

REQUEST FOR EVIDENCE

I-129 L-1 Intracompany Transferees: L-1A New Office (First Year)

You filed Form I-129, Petition for a Nonimmigrant Worker, seeking L-1 nonimmigrant classification for (beneficiary). You seek to employ the beneficiary as President.

The L-1 classification may be granted to an individual 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;
- Seeks to enter the United States temporarily to render services to a branch of the same employer, or a parent, affiliate, or subsidiary; and
- Will work in a capacity that is managerial or executive, or involves specialized knowledge.

To process your petition and determine if the beneficiary is eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Note, however, that you are responsible for providing evidence that best shows that you and the beneficiary meet all requirements. Evidence must show that both you and the beneficiary were eligible for the requested benefit when you filed Form I-129.

USCIS checks all petitions filed for this classification in its Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations petitioning to employ foreign workers. For more information about this program, please visit USCIS's website at www.uscis.gov/VIBE.

Request for Translations

All foreign language documents must have a complete English translation to establish eligibility. This includes any documents you submit in response to this Request for Evidence.

In order for USCIS to consider this evidence, you must submit English language translations for each document. The translator must certify that:

- The translations are accurate and complete; and
- He or she is competent to translate from the foreign language into English.

General Petitioner Requirements for the L-1A Classification

To qualify for the L-1A classification, you must show:

- That you and the organization which employed or will employ the beneficiary are qualifying organizations;
- The foreign entity is doing business; and
- The U.S. entity is, or will be, doing business.

To satisfy these requirements, you submitted:

- Articles of Incorporation for the U.S. company, dated May 8th, 2014, indicating the corporation has authorized the issuance of 1,000,000 shares;
- Bylaws for the U.S. company indicating that 100,000 shares have been issued to the foreign company in exchange for \$100,000 in capital;
- Stock Certificate #1, dated June 25th, 2014, indicating that 100,000 shares of common stock have been issued to the foreign company;
- Stock Ledger matching the issuance of the Stock Certificate;
- Untranslated Wire Transfer documents dated June 17th, 2014 indicating that \$50,000 had been transferred;
- Untranslated Wire Transfer documents dated June 17th, 2014 indicating that \$50,000 had been transferred;
- Untranslated Wire Transfer documents dated June 27th, 2014 indicating that \$50,000 had been transferred;

Qualifying Relationship: Ownership and Control. To transfer an employee from a foreign entity to a U.S. entity as an L-1 nonimmigrant, a qualifying relationship must exist between the two entities. Qualifying relationships may occur between branches of the same employer, or amongst parent companies, affiliates, or subsidiaries. To show this relationship, you must provide evidence of ownership and control of these entities.

For the purposes of L-1 classification, ownership means the legal right to have possession of an organization. Control means the legal or actual ability to exercise authority or influence over an organization.

Ownership and Control of the U.S. Entity

The evidence you submitted is insufficient. According to the bylaws that you submitted for the U.S. company the foreign company was to contribute \$100,000 in exchange for 100,000 shares of common stock in the U.S. company. You submitted Stock Certificate #1, dated June 25th, 2014, for the U.S. company indicating that 100,000 shares of common stock had been issued to the foreign company, however, you did not provide any evidence to illustrate that the foreign company exchanged capital for the 100,000 shares. You did submit untranslated wire transfer receipts indicating that a total of \$150,000 had been remitted, yet USCIS is unable to establish who is the remitter of the funds is. Moreover, you did not provide any documentary evidence that the foreign company contributed any capital in exchange for ownership in the U.S. company. You may still submit evidence to satisfy this requirement.

Evidence may include, but is not limited to, copies of:

- Proof of stock purchase or capital contribution in exchange for ownership, such as the following:
 - Wire transfer receipts;
 - Bank statements;
 - Cancelled checks;
 - Deposit receipts; or
 - Customs forms showing receipt of goods and their value.
- A capitalization table.
- A term sheet, letter of intent, memorandum of understanding, or other similar document signed by the parties to the agreement specifically outlining the details of investment in your company.

General Requirements for an L-1A Manager or Executive in a New Office

If the beneficiary will be a manager or executive who will open or be employed in a new office in the United States, you must also show:

- Sufficient physical premises to house the new office have been secured;
- The beneficiary was employed in an executive or managerial capacity for one continuous year in the three year period before the time of his or her application for admission to the United States;
- The proposed employment involves executive or managerial authority over the new office; and
- The proposed U.S. office will support an executive or managerial position within one year.

To satisfy these requirements, you submitted:

- A cover letter with a description of the beneficiary's duties with the foreign company;
- A cover letter with a description of the beneficiary's proposed duties with the U.S. company;
- A copy of the foreign company's organizational chart;
- A copy of the proposed organizational chart for the U.S. company.

Managerial or Executive Position Abroad. The beneficiary must have at least one continuous year of full-time employment abroad with a qualifying organization within the three years before his or her application for admission to the United States. The position must have been managerial or executive.

The evidence you submitted is insufficient. The description of duties you provided for the beneficiary's position with the foreign company was vague and did not include a percentage of time that he dedicates to his tasks. You may still submit evidence to satisfy this requirement.

Evidence may include, but is not limited to:

- A letter from an authorized representative of the foreign entity describing the beneficiary's executive decisions made on its behalf. The letter should describe the beneficiary's typical executive duties, and the percentage of time spent on each. In addition, the letter should address:

- How the beneficiary directed the management of the organization, or a major component or function of the organization;
- How the beneficiary established the goals and policies of the organization, component, or function;
- How the beneficiary exercised wide latitude in discretionary decision-making; and
- Whether the beneficiary received only general supervision or direction from higher level executives, the board of directors, or stockholders.

One Year Requirement. You must show the new office will support an executive or managerial position within one year of petition approval. You must show this with evidence regarding:

- The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
- The size of the U.S. investment and the financial ability of the foreign entity to pay the beneficiary and to begin doing business in the United States; and
- The organizational structure of the foreign entity.

The evidence you submitted is insufficient. You did not provide any evidence to illustrate that the foreign company contributed any capital to the U.S. company. Furthermore, you did not provide a business plan for the U.S. company that included a timetable for each proposed action for the one year starting with the date of filing your Form I-129. Furthermore, the proposed organizational chart that you submitted did not indicate what the proposed staffing of the office would reflect after one year of the approval of the petition. You may still submit evidence to satisfy this requirement.

Evidence may include, but is not limited to:

Information regarding the proposed nature of the new office, describing the scope of the entity, its organizational structure, and its financial goals:

- An original letter from the foreign entity explaining the need for the new office in the United States. The letter should indicate the proposed number of employees and types of positions they will hold; the amount of the U.S. investment; and the financial ability of the foreign company to pay the beneficiary and commence doing business in the United States. In addition the letter should explain how the proposed business venture will, within one year, support a managerial or executive capacity position.
- A copy of a feasibility study, market research study, or similar, by which the foreign parent company determined the need for, and the probability that the proposed U. S. company would support, a manager or executive within one year of approval of the petition.
- A copy of the business plan or executive summary for commencing the start-up of the new office in the United States. The plan or executive summary should include a timetable for each proposed action for the one year starting with the date of filing Form I-129.
- Minutes of the meetings for the foreign entity to illustrate the discussions to form the U.S. entity.

- A copy of the proposed United States line and block organizational chart, showing all hierarchy and staffing levels. List all proposed positions, summary of proposed duties, and expected educational levels. Include names of employees filling the positions, if known.

Information regarding the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States:

- Proof of capital contribution to the U.S. entity, such as the following:
 - Initial wire transfers;
 - Cancelled checks;
 - Deposit receipts; or
 - Bank statements originating in the United States detailing monetary amounts for the capital contribution.
- A capitalization table.
- A term sheet, letter of intent, memorandum of understanding, or other similar document signed by the parties to the agreement specifically outlining the details of investment in your company.
- Documents showing the foreign entity paid for services to start business at the U.S. location. This could include evidence of vendor contracts, utilities, payroll, legal and accounting fees, a lease agreement, etc.
- The U.S. entity's business bank statements, if available.
- Current letters from the U.S. entity's bank indicating when its accounts were opened, current status, and average balances.
- The U.S. entity's most recent federal income tax return, if applicable.
- Stock purchase agreements.

Information regarding the organizational structure of the foreign entity:

- A copy of the foreign entity's organizational chart or diagram, showing its organizational hierarchy and staffing levels.

Beneficiary is Owner or Major Stockholder of Company

If the beneficiary is an owner or major stockholder of the company, you must provide additional evidence. Specifically, you must also show:

- The beneficiary's services will be used for a temporary period; and
- The beneficiary will return abroad or depart the United States upon completion of the temporary services in the United States.

You did not submit any evidence for this requirement. You may still submit evidence to satisfy it.

Evidence may include, but is not limited to:

- A contract showing a future assignment at the foreign entity and the beneficiary's expected date of return.

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- A statement by the U.S. entity explaining the plan to replace the beneficiary's services upon his or her return to the foreign entity.
- A statement by the representative of the foreign entity. The statement may explain:
 - How the beneficiary's duties will be covered during his or her period away;
 - The expected return date of the beneficiary to the foreign entity; and
 - The position to which the beneficiary will return.