



104 Kenner Avenue, Suite 202
Nashville, TN 37205
Tel 615-340-5000 Fax 615-216-2118
www.immigrationgrp.com

Who Qualifies For The EB-1 Executive Or Managerial Green Card?

The EB-1 green card route for multinational executives and managers results in green card issuance many years earlier than the PERM green card route. To qualify for this faster route, a sponsored employee must have worked abroad for a related company as a manager or executive for at least one year during the three years immediately prior to being transferred to the United States to serve as a manager or executive. Employees of a foreign company that becomes acquired may count their time with their pre-acquisition employer toward meeting the one-year requirement.

The most common visa type held by a sponsored employee for this expedited green card route is the L-1A visa. However, (1) possession of an L-1A visa does not automatically qualify the employee for the EB-1 route; (2) possession of an L-1B does not disqualify an employee from the EB-1 route if they otherwise meet the eligibility criteria; and (3) possession of an E, H, or TN visa does not disqualify an employee from the EB-1 route if they otherwise meet the eligibility criteria. This article discusses the EB-1 route primarily in the context of the L-1A visa.

For an L-1 visa, an employee must have worked abroad as a full time executive, manager, or specialized knowledge worker for a related company for at least one year during the three years immediately prior to their transfer to the United States.

In contrast, the EB-1 green card requires that the employee worked abroad as an executive or manager for a related company for at least one year during the three years immediately prior to their transfer. This requires proof by organizational charts, letters from the U.S. and the foreign employers attesting to the executive or managerial duties, and other items demonstrating the following:

Executive:

- Directed the management of the company or a component or function within the company;
- Established goals and policies for the company as a whole or a large division or component;
- Exercised wide latitude in discretionary decision making, including such areas as budgetary matters or client relations; and
- Received only general direction from higher level executives, stockholders, or the board.

Manager:

- Managed the organization or a department, subdivision, function, or component of it;
- Supervised and controlled the work of other supervisory, professional, or managerial employees, or managed an essential function within the organization or a department or subdivision of it. (In other words, first line supervisors are not managers unless they supervise professionals.);
- Had the authority to hire and fire employees or to recommend personnel actions (if supervising other employees directly) or functioned at a senior level (if no direct supervision of others); and
- Exercised discretion over day-to-day operations of the activity or function.

The PERM three-step green card process takes many years to complete, whereas the EB-1 multinational executive and managerial route is a two-step process that takes only 9-18 months to complete. The two-step process can be approached in two ways: (1) file both steps simultaneously or (2) file the steps in succession. The advantage of simultaneous filing is completion of the green card a few months earlier. The advantage of successive filing is in seeing whether eligibility for the multinational manager route is approved before incurring the costs of filing the second step. The USCIS does not provide expedited handling of the first step, so there is no middle position available.

Given the substantial time difference between the two-step and the three-step processes, some applicants pursue the faster process despite their lack of eligibility. This has resulted in recent years in heightened scrutiny by the USCIS. Therefore, in order to succeed under the scrutiny imposed by the USCIS during the two-step process, an employer must make it exceedingly clear that the sponsored employee was and is an executive or manager. The strength of a petition asserting EB-1 multinational eligibility should therefore be assessed before deciding whether to file the second step application simultaneously.

If the two-step process is unavailable, then the green card requires an additional first step known as PERM, which is a labor market process involving advertising in the marketplace to prove that no interested U.S. worker is able, willing, qualified, and available for the job position. Though this additional step takes approximately one year to accomplish, the overall time for completion of the three-step green card process is much longer than in the two-step process, because the three-step process is delayed due to visa quotas and backlogs whereas the two-step process typically is not.

If an employee has limited time remaining on his or her temporary work visa, the employer should consider both (1) changing the employee to the H-1B temporary work visa category and (2) pursuing the slower PERM route simultaneously with the filing of the EB-1 route in order to cover all options.

Here are some examples of the EB-1 process in action:

- John, an L-1A executive in the U.S. and a manager in Australia for the parent company, is EB-1.
- Janna, an E-2 executive in the U.S. and an executive in Finland for an affiliate, is EB-1.
- Vinod, an H-1B executive in the U.S. and a manager in India for a subsidiary, is EB-1. He will finish his green card in the same amount of time as John and Janna.
- Rajesh, an H-1B executive in the U.S. and a specialized knowledge employee for the Indian parent company, is not EB-1. He will finish his green card 5-10 years after John, Janna, and Vinod due to visa quotas applicable to India in the EB-2 and EB-3 categories.
- Dagmar, an L-1A manager in the U.S. and a specialized knowledge employee for the German parent company, is not EB-1. She will finish her green card 3-7 years later than John, Janna, and Vinod due to visa quotas applicable to Germany in the EB-2 and EB-3 categories.
- Menno, an L-1B executive in the U.S. and an executive abroad for the Dutch parent company, received an L-1B visa due to his company's mistaken belief that the "specialized knowledge" category sounded more exclusive and seemed more beneficial to him. He is EB-1. He will finish his green card in the same amount of time as John, Janna, and Vinod.