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## L-1 - H-1 COS issues

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Submitted by Chief Editor on Jan 9th 2009

#### **ANSWER:**

**Facts** - I am on an L1 visa working for employer A and my wife is on L2-EAD. We both applied for H1 visa through Employer B and it got approved recently. I am not sure if Employer B (Consulting Company) has applied for COS while applying for both of ours H1 visa. Could you answer the following queries for both (COS applied and COS not applied) conditions during H1 application.

#### **Questions**

**Qo1.** Can I continue working on my L1 visa? If yes, for How many months? Is it legal to work on L1 after 1st October 2008 as my H1 has already been approved? (I am not sure COS has been applied or not)

**Ans1.** The key to this is COS. If you have obtained Change of Status (issuance of a new I-94 with your H-1 approval), you are on H-1 beginning October 1 (or whatever the date of H-1 approval and COS is.

If COS was not given, you can continue working on L-1 and either get COS or H-1 visa when you want to begin working on H-1. Of course, CIS or consulates may need an explanation for how/why the H-1 employer is willing/able to wait for you to join.

**Qo2.** Can my wife continue working on L2-EAD as long as I continue working on L1? Is it legal to work on L2-EAD after 1st October 2008 as her H1 has already been approved? (I am not sure COS has been applied)

**Ans2.** The key again is COS. If you have it, she cannot work after 10/1 because she would no longer be on L-2 from the date forward.

**Qo3** My wife will be joining on a permanent position for a company C on L2-EAD shortly. Can she get her H1 transferred to company C from Employer B (Who applied for her H1) from 1st October 2008 ?

**Ans3.** In my view, she can do the transfer even before October 1.

**Qo4.** What would be the best options to continue our L1 and L2-EAD status for another 3-6 months ? By doing this would the H1 be Invalid ? Do I have to apply for new H1 considered

under CAP ?

**Ans4.** You will not be under cap no matter whether you join the new employer right away or not. Read on for the rest.

**Qo5.** I read from some of the postings that staying out side USA (Canada, Mexico, India) on October 1st and re-entering USA after 1st Oct will enable L1,L2 status back (if COS has been applied for H1). Is this the only way to retain the L1/L2 status?

**Ans5.** In my view this is the best way. Leave on or before Sept 30th (or a day before COS kicks in) and come back on or after October 1st (or the day on which COS kicks in).

**Qo6.** .I entered US on a L1-B visa from a 'company 1' on a blanket Visa (L1-b) from India to USA in 2006.

2. Filed for H1 through 'company-2' in mar 2008. Approved as COS starting Oct 1st.

3. I did not/could not switch over to H1(company 2) till date due the lack of jobs matching my skills.

4. Would like to get back in status on L1 (My L1 visa and ITS I-94 are both valid till Nov 09 ).

5. Some people say that since L1 visa and its i-94 is valid, i can exit and re-enter the country with the L1 petition and that would put me back into status.

6. Continuing on point 6, once back on L1, i can file for H1 through a different company in future and i wont be counted against cap, is this true?

Would appreciate your responses as i am concerned that having been out of status since Oct1 would leave me with limited options.

**Ans6.** Ideally, to get back into status, you should apply for a NEW L-1 visa and come back into USA. There is a law on the books as far as I remember that says if you are ever out of status (which you are), all your visa stamps are "considered" canceled. This law, however, being next to impossible to implement is largely disregarded. Therefore, a lot of people in your situation just leave USA and come back with the same L-1 visa stamp. Theoretically, at least, that is not a perfect solution.

You will not be counted against the cap next time you apply for another H-1 as long as you have not been outside USA for one year.

**Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [2] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [3]**

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