



WHEN DUAL INTENT MEETS THE DUTY TO DEPART: L-1 OWNERS PURSUING EB-1C PERMANENT RESIDENCE

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The L-1 visa classification appears to pull owner-beneficiaries in two directions. INA § 214(b) permits an L-1 nonimmigrant to pursue permanent residence without forfeiting L-1 eligibility, and an L-1 manager or executive may be sponsored for permanent residence in the EB-1C category under INA § 203(b)(1)(C). Yet when the L-1 beneficiary owns or is a major stockholder of the petitioning entity, 8 C.F.R. § 214.2(l)(3)(vii) requires evidence that the beneficiary's services in the United States will be temporary and that the beneficiary will be transferred to an assignment abroad when those services end. How can an owner-beneficiary intend to immigrate permanently while also demonstrating an anticipated transfer abroad? The answer lies in distinguishing the beneficiary's lawful long-term objective of permanent residence from the temporary character of the present L-1 assignment and the beneficiary's obligation to depart if no lawful basis to remain has been secured when that assignment ends.

The owner-specific temporary-services requirement appeared in the Legacy INS's 1987 regulations and therefore predates Congress's express statutory recognition of L-1 dual intent. See 52 Fed. Reg. 5,738 (Feb. 26, 1987). Although the 1987 preamble did not separately explain the provision or cite *Matter of Isovich*, 18 I. & N. Dec. 361 (Comm'r 1982), the regulation is consistent with *Isovich's* earlier requirement of greater proof of temporariness when the beneficiary owned or controlled the petitioner. The provision is therefore best understood as a heightened evidentiary safeguard in owner-controlled cases, not as a restriction targeting small businesses or ownership itself. Congress

provided express statutory protection through section 205(b)(1) of the Immigration Act of 1990, which amended INA § 214(b) to exempt L nonimmigrants from the presumption of immigrant intent. That amendment took effect on October 1, 1991. The owner-specific requirement should therefore be interpreted consistently with this statutory protection. To the extent it is construed to demand an intention incompatible with lawful pursuit of permanent residence, the subsequently enacted statute should control. Seeking permanent residence does not, by itself, establish that the beneficiary's present L-1 assignment is inconsistent with a temporary stay.

Under 8 C.F.R. § 214.2(l)(16), a beneficiary may come to the United States temporarily in L-1 status while lawfully seeking permanent residence, provided the beneficiary intends to depart voluntarily at the end of the authorized stay. The provision further states that the filing or approval of an immigrant preference petition cannot be the sole basis for denying an L-1 petition, an extension request, or an application for admission. An approved I-140 therefore does not stand alone provide a sufficient basis to deny L-1 classification.

Anecdotal evidence suggests that the USCIS might issue a Request for Evidence or a Notice of Intent to Deny when it notices that the beneficiary is also the subject of an EB-1C petition questioning whether there is an intent to depart the US at the end of the L-1 stay if there is already a desire to stay in the US permanently.

The intention to depart must be understood in this context. A beneficiary may intend to become a permanent resident if legally eligible while also intending to leave if the authorized stay ends without another lawful basis to remain. The beneficiary need not abandon the pursuit of permanent residence upon departure. For example, the beneficiary could return to an assignment abroad and subsequently complete immigrant-visa processing when a visa number becomes available and all other requirements are satisfied. Conversely, if permanent residence is granted during the authorized stay, the beneficiary may remain in the United States as a permanent resident. These possible outcomes demonstrate why pursuing permanent residence does not necessarily make the present L-1 assignment permanent.

USCIS could nevertheless argue that the owner-specific provision imposes an evidentiary requirement separate from the general protection for dual intent.

On the one hand, a petitioner could contest the RFE or NOID by arguing that the dual intent for L-1 beneficiaries enshrined in INA 214(b) overrides the earlier promulgated regulation at 8 C.F.R. § 214.2(l)(3)(vii) and that the USCIS ought to disregard it. On the other hand, while this argument may succeed potentially in an action in federal court under the Administrative Procedure Act, the USCIS may feel that it is bound by this regulation and so this distinction ought to be addressed: dual intent does not automatically dispense with the requirement to document temporary U.S. services and a subsequent assignment abroad. The two provisions should, however, be read together. USCIS may examine whether the proposed temporary assignment and transfer abroad are genuine, but it should not treat an approved I-140 alone as proof that those arrangements are incompatible with the beneficiary's intentions. The relevant inquiry is whether the evidence supports the temporary assignment and subsequent transfer, rather than whether the beneficiary also hopes to obtain permanent residence.

Thus, petitioners should support the owner-specific requirement with concrete evidence describing the duration and purpose of the U.S. assignment, the anticipated role abroad, and the company's arrangements for the subsequent transfer. The beneficiary's declaration should explain the intention to comply with the authorized period of stay if permanent residence or another lawful basis to remain has not been obtained. This approach gives effect to both provisions: it addresses the evidence required for an owner's temporary assignment while preserving the lawful pursuit of permanent residence that L-1 dual intent permits.

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