

DATE: December 11, 2009  
RE: Requirements of the International Executive Or Manager (EB1/Group 3)  
Immigrant Visa for Investors

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This memorandum is written to provide an overview of the requirements for an investor to obtain lawful permanent residency or green card status in the United States by classifying an investor into your project as an International Manager or Executive pursuant to the first preference employment-based group 3 category (the “*EB1/Group 3*”).

## 1. INTRODUCTION

The requirements for the EB1/Group 3 immigrant visa are as follows:

- (a) A U.S. Company must exist which will employ the investor (“*Employer*”);
- (b) The investor entering the United States must have been and will be an executive or a manager of Employer.
- (c) The investor entering the United States has been employed as an executive or manager of a Foreign Affiliate of Employer.

## II. SUMMARY DISCUSSION OF THE REQUIREMENTS

1. U.S. Employer. Employer must demonstrate and satisfy, among other things, the following eligibility requirements:

- a. That Employer is authorized to conduct business in the United States;
- b. That Employer is actively conducting business in the United States;<sup>1</sup>
- c. That Employer has a parent, subsidiary, affiliate or branch office located in a country outside the United States (“*Foreign Affiliate*”); and
- d. That Employer has been operating its business in the United States for at least one year.

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<sup>1</sup> This requirement may be satisfied by demonstrating that Employer provides goods or services in a continuous manner, entailing more than the mere presence of an agent or office.

2. Executive/Managerial Position. In addition, Employer must be further able to demonstrate and satisfy, among other things, the following eligibility requirements:

a. That, for at least one year during a three year period immediately preceding the investor's last entry to the United States, the investor served in an executive or managerial capacity with the Foreign Affiliate;

b. That, immediately following the investor's last entry to the United States, the investor served and will serve in an executive or managerial capacity with Employer in the United States.

3. Definitions.

a. The Department of Homeland Security ("**DHS**") has defined the term "**executive capacity**" to mean an assignment within an organization in which the investor 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.

b. In addition, the DHS has defined the term "**managerial capacity**" to mean an assignment within an organization in which the investor 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 essential functions within the organization, or a department or subdivision of the organization;

(3) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the functions managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the investor has authority.

It should be evident from the definition of executive and managerial capacity above, that the Employer must be of a certain size that would allow the executive and manager to perform the duties described. It is more difficult to classify smaller entities as those that can support such a position.

IV. **Strategy No. 1: Using the Nonimmigrant L-1 Visa in order to meet the One Year Requirement.**<sup>2</sup>

In the event the U.S. Employer has not been doing business in the United States for one year, the investor has the option of entering the United States in a nonimmigrant visa category as an international manager or executive (the “*L-1 Visa*”). The requirements for the L-1 visa are the same as those listed for the EB1/Group 3 immigrant visa in §II above except that the Employer is not required to show that the Employer has been doing business in the U.S. for one year (Item No. II(1)(d)) and the investor may enter the United States in order to open a new business in the United States.

If the investor is entering the United States to open a new business, the investor, so long as he or she meets the requirements listed above, will be granted a nonimmigrant intra-company transferee (L-1) visa which is initially valid for a period of one year but which is renewable in three year increments for a total of seven (7) years if the investor is able to show that the Employer is operating a business in the United States at the end of the initial one year period.

Therefore, in order to obtain lawful permanent residency status, we would recommend the following strategy:

1. The investor, who owns a business outside the United States, will establish a U.S. company which is a branch, subsidiary, or affiliate to the Foreign Affiliate;
2. The investor will apply for and enter the United States pursuant to a nonimmigrant L-1 visa which would be valid for one year;
3. At the end of one year, the investor will apply for an extension of his or her nonimmigrant L-1 visa for an additional period of three (3) years;
4. Upon receipt of the L-1A visa extension, the investor should file the petition to qualify for an EB1/Group 3 immigrant visa (the “*Classification Petition*”) with the CSC; and

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<sup>2</sup> This strategy may also work using the nonimmigrant E-2 investor visa instead of the L-1 Visa. Please discuss this option with an immigration attorney.

5. Upon approval of the Classification Petition, file the Application to Register Permanent Residence or Adjust Status (Form I-485) to obtain lawful permanent residency status in the United States.

**IV. Strategy No. 2: Sending the Employee to the Foreign Affiliate to meet the One Year Abroad Requirement.**

In the event the employee is currently working in for Employer, in a nonimmigrant visa status such as an H-1B1 status and Employer **(a)** has been doing business in the United States for at least one year, and **(b)** has a Foreign Affiliate, it may be possible for the employee to obtain the status of a lawful permanent resident through the EB1/Group 3 category in the following manner:

1. The Employee is transferred to work for the Foreign Affiliate in a Managerial or Executive capacity for at least one year;

2. After working with the Foreign Affiliate for at least one year, the employee will be transferred back to Employer to work in the United States in a managerial capacity by obtaining a nonimmigrant L-1A Visa;<sup>3</sup> and

3. Upon his or her arrival in the United States, Employer would file the Classification Petition on behalf of the employee.

**V. Conclusion.**

If the USCIS approves the Classification Petition, then the investor, his/her spouse and any of children under 21 years of age will become eligible to apply for an immigrant visa to enter the United States and become lawful permanent residents or green card holders.

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<sup>3</sup> As a practical matter, after working for one year abroad, the employee immediately qualify for classification pursuant to EB1/Group 3 category. However, it would probably take less time to qualify the employee for L-1A visa status than to adjudicate the Classification Petition.