

New Form For Blanket L Visas May Boost Consular Scrutiny

By Allissa Wickham

Law360, New York (August 18, 2016, 5:19 PM ET) -- A new L-1 visa form means employers will soon have to provide more detailed information about their staffers to nab visas for managerial or skilled employees under a so-called "blanket" petition, which attorneys say could burden companies and lead to more scrutiny from consulate officers.

Beginning on Aug. 29, companies will need to start using the latest edition of Form I-129S, which allows employers to secure L-1A or L-1B visas for managerial staffers or workers with "specialized knowledge," if the organization already has an approved blanket L-1 petition. Getting an approved blanket L petition allows visa candidates to submit forms directly to consular officers abroad, rather than sending materials to U.S. Citizenship and Immigration Services, and is a tempting option for larger companies that frequently transfer workers to the U.S.

However, although USCIS notes that getting the green light on a blanket L application provides companies with "the flexibility to transfer eligible employees" to the U.S. "quickly and with short notice," employers will now need to grapple with a longer version of Form I-129S, which some attorneys have pegged as more burdensome.

"The new form is really looking to pick apart the employee's employment history, to see whether or not they meet the requirements," said Kristen Burke of Greenberg Traurig LLP. "And so, it's going to take an employer a longer period of time."

The updated form, complete with its new information demands, might also be used to intensify scrutiny of applications, according to Burke, as consulate officers examine whether the foreign nationals have completed at least one full year out of the last three in an executive or specialized knowledge role.

"So ... by providing more information about your employment history, that's going to open the door to more red flags, if the consular officer believes that the person hasn't met that 'one year out of the last three years' requirement," she said.

In terms of its relatively minor changes, the new Form I-129S asks for the foreign national's gender, as well as all the names the person has ever used, such as maiden names or aliases. But in terms of the bigger updates, the form now asks for the percentage of time the person will spend doing job duties on a "daily basis," and seeks the annual wage the person received.

"It's asking for the wages earned per year, and it's asking for it in U.S. dollars, which seems a little

strange because the person is working outside the U.S., and presumably [is] being paid in local currency, not U.S. dollars," said Sarah R. Kilibarda of Faegre Baker Daniels.

She noted, however, that the government may want to see that the person is being paid in such a way that would demonstrate that she has specialized knowledge or is an executive.

Kilibarda also pointed out that the new form places a focus on third-party worksite scenarios.

"If an L-1 individual — an L-1B in particular — will be working at a worksite other than your company worksite, it asks for additional information about that," she noted. "Including the supervisor's name, who's going to control the person's work and a little bit more detailed questions about why this person's knowledge is needed at this third-party site."

In general, third-party worksites in both L-1 and H-1 areas have received significant scrutiny over the past few years, Kilibarda noted. And indeed, outsourcing companies' use of the visas has drawn attention from lawmakers recently, including from Rep. Bill Pascrell Jr., D-N.J., and Sen. Charles Grassley, R-Iowa, who have both introduced reform measures for the program.

The new form also requires an employer to sign off on a declaration stating it has reviewed the petition. Although the previous form also required the employer's signature, the latest update contains a more extensive declaration for the company to attest to, which reminds the petitioner of the possibility of on-site compliance audits.

"There's a general initiative in all the new forms that they're putting [out] to refine the preparer's certification and the petitioner's certification," noted David Grunblatt of Proskauer Rose LLP, who added that this may "make it easier to prosecute somebody for fraud."

Right now, it would be wise for employers to look over their L-1 visa cases and make sure they're using the correct form, according to James Pack of Fragomen Del Rey Bernsen & Loewy LLP. Otherwise, it's possible that visa seekers could be in for a rude surprise when they show up for their consulate appointments.

"There might be people floating around there that employers aren't even paying any attention to ... and they have an appointment on Sept. 4th," Grunblatt said. "They walk into the embassy and suddenly they are ambushed with 'Oh, you got the wrong form.'"

Still, there is a bit of silver lining to the update. Burke noted that having more information in advance, such as when the person started working for the company or how many hours they work per week, could facilitate interviews and therefore possibly boost processing times.

"It could result in more efficient processing and faster adjudications, which would be helpful to all individuals," she said.

--Editing by Katherine Rautenberg and Philip Shea.