



A New Era: Green Card Strategies

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Spring Webinar Series

**Sessions 1 and 2 recordings are available on
[KlaskoLaw.com](https://klaskolaw.com)**

- Session 1: *Travel and Adjudication Trends*
- Session 2: *Legislative, Litigation, Regulatory, and Policy Changes*



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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 Annual Conference 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).

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Anu Nair
Partner

Anusree (Anu) Nair is a partner at Klasko Immigration Law Partners' Philadelphia office. She focuses her practice on business immigration by helping investors, scientists, doctors, and other highly skilled professionals achieve their immigration goals. She also leads the firm's EB-1 practice, which can be a better green card option for some EB-5 investors.

With her strong science background, Anu is uniquely poised to assist doctors, researchers, and other highly skilled professionals secure their green cards through EB-1A (Aliens of Extraordinary Ability), EB-1B (Outstanding Researchers); and EB-2 National Interest Waiver petitions.

Anu has extensive experience representing hospitals, international record companies, multinational businesses, and major production companies in securing a variety of employment-based immigration benefits for their employees. She also assists clients with family-based immigration matters and represents clients before the Immigration Court, the Citizenship and Immigration Service, and Customs and Border Protection.

Anu is a 2006 graduate of Baruch College where she majored in Biology. She went on to obtain her law degree from the Benjamin N. Cardozo School of Law, where she served as submissions editor of the Cardozo Journal of Law and Gender.

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Allie K. Dempsey
Senior Associate


Allie Dempsey is a Senior Associate at Klasko Immigration Law Partners, LLP. She provides strategic and comprehensive immigration solutions to the firm's corporate and university clients, as well as to individuals of extraordinary ability seeking to achieve their immigration goals.

Allie has significant experience with employment-based immigration matters and regularly works with clients to obtain nonimmigrant status for global talent, including O-1, H-1B, L-1, and TN visas, and has successfully guided many clients through the immigrant visa process, helping professionals, advanced-degree individuals, and multinational managers and executives obtain permanent resident status in the United States. Allie also has considerable experience guiding highly-skilled individuals through the green card process via complex petitions for extraordinary ability (EB-1A), outstanding researcher/professor (EB-1B), and national interest waiver (EB-2 NIW) classification.

She received her Bachelor of Arts degree in Political Science and French from Gettysburg College and earned her J.D. from Penn State Dickinson Law, where she was the first Managing Editor of the Penn State Journal of Law and International Affairs and served as a legal intern with the Department of Justice, Executive Office for Immigration Review.




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Agenda

- Impact of COVID
- Where we are now
- Current strategies
- Biden's proposed changes
- Strategies for the future
- What else to anticipate from Biden?



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Where We Are Now

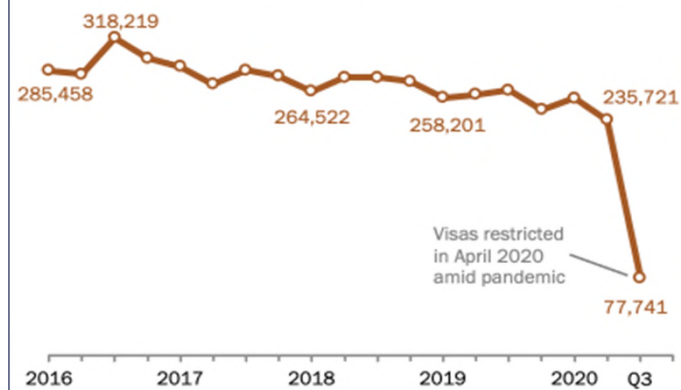
- Dramatic forward movement of Visa Bulletin
- Long processing times
- Continued heightened scrutiny of cases
- Remote work policies
- Green card interviews in the time of COVID /discretion to waive

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The number of people who received a U.S. green card declined sharply in fiscal 2020 amid the pandemic

New U.S. lawful permanent residents *per quarter*, fiscal 2016-2020



Note: Quarterly data for fiscal year 2020 is through the third quarter, April to June 2020.
Source: U.S. Department of Homeland Security.

PEW RESEARCH CENTER

Impact of Pandemic on Green Cards Issued

Source: Boundless Immigration (boundless.com)

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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

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Visa Bulletin May 2021

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	C	C	C	C	C	C	C
2nd	C	01DEC16	C	01AUG10	C	C	C
3rd	C	15MAY18	C	01FEB11	C	C	C
Other Workers	C	01AUG09	C	01FEB11	C	C	C
4th	C	C	01SEP18	C	15MAR19	C	C
Certain Religious Workers	C	C	01SEP18	C	15MAR19	C	C
5th Non-Regional Center (C5 and T5)	C	15AUG15	C	C	C	C	15FEB18
5th Regional Center (I5 and R5)	C	15AUG15	C	C	C	C	15FEB18

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Current Strategies for PERM-Based Immigration

- Take into account Department of Labor processing times when considering the PERM process – start sooner!
 - Applies to traditional PERM labor certification *and* Special Handling for college and university teachers – 18-month window is especially limiting with Prevailing Wage delays

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PERM-Based Immigration: Wage Determination Processing Times

Average Number of Days to Issue Wage Determinations

Program	Month	OES (Calendar Days)	Non-OES (Calendar Days)
CW-1	March 2021	28	28
H-1B	March 2021	147	124
H-2B	March 2021	28	N/A
PERM	March 2021	146	127

Source: <https://flag.dol.gov/processingtimes>

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PERM-Based Immigration: Current Processing Times

PERM Processing Times (as of 02/28/2021)		
Processing Queue	Priority Date	
Analyst Review	August 2020	
Audit Review	April 2020	
Reconsideration Request to the CO	November 2020	

Average Number of Days to Process PERM Applications		
Determinations	Month	Calendar Days
Analyst Review	March 2021	226
Audit Review	March 2021	352

Source: <https://flag.dol.gov/processingtimes>

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Updates & Strategies for PERM-Based Immigration (Continued)

- Potential changes in DOL wage rules – proposed under Trump and delayed by Biden
- Green card interviews in the time of COVID/discretion to waive
- Upgrades and downgrades
 - Switching between the two options
 - Premium Processing
- Portability and hiring employees with pending I-485
- Remote work policies
- Impact of visa bulletin on H-1B extensions

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Proposed Changes Under Biden

- Increases worldwide numbers for employment immigration from 140,000 to 170,000
- Recapture unused visa numbers from 1992-2020 (estimated to be around 220,000)
- Applicants with PhDs in STEM Fields would not be subject to any numerical limitations
- Eliminate per-country limits

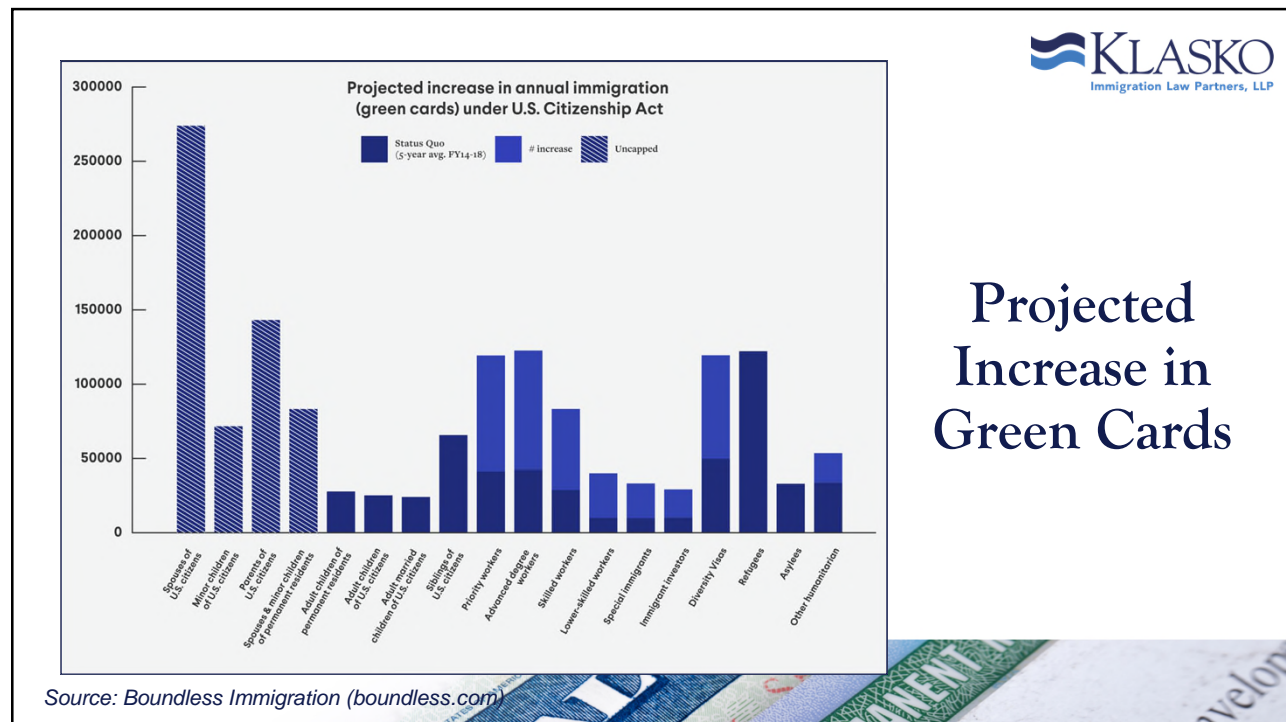
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Proposed Changes Under Biden

(Continued)

- Exempt spouses and children from counting towards visa numbers for employer sponsored petitions
- Eligible to apply for green card 10 years after I-140 approval
- Allow Secretary of DHS and Secretary of DOL to establish a procedure for temporarily limiting employment-based immigrants from entering the U.S. or adjusting status in the U.S. in geographic areas or labor sectors with high levels of unemployment

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EB-1C Multinational Managers and Executives

- Long processing times
- Premium processing not currently available
- Heightened scrutiny continues
- Focus on corroborating documentation

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EB-1, EB-2 NIW as Solutions to Current Trends

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EB-1 and EB-2 NIW

- No requirement to test labor market
- Faster processing times (except NIW)
- No current EB-1 backlog for most foreign nationals
 - Shorter backlogs for Indian and Chinese nationals than EB-2 or EB-3
- No employer sponsorship required for EB-1A and EB-2 NIW

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Visa Bulletin

May 2021

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1st	C	C	C	C	C	C	C
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3rd	C	15MAY18	C	01FEB11	C	C	C
Other Workers	C	01AUG09	C	01FEB11	C	C	C
4th	C	C	01SEP18	C	15MAR19	C	C
Certain Religious Workers	C	C	01SEP18	C	15MAR19	C	C
5th Non-Regional Center (C5 and T5)	C	15AUG15	C	C	C	C	15FEB18
5th Regional Center (I5 and R5)	C	15AUG15	C	C	C	C	15FEB18

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EB-1 and EB-2 NIW:

Current Processing Times

- Current processing times reflect a wide range for all case types:
 - **EB-1A:** 8 to 21 months
 - **EB-1B:** 5 to 8 months
 - **NIW:** 5 to 8 months
- Processing times vary based on Service Center – Texas Service Center especially has been delayed
- NIW adjudications in practice are taking longer than stated processing times – cases may remain pending for a year or more

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EB-1 and EB-2 NIW: RFE Trends and Tips to Overcome

- Across all categories continued focus on “implementation” – how is the work impacting the field?
- For self-sponsored filings (EB-1A and NIW), recent focus on Statement of Intent by the applicant – what are the plans for the work?
- Multiple-authors: USCIS continues to question contributions when the applicant is not first author – worth going the “extra mile” to establish the role played and its importance
- Original contributions: continued importance of detailed and independent letters

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What to Expect from Biden Administration?

- COVID-related backlogs
- Long adjudications
- Difficult adjudications
- RFEs
- Agency leadership
- Pending litigation

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Adjudications Outlook under Biden Administration – COVID-19

- COVID-19 will continue to remain a major factor in implementation of any changes
 - Consulates still functioning at lower capacity;
 - USCIS slowly reopening, but biometrics and adjustment interviews are delayed;
 - Receipt notices and issuance of work authorization cards and green cards delayed.



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Adjudications Outlook under Biden Administration – Timeline for Change

- Will take time for changes to be implemented
 - Mission statement not updated
 - USCIS director recently nominated
 - Officers trained under previous administration's policy will need to be retrained
 - Removing administrative barriers – including transparency and access to agency
 - Return to supervisory reviews of denials vs. approvals?



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Adjudications Outlook under Biden Administration – Maintaining Status Quo

- Policies that pre-dated Trump administration and will likely remain
 - Kazarian;
 - Multinational Manager scrutiny
- Biden administration defending policies and regulations issued under Trump administration
- Exception: Public charge rule no longer in effect



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Questions?



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For Further Information



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