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Non-Immigration Visa Fraud: Proposals to End the Misuse of the L Visa by Transnational Criminal Organizations as a Method of Illegal Immigration

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Non-Immigration Visa Fraud: Proposals to End the Misuse of the L Visa by Transnational Criminal Organizations as a Method of Illegal Immigration

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I. INTRODUCTION

In the 1997 novel *The Wrath of God*, Chinese entrepreneur Sun Qi escapes to the United States and forms the Pan-American Investment Group.¹ This business specializes in the mass production of forged documents: work records detailing at least two years of management experience, business licenses, certificates confirming the applicant has no criminal record, and university diplomas.² The firm charges each client twenty thousand dollars for a set of these documents that qualify the alien for an L-1 non-immigrant visa.³ In this Chinese novel, a lawyer working with the Pan-American Investment Group explained that using the L visa as a tool for illegal immigration to the United States is big business:

We spend no more than 2,000 U.S. dollars on each applicant. For each new immigrant we can make 18,000 U.S. dollars, which means 180,000 U.S. dollars for ten, 1.8 million U.S. dollars for 100. How much can 10,000 or 100,000 bring in? . . . With an input-output ratio of one to ten, what other business has a profit margin higher than this?⁴

Congress created the L visa in 1970 to encourage international companies to transfer foreign talent and investment to the United States.⁵ These multinational businesses needed a quick and flexible method to transfer business personnel to the United States.⁶ However, in attempting to meet the legitimate needs of transnational companies, Congress unintentionally crafted a malleable visa vulnerable to fraud.⁷

Although fictional, *The Wrath of God* accurately depicts how transnational criminal organizations exploit the provisions of the

1. See *Novel Describes Systematic Political Corruption*: Part 2 BBC SUMMARY OF WORLD BROADCASTS, July 5, 1997, at Part. 3, available in LEXIS, NEWS Library, CURNWS File.

2. See *id.*

3. See *id.*

4. See *id.*

5. See Pub. L. No. 91-225, 84 Stat. 116 (1970) (amending 8 U.S.C. § 1101(a)(15), 1182(e), 1184).

6. See *infra* Part III.

7. The immigration system has 2 parts: immigration and non-immigration. See *infra* note 36. For clarity, the term "immigration system" includes reference to both parts. The term "immigration" or "non-immigration" will refer to the sub-units.

L-1 non-immigrant visa as a method for illegal immigration. The problem in China is especially severe; government investigations have revealed that in some provinces, between eighty and ninety percent of all L visa applications are fraudulent, and many are from companies that only exist on paper.⁸

In May 1997, Congress examined the "notoriously porous" L visa in a series of hearings on visa fraud before the Subcommittee on Immigration and Claims.⁹ In his opening statement, Chairman Lamar Smith stated that visa fraud posed "severe and increasing risks to the integrity of our immigration system."¹⁰

This Note examines why the L visa is particularly vulnerable to multinational fraud and proposes both a domestic and an international solution to combat this abuse. Part II of this Note addresses the governmental policies behind the L visa. This section provides an overview of the origins of the transnational company and discusses the reasons why Congress created the L visa to meet the needs of this specialized segment of international business.

Part III analyzes the bifurcated approval process for an L visa. This section surveys the requirements for the L visa and discusses why Congress believed these requirements were an adequate safeguard against abuse. Part III also examines why the traditional check on the immigration process, consulate review, is largely ineffective to detect and deter fraudulent L visa applications.

Part IV of this Note analyzes how transnational criminal organizations, most notably Russian and Chinese units, use the L visa as a method of illegal immigration. This section details the prototypical L visa scheme and discusses how criminal organizations exploit the flexible provisions of the L visa to perpetuate these fraudulent practices.

Part V proposes a two-part solution to L visa fraud. First, the INS and the State Department need to close existing loopholes in the L visa through better methods of detection of criminal applicants and punishment of offenders. Second, the United States should sign a Mutual Legal Assistance Treaty with both Russia and China. This treaty would allow the United States to

8. See William Branigin, *Immigration Fraud Schemes Proliferating Inside the U.S.*, WASH. POST, May 19, 1997, at A4.

9. See *id.*

10. *Visa Fraud and Benefit Application Fraud: Hearings Before the Subcomm. On Immigration and Claims of the House Comm. on the Judiciary*, 105th Cong. 1 (1997) (opening statement of Chairman Lamar Smith) [hereinafter Smith Opening Statement].

work together with these countries to eliminate the organized criminal networks perpetuating these large-scale fraud schemes.

II. THE EMERGING GLOBAL ECONOMY AND ITS IMPACT ON U.S. IMMIGRATION POLICY

Traditional U.S. immigration policy has sought to protect the U.S. worker by severely limiting employment opportunities for foreign nationals.¹¹ However, the growing importance of transnational corporations challenges this philosophy.¹² Transnational companies need a flexible immigration policy to allow for critical interaction between company employees and the immediate transfer of personnel to adjust to shifting labor patterns.¹³ Because of the increasing significance of the multinational company, the proper goals for U.S. immigration policy must be re-examined within the context of the international business climate.¹⁴ An unduly restrictive business immigration system could severely limit the ability of U.S. companies to compete in the global marketplace.

A. *The Importance of the Transnational Company in the International Business Community*

The Transnational Corporation (TNC) is a multinational organization with a unified structure, collective control, and a common strategy.¹⁵ The TNC is largely the product of the post-

11. See Maria Isabel Medina, *The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud*, 5 GEO. MASON L. REV. 669, 676 (1997) (arguing that the core of American immigration policy is the philosophy that the United States may regulate entry and exit through its borders for the benefit of its citizens). Toward that end, in 1986 Congress criminalized the employment of illegal aliens in order to deter unauthorized entry and offer better employment opportunities for U.S. workers. See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986). 8 U.S.C. § 1101.

12. See generally Peter Hansen & Victoria Aranda, *An Emerging International Framework for Transnational Corporations*, 14 FORDHAM INT'L L.J. 881 (1991) (arguing that an international framework is necessary for the full development of the global economy). The characteristics of the global economy include: free trade in goods, capital and services; loosening of regulations governing foreign investment; elimination of exchange controls; rapid movement of capital across national boundaries; and a shift in economic power from resource-based to knowledge based economies. See John Hogarth, *Developments in Criminal Law and Criminal Justice: Bribery of Officials in Pursuit of Corporate Aims*, 6 CRIM L.F. 557, 561 (1995).

13. See Austin T. Fragomen, *Impact of U.S. Immigration Law Based Upon International Business*, 16 CAN. U.S. L. J. 29, 31.

14. See *id.* at 30.

15. See Hansen & Aranda, *supra* note 12, at 882.

World War II economy and its emergence has led to a revolution in business patterns and a high level of globalization in the world economy.¹⁶ TNCs account for about eighty percent of United States international trade, of which approximately forty percent is intracompany trade.¹⁷ Globalization is now recognized as a "critical component for any new business."¹⁸ Therefore, the importance of TNCs can only be expected to increase.

TNCs engage in a different type of business transaction than traditional international businesses.¹⁹ The conventional international business deal, between two separate companies incorporated in different countries, involves a one time transaction at the border.²⁰ In contrast, TNCs presuppose a long term relationship with the host country.²¹ Because of continuous contact with the host country, TNCs require different instruments for business transactions, trade, and monetary matters.²²

B. *The Conflict Between Transnational Companies and Traditional U.S. Immigration Policy*

To achieve success in a global economy, multinational corporations must have the ability to move personnel freely within their organizations.²³ Putting the best manager or the most expert technician in the right branch of the TNC, "is an absolute requirement to assure that a business stays even with, or ahead

16. *See id.* at 881.

17. *See id.* The growing importance of TNCs is illustrated by the U.N. Code of Conduct on Transnational Corporations. *See id.* at 886 (citing U.N. CONF. ON TRADE & DEV. (UNCTAD), DRAFT INT'L CODE OF CONDUCT ON THE TRANSFER OF TECH., U.N. Doc. E/1990/94 (1990)). The Code covers standards for TNCs and well as policies for the host countries. *See id.* The Code recognizes that sovereign jurisdictions have the right to control business within their borders, but also recognizes the need for consistency across national borders. *See id.* The umbrella clause of the Code advocates the use of international law as the measure for the treatment of TNCs. *See id.*

18. *See Hearing on Draft Proposals for the Immigration Act of 1995 Before the Subcomm. on Immigration and Refugees of the Senate Judiciary Comm.*, 104th Cong. (1995), available in 1995 WL 10731922 (prepared testimony of Austin T. Fragomen) [hereinafter Fragomen Testimony].

19. *See Hansen & Aranda, supra* note 12, at 882.

20. *See id.*

21. *See id.*

22. *See id.*

23. *See Fragomen, supra* note 13, at 31 (arguing that rapid technological shifts make it increasingly difficult to precisely pinpoint the areas where training and education are necessary, and, therefore, that the multinational company needs to access personnel in other countries, who may already possess this knowledge, to fill specialized positions).

of well-financed and highly efficient overseas competitors."²⁴ A flexible immigration policy allows the company to attract the best employees by promising advancement within the organization without regard to nationality.²⁵

A favorable business immigration system also permits a company to fill positions caused by temporary labor shortages in any one country.²⁶ This need is particularly evident in the science and technology industries, as approximately fifty percent of graduates of Ph.D. programs at U.S. universities are foreign nationals.²⁷ One business commentator has noted that "it is virtually impossible to adequately staff a major . . . corporate research facility without recruiting foreign nationals from U.S. universities or directly from abroad."²⁸

Furthermore, the international exchange of personnel leads to a cross-fertilization of ideas among highly skilled employees. Penetrating a foreign market requires employees with specialized knowledge of the customs and preferences of the people who comprise that market.²⁹ Through contact with foreign workers, U.S. employees gain a better understanding of the various cultures of the international market.³⁰ The foreign employee returns to his home country with a positive impression of the United States and an increased knowledge of the methods, procedures, and culture of the company or firm.³¹

The need of multinational businesses to freely transfer personnel between offices directly conflicts with established U.S. immigration policy. This policy has, in an effort to protect the unemployed U.S. worker, sought to discourage U.S. companies from hiring foreign individuals.³² Most significantly, in order to hire a foreign worker, most U.S. companies have in the past had to satisfy a cumbersome labor certification process through the Department of Labor and prove that no qualified U.S. workers were available for the position.³³

24. *Id.*

25. See House Report, *infra* note 37, at 2752.

26. See Fragomen, *supra* note 13, at 29.

27. See *id.* at 30.

28. *Id.*

29. See *id.* at 29.

30. See *id.*

31. See *id.* at 30.

32. See *id.* at 32. Ironically, the group Congress most wanted to protect, low-skilled American workers, are least protected by this legislation. By favoring immigrants with family ties over immigrants with specific skills the result has been to give an unintentional preference to low or unskilled foreign workers. See *id.*

33. Under the Labor Certification program, an employer must either prove (1) the alien will occupy a job for which there is a proven shortage of American workers (examples include: physicians in rural areas, persons in the arts, and

This restrictive policy acted as a trade barrier, severely hindering the ability of U.S. companies to attract talented foreign workers and limiting the opportunities for foreign companies wishing to establish branch offices in the United States.³⁴ As one commentator noted, the

[b]usiness community can do little to control exchange rates or the extent of foreign government restrictions on trade, but it must do all it can to assure efficiency in business operations and the optimal dedication of personnel resources to respond to market demands . . . [C]ompanies need immigration laws that provide maximum flexibility in planning and minimum time delays.³⁵

Before 1970, the United States lacked a flexible program that would allow businesses to bring foreign personnel to this country to occupy temporarily a significant position within the corporation or to start a new branch of a foreign parent company.³⁶ Instead, the foreign national had to qualify under the rigid standards of either the H or the J visa.³⁷ Neither was particularly suited to the needs of the TNC.³⁸

The H visa allows a company to transfer an employee to this country for a limited period of time to occupy a temporary position.³⁹ However, this visa strictly defines "temporary position" as one with a definite starting and ending date.⁴⁰ For example, a

certified physical therapists or nurses) or (2) the alien will occupy a position for which no American worker is available at the prevailing wage. See Labor Certification Process for Permanent Employment of Aliens in the United States, 20 C.F.R. § 656 (1998).

34. See Lance Director Nagel et al., *Rethinking Immigration to Further Global Trade*, RECORDER, July 8, 1994, at 29, available in LEXIS, NEWS Library, ARCNEWS File. Without a global system for transnational business, corporations are prevented from "pursu[ing] the true logic of the global economy." Hansen & Aranda, *supra* note 11, at 882 (citations omitted). The result is that international corporations have less control over their operations and the entire enterprise is unable to function as a unit. See *id.*

35. Fragomen, *supra* note 13, at 31.

36. United States immigration law establishes two categories for foreign nationals who wish to move to, move in, or travel to this country. See Paul. T. Wangerin, *A Beginner's Guide to Business-Related Aspects of United States Immigration Law*, 5 NW. J. INT'L L. & BUS. 844, 848 (1983). "Non-immigrants" include those persons who will stay in the United States for a limited amount of time. See *id.* "Immigrants" include those aliens who will reside in this country. See *id.* Both must obtain the proper type of visa. See *id.*

37. See H.R. REP. NO. 91-851 (1970) reprinted in 1970 U.S.C.C.A.N. 2750-51 [hereinafter House Report].

38. The other non-immigrant visas relevant to international business include: the Business (B-1) and Tourist (B-2); the Treaty Insider (E-1) and Treaty Investor (E-2); Temporary Worker (H); Business Visitor/Temporary Worker (B-1[H]); and Intracompany Transferee (L). See Wangerin, *supra* note 36, at 850-56.

39. See House Report, *supra* note 37, at 2752.

40. See *id.* at 2751.

foreign national could not "temporarily" occupy a permanent position such as Chief Executive Officer or Vice President. These restrictions limited the ability of the TNC to fill vacant positions with available employees.⁴¹

The second option, the J visa, is not a viable alternative for a TNC.⁴² The J visa is designed to bring "exchange visitors" to the United States.⁴³ Once in this country, however, the alien is prohibited from adjusting his status to permanent resident.⁴⁴ The foreign national is also required to leave the country for at least two years prior to applying for an immigrant visa.⁴⁵ Although most TNC employees come to the United States on a temporary assignment, the company needs the option of changing their status to permanent residency if necessary.⁴⁶

Because neither the H visa nor the J visa adequately addressed the needs of the multinational corporation, prior to the creation of the L visa, the employee was most often forced to apply for an immigrant visa and qualify for permanent residence.⁴⁷ As a result of this practice, the demand for immigrant visas was extraordinarily high and precluded otherwise qualified non-business personnel from obtaining lawful permanent residence.⁴⁸ Moreover, the process was extremely slow and forced multinational corporations to wait a year or more for the visa.⁴⁹ This delay severely restricted normal business operations.

41. *See id.* The H visa has been cited as the most complex business non-immigrant visa as it requires the company to deal with both the INS and the Department of Labor. *See* Susan Gaylord Willis, *The Ins and Outs of Immigration*, HR MAGAZINE, Oct. 7, 1996, at 139, available in 1996 WL 9969590. The company must first file the initial application with the INS and then complete a cumbersome "Labor Condition Application" from the Department of Labor stating that there is no strike or lockout in progress and that the employment of the foreign national will not adversely affect U.S. workers. *See id.* Also, unlike most non-immigrant visas, the H visa has an annual numerical limit. *See id.* These limitations make it a difficult choice for the TNC. *See id.*

42. *See* House Report, *supra* note 37, at 2751.

43. *See id.*

44. *See id.*

45. *See id.*

46. *See* Willis, *supra* note 41, at 139.

47. *See* House Report, *supra* note 37, at 2754. Under the quota system, a total of 270,000 immigrant visas may be issued each year. Furthermore, no more than 20,000 immigrant visas may be issued to persons from any one country in a single year. *See* Barry R. Chiswick, *Guidelines for the Reform of Immigration Policy*, 36 U. MIAMI L. REV. 893, 899 (1982).

48. *See* House Report, *supra* note 37, at 2754.

49. Some of the most vocal opponents to the pre-1970 business immigration system were Canadian business owners who felt that the long delays severely impacted their ability to do business within the United States. *See id.* (noting that qualified visa applicants from Canada must wait approximately a year for a visa).

III. CONGRESS CREATED THE L VISA AS A SOLUTION TO THE PROBLEM OF BUSINESS IMMIGRATION

In 1970, Congress approved a new type of visa to address the needs of multinational corporations. The design of the L visa included several provisions favorable to international business: a rapid approval process, the ability to petition for permanent residence while in the United States without satisfying the Labor Certification Process, and a streamlined procedure for companies transferring large numbers of employees to the United States on a frequent basis.⁵⁰ These flexible provisions, however, also made the L visa vulnerable to fraud.

A. Legislative Policy Behind the L Visa

In 1970, Congress assessed the immigration system and concluded that the existing program "restricts and inhibits the ability of international companies to bring into the United States foreign nationals with management, professional, and specialist skills and thereby enable American business to maintain and improve the management effectiveness of international companies to expand U.S. exports to be competitive in overseas markets."⁵¹ Furthermore, Congress stated that such interchange was critical to the development of a global economy as it permitted an individual to advance in an international company without regard to nationality and allowed the development of superior management skills.⁵²

Congress took special note that the United States was behind most other countries in this respect as "generally U.S. corporations experience no difficulty in transferring personnel from the *United States* to other countries."⁵³ These intra-company transfers had contributed "immeasurably to the growth of American enterprise throughout the world and to the international trade of the United States."⁵⁴

50. *See id.*

51. *Id.* at 2751.

52. *See id.* at 2752.

53. *Id.* (emphasis added). This was, however, not universally the case. In a letter addressed to the House, James T. Lynn, General Counsel for the Department of Commerce noted that the United States was not the only country with excessively long waits for business immigrants. In a survey of 81 U.S.-based companies by the National Foreign Trade Counsel, excessively long waits were present in other countries. *See id.* at 2760.

54. *Id.* at 2571.

For these reasons, in 1970, Congress amended the Immigration and Nationality Act and created a new category of visas for intracompany transferees. The L visa was designed to meet the needs of a small, specialized group of multinational businesses needing a quick process to circumvent the usual bureaucratic maze required for non-immigrant visas.⁵⁵

This new visa had several distinct advantages for the U.S. company desiring to transfer a foreign employee to the home office or an international company wishing to establish a branch office in the United States. Most notably, in drafting this legislation, Congress intentionally crafted malleable requirements for the L visa to allow international businesses maximum flexibility. Although the intent of Congress was to address the legitimate needs of the international business community, Congress unknowingly created an incentive for criminal organizations to misuse the provisions as a method for illegal immigration.

B. *The L Visa's Bifurcated Approval Process*

Three federal agencies administer the immigration process. The Department of Justice's Immigration and Naturalization Service (INS) oversees immigration laws for aliens arriving in the United States and those already present in the country.⁵⁶ The State Department, through the consulates, administers these laws for aliens who are seeking to enter the United States and are presently located in a foreign country.⁵⁷ And for most visas, the Department of Labor also must certify that the proposed alien will not adversely affect U.S. workers or working conditions.⁵⁸

1. INS Approval Process

If a TNC currently has a base of operations in the United States and wishes to obtain an L visa for an employee, the employer will first petition the INS.⁵⁹ The employer must file the petition with the INS center in the jurisdiction where the

55. Unlike the H visa, the L visa applicant was deemed "pre-certified." The Department of Labor Certification Process and job posting requirements were removed. See David M. Morris, *The Hot "L" Visa: Is it Right for You?*, IMMIGR. ADVISOR, Nov. 1996, at 5, available in LEXIS, NEWS Library, ARCNWS File.

56. See 8 C.F.R. § 2.1 (1998). There is a limited right of appeal in federal court for some applicants rejected by the INS. See Administrative Procedure Act, 5 U.S.C. §§ 551, 576, 701-03 (1994).

57. See 20 C.F.R. § 656.2 (c)(1) (1998).

58. See 22 C.F.R. 656.2 (c.) (1) (1998). This is not necessary for L visa candidates. See Willis *supra* note 41, at 139.

59. See ROBERT C. DIVINE, IMMIGRATION PRACTICE 483 (1994).

employee will be located.⁶⁰ If the petition is granted, the INS will issue form I-797 to the consulate in the employee's country of origin or current residence. The actual visa will be issued by the consulate officer.⁶¹

One of the most beneficial provisions of the L visa is the expedited approval process. Under normal conditions, the INS must approve or deny a visa petition within thirty days of the application.⁶² In limited circumstances, if an established company files the petition, the INS may issue a decision within seventy-two hours.⁶³

From the beginning, Congress was worried that the L visa might be misused by unscrupulous individuals who would manipulate the loose provisions in an effort to elude the strict immigration process.⁶⁴ For example, a person might come into the United States under the guise of a "temporary" transfer but intend to stay in the country permanently.⁶⁵ Furthermore, an L visa transferee is allowed to bring immediate family members to the United States⁶⁶ and does not have to maintain a personal residence abroad; therefore, the employee may have little incentive to return to his home country after the visa expired.⁶⁷

60. See *id.*

61. See Business Law Inc., Editorial Staff, *Corporate Counsel's Guide to Business Related Visas in TRANSNATIONAL JOINT VENTURES* 7.034 (William A. Hancock ed., 1994) [hereinafter *Corporate Counsel's Guide to Business Related Visas*].

62. Although this is accepted procedure, there is no penalty to the INS if the agency takes longer to process the application. See *id.* Non-immigrant business visas typically take two weeks to two months to have the petition approved. See *id.* at 7.003.

63. See AUSTIN T. FRAGOMEN, *IMMIGRATION PROCEDURES HANDBOOK* 4-6 (Supp. 1995). This is a new procedure established by the Vermont Service Center. Applications are screened to identify "readily approvable cases . . . by established corporations." If no complex issues are present in the case, approval may be complete within 72 hours. See *id.*

64. See Steven E. Perlman, Note, *Intracompany Transferee Visas—The Labyrinth to Mobility for International Executives*, 19 N.Y.U. J. INT'L L. & POL. 679, 683 (1987). Those individuals who initially declare their intent to immigrate to the United States permanently must wait years for a decision on their petition. However, an executive could avoid this delay by entering the United States first with an L visa and then applying for residency while living and working in this country. See *id.*

65. There is no statutory requirement that the foreign company remain in operation while the employee is in the United States. See Perlman, *supra* note 64 at 680.

66. The L-2 visa allows immediate family members, including the spouse and unmarried children, to accompany the employee to the United States. See *Corporate Counsel's Guide to Business Related Visas*, *supra* note 61, at 7.029.

67. See House Report, *supra* note 37, at 2758.

To address these concerns, Congress created strict requirements for L visa eligibility.

a. Requirements for the L Visa

First, not all businesses can qualify for the visa; the L visa requires a particular business relationship involving a U.S. business-sponsor and a foreign employee.⁶⁸ The two businesses are required to have the same employer/branch office, parent/subsidiary or affiliate relationship.⁶⁹ One entity, business or foreign, has to maintain at least fifty-one percent control of the decisions and management of the other.⁷⁰ Mere contractual relationship, even if it involves an exclusive contract, is insufficient to satisfy the requirement.⁷¹

A foreign business may, however, use the L visa to legitimately bring employees to the United States for the purpose of establishing a branch office.⁷² In this instance, the corporation would be asked only that the foreign office be a specific size or be involved with international trade to some degree.⁷⁴

To satisfy the second requirement, the transferee must be a manager, executive, or a specialized knowledge worker.⁷⁵ To determine whether the employee occupies a qualifying position,

68. See 8 U.S.C. § 1101(a)(15)(L) (1998).

69. See DIVINE, *supra* note 59, at 489. Sole proprietorship, partnerships, and even non-profit organizations may qualify for L visa status. See Perlman, *supra* note 64, at 687-88. The key indicator is a high level of control exercised by one firm over the other or by a third party over the two firms. See *id.* at 688. The alien, however, must be an employee of the organization. See *id.* at 686-87. This means that a sole proprietorship cannot use the L visa to transfer the owner to the United States. However, if the alien is a partial owner of the corporation, he still may qualify for L status. See *id.* at 687. In one case, an alien owned one-third of the parent corporation. See ARNOLD H. LEIBOWITZ, IMMIGRATION LAW AND REFUGEE POLICY 7-57 (1983) (citing Matter of Aphrodite Investments, Ltd., 17 I & N Dec. 530 (Comm. 1980)). The issue in the case was whether the beneficiary could be classified as an intra-company transferee. See *id.* The court differentiated the terms "employee" from "employed." See *id.* Although as a partial owner, the alien was not an "employee" of the corporation, the alien was still "employed" by the corporation because he was paid a salary for his work. Therefore, he could be classified as an intra-company transferee. See *id.*

70. That does not, however, mean that one business had to maintain 51% equity ownership over the other. In one case, one firm ("A") with a 10% equity control of another firm ("B") was deemed a qualifying organization because firm A maintained effective control over the decisions of firm B. See Perlman, *supra* note 62, at 688 (citing In re Hughes, 18 I & N Dec. 289 (Comm'r 1982)).

71. See ARTHUR M. GELLMAN ET AL., UNITED STATES IMMIGRATION FOR BUSINESS, INVESTORS AND WORKERS 6 (1981).

72. See 8 C.F.R. § 214.2(l)(1)(ii)(A) (1998).

73. See Perlman, *supra* note 64, at 689.

74. See *id.*

75. See 8 C.F.R. 204.5(j)(e)(i)(A) (1998).

the INS will analyze both the duties of the employee and the circumstances of employment.⁷⁶ Managerial employees are those who primarily direct an organization, department, or subdivision of an organization.⁷⁷ These employees also supervise other workers, including the hiring and firing of personnel.⁷⁸ Executive employees primarily direct an organization, establish the policies and goals of a company, and exercise a significant amount of independent judgment.⁷⁹ An employee with specialized knowledge will have a distinct degree of understanding of the product or service of a company that is essential to the maintenance of the organization.⁸⁰

The L visa also requires the employee to have worked continuously for the foreign organization for at least one of the three years immediately preceding the application.⁸¹ Although not stated specifically in the statute, the INS has required the one year employment to be in a managerial or executive capacity abroad.⁸² However, the INS has not required the employee to complete this one year of employment while the qualifying relationship exists between the two companies.⁸³ An employee

76. To determine whether the employee occupies a qualifying position, the INS will consider: salary, employment history, education, current job description, number of employees, and volume of business. See Perlman, *supra* note 64, at 693.

77. See DIVINE, *supra* note 59, at 493.

78. See *id.*

79. See *id.*

80. See *id.* at 494. The "specialized knowledge," however, must either relate to commerce or it must allow American companies to compete overseas. In *Matter of Michelin Tire Corp.*, the tire company wanted to use an L visa to transfer a native French educator to the United States. See LEIBOWITZ, *supra* note 69, at 7-62 (citing *Matter of Michelin Tire Corp.*, 17 I & N Dec. 248 (Reg. Comm. 1978)). The company argued that the teacher possessed "specialized knowledge" of the French Education System and would educate the children of the French employees so those pupils would not fall behind in their studies while their parents were temporarily assigned to the United States. *Id.* The court found that while the teacher possessed specialized knowledge of the French education system, such knowledge did not fall within the language of the statute as it did not concern commerce or the movement of key personnel within the organization. *Id.*

81. See 8 CFR § 204.5(j)(3)(A) (1998).

82. See DIVINE, *supra* note 59, at 494. Although the employee must have "continuously worked" for the foreign employer for one year prior to applying for the visa, the "continuity" is not disrupted if the employee briefly travels to the United States for business or pleasure. However, the time spent in the United States will not be counted towards the one year requirement. See *id.* at 495.

83. See *id.* The nature of the relationship between the two companies could also change while the alien is working for the foreign corporation (i.e., an employer with a foreign branch office may become a parent company with a foreign subsidiary). See *id.* at 490 n.90.

may qualify for an L visa after completing one year of employment with a foreign business that only recently affiliated with a U.S. company.⁸⁴

Finally, an employer must submit documentation that its employee will depart the United States at the conclusion of the authorized stay.⁸⁵ However, a unique and valuable provision of the L visa is that it allows the applicant to alter his status while in the U.S. and apply for permanent residence simultaneously. After one year, an employee may file directly with the INS for lawful permanent residence, effectively avoiding the cumbersome Department of Labor certification process.⁸⁶

b. Terms of the L Visa

The initial visa is granted for either one or three years.⁸⁷ The employee may be granted a three year visa if the U.S. company has been in business for at least one year.⁸⁸ If the company is new, however, defined as having been in existence for less than twelve months, only a one year visa will be issued.⁸⁹ Extensions are allowed up to a total of seven years (managers and executives) or five years (employees having specialized knowledge).⁹⁰ Once the limit is reached the employee must leave the United States and may not petition for an L or an H visa for one year.⁹¹

c. Blanket Visa Petitions

An employer may either complete an individual application for each potential transferee or petition for a blanket visa.⁹² The blanket visa, one of the most favorable provisions of the L visa, allows large corporations that frequently transfer groups of

84. See *id.* at 495.

85. See 8 C.F.R. § 214.2(l)(7)(i)(A)(2) (1998).

86. See *Morris*, *supra* note 55, at 5.

87. See 8 C.F.R. § 214.2(l)(7)(i)(A)(2), (3) (1998).

88. See *id.*

89. See *id.*; 8 C.F.R. § 214.2(l)(1)(ii)(F) (1998).

90. See 8 C.F.R. § 214.2(l)(15)(ii). Aliens whose U.S. employment is seasonal or intermittent, defined as less than six months a year, are exempt from the five/seven year limitation and may apply for indefinite extensions. See *DIVINE*, *supra* note 59, at 484.

91. See 8 C.F.R. § 214.2(l)(12)(l) (1998). Under the North American Free Trade Act, Canadians are exempt from this process. See *DIVINE*, *supra* note 59, at 484. Canadian citizens may receive an extension of their L visa by simply presenting a petition to an immigration officer at a Class A port of entry, a U.S. airport handling international traffic or U.S. pre-clearance/pre-flight station. See *id.*

92. See 8 C.F.R. § 214.2(l)(l)(l).

employees to submit one application.⁹³ If approved, the company and its branches, subsidiaries, and affiliates are deemed qualifying organizations.⁹⁴ When the company transfers an individual employee to the United States, that alien need only apply to the consulate in his home country.⁹⁵ The company is not required to submit additional documentation to the INS.

To receive the favorable blanket visa status, the multinational corporation must prove the following: (1) the petitioner and each of the other offices are involved in commercial trade or services; (2) the United States office has been in business for one year or more; (3) the company has three or more domestic or foreign branches, subsidiaries, or affiliates; (4) and approval of at least ten L applications during the previous twelve months or United States subsidiaries with combined annual sales of twenty-five million or more or a U.S. workforce of at least one thousand employees.⁹⁶ A blanket petition may be extended indefinitely after the first three-year issuance.⁹⁷

2. The State Department Approval Process

If the INS approves the petition for either the single or blanket L visa, that agency notifies the State Department. The State Department is responsible for issuing the actual visa to the candidate.⁹⁸ Uniquely, the persons from the State Department who issue the L visa are U.S. consuls, most of whom lack any formal training in immigration law.⁹⁹ In contrast to the INS,

93. See *Corporate Counsel's Guide to Business Related Visas*, *supra* note 61, at 7.033.

94. See *DIVINE*, *supra* note 59, at 498.

95. See *id.* at 499.

96. See *Corporate Counsel's Guide to Business Related Visas*, *supra* note 61, at 7.032. If a conglomerate files a blanket L visa petition, the INS may approve some, all, or none of the entities for blanket visa status. See *DIVINE*, *supra* note 59, at 499.

97. See *DIVINE*, *supra* note 59, at 499. Three years after the blanket petition is approved, the petitioner may request an indefinite extension. A new petition must be filed with the INS containing: a copy of the approved blanket visa petition, a report of all employees transferred to the United States under the blanket visa (including dates of arrival and departure and a list of the positions occupied by the foreign employees), a statement of continuing eligibility for the L visa, and any new additions/dropped entities. See *id.*

98. See Robert G. Heiserman, *Consular Processing: Just Visiting-Really—Irrelevant Relevances*, in *PROCESS AND PROCEDURES: A GUIDE TO VISA PROCESS AT U.S. CONSULS AND EMBASSIES 20, 20-23* (Charles M. Miller et al. eds. 1992) [hereinafter *PROCESS AND PROCEDURES*].

99. See Jose E. Latour, *Consular Processing of Visas: Other Side of the Window*, in *PROCESS AND PROCEDURES*, *supra* note 98, at 24, 26; see also Perlman, *supra* note 64, at 681 & n.15.

which examines a paper record to assess whether to approve the petition, the consul officer determines the legitimacy of the application by speaking first-hand to the applicant.¹⁰⁰ In the traditional immigration process, the consulate has the power to approve or deny a petition solely based on the individual officer's subjective determination as to whether the candidate is telling the truth.¹⁰¹

Under normal procedure, the consulate officers are often ill-equipped to differentiate between fraudulent applications and legitimate ones. Visa duty is a disfavored part of a consulate officer's job and is normally assigned to the newest officers.¹⁰² These officers may lack the sophisticated language experience required to properly assess a visa application. Furthermore, consulate officers may be unfamiliar with the nuances of the visa application process as most are foreign service officials, rather than attorneys, and receive the majority of their training through on-the-job experience.¹⁰³

This situation is compounded, however, when the consulate officer must decide whether to approve or deny an L visa application. Ordinarily, the alien has the burden of convincing the consulate officer that the requirements for the visa are met.¹⁰⁴ In contrast, if the INS approves an L visa petition, the consular officer must issue the visa unless it can show additional information that was not presented to the INS that would preclude the alien from qualifying for the visa.¹⁰⁵

Because of the lack of training and supervision for consulate officers and the inherent subjectivity in the visa application process, it is highly likely that mistakes are made. The decision of the consulate, however, is not subject to review, even if the officer acted under erroneous or biased assumptions. Absent a gross abuse of discretion, the consulate's decision is final.¹⁰⁶

100. See Heiserman, *supra* note 98, at 21-23.

101. See *id.* at 20-21.

102. Latour, *supra* note 98, at 26. Moreover, as the number of visa applications increase, the ability for a new consulate officer to make an accurate judgment decreases dramatically. Not surprisingly, most consulate officers apply for a transfer to a new position within the embassy as soon as one opens up. See *id.*

103. See *id.* at 25-27.

104. See *id.* at 28.

105. See Willis, *supra* note 41, at 139.

106. See Latour, *supra* note 98, at 27-28. The State Department concedes that the consul's decision is subjective. Nevertheless, there is no administrative review of the consul's decision. See *id.* at 28. Courts have repeatedly held that aliens have no legal right to immigration. Therefore, there is no legal right to a review of the consul's decision. See *Centeno v. Schultz*, 817 F.2d 1212, 1213 (5th Cir. 1987).

It seems unlikely that the present consulate review process would effectively guard against L visa fraud. Normally, the interview would provide the opportunity for the consulate officer to review the petition and make a subjective determination as to whether the person is an appropriate candidate for the visa. However, if the L visa candidate is presumptively entitled to the visa before anyone has ever seen or spoken with the foreign national, it seems as if the interview would not serve the same purpose. If the employer submits a sufficient paper record to the INS, why would the consulate officer have an incentive to actively investigate the application? Absent some obvious evidence of a fraudulent visa application, it seems likely that the employee would receive an L visa without incident.

When Congress created the L visa, it developed an immigration tool with significant advantages for the TNC. First, the L visa, with its accelerated processing feature allows a company to respond in a timely manner to changes in personnel or market demands.¹⁰⁷ Second, should an employer want to permanently transfer the employee to the United States, the employee could file with the INS for lawful permanent residence status after entering the country.¹⁰⁸ Finally, the blanket provision allows a company to transfer large numbers of personnel without applying for each visa individually.¹⁰⁹ These three advantages, however, may also account for the high number of fraudulent visas granted every year.

IV. MISUSE OF THE L VISA BY CRIMINAL ORGANIZATIONS AS A METHOD FOR ILLEGAL IMMIGRATION

When the L visa was created, Congress was primarily concerned with preventing foreign employees from using the visa to enter the country on a temporary basis but with the intention of applying for permanent residence status.¹¹⁰ When the House Judicial Committee examined this issue, it concluded that the potential for fraudulent activity was minimal because "no international company would jeopardize or endanger its future need for a corporate executive rotation by attempting to misuse or abuse such procedure as a vehicle for immigration."¹¹¹ While legitimate international businesses may have every incentive to

107. See *supra* Part III.A.

108. See *supra* notes 85-86 and accompanying text.

109. See *supra* Part III.B.

110. See House Report, *supra* note 37, at 2755.

111. *Id.*

comply with immigration regulations, Congress failed to consider the possibility that a criminal organization could manipulate this visa as a powerful tool for illegal immigration.

A. *The Emerging Global Mafia*

Global organized crime is the world's fastest growing industry with yearly profits estimated at over \$1 trillion.¹¹² Just as the post-World War II economy has led to an increase in the globalization of legitimate businesses, the same forces have contributed to the proliferation of international criminal conspiracies.¹¹³ Transnational crime presents the "greatest long term threat to the security of the United States" and poses a risk to democratic societies throughout the world.¹¹⁴

Traditionally, organized crime was centered in only one country. Although organized criminal syndicates in the United States often recruited new members from recent immigrant populations, few alliances were formed with groups from other countries.¹¹⁵ The new transnational criminal organizations, however, coordinate activities between countries. Members of Russian Organized Crime units who steal automobiles from the United States may ship the parts to Russian associates in Germany or Russia.¹¹⁶ And Chinese gangs involved in alien smuggling operations establish branch operations in China, Hong Kong, and the United States.¹¹⁷

112. Transnational criminal organizations are involved in crimes from money laundering and currency counterfeiting to trafficking in drugs and nuclear materials. See *Executive Summary* to GLOBAL ORGANIZED CRIME: THE NEW EMPIRE OF EVIL at ix (Linnea P. Raine & Frank J. Cilluffo eds., 1994) [hereinafter GLOBAL ORGANIZED CRIME].

113. See *id.* at xi. International Organized Crime has been called "the new communism, the new monolithic threat." Michael Elliot, *Global Mafia*, NEWSWEEK, Dec. 13, 1993, at 22.

114. *Executive Summary*, *supra* note 112, at ix.

115. Probably the best example is the Italian Mafia. The organization began in Sicily where private landowners hired armies to protect their lands against peasant uprisings. See WILLIAM KLEIN KNECHT, *THE NEW ETHNIC MOBS* 37 (1996). Italian peasants who emigrated to the United States during the early twentieth century were often surprised to find their old oppressors had also found a home in the New World. See *id.* Although the American Mafia adopted several traditions of their Sicilian ancestors, few formal ties were established between the countries. See *id.*

116. See *id.* at 304. Russian mobsters also have established formal alliances with the Colombian cartels to distribute cocaine in the United States. See *id.*

117. See *id.* The Chinese tongs, or gangs, have established a highly successful credit card scheme between Hong Kong and Los Angeles or San Francisco. See *id.* A gang member in Hong Kong will transcribe a set of credit card numbers and forward the information to associate gang members in the

B. *The L Visa is a Powerful Tool for Transnational Crime*

Members of legitimate TNCs use the L visa to move personnel within the organization.¹¹⁸ Transnational criminal organizations use the L visa to facilitate either the expansion of criminal activities in the United States or as a lucrative method to smuggle illegal immigrants into the country.¹¹⁹

Because the L visa requires a complex application process, an individual alien is unlikely to select this method for illegal immigration. That type of alien is far more likely to use a manufactured visa, passport, or residency document in an attempt to illegally enter the United States.¹²⁰ With this type of illegal immigration, however, the alien continuously risks the possibility that someone will request identification and discover the counterfeit documents.¹²¹

In contrast, transnational criminal organizations have the resources to navigate through the L visa process and effectively thwart such risk of continuous discovery. With this method, the criminal organization may use fraudulent documents in an effort to qualify the alien for an L visa.¹²² If successful, however, the illegal immigrant need not rely on manufactured documents once in the United States. Instead, the alien receives a valid visa.¹²³

United States. *See id.* Within a few days, a counterfeit credit card with the same numbers will be in the hands of the gang members in Los Angeles or San Francisco. *See id.*

118. *See infra* Part II and Part III.

119. *See Visa Fraud and Immigration Benefits Application Fraud: Hearings Before the Subcomm. on Immigration and Claims of the House Judiciary Comm.*, 105th Cong. 10-11, 13 (1997) (statement of Paul Virtue, Acting Executive Associate Commissioner, Office of Programs, Immigration and Naturalization Service) [hereinafter Virtue Testimony].

120. This is known as document fraud. Document fraud is defined as "the counterfeiting, sale and/or use of identity documents or breeder documents such as birth certificates and Social Security cards, alien registration documents and stamps, passports and visas, and other fraudulent documents and paperwork to circumvent the immigration laws of the Nation." *Id.* at 12. The documents are used to either enter or function within the United States. *See id.*

121. The alien must "keep a low profile" as reliance on fraudulent documents subjects the alien to continuous risk of discovery. *Id.*

122. This is known as benefit application fraud. The alien willfully misrepresents a fact in order to qualify for a visa or permanent residency. *See id.* The difference is the timing of the fraud. With document fraud, the alien needs to continuously use the false documents to remain in the country. *See id.* However, when the alien commits benefit application fraud, the false statements are made prior to entry in order to obtain the visa. *See id.*

123. Probably the most notorious case of benefit application fraud involved Mir Aimal Kanshi, a Pakistani terrorist who allegedly fatally shot two CIA agents outside the CIA Headquarters in 1993. *See id.* at 13. Mir Aimal Kanshi had manipulated the INS application process and fraudulently obtained two visas:

Because the INS destroys supporting visa documents after only one year, it is unlikely that the fraudulent documents will ever be discovered.¹²⁴

The flexible provisions of the L visa provide ample opportunity for such fraud. The visa must be approved within thirty days, leaving little time for the INS investigator to examine an application. Furthermore, the visa is granted largely on the basis of a paper record. If the criminal organization can manufacture fraudulent documents able to pass a cursory inspection with the INS, the individual alien will have little trouble obtaining the visa from the consulate.

The prototypical L visa scheme involves a shell corporation.¹²⁵ The transnational criminal organization will manufacture the necessary documents and petition for an L visa. Once approval is granted the organization will either use the visa to "transfer" foreign operatives to the United States or sell the "positions" in the corporation to aliens needing a nearly foolproof method of illegal immigration.¹²⁶

Once in this country, the illegal immigrant may apply for an extension without an additional interview and may never be required to submit additional documentation verifying legitimate business purposes. And after the required one year, the transferee may apply for permanent residence in the United States.¹²⁷

During a series of hearings on visa fraud held in May 1997 before the Subcommittee on Immigration and Claims, INS and State Departments officials testified that the two multinational organized crime groups most proficient in L visa fraud were Russian Organized Crime units and Chinese syndicates.¹²⁸

1. L Visa Fraud and Russian Organized Crime

The first group to effectively use the L visa as a means for illegal immigration were units of the Russian Organized Crime

one was a non-immigrant business visa and the other was obtained through the amnesty program. See Branigin, *supra* note 8, at A4.

124. See *Easy In, Easy Stay*, L.A. TIMES, March 9, 1993, at B6.

125. See Virtue Testimony, *supra* note 119, at 10.

126. See *Hearings on Combatting Illegal Immigration Before the Subcomm. on Immigration & Claims*, 105th Cong. (1997), available in 1997 WL 10570044 (testimony of George Regan, Acting Associate Commissioner, Enforcement, Immigration and Naturalization Service) [hereinafter Regan Testimony].

127. See Part II for information about the ease of applying for permanent residence from an L visa.

128. See Smith Opening Statement, *supra* note 10, at 2.

(ROC).¹²⁹ The ROC has been most successful with sophisticated white collar crimes such as medical insurance or fuel tax fraud.¹³⁰ The L visa, with its largely paper application process, allows the ROC to transfer the same skills to immigration fraud.¹³¹

As early as 1994, government officials encountered a sharp increase in the number of L visa applications filed by Russian companies. Immigration officials reported that although the initial applications were poorly prepared and resulted in quick denials, later fraudulent petitions were much improved and more difficult to detect.¹³² After a 1996 investigation, INS agents on the East Coast identified over two hundred Russian shell corporations that had been used in L visa schemes.¹³³

Experience in the Former Soviet Union also provided ample training for L visa fraud. Soviet citizens were forced to navigate through a communist bureaucracy that demanded papers to work, travel, buy certain goods, get medical care, or buy a car.¹³⁴ Any successful criminal quickly learned to master the art of forgery.¹³⁵

With that background, it is not surprising that the ROC is able to manipulate effectively the largely paper L visa application

129. The Russian Mafia was identified as the perpetrator of these schemes after a large inter-departmental investigation involving the Department of State, the FBI, and the INS Organized Crime Task Force. See *Visa Fraud and Immigration Benefits Application Fraud Hearings Before the Subcomm. on Immigration and Claims*, 105th Cong. 22 (1997) (testimony of William Yates, Director of the Vermont Service Center) [hereinafter Yates Testimony].

130. The most profitable of these schemes involved a chain of phony fuel wholesalers. Federal law requires that fuel wholesalers collect the tax from their sales and turn it over the IRS. See KLEIN KNECHT, *supra* note 115, at 273. The Russian Mob would create a series of shell corporations and then arrange for their own fuel wholesalers to "sell" the fuel to the phony corporations but "forget" to collect the tax. See *id.* When the IRS tried to collect the tax, the agency would discover that the company no longer existed. See *id.* The New York State Department of Taxation and Finance estimated that the Russian Mob collected around \$1 million a week from this scheme. See *id.* at 274. In fact, the scam was so profitable that when John Gotti heard of the idea he demanded a partnership with the Russians. See *id.* at 273.

131. In 1991 there were an estimated 780 gangs in the Former Soviet Union, in 1994 that number had increased to 5,700 with over 3 million associates. The Russian gangs have relations with 29 foreign countries and run more than 200 gangs in the United States. See Claire Sterling, *Containing the New Criminal Nomenklatura*, in GLOBAL ORGANIZED CRIME: THE NEW EMPIRE OF EVIL, *supra* note 112, at 106, 106.

132. See Yates Testimony, *supra* note 129, at 22.

133. See Branigin, *supra* note 8, at A4.

134. See KLEIN KNECHT, *supra* note 115, at 272.

135. See *id.*

process.¹³⁶ However, even if the INS made a concerted effort to detect ROC operatives applying for L visas, the effort would be largely unsuccessful.¹³⁷ For humanitarian reasons, the United States has elected to waive an examination of criminal records for persons applying for visas from the former Soviet Union. Because so many potential applicants had been imprisoned for political reasons, the United States decided that it would be impossible to differentiate effectively between real criminals and former political prisoners.¹³⁸

If the illegal alien is not a member of the ROC, but instead purchases his "position" in the company, the foreign national pays for part of his passage with cash and part with service to the organization once in the United States.¹³⁹ Men become low-level extortionists or drug couriers while women are forced into prostitution.¹⁴⁰ The organization also holds their papers until the alien accumulates enough merchandise to repay the debt.¹⁴¹

2. L Visa Fraud and the Chinese Mafia

The Russian Mob is not the only group exploiting the provisions of the L visa for illegal immigration. INS officials also report that this visa is rapidly becoming the favored method for organized smuggling from China to the United States.¹⁴² When State Department officials investigated this problem in two Chinese provinces, they found that between eighty to ninety percent of all the L visa applications were wholly fraudulent.¹⁴³

136. The Russian organized criminal groups control 40,000 businesses, including 2,000 state enterprises, 4,000 organizations, 9,000 cooperatives, 7,000 small enterprises, 407 banks, and 697 markets. See Sterling, *supra* note 131, at 114.

137. See Regan Testimony, *supra* note 126. Criminal operatives from Russia rarely apply for a visa under their own names. See *id.* Instead these criminals will use a high quality counterfeit passport, easily available from a travel agency or document facilitator for \$120-200. See *id.*

138. See Jerry Seper, *The Soviet Mafia: An American Success Story*, WASH. TIMES, Sept. 29, 1991, at A1. Similarly, in fifty countries (including Mexico, Pakistan, Afghanistan, Iraq and Iran) the State Department waives the requirement that visa applicants provide a copy of their police report as evidence of their lack of criminal history as the police departments are ridden with corruption. See Smith Opening Statement, *supra* note 10, at 3. The result is that aliens with vast criminal records are given visas to the United States. See *id.*

139. See Regan Testimony, *supra* note 126.

140. See *id.*

141. See *id.*

142. See *id.*

143. In the Hainan Province over ninety percent of the visa applications were found to be completely fraudulent. Furthermore, the consulate in Shanghai has a "burgeoning problem with L visa fraud but is without the resources to

During the late 1980s, Chinese organized crime groups based in China and Hong Kong joined forces and turned the human smuggling trade into an enormously profitable venture.¹⁴⁴ Before this time, Chinese gangs had concentrated on smuggling heroin from the Far East into the United States.¹⁴⁵ The Chinese syndicates realized, however, that alien smuggling could be an equally profitable venture with far less risk. The penalty for alien smuggling is only a few months in jail, while a conviction for drug smuggling may carry a penalty of up to twenty-five years to life in prison.¹⁴⁶

The syndicates began by smuggling huge numbers of aliens into the United States on crowded fishing boats.¹⁴⁷ As the United States increased its border controls, however, the syndicates needed an alternative route for the transaction.¹⁴⁸ The L visa provided such a method. With an L visa, an alien did not have to sneak into the United States; the illegal immigrant was able to enter through official channels.

Chinese immigrants will typically pay up to fifty thousand dollars to a broker who will manufacture the documents needed to support the L visa application.¹⁴⁹ The broker will contact a branch of the organization in the United States that will apply for the visa. Once approved, the alien is able to visit a consulate with the manufactured documents and receive the visa. Those who can afford to probably pay the entire fee in cash. However, as with other forms of alien smuggling, those who cannot afford to

investigate." John R. Emshwiller, *Fraud Plagues Foreign Investment Programs*, WALL ST. J., Apr. 13, 1996.

144. The alien smuggling trade is so prevalent, it has been called a modern day "underground railroad." See Tod Robberson, *Corridor of Hope; Asian Migrants Employing Central America as Underground Railway to U.S.*, DALLAS MORNING NEWS, Dec. 21, 1997, at 18R, available in LEXIS, NEWS Library, CURNWS File.

145. See KLEIN KNECHT, *supra* note 115, at 168.

146. See *id.*

147. Such was the case on June 6, 1993 when the Golden Venture ran aground off the shores of New York City. See Seth Fiason, *Hunt Goes on for Smugglers in Fatal Trip*, N.Y. TIMES, July 18, 1993, at 27. The boat carried hundreds of Chinese illegal immigrants who jumped ship to try and swim ashore. See *id.* Ten people drowned and hundreds of others were rounded up and put in jail. See *id.*

148. Although the INS has devoted an increasing amount of resources to border enforcement, number of aliens using fraudulent means to enter and remain in the U.S. has also increased. See Virtue Testimony, *supra* note 119, at 11-12.

149. See Branigin, *supra* note 8, at A4.

pay may be forced to work in slave-like conditions while slowly paying off the debt.¹⁵⁰

In 1996, after discovering the high percentage of fraudulent L visa applications from China, the INS decided to randomly visit a number of the Chinese companies approved for the L visa. During this investigation, INS agents found that numerous companies had listed either nonexistent addresses or were "flea-bag motels, mail drops, apartments, the offices of immigration 'consultants,' or unrelated Chinese businesses that are used as fronts."¹⁵¹ In one case a man granted an L-1 visa and listed as a corporate officer was found at the listed address sitting in a barn, wearing dirty old clothes and sorting vegetables. The company was only one of four using that address.¹⁵² In another investigation, a two bedroom apartment served as the home address for twenty Chinese "companies" that had applied for visas.¹⁵³

The INS rarely conducts these random checks on companies approved for the L visa. Even if the agency suspects any type of L visa fraud, it is without the manpower and resources to investigate the problem.¹⁵⁴ The agency employs only one thousand six hundred agents for interior enforcement of the entire country; less than half the number of police officers assigned to the Washington DC metropolitan police force. Due to the small number of officers and its large caseload, the INS confessed that less than half of all fraud cases reported in 1996 were ever investigated.¹⁵⁵

150. See Robberson, *supra* note 144. Traditionally, Chinese smugglers, or "snakeheads," are especially ruthless in demanding payments. Some Chinese illegal immigrants are kidnapped or brutally assaulted. While in China, the snakehead may entice the alien with promises of a good paying job once in the United States. In reality, many illegal aliens, smuggled into the United States, do not speak the language and are unable to find work. And, once the alien arrives in the United States, the snakehead may demand immediate payment of the entire balance. See Kevin Tessier, *Immigration Project: The New Slave Trade: The International Crisis of Immigrant Smuggling*, 3 IND. J. GLOBAL LEG. STUD. 261, 261 (1995).

151. Branigin, *supra* note 8, at A4.

152. See *id.*

153. See Emshwiller, *supra* note 143, at B1.

154. See Branigin, *supra* note 8, at A4.

155. See *id.*

V. PROPOSED SOLUTIONS

The INS has stated repeatedly that the immigration system must have simple and effective rules and regulations.¹⁵⁶ Both immigrants and non-immigrants who want to comply with the rules should find the system "user-friendly."¹⁵⁷ And those who seek to violate the rules "should face a high degree of certainty that they will be caught."¹⁵⁸ However, even the INS admits that "there are elements of the nonimmigrant system currently faltering on the edges of credibility."¹⁵⁹ The L visa system is one such example.

Prior efforts to control the misuse of the L visa have been aimed primarily at legitimate international businesses. The Immigration Reform and Responsibility Act of 1996, which contained the first significant changes to the L visa since its creation in 1970, did not directly address the problem of L visa fraud. The 1996 legislation, however, did provide the INS with a new option to crackdown on foreign nationals who committed even minor violations of U.S. immigration law.¹⁶⁰

The most significant change to business immigration, as a result of the 1996 law, was the penalty attached to a business immigrant who overstayed his authorized period of admission. According to the new law, a non-immigrant's visa is void on the

156. See *Nonimmigrant Visa Issues Hearings: Before the Senate Judiciary Comm.*, 104th Cong. 29 (1995) (statement of Doris Meissner, Commissioner, Immigration and Naturalization Service) [hereinafter Meissner Testimony].

157. *Id.*

158. *Id.* This necessitates "documents that are tough to fake and easy to detect when altered, and competent and honest officers issuing the documents who are well informed about the tricks that are being used to try and fool them." *Visa Fraud and Immigration Benefit Application Fraud Hearings Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 105th Cong. 7 (1977) (statement of Mary A. Ryan, Assistant Secretary, Bureau of Consular Affairs) [hereinafter Ryan Testimony].

159. See Meissner Testimony, *supra* note 156.

160. Prior to the 1996 amendment, business visitors had enjoyed a wide degree of "tolerance" concerning their visa deadlines. For example, "B-1" business visitors took advantage of an INS policy that allowed them to stay up to one week beyond their authorized visa without filing a formal extension request. The alien simply had to write to the local office with the new departure date. Attorneys are now warning clients that this practice is dangerous. See Catherine Henin-Clark, *Impact of the New U.S. Immigration Law on Business and Employment-Related Visas*, N. AM. FREE TRADE & INV. REPORT, Dec. 15, 1996, available in LEXIS, NEWS Library, CURNWS File.

first day of the overstay.¹⁶¹ Furthermore, that individual cannot apply for an extension while in this country and instead is required to apply for a new temporary visa from his own country of residence.¹⁶²

If an alien overstays for a total of 180 days or more, he is barred from admission to the United States for three years.¹⁶³ Aliens who overstay for a year or more are locked out of the United States for ten years.¹⁶⁴ Moreover, a non-immigrant who has overstayed his visa is likely to face increased scrutiny when applying for future visas. These individuals will be flagged as possible future overstay violators.¹⁶⁵

The new overstay penalty does provide an additional incentive for legitimate employers to make sure their employees maintain lawful status and depart in a timely manner. This new provision, however is unlikely to have a significant impact on the problem of L visa fraud. Because the INS lacks the manpower to investigate possible immigration fraud schemes, and the agency has no method to formally monitor the approved departure date for L visas, the agency will only learn of overstay violations when the company files for an extension.¹⁶⁶ It is unlikely that shell corporations would file for an extension as the alien often seeks permanent residency before the L visa expires.

One suggested solution to the problem is to make it more difficult for multinational companies to qualify for an L visa. Such proposals include raising the minimum requirements for the L visa¹⁶⁷ or levying a significant tax on multinational companies using the L visa.¹⁶⁸ These proposals, however, would likely

161. *See id.* Several business commentators have stated that this provision could subject legitimate businesses to extreme penalties if companies have to withdraw key personnel because of a twenty-four hour oversight. *See id.*

162. *See id.* Under the old law, the violating employee could go to an adjacent country, such as Canada, and obtain a new temporary visa. *See id.*

163. *See id.* There was, however, a definite need to address the overstay problem in the United States. Prior to the 1996 law, the INS estimated that 300,000 non-immigrants each year stayed past their scheduled departure date. *See Meissner Testimony, supra* note 151, at 29. These illegal immigrants comprised forty to fifty percent of the entire illegal immigrant population. *See id.*

164. *See Henin-Clark, supra* note 160.

165. *See id.*

166. However, one member of the Russian Organized Crime filed an L visa extension while in prison. *See Yates Testimony, supra* note 129, at 24.

167. This solution was proposed by Representatives Lamar Smith of Texas and Alan Simpson of Wyoming. The ultimate goal was to reduce legal immigration into the United States by one-third, to 595,000, by 2002. *See Charles Lunan, Legislation Seeks Limits on the Influx of Foreigners, FT. LAUDERDALE SUN-SENTINEL*, Nov. 6, 1995, at 7.

168. Representative Alan Simpson also proposed that a thirty percent employer fee should be collected off the salary of all foreign workers. Immigration attorneys responded that idea would be "very negative" and that, "thirty percent

preclude a number of legitimate but small multinational corporations from utilizing the advantages of the L visa.¹⁶⁹ Because of the increasing importance of TNCs, any solution must be carefully balanced to minimize the effect on legitimate businesses.¹⁷⁰

A viable solution to the L visa fraud problem is likely to include two components. First, the INS and the State Department need to implement better procedures to detect and deter offenders without jeopardizing the legitimate needs of transnational corporations. Such procedures might include a re-allocation of resources to allow the INS to focus on the areas with the highest incidences of fraud, and a concerted effort to prosecute not only the individuals who perpetuate the fraudulent schemes, but also the criminals who profit from these illegal practices.

Any comprehensive solution to the problem, however, must also contain an international component. L visa fraud is only a means used by transnational criminal organizations to expand operations or facilitate illegal smuggling to the United States. Without an effective international solution aimed at ending this type of crime, the criminal organizations will simply shift to another method to achieve the same ends.

*A. Solution #1: Decrease L Visa Fraud Through Better
Identification of Criminal Applicants and Increased
Penalties for Individuals Who Participate in These Schemes*

The INS and the consulates are overworked and understaffed.¹⁷¹ In order to effectively detect L visa fraud, these agencies need better allocation of resources to focus on the areas containing the most fraudulent applications and better methods to identify possible fraudulent applications.¹⁷²

of a CEO's salary—that's quite a hit." David Thomas, *Special Report: Doing Business in the U.S.*, FIN. POST, Sept. 30, 1995, at 35.

169. As one Miami immigration attorney stated, the proposed bills would preclude hundreds of South Florida companies from getting L-1s. "We are not dealing with Mercedes-Benz and Motorola here," said Tammy Fox-Isicott, a Miami immigration lawyer. Lunan, *supra* note 162, at 7. "We are dealing with mom-and-pop firms and small companies. . . . Ninety-five percent of these companies would close." *Id.*

170. See discussion *infra* Part II.

171. The INS staff was expected to issue over six million visas in 1997, double the number issued just five years ago with the same size staff. See Ryan Testimony, *supra* note 158, at 6.

172. The INS and State Department have done a great deal to address the problem of document fraud. The documents are printed on products kept under lock and key and contain a number of security features: intaglio printing to give

As budgets are slashed and the number of applications rise, consulates become unable to fulfill their role as the first line of defense against immigration fraud. In the nineties, "nowhere in U.S. foreign policy have the changes . . . hit us harder than in transnational issues affecting consular fraud: demographic movement of unprecedented levels, political instability, . . . [and] the growth of international organized crime . . . all combine to place an enormous burden on our consular officers . . ." ¹⁷³ Expansion of the Visa Waiver Pilot Program (VWPP) could alleviate some of the strain on consulate resources. ¹⁷⁴

Established in 1986, VWPP allows temporary visitors for business or pleasure to forego the requirement to obtain a B visa prior to traveling to the United States. ¹⁷⁵ This program has freed up significant resources. ¹⁷⁶ The Visa Waiver Program is only available to countries that have a both negligible rate of refusal for the B visa and a negligible visa overstay rate. ¹⁷⁷ In deciding whether to grant participation in VWPP, the Attorney General must also examine the country's national security and immigration fraud enforcement programs.

One proposal advocates lessening the requirements for the VWPP to allow more countries to participate, thereby freeing additional resources. ¹⁷⁸ A better proposal, however, would be to

the document a texture, ultra-violet inks, watermarks, coded algorithms, and fine micro-line printing. See Ryan Testimony, *supra* note 158, at 8.

173. *Id.* at 6.

174. Another program promises to decrease the workload on INS agents. Called the INS Passenger Accelerated Service System (INSPASS), this program allows frequent business travelers to process their own clearance at the airports with specially issued "smart cards." The traveler must apply in person at an INS office and supply biographical data along with hand geometric data. If approved, the INS will issue the traveler a magnetic-stripe card with a digital photo and hand identification data. Once at the airport, the traveler inserts the card and then must place their hand on a magnetic reader. Over 70,000 people from the United States and twenty other countries have used the INSPASS program. See Peyman Pejman, *INS Will Roll Out Inspection Kiosks at Airports In the Fall*, GOV'T COMPUTER NEWS, Sept. 1, 1997, at 1.

175. In 1996, over 12 million foreign visitors, or about half of all temporary business visitors and tourists, entered the U.S. under the VWPP. See *Hearings Before the Visa Waiver Pilot Program Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 105th Cong. 1 (1997) (prepared statement of Chairman Lamar Smith) [hereinafter Smith Prepared Statement]. This program has the added benefit of encouraging travel and tourism. See *id.* at 2.

176. See *id.*

177. See *id.*

178. This idea has been criticized for four reasons. First, it would replace an objective standard with a standard based on subjective factors. See *id.* at 3. Second, this is inconsistent with efforts to reduce immigration fraud. See *id.* Third, it invites nations that do not meet the objective standards to lobby for inclusion in the Visa waiver program. See *id.* Fourth, it is inconsistent with the program's prior concept of a successful program. See *id.*

extend the scope of the program for qualifying countries to include the L visa. A significant portion of L visa applications are from international companies incorporated in countries that have already satisfied the rigorous standards for the VWPP.¹⁷⁹

Each company would still have to apply to the INS and satisfy the requirements for the L visa.¹⁸⁰ However, should the INS approve the petition, the employee would not need to visit the consulate to receive the L visa. Instead, the employee would be treated like an individual transferred under the current Blanket L Visa Program.

The saved resources could be reallocated in an effort to detect criminal applicants in countries with a high rate of fraudulent activity. In areas where eighty to ninety percent of the L visa petitions are from companies that exist only on paper, the applicant should not be presumptively entitled to the visa. Instead, as with an application for an immigrant visa, the consul should carefully scrutinize the petition and have the discretion to deny the L visa for a reasonable suspicion of fraud.¹⁸¹

The INS also needs an improved method to identify corporations that are merely fronts for criminal organizations. This could involve tracking prior applications to identify patterns of fraudulent activity and requiring verification of information submitted on the petition.¹⁸² Individual fraudulent paper applications can easily pass scrutiny.¹⁸³ However, with increased use of computer analysis, the INS agent could identify when a number of different companies have used the same information.¹⁸⁴ Furthermore, the INS should use Interpol resources and check the criminal background of employees, officers, and shareholders in multinational corporations applying for the L visa.¹⁸⁵

179. Such countries include: The United Kingdom (14,000 L visa applications annually), Japan (18,000 L visa applications annually), and Canada (6,000 L visa applications annually). See AUSTIN T. FRAGOMEN, IMMIGRATION PROCEDURES HANDBOOK at 4-2 (Supp. 1995).

180. See *supra* notes 66-84 and accompanying text.

181. This would result in different treatment for L visa candidates from countries with high levels of fraudulent L visa application. Such disparate treatment, however, is not without justification. Protecting the United States from illegal immigrants is a legitimate priority for the legislature. Furthermore, the Supreme Court has recognized that the legislative and executive branches possess plenary power over immigration and, therefore, their decisions are not subject to judicial review. See *Fiallo v. Bell*, 430 U.S. 787, 799 (1977).

182. See Meissner Testimony, *supra* note 156, at 30-31.

183. See Virtue Testimony, *supra* note 119, at 13.

184. See *supra* note 153 and accompanying text.

185. Interpol is an international police force with 146 member states. The purpose of the organization is to gather information about international criminals.

These procedural alternations could decrease the amount of L visa fraud without compromising the essential flexibility of the visa. When fraud is detected, however, both the individuals who participated in the scheme and the individuals who profited from the scheme should face penalties.¹⁸⁶

Under the current law, an alien is excludable if he procures a visa through fraud or by willfully misrepresenting a material fact.¹⁸⁷ Misrepresentation can involve either an actual fact that, if known, would have constituted grounds for denial of the visa, or a false statement that prevented the INS or consul from pursuing a relevant line of inquiry into matters affecting the issuance of the visa.¹⁸⁸

This law would allow the INS to deport an alien who has fraudulently obtained an L visa. However, under current INS procedure, when the agency prosecutes a criminal organization for L fraud, there is no strategy to pursue deportation of the aliens who have benefited from the fraud.¹⁸⁹ The INS also lacks the ability to flag the computer records of these aliens so, at a minimum, they cannot qualify for an extension or permanent residence.¹⁹⁰

The INS should monitor the aliens entering this country under the L visa. And, if the company is prosecuted for fraud, the

See Peter J. Vassalo, *The New Ivan the Terrible: Problems in Criminal Enforcement and the Spector of the Russian Mafia*, 28 CASE W. RES. J. INT'L L. 173, 185 n.89 (1996) (citing MALCOLM ANDERSON, *POLICING THE WORLD: INTERPOL AND THE POLITICS OF INTERNATIONAL POLICE COOPERATION* 3 (1989)). The European communities have also joined forces to form Europol for the sharing of information about criminal activity within the European Union. See Vassalo, *supra* at 186.

186. This is consistent with newly-altered INS policy that seeks to prosecute all persons who commit other types of immigration fraud. For example, under prior INS policy an alien could seek a waiver of deportation for immigration fraud if the foreign national was a spouse, child, or parent of a United States citizen or of an alien lawfully admitted for permanent residence. See *Immigration and Nationality Act*, 8 U.S.C. § 1251(f)(1)(A)(i) (1982) (transferred to 8 U.S.C. § 1227). However, in *INS v. Yang*, the Supreme Court reversed a Ninth Circuit decision which held immigration officials could not consider fraud used to enter the country as grounds for deportation if the alien was lawfully married to a permanent resident. 519 U.S. 26 (1996). The Court held that the statutory language imposes no such barrier and, therefore, that the INS is free to consider any evidence of fraud as grounds for deportation. See *id.* at 30.

187. See *Immigration and Nationality Act*, 8 U.S.C. § 1182(a)(19) (1994).

188. See 8 U.S.C. § 1182(a)(33).

189. See Smith Opening Statement, *supra* note 10, at 1.

190. No departure documents are required for entry to the United States. As a result, the INS has no idea how many people fail to leave when their visas expire. One INS spokesman stated "You are talking about a huge number of people . . . There is no system to track them. We wouldn't even know where to start looking for them." J.B. Cutler, *To Combat Terrorism, Start by Enforcing the Immigration Laws*, STAR TRIBUNE, Mar. 15, 1993, at 11A (quoting Duke Austin, INS spokesman).

INS should also institute deportation proceedings against each alien who has utilized the fraudulent scheme to enter the United States.

Currently, aliens are fully aware that once in this country they are virtually "home free."¹⁹¹ So long as the individual alien is never caught by law enforcement for a crime that would be punishable by deportation, even if the criminal organization is prosecuted, their individual L visa is secure.

Finally, the criminal penalty for organizations convicted of these fraudulent schemes should be commensurate with the crime committed. The penalty for this crime should be increased to reflect the fact that these criminal organizations are importing trained criminal operatives into this country in order to expand their base of operations.

By utilizing better measures to detect fraudulent applications and expanding the penalties for individuals who participate in these schemes, the INS will likely detect and punish more L visa fraud offenders. However, if the organized crime groups originate in Russia or China, punishing the individual offenders is unlikely to solve the entire problem. Procedural changes, combined with an international component, would provide a better, more effective solution.

B. *Solution #2: Use a Mutual Legal Assistance Treaty to Stop the Proliferation of Organized Crime*

No law enforcement agency, acting alone, has ever waged a successful campaign against organized crime.¹⁹² But the collective approach is not without bureaucratic obstacles. In the United States, it took law enforcement decades to join forces and fight against domestic organized crime. The most comprehensive solution would require the participation of the entire international community. Although this is a laudable goal, the barriers to developing such a comprehensive program would likely be insurmountable.¹⁹³ On a smaller scale, however, the United

191. See *Virtue Testimony*, *supra* note 119, at 12.

192. See *generally*, KLEIN KNECHT, *supra* note 115, at 305 (discussing the less-than-obvious difficulties facing law enforcement in the fight against organized crime).

193. See Farah Hussain, Note, *A Functional Response to International Crime: An International Justice Commission*, 70 ST. JOHN'S L. REV. 755, 756 (1996). Such barriers include the fact that international crime is not recognized by all nations and that no central organization has been established to monitor enforcement of this type of crime. *Id.*

States could work with China and Russia to address the specific problems presented by organized crime in those countries.

Traditionally, criminal law has been applied only at the domestic level.¹⁹⁴ Due to a number of procedural barriers, no transnational system of criminal law exists.¹⁹⁵ Countries have formed bilateral treaties, however, that have proven effective when addressing specific transnational criminal issues.¹⁹⁶

Such a treaty could effectively address the problem of L visa fraud in the United States and abroad. For example, associates from one branch of the criminal organization in China may recruit clients while another branch in the United States may apply for the L visa certification. Should the INS discover the fraudulent application, the agency will be able to prosecute those members of the organization in the United States that applied for the visa. In order to eliminate the criminal network behind the scheme, however, the branch in the foreign country must also be stopped.

The United States should develop a specific framework with both Russia and China to govern legal procedures for dealing with transnational organized crime and information sharing devices. Use of a Mutual Legal Assistance Treaty (MLAT) to coordinate enforcement and cooperation between nations is one possible solution.¹⁹⁷ An MLAT will identify specific areas for cooperation and also develop a legal procedure to transfer information and witnesses between the two countries.¹⁹⁸

The United States signed its first MLAT in 1973 with Switzerland to address the issue of illicit funds in Swiss banks.¹⁹⁹ The Swiss MLAT allowed United States law enforcement and administrative agencies, such as the Securities and Exchange Commission, access to information normally restricted under bank secrecy laws.²⁰⁰ The Swiss MLAT was used to access the bank records of members of organized crime charged with tax evasion.

An MLAT to address the L visa fraud issue could be modeled after a 1985 MLAT signed between the United States and Italy.²⁰¹

194. National sovereignty and the reluctance of domestic courts to adjudicate international law are among the barriers to a transnational criminal law system. See Vassallo, *supra* note 185, at 175.

195. See *id.*

196. See *id.*

197. See HENRY J. STEINER & DETLEV F. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 830 (1986).

198. See *id.*

199. Treaty of Mutual Legal Assistance in Criminal Matters, May 25, 1973, U.S.-Switz., art. 9, 27 U.S.T. 2019, 2035 [hereinafter Swiss MLAT].

200. See Vassallo, *supra* note 185, at 188.

201. See Treaty of Mutual Legal Assistance in Criminal Matters, Nov. 9, 1982, U.S.- Italy [hereinafter Italian MLAT].

The Italian MLAT dealt specifically with the issue of organized crime and directed both countries to cooperate in: locating persons, servicing of documents, document production, execution of search and seizure requests, taking of testimony, and transferring of persons.²⁰²

In 1987, the Italian MLAT was an essential part in the successful prosecution of the "Pizza Connection" case.²⁰³ In this case, the government convicted Gaetano Badalamenti, a former chief of the Sicilian Mafia, and sixteen other organized crime associates from Sicily and the United States for smuggling 1,650 pounds of heroin into the United States over five years.²⁰⁴ Using the Italian MLAT, Rudolf Giuliani, then the U.S. Attorney in Manhattan,²⁰⁵ was able to arrange for the live testimony of two critical Italian nationals, Tommaso Buscetta and Salvatore Contorno.²⁰⁶

Using an MLAT, the United States would have a better chance of permanently halting the use of the L visa for illegal immigration. The MLAT would allow better access to information and witnesses critical to effective enforcement of immigration law. And instead of a piecemeal approach, where individual fraud rings are detected and prosecuted, the government could use an MLAT to effectively wipe out the entire network.²⁰⁷

VI. CONCLUSION

In 1970, Congress wanted to encourage foreign investment in the United States and thought the L visa, with its flexible provisions, would be an incentive for international businesses to establish branch offices in the United States. As the global marketplace becomes more important, transnational corporations will continue to need the L visa to relocate personnel to the United States.

While Congress accurately predicted the rise of the transnational corporation, it failed to consider that those same

202. *Id.* at art. 1, § 2 (a-g), 24 I.L.M. at 1539. Prior to MLATs, the two countries were forced to use the cumbersome diplomatic process to gain information for criminal proceedings. *See Vassalo, supra* note 180, at 190.

203. *See Vassalo, supra* note 185, at 191.

204. *See KLEIN KNECHT, supra* note 115, at 137.

205. *See id.* at 288.

206. *See Vassalo, supra* note 185, at 192. Without the MLAT, Italy could have agreed to produce the witnesses, but would not have been under an obligation to do so. *See id.*

207. *See id.* at 195.

forces would also lead to a revolution in transnational criminal organizations. The evidence clearly indicates at least two multinational criminal conspiracies consistently misuse the L visa to facilitate illegal immigration.

The solution is not to eliminate the L visa. However, in order to maintain the integrity of the United States immigration system, individuals such as the fictional Chinese entrepreneur Sun Qi in the novel *The Wrath of God*, cannot be allowed to manipulate the L visa for an enormous profit. Through a combination of procedural changes to the L visa, and an effective agreement with foreign jurisdictions, the United States can strike the necessary balance between a flexible visa for international businesses and control of its non-immigration system.

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