



L-1 VISA APPLICATIONS UNDER SCRUTINY AT U.S. CONSULATES IN INDIA

The U.S. Consulate in Chennai recently confirmed that L-1 visa applications filed under a company's approved Blanket L Petition must be "clearly approvable" in order for the post to issue an L-1 visa.

The "clearly approvable" standard, which is legally applicable for review of applications under a Blanket L Petition, is higher than the "preponderance of evidence" standard that applies to L-1 petitions filed with U.S. Citizenship & Immigration Services (CIS). While the "preponderance of evidence" standard requires that the petitioner prove eligibility by a mere probability (51% likelihood), consular officers have asserted that the "clearly approvable" standard is "way higher."

One official noted that the Chennai post receives 25% of all H-1B visa applications and 30% of all L-1 visa applications, with Blanket L-1 applications consolidated for review by fourteen adjudicators conducting approximately 120 visa interviews per officer per day. Interviews average only three to four minutes each, so applicants have a very short window of time to demonstrate their eligibility.

Because adjudicators often do not have time to study a lengthy visa application package, they rely heavily on applicant responses during the visa interview. While an applicant may not overcome a poorly prepared visa application package by a good interview, it is clear that a poor interview can detract from a well-prepared application package and even lead to the denial of an otherwise approvable application. One consular officer suggested that L-1B visa applicants prepare better for their interviews and be ready to answer questions about their project and the work they will be doing. She advised that applicants for L-1A visas must be clearly approvable as managers, noting that she denies L-1A status to Team Leads who generally perform the same work as the programmers they oversee. In her opinion, the added project scheduling function that Team Leads perform does not qualify as a managerial function. Another officer concurred, acknowledging that the "clearly approvable" standard makes Blanket L-1 applications suitable for only more "senior managers."

Due to the higher standard of review applied to L-1 applications under a Blanket L Petition, petitioners should ensure that each applicant is well prepared for his or her visa interview. In complex or marginal cases, the best approach may be to file an individual L-1 petition with CIS. While L-1 petitions filed with CIS also seem to receive a strict level of review, CIS adjudicators have more time to read and consider the factual presentation and legal arguments submitted with the petition filing. Additionally, when a CIS adjudicator does not consider the case approvable based on the initial submission, the Request for Evidence procedure is in place to ensure that the petitioner is afforded the opportunity to address the

adjudicator's concerns. In difficult cases, CIS adjudication procedures may offer a strategic advantage even if the petitioner has an approved Blanket L petition.

For more information on how to qualify for L-1 status and how to ensure employees are well prepared for their L-1 visa interviews, contact your FosterQuan immigration attorney. As always FosterQuan will continue to monitor trends in consular practice at posts around the world and will provide future updates in FosterQuan's Immigration Update© and on our firm's website at www.fosterquan.com.