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MEMORANDUM

RE:	The Intra-Company Executive or Managerial L-1A Petition
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This memorandum briefly describes the requirements and procedures for (the “**Employer**”) to petition for an intra-company executive/manager (“**L-1A**”) visa on behalf of a foreign employee (“**Beneficiary**”).

1. **Requirements for the L-1A Status.**

a. There must exist a qualifying ownership relationship between a company doing business outside the United States (“**Foreign Company**”) and a company doing business in the United States (“**U.S. Company**”) (eg. parent/subsidiary/affiliate relationship).

b. The Beneficiary must have been employed by the Foreign Company in a managerial or an executive position for at least one year prior to filing the L-1 Petition with the U.S. Citizenship and Immigration Service (“**USCIS**”).

c. The U.S. Company is offering Beneficiary an executive or managerial position in the United States.

d. Beneficiary may be entering the United States to open the U.S. Company.

e. The Department of Homeland Security has defined executives and managers as follows:

(i) “**Executive capacity**” means an assignment within an organization in which the investor primarily:

(a) Directs the management of the organization or a major component or function of the organization;

(b) Establishes the goals and policies of the organization, component or function;

(c) Exercises wide latitude in discretionary decision-making; and

(d) Receives only general supervision or direction from higher level executives, the board of directors or stockholders of the organization.

(ii). “**Managerial capacity**” means an assignment within an organization in which the investor primarily:

(a) Manages the organization, or a department, subdivision, function or component of the organization;

(b) Supervises and controls the work of other supervisory, professional, or essential functions within the organization, or a department or subdivision of the organization;

(c) 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

(d) 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 U.S. Company 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.

2. **Benefits of L-1A Status.**

a. Beneficiary is eligible to continue to work for U.S. Employer pursuant to this status for a period of up to seven years.

b. Beneficiary’s spouse may obtain authorization to work in the United States while Beneficiary is in this status.

c. Beneficiary may be eligible to apply for an immigrant visa (lawful permanent residency status) based on the same qualifications described above after the U.S. Company has been doing business in the United States for at least one year and is making sufficient income to pay Beneficiary’s salary.

3. **L-1A Application Process.** The application process is technically a two-part process: (a) The Employer must file a petition with the USCIS seeking to classify

Beneficiary as an L-1A executive or managerial employee (“**L-1A Petition**”) and (c) if the L-1A Petition is approved, Beneficiary (i) if eligible, may seek to change his/her immigration status in the United States¹ or (ii) apply to the U.S. Embassy or Consulate outside the United States for a nonimmigrant L-1A Visa to enter the United States. Beneficiary is eligible to change his/her status in the United States without leaving the United States if he/she has continuously maintained lawful status in the United States. However, if Beneficiary leaves the United States after obtaining a change to L-1A status, he/she must apply for the nonimmigrant L-1A visa prior to his/her re-entry into the United States.

4. **Filing Fees.** The filing fees for the H-1B, as of the date of this memorandum, include the following: (a) \$320.00 for the Nonimmigrant Petition for Alien Worker; (b) \$500.00 -- fraud fee for investigations (“**Fraud Fee**”). If the U.S. Employer desires to expedite the process and pay a premium processing fee in the amount of \$1,000.00, the Petition may be adjudicated within a period of 15 days.

5. **FDNS Site Visits.** The Office of Fraud Detection and National Security (“**FDNS**”) was created by the U.S. Citizenship and Immigration Services (USCIS) in 2004 to conduct site visits to businesses that sponsor foreign nationals who receive benefits from the USCIS. These site visits are conducted to investigate immigration benefit fraud and to ensure that benefits, such as L-1A status, are not granted to persons who threaten national security or public safety. The FDNS is funded by the Fraud Fee. Employer’s filing L-1A petitions on behalf of any beneficiaries may be subject to these site visits. The purpose of these site visits are to ensure that Employer exists and to verify that the information contained in the petitions is accurate.

6. **Services provided by the Law Offices of KahBo Dye-Chiew.** KahBo Dye-Chiew, the principal of the Law Offices of KahBo Dye-Chiew, has been assisting clients file H-1B petitions since 1991. She will work with Employer and Beneficiary to advise them as to the viability of the L-1A petition based on the relationship between the Foreign Company and the U.S. Company and Beneficiary’s employment with the Foreign Company and proposed employment with the U.S. Company. She assists Employer in preparing the petition forms and preparing the Employer’s letter in support of the L-1A Petition which contains the evidence in support of the petition to show that both the Employer and the Beneficiary meet the requirements of the L-1A Petition.

Ms. Dye-Chiew assists clients in preparing this information based on the information which she obtains directly from the client. The L-1A petition and the Employer’s letter must be signed by the Employer prior to filing with the USCIS as appropriate. Prior to filing, Ms. Dye-Chiew will request that Employer carefully review all the documentation and that Employer’s signature on these documents confirm that the documents accurately represent

¹ The request to change immigration status in the United States can be done at the time that the initial petition is filed.

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all information contained therein and that the documentation is ready for filing with the USCIS. An accurately documented petition is Employer's best defense in the event of an FDNS Site Visit.

Next Steps. In order for this law firm to start working on the L-1A process, we will request that Employer and Beneficiary sign an engagement letter with our law firm which sets forth the terms of the engagement of this law firm to assist Employer and Beneficiary in filing the L-1A Petition. We will provide you with our standard checklist of documents which we will request from the Employer to start processing the L-1A.

Should you have any questions concerning the foregoing, please do not hesitate to contact the Law Offices of KahBo Dye-Chiew.

End of Memorandum