

U.S. Department of Homeland Security
425 I Street, NW
ULLICO Bldg., 3rd Floor
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

HOOPRD 70/6.2.8

MAR -9 2004

Mr. Gary Endelman
BP America, Inc.
501 Westlake Park Blvd.
Mailcode 16.166
Houston, TX 77079

Dear Mr. Endelman:

Thank-you for your letter dated January 15, 2004 in which you request clarification on whether part time employment is permissible in the context of the L-1 visa classification.

BCIS recognizes that there will be periods of time when an alien will not be able to provide services to the United States employer but will receive his or her full salary and maintain employment. An example of this situation would be maternity, vacation, or sick leave. It has been legacy INS and BCIS policy that these periods of leave do not violate the terms of the alien's admission to the United States as a nonimmigrant alien. Further, the employer is not required to notify the BCIS that the alien has been granted leave. Of course, the alien must still be employed by the petitioning entity.

You pose a question of whether an L-1B employee, who has been granted maternity leave, may return to work on a part-time basis with the intention of gradually returning to full-time employment. Such leave is authorized by the Family and Medical Leave Act of 1993. Consistent with Federal law and with general statements expressed above, this situation would be a permissible part-time work in the context of the L-1 visa classification.

If you have questions regarding this or any other matter, please do not hesitate to contact this office.

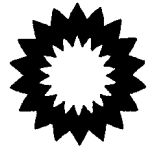
Sincerely,

A handwritten signature in black ink, appearing to read "Efrén Hernández".

Efrén Hernández
Chief, Business and Trade Services Branch
Office of Program and Regulations Development

www.uscis.gov

bp



Gary E. Endelman

Immigration Attorney
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January 15, 2004

Efren Hernandez III
Director, Business and Trade Services
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Washington DC 20534

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Re: Part-Time L1 Employment

Dear Mr. Hernandez:

Angelo Paparelli and I have been discussing whether part-time L1 employment was permissible and he suggested that we seek your expert opinion.

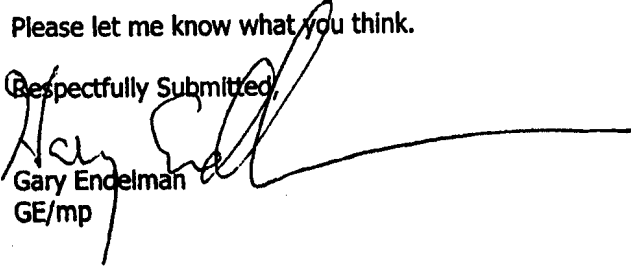
While I know that, in the past, correspondence suggests that someone can work part of the year in another country and part of the year in the USA, my situation is different. I have an L1B employee who is going on maternity leave. When she returns, she wants to resume working on a part-time basis. I know of no reason in the statute or the regulations that would prohibit this. There is clearly no LCA obligation that would be compromised and the person will still be doing the same job for the same employer. She intends to up her hours per week gradually to full time status once her baby is a bit older. Allowing part-time employment would be consistent with other federal law that permits, even facilitates, taking maternity leave. It has always been my view that the immigration law should be interpreted, whenever possible, in harmony with companion statutes.

The I-129 form itself allows you to check the part-time box. Part-time L-1 employment has long been accepted in the maquiladora context. 8 C.F.R. Section 214.2(l)(12)(ii) allows commuter L-1 transfers to work part-time. The Foreign Affairs Manual allows L-1 experience abroad to be full-time services divided among affiliated companies, each using the employee on a part-time basis. 9 FAM 41.54, N 11.1

For all these reasons, I believe that part-time L-1 employment and the facts recited above is sanctioned by and consistent with current immigration law, regulations and interpretation.

Please let me know what you think.

Respectfully Submitted,


Gary Endelman
GE/mp