

Department of Homeland Security **Office of Inspector General**

Implementation of L-1 Visa Regulations





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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 9, 2013

MEMORANDUM FOR: The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services

Thomas S. Winkowski
Deputy Commissioner of U.S. Customs and Border Protection,
Performing the duties of the Commissioner of CBP
U.S. Customs and Border Protection

FROM: Charles K. Edwards
Deputy Inspector General

SUBJECT: *Implementation of L-1 Visa Regulations*

Attached for your action is our final report, *Implementation of L-1 Visa Regulations*. We incorporated the formal comments from U.S. Citizenship and Immigration Services and U.S. Customs and Border Protection in the final report.

The report contains 10 recommendations aimed at improving the L-1 visa program. Recommendations 1, 2, 3, 6, 8, 9, and 10 are directed to USCIS. Recommendations 4, 5, and 7 are directed to CBP. Your office concurred with all recommendations directed to it. Recommendations 2, 3, 4, 5, 8 and 9 are unresolved. Based on information provided in your response to the draft report, we consider recommendations 1, 6 and 10 resolved and open. Recommendation 7 is closed. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendation(s). The letter should be accompanied by evidence of completion of agreed-upon corrective actions.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security.

We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Deborah Outten-Mills, Acting Assistant Inspector General for Inspections at (202) 254-4015.

Attachment



Table of Contents

Executive Summary.....	2
Background	2
Results of Review	6
Guidance on Specialized Knowledge Would Promote Consistent L-1B Adjudications	6
Recommendation	10
Blanket Petitions	10
Recommendations	14
CBP Officers Need Additional Training and Guidance To Process L-1 Petitions at Designated Canadian Ports of Entry and Preclearance Stations Effectively	14
Recommendation.....	17
Procedures for the L-1 Visa Fee Collection Process Need To Be Improved	17
Recommendation.....	18
USCIS Can Increase Efforts To Verify the Legitimacy of New Office Petitions	18
Recommendation.....	22
The Validation Instrument for Business Enterprises Can Promote Consistency Within the L-1 Visa Program	23
Recommendations	24
Consistent Application of the 2004 Visa Reform Act Would Increase L-1 Visa Program Integrity.....	25
Recommendations	26
Management Comments and OIG Analysis	27



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendixes

Appendix A: Objectives, Scope, and Methodology	333
Appendix B: Management Comments to the Draft Report	344
Appendix C: Regulation Definitions.....	399
Appendix D: Top Ten L-1 Employers, FY 2002 – FY 2011	42
Appendix E: H-1B and L-1B Submissions, FY 2002 – FY 2011	43
Appendix F: Major Contributors to This Report	44
Appendix G: Report Distribution	45

Abbreviations

AAO	Administrative Appeals Office
CBP	U.S. Customs and Border Protection
CBPO	Customs and Border Protection Officer
CFR	Code of Federal Regulations
D&B	Dun and Bradstreet
DHS	Department of Homeland Security
DOS	Department of State
FDNS	Fraud Detection and National Security Directorate
FY	fiscal year
IMMACT	<i>Immigration Act of 1990</i>
INS	U.S. Immigration and Naturalization Service
ISO	Immigration Services Officer
OIG	Office of Inspector General
POE	port of entry
RFE	Request for Evidence
USCIS	U.S. Citizenship and Immigration Services
VIBE	Validation Instrument for Business Enterprises
VRA	<i>L-1 Visa and H-1B Visa Reform Act of 2004</i>



Executive Summary

Senator Charles Grassley requested that the Department of Homeland Security (DHS) Office of Inspector General examine the potential for fraud or abuse in the L-1 intracompany transferee visa program. The L-1 visa program facilitates the temporary transfer of foreign nationals with management, professional, and specialist skills to the United States.

Through domestic and international fieldwork, we observed DHS personnel and Department of State consular officials process L-1 petitions and visas. We also interviewed 71 managers and staff in DHS and the Department of State.

Although U.S. Citizenship and Immigration Services regulations and headquarters memorandums provide guidance regarding the definition of specialized knowledge, they are insufficient to ensure consistent application of L-1 visa program requirements in processing visas and petitions. More communication between DHS and the Department of State would improve the processing of blanket petitions. We determined that program effectiveness would be improved and risks reduced with additional effort in (1) training for Customs and Border Protection Officers that will enable them to fill their L-1 gatekeeper role at the northern land border more effectively, (2) improving internal controls of the fee collection effort at the northern land border, (3) more rigorous consideration of new office petitions to reduce fraud and abuse, (4) providing an adjudicative tool that is accessible to all Federal personnel responsible for L-1 decisions, and (5) consistently applying Visa Reform Act anti-“job-shop” provisions to L-1 petitions.

These issues increase the opportunity for fraud and abuse in the L-1 visa program. We are making 10 recommendations to improve the integrity of the L-1 visa program. The Department concurred with all recommendations.



Background

U.S. Citizenship and Immigration Services (USCIS) approves or denies applications for various immigration benefits, including petitions for temporary workers. The L-1 visa program originated with the 1970 amendments to the *Immigration and Nationality Act*.¹

Legal authorities that control the L-1 visa program include the following:

- 1970 Amendments to the *Immigration and Nationality Act*: Established the L-1 visa program.
- *8 Code of Federal Regulations (CFR) § 214.2(l)(1)(ii)(D)(1987)*: Amended the regulatory definition of specialized knowledge first published by the U.S. Immigration and Naturalization Service (INS) in 1983.
- *Immigration Act of 1990 (IMMACT)*: Provided the first statutory definition of specialized knowledge and effectively made inapplicable the previous regulatory definition that stated the foreign national was required to possess “proprietary” knowledge in order to qualify as an L-1B nonimmigrant; increased limits on legal immigration to the United States; and revised and established new nonimmigrant admission categories.²
- *8 CFR § 214.2(l)(1)(ii)(D)(1991)*: Amended the definition of specialized knowledge in the *Immigration Act of 1970*.
- *North American Free Trade Agreement of 1994*: Allowed Canadian and Mexican citizens to temporarily enter the United States by applying for immigration benefits directly at a Class A port of entry or a U.S. preclearance/preflight station in Canada.³
- *L-1 Visa and H-1B Visa Reform Act of 2004*: Requires that any employee with specialized knowledge who will be primarily located offsite must be controlled and supervised by the petitioning company, and the placement of the foreign national will not be an arrangement to provide labor for hire, but rather will be a placement in connection with the provision of products or services for which specialized knowledge specific to the petitioning employer is necessary.⁴

The L-1 visa is one of many visa types that require an approved petition. Before a foreign traveler can apply for such a visa, a multinational company (the petitioner) must submit a petition (Form I-129) to USCIS requesting that USCIS make a determination that the intending traveler (the beneficiary) fits within the L-1 visa category. USCIS examines the qualifications of both the petitioner and the beneficiary, refers to the

¹ See INA § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L), as added by Pub. L. No. 91-225, Sec. 1(b).

² Pub. L. 101-649.

³ 8 CFR 214.2(b)(4).

⁴ See INA § 214(c)(2)(F), 8 U.S.C. § 1184(c)(2)(F), as added by Pub. L. No. 108-447, Sec 412(a).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

requirements imposed by the law, and either approves or denies the request. For the L-1 visa, there are restrictions as to which companies can apply for L workers and what kinds of employees might qualify.

An L-1 employee sent to work temporarily in the United States by the petitioning employer must qualify in one of two subcategories:

- L-1A – an alien performing services in a managerial or executive capacity.
- L-1B – an alien performing services as a specialized knowledge worker.

Managers and executives need not supervise subordinates. The statutory definitions of “managerial capacity” and “executive capacity” at INA § 101(a)(44)(A) and (B), respectively, and the regulations at 8 CFR § 214.2(l)(1)(ii)(B) and (C), allow for functional management. Most L-1 petitions are adjudicated by Immigration Services Officers (ISOs) at the California and Vermont Service Centers. After USCIS approves a petition for a beneficiary who is overseas, a Department of State (DOS) consular officer interviews the individual at a U.S. consulate or embassy.

We examined some aspects of the L-1 visa program in 2006. Our report *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program* (OIG-06-22, January 2006) made three recommendations to improve the program:

Recommendation 1: Establish a procedure to obtain overseas verification of pending H and L petitions by Department of State officers in the related countries.

Recommendation 2: Explore with ICE [U.S. Immigration and Customs Enforcement] whether ICE Visa Security Officers, experienced criminal investigators assigned abroad in compliance with Section 428(e) of the *Homeland Security Act*, could assist in checking the bona fides of L petitions submitted by petitioners in the countries in which the officers are assigned.

Recommendation 3: In cooperation with “L Visa Interagency Task Force,” which consists of representatives from the Departments of Homeland Security, Justice, and State, seek legislative clarification relative to:

- a) applying the concepts of manager and executive to L-1A visas and verifying that the beneficiary will be so used;
- b) the term “specialized knowledge,” as altered in the *Immigration Act of 1990*, and according to USCIS guidance issued in March 1994; and
- c) the criteria and proof required when a foreign company seeks to use an L petition to open a new office in the United States. That almost any foreign



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

business proprietor can effectively petition himself and his family into the United States may not be in accord with congressional intent.

After the release of the 2006 report, USCIS took actions sufficiently consistent with the intent of the recommendations that they were closed.

The 2004 Visa Reform Act Creates Anti-“Job-Shop” Provisions

In 2004, Congress passed the *L-1 Visa and H-1B Visa Reform Act* (VRA), which amended the *Immigration and Nationality Act* (8 U.S.C. 1184(c)(2)) and made significant changes to the L-1 visa category.⁵ One change was the creation of anti-“job-shop” provisions, which are commonly used to describe a firm that petitions for aliens in L-1B status to contract their services to other companies, often at wages that undercut the salaries paid to U.S. workers.⁶

The VRA requires that any employee with specialized knowledge who will be primarily located offsite must be controlled and supervised by the petitioning company. Additionally, the placement of the foreign national will not be an arrangement to provide labor for hire, but rather will be a placement in connection with the provision of products or services for which specialized knowledge specific to the petitioning employer is necessary.⁷ An L-1B applicant must perform specialized knowledge duties related to the petitioning employer. ISOs use the *Adjudicator’s Field Manual* and the July 28, 2005, interoffice memorandum from USCIS as guidance to deny petitions based on the VRA anti-“job-shop” provisions.⁸ This memorandum and the above-noted *Adjudicator’s Field Manual* revisions provide guidance to USCIS officers in the field regarding amendments made by the VRA.⁹

Data Trends and Comparisons

USCIS approvals for L-1 petitions peaked in fiscal year (FY) 2007 at 57,218. The number of approved petitions has declined each year since then, with a total of 33,301 L-1 approvals in FY 2011.¹⁰ Of this amount, India has led the world in L-1 visa approvals, with 26,919 L-1 visas issued in FY 2011. The United Kingdom, Japan, Canada, and

⁵ See INA § 214(c)(2)(F), 8 U.S.C. § 1184(c)(2)(F), as added by Pub. L. No. 108-447, Sec 412(a).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ USCIS, *Adjudicator’s Field Manual*, Chapters 32.3, 32.4(a) and 32.5.

⁹ Interoffice Memorandum from William R. Yates on Changes to the L Nonimmigrant Classification made by the L-1 Reform Act of 2004 to USCIS Regional Directors, District Directors, Officers-in-Charge, and Administrative Appeals Office Director (July 28, 2005).

¹⁰ U.S. Citizenship and Immigration Services, Office of Performance and Quality, Data Analysis and Reporting Branch, February 24, 2012.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Mexico maintain the next highest number of L-1 visa approvals, respectively, with a total of 16,823 issuances in FY 2011. Between FY 2003 and FY 2010, these five countries accounted for 75.7 percent of L-1 entries into the United States.¹¹

Since FY 2002, the 10 companies identified in appendix D have received the most L-1 approvals from USCIS. Most of these companies petition for more L-1B specialized knowledge workers than for L-1A managers.

L-1 Visas as H-1B Substitutes

Some observers have expressed concern that the L-1 visa program, which has no numerical limit, may be used to avoid the more stringent H-1B program requirements.¹² For example, the L-1 visa does not require the filing of a Labor Condition Application with the Department of Labor. The dependent spouse of an L-1 employee is normally allowed to work while in the United States, whereas the dependent spouse of an H-1B employee is not.¹³ An H-1B worker must have a specialty occupation, while an L-1B beneficiary must only possess specialized knowledge.

Some employees might properly be considered eligible for either classification based on their qualifications. However, the data we reviewed provides no conclusive evidence that the L-1 visa program is being used to avoid H-1B restrictions. Since FY 2008, the ratio of H-1B to L-1B submissions has actually increased, as shown in appendix E. More H-1B petitions were submitted per each L-1 petition in FY 2011 than in the previous six FYs.

The L-1 visa program generates various opinions from organizations. Numerous publications have discussed the costs and benefits of the H-1 and L-1 visa programs. Opponents of the L-1 visa program feel that it drives down salaries, reduces employment opportunities for domestic technology workers, and allows unscrupulous petitioners to exploit the foreign beneficiaries.¹⁴ However, proponents of the L-1 visa argue that this program allows U.S. firms to remain innovative and recruit and retain the “best and the brightest.”¹⁵

¹¹ Ibid.

¹² *L Visas: Big Businesses Loophole for Displacing American Workers*, April 2008.

¹³ Ibid.

¹⁴ <http://dpeaflcio.org/programs-publications/issue-fact-sheets/guest-worker-visas-the-h-1b-and-l-1/>

¹⁵ Department for Professional Employees, *Gaming the System 2012*, p. 16.



Results of Review

Guidance on Specialized Knowledge Would Promote Consistent L-1B Adjudications

We reviewed L-1 petitions ranging from the restaurant industry to the information technology field, and concluded that adjudicators reach different decisions despite similar fact patterns. Consistent adjudications are vital to stakeholder companies because USCIS decisions are key factors in a company's decision to transfer employees to the United States.

Previous Laws and Policies Governing Specialized Knowledge

The L-1 visa classification was created by Congress in 1970 without providing a statutory definition of "specialized knowledge." The U.S. Immigration and Naturalization Service (INS) published a regulatory definition for the first time in 1983. In February 1987, the INS amended its definition of specialized knowledge as "knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organization's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market."¹⁶ This definition required an employee to be a key person with materially different knowledge and expertise that is critical for job performance and relates exclusively to the employer's proprietary interest.¹⁷

In 1988, INS issued a policy memorandum instituting a broader interpretation of specialized knowledge, defining it as "special knowledge possessed by an employee that is different from or surpasses the ordinary or usual knowledge of an employee in the particular field."¹⁸

The *Immigration Act of 1990* (IMMACT) enacted the first statutory definition of specialized knowledge, clarifying that the beneficiary's knowledge need not be proprietary to the petitioner or limited in the U.S. labor market. IMMACT states that an "alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced

¹⁶ 8 CFR § 214.2(l)(1)(ii)(D)(1989).

¹⁷ Matter of Sandoz Crop Protection Corporation, 19 I&N Dec. 66 (Comm. May 20, 1988).

¹⁸ Interoffice memorandum from Richard Norton, Associate Commissioner, U.S. Immigration and Naturalization Service to All Regional Commissioners and All Regional Service Center Directors (October 20, 1988) (on file with USCIS).



level of knowledge of processes and procedures of the company.”¹⁹ Following the passage of IMMACT, Congress noted that nonimmigrant visas, such as the L-1 and H-1B, had enhanced trade and accommodated useful movement of people and products.²⁰

As a result of IMMACT, INS promulgated the existing regulatory definition of specialized knowledge at 8 CFR § 214.2(l)(1)(ii)(D). Federal immigration officials issued several policy memorandums providing guidance on what should be considered specialized knowledge. A July 1991 INS regulation gave the interpretation of specialized knowledge that the individual must possess “special knowledge” that applies in international markets or “an advanced level of knowledge or expertise in the organization’s processes and procedures.”²¹ In March 1994, INS issued the memorandum “Interpretation of Specialized Knowledge,” which noted that a petitioner’s assertion that an alien’s knowledge is different does not establish that the alien possesses specialized knowledge.²² In September 2004, USCIS issued the memorandum “Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L-1B status.” This memorandum clarified guidance in the 1994 memorandum that chefs or specialty cooks generally are not considered to have “specialized knowledge” for L-1B purposes, even though they may have knowledge of a restaurant’s special recipe or food preparation technique.²³

In 2008, the Administrative Appeals Office (AAO) issued a non-precedent decision on an appeal submitted by GSTechnical Services (GST). In the GST decision, the AAO concluded that routine work experience and knowledge of a company’s products do not constitute specialized knowledge.

ISOs Do Not Apply the Specialized Knowledge Definition Uniformly

In an effort to understand how specialized knowledge is applied, we reviewed petitions at the USCIS service centers and studied more than 250 petition denials that were appealed to the AAO. When a service center denial is upheld, the AAO explains to the petitioner the deficiencies in the case. Unsuccessful petitioners, industry groups, and the immigration bar raise concerns that USCIS is denying

¹⁹ 8 U.S.C. § 1184(c)(2)(B).

²⁰ 1990 U.S.C.C.A.N. 6746.

²¹ 56 FR 31553 (1991).

²² Interoffice memorandum from James Puleo, Acting Executive Associate Commissioner, U.S. Immigration and Naturalization Services to District Directors, Officers in Charge, Service Center Directors, Director of Administrative Appeals Unit and Office of Operations (March 9, 1994) (on file with USCIS).

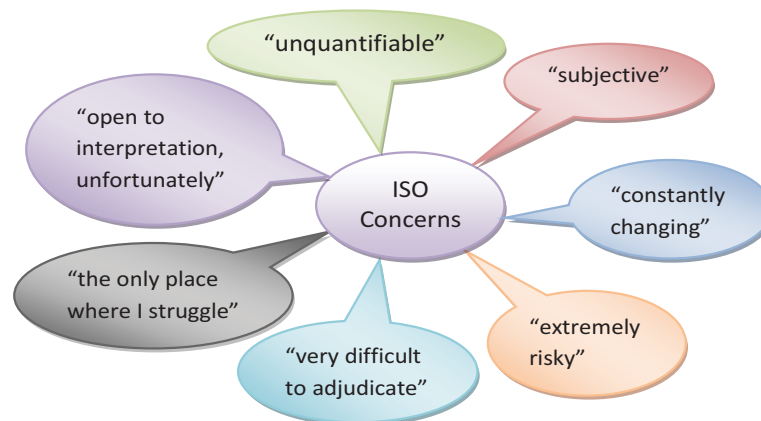
²³ Interoffice memorandum from Fujie O. Ohata, Director, Service Center Operations, U.S. Citizenship and Immigration Services to Service Center Directors (September 9, 2004) (on file with USCIS).



OFFICE OF INSPECTOR GENERAL Department of Homeland Security

petitions that should be approved. After examining the files, we conclude that the low number of successful appeals and the detailed explanation by AAO of the deficiencies in the underlying petitions indicate that service centers are not unduly restrictive.

ISOs we interviewed said that specialized knowledge petitions are complicated to adjudicate because specialized knowledge has not been adequately defined. The terms they used to describe their concerns to us included the following:



ISOs told us that when adjudicating specialized knowledge petitions, the general principle is “you know it when you see it.” The absence of a meaningful definition for specialized knowledge could undermine consistent L-1B adjudications.

ISOs informed us that even after receiving specialized knowledge training, they remain unable to apply the law and policy to L-1B petitions consistently. They described a class that they had recently taken as very generic. To increase the value of training, ISOs suggested that USCIS should use real life examples. USCIS has been developing specialized knowledge guidance to replace the outdated March 1994 memorandum.

In our 2006 report *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program* (OIG-06-22, January 2006), we wrote: “One Southeast Asian visa section reported officers do not have the knowledge or the guidance necessary to determine whether such work involves specialized knowledge, except in the most clear cut cases.”²⁴ During this review, we determined that despite efforts to implement guidance that has been provided, confusion about the application of specialized knowledge still results in inconsistent adjudications.

²⁴ *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, OIG-06-22 (January 2006), p. 11.



The Statutory Definition of Specialized Knowledge Is Vague and Unclear

The L-1 definition contained in the Immigration and Nationality Act does not clearly distinguish between employees with and without specialized knowledge.²⁵ As a result, decision making for specialized knowledge petitions is inconsistent, and unsuccessful petitioners do not understand why their petitions are denied.

There is a vigorous public debate between stakeholders about what knowledge is specialized and what Congress intended when it legislated the L-1B visa. The debate has been conducted in congressional hearings, policy journals, and letters to the White House.

In the legislative history to the 1970 legislation that created the L-1B visa program, Congress indicated their intent that the classification would be narrowly drawn so that the total number of L-1B beneficiaries would not be large.²⁶ Some in the stakeholder community argue that the 1990 IMMACT intentionally broadened the 1970 constraints with a more liberal definition of specialized knowledge. Other stakeholders, including the AAO, believe that the IMMACT changes did not alter the program's original intent to benefit a small number of beneficiaries.

We believe the AAO's reasoning to be persuasive. The section of the IMMACT that relates to L-1B visas appears to be an effort to clarify, not broaden, the definition of specialized knowledge. A liberal definition of specialized knowledge would open the category to an unlimited number of foreign workers. Congressional intent in 1990 notwithstanding, the need for a clear definition of specialized knowledge creates frustration for USCIS employees and confusion for the public. Because it is not clear which employees should be granted L-1B visas, and because there are no numerical limits on the number that can be approved each year, the potential number of beneficiaries is limitless.

Based on our interviews, file reviews, and stakeholder opinions, we conclude that the primary challenge for the L-1B category is that the statutory language remains open to interpretation. Over the years, the former INS, and now USCIS, have made identifiable efforts to clarify this vague concept. Adjudicators cannot consistently apply a definition that has no clear meaning. Although USCIS regulations and headquarters memorandums provide guidance regarding the

²⁵ 8 U.S.C. § 1101(a)(15)(L).

²⁶ 1970 U.S.C.C.A.N. 2751-2755.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

definition of specialized knowledge, they are insufficient to ensure consistent application of L-1B visa program requirements in processing petitions and visas.

Visa officers abroad also need to make specialized knowledge decisions when they adjudicate visa applications. The DOS periodically sends visa guidance to consular officers at embassies around the world. One message to the field about L-1B visas said, in part (emphasis added):

“Unfortunately, the statutory language defining ‘specialized knowledge’ is not simple or clear. ... [A]n alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company. The phrase ‘specialized knowledge’ is not otherwise defined in the law, and there have been few administrative or judicial opinions interpreting it. This statutory definition has been called tautological, in that it states an alien will serve in a capacity involving specialized knowledge if the alien has special knowledge. As the DHS/AAO noted, ‘the definition is less than clear, since it contains undefined, relativistic terms and elements of circular reasoning.’ A decision by a District Court in Washington, D.C. was even more critical: **‘Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning.’**”²⁷

Recommendation

We recommend that USCIS:

Recommendation #1:

Publish new guidance to clarify the USCIS interpretation of specialized knowledge. This guidance should be sufficiently explicit to give adjudicators an improved basis for determining whether employees of a petitioning entity possess specialized knowledge.

Blanket Petitions

Regular visa petitions provide required information about both the petitioner and the beneficiary. For an L visa to be issued, the petitioner must be a company operating in at least two countries, one of which is the United States, and the

²⁷ Telegram 11State002016, January 2011.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

beneficiary must be an employee. This report discusses the challenge that ISOs face deciding whether the petitioning company meets the complicated definition of an L-1 entity, and the beneficiary qualifies as an executive or possesses specialized knowledge. To gain USCIS approval, an L-1 petitioner provides extensive information about corporate ownership, business activities, and the relationships among its parent, branches, subsidiaries, and affiliates.

This burden is eased for companies that meet specific criteria. If a petitioner meets specific requirements for size and the number of related entities, for example, they are allowed to establish the required intracompany relationships by filing a blanket petition.²⁸ The blanket petition allows a petitioner to seek continuing approval of itself and some or all of its parent, branches, subsidiaries, or affiliates as qualifying organizations.²⁹

With the approved blanket petition as support, individual employees can later apply for L-1 visas.³⁰ The petitioner can send employees to the United States repeatedly without needing to prove the petitioning company's eligibility. The transferring employees will report to the consular office in their home country to prove their individual eligibility for the L-1 classification as a manager, executive, or specialized knowledge worker. The approval of a blanket L petition does not guarantee that an employee will be granted an L-1 visa. However, it does provide the employer with the flexibility to transfer eligible employees to the United States quickly and with short notice without having to file an individual petition with USCIS. In most cases, once the blanket petition has been approved, the employer should complete Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, and send it to the employee along with a copy of the blanket petition Approval Notice and other required evidence, so that the employee may present them to a consular officer.

Different Standards of Proof Create Inconsistencies in L-1 Adjudications

The blanket petition process causes unease among both USCIS ISOs and DOS consular officers. Some ISOs are concerned that consular officers abroad might interpret specialized knowledge too loosely when considering blanket beneficiaries. Consular officers are troubled that employees who are denied L-1 visas abroad can later obtain individual petitions filed on their behalf by the same employer. We interviewed consular officers in India who expressed concerns that some of the beneficiaries of individual petitions who are approved

²⁸ See appendix C for the definition of a blanket L-1 petition and a list of criteria required for companies to file.

²⁹ Ibid.

³⁰ 8 CFR § 214.2(l)(4).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

by USCIS adjudicators would not be approved by consular officers due to their knowledge not being specialized.

Consular officers use a “clearly approvable” standard to determine the qualifications for any previously unnamed beneficiary applying for an L-1 visa under an approved blanket petition. Clearly approvable means that (1) the petitioner is unambiguously an executive or manager, or possesses specialized knowledge; (2) supporting documentation establishes that all requirements are met; and (3) there are no indications of fraud.

USCIS ISOs evaluating whether the named beneficiaries of regular L-1 petitions have specialized knowledge use a preponderance of evidence standard. The preponderance of evidence standard requires only that the evidence supporting the applicant’s claim is probably true. This, USCIS explains, means that the applicant is more likely eligible than ineligible.

ISOs are experts in the nuances of difficult adjudications of L-1 petitions. They have received relevant L-1 specific training and have years of petition experience. L-1 petitions processed at the Service Centers are decided by specific teams that concentrate on this kind of petition. In contrast, consular officers move from assignment to assignment, do not usually adjudicate petitions, and have had no USCIS training. Any particular visa officer may have previously adjudicated only a few L-1 visa cases. To have consular officers approve only cases that are clearly approvable may be a reasonable means to channel the more complicated cases back to USCIS to be decided by more experienced adjudicators. Nevertheless, the two standards create a disparity: beneficiaries whom consular officers determine to not be unambiguously approvable, but whom USCIS determines to be more likely than not approvable.

When a consular officer denies a visa applicant seeking an L-1 visa under a blanket petition, the employer can submit an individual petition for the same employee. This individual petition will be adjudicated at one of the two Service Centers that process L petitions. Some of the consular officers with whom we spoke noted that some L-1 visa applicants applying under a blanket petition are denied at post because they do not have specialized knowledge, but then reappear months later as the named beneficiaries of an individual petition approved by USCIS. The officers understood that any such occurrence might be a standard of proof issue, but that their adverse decision had been based on a face-to-face interview; USCIS did not have that opportunity. They also noted that with a second opportunity, the applicant might submit different information to USCIS.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

The second petition is supposed to state the reason why the named alien was denied an L-1 visa under the blanket procedure and must specify the consular office that made the determination.³¹ However, because the process depends on self-reporting, vulnerabilities may ensue.

Although ISOs and consular officers processing L-1 petitions have different missions and guidelines, they recognize the benefit of increased communication about specialized knowledge issues. As a solution, ISOs and consular officers suggested periodic visits by visa officers to the Vermont or California Service Centers and familiarization trips by senior USCIS adjudicators to the posts in India where most L-1 visas are adjudicated.

A Best Practice: Consular Team India Consolidates Blanket L-1 Cases

In December 2011, Department of State (DOS) visa posts in India centralized blanket L-1 petition processing in Chennai. Posts in India process the most L-1 visas in the world, with 37 percent of total visas worldwide in FY 2011. Almost 90 percent of these petitions were for blanket L-1 visas. According to Consular Team India, “India is the only country in the world where companies have built a business model dependent on using blanket L-1s to send large numbers of personnel to the United States who would otherwise require H-1Bs.” Consolidation was implemented at the recommendation of the DOS Office of Inspector General, urging more supervision, consistency, and centralization of visa operations in India.

Prior to consolidation, L-1 visa standards lacked uniformity. Inconsistencies among posts and the complexity of this visa category created fairness issues; petitioning companies noted different outcomes for their employees with similar circumstances.

Immediately following consolidation, Chennai started to see positive results in its adjudicative process. Consular officers in Chennai handled more cases and became more confident and expert. As a result, the number of unqualified applicants has decreased and fraud indicators have declined.

Source: Department of State, Consular Affairs, *Briefing for DHS OIG Team*, April 16, 2012.

³¹ Ibid.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

We believe that ISOs and consular officers possess mutually beneficial L-1 expertise. Increased communication would enhance the effectiveness of the L-1 visa program. This communication might include joint training exercises or videoconference “round table” workgroups.

Recommendations

We recommend that USCIS:

Recommendation #2:

Screen L-1 beneficiaries against a list of persons previously denied visas by DOS consular officers.

Recommendation #3:

Develop broader working-level communications opportunities between ISOs adjudicating L petitions and DOS consular officers adjudicating L visa applications.

CBP Officers Need Additional Training and Guidance To Process L-1 Petitions at Designated Canadian Ports of Entry and Preclearance Stations Effectively

We previously described the careful review that most L petitions receive at USCIS Service Centers and the scrutiny that DOS consular officers pay to L visa applicants. However, neither of these things happens when a Canadian seeks to cross the northern border as an intracompany transferee.

Canadians are exempt from many nonimmigrant visa requirements and usually apply for admission to the United States at the land border without first obtaining a visa. This has several effects on the scrutiny a Canadian L applicant receives compared with all other nationalities.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

	Most Nationalities	Canadian L Applicant
L-1 Petition	Approved or denied by a small cadre of USCIS adjudicators. The employees do employment visa cases exclusively and have received significant training relevant to this duty.	The first U.S. Government official to see the petition is a Customs and Border Protection Officer (CBPO), who performs the full range of U.S. Customs and Border Protection (CBP) duties and may process only a small number of L cases in a month.
Available Tools	The USCIS <i>Adjudicator's Field Manual</i> contains extensive information about how to process L petitions. USCIS has the ability to quickly verify the existence of the petitioning company. Unclear petitions are subject to Requests for Evidence.	CBP does not have these tools. Processing some travelers nights and weekends, CBP often cannot even phone the company to ask questions.
Scrutiny of the Traveler	L visa applicants receive an in-depth personal interview by consular staff at embassies and consulates in the traveler's home country. If there are any deficiencies, the traveler obtains additional documentation from their employer and returns another day for further examination. All visa applicant names are checked automatically against myriad visa security databases.	The traveler appears unannounced at a port of entry (POE) and is processed on the spot. The traveler's name is checked against TECS, which has some but not all of the data available to consular officers. ³² An unsuccessful traveler can, and sometimes does, "port shop" by driving to the next bridge or tunnel and trying their luck again with a different CBPO.

CBPOs assigned at POEs normally permit or deny a traveler's admission into the United States and determine the length of stay on any particular visit.³³ On the Canadian border and at preclearance facilities in Canadian airports, CBPOs also determine whether L-1 petitions are approvable and whether the traveler

³² TECS (not an acronym) is the principal system used by CBPOs at ports of entry to assist with screening and determinations regarding admissibility of arriving persons.

³³ http://travel.state.gov/visa/temp/types/types_1274.html



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

qualifies as an L-1 beneficiary.³⁴ Most of the CBPOs we interviewed feel that an inadequate level of L-1 training hampers their effectiveness.

Basic training courses for entry-level CBPOs at the Federal Law Enforcement Training Center cover inspection processes, visa classifications, and the statutory grounds for traveler inadmissibility. Basic training also introduces all other laws, rules, and regulations that CBP enforces, many of which are customs-related. The curriculum for entry-level CBPOs does not include L-1 visa training.

Upon arrival at their first POE, new officers receive on-the-job training specific to that port of entry. L-1 visa training at the POEs we visited was limited to written material saved from a previous training event and on-the-job training administered by more experienced colleagues. This type of training is beneficial, but more structured training would ensure greater consistency in assessing qualifications for L-1 visa benefits.

We heard concerns about northern border cases from the USCIS adjudicators and fraud detection specialists we interviewed. One USCIS fraud specialist said that while on detail to a northern border port of entry, he witnessed CBPOs accepting L-1 petitions that were 20 years old, missing pages containing vital information, or missing appropriate supporting documentation. Several fraud specialists we interviewed told us that they believe that there are fraud concerns with petitions processed by CBPOs. For example, an applicant whose admission is denied may withdraw their application and reapply at another POE. Because of the inconsistency in the decision-making process, a petition that was denied at one POE may be approved at another. The majority of the USCIS adjudicators we interviewed consider L determinations to be complex, and do not consider northern border CBPOs adequately trained or resourced to make quality L decisions.

Many of the CBPOs we interviewed agree with the concerns expressed by USCIS adjudicators. Some questioned the visa security implications of asking CBPOs on the northern border to make L-1 visa determinations that in all other contexts would be made by better equipped USCIS adjudicators. To do the best job they can, they reserve L processing for their more experienced officers, but worry that L-1 visa processing diverts these experienced POE staff away from the core mission of stemming the flow of illegal drugs, terrorists, and undocumented aliens into the United States. CBPOs we interviewed provided the following suggestions for how to strengthen the northern border L-1 process:

³⁴ The NAFTA Adjudications – Training Materials, slide 112.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

- Limit the number of POEs making L-1 determinations, and provide the service only Monday through Friday during normal business hours. This would allow CBP to concentrate the workload and assign it to a small number of better trained and more experienced officers who could contact petitioning companies when necessary.
- Eliminate the northern POE adjudication service and require L travelers to obtain L visas from consular offices in Canada. Why, some CBPOs asked us, is CBP performing a USCIS function? One clear congressional goal when dismantling the former INS was to separate immigration benefit and immigration enforcement operations. Congress assigned benefit determinations to USCIS and enforcement operations to CBP.
- Have USCIS station trained adjudicators at each of the two or three busiest POEs to handle the L workload.

To improve the accuracy of L-1 determinations at the northern border, CBP must increase the amount and quality of L-1 training given to northern border CBPOs.

Recommendation

We recommend that CBP:

Recommendation #4:

Provide thorough L-1 visa training to all CBPOs processing L-1 travelers at ports of entry or preclearance/preflight stations in Canada. Training should include determining petitioner's eligibility, L-1 fraud detection, correct assessment of fees, specialized knowledge, and the provisions of the Visa Reform Act.

Procedures for the L-1 Visa Fee Collection Process Need To Be Improved

L-1 petitioners are required to pay a \$500 fraud fee when they submit a petition. They also must pay a \$2,250 fee if they employ 50 or more employees in the United States with more than 50 percent of their employees in L-1A or L-1B nonimmigrant status.³⁵ USCIS and CBP interviewees told us that CBPOs are sometimes confused about when to collect the fees and how to document the collection. In addition, there is no reliable way for the processing CBPO to know how many petitioning-company employees are in L status in the United States. We determined that appropriate fees were not always charged, and duplicate

³⁵ These fees are also paid by petitioners for some other categories.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

fees were sometimes charged when there were no receipts to prove prior payment.

One USCIS manager stated that after August 2010, when the \$2,250 fee was implemented, 2 months passed before CBP began collecting it.³⁶ One ISO stated that there were meetings at the headquarters level between CBP and USCIS to explain the circumstances under which these fees should be collected. However, CBP headquarters has not issued guidance to the field regarding this issue.

According to one USCIS manager, it was estimated that more than 2,000 petitioners were not charged the \$2,250 fee because CBPOs could not verify whether the petitioners had 50 or more employees. CBP's TECS data system does not have fee collection data fields. To document a fee collection, a text note is usually placed in the general notes field in TECS indicating that the fees were paid.

To improve the integrity of the fee collection process, CBP should establish clear guidelines for fee collection, develop methods to accurately record the payments of fees, and train CBPOs in the new process.

Recommendation

We recommend that CBP, in concert with USCIS:

Recommendation #5:

Establish fraud fee collection guidelines for CBPOs processing L-1 travelers. At a minimum, procedures should prevent incorrect charges to travelers, provide an audit trail, and show CBPOs a history of the traveler's previous fee payments.

USCIS Can Increase Efforts To Verify the Legitimacy of New Office Petitions

The L-1 visa classification allows a foreign company that does not have an affiliated U.S. office to send an executive, manager, or specialized knowledge worker to help start a new office. A new office is "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year."³⁷

³⁶ Pub. L. 111-230.

³⁷ 8 CFR § 214.2(l)(1)(ii)(F).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Although IMMACT requires an L-1 beneficiary to be a manager, executive, or specialized knowledge worker, the head of a new office usually will neither manage employees (who have not yet been hired), oversee ongoing business activities (that have not yet commenced), nor serve as a functional manager of an ongoing business function. Instead, the beneficiary's responsibilities may include conducting nonqualifying duties such as renting office space, buying furniture and equipment, and hiring workers. The L-1 new office regulation grants L-1 status for a 1-year period during which the beneficiary need not meet the L-1 statutory definition and manage subordinates. At the end of the 1-year period, some beneficiaries may not qualify for continuing L-1A or L-1B status if they are not by then engaging primarily in high-level work. An L-1A petitioner must also demonstrate that a manager or executive will be needed and that the office will be doing business in the future.³⁸

According to Chapter 32.3 of the *Adjudicator's Field Manual*, "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 requirement for the nonimmigrant classification." However, because new office petitions include plans and projections, several ISOs explained that there is not much factual evidence in the files they adjudicate. It can only be established at the end of the year whether the beneficiary is entitled to L-1 status. Some ISOs give the new office petitioners the "benefit of the doubt," while other ISOs deny the initial petition if they conclude that the requirements will not have been met after a year. ISOs said that USCIS generally favors approval of initial new office petitions. If definitional requirements are not met after the 1-year period, USCIS can deny the petitioner's request for an extension.

ISOs expressed some concerns about the vulnerabilities associated with new office petitions: one told us that he believed USCIS is lenient with initial new office petitions; another said that new office petitions must have supervisory approval to deny, which diminishes an ISO's discretion.

Our file reviews showed that some new office petitions were approved even when the beneficiary did not submit sufficient evidence that the L-1 beneficiary will meet the regulatory definition after the first year. We also noted instances where petitions received an approval, even though the facts of the cases were similar to other cases that were denied. Examples of problems we observed include the following:

³⁸ 8 CFR § 214.2(l)(3)(v)(C).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

- Lack of a realistic business plan or a plan that is so vague, the petitioner cannot present a viable path to meeting L-1 definitions at the end of the 1-year period;
- Initial staffing structures that raise questions about the future need for an L-1A manager or executive. Common examples we reviewed included gas stations or convenience stores that list several “managers,” with few workers involved in the day-to-day functions of the business;
- Managers who perform nonqualifying work as a central part of their job; and
- Inconsistencies or vagueness in how the beneficiary’s managerial or executive job is described.

We believe that there are program integrity risks with new office petitions and conclude that these petitions are sometimes approved erroneously.

The New Office Regulation Is Inherently Susceptible to Abuse

New office petitions and extensions are inherently susceptible to abuse because much of the information in the initial petition is forward-looking and speculative. For example, some companies cannot accurately forecast exactly how the company would grow to justify an L-1A manager or executive after the 1-year period. It might also not be known at the time of filing exactly where some offices will be located or what equipment will be purchased. ISOs told us that petitioners can present speculative, even imaginary information, or simply recite regulatory definitions in order to receive a new office petition approval.

Several decisions from the Administrative Appeals Office note this abuse:

“the record shows that the beneficiary, two years after the granting of the petitioner’s first “new office” approval, has still been performing many of the non-managerial duties associated with the petitioner’s startup activities.”

“The petitioner has not reported any income or expenses or paid any taxes since its incorporation in October 2005.”

The beneficiary stated that he will form the United States company “once the L-1 is approved.”



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

New office beneficiaries who wish to extend their stay after the 1-year period must submit a request for an extension that allows the beneficiary to remain in the United States for an additional 2 years. The beneficiary can be approved for up to two extensions and stay for a total of 7 years. New office extensions are exempt from the USCIS policy that gives deference to prior approvals.³⁹ However, some ISOs told us that they apply deference to new office petitions approved previously and hesitate to deny extensions, assuming that other colleagues previously examined them favorably.

We learned from our file review and interviews that some understaffed, underfunded, or even inactive companies are abusing the L-1 visa program. One pattern of abuse is an L-1A manager hiring family members and appearing to manage them in order to corroborate their claim to be an L-1A manager or executive. Several non-precedent AAO decisions confirm this: “The petitioner also claims to employ the beneficiary’s spouse as its office manager, but she has indicated on her Form I-539 application that she has not worked in the United States in L-2 status, and she has not submitted an application for employment authorization.”⁴⁰ Spouses of L-1 beneficiaries have L-2 status and are authorized to seek employment in the United States. It should raise a red flag, however, when an L-1 manager includes family members among the supposed staff.

Site Visits Assist Fraud Detection Efforts

An ISO or DOS consular officer can request a site visit to the prospective location of the new office to determine the legitimacy of that location. The site visit is conducted through the USCIS Fraud Detection and National Security (FDNS) unit. Sometimes, an ISO will ask a consular officer at the U.S. embassy in the foreign country to conduct a site visit to verify the legitimacy of the petitioning foreign business. Consular officers told us that because of the demands of their normal duties, it may be difficult to find time to visit businesses in locations far from the embassy or consulate.

In our 2006 report, we learned that petitioners were using the new office provision to petition for themselves and family members to come to the United States. Often, when site visits were conducted, USCIS discovered that the

³⁹ “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 the alien is eligible for the particular nonimmigrant classification sought should be given deference.” See Interoffice Memorandum from William R. Yates on 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 to Service Center Directors and Regional Directors (April 23, 2004).

⁴⁰ EAC 06 [receipt number withheld], September 5, 2007, p. 9.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

business never existed or was no longer doing business in the United States. As a result, the beneficiary no longer qualified for L-1 status because there was no intracompany relationship.⁴¹

Another ploy involves a foreign sole proprietor who opens a new office in the United States, petitions for family members, and then closes the foreign business altogether. Several consular officers said most new office petitions should require a site visit, especially the ones in which applicants petition for themselves and their family.

Several consular officers said they have requested FDNS site visits for new office petitions and found them effective in detecting fraud. We reviewed one case in which USCIS personnel conducted a site visit to a U.S. company and discovered an empty office. Building management told USCIS personnel that the space had been vacant for 2 years and the rent had not been paid in a long time. Further research revealed that the petitioner had attempted to start six other businesses from the same empty office.

In another case, USCIS personnel conducted a site visit to a U.S. company and discovered a leased space with a desk and chair, but no computer, telephone, fax, company signage, or employees. After conducting a follow-up interview with the beneficiary, the beneficiary admitted that his only reason to set up business in the United States was because all of his friends have U.S. residency and he wanted to move his family to the United States.⁴²

L-1 site visits have improved L-1 visa program integrity. A provision in the USCIS regulation to allow new office extensions beyond the 1-year period only after a successful site visit evaluation could deter future petitioners from abusing the new office regulation.

Recommendation

We recommend that USCIS:

Recommendation #6:

Make a site visit a requirement before extending 1-year new office petitions.

⁴¹ *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program*, OIG-06-22 (January 2006), p. 16.

⁴² NIV Petition Revocation Request, EAC-10-[receipt number withheld], February 7, 2011, p. 3.



The Validation Instrument for Business Enterprises Can Promote Consistency Within the L-1 Visa Program

VIBE Acts as an Adjudicative Tool

When a petitioner files an L-1 petition, an ISO must verify that the petitioning organization is financially viable and that a corporate relationship exists between the foreign and U.S. entities. In May 2010, USCIS launched the Validation Instrument for Business Enterprises (VIBE). It is a web-based tool that uses commercially available data to validate basic information about companies petitioning to employ alien workers. VIBE's main goal is to equip adjudicators with information they can use to help determine petitioners' eligibility.⁴³

VIBE scores the petitioning organization's operational and financial viability. The system enables ISOs to identify any inconsistencies in the petition and rule out fraud. VIBE receives information about petitioning organizations from Dun & Bradstreet (D&B), an independent information provider. When an L-1 petition is received, the petitioner's information is transmitted to D&B to be matched with a known commercial entity in the D&B database. When a match is detected, D&B retrieves the information and sends it back to VIBE. VIBE compares the data against a series of specially designed algorithms to score the petition's various elements. VIBE helps ISOs identify any problematic areas in the petition. After the VIBE check, if issues are raised, it may be necessary to send the petitioner a Request for Evidence (RFE) or give the case careful scrutiny.

VIBE Accomplishes Its Mission Objectives

The Service Center Operations directorate of USCIS continually makes improvements to VIBE. For example, an ISO can enter comments into VIBE based on information received from an RFE. This enables the ISO to share with USCIS any relevant information not submitted in the original petition that may be detrimental to the application's approval or denial. VIBE also strengthens USCIS' ability to detect fraud in L-1 petitions. For instance, VIBE is the first USCIS system that can identify a problematic petition sent to an ISO and stop it prior to approval.

⁴³ Validation Instrument for Business Enterprises Program, <http://www.uscis.gov/vibe> (accessed July 30, 2012).



VIBE Is Limited to USCIS

USCIS is the only Federal agency that has unlimited access to VIBE. However, DOS and CBP process L-1 petitions at U.S. embassies and consulates and Class A ports of entry and preclearance stations. Wider VIBE availability to DOS and CBP stakeholders would improve L program integrity.

Several consular officers who process employment-based petitions expressed their wish to be able to access VIBE in order to confirm the bona fides of petitioners. VIBE could provide DOS personnel with access to petitioner information crucial to processing L-1 visa applications. In turn, DOS personnel could increase and strengthen VIBE's library of petitioners. During 2012, USCIS began to make VIBE available to a limited number of DOS consular officers, primarily in Fraud Units.

CBP could also benefit from access to VIBE. We observed a CBPO who attempted to process an employment-based petition. The officer noted discrepancies in the application and attempted to call the petitioner to verify the petitioner's information. However, there was no response at the phone number provided. Because of inadequate information, the officer declined to process the petitioner's application. The applicant was denied entry and instructed to retrieve additional supporting documentation before resubmitting the application. In this instance, VIBE could have eliminated the need for the CBPO to call the petitioning organization to verify discrepancies in the application, since it provides information that establishes the viability of a petitioning organization.

CBP's ability to access VIBE would promote and strengthen L-1 visa adjudicative consistency, increase information sharing among agencies, and further USCIS's anti-fraud mission.

Recommendations

We recommend that CBP:

Recommendation #7:

Request USCIS to provide CBPOs at the northern border ports of entry and preclearance locations with access to VIBE to assist in L-1 petition processing.

We recommend that USCIS:



Recommendation #8:

Grant CBP access to VIBE to assist in L-1 petition processing and promote program integrity.

Consistent Application of the 2004 Visa Reform Act Would Increase L-1 Visa Program Integrity

ISOs Inconsistently Apply Visa Reform Act Anti-“Job-Shop” Provisions

Congress added anti-“job-shop” provisions to the VRA to prevent petitioners from using L-1B applicants at third-party worksites unrelated to the petitioning company (referred to as labor for hire). These provisions protect U.S. workers by prohibiting companies from sending L-1B applicants to work for a third-party company on products widely accessible to U.S. workers. However, USCIS does not have a regulation on the VRA anti-“job-shop” provisions. As a result, the provisions are not applied consistently. Some ISOs deny petitions when “job-shop” concerns are found in petitions; others do not. We reviewed approved cases with “job-shop” concerns—notes in the file that the beneficiary would be sent to a client’s site to perform work for a third-party client.

Several non-precedent AAO decisions note this inconsistency. In some decisions, ISOs included VRA language in denial letters. However, in other decisions, the AAO added anti-“job-shop” language because ISOs did not deny the petition for VRA reasons, even though the beneficiary would be performing work primarily for a third party. In one such example, the AAO denied an appeal based on provisions of the VRA, even though USCIS did not cite these provisions in its denial: “Beyond the decision of the director, the petition must also be denied on additional grounds that were not addressed in the certified decision. Contrary to counsel’s claims, this case does present issues under the L-1 Visa Reform Act and section 214(c)(2)(F) of the Act.”⁴⁴

In other non-precedent AAO cases, ISOs incorrectly applied VRA standards in denial letters. For example, in one decision, USCIS used incorrect VRA standards to deny an L-1B petition: “As a threshold matter, it is noted that the director’s determination that ‘it appears that the beneficiary may not be 100% supervised by the petitioner’ is an incorrect standard under the L-1 Visa Reform Act, and this determination shall be withdrawn.”⁴⁵

⁴⁴ WAC 07 [receipt number withheld], July 22, 2008, p. 40.

⁴⁵ WAC 07 [receipt number withheld], Nov. 3, 2008, p. 7.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Several interviewees said that USCIS does not have sufficient policy to illustrate labor for hire examples, which in turn hampers effective use of the VRA standards. Some senior USCIS employees said that additional guidance would help implement the law. Some ISOs said that labor-for-hire concerns have never been the basis for them to deny petitions. The ISOs added that they felt they had insufficient policy guidance and training in this area. One ISO said that he never received training on the VRA anti-“job-shop” provisions and never denies petitions on labor-for-hire issues.

The L-1 visa program is susceptible to fraud and abuse when ISOs do not consistently apply anti-“job-shop” provisions to petitions that would otherwise be deniable. The AAO recognizes this in many cases. One appeal file we reviewed was critical of the center’s approval of a case in which VRA concerns ought to have caused a denial: “Assuming *arguendo* that the petitioner had established that the beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition.”⁴⁶

Current guidance in the *Adjudicator’s Field Manual* is limited and confusing. Section 32.3 notes that if the L-1 employer typically performs specialized services and sends L-1B workers offsite, the VRA provisions may not apply.

Recommendations

We recommend that USCIS:

Recommendation #9:

Create a regulation on the Visa Reform Act anti-“job-shop” provisions that will increase consistency in decision making.

Recommendation #10:

Update existing guidance on the Visa Reform Act anti-“job-shop” provisions that Immigration Service Officers can use in the interim while a regulation is created.

⁴⁶ WAC 08 [receipt number withheld], Nov. 3, 2008, p. 8.



Management Comments and OIG Analysis

We evaluated USCIS' and CBP's formal and technical comments and have made changes to the report where appropriate. A summary of USCIS' and CBP's written response to each recommendation, and our analysis, is included below. A copy of the formal joint USCIS/CBP response, in its entirety, appears in appendix B.

Of the ten recommendations, seven were directed to USCIS and three to CBP. Both components concurred with their respective recommendations, and have taken actions to address the majority of the recommendations. Their formal responses, however, noted some implementation challenges.

Recommendation #1:

We recommend that USCIS publish new guidance to clarify USCIS' interpretation of specialized knowledge. This guidance should be sufficiently explicit to give adjudicators an improved basis for determining whether employees of a petitioning entity possess specialized knowledge.

USCIS Response: USCIS concurs with recommendation 1. USCIS has a draft policy memorandum in review for official agency clearance. The draft policy memorandum specifically addresses L-1B specialized knowledge adjudications, including the importance of the 2004 Visa Reform Act.

OIG Analysis: The action USCIS proposes is responsive to the intent of this recommendation. We anticipate closing the recommendation when we receive and have reviewed the policy memorandum clarifying the interpretation of specialized knowledge. We consider recommendation 1 Resolved and Open.

Recommendation #2:

We recommend that USCIS screen L-1 beneficiaries against a list of persons previously denied visas by DOS consular officers.

USCIS Response: USCIS concurs with recommendation 2. However, USCIS notes significant implementation challenges. USCIS officials said it will be difficult to accomplish the recommendation because the computer system currently used for L visa adjudications does not allow for this type of coordination with DOS records. USCIS plans to integrate this type of screening into its L adjudicatory process once L petitions are added to the USCIS' Electronic Immigration System, a new system capable of interfacing with DOS' systems. USCIS estimates that incorporating L-1 beneficiaries into the Electronic Immigration System will not occur until 2015.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

OIG Analysis: USCIS' proposed actions are responsive to the intent of the recommendation. Once USCIS implements the plan described in its response, we will close the recommendation. We consider recommendation 2 Unresolved and Open.

Recommendation #3:

We recommend that USCIS develop broader working-level communications opportunities between ISOs adjudicating L petitions and DOS consular officers adjudicating L visa applications.

USCIS Response: USCIS agrees that close communication with DOS is critical and welcomes the opportunity to work closely with DOS consular officers on L visa adjudications. USCIS plans to establish regular meetings with the Visa Office in the Bureau of Consular Affairs at DOS regarding L adjudication issues. USCIS met and conferred with Bureau of Consular Affairs personnel in the development of its draft L-1B policy memorandum. USCIS will work with the Bureau of Consular Affairs to arrange the most efficient means of maintaining person-to-person communications, given budget challenges and time zone differences amongst relevant personnel.

OIG Analysis: The actions proposed by USCIS are responsive to the intent of the recommendation. We cannot now determine how these plans will affect the communications between service center adjudicators and consular section visa officers. USCIS should provide documentation confirming the development of the new communication opportunities. We consider recommendation 3 Unresolved and Open.

Recommendation #4:

We recommend that CBP provide thorough L-1 visa training to all CBPOs processing L-1 travelers at ports of entry or preclearance/preflight stations in Canada. Training should include determining petitioner's eligibility, L-1 fraud detection, correct assessment of fees, specialized knowledge, and the provisions of the *Visa Reform Act*.

CBP Response: CBP concurs with recommendation 4. CBPOs receive extensive L-1 training at the CBP Field Operations Academy and formal post-academy training. CBP continually and periodically provides L-1 training to all CBPOs who are performing adjudicative duties at the ports of entry (POEs). On June 27, 2012, CBP provided enhanced administrative guidance to CBPOs through the release of a detailed North America Free Trade Agreement (NAFTA) Reference Guide for TN and L applicants. The guide is an enhanced operational manual designed to clarify Canadian business travelers' entry provisions under NAFTA and achieve optimal consistency at all POEs. In July 2012, CBP created a "Business Traveler's Corner" (BTC) webpage on CBPnetsecure



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

under the “Officer’s Reference Tool” site where the latest memoranda and regulations pertaining to L-1 visas and business travelers are posted. The BTC webpage is maintained and updated regularly. It is an effective source of information for CBPOs seeking information pertaining to admissibility about L-1 visas and business travelers. CBP will continue to provide the highest standard of training to the CBPOs in regards to processing L-1 applications, including, periodically reminding the CBPOs via musters and training memoranda of the proper procedures for adjudicating L-1 applications. CBP considers recommendation 4 complete and requests closure.

OIG Analysis: CBP requested that we consider closing recommendation 4. CBP makes copious information available to CBPOs who can indeed look it up, but we do not consider that to be as effective as training. To meet the intent of our recommendation, CBP needs to develop additional L training sufficient that most officers could accurately process most L travelers without needing to turn to the manuals. This training should include determining petitioner’s eligibility, L-1 fraud detection, correct assessment of fees, specialized knowledge, and the provisions of the *Visa Reform Act*. We consider recommendation 4 Unresolved and Open.

Recommendation #5:

We recommend that CBP, in concert with USCIS, establish fraud fee collection guidelines for CBPOs processing L-1 travelers. At a minimum, procedures should prevent incorrect charges to travelers, provide an audit trail that documents the transfers of the funds, and show CBPOs a history of the traveler’s previous fee payments.

CBP and USCIS Response: CBP and USCIS concur with this recommendation. CBP and USCIS will identify the level of detail regarding fee information in USCIS systems that is available to CBPOs at the northern border. After CBP and USCIS determine information needs and identify any gaps, CBP will then, with the assistance of USCIS, develop and implement solutions that provide an appropriate level of information to CBPOs processing L-1 travelers at the northern border. Once solutions are implemented, CBP will develop an internal strategy for the implementation of fraud fee collection by the CBPOs.

OIG Analysis: CBP and USCIS plans are responsive to the intent of the recommendation. We recognize this recommendation requires a collaborative approach. CBP and USCIS should provide the status of this collaborative effort and any evidence to support their implementation of fraud fee collection guidelines. We consider recommendation 5 Unresolved and Open.



Recommendation #6:

We recommend that USCIS make a site visit a requirement before extending 1-year new office petitions.

USCIS Response: The USCIS Fraud Detection and National Security Directorate expects to begin conducting post-adjudication domestic L-1 compliance site visits in the First Quarter of FY2014.

OIG Analysis: The USCIS plans are responsive to the intent of the recommendation. USCIS should provide documentation for this new initiative and any other evidence documenting completion of compliance site visits. We will consider this recommendation closed upon receipt of the requested documentation. We consider recommendation 6 Resolved and Open.

Recommendation #7:

We recommend that CBP request USCIS to provide CBPOs at the northern border ports of entry and preclearance locations with access to VIBE to assist in L-1 petition processing.

CBP Response: CBP concurs with this recommendation. On May 7, 2013, CBP requested from USCIS access to VIBE for CBPOs at the northern border POEs and preclearance locations. On May 22, 2013, USCIS agreed to grant CBP access to VIBE. CBP proposes that the granting of access be phased in waves at the northern border POEs and pre-clearance locations.

- Phase 1: Access will be given to CBPOs stationed at Northeastern Border POEs (to be completed by October 31, 2013);
- Phase 2: Access will be given to CBPOs stationed at Northwestern Border POEs (to be completed by November 30, 2013); and
- Phase 3: Access will be given to CBPOs stationed in Preclearance (to be completed by December 31, 2013).

USCIS will provide VIBE training to a group of CBPOs selected by their respective field offices. These selected CBPOs will in turn provide in-house training to CBPOs granted access to VIBE. CBP considers recommendation 7 complete and requests closure.

OIG Analysis: We consider the actions CBP has taken and planned to be responsive to recommendation 7, which is Resolved and Closed.



Recommendation #8:

We recommend that USCIS grant CBP access to VIBE to assist in L-1 petition processing and promote program integrity.

USCIS Response: USCIS concurs with recommendation 8. USCIS agrees that granting CBP access to VIBE will assist CBP with the processing of L petitions at the border and will promote program integrity. USCIS noted that information available via VIBE to CBPOs at the border will only reflect those petitions for which USCIS generated a receipt number. USCIS will continue to review how VIBE data is entered and recorded to maximize CBP's ability to process L-1 petitions and promote program integrity.

OIG Analysis: The USCIS plans are responsive to the intent of the recommendation. However, USCIS does not provide a plan for granting access to CBP. USCIS should provide documentation that includes an action plan and a timeline for implementing this recommendation. We will review information USCIS provides as these changes are implemented. We consider this recommendation Unresolved and Open.

Recommendation #9:

We recommend that USCIS create a regulation on the *Visa Reform Act* anti-“job-shop” provisions that will increase consistency in decision making.

USCIS Response: USCIS concurs with recommendation 9. USCIS agrees that it is important to have consistency and clarity in adjudications under the L-1 Visa Reform Act of 2004. The draft L-1B policy memorandum that is currently in clearance includes guidance on implementation of these provisions. USCIS is also considering rulemaking under the L-1 Visa Reform Act so that it can provide its officers, as well as its stakeholders, with enhanced clarity as to the standards that apply to L-1B petitions. In addition, USCIS will be considering use of the Administrative Appeals Office (AAO) precedent decision process as a vehicle for enhancing guidance in this area.

OIG Analysis: The USCIS plans are not responsive to the intent of the recommendation. The plans are only to consider a rulemaking, and involve various options, not a specific course of action. USCIS should provide a clear and concise plan to address the regulation on the *Visa Reform Act* anti-“job-shop” provisions. We consider recommendation 9 Unresolved and Open.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Recommendation #10:

We recommend that USCIS update existing guidance on the *Visa Reform Act* anti-“job-shop” provisions that Immigration Service Officers can use in the interim while a regulation is created.

USCIS Response: USCIS concurs with recommendation 10. USCIS has included guidance on the *L-1 Visa Reform Act* as part of the draft L-1B specialized knowledge policy memorandum that is currently under review (see Recommendation 1). This guidance is intended to provide both ISOs and stakeholders with clear standards for the adjudication of L-1B petitions. In addition, during the development of the policy memorandum guidance, USCIS will assess the need for regulatory guidance and AAO precedent decisions.

OIG Analysis: The USCIS plans are responsive to the intent of the recommendation. USCIS should provide a copy of the memorandum as stated in Recommendation 1 and a copy of the assessment addressing the need for regulatory guidance. We consider recommendation 10 Resolved and Open.



Appendix A

Objectives, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

We initiated this review at the request of U.S. Senator Charles Grassley, based on his concerns about fraud and abuse within USCIS's L-1 intracompany transferee visa program. He also requested an update on the Office of Inspector General's 2006 report titled *Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program* (OIG-06-22, January 2006).

In addition to a review of the L-1 visa program's policies and procedures, we conducted 71 interviews with managers and staff, within DHS and the Department of State, at two of the four service centers and consular posts in India. We also interviewed headquarters leadership in the Service Center Operations, Field Operations, and Fraud Detection and National Security directorates. Through domestic and international fieldwork, we observed DHS personnel and consular officials as they processed L-1 petitions and discussed the challenges they face. Our file review and observations included conversations with expert Immigration Service Officers, Consular Officers, and Customs and Border Protection Officers about particular cases. We reviewed:

- Data related to L-1 visa usage;
- Implementation of the specialized knowledge definition;
- Use of the L-1 blanket petition process;
- U.S. Customs and Border Protection's role in granting or denying admission to L-1 applicants at the Canadian land border;
- Use of the L-1 visa program to establish new offices in the United States;
- Use of the Validation Instrument for Business Enterprises; and
- Use of the *L-1 Visa and H-1B Visa Reform Act of 2004* to deny L-1 visa petitions for labor-for-hire issues.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors General on Integrity and Efficiency.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix B
Management Comments to the Draft Report

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director MS-2000
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

JUN 14 2013

Memorandum

TO: Charles K. Edwards
Deputy Inspector General

FROM: Alejandro N. Mayorkas
Director

SUBJECT: Office of Inspector General Draft Report: *Implementation of L-1 Visa Regulations – For Official Use Only - OIG Project No. 12-016-ISP-USCIS*

Thank you for the opportunity to review and comment on your draft report, *Implementation of L-1 Visa Regulations*. U.S. Citizenship and Immigration Services (USCIS) recognizes and appreciates the DHS Office of Inspector General's (OIG's) time and work in planning and conducting its study to examine how USCIS, among other agencies, implements the L-1 visa regulations, including the definition of specialized knowledge, the use of L-1 status to open a new branch office, and the blanket petition process. As noted in the report, USCIS implemented recommendations to improve the L-1 Visa program based on the DHS OIG's 2006 report, *Review of Vulnerabilities and Potential Abuses of the L 1 Visa Program*, OIG-06-22 (January 2006). This current report will help USCIS and its government colleagues at U.S. Customs and Border Protection (CBP) and the Department of State (DOS) to continue to enhance the program's overall effectiveness and integrity.

USCIS and CBP have reviewed the ten recommendations contained in the draft report and we concur with the recommendations. In fact, we already have taken steps to address the majority of them. The following are USCIS's and CBP's responses to the recommendations contained in the draft report; we have noted implementation challenges where appropriate.

Recommendation 1: USCIS publish new guidance to clarify the USCIS interpretation of specialized knowledge. This guidance should be sufficiently explicit to give adjudicators an improved basis for determining whether employees of a petitioning entity possess specialized knowledge.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Office of Inspector General Draft Report: *Implementation of L-1 Visa Regulations – For Official Use Only - OIG Project No. 12-016-ISP-USCIS*

Page 2

Response: Concur. USCIS has a draft policy memorandum in review for official agency clearance. The draft policy memorandum specifically addresses L-1B specialized knowledge adjudications, including the importance of the 2004 Visa Reform Act.

Recommendation 2: USCIS screen L-1 beneficiaries against a list of persons previously denied visas by DOS consular officers.

Response: Concur, but note there are significant implementation challenges. USCIS fully agrees with the intent of the recommendation. However, it will be difficult to accomplish the recommendation in the near term because the computer system currently used for L visa adjudications does not allow for this type of coordination with DOS records. The type of screening the OIG recommends would require extremely time-consuming manual name checks, which have a high degree of error due to name misspellings and frequent name changes (e.g., change in marital status). USCIS plans to integrate the type of screening included in this recommendation into its L adjudicatory process once L petitions are added to the USCIS Electronic Immigration System (USCIS ELIS), a system that is capable of interfacing with DOS systems such as the Consular Consolidated Database (CCD).

Currently, through USCIS ELIS, nonimmigrants may file to change their status to B-1, B-2, F-1, F-2, J-1, J-2, M-1 or M-2; nonimmigrants in B-1, B-2, F-1, M-1 or M-2 status may file to extend their stay; and F and M nonimmigrants may file for reinstatement of status. New immigrants must also pay their USCIS Immigrant Fees through USCIS ELIS. USCIS ELIS will begin processing immigrant petitions for alien entrepreneurs this summer and plans to introduce processing of replacement Permanent Resident Cards in the fall.

Following its first release in May 2012, USCIS transitioned the development of USCIS ELIS from a traditional waterfall methodology to a more modular Agile methodology. This approach enables smaller increments of capability to be released on a more frequent basis than with traditional waterfall system development. In Agile, the capabilities to be deployed are reprioritized with each release to maximize business value and build upon prior development. Because a comprehensive deployment schedule is not established in advance, this adds a degree of uncertainty to the timeline for when specific benefit types will be deployed in USCIS ELIS, particularly in the out years. However, as currently planned, the L adjudication process will be incorporated into USCIS ELIS as part of the employment-based nonimmigrant product line in fiscal year (FY) 2015, following the deployment of the family-based immigrant product lines in FY2014.

Recommendation 3: USCIS develop broader working-level communications opportunities between ISOs adjudicating L petitions and DOS consular officers adjudicating L visa applications.

Response: Concur. USCIS agrees that close communication with DOS is critical and welcomes the opportunity to work closely with DOS consular officers on L visa adjudications. USCIS plans to establish regular meetings with the Visa Office in the Bureau of Consular Affairs at DOS regarding L adjudication issues. USCIS met and conferred with Bureau of Consular



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Office of Inspector General Draft Report: *Implementation of L-1 Visa Regulations – For Official Use Only - OIG Project No. 12-016-ISP-USCIS*
Page 3

Affairs personnel in the development of its draft L-1B policy memorandum referenced above. USCIS will work with the Bureau of Consular Affairs to arrange the most efficient means of maintaining person-to-person communications, given budget challenges and time zone differences amongst relevant personnel.

Recommendation 4: CBP provide thorough L-1 visa training to all CBPOs processing L-1 travelers at ports of entry or preclearance/flight stations in Canada. Training should include determining petitioner's eligibility, L-1 fraud detection, correct assessment of fees, specialized knowledge, and the provisions of the Visa Reform Act.

Response: CBP concurs with this recommendation. CBPOs receive extensive L-1 training at the CBP Field Operations Academy and formal post-academy training. CBP continually and periodically provides L-1 training to all CBPOs who are performing adjudicative duties at the ports of entry (POEs).

On June 27, 2012, CBP provided enhanced administrative guidance to CBPOs through the release of a detailed North America Free Trade Agreement (NAFTA) Reference Guide for TN and L applicants. The guide is an enhanced operational manual designed to clarify Canadian business travelers' entry provisions under NAFTA and achieve optimal consistency at all POEs.

In July 2012, CBP created a "Business Traveler's Corner" (BTC) webpage on CBPnetsecure under the "Officer's Reference Tool" site where the latest memoranda and regulations pertaining to L-1 visas and business travelers are posted. The BTC webpage is maintained and updated regularly. It is an effective source of information for CBPOs seeking information pertaining to admissibility about L-1 visas and business travelers. CBP will continue to provide the highest standard of training to the CBPOs in regards to processing L-1 applications, including, periodically reminding the CBPOs via musters and training memoranda of the proper procedures for adjudicating L-1 applications.

CBP considers recommendation 4 complete and requests closure.

Recommendation 5: CBP, in concert with USCIS, establish fraud fee collection guidelines for CBPOs processing L-1 travelers. At a minimum, procedures should prevent incorrect charges to travelers, provide an audit trail, and show CBPOs a history of the traveler's previous fee payments.

Response: CBP and USCIS concur with this recommendation. CBP and USCIS will identify the level of detail regarding fee information in USCIS systems that is available to CBPOs at the northern border. After CBP and USCIS determine information needs and identify any gaps, CBP will then, with the assistance of USCIS, develop and implement solutions that provide an appropriate level of information to CBPOs processing L-1 travelers at the northern border. Once solutions are implemented, CBP will develop an internal strategy for the implementation of fraud fee collection by the CBPOs.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Office of Inspector General Draft Report: *Implementation of L-1 Visa Regulations – For Official Use Only - OIG Project No. 12-016-ISP-USCIS*

Page 4

Recommendation 6: USCIS make a site visit a requirement before extending 1-year new office petitions.

Response: Concur. USCIS Fraud Detection and National Security Directorate expects to begin conducting post-adjudication domestic L-1 compliance site visits in the First Quarter of FY2014.

Recommendation 7: CBP request USCIS to provide CBPOs at the northern border ports of entry and pre-clearance locations with access to VIBE to assist in L-1 petition processing.

Response: CBP concurs with this recommendation. On May 7, 2013, CBP requested from USCIS access to VIBE for CBPOs at the northern border POEs and pre-clearance locations. On May 22, 2013, USCIS agreed to grant CBP access to VIBE. CBP proposes that the granting of access be phased in waves at the northern border POEs and pre-clearance locations.

- Phase 1: Access will be given to CBPOs stationed at Northeastern Border POEs (to be completed by October 31, 2013);
- Phase 2: Access will be given to CBPOs stationed at Northwestern Border POEs (to be completed by November 30, 2013); and
- Phase 3: Access will be given to CBPOs stationed in Preclearance (to be completed by December 31, 2013).

USCIS will provide VIBE training to a group of CBPOs selected by their respective field offices. These selected CBPOs will in turn provide in-house training to CBPOs granted access to VIBE.

CBP considers recommendation 7 complete and requests closure.

Recommendation 8: USCIS grant CBP access to VIBE to assist in L-1 petition processing and promote program integrity.

Response: Concur. USCIS agrees that granting CBP access to VIBE will assist CBP with the processing of L petitions at the border and will promote program integrity. It should be noted, however, that information available via VIBE to CBPOs at the border will only reflect those petitions for which USCIS generated a receipt number. USCIS will continue to review how VIBE data is entered and recorded to maximize CBP's ability to process L-1 petitions and promote program integrity.

Recommendation 9: USCIS create a regulation on the Visa Reform Act anti-“job-shop” provisions that will increase consistency in decision-making.

Response: Concur. USCIS agrees that it is important to have consistency and clarity in adjudications under the L-1 Visa Reform Act of 2004. The draft L-1B policy memorandum that is currently in clearance includes guidance on implementation of these provisions. USCIS is also considering rulemaking under the L-1 Visa Reform Act so that it can provide its officers, as well as its stakeholders, with enhanced clarity as to the standards that apply to L-1B petitions. In



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Office of Inspector General Draft Report: *Implementation of L-1 Visa Regulations – For Official Use Only - OIG Project No. 12-016-ISP-USCIS*
Page 5

addition, USCIS will be considering use of the Administrative Appeals Office (AAO) precedent decision process as a vehicle for enhancing guidance in this area.

Recommendation 10: USCIS update existing guidance on the Visa Reform Act anti-“job-shop” provisions that Immigration Service Officers can use in the interim while a regulation is created.

Response: Concur. USCIS has included guidance on the L-1 Visa Reform Act as part of the draft L-1B specialized knowledge policy memorandum that is currently under review (see Recommendation 1). This guidance is intended to provide both ISOs and stakeholders with clear standards for the adjudication of L-1B petitions. In addition, during the development of the policy memorandum guidance, USCIS will assess the need for regulatory guidance and AAO precedent decisions.

Again, on behalf of USCIS and CBP, thank you for the opportunity to review and comment on this draft report. Technical comments and sensitivity comments were previously provided under separate covers.



Appendix C Regulation Definitions

DEFINITIONS RELATED TO L-1 PETITIONERS

Qualifying organization: a United States 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 section 101(a)(15)(L) of the Act.

Parent: a firm, corporation, or other legal entity which has subsidiaries.

Branch: an operating division or office of the same organization housed in a different location.

Affiliate: (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 United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

Subsidiary: a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Doing business: 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.

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

Blanket Petitions: (i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations if:

- (1) The petitioner and each of those entities 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 have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a United States work force of at least 1,000 employees.

DEFINITIONS RELATED TO L-1 BENEFICIARIES

Intracompany transferee: 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 or 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. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted towards fulfillment of that requirement.

Specialized knowledge: 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.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Managerial capacity: 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 the supervisor's supervisory duties unless the employees supervised are professional.

Executive capacity: 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.



Appendix D

Top Ten L-1 Employers, FY 2002 – FY 2011

Employer	L-1A Petitions	L-1B Petitions	Total
Tata Consultancy Services Limited	7,571	18,337	25,908
Cognizant Tech Solutions US Corp	1,521	18,198	19,719
IBM India Private Limited	446	5,276	5,722
Wipro Limited	1,574	3,933	5,507
Infosys Technologies Limited	620	3,395	4,015
Satyam Computer Services Limited	333	2,941	3,274
HCL America Inc	40	1,934	1,974
Schlumberger Technology Corp	684	795	1,479
Price Waterhouse Coopers LLP	1,196	179	1,375
Hewlett Packard Co	533	721	1,254
Total Submissions	14,518	55,709	70,227

Source: U.S. Citizenship and Immigration Services, Office of Performance and Quality, Data Analysis and Reporting Branch, March 8, 2012.



Appendix E

H-1B and L-1B Submissions, FY 2002 – FY 2011

Fiscal Year	H-1B Submissions	L-1B Submissions	Ratio
2002	178,871	12,256	14.6
2003	212,083	16,114	13.2
2004	309,368	17,161	18.0
2005	264,218	19,972	13.2
2006	296,424	25,952	11.4
2007	311,889	29,552	10.6
2008	286,462	24,841	11.5
2009	245,006	16,226	15.1
2010	245,788	17,704	13.9
2011	262,480	15,913	16.5
Total	2,612,589	195,691	13.4

Source: U.S. Citizenship and Immigration Services, Office of Performance and Quality, Data Analysis and Reporting Branch, February 24, 2012.



Appendix F

Major Contributors to This Report

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Appendix G

Report Distribution

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Should you be unable to access our website, you may submit your complaint in writing to:

Department of Homeland Security
Office of Inspector General, Mail Stop 0305
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