

2019 Climate Change

Navigating a Difficult Immigration Environment

April 16, 2019





H. Ronald Klasko
Partner

Ron Klasko is the Managing Partner of the firm and has been providing immigration assistance and solutions to corporations, hospitals, universities and individuals for over 30 years.



Ron is a past National President of the American Immigration Lawyers Association and served for 3 years as the bar association's General Counsel. He is also one of only three practicing attorneys ever honored with the AILA Founders Award for his contributions to immigration jurisprudence. Ron has been invited by more than 30 universities and hospitals to address students and scholars.

Ron has been selected as one of six top tier immigration lawyers in the U.S. by Chambers Global and the firm has been selected as a top tier immigration law firm by U.S. News and World Report. He is selected annually for inclusion in Best Lawyers in America ©. The International Who's Who of Business Lawyers selected Ron as the "most highly regarded" immigration lawyer in the world. He is a frequent author and lecturer on business and university-related immigration law topics and is a former Adjunct Professor of Immigration Law at Villanova University Law School.

Ron is a graduate of the University of Pennsylvania School of Law. He has helped thousands of foreign nationals navigate the complicated process of obtaining working visas and green cards.



William A. Stock
Partner

Bill Stock is a founding partner of Klasko Immigration Law Partners, LLP and has been providing immigration assistance and solutions to leading multinational corporations, universities, research institutions, hospitals, and individuals for over 25 years.



He is a Past President of the American Immigration Lawyers Association and has addressed national conferences organized by AILA, NAFSA, SHRM and other professional organizations. He is a member of the Board of Directors of the American Immigration Council, a national foundation working to strengthen America by honoring our immigrant history and shaping how America thinks about and acts towards immigrants and immigration.

A graduate of the University of Minnesota Law School, Bill is featured in The Best Lawyers in America, The Chambers Global Guide, Human Resources Executive magazine, Pennsylvania Super Lawyers, Who's Who in America and other guides to prominent lawyers. In 2017, he was elected a Fellow of the American Bar Foundation.



Elise A. Fialkowski
Partner

Elise Fialkowski has been providing immigration assistance and solutions to leading universities, research institutions, multinational corporations, startups, entrepreneurs and individuals for over 25 years.



Elise has particular expertise in worksite enforcement and leads Klasko's worksite compliance group. She regularly counsels on I-9 compliance, E-Verify, and H-1B LCA compliance. She works with employers to develop proactive compliance programs and assists employers with internal audits and training. Elise has also successfully represented companies facing I-9 and H-1B LCA audits and investigations.

Elise has long been active in the American Immigration Lawyers Association (AILA) and currently serves on AILA's Global Migration Section Steering Committee and on the Philadelphia Customs and Border Protection Liaison Committee. She has served on many other committees at the local and national level.

Elise has been named in Best Lawyers in America ©, Pennsylvania SuperLawyers, The International Who's Who of Corporate Immigration Lawyers and the International Who's Who of Business Lawyers. A Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill, Elise received her law degree from the Villanova University School of Law (J.D., magna cum laude, 1991).



Michele G. Madera
Partner

Michele Madera's practice is focused on employment-based non-immigrant and immigrant matters for large corporations with a high volume of immigration matters.



Michele has extensive experience advising clients throughout the labor certification process, including the recruitment process, filing the Form ETA 9089, and responding to Audit Requests by the Department of Labor.

She also has worked with clients in the preparation of B-1 Business Visitor applications, the following petitions: H-1B, E-3, H-3, L-1A, I-140s for EB-1, EB-2 and EB-3 classifications, adjustment of status applications, Re-entry Permit applications, and Motions to Reopen.

Michele has also advised her clients and assisted in responses to Requests for Evidence. She works with employers in assessing new job opportunities for employees to determine the effect of the change on non-immigrant and immigrant matters. Michele has represented clients before U.S. Citizenship and Immigration Services, U.S. Department of Labor, and U.S. Customs and Border Protection.



Feige M. Grundman
Associate

Feige Grundman is a Senior Associate in the Firm's Philadelphia office. Feige's practice includes the representation of Fortune 500, multinational, and private companies with high volume employment based non-immigrant and immigrant visa matters.



She has significant experience advising clients on PERM applications and denials, strategies for employing foreign nationals, I-9 compliance, worksite enforcement, and E-Verify compliance. She frequently represents companies before the U.S. Department of State, U.S. Department of Labor, and the U.S. Department of Homeland Security. Feige also prepares filings for individuals seeking to invest in the United States via various visa programs, and counsels those facing 221(g) issues at U.S. Consulates. She also provides pro bono legal counsel to the Adoptee Rights Campaign and assists in lobbying efforts towards obtaining citizenship for all adoptees.

A member of the Pennsylvania, New Jersey and Florida Bars, Feige is an active member of the American Immigration Lawyers Association. She is a past Board member of the Support Center for Child Advocates and served as an Executive Committee Liaison to the Philadelphia Bar Association's Young Lawyers Division.



Lisa T. Felix
Associate

Lisa Felix represents corporate and educational clients who seek to hire or transfer foreign employees, as well as foreign individuals seeking employment in the United States as scientists, highly skilled professionals, executives, managers, and artists. She advises employers on immigration compliance, responding to government investigations, and immigration strategy and planning.



Lisa has experience representing individuals in self-sponsored immigration matters based on professional qualifications and business development, as well as personal matters including naturalization, family-based immigration matters, consular processing and asylum claims.

Before practicing as an attorney, Lisa worked extensively in higher education, providing immigration services to students, faculty, researchers, and administrators at the University of Pennsylvania, the State University of New York at Buffalo, and at Southern Illinois University–Carbondale's branch campus in Niigata, Japan. As a Designated School Official and Alternate Responsible Officer, she advised academic and administrative departments, foreign faculty, and students in the areas of hiring, enrollment, non-resident tax compliance, and academic, cross-cultural and personal concerns.



Andrew J. Zeltner
Associate

Andrew Zeltner is an Associate in the Firm's Philadelphia office. Mr. Zeltner handles a wide array of corporate immigration matters including those involving the processing of permanent resident applications (green cards) on behalf of multinational corporate and individual clients, including labor certification applications, immigrant visa petitions and adjustment of status applications.



He has significant experience providing employment-based U.S. immigration services for large corporate clients, including applications for B-1 OCS, E-1/E-2, H-1B, H-3, J-1, L-1, O-1, TN, labor certifications, multinational manager and executive immigrant petitions, outstanding researchers, extraordinary ability aliens, and national interest waivers. He has provided extensive advice to human resources professionals and corporate counsel regarding immigration compliance matters including I-9 and LCA compliance issues.

Mr. Zeltner received a Bachelor of Arts degree in Politics (cum laude) from The Catholic University of America. He earned his J.D. (cum laude) from Quinnipiac University School of Law. While in law school, Mr. Zeltner served as Opinions Editor of the Quinnipiac Probate Law Journal.



Natalia Gouz
Associate

Natalia Gouz is an Associate in the Firm's Philadelphia office and is responsible for providing strategic and comprehensive business immigration solutions for the firm's corporate clients.



Natalia has considerable experience in obtaining a diverse roster of nonimmigrant visas, including H-1B, L-1, TN, O-1, E-1 and E-2, and E-3. She also has significant experience handling immigrant worker petitions (green cards) for professionals, advanced-degree individuals, multinational managers and executives, as well as skilled workers. During her years of practice, Natalia has acquired in-depth knowledge of the PERM Alien Labor Certification process, having successfully secured Labor Certifications from the U.S. Department of Labor for her clients.

Her clients span a broad spectrum of industries, including financial services, information technology, logistics, transportation, manufacturing, food services, and hospitality. Natalia has also volunteered her time to the Safe Passage Project at New York Law School, which addresses the legal needs of indigent immigrant youth living in New York. Natalia is a graduate of New York Law School (J.D.), and received her Bachelor's degree in Political Science from Pace University.



Lauren D. Berkowitz
Associate

Lauren Berkowitz provides strategic and comprehensive business immigration solutions for the firm's corporate clients.



Lauren has flourished in assisting multinational companies with their U.S. immigration needs by acquiring nonimmigrant visas for business visitors, investors, and intra-company transferees. She also has significant experience assisting corporate clients with immigration compliance matters including I-9 and LCA compliance. For temporary employment-based matters, Lauren has considerable experience in obtaining a diverse roster of nonimmigrant visas, including H-1B, L-1A, L-1B, TN, O-1, E-2, and E-3. She also has experience handling immigrant worker petitions (green cards) for professionals, advanced-degree individuals, multinational managers and executives, as well as extraordinary ability individuals.

Lauren is a graduate of Temple Law School (J.D.) and received a Bachelor of Arts degree from the University of Virginia. She is conversational in French and has an affinity for French food and wine. She is also an avid Philadelphia sports fan and enjoys solving crossword puzzles.



Maria M. Mihaylova
Associate


Maria Mihaylova works closely with both corporate and individual clients on a wide range of business and family-based immigration matters.



An immigrant herself, Maria is well-attuned to the needs of foreign nationals who are evaluating and planning out their immigration options in the United States. Her extensive and versatile experience advising and representing start-ups as well as small, mid-sized and large businesses has enabled her to develop a thorough understanding of employers' needs and concerns and has largely defined her client-centric approach to addressing and resolving immigration issues.

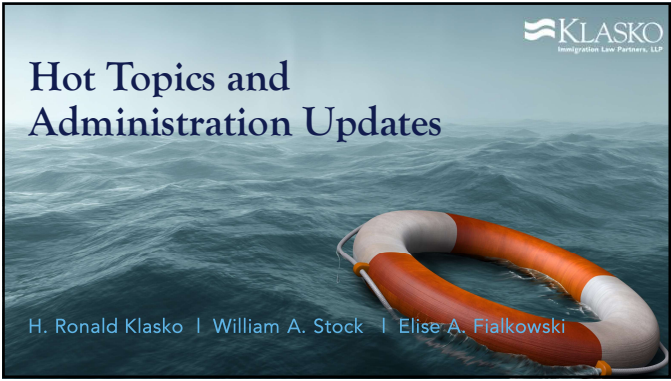
Maria has considerable experience obtaining employment-based non-immigrant visas for professionals. She has successfully worked with multinational executives and managers, professors and researchers, and people of extraordinary and exceptional abilities alike to obtain their green cards. She possesses a comprehensive knowledge of the PERM Alien Labor Certification process.


Maria received her Juris Doctor (J.D.) degree from Seton Hall University School of Law in 2012 and is fluent in Bulgarian.



Hot Topics and Administration Updates

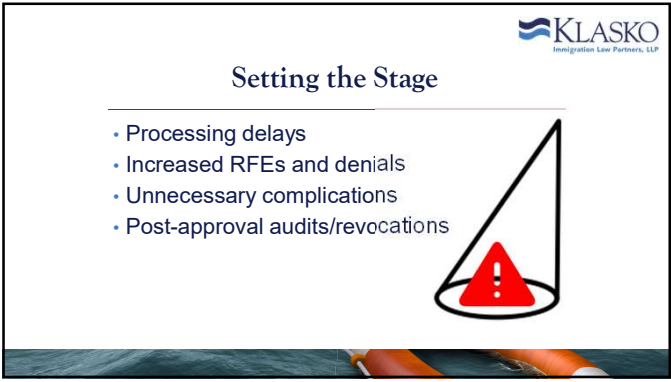

H. Ronald Klasko | William A. Stock | Elise A. Fialkowski






Setting the Stage





- Processing delays
- Increased RFEs and denials
- Unnecessary complications
- Post-approval audits/revocations

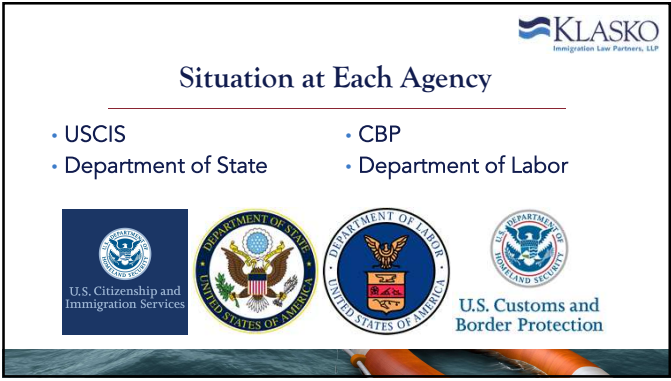




Situation at Each Agency

• USCIS	• CBP
• Department of State	• Department of Labor







Non-Sponsored Employees

DACA



Deferred Action for Childhood Arrivals



TPS



(Temporary Protected Status)





Increase in Audits

- I-9
- Wage & Hour Division
- Contractor Verifications





New Restrictions

- Guidance
 - F/M/J unlawful presence
- Regulations
 - H-1B Lottery
 - H-4 EAD
 - I-539



Pushing Back on Changes

- Congressional Oversight
- Litigation
- Regulatory comments



Looking Forward

- Regulating definition of employer/employee
- H-1B "specialty occupation"
- Statutory changes
- Quota relief
- Broader immigration reform
- Suspension of premium processing/processing delays/impact on cap gap employment



Questions?

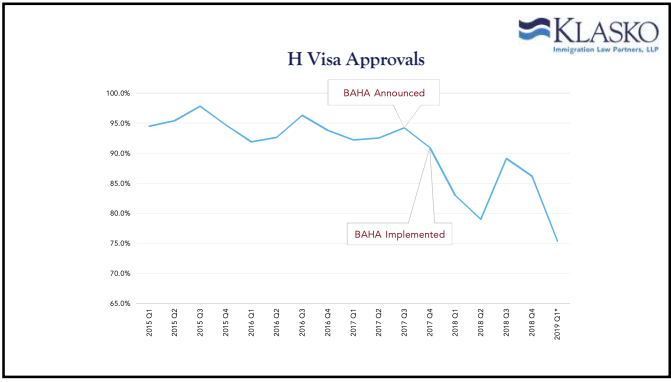


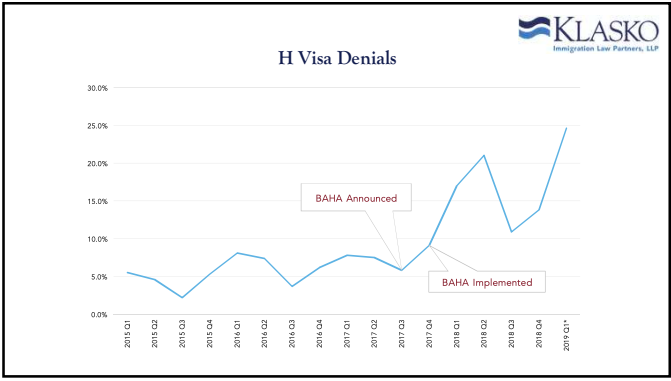


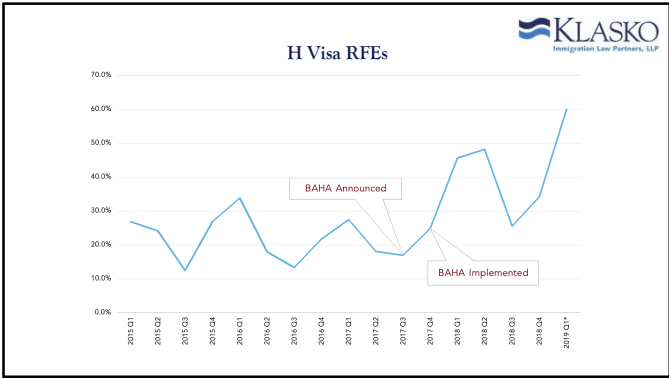
Denials, RFEs, and Statistics: *How Looking Back Can Help Move Forward*

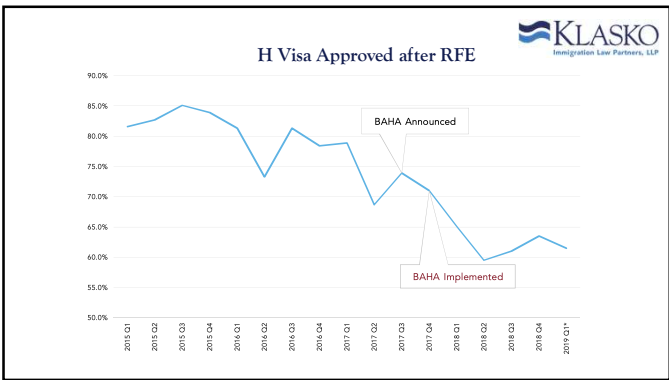
Michele G. Madera | Feige M. Grundman | Natalia Gouz











Nonimmigrant Visa Trending RFE Topics

H-1B

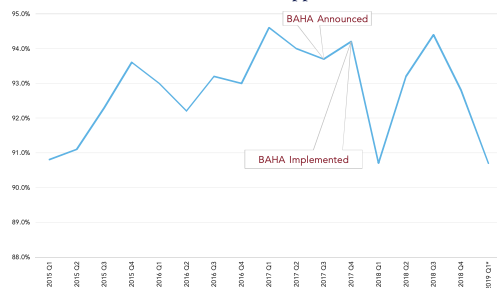
- Specialty occupation nature of position
- Relationship of employee's degree field
- Employer-employee relationship, 3rd party placements, Availability of work

Nonimmigrant Visa Statistics

- O-1 calendar year 2018 adjudications
 - USCIS data: 12.3% outright denial; 29.4% RFE; 88.6% overall approval rate (61.3% approved after RFE)



O Visa Approvals



Nonimmigrant Visa Trending RFE Topics

O-1

- RFEs on extensions for cases never challenged in the past (rescission of prior USCIS "deference" policy plus impact of BAHA Executive Order on adjudication policy)
- Contract or employment offer
- Challenging whether "consultation letter" is a "consultation letter"
- General mistakes of law
- New *Kazarian* RFE (overall merits)
- Maintenance of status for F-1 students (including mistakes of law)

Immigrant Visa Statistics

- **EB-1 Extraordinary Ability**
 - 29% KILP RFE rate
 - 100% overall KILP approval rate
- **EB-1 Outstanding Researcher**
 - RFE surge beginning late October with new template
 - 23% KILP RFE rate
 - 96% overall KILP approval rate
- **EB-2 National Interest Waiver**
 - 20% KILP RFE rate
 - 100% approval rate

Immigrant Visa Trending RFE Topics

EB-1 Extraordinary Ability

- How the beneficiary will engage in the endeavor in the United States
 - No job offer requirement for the category, but a job offer helps
 - Specific statement of intent and plan from the beneficiary

Immigrant Visa Trending RFE Topics

EB-1 Outstanding Researcher/Professor

- Trending RFE topics
- Mistakes of law ("original contributions")
- New *Kazarian* RFE template (vague challenges)
- Qualifying employment offer (three ways to be "permanent")
- Qualifying employer
 - Whether private employer petitioner has at least 3 FT researchers
 - Whether private employer petitioner has record of achievements
- Beneficiary's 3 years of research experience (even for seasoned researchers)

Immigrant Visa Trending RFE Topics

EB-2 National Interest Waiver

- Whether the individual is “well positioned” to further the endeavor

What Have We Learned?

- Approval rates are decreasing
 - Even lower for IT consultants
 - Lasting effects of BAHA
- Anticipate RFES
 - Drafting & filing strategies change
 - Requesting more documentation and information at initial filing
 - USCIS changes RFE templates

What Have We Learned?

(Continued)

- Accepting RFES
 - Even when you anticipate RFEs and update templates, it's impossible to avoid RFEs
 - BAHA
- Options after denial:
 - Refile
 - Litigation (breakout session)
 - AAO: can be successful for some categories, but also very long processing times

Questions?



Time for a
Break



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Bathrooms are
available to the
LEFT and the
RIGHT



Breakout Sessions – 10:30 – 10:55

Out of Site, Out of Mind (*Library
Lounge*)

— OR —

F/J/M Unlawful Presence
and Litigation Update
(*Lincoln Memorial*)

Bathrooms are
available to the
LEFT and the
RIGHT



Breakout Sessions – 11:00 – 11:25

Is My EB-1 Good Enough?
(Library Lounge)

— OR —

What You Say Can & Will
Be Used Against You
(Lincoln Memorial)

Bathrooms are
available to the
LEFT and the
RIGHT

Breakout Sessions – 11:30 – 11:55

Litigation: Often the Best Remedy
(Library Lounge)

— OR —

Recent Developments in
Change of Status
(Lincoln Memorial)


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Time for a
Break



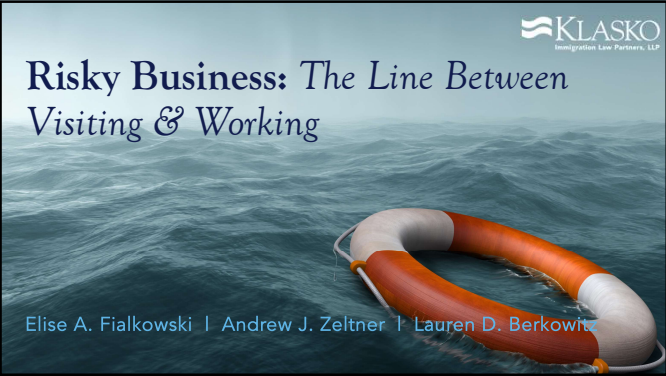
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Risky Business: *The Line Between Visiting & Working*

Elise A. Fialkowski | Andrew J. Zeltner | Lauren D. Berkowitz






Standard B-1/ESTA activities

- Business meetings
- Conferences
- Gathering information
- Familiarization trip
- Benefit accrues to company abroad
 - Be cognizant of the slippery slope from "meetings" to employment benefitting U.S. entity




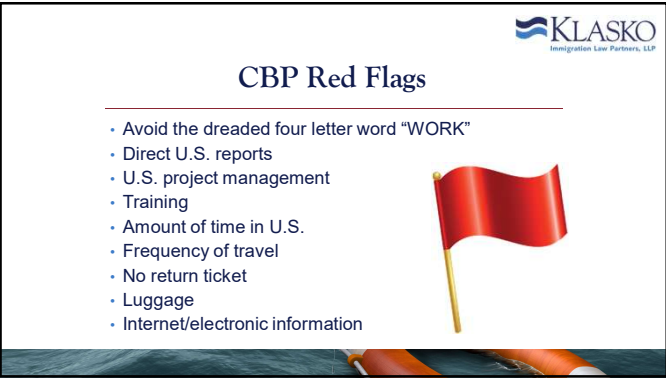




CBP Red Flags

- Avoid the dreaded four letter word "WORK"
- Direct U.S. reports
- U.S. project management
- Training
- Amount of time in U.S.
- Frequency of travel
- No return ticket
- Luggage
- Internet/electronic information





Alternative Options

- B-1 in Lieu of H-1B/potential solution for short term project
- B-1 in Lieu of H-3



Practical Examples For Consideration

- Chairman of the Board
- Global Managers
 - Two trips a year
 - Eight trips a year

The Costs of Risky Business

- Secondary inspection – lengthy CBP interview
- Sent home on next flight or even detained
- Fraud/Misrepresentation/ U.S. travel bar



How to Prepare/Limit Risk

- Policy/Program
- Evaluation
- B-1 pocket letter



Questions?



Riding the Green Card Rollercoaster: *How to Upgrade by Downgrading*

Michele G. Madera | Natalia Gouz | Maria M. Mihaylova

What are the Preference-Based Categories?

- **The EBs: Employment-Based Preference Categories:**

- EB-1: Priority Workers (i.e. Individuals of Extraordinary Ability, Outstanding Researchers / Professors, and Multinational Executives and Managers)
- EB-2: Members of Professions Holding Advanced Degrees (or a Bachelor's degree and 5 years of Experience, or persons of Exceptional Ability)
- EB-3: Skilled Workers, Professionals (i.e. individuals who hold at least a Bachelor's degree), and Other Workers
- EB-4: Certain Special Immigrants (i.e. religious workers)
- EB-5: Employment Creation Category for foreign investors

April Visa Bulletin

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	01FEB18	22FEB17	01FEB18	22FEB17	01FEB18	01FEB18	01FEB18
2nd	C	01APR16	C	12APR09	C	C	C
3rd	C	01AUG15	C	22JUN09	C	01MAR18	C
Other Workers	C	22AUG07	C	22JUN09	C	01MAR18	C
4th	C	C	08MAR16	C	01APR18	C	C
Certain Religious Workers	C	C	08MAR16	C	01APR18	C	C
5th Non-Regional Center (C5 and T5)	C	15SEP14	C	C	C	C	22AUG16
5th Regional Center (I5 and R5)	C	15SEP14	C	C	C	C	22AUG16

How Does a Foreign National Get In Line?

- Need an approved I-140 in one of the preference categories
 - Approved I-140 + Perfected Priority Date
- What is the significance of a Perfected Priority date?
 - A Perfected Priority date "travels with" the foreign national
 - It can be transferred to a subsequent I-140 petition done by the same or a new employer
 - It can only be lost in the event of a fraud / misrepresentation finding

Once In Line: What is an Upgrade?

- **When Do We File One?**
 - Employee has approved I-140 under EB-3
 - Employee gets a promotion to an EB-2 eligible role
 - Employer obtains certified PERM for new position
 - Employer files an EB-2-based I-140 asking USCIS to assign the perfected EB-3 priority date
 - USCIS approves EB-2 I-140 with the retained/perfected EB-3 priority date
- **Result:**
 - Perfected EB-3 approval priority date is assigned to new EB-2 approval
 - Employee can file their adjustment of status application once priority date is current.

Once In Line: What is an Downgrade?

- **When Do We File One?**
 - Employee has an approved EB-2 I-140
 - Priority date is current under EB-3
 - Employer files an EB-3 I-140 petition using the same labor certification that was the basis for the approved EB-2 I-140 petition
- **Result:**
 - Employee can file for Adjustment of Status together with Downgraded EB-3 I-140 filing.

To Downgrade or Not To Downgrade?

- **Benefits for Employers:**
 - Potentially limits the risk of having to do a new PERM labor certification if the employee is eventually promoted, or there is a substantial change in responsibilities;
 - Can potentially lower costs associated with renewing the respective employee's non-immigrant status; and
 - Fosters employee goodwill.
- **Benefits for Employees:**
 - Can potentially receive green card quicker.

To Downgrade or Not To Downgrade?

(Continued)

- Are there any risks/downsides of downgrading?
 - Creating a backlog in the "downgraded" category
 - Administrative issues with "linking" the I-140 approval with the pending I-485



Questions?



Closing Remarks

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