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Michele G. Madera
Partner



Michele's practice is focused on employment-based non-immigrant and immigrant matter 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.

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

Her extensive and versatile experience advising and representing start-ups as well as small, mid-sized and large businesses employers 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 processing and obtaining employment-based non-immigrant visas for professional employees, individuals of extraordinary ability and foreign entrepreneurs alike. She has successfully processed a wide range of visa matters involving H-1B, H-1B1, H-3, E-3, E-1/E-2 investor visas, L-1A/L-1B, J-1, TN, O-1, and P-1 visas.

Maria received her Juris Doctor (J.D.) degree from Seton Hall University School of Law in 2012. She also received a Bachelor of Arts degree in Social and Behavioral Sciences, *summa cum laude*, from Seton Hall University. She is currently admitted to practice in New Jersey and New York and is a member of the American Immigration Lawyers Association. Maria is fluent in Bulgarian.



Maria M. Mihaylova
Senior Associate

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Nigel D. James
Associate

Nigel James is an Associate at Klasko Immigration Law Partners and navigates intricate immigration laws to streamline employment and family-based immigration matters for corporate and individual clients. Nigel is a member of the firm's EB-1 team.



Prior to joining Klasko Immigration Law Partners, Nigel practiced at a boutique immigration law firm in Philadelphia and 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). He also has experience with removal defense matters before the Executive Office for Immigration Review (EOIR) and the Board of Immigration Appeals (BIA), T visas for victims of labor and sex trafficking, naturalization, and humanitarian matters.

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.

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What is Employment or Work?

- Performing services in exchange for compensation
- Compensation can be monetary, but can be other ways
 - Unpaid employment is still employment!
- Self-employment counts

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What is Volunteering?

- Usually a benefit to others beyond the organization
- “Primary beneficiary” of internship is the student

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What are the Consequences?

- Unauthorized employment
- Violation of immigration status
- H-1B for concurrent employment

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What About Everything in Between?

- Selling on eBay/Etsy
- Prizes/awards
- Honorariums
- GoFundMe
- Investing
 - Stocks/crypto
 - Real estate/Airbnb
- Entrepreneurship
- Babysitting

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Pop Quiz!

Employment or Volunteering?

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Introduction and Visa Types

- Why are Name, Image and Likeness Arrangements of Concern to International Student-Athletes Even if Allowed by NCAA Rules?
- F-1 Regulations impacting NIL
- J-1 Regulations impacting NIL

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What is Employment or Work?

- Performing services in exchange for compensation
- Compensation can be monetary, but can be other ways
 - Unpaid employment is still employment!
 - Distinguishing “true volunteering” from unpaid employment
- Self-employment counts
- Location of payment may not matter
- Timing of payment does not matter

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Name, Image, Likeness

- Current Landscape: NCAA continuously resisted student athletes receiving compensation for name, image, or likeness (“NIL”)
 - June 21, 2021
 - Supreme Court issued decision in National Collegiate Athletic Association v. Alston
 - June 30, 2021
 - NCAA interim policy
 - July 1, 2021
 - State NIL laws went into effect
- DHS: Monitoring issue but no answer on allowable NIL

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Types of NIL Arrangements

- | | |
|----------------|---------------------------|
| • Endorsements | • Podcasts |
| • Sponsorships | • Camps |
| • Appearances | • Clinics |
| • Autographs | • Private Lessons |
| • Memorabilia | • Crowdfunding |
| | • <i>And more!</i> |

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Guidance from Past Cases?

• UNAUTHORIZED

- F-1 student deemed to have engaged in unauthorized employment through the purchasing of ice cream and ice cream trucks
- Leased trucks to vendors to sell and assisted in management as needed
- Active
- Wettasinghe v. U.S. Department of Justice, 702 F.2d 641 (6th Cir. 1983)

• AUTHORIZED

- Foreign national received profits through the ownership of a motel
- Not actively engaging in the business
- Passive
- Bhakta v. Immigration & Naturalization Service, 667 F.2d 771 (9th Cir. 1981)

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NIL Agreements – Foreign Company

- *Any work done in the United States, even for a foreign company, and even if paid to a foreign bank still counts as employment*

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NIL Agreements – Active or Passive?

- Company agrees to pay student-athlete every time they post on social media promoting their brand
- Small company located in Germany asks student-athlete to make remote/virtual appearances for sports clinic during the summer
- Active
- New restaurant agrees to pay student-athlete in order to use their picture to promote grand opening on social media
- Student-athlete creates product line, hires management team, and receives income from generated sales
- Passive

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What are the Consequences?

- Unauthorized employment
- Violation of immigration status
- Termination of J-1/F-1 status

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NIL Future

- Congress plans to continue discussing federal college sports reform
- The Interim NCAA Policy (June 30, 2021) will remain in place
 - Until federal legislation or new NCAA rules
- Guidance from the Department of Homeland Security
 - Student and Exchange Visitor Program (SEVP) continues to monitor, but no clear guidance yet

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Solutions

- NIL within US should be passive
- Active NIL (appearances, clinics) ok outside US
- Consider CPT for extended NIL activities
- For substantial economic benefits, consider incorporating and switching to business/employment visas (E, L, H, etc.)
- For very high-level athletes, consider switching to O-1 or P temporary visas, or self-sponsoring green card

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Options for Starting a Company in the US

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Work v. Business Activities

- What is “Work”?
 - Not defined in the Federal Regulations or INA but for USCIS, DOS purposes, term tends to be interpreted as:
 - Activities one regularly engages in to make a living
- What is a “Business Activity”?
 - Also not expressly defined in the Regulations or INA, but generally
 - Activities that enable the pre-launch set-up for a new business
- When does a Business Activity become Work?

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Safely Launching a Business in the US

- Entrepreneur already in the US:
 - Set-up Activities must always be consistent with and permitted under the visa status of the entrepreneur
 - Example: Setting up a new business under an F-1 status vs. H-1B Status – different visas require different navigation approaches.
 - Level of involvement with the enterprise will determine the type of visa required
 - The closer to the launch of operations the business gets, the greater the likelihood that the entrepreneur will need to move onto a specific work-authorizing visa.
- Entrepreneur is outside of the US:
 - Limited visa options to facilitate the organizational / set-up phase of a business launch
 - B-1 or ESTA (if available)
 - Limited engagement in bona fide business activities allowed
 - Level of involvement with the enterprise and activities in the US will determine the type of visa required; Factors include:
 - Frequency of visits to US
 - Nature of Activities when in the US

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Typical Visas for Entrepreneurs

- During Development and Pre-Launch Set-Up:
 - B-1 / ESTA (for those outside of the United States)
 - F-1 Optional Practical Training (for those inside the United States)
 - J-1 academic training (if permitted and available under the program)
- Operation Launch and Beyond:
 - L-1
 - E-1 / E-2
 - H-1B / E-3 / TN / H-1B1
 - O-1
 - F-1 Optional Practical Training
 - Permanent Residency

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Indications of when to change visas

- Change in level of involvement
 - Example: Researching market v. negotiating contracts
- Change in the nature of “business activity”
 - Example: Meeting potential investors v. meeting potential clients
- Changes in US visit frequency
 - Example: 1 week / 3 months vs 1-2 days every 2 weeks
- Special Note on Direct Warnings from CBP

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Questions?



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For Further Information



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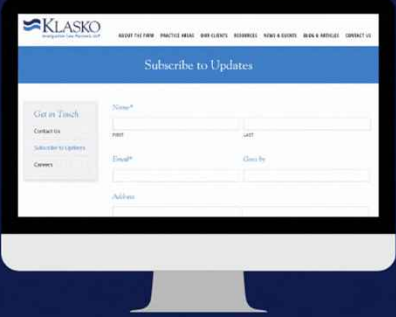


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SCHEDULE A CONSULTATION:

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REQUEST: Michele, Maria, or Nigel 

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