



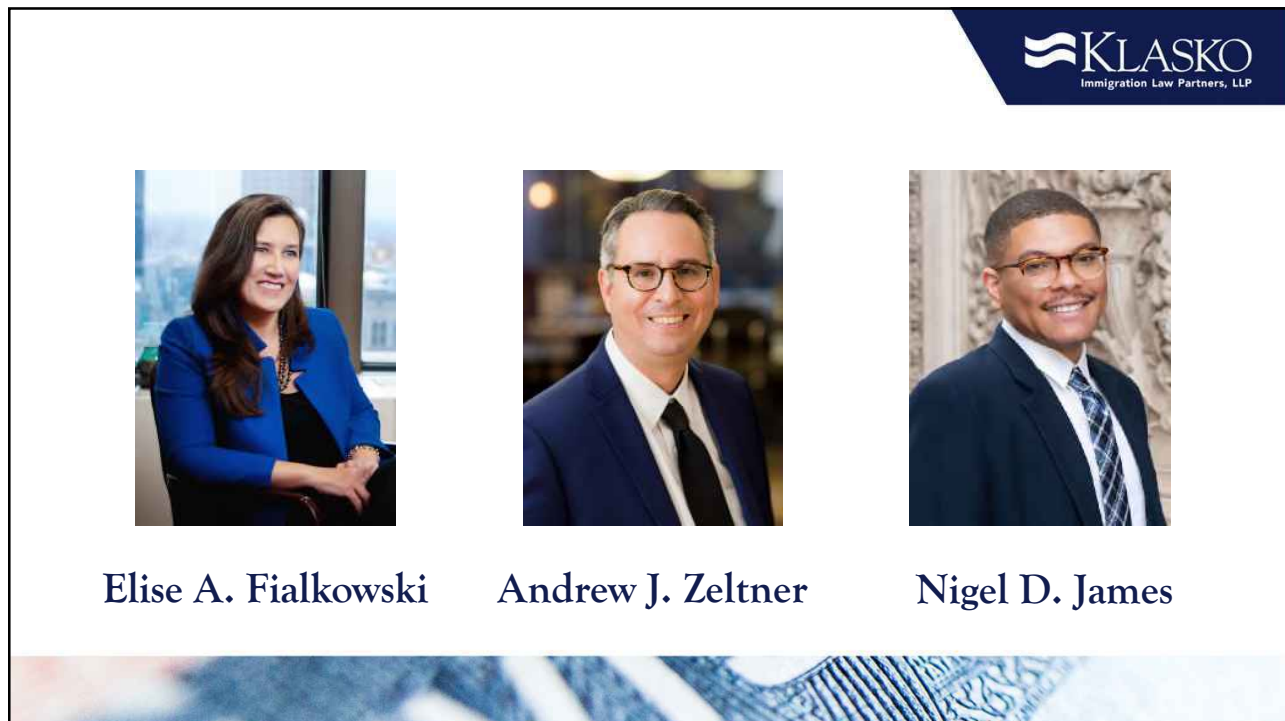



# H-1B Lottery & Alternatives For Startup Companies




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## POLL

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### **How familiar are you with the H-1B lottery?**

- Not familiar at all.
- A little familiar.
- Very familiar.

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## POLL

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### **Do you employ any students in F-1 status?**

- Yes
- No

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## H-1B Lottery / Quota

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- What is it, and what does it mean?
  - 65,000 visas
- Separate quota for US-educated advanced degree holders
  - 20,000 visas
- No data on approval/denials yet for FY2023
  - 483,927 registrations (+56.8% from 2022)
  - 127,600 selected
- KILP numbers

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## Lottery Process

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- Pre-registration process
  - Electronic submission
  - \$10 fee for each beneficiary
    - Proposed increase, not expected for 2023 lottery
  - March 2023
- Post-registration process
  - Notification of selection through account
  - Notification in early April
  - File petitions only for selected beneficiaries
    - 90-day filing window if selected

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## Issues for Startups

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- Must establish company with employer tax I.D. number
- Company can be 100% owned by H-1B employee
  - Must be W-2 employee
  - Company separate entity from owner/employee
  - Independent Board of Directors or other mechanism

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## Issues for Startups

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*(cont'd)*

- Importance of business plan/financial projections
- Profitability/ability to pay
- Real job to be done by H-1B
- Other employees helpful – not required

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## Issues for Startups

*(cont'd)*

- Prevailing Wage
- Remote work considerations/home address
  - HQ needed?

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## What You Need to Do Now

- Register company's account
- Registration with Department of Labor for LCA
- Preparing for issues before registration
  - Occupational classification
  - Prevailing Wage
  - Status maintenance until October 1

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## H-1B Alternatives

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- Continue F-1 work authorization (CPT, OPT, STEM-OPT)
- H-3 training for non-STEM fields
  - J-1
- Employment abroad and L-1 eligibility

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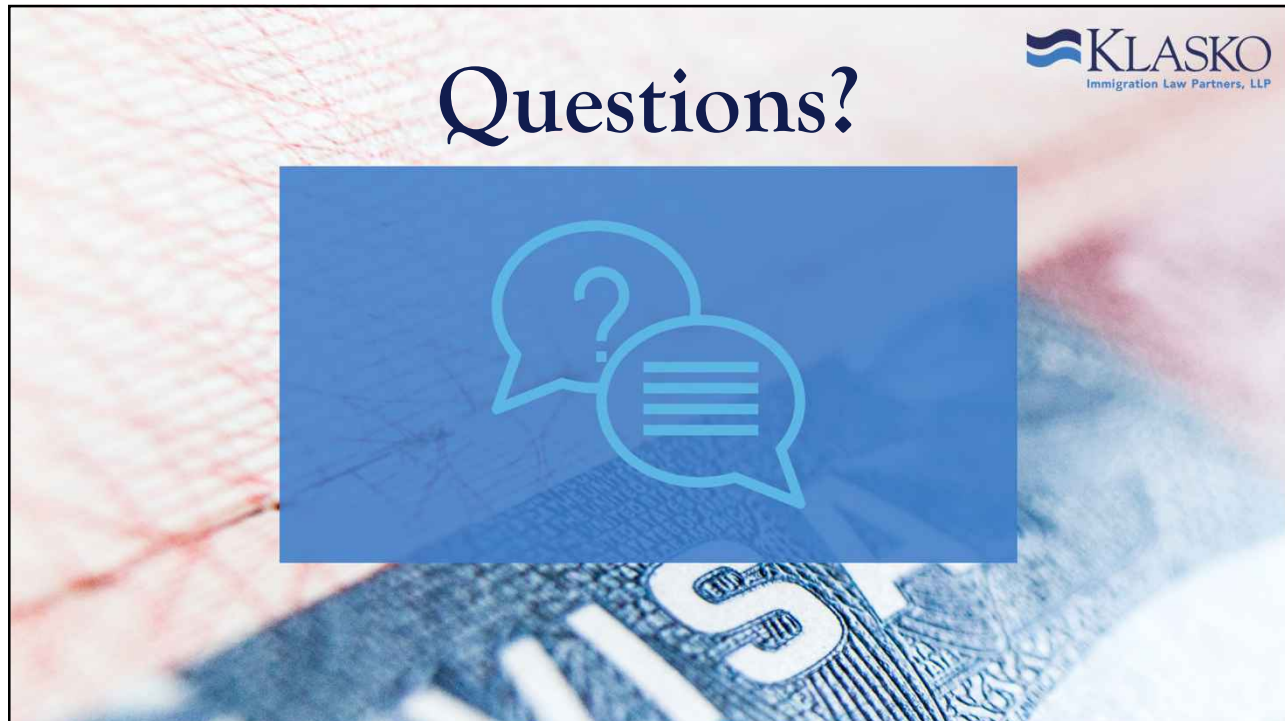
## H-1B Alternatives

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*(cont'd)*

- E-2 Treaty Investor
- Consider spousal status
- O-1 or EB-1 / NIW
- Labor certification / direct to green card
- Concurrent H-1B employment

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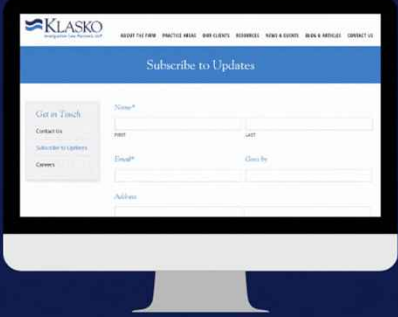


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**Elise A. Fialkowski**  
Partner


**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 long been active in the American Immigration Lawyers Association (AILA) and currently serves on AILA's National Online Course Committee, AILA's 2021 Annual Conference Committee, AILA's Verification and Documentation Liaison Committee, the Philadelphia Customs and Border Protection Liaison Committee, Nationalities Service Center's Nominating and Governance Committee, Women Owned Law Steering Committee, and is a Board Member of John F. Peto Studio Museum. She has served on many other committees at the local and national levels.

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).



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**Andrew J. Zeltner**  
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**Andrew J. Zeltner** is based 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.



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Associate

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Nigel James navigates immigration laws for clients and is a member of the firm's EB-1 team.

His daily dedication to solving the puzzles of immigration law for corporate and individual clients is also influenced by his background and interest in science, in topics such as microbiology and sustainability involving environmental systems and energy technologies.

Nigel has provided legal advice on family-based and employment-based immigration, including applications for H-1B, L-1, labor certifications, national interest waivers, and complex requests from the U.S. Citizenship & Immigration Services (USCIS).

Nigel received his Bachelor of Arts degree in Biological Sciences from Clemson University and received his Juris Doctor from the Villanova University Charles Widger School of Law. While in law school, he served as Managing Editor of Technology for the Jeffrey S. Moorad Sports Law Journal, President of the Labor & Employment Law Society, and on the Executive Board for the Villanova Black Law Students Association. Nigel speaks Spanish and conversational Portuguese.


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