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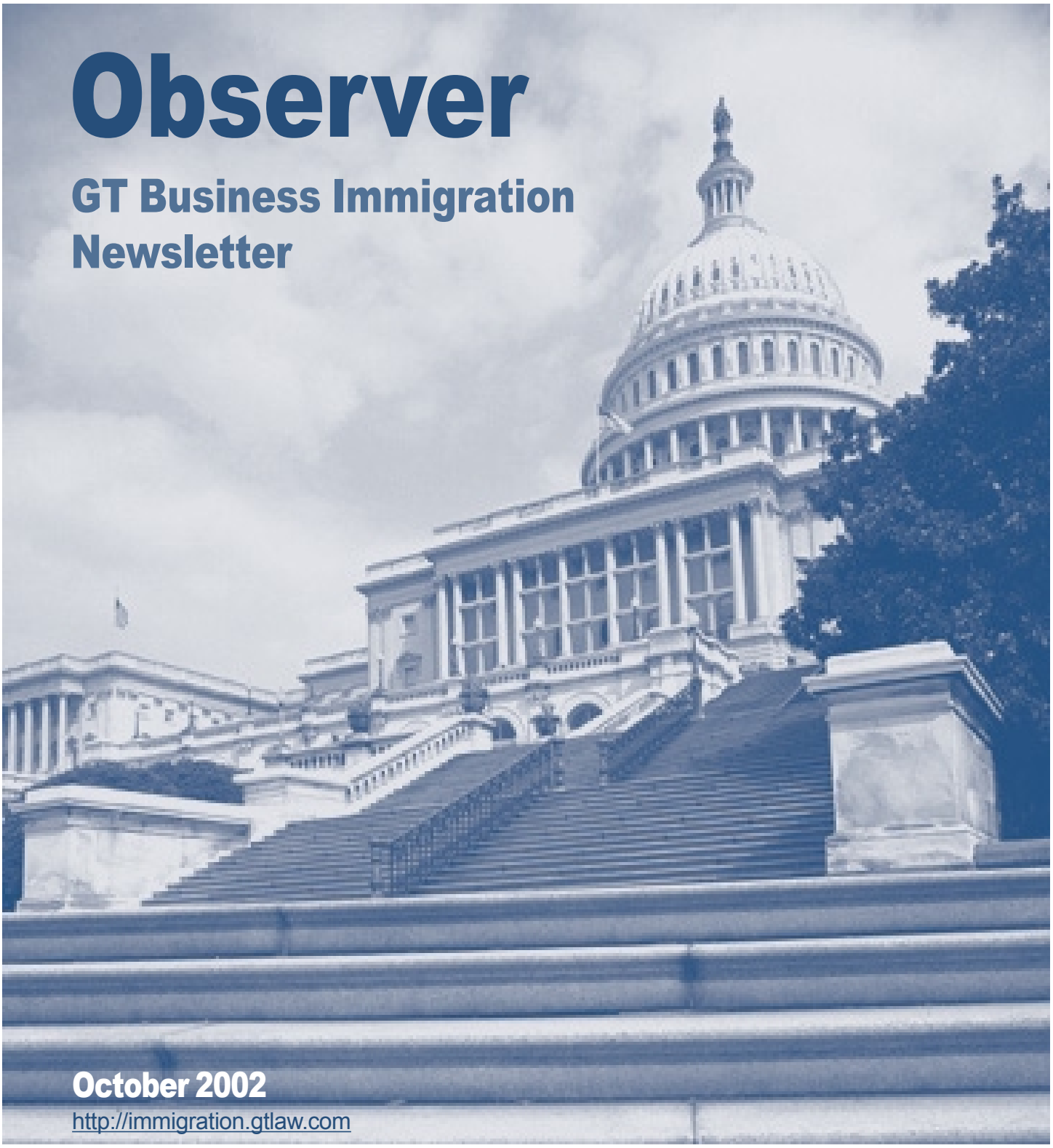

October 2002

http://immigration.gtlaw.com

Observer

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The GT Business Immigration Observer is published by the business immigration practice group at Greenberg Traurig. GT Of Counsel, Dawn M. Lurie serves as the Editor of the Observer. The newsletter contains information concerning trends and recent developments in immigration law. Moreover, the authors analyze and report on relevant immigration related issues as well as legislative issues.

Finally, the GT Observer serves as an invaluable resource to individuals, and human resource managers, recruiters and company executives who must keep current on these matters.

SPREAD THE WORD

If you have enjoyed reading this newsletter and have found useful information in it, we'd greatly appreciate your help in spreading the word about it. You can do this by forwarding a copy to your friends and professional peers and telling them about it.

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INS Launches Its Registration Program On the One Year Anniversary of The Terrorists Attacks in New York and The Pentagon

On the one-year anniversary of the terrorist attacks on the World Trade Center and the Pentagon, the Immigration and Naturalization Service implemented its special registration system for certain nonimmigrants entering the country. The registration system requires certain nonimmigrants to register with INS when they enter the country. The registration includes being fingerprinted, photographed, and interviewed upon entry to the United States. While in the country, individuals subject to the registration requirements will have to periodically check in with INS.

The original countries subject to the registration system were Iran, Iraq, Sudan, Libya and Syria. Recently, Saudi Arabia, Yemen and Pakistan were added to the list of countries. Registration for these three new countries began on October 1, 2002. All citizens and nationals aged 14 and over from the first five countries are subject to registration (including those who possess dual citizenship); however, only male citizens or nationals aged 16 to 45 from Saudi Arabia, Yemen and Pakistan will be subject to registration.

As nonimmigrants enter the country, they will be given a packet of information that explains the registration requirements and their responsibilities under the registration system.

The INS regulations also required individuals to register when they exit the country. On September 30, 2002, INS published a list of the ports of entry in which nonimmigrants may register as they exit the country. That list became effective on October 1, 2002. Individuals are not permitted to register upon exit at a port of entry not listed by the INS. The list of approved registration port of entries is attached in PDF format:

In an effort to address confusion among foreign nationals who had entered the United States before these regulations took effect, on October 9, 2002, INS indicated that "Nonimmigrant visitors who have been admitted into the United States without being registered by INS immigration officials, are not special registrants, and therefore are not required to follow special registration procedures. " There is no requirement to report to an INS office for an interview, and there are no restrictions or requirements related to leaving the United States for these individuals regardless of their nationality. However, when such individuals reentry the U.S., they may be selected for special registration.

The registration system is evolving and receiving mixed reactions. When Saudi Arabia was added to the registration list, their government expressed outrage and indicated that U.S. citizens may be subject to "special registration" when entering Saudi Arabia . At this point, it is unclear what effects adding these three countries to the registration requirement will have on the diplomatic relations between these countries and the United States. In addition, immigration practitioners are unsure of the motives of the INS in adding these countries to the initial list, specially since the addition of the countries was done through a memorandum that was not released to the public. The memorandum became public knowledge only when it was discovered by a media source. However it should be noted that several of the 9/11 hijackers were Saudi Arabian Nationals.

Additional Information on special registration is available at the INS web page at www.INS.usdoj.gov. As the registration system develops and expands, Greenberg Traurig will provide updates.

To view the entire article go to:
http://www.gtlaw.com/practices/immigration/newsletter/008/item01.htm

Guest Worker Essential Worker Immigration

EWIC is a coalition of businesses, trade associations, and other organizations from across the industry spectrum concerned with the shortage of both skilled and lesser skilled ("essential worker") labor.

Greenberg Traurig Shareholder Laura Reiff is a co-chair of the coalition. For more information see: www.EWIC.org

Global Immigration Seminars

Greenberg Traurig continues its tradition of providing complimentary presentations to companies on outbound immigration issues as well as discussions on money saving tax strategies for employees as well as employers. GT provides information, guidance and assistance to our clients on visa matters relating to the international relocation of personnel to, and between, countries outside of the United States.

Please contact Dawn M. Lurie at (703)903–7527 or luried@gtlaw.com for further information.

Possible System Overhaul? - GAO Finds Problems with Commerce Department's Deemed Export Control System and the Regulation of the Transfer of Sensitive Technology to Foreign Nationals

The General Accounting Office ("GAO") recently released a report critical of the Department of Commerce's Deemed Export Control System and how it regulates the transfer of technology to foreign nationals. Moreover, the Department of Defense reviewed the GAO's recommendations and agreed with their suggested course of action. While the Department of Commerce responded to the GAO by stating that it had an effective monitoring system in place, the Department also stated that it would explore the GAO's recommendation for changes to the system.

For the uninitiated, a "deemed export" occurs when an export of a controlled commodity or technology subject to the Export Administration Regulations ("EAR") of the Department of Commerce is made to a foreign person, whether in the United States or abroad. The export is legally "deemed" to be an export to the country of which the foreign person is a national. The GAO report should be of particular interest to employers who are involved with controlled technologies and commodities that are subject to the EAR and who employ foreign nationals who are not permanent resident aliens ("Green Card" holders). The GAO's recommended changes to the Deemed Export Program could result in a more stringent enforcement of the current export regulations and a possible revamping of the entire system. Employers should ensure that they are in compliance with Commerce's Deemed Export Control Program as violations may result in administrative or criminal penalties including fines, denial of export privileges and imprisonment.

As background, the U.S. Government regulates and controls the exports of certain non-military (the Department of Commerce) and military (the Department of State) technologies and commodities. Certain technologies and commodities that may have both a military and a non-military application are referred to as "dual-use" and are also controlled by the Department of Commerce. The EAR may require your company to obtain licenses from Commerce before exporting "dual-use" technologies. Such technologies are subject to export controls because they could be used by other countries to upgrade their military systems or the technologies are tied to national security or foreign policy issues. In particular, countries of concern are China, Cuba, India, Iran, Iraq, Israel, Libya, North Korea, Pakistan, Russia, Sudan and Syria, although the EAR and its restrictions pertaining to "dual-use" exports apply to all foreign entities, wherever located.
Companies that employ foreign nationals who are involved with working with or who have access to controlled technologies are required to apply for deemed export licenses. Generally, technologies that require a license when exported to certain countries, either for actual export or deemed export, are: technologies connected with certain nuclear materials, facilities and equipment; propulsion systems and space vehicles; navigation and avionics; chemicals, "microorganisms" and toxins; electronics; computers; materials processing; telecommunications and information security; and lasers and sensors.

Based on the GAO's review of the Commerce's Deemed Export Program, it appears there are serious weaknesses in the control of transfers of technology to certain foreign nationals. According to the GAO, the majority of deemed export licenses issued in fiscal year 2001 involved countries of concern with 73% of the licenses were issued for Chinese nationals, and another 14% of the licenses were issued to Russia, Iran, India, Syria, Israel, Iraq, and Pakistan.

In particular the GAO found two major issues with the Program. First, Commerce currently screens thousands of overseas visa application selected by the Department of State to find foreign nationals who may be subject to deemed export control licensing. However, according to the GAO, Commerce has no process in place to examine the individuals who change status in the U.S. to work for companies that are involved in dual use technologies. GAO looked at the numbers of individuals who in fiscal year 2001 switched to the H-1B nonimmigrant classification in the past year as a sample study (H-1B is the classification for temporary workers). They found a possible 15,000 foreign individuals in H-1B status alone who may be subject to deemed export controls based on the type of work their position required.

The second major issue the GAO found with the Program is that Commerce rejects very few applications for deemed export licenses, and it does not have an effective monitoring system in place to determine if companies are enforcing the conditions under which a deemed export control license is issued. As part of the issuance of deemed export licenses, Commerce attaches security conditions to almost all licenses which are supposed to cut-down the risk of allowing the foreign nationals to have access to controlled technologies. Currently, the impetus of enforcing these security conditions is left up to the company applying for the deemed export license. Commerce does not

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normally conduct any type of follow-up visits to the companies who have applied for deemed export licenses to check to see if the companies are implementing the security conditions of the license. According to GAO, Commerce has no clear idea if these controlled technologies are being protected from being transfered to countries of concern through their foreign nationals.

Based on its findings, GAO made several recommendations on how Commerce could improve its Deemed Export Control Program. In order to improve its screening and identification of all individuals who could be subject to deemed export controls, the GAO recommended that Commerce use all existing U.S. immigration data to assist them in this process. According to the GAO, this should assist Commerce in identifying those individuals who are attempting changes of immigration status in the U.S. and who are currently not being screened as they are not necessarily applying for visas. In order to ensure compliance with the security conditions, the GAO also recommended that Commerce work closely with the Department of Defense, Department of State and the Department of Energy in order to develop a program that is risk-based in order to monitor compliance with deemed export license requirements.

In the aftermath of the GAO report, many expect that Commerce will certainly seek to tighten its rules on deemed exports, and that we will see those changes published in the Federal Register as changes to the EAR. Employers involved with technologies and commodities subject to the EAR that employ foreign nationals should be aware that they may face tighter regulation and enforcement in the future. This enforcement could possibly involve random checks by Commerce employing the use of immigration data to monitor whether the company's employees are properly covered by a deemed export control license as well as compliance visits to ensure that companies that have deemed export control licenses are enforcing the security conditions.

If you have any questions regarding the deemed export compliance issue, please feel free to contact Dawn Lurie in Greenberg Traurig's Immigration Practice Group or Fred Shaheen in our Export Control Practice Group (703-749-1355).

Relief for H-1B Holders – H-1B Seventh-Year Extensions for Pending Labor Certifications, Other Fixes in DOJ Reauthorization Bill

On October 3, 2002, the United States Senate passed the Department of Justice Authorization Bill, HR 2215. The bill, which had passed the House during the last week of September, is notable as the first DOJ reauthorization to be passed by both houses in more than 13 years. As of the date of the writing of this report, the bill is undergoing technical corrections though it is expected to be signed shortly by President Bush.

The Authorization Bill contains provisions Greenberg Traurig drafted and lobbied for that would apply "seventh-year extensions" to labor certifications that have been pending for more than one year prior to the end of the nonimmigrant worker's sixth year in H status. This provision allows non-immigrants who have labor certification applications caught in lengthy agency backlogs to extend their H-1B status beyond the 6th year limitation, or if they have already exceeded such limitation, to have a new H-1B petition approved so they can apply for an H-1B visa to return from abroad or otherwise re-obtain H-1B status. This is a necessary complement to the H-1B extension legislation that was passed in 2000 permitting extensions beyond the 6 year maximum for persons with pending permanent residence applications.

The bill will also expand the Conrad program for J-1 waivers of the two-year home country presence requirement from 20 to 30 waivers per state and extend the program for two years.

The bill contains provisions regarding citizenship, including extending the deadline to allow family members to apply for honorary posthumous citizenship for non-citizen veterans who died while honorably serving the U.S. in past wars; and authorizing a child's grandparents or legal guardian to submit an application for naturalization on behalf of certain children eligible for naturalization, where the child's parent died during the preceding five years.

Additionally, the bill addresses certain immigrant investor issues, including new procedures for removal of conditions on permanent resident status and Immigration Court review of denials of applications to remove conditions. Also included are provisions for the reopening of certain INS-revoked petitions so that investors may pursue previously filed adjustment of status or overseas immigrant visa applications. The bill provides for a new definition of "full-time employment" as being at least 35 hours of work per week, eliminates the "establishment" requirement so that an investor need show only that he or she has invested in a commercial enterprise, and need not have established one, and clarifies that "commercial enterprise" may include a limited partnership.

Options for Multinational Organizations Transferring Personnel to the U.S. from Abroad: The L-1 Visa and the Blanket L Program

In recent months we have observed countless companies and particular business sectors cutting back on their workforce due to the downturn in the economy. As a result many employers are no longer utilizing the H-1B program to employ foreign nationals. However, for companies with multinational operations, the global transfer of personnel continues and perhaps is expanding, as a result of these economic trends. In some cases the correlation increases as companies are merged and acquired, and as organizations restructure, downsize and regroup, thereby leading to a greater transfer of foreign personnel to close down, retrain and establish existing and new operations in the U.S.

While the B-1 visitor for business visa can be utilized for some purposes, the limitations placed on the type of activity personnel from abroad can engage in can be frustrating and can impede operations. For multinational organizations with affiliates, subsidiaries and branch companies in the U.S., the L-1 visa program and the Blanket L program can be essential to the efficient and cost-effective transfer of personnel to the U.S.

What is the L-1 Visa Category and why is it better than an H-1B or a B-1?

The L-1 visa also known as the intra-company transferee visa, is designed to facilitate the transfer of key employees, including top level managers and employees with specialized knowledge of the company to the U.S. from a foreign branch, parent/subsidiary or affiliated entity.

In comparison to the H-1B visa classification, the L-1 category provides the U.S. organization with more flexibility and less burdensome regulations and obligations. In particular, the L-1 classification does not subject the employer to the standards and requirements of the Department of Labor (DOL) as they relate to H-1Bs. Some of the key differences include:

- The L-1 is not subject to prevailing wage requirements as is the H-1B.
- Filing an L-1 does not require a DOL certified Labor Condition Application (LCA) for each location where the transferred employee may work.
- There is no requirement that the transferred employee hold a Bachelor's degree that correlates to the job being performed in the U.S. or that the position be a professional one requiring a Bachelor's degree (exception for Blanket L transfers of specialized knowledge employees).
- In L-1 status the transferred employee may work part time or full time without having to amend the I-129 petition. With an H-1B such a change would require amending the I-129 and the LCA.
- The transferred employee can work part-time for more than one subsidiary of tthe same international corporation.

Any time a transferred employee is expected to be "gainfully employed" by the U.S. entity, then the L-1 should be considered in lieu of the B-1. This applies even if the transferred employee remains on the payroll of the company abroad.

For example, if there is a pending merger between a U.S. and German company, or an existing U.S. company is negotiating a purchase by a Germany company, the German company may initially need to send top executives and managers to negotiate the deal. The need for their presence will also be important as the deal is being finalized. It is appropriate for these persons to enter the U.S. on a B-1 visa. Once the sale or merger is complete, if these individuals remain to manage the company or the transition, then their status will need to be changed from a business visitor to an intra-company transferee in L-1 status.

In addition, if the individual initially entered as a B-1 visitor to attend meetings or conduct other activities at affiliate offices, and through the course of his activities, the nature of his stay changes, the U.S. company should definitely consider filing for a change of status for the employee to L-1. Generally, activities the INS deems acceptable for individuals who enter the U.S. as business visitors include:

- Engaging in commercial transactions that do not involve gainful employment in the United States.
- Negotiating contracts.
- Consulting with business associates.
- Litigation.
- Participating in scientific, educational, professional, or business conventions, conferences, seminars.
- Undertaking independent research.

What companies and international personnel qualify for this category?

Any type of business in any industry can qualify for this classification, as long as the activities are not illegal. Interestingly enough, the U.S. and foreign entity do not have to be in the same line of business. However, the foreign entity must have been in existence for at least one year.

For the company to qualify, the U.S. entity will need to be one of the following:

- A branch office of a foreign company.
- A parent or subsidiary of a foreign company meeting the INS' definition of such a relationship.

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- An affiliate of a foreign company (both companies owned by the same entity or same group of owners in similar proportions).

For the employee abroad to qualify he/she:

- Must have worked in an executive, managerial or specialized knowledge capacity for the foreign entity for at least one year in the past three years (6 months if transferring under a blanket L program discussed below)
- Will be sponsored to work in the same capacity for the U.S. entity.

For individuals who are transferred as executives and managers, their L-1A status can be granted for an initial three year period and extended for a total of seven years. For those transferring as specialized knowledge employees, their L-1B status can be extended for up to a total of five years, and in some cases where this individual switches to L-1A status it may be possible to extend for up to seven years.

What if the Company abroad is establishing a new company or a new office in the U.S.?

The L-1 is also available for employees who are being transferred to set up new offices, subsidiaries or affiliates. In such a case the L-1 is valid for an initial one year period and can be extended as noted above if the need is justified. There is no minimum investment requirement. However, there must be enough revenue to pay the salary of the company's officers and other startup and projected expenses.

The request for the transfer can be made as soon as the new organization is formed. Although, the regulations require a four week adjudication, the L-1 visa can take two months or longer to be approved after it is filed with the INS, however, for an additional premium processing fee, the petition can be expedited and a determination received within 15 days.

What is the Blanket L and how does it help?

Multinational companies transferring large numbers of employees in L-1 status can take advantage of special procedures that make it easier for their employees and for them to obtain L-1 visas. Companies that qualify can receive a "blanket approval" for all of their employees to avoid filing individual petitions with INS for each employee. The blanket approval certifies the affiliated company(ies) relationships. Through the blanket program, multinational companies can transfer employees to the U.S. in a much more efficient and cost-effective manner. The process cuts down and often eliminates INS processing times and fees, and at the same time saves the company money by ensuring the transfer of key personnel in a timely manner avoiding loss and unnecessary expenditures arising when individuals are stuck outside of the U.S. for prolonged periods of time.

- To qualify for a blanket petition, the U.S. company must meet the following criteria:
- The U.S. and foreign offices must be engaged in commercial trade or services.
- The company abroad and the company in the U.S. must have been in operation for at least a year.
- The U.S. company must have at least three domestic or foreign branches, subsidiaries, or affiliates.
- The U.S. company must establish one of the following:
  1. At least ten L-1 visas were approved in the last year;
  2. The company had U.S. sales of at least $25 million; or
  3. There is a U.S. work force in excess of 1,000 workers.

Once the U.S. company is able to obtain a Blanket L approval from the INS, any future intracompany transferees will only need to establish their qualification in L-1 status as managers and executives or specialized knowledge employees. For those outside of the U.S., this means that they do not have to wait for a petition to be filed and approved by the INS. They will only need to submit their L-1 visa applications to the U.S. consulate abroad to be issued an L-1 visa. This procedure bypasses the two to three month processing times of the INS and results in the ability of an intracompany transferee to obtain an L-1 visa and begin employment in the U.S. within weeks rather than months.

Of course, it is also important to note that some applicants are subject to additional security checks which will inevitable affect and control how quickly or how slowly the L-1 visa application will be processed at the consulates abroad. In addition, it is also expected that all nonimmigrant visa applications will eventually be required to appear for visa interviews, which is also expected to slow down the processing times at the consulates.

Are there any other considerations?

In addition to consulting experienced corporate immigration counsel, it is imperative for the foreign national as well as the U.S. and foreign entities to seek the advice of corporate and tax counsel, as well as certified public accountants. For new entities and offices, these professionals will be able to assist in structuring the U.S. entity so as to minimize tax liabilities in the U.S. as well as abroad. Once the entities are established and in operation, care

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must also be taken to ensure that appropriate and required reports are filed with the IRS as well as local and state agencies.

Using the L-1 program and the Blanket L program allows various industries to take advantage of a more efficient and less costly way to achieve their goals and exchange information, skills and knowledge through the transfer of their employees to the U.S. When utilized in combination with established resources in the U.S., individuals who are transferred among affiliated companies on a global scale are valuable resources that are essential to companies in their efforts to improve their economic stance and increase their chances of survival.

Diversity Immigrant Visa Program (DV-2004) Registration Instructions Issued by the Department of State (CDT)

On August 21, 2002, the U.S. Department of State issued a notice of registration for the 2004 Diversity Visa Program. Entries for DV-2004 must be received by the Kentucky Consular Center (at the address noted below) between NOON on Monday, OCTOBER 7, 2002 and NOON on Wednesday, NOVEMBER 6, 2002. Entries received before or after this period will be disqualified, regardless of when they are postmarked.

The Diversity Visa Program makes 55,000 immigrant visas available each year; however, 5,000 of these visas are allocated to those eligible for immigrant status under the Nicaraguan and Central American Relief Act (NACARA). This reduction began in DV-1999 and remains in effect for DV-2004.

Natives of the following countries are not eligible for DV-2004: Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, Vietnam (Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.)

For information on the following:

- Eligibility Requirements
- How to Apply
- Mailing Instructions
- Selection Criteria
- Notification of Successful Applicants

Go to http://www.gtlaw.com/practices/immigration/newsletter/009/item07.htm

Interested individuals may call Greenberg Traurig Business Immigration Group or the U.S. Department of State information line at (202) 331-7199. Applicants overseas may contact the nearest U.S. embassy or consulate for instructions. Information is also available at http://travel.state.gov.

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