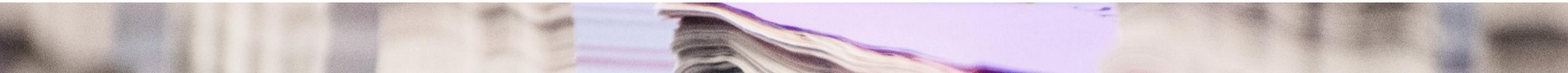


# Options To Remain in U.S. After F-1 Status

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*Klasko Immigration Law Partners*

*July 12, 2018*



# Immigration Issues in 2018 and Beyond

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- Buy American/Hire American Executive Order
- Cutbacks on legal immigration
- Main restrictions: H-1B, L-1, EB-1A, EB-1-C
- Demand exceeds supply



# Nonimmigrant (Visa) vs. Immigrant (Green Card)

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- Nonimmigrant

- Can obtain quickly
- Limited in time
- Does not lead to citizenship
- H-1B, L-1 or E-2

- Immigrant

- Lengthier process
- Per country quotas
- Permanent (leads to citizenship)
- Family can work/study in U.S.
- Self-sponsored
  - EB-1A (extraordinary ability)
  - EB-5 (investor)
- Family sponsored
  - Long quota waits except spouse of USC
- Employer sponsored
  - EB-1C (multinational manager)
  - EB-2/3 (PERM labor certification)

# H-1B Visa

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- Employer sponsored and employer specific
- Requirements
  - specialty occupation
  - prevailing wage
- 3 years + 3 years

# Problems with H-1B Option

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- H-1B lottery
  - Approximately 25% chance for bachelors
  - 50 -75% for U.S. masters
- Problems if chosen in lottery
  - Significant increase in denials of H-1B petitions
  - Restrictive interpretation of “specialty occupation”
  - Denials based on wage issues
  - Denials based on employer-employee relationship
  - Denials based on OPT violations

# Problems with H-1B Option *cont'd*

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- Problems with H-1B extension
  - No deference to prior H-1B approval (new policy)
  - Attempts to limit number of H-1B extensions
- Attempt to eliminate H-4 employment authorization

# L-1 Option

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- Employment by related company outside of U.S. for one of last 3 years
- Manager, executive or specialized knowledge
  - Very restrictive interpretations

# E-2 Option

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- Citizen of country with investment treaty with U.S.
  - Grenada
- Substantial investment
- 50% + ownership of company



# EB-2/3 Option

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- Employer-sponsored labor certification application
- Quota wait
  - India 15+ years
  - China 5-10+ years
- During waiting time, H-1B cannot
  - Change employers
  - Be promoted

# EB-1 Options

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- Multinational manager
  - Manager overseas and manager in U.S.
  - Very restrictive
- Extraordinary ability
  - Sustained national or international renown
- Quota - - China/India 2012
  - Rest of world no wait

# Best Option for Many: EB-5

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- Requirements for EB-5
  - Investment amount usually \$500,000
  - Investment in own business (direct EB-5) or pooled investment in project sponsored by regional center
  - Project must create at least 10 jobs per investor
  - Conditional permanent residence usually obtained in 24 to 42 months

# Advantages of EB-5

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- No employer sponsorship required
- Currently no quota backlog, except China and Vietnam
- Very high approval rate
- Investment money returned with some return on investment if good investment
- No restriction on changing jobs or promotions during pendency of EB-5
- No geographical restrictions
- No requirement to manage or be employed by project

# EB-5 Procedure

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- File I-526 petition
- Upon approval, file I-485 application (if in U.S.) or DS-260 (if outside U.S.)
- Upon approval, obtain 2-year conditional green card
- 21 to 24 months later, file for permanent green card

# Possible Changes in EB-5 within Next 12 Months

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- Increase in investment amount
- Quota backlogs



# Regional Center EB-5

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- Regional center vs. project
- Key is choosing good project
  - Immigration risk
  - Financial risk
- Costs of regional center EB-5

# Key Issues in Choosing an EB-5 Project

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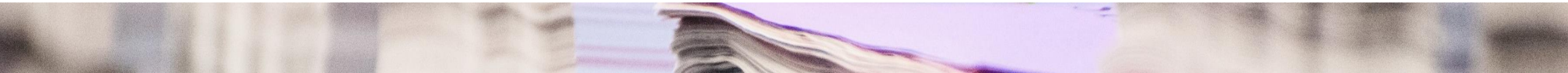
- Reputation/history of developer
- Reputation of EB-5 professional team
- Exemplar and/or I-526 approval
- Credible business plan
- Job cushion
- Investment at risk
- Full capital stack, with substantial developer equity
- Compliance infrastructure



# Lawful Source of Funds

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- Can be gifted - - prove giftor's source of funds
- Can be from out of U.S.
- Extensive documentation required
- If comes from loan/mortgage, must document source of collateral



# How We Can Help

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- Full service immigration law firm
- Work with over 30 universities and their students
- 20-person EB-5 team



# Questions?

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# For Further Information

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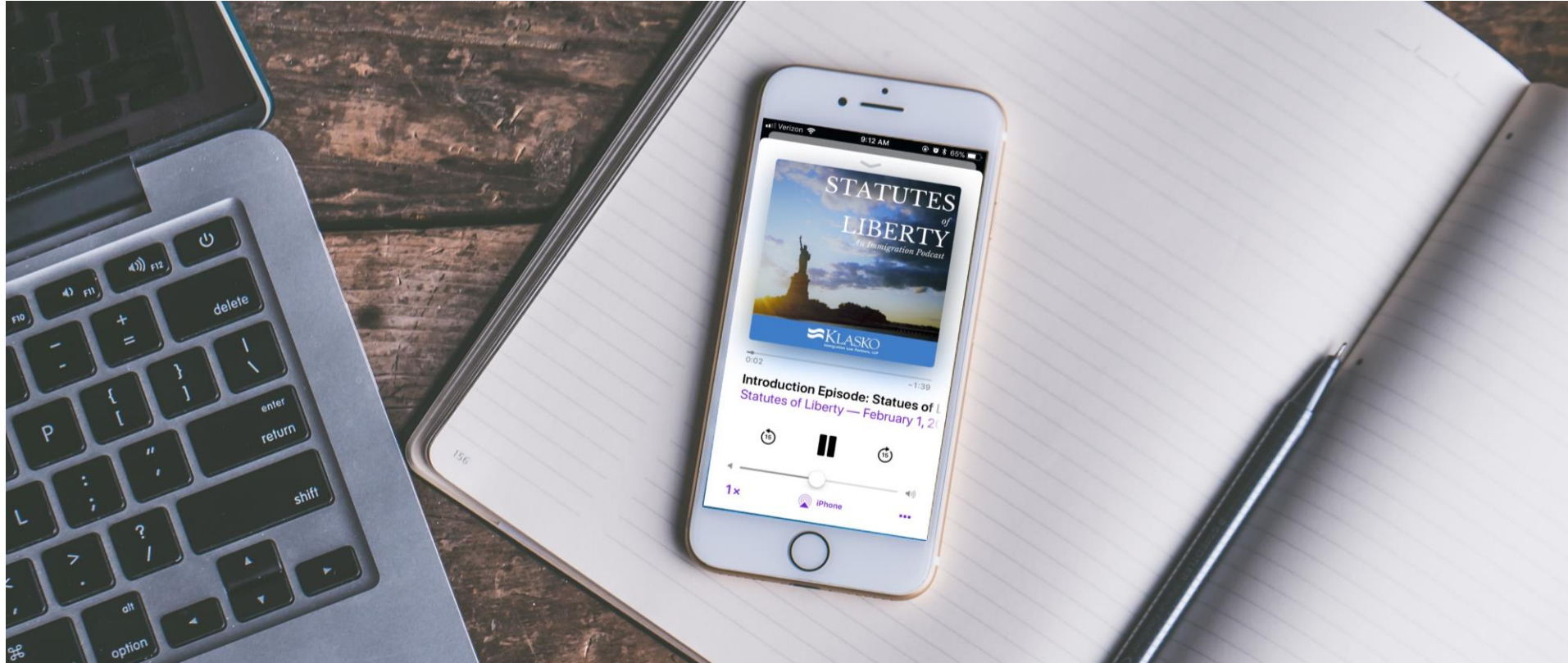


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# Statutes of Liberty: An Immigration Podcast is now available on KlaskoLaw.com and Apple Podcast!



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