

## L-1 Immigration Status: Are You Really an Executive, or Manager?



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With limited immigration options to obtain work authorization in the U.S., intercompany transferee (L-1) work authorization is a strategy used by companies operating throughout Canada and abroad to send key workers to the U.S. for a variety of purposes.

There are two main types of L-1 status: status for executives and managers (L-1A) and status for specialized knowledge workers (L-1B). Obtaining status as a manager or executive is preferable, since it offers eligible workers the ability to work full time, continuously in the U.S. for up to seven years. Specialized knowledge workers are limited to five years of full-time, continuous status in the U.S. - two years less than managers and executives.

Executives are defined generally as those who are at the top tier of their organization; those who have the ability to make decisions of wide latitude without much oversight. However, neither the title of a position nor ownership of the business is, by itself, an indicator of managerial or executive capacity. Most executives have one or more junior executives or senior managers reporting to them, with other, indirect reports as well.

Managerial cases can be less clear. The most obvious type of manager is one who manages other professionals - meaning those with bachelor's degrees who are working in a position that normally requires a bachelor's degree. If a manager has professionals reporting to him or her, one can prove this with things such as an organizational chart, resumes of the managed individuals and a description of the job titles and duties of the managed individuals. The U.S. government's position is that a first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's managerial duties unless the employees supervised are professional.

The second type of manager - functional manager - is harder to demonstrate. U.S. Citizenship and Immigration Services (USCIS) recognizes that not all management involves overseeing workers. Some managers oversee an essential function within an organization. Where this is the case, applicants are expected to identify the function with specificity and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. Importantly, the description of the applicant's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. If an employee primarily performs tasks to produce a product or to provide services, they will not be considered to be primarily employed as a functional manager.

To make a successful argument for an L-1 functional manager you need to show several things, including: (1) The function is a clearly defined activity; (2) The function is "essential," (i.e., core to the organization); (3) the manager primarily manages, as opposed to performs, the function; (4) the manager acts at a critical level within the organizational hierarchy or with respect to his managed function; and (5) the manager exercises discretion over the function's day-to-day operations. Achieving L-1A approval for a functional manager requires being extremely clear that the applicant manages a function, not people. Some Department of Homeland Security (DHS) officers are less familiar with this type of case, so plainly stating the role and how the individual qualifies under the five-part criteria outlined above is necessary.

In the case of a manager or executive taking on a role in a new office in the U.S., a manager or executive may be more involved in day-to-day operations during the initial phases of the business than is normal for an established business. However, the DHS also expects them to have authority and plans to hire staff as well as wide latitude in making decisions about the goals and management of the organization to qualify for status.

In some instances, an individual who has previously specialized knowledge but is promoted to a more senior role within an organization may subsequently qualify as a functional manager once they reach an appropriate level of seniority within the organization. If you are unsure whether the individual qualifies as an executive, people manager, or functional manager, reach out to a qualified immigration professional to assess eligibility.

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