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US IMMIGRATION & NATIONALITY LAW

L-1 ELIGIBILITY WITHOUT TRADITIONAL EMPLOYMENT: POZZOLI, TESSEL, AND HISTORIC INS GUIDANCE

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For many multinational employees, founders and senior executives, especially outside the United States, "employment" is not always a simple paycheck and payroll relationship. They may be compensated through their own entities, hold significant equity, or even draw no traditional salary. Yet U.S. immigration law still requires that an L-1 beneficiary have been "employed" abroad by a qualifying organization for at least one year.

Over decades, legacy INS and USCIS have answered what "employment" means in the L-1 context in a consistent way: the focus is on the underlying relationship of control and corporate integration, not on formalities like which entity runs payroll, what the local contract is called, or whether the individual receives a conventional salary. Classic decisions such as *Matter of Pozzoli*, 14 I&N Dec. 569 (Reg. Comm. 1974), and *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1981), along with later policy guidance, frame "employment" as the rendering of services under the employer's power to direct and control, within a genuine corporate structure.

To qualify for L-1 classification under section 101(a)(15)(L) of the Immigration and Nationality Act (INA), a foreign national must have been employed abroad continuously for at least one year in the three years preceding the petition and admission, must have been so employed by a qualifying organization (the same employer or its parent, subsidiary, or affiliate), and must be coming to the United States to work for that organization in either an executive or managerial capacity (L-1A) or in a position involving specialized knowledge (L-1B). Neither

the statute nor the regulations provide a bespoke L-1 definition of "employment." Instead, INS and USCIS have articulated that concept through case law and policy, repeatedly emphasizing who has the power of control over the individual's work, how integrated the individual is into the organization's management and operations or its specialized functions, and whether the services are rendered within a bona fide multinational corporate structure.

In *Matter of Pozzoli*, a U.S. corporation petitioned for a long-term executive of its Italian subsidiary to come to the United States as an L-1. The company made clear that during his U.S. assignment, the beneficiary would remain on the Italian subsidiary's payroll. The district director denied the petition, reasoning that because the Italian affiliate would continue to pay him, he would still be "employed" by the foreign company abroad and not "rendering his services" to the U.S. entity. On certification, the Regional Commissioner reversed. After reviewing the statutory history of section 101(a)(15)(L) and general master-servant law, INS concluded that the district director's focus on payroll source was misplaced. The Commissioner found that the petitioner and its Italian subsidiary were part of the same multinational enterprise, that the transfer was "to continue his employment as an executive of the corporation," and that the purpose of the L-1 amendments was to facilitate exactly this sort of movement of key personnel. The decision explicitly held that "the question of where the beneficiary's paycheck may originate is not a relevant factor" in determining eligibility for L-1 classification, and that payment by the foreign affiliate "does not preclude him from establishing eligibility." In other words, for L-1A purposes, the source of salary from a qualified affiliate abroad or from the U.S. entity does not, by itself, decide whether the person is "employed" by a qualifying organization; what matters is the corporate relationship and who actually controls the work.

Matter of Tessel, Inc. dealt with a different but closely related issue: can a person be treated as an "employee" when he is essentially an owner executive and does not draw a traditional salary? *Tessel* arose in the context of Schedule A, Group IV labor certification, but the analysis was explicitly tied to the L-1 definition of "affiliate" and the nature of qualifying employment abroad.

In *Tessel*, the beneficiary owned the vast majority of a South African company, served as its unsalaried chairman, and also owned a majority of the U.S. petitioner. The district director and the Regional Commissioner both questioned whether he was truly an employee at all, characterizing him instead

as an investor or entrepreneur, and expressing doubt that an employer employee relationship could exist where the petitioner and beneficiary were "one and the same." The Commissioner rejected those views, relying in part on *Matter of M*, 8 I&N Dec. 24 (BIA; A.G. 1958), which held that a corporation could file a preference petition for its sole shareholder.

Tessel reaffirmed that a corporation is a separate legal entity from its stockholders and is capable of employing them and petitioning on their behalf. It held that an unsalaried appointed chairman is nonetheless an employee in a managerial or executive position for purposes of Schedule A, Group IV, and that the fact that someone may qualify in another immigrant classification (such as investor) does not preclude simultaneous qualification as an employee. The decision also clarified that companies can be "affiliated" for L-1 purposes where there is a high degree of common ownership and management, either directly or through a third entity. Taken together, *Tessel* makes two core points that carry directly into the L-1 context: equity ownership does not destroy an employment relationship, and the absence of a conventional salary does not, by itself, mean there is no executive or managerial "employment."

In 1995, INS distilled these themes in a policy letter that explicitly addressed the meaning of "employed" for L□1 purposes. In a letter dated August 25, 1995, attorney William Z. Reich wrote to INS about a Canadian citizen who had been refused L□1 admission under NAFTA because he could not produce a T□4 wage form, the Canadian equivalent of a W□2. The individual had been compensated under a contract that was more advantageous for tax purposes, rather than as a salaried employee, and therefore did not have the usual wage documentation. Nonetheless, a letter from the employer's human resources manager confirmed several years of permanent, full□time employment; he had no other job; he devoted his full attention to managing the business; and he received direction and assignments from the company's executives, remaining subject to their control at all times. Mr. Reich argued that, given the nature and character of the relationship, the individual was clearly not an "independent contractor" as defined in the regulations, but rather an employee in substance. In her December 18, 1995 response, Yvonne M. LaFleur, then Chief of the Nonimmigrant Branch at INS, acknowledged that a general regulatory definition of "employment" elsewhere in the rules specifies compensation as one element, but explained that for L-1 purposes the Service "generally equates the rendering of service with employment for the qualifying L-1 period." The

letter cites both *Tessel* and *Pozzoli*, emphasizing that a non-salaried chairman can qualify as an L-1 nonimmigrant, and that the "power of control over the employee's activity, rather than salary, is the essential element in the employment relationship." That is a direct echo of the master servant analysis cited in *Pozzoli*: the truly "essential element" is the right to control how, when, and for whose benefit the work is performed, with the power to appoint and dismiss as strong evidence of that relationship, and the payment of wages "the least important factor". This correspondence is reproduced at 73 Interpreter Releases 49 (Jan. 10, 1996).

Taken together, *Pozzoli*, *Tessel*, and the LaFleur letter all point in the same direction. For L-1 purposes, "employment" is primarily a question of whether the individual renders services under the direction and control of a qualifying organization. The existence of salary, the exact form of compensation, and the source of payroll are secondary considerations. Ownership, even majority or sole ownership, does not prevent a corporation from being the individual's employer if the corporate entity is real and exercises governance authority over the executive role. Formal gaps in local payroll documentation, such as the absence of a T-4 or W-2, do not, by themselves, negate a qualifying employment relationship when the factual record shows full time, controlled service to the company.

These long-standing principles are increasingly important as global employers use local structures that do not resemble a U.S. W-2 job. Brazil provides a good illustration. In Brazil, the traditional employment relationship is governed by the Consolidation of Labor Laws (Consolidação das Leis do Trabalho, or CLT), Decree‑Law No. 5,452/1943. A CLT relationship is the classic labor‑law employment bond that brings with it a bundle of statutory wage protections, benefits, and social charges. In addition to this traditional CLT employment, however, Brazilian law recognizes several other legitimate forms for structuring professional activities. These include corporate relationships, specialized service arrangements, and the exercise of executive functions formalized through civil or commercial contracts. Under the widely used "Pessoa Jurídica" (PJ) model, for example, a professional provides services through a legal entity that he or she owns. That entity invoices the company, and compensation flows through the PJ rather than directly through a CLT employment contract. PJ contracts typically include boilerplate clauses disavowing a CLT "employment bond" or "subordination" and assigning labor and social security obligations to

the PJ entity. These clauses are designed to allocate responsibilities under Brazilian labor and tax law and to make clear that the relationship is not governed by CLT, but they do not automatically mean that the individual is economically independent from, or external to, the company's internal management.

In some L□1A scenarios, a Brazilian□based executive may, for more than a year within the three□year lookback period, serve as the top□level executive of a foreign parent company while being compensated, consistent with local practice, through a wholly owned PJ, rather than under a CLT bond. On the surface, standard PJ contract language disavowing a CLT bond or "subordination" can make the relationship look like independent contractor work, even when, in substance, the executive functions as an internal leader of the foreign enterprise.

Under long-standing INS/USCIS guidance, the proper way to analyze such a structure is not to stop at the contract label, but to examine the underlying master-servant relationship. Corporate documents, shareholder resolutions, and other evidence can show that the foreign parent has in fact selected and engaged the individual as its principal executive; defined that person's duties and strategic objectives; approved and adjusted compensation; retained the power, through corporate bodies, to appoint, supervise, and remove the executive; and relied on full-time, exclusive service integrated into its governance and reporting structure. A legal opinion from Brazilian counsel can further explain that the PJ form and CLT disclaimers reflect a choice among different lawful modes of engagement under Brazilian law, and do not necessarily mean that the individual operates as an external, multi-client contractor. In many such cases, the PJ itself has no other clients and functions solely as a billing and tax vehicle for executive services rendered inside the parent's corporate structure.

Viewed through the framework of *Matter of Pozzoli*, *Matter of Tessel*, and the LaFleur letter, the legal analysis is straightforward. As *Pozzoli* makes clear, the origin or routing of the paycheck does not determine who "employs" the executive for L-1A purposes; what matters is which qualifying organization actually directs and benefits from the work. *Tessel* confirms that equity ownership and the absence of a traditional, local-law salary do not prevent a corporation from being the individual's employer, because the corporation is a separate legal person capable of employing its owners when it exercises

genuine governance authority over their roles. And consistent with the LaFleur letter, the fact that compensation is paid under a contract for tax reasons does not disqualify the arrangement, because the Service "generally equates the rendering of service with employment for the qualifying L-1 period" when the master-servant control relationship is clearly documented.

These Brazilian-style PJ situations are simply one illustration of a broader rule. For L-1 purposes, "employment" is not a rigid label tied to local labor codes, salary forms, or who prints the paycheck. Even in the U.S., the use of a Professional Employer Organization (PEO) is prevalent so that companies can access better benefits. A PEO is a firm that provides comprehensive HR outsourcing services to small and medium-sized businesses through a co-employment agreement where the employee is put on the payroll of the PEO. The PEO can obtain better insurance premiums because it would have more bargaining power than a single company. It is a functional concept anchored in control and corporate integration, rather than in any single compensation form or local labor‑law label. Whether the petition is for an L‑1A executive or manager or an L‑1B specialized knowledge employee, the core question is the same: has the foreign national, in fact, rendered services abroad for at least one continuous year within the required three‑year window to a qualifying organization that directed and controlled the work within a genuine multinational structure?

In jurisdictions like Brazil, where CLT employment is only one of several legitimate ways to structure professional activities and where executives or specialists often serve under PJ or other civil/commercial arrangements, what matters for L‑1 is not whether the relationship is labeled CLT, PJ, contractor, or something else, but whether the foreign entity truly functions as the employer in the master‑servant sense: selecting the individual, defining duties and objectives, supervising performance, and retaining the power to remove the person from the role. If those elements are present, and all other statutory and regulatory criteria are met, the absence of a CLT bond, a traditional salary, or a familiar payroll form should not, by itself, defeat the one‑year foreign employment requirement for L‑1 category.

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