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IT'S THE LAW

Immigration Law In The Hospitality Industry

THE MEGACUP PHENOMENON Visas For Multinational Managers and Specialized Knowledge Workers

When I read that a certain major multinational coffee company plans to open its first retail outlet in France early 2004, as an immigration lawyer I could not fail to contemplate how the planned expansion could create an opportunity for the company to transfer personnel from its French to its U.S. operations.

To illustrate, let us take the example of a multinational coffee retailer – we'll call it Megacup. In the U.S., where Megacup is based, the company maintains a corporate headquarters office, as well as a number of regional offices and several hundred retail outlets. In addition, Megacup operates several industrial plants around the U.S. where it roasts coffee beans for use in its wholesale and retail operations. Megacup has recently established a corporate organization in France, and has opened several dozen coffee outlets there.

U.S. immigration laws allow multinational companies to transfer managers, executives, and specialized knowledge workers from their foreign operations to their U.S. operations in either L-1A (managers and executives) or L-1B (specialized knowledge workers) status. The prospective U.S. employer and the foreign employer must have a qualifying parent, branch, affiliate or subsidiary relationship. The sponsored worker must have at least one continuous year of full-time overseas employment with the foreign employer, within the three years preceding the filing of the request for L-1 status. Both the qualifying foreign employment and the prospective employment must be in a managerial, executive, or specialized knowledge capacity. In most cases, the L-1 visa can be issued

for an initial period of 3 years, and extended in 2 year increments. The maximum stay is 7 years for an L-1A worker, and 5 years for an L-1B worker.

Clearly, a major multinational company like Megacup could use the L-1 category to transfer executives from its corporate offices in France to its corporate headquarters in the U.S. So, for example, if Megacup France hired a new executive to oversee its French operations, after one year it could transfer that person to a similar executive position in its U.S. operations.

What other kinds of workers could Megacup transfer to the U.S. in L-1 status?

Under the Immigration Service's regulations, "managers" are those who manage the organization, "or a department, subdivision, function, or component" thereof, and who exercise discretion over the day-to-day operations of the activity or function for which they have authority. Managers include both traditional managers, who supervise and control the work of other professional employees, and functional managers, who manage an essential function within the organization and function at a senior level within the organizational hierarchy.

In its corporate headquarters and regional offices Megacup probably employs financial managers, information technology managers, operations and logistics managers, marketing and sales managers, human resources managers, and facilities managers who would qualify for L-1A status. Production and distribution managers at the company's industrial plants may qualify for L-1A

status as well.

In addition to managers and executives, it is likely that a variety of workers who hold specialized knowledge of the company's methods and procedures would qualify for L-1B status. L-1B status is granted to professionals who possess "special knowledge . . . of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures."

So, for example, in its corporate offices Megacup may employ marketing professionals who are familiar with the company's specialized methods of market research and the channels of distribution for the its products. In its industrial plants, the company may employ engineers and technical professionals who are knowledgeable about the company's proprietary technology and methods of roasting coffee beans. Both types of professionals may qualify for L-1B status.

While the L-1A and L-1B categories are most frequently utilized by large multinational companies like Megacup, these visa categories can be of use to smaller organizations as well.

For example, a restaurant in France that is wholly owned by a restaurant in the U.S. may be able to transfer culinary managers (i.e. Executive Chefs) to the U.S. in L-1A status, and even non-managerial chefs with proprietary knowledge of the restaurant's operational procedures or recipes may qualify for L-1B status. Similarly, a food and beverage or restaurant manager who oversees other hospitality professionals and has significant oper-



Becki Young

ational and financial management duties might qualify for L-1A status.

Whether a corporate organization qualifies to transfer workers to the U.S. in L-1 status, and whether a particular worker qualifies for either L-1A (multinational manager or executive) or L-1B (specialized knowledge worker) status, requires a careful analysis of both the facts and the law in any given case. While the above examples illustrate some of the potential uses of L-1A and L-1B status in the restaurant and foodservice industry, this category is subject to intense scrutiny by the Immigration Service, and employers who believe they qualify to sponsor L-1 workers are advised to consult a qualified immigration attorney.

Becki L. Young has been working in the field of immigration law since February 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, including investment banking and securities, information technology, health care, and hospitality, providing advice on work permits and related immigration issues. Contact her to learn more or to schedule a personal consultation by calling (202) 232-0983 or e-mailing to youngb@blylaw.com.