

## Current Trends for Intracompany Transferee Travellers



By [Elizabeth M. Klarin](#)

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Many cross-border and international businesses were forced to put their activities on hold during the COVID-19 pandemic. Border and international travel restrictions have made it difficult, if not impossible, to cross into the U.S. for many business travellers who were otherwise eligible for status as intracompany transferees. As a result, businesspeople operating both domestically in the U.S. and/or internationally may have felt forced to “pick a side.”

Thankfully, we are finally emerging from the business challenges created by the pandemic, with many businesses returning to advance their operational expansion plans into or across the U.S. In the case of intracompany transferee travellers — called the “L-1” visa category under U.S. immigration law — there is positive news and some remaining challenges. Here are the highlights:

### **The positives**

The U.S. is very open to business across the country, and trends show a continued willingness by Americans to spend. Innovative products or services are welcomed by American consumers, making this an opportune time to forge ahead with expanding into the U.S. In fact, some business owners and operators have found the business

environment much less restrictive in certain U.S. states throughout the pandemic, as compared to the business environment and opportunities in their home countries.

Also, travel restrictions have eased immensely. The U.S. has lifted the COVID-19 testing requirement for international travel, making it much easier and smoother to make and keep travel plans. During the pandemic, many individuals were reticent to plan travel, concerned that they might test positive for COVID-19 last minute and lose out on expenditures, or miss out on critical meetings with potential customers or the ability to attend conferences. Although the relief in travel restrictions has greatly improved international business activity, the Centers for Disease Control and Prevention has stated that it will continue to monitor the state of the pandemic and will reassess the need for COVID-19 testing if the situation changes.

Likewise, U.S. consulates and embassies around the world have largely reopened after shutting down service operations — sometimes, more or less completely — during the pandemic.

## **Remaining challenges**

While there are significant positives for intracompany transferee travellers entering the U.S. as we wind down 2022, some important challenges remain.

The COVID-19 vaccination requirement for entry to the U.S. remains in place —hindering travel for the many individuals who have chosen not to receive it. The U.S. Department of Homeland Security is hesitant to admit anyone who is not vaccinated. Humanitarian parole (entry into the U.S. for humanitarian reasons or in the national interest of the U.S.) can be granted at the discretion of U.S. Customs and Border Protection, but not many unvaccinated individuals are likely to be granted this type of parole — leaving most unvaccinated business travellers and their families stuck outside the U.S. until restrictions are lifted.

The U.S. government also challenges a significant percentage of the intracompany transferee cases submitted, outright denying between 20-30 per cent of cases submitted (on average by year since 2019), according to U.S. Citizenship and Immigration Services (USCIS) data. The agency has also requested additional evidence of eligibility in more than half the total cases submitted (on average by year since 2019). Of the cases that receive a request for additional evidence, only just over 50 per cent receive approval after response by the petitioner.

The harshness with which USCIS assesses eligibility criteria such as: the depth of specialized knowledge held by the individual; the managerial or executive status and job duties of senior company officials; the overlap of ownership and control between the U.S. and foreign qualifying entities, and the financial viability of newer U.S. operations — all of which are assessed under a subjective adjudication standard — can be staggering.

While a great deal of information is available on U.S. government websites about the eligibility criteria and what is required to apply for L-1 status, businesspeople wishing to qualify themselves or a worker for this status would do well to consult with counsel about the nuances of approvability. Notably, the Department of Homeland Security changes its L-1 intracompany transferee policies and adjudication trends on an ongoing basis, mostly to raise the bar on what is required or the format in which it wishes to see evidence presented to warrant approval. Understanding these challenges, policies and trends is often the key to successfully petitioning for intracompany transferee status — and to avoiding wasting time and money on a petition, if deficiencies cannot be cured.

Lastly, for L-1 travellers requiring a visa, U.S. diplomatic posts have struggled to catch up with backlogs in cases created by the suspension of services during the pandemic. As a result, some U.S. embassies and consulates still have longer-than-usual wait times for visa appointments. However, visa interview waivers are available to certain L-1 eligible individuals who have previously had any type of U.S. visa, as well as certain first-time individual, petition-based L visa applicants who are citizens or nationals of a country that participates in the U.S. Visa Waiver Program.

The L-1 visa still offers one of the best, most open business pathways to obtain work authorization in the U.S. It can generally be obtained much more quickly than certain other visa types, and offers years of benefits to those who qualify. As legal U.S immigration remains tightly controlled for businesspeople, the L-1 is a fantastic short or longer-term strategy for international workers.

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