

Calendar No. 758

108TH CONGRESS
2D SESSION**S. 1635**

To amend the Immigration and Nationality Act to ensure the integrity of the L-1 visa for intracompany transferees.

 IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2003

Mr. CHAMBLISS (for himself, Mrs. FEINSTEIN, and Mr. GRAHAM of South Carolina) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 4, 2004

Reported by Mr. HATCH, with an amendment in the nature of a substitute
[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Immigration and Nationality Act to ensure the integrity of the L-1 visa for intracompany transferees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “L-1 Visa
5 (~~Intracompany Transferee~~) Reform Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) A key purpose of the visa issued to non-
4 immigrants described in section 101(a)(15)(L) of
5 the Immigration and Nationality Act (commonly
6 known as the “L-1 visa”) is to provide multi-
7 national companies with a means to transfer into the
8 United States, foreign workers whose presence is
9 necessary because of the specialized knowledge those
10 workers have gained with respect to the products,
11 processes, or procedures of their employer.

12 (2) The L-1 visa plays an important role in the
13 economy of the United States by bringing the most
14 talented and essential persons to work on United
15 States projects and keeping United States busi-
16 nesses competitive throughout the world.

17 (3) The L-1 visa facilitates foreign investment
18 in the United States to build factories and open of-
19 fices, to employ United States workers at those fa-
20 cilities, and to contribute tax revenue to State budg-
21 ets.

22 (4) The L-1 visa brings persons essential to
23 product research and development to the United
24 States which permits operations to remain in this
25 country rather than moving offshore.

1 (5) Due to the very nature of the L-1 visa as
2 Congress intended it and as properly used, employ-
3 ees in this classification do not displace United
4 States workers, and they should not be regarded as
5 new hires since they, instead, are transferees within
6 a company.

7 (6) In certain circumstances, however, misuse
8 of the L-1 visa has resulted in the displacement of
9 United States workers.

10 (7) Misuse of the L-1 visa classification has in-
11 volved only certain employees who were admitted on
12 the basis of specialized knowledge and were working
13 offsite, not those working at the site of the peti-
14 tioning employer or its affiliate, subsidiary, or par-
15 ent.

16 (8) Misuse has occurred when the foreign work-
17 er has been principally controlled and supervised by
18 an unaffiliated company.

19 (9) Misuse has occurred where the placement of
20 the L-1 employee is part of an arrangement to sim-
21 ply provide labor in a context that does not require
22 specialized knowledge particular to the petitioning
23 employer.

1 **SEC. 3. NONIMMIGRANT L-1 VISA CATEGORY.**

2 (a) **IN GENERAL.**—Section 214(c)(2) of the Immigra-
 3 tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amend-
 4 ed by adding at the end the following:

5 “(F) An alien who will serve in a capacity involving
 6 specialized knowledge with respect to an employer for pur-
 7 poses of section 101(a)(15)(L) and will be stationed pri-
 8 marily at the worksite of an employer other than the peti-
 9 tioning employer or its affiliate, subsidiary, or parent shall
 10 not be eligible for classification under section
 11 101(a)(15)(L) if—

12 “(i) the alien will be controlled and supervised
 13 principally by such unaffiliated employer; or

14 “(ii) the placement of the alien at the worksite
 15 of the unaffiliated employer is part of an arrange-
 16 ment merely to provide labor for the unaffiliated em-
 17 ployer rather than in connection with the provision
 18 of a product or service for which specialized knowl-
 19 edge specific to the petitioning employer is nec-
 20 essary.”.

21 (b) **APPLICABILITY.**—The amendment made by sub-
 22 section (a) shall apply to petitions filed on or after the
 23 effective date of this Act, whether for initial, extended, or
 24 amended classification.

1 **SEC. 4. REQUIREMENT FOR PRIOR CONTINUOUS EMPLOY-**
2 **MENT FOR CERTAIN INTRACOMPANY TRANS-**
3 **FEREES.**

4 (a) **IN GENERAL.**—Section 214(e)(2)(A) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1184(e)(2)(A)) is
6 amended by striking the last sentence (relating to reduc-
7 tion of the 1-year period of continuous employment abroad
8 to 6 months).

9 (b) **APPLICABILITY.**—The amendment made by sub-
10 section (a) shall apply only to petitions for initial classi-
11 fication filed on or after the effective date of this Act.

12 **SEC. 5. MAINTENANCE OF STATISTICS BY THE DEPART-**
13 **MENT OF HOMELAND SECURITY.**

14 (a) **IN GENERAL.**—The Department of Homeland Se-
15 curity shall maintain statistics regarding petitions filed,
16 approved, extended, and amended with respect to non-
17 immigrants described in section 101(a)(15)(L) of the Im-
18 migration and Nationality Act (8 U.S.C. 1101(a)(15)(L));
19 including the number of such nonimmigrants who are clas-
20 sified on the basis of specialized knowledge and the num-
21 ber of nonimmigrants who are classified on the basis of
22 specialized knowledge in order to work primarily at offsite
23 locations.

24 (b) **APPLICABILITY.**—Subsection (a) shall apply to
25 petitions filed on or after the effective date of this Act.

1 **SEC. 6. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall
3 take effect 180 days after the date of enactment of this
4 Act.

5 **SECTION 1. SHORT TITLE.**

6 *This Act may be cited as the “L–1 Visa (Intracompany*
7 *Transferee) Reform Act of 2004”.*

8 **SEC. 2. FINDINGS.**

9 *Congress finds the following:*

10 (1) *A key purpose of the visa issued to non-*
11 *immigrants described in section 101(a)(15)(L) of the*
12 *Immigration and Nationality Act (commonly known*
13 *as the “L–1 visa”)* *is to provide multinational com-*
14 *panies with a means to transfer into the United*
15 *States, foreign workers whose presence is necessary be-*
16 *cause of the specialized knowledge those workers have*
17 *gained with respect to the products, processes, or pro-*
18 *cedures of their employer.*

19 (2) *The L–1 visa plays an important role in the*
20 *economy of the United States by bringing the most*
21 *talented and essential persons to work on United*
22 *States projects and keeping United States businesses*
23 *competitive throughout the world.*

24 (3) *The L–1 visa facilitates foreign investment*
25 *in the United States to build factories and open of-*

1 *fices, to employ United States workers at those facili-*
2 *ties, and to contribute tax revenue to State budgets.*

3 (4) *The L-1 visa brings persons essential to*
4 *product research and development to the United*
5 *States which permits operations to remain in this*
6 *country rather than moving offshore.*

7 (5) *Due to the very nature of the L-1 visa as*
8 *Congress intended it and as properly used, employees*
9 *in this classification do not displace United States*
10 *workers, and they should not be regarded as new hires*
11 *since they, instead, are transferees within a company.*

12 (6) *In certain circumstances, however, misuse of*
13 *the L-1 visa has resulted in the displacement of*
14 *United States workers.*

15 (7) *Misuse of the L-1 visa classification has in-*
16 *volved only certain employees who were admitted on*
17 *the basis of specialized knowledge and were working*
18 *offsite, not those working at the site of the petitioning*
19 *employer or its affiliate, subsidiary, or parent.*

20 (8) *Misuse has occurred when the foreign worker*
21 *has been principally controlled and supervised by an*
22 *unaffiliated company.*

23 (9) *Misuse has occurred where the placement of*
24 *the L-1 employee is part of an arrangement to sim-*
25 *ply provide labor in a context that does not require*

1 *specialized knowledge particular to the petitioning*
2 *employer.*

3 **SEC. 3. NONIMMIGRANT L-1 VISA CATEGORY.**

4 *(a) IN GENERAL.—Section 214(c)(2) of the Immigra-*
5 *tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amended*
6 *by adding at the end the following:*

7 *“(F) An alien who will serve in a capacity involving*
8 *specialized knowledge with respect to an employer for pur-*
9 *poses of section 101(a)(15)(L) and will be stationed pri-*
10 *marily at the worksite of an employer other than the peti-*
11 *tioning employer or its affiliate, subsidiary, or parent shall*
12 *not be eligible for classification under section 101(a)(15)(L)*
13 *if—*

14 *“(i) the alien will be controlled and supervised*
15 *principally by such unaffiliated employer; or*

16 *“(ii) the placement of the alien at the worksite*
17 *of the unaffiliated employer is essentially an arrange-*
18 *ment to provide labor for hire for the unaffiliated em-*
19 *ployer, rather than a placement in connection with*
20 *the provision of a product or service for which spe-*
21 *cialized knowledge specific to the petitioning employer*
22 *is necessary.”.*

23 *(b) APPLICABILITY.—The amendment made by sub-*
24 *section (a) shall apply to petitions filed on or after the effec-*

1 *tive date of this Act, whether for initial, extended, or*
2 *amended classification.*

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8 *amended by striking the last sentence (relating to reduction*
9 *of the 1-year period of continuous employment abroad to*
10 *6 months).*

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20 *gration and Nationality Act (8 U.S.C. 1101(a)(15)(L)), in-*
21 *cluding the number of such nonimmigrants who are classi-*
22 *fied on the basis of specialized knowledge and the number*
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25 *tions.*

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2 *titions filed on or after the effective date of this Act.*

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