fact question, and adjudicators therefore must look at the all aspects of the activity or activities in which the alien will be engaged away from the petitioner’s worksite. In general, if the off-site activity or activities do not require specialized knowledge of the petitioner’s product or services, or if such knowledge is only tangentially related to the performance of such off-site activities, the alien will fall within the ambit of the section 214(C)(2)(F) bar. For example, an alien would be ineligible for L classification if a petitioner is essentially in the business of placing workers with various unaffiliated companies, irrespective of the alien’s specialized knowledge of the petitioner’s particular product or service, where the off-site activities to be performed do not require such specialized knowledge. On the other hand, if the petitioner is primarily engaged in providing a specialized service, and typically sends its specialized knowledge personnel on projects located on the work site of its unaffiliated

clients to perform such services, then, assuming the alien remains under the principal control and supervision of the petitioning employer, and otherwise meets the basic requirements for L classification, the alien would not be subject to the section 214(c)(2)(F) bar.

(d) Petitioner's Status. The petitioner for an intracompany transferee must be a firm, corporation, or affiliate thereof which is seeking to transfer a foreign employee to the United States temporarily from one of its operations outside the United States. Either the United States employer or the foreign employer may file a petition with USCIS to classify the alien as an intracompany transferee. The petitioner must be actively engaged in providing goods and/or services in the United States and abroad, either directly or through a parent, branch, subsidiary, or affiliate, with employees in both countries, for the duration of the alien's stay. The mere presence of an agent or office of the petitioner is insufficient evidence of this requirement.

Depending on the nature of the petitioner, different types of evidence may be required:

- Large, Established Organizations. Such organizations may submit a statement by the company's president, corporate attorney, corporate secretary, or other authorized official describing the ownership and control of each qualifying organization, accompanied by other evidence such as a copy of its most recent annual report, Securities and Exchange Commission filings, or other documentation which lists the parent and its subsidiaries.
- Small Business and Marginal Operations. In addition to a statement of an authorized official regarding ownership and control of each qualifying organization, other evidence of ownership and control should be submitted, such as records of stock ownership, profit and loss statements or other accountant's reports, tax returns, or articles of incorporation, by-laws, and minutes of board meetings.
- New Offices. If the beneficiary is coming to the United States to open a new office, proof of ownership and control, in addition to financial viability, is required. The petitioners' statement of ownership and control should be accompanied by appropriate evidence such as evidence of capitalization of the company or evidence of financial resources committed by the foreign company, articles of incorporation, by-laws, and minutes of board of directors' meetings, corporate bank statements, profit and loss statements or other accountant's reports, or tax returns. See documentary requirements for new office cases in 8 CFR 214.2(l)(3)(v) and discussion in *Matter of Leblanc*, 13 I&N Dec. 816.

Note: If the petition is approved under this provision, its validity is limited to one year, after which a new petition must be filed for extension of stay (see 8 CFR 214.2(l)(7)(i)(A)(3)).

- Partnerships. To establish who owns and controls a partnership, a copy of the partnership agreement must be submitted. To establish what the partnership owns and controls, other evidence may be necessary. By law, international partnerships which provide accounting services or management consulting services meet the criteria as qualifying organizations for L-1 purposes. Extensive documentation in such cases is not required.
- Proprietorships. In cases where the business is not a separate legal entity from the owner(s), the petitioner's statement of ownership and control must be accompanied by evidence, such as a license to do business, record of registration as an employer with the Internal Revenue Service, business tax returns, or other evidence which identifies the owner(s) of the businesses.
- Joint Ventures. As discussed in *Matter of Hughes*, 18 I&N Dec. 289 (Commissioner, 1982), there are two types of joint venture business enterprises - equity joint ventures and non-equity joint ventures:
 - An equity joint venture is created under corporate law and exists when two or more companies contribute capital to the venture. A qualifying L-1 relationship can exist between a contributing company and the resulting venture if the contributing company owns at least 50% of the venture and exercises control over the venture.
 - A non-equity joint venture, on the other hand, is a contractual arrangement in which one or more of the contributing companies provides noncapital resources (e.g., manufacturing processes, patents, trademarks, managerial know-how, or other essential factors). A non-equity joint venture does NOT establish a qualifying L-1 relationship.

(e) Alien's Qualifications. Detailed descriptions of the alien's prior year of employment abroad and of the intended employment in the United States are required from the petitioner to determine if the alien was and will be employed in a managerial, executive, or specialized knowledge capacity.

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To document the alien's employment abroad and the alien's intended employment in the United States, a letter signed by an authorized official of the petitioner describing the prospective employee's employment abroad for the requisite one year and the intended employment in the United States, including the dates of employment, job titles, specific job duties, number and types of employees supervised, qualifications for the job, level of authority, salary, and dates of time spent in the United States during the qualifying period. In cases where the accuracy of the statement is in question, the director may require other evidence, such as wage and earning statements or an employment letter from an authorized official of the employing company abroad.

(f) Investigations. The adjudicator may not request an overseas investigation of the qualifications of a beneficiary of an L-1 petition if there are other grounds for denial of the petition. Any request for an overseas investigation must be accompanied by copies of the Form I-129 and supporting documents. (See Chapter 10.5 regarding overseas investigations requests.) Attach any report of investigation of the beneficiary's qualifications to the approved petition when it is forwarded to the consulate at which the visa application is to be made. Attach any report of investigation on the petitioner to the approved petition being forwarded to the consulate only if it might have a bearing on the visa issuance.

There is a high incidence of misrepresentation involving work experience gained in certain countries (see Appendix 30-2). Even so, when the adjudicating officer is convinced that the evidence substantiates the work experience for an L-1 nonimmigrant, the petition may be approved. The officer shall send all other L-1 nonimmigrant petitions for these countries for investigation.

All cases meeting the minimum threshold for articulable fraud must be referred to the Fraud Detection Unit (FDU) Intelligence Research Specialist (IRS) or FDNS Immigration Officer (IO) on the standard Fraud Referral Sheet (FRS) per the instructions in the December 14, 2004 memorandum entitled *Criteria for Referring Benefit Fraud Cases*. Field offices will, without exception, submit requests for overseas investigations to the FDU IRS/FDNS IO via the FRS. The FDU IRS/FDNS IO will track all case leads in the Fraud Tracking System (FTS) and will report all findings of fraud to Adjudications using the standard Fraud Verification Memorandum.

(g) Approval. If the necessary supporting documents are present and the petition appears to be approvable in all respects, endorse the action block with the approval stamp. Indicate the petition validity dates and other action taken. The initial approval period is up to three years, except that if the petitioner is a start-up operation, the approval period is limited to one year. Extensions of stay are granted in two-year increments. The dates of employment

(admission and extension periods) must be within the statutory limits for the L category: seven years for executive and managerial employment, five for specialized knowledge. Consider any concurrent extension or change of status request in accordance with the procedures described in Chapter 30. Closing actions include preparation of the approval notice (CLAIMS-generated), forwarding of the approved petition to the appropriate consulate (if applicable) and disposition of the file in accordance with local procedures. See 8 CFR 214.2(l)(14)(ii) for special requirements involving extension requests for "new office" cases.

(1) Intermittent L-1 Status. The limitations on the maximum stay in L status do not apply to aliens whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations do not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The burden is on the petitioner and the alien to establish that the alien qualifies for an exception.

(2) Conversion from Specialized Knowledge to Executive / Manager Position. An L-1B specialized knowledge alien may change to an L-1A executive/manager to receive the benefits of the seven year limit of stay. The petitioner must have an I-129 petition approved in the alien's behalf as an executive or manager for six months to be able to receive the limitation of stay of seven years. This means that a specialized knowledge alien must have an I-129 approved as an executive or manager prior to his four and one half year period of stay in the United States. Remember that the work experience outside the U.S. does not have to be in the same capacity as the proposed employment in the U.S.

(h) Denial. Prepare and serve a formal denial order as described in Chapter 10.7. Forward the petition in accordance with local procedures pending submission of an appeal or expiration of the appeal period. A denied petition for L classification is appealable to the Administrative Appeals Office.

(1) Discretionary Denial. Regulations do not provide appellate review of an alien's application for extension of stay. A decision to grant or deny the application is discretionary. Due process does not require USCIS to provide appellate review of the discretionary denial of an application for a benefit conferred on a nonimmigrant. When novel or unusually complex issues are presented, the application should receive supervisory-level review. An alien who believes that his or her application has been arbitrarily or erroneously denied may file a motion to reopen or reconsider the case, request certification, or seek judicial relief. A denial of the extension of stay application

requires no determination of whether the beneficiary meets L-1 standards; therefore, there is no decision on the petition to appeal. However, the petitioner is not precluded from filing a new petition in the alien's behalf.

(2) Readjudication of L-1 Eligibility. In matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an adjudicator that an alien is eligible for the particular nonimmigrant classification sought should be given deference. Cases where a prior approval of the petition need not be given deference are where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is a new material information that adversely impacts the petitioner's or beneficiary's eligibility. For additional guidance on this issue refer to the William R. Yates memo of April 3, 2004 titled "The Significance of a Prior CIS approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity".

The following are some exceptions to the above guidance on readjudication of L-1 eligibility:

- **Anti Job-Shop Provisions.** The L-1 Visa Reform Act, at section 412(a) of Pub. L. 108-447, Division J, Title IV, adds a new section 214(c)(2)(F) to the Immigration and Nationality Act, as amended (Act). New section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be "stationed primarily" at the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either (1) the alien will be "principally" under the "control and supervision" of the unaffiliated employer, or (2) the placement at the non-affiliated worksite 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. *The new ground of ineligibility applies to all petitions filed on or after June 6, 2005. This includes petitions for initial, amended, or extended L classification. Thus, even if an alien worker holds or held L specialized knowledge status prior to June 6, 2005 and USCIS previously determined that the alien worker was eligible, the test for the new ground of ineligibility is to be applied to the petition. Adjudicators should not make a special effort to seek out these prior approvals, but should assess these anti-job shop concerns as new or subsequent petitions arise for adjudication in the normal course of business.*

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- **Treaty investor classification and L-1 "new office" extensions.** Additional scrutiny should be given to petitions where the initial petition is granted to allow the petitioner and or/beneficiary to effectuate a tentative or prospective business plan or otherwise prospectively satisfy the requirements for the nonimmigrant classification. This includes treaty investor classification which may require a petitioner to be actively in the process of investing a substantial amount of capital in a bona fide enterprise, and the L-1 "new office" extension petitions. See 8 CFR 214.2(l)(14)(ii) for special requirements involving extension requests for "new office" cases.

☞ 2. The *AFM* currently containing chapter 32.4(a) entitled, "Blanket Petition Process General" has been revised to read as follows:

(a) General. (Chapter 32.4(a) Revised July 28, 2005; AFM 05-26) The blanket petition program allows a petitioner to seek continuing approval of itself, its parent, and its branches, subsidiaries, and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of any number of aliens employed by itself, its parent, or some of its branches, subsidiaries, and affiliates. The program is restricted to relatively large international employers who are engaged in commercial trade or services. The petitioner is required to document that it meets certain criteria to file a blanket petition and to document the relationship between the qualifying organizations which will be included in the blanket petition. When the blanket petition is adjudicated, the decision relates only to these factors. Whether alien beneficiaries of the blanket petition qualify for L classification is later determined by a consular office when the alien applies for a visa or by a USCIS or CBP officer if the alien is visa-exempt or applying for a change of status. An alien, who for one year in the previous 3 years has been employed by a qualifying organization as a manager, executive, or specialized knowledge professional, is eligible to transfer to the United States to a qualifying organization listed in the blanket petition as a manager, executive, or specialized knowledge professional.

Note: The L-1 Visa Reform Act at section 413 of Pub. L. 108-447, Division J, Title IV, modifies the eligibility requirements for L-1 intracompany transferees covered by a blanket petition filed pursuant to section 214(c)(2)(A) of the Act by amending section 214(c)(2)(A) of the Act to restore prior law requiring that the L-1 beneficiary of a blanket petition have been employed abroad by the L entity for a period of 12 months. The Act thus eliminates the 6-month exception that had been the law for blanket beneficiaries since 2001. All L-1 beneficiaries are now required to have been employed abroad for a 12-month period regardless of whether the beneficiary is obtaining L classification

based on a blanket petition or as an individual. This provision applies only to *initial* L-1 petitions filed after June 6, 2005. Thus, adjudicators should not issue RFEs on that issue for L-1 petitions that were pending on that date. The 6-month rule should also continue to be applied to cases involving extensions or changes of job duties within the L classification filed after the effective date, but in which the original status was obtained through a blanket process prior to the effective date based upon the then-existing eligibility requirements.

- ☞ 3. Chapter 32.5 is revised to read:

32.5 Individual Eligibility under Blanket Petitions.

(a) General. (Chapter 32.5) Revised July 28, 2005; AFM 05-26) The adjudication of individual eligibility for admission under a blanket approval is delegated to the consular officer where the alien applies for a visa. If visa-exempt, or when the alien is applying for a change of status, this adjudication is handled by the service center where the blanket was approved. The alien must provide the consular or USCIS officer the following documents to support eligibility for L classification:

- A letter from the prospective employee's employer abroad confirming his or her dates of employment, job duties, qualifications, and salary for at least the previous year.
- Records of educational training, degrees, and other pertinent evidence to document that the prospective employee is a specialized knowledge professional.
- An original and two copies of the I-129S (issued within the last six months) and the three copies of Form I-797, Notice of Approval of Blanket L Classification. (Only the original and a single copy of each is needed for applications filed with a service center.)
- Form I-539, with fee, if applying for a change of status.

(b) Anti "Job-Shopping" provisions of the L-1 Visa Reform Act. As noted in Chapter 32.3(c) and (h)(2) of the AFM, the L-1 Reform Act, at Pub. L. 108-447, section 412(a) of Division J, Title IV, adds a new section 214(c)(2)(F) to the Immigration and Nationality Act, as amended (Act). New section 214(c)(2)(F) renders ineligible for L nonimmigrant classification a specialized knowledge worker if the worker will be "stationed primarily" at

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the worksite of an employer other than the petitioner or an affiliate, subsidiary, or parent and either (1) the alien will be “principally” under the “control and supervision” of the unaffiliated employer, or (2) the placement at the non-affiliated worksite 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.

Several conditions must be met in order for this ground of ineligibility to apply:

First, the alien worker must be a specialized knowledge worker. The term “specialized knowledge” should be familiar to adjudicators and is defined at 8 CFR 214.2(l)(1)(D) and, with respect to professionals, at 8 CFR 214.2(l)(1)(E). The change does not apply to other (i.e., managers and executives) L nonimmigrants.

Second, the worker must be stationed primarily at a worksite *outside* the L organization. Thus, so long as the worker is to be stationed within the L organization, this particular ground of ineligibility does not apply. Moreover, even if the worker is stationed outside the L organization, the worker must be “stationed primarily” outside the organization. We interpret this provision to mean that, as a threshold matter, in order for the section 214(c)(2)(F) bar to L classification to apply, a majority of the alien’s work-related activities must occur at a location other than that of the petitioner or its affiliates. In this regard, even if the majority of an alien’s time is physically spent at the petitioner or its affiliates’ location, to the extent that such time can be considered to be “down time” rather than time actually performing the services described in the petition, an alien might be subject to the section 214(c)(2)(F) bar (since, in this example, the majority of the alien’s actual work time is spent at an unaffiliated company or companies’ work site). The number of non-affiliated worksite locations where the alien might be stationed, by itself, is not relevant; what is relevant is the location where the alien will be actually be engaged in employment as specified in the underlying petition.

If the alien worker is “stationed primarily” outside the L organization, as described above, then there are two independent means by which the alien worker may be rendered ineligible for L status.

The first means relates to the control and supervision of the worker. Even if the alien worker is to be stationed “primarily” outside the L organization, that fact alone does not establish ineligibility for L classification. In order for the ground of ineligibility to apply, “control and supervision” of the worker at the non-affiliated worksite must be “principally” by the unaffiliated employer. Again, adjudicators should use the common dictionary meaning of the term “principally,” which means “first and foremost.” Thus, even if the non-affiliated

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entity exercises some control or supervision over the work performed, as long as such control and supervision lies first and foremost within the L organization, and the L organization retains ultimate authority over the worker, the ground of ineligibility does not apply. For example, an L-1 worker may be stationed primarily outside the L organization, but receives all direction and instruction from a supervisor within the L organization structure. The non-L organization client may provide input, feedback, or guidance as to the client's needs, goals, etc., but does not control the work in the sense of directing tasks and activities. So long as the ultimate authority over the L-1 worker's daily duties remains within the L organization, the fact that there may be intervening supervision or input between the worker and the L organization does not render the worker ineligible for L-1B classification.

The second means relates to the nature of the alien worker's placement outside the L organization. Such an alien worker is ineligible for L classification if the placement at the unaffiliated worksite 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. What constitutes "essentially" such an arrangement is inherently a fact question, and adjudicators therefore must look at the all aspects of the activity or activities in which the alien will be engaged away from the petitioner's worksite. In general, if the off-site activity or activities do not require specialized knowledge of the petitioner's product or services, or if such knowledge is only tangentially related to the performance of such off-site activities, the alien will fall within the ambit of the section 214(C)(2)(F) bar. For example, an alien would be ineligible for L classification if a petitioner is essentially in the business of placing workers with various unaffiliated companies, irrespective of the alien's specialized knowledge of the petitioner's particular product or service, where the off-site activities to be performed do not require such specialized knowledge. On the other hand, if the petitioner is primarily engaged in providing a specialized service, and typically sends its specialized knowledge personnel on projects located on the work site of its unaffiliated clients to perform such services, then, assuming the alien remains under the principal control and supervision of the petitioning employer, and otherwise meets the basic requirements for L classification, the alien would not be subject to the section 214(c)(2)(F) bar.

(c) Adjudication. Adjudication is limited to beneficiary-related issues, e.g., the beneficiary's qualifying experience and the nature of the proposed employment in the United States. If a question arises relating to the petitioner, the issue must be resolved through the revocation process, discussed in Chapter 30.11. Policies and procedures for individual L-petition adjudication are equally applicable to blanket cases.

Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004

Revisions to *Adjudicator's Field Manual (AFM)* Chapters 32.3, 32.4(a), and 32.5
(AFM Update AD05-26)

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(d) Approval. Upon approval, endorse both copies of Form I-129S with the approval stamp and period of admission (up to three years, even if the blanket is due to expire sooner). Return the original to the applicant and retain a copy for USCIS records.

(e) Denial. If an individual applicant appears ineligible, notify the petitioner of the decision using a formal written order. An appeal may be filed by the petitioner in the same manner as an appeal from the denial of an individual L petition. See 8 CFR 214.2(l)(10). If a consular officer denies such as case, no appeal is permitted; however, the petitioner may file an individual L petition in such a case. See 8 CFR 214.2(l)(5)(ii)(E).

- ☞ 4. The *AFM* **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD 05-26 July 28, 2005	Chapters 32.3, 32.4(a), and 32.5	This memorandum replaces Chapters 32.3, 32.4(a), and 32.5 with revised Chapters 32.3, 32.4(a), and 32.5 of the <i>Adjudicator's Field Manual (AFM)</i> .
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cc: CIS Headquarters Directors
Bureau of Immigration and Customs Enforcement
Bureau of Customs and Border