

APPLICATION
WORK
IMMIGRATION
PASSPORT
STATUS
INTERNATIONAL
TRAVEL
VISA

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Fundamentals of Immigration Law

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Overview

- Key Concepts
- Employment-Based Nonimmigrant Procedures and Categories
- Employment-Based Immigrant Procedures and Categories/Green Cards
- Recruitment Questions About Immigration Status
- Family-Based Immigrants and Related Issues

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Essential Immigration Concepts

- Key Distinctions:
 - Immigrant vs. Nonimmigrant
 - “Visa” vs. “Status”



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Key Distinction #1

- Immigrants vs. Nonimmigrants
 - Immigrants/Permanent Residents are allowed to live and work in the United States without restriction
 - Law Presumes “Immigrant Intent” of All Noncitizens (unless they can prove qualification for a nonimmigrant category)
 - Nonimmigrants are admitted for a specific, temporary purpose enumerated in the Immigration and Nationality Act
 - Nonimmigrant intent and dual intent

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Key Distinction #2

- Visa vs. Status
 - Permission to enter
 - Visa is a stamp in the passport – used for entry into the U.S.
 - Permission to stay – how long and for what purpose
 - I-94 record indicates status (purpose and length of authorized stay)

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Key Documents

- Passport – issued by the country of citizenship
- Visa Stamp – a stamp in the passport used for entry into the U.S.
- I-94 record – record indicates status (activity/purpose and length of authorized stay)
- Evidence of eligibility (I-20, DS-2019, I-797)



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Nonimmigrant Concepts and Procedures

- Basic Procedures
 - Employer or Individual Petition
 - Employee Visa Stamp Application
 - Change of Status
 - Extension of Status
 - Adjustment of Status



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Employment-Based Nonimmigrant Categories

- Visitors for Business or Tourism (B) (includes Visa Waiver Program/ESTA)
- Students (F)
- Professional Workers (H-1B)
- Exchange Visitors (J)
- Extraordinary Ability (O-1)
- Canadian & Mexican Professionals (TN-1)
- Intra-Company Transferees (L-1)
- Treaty Traders and Investors (E-1/E-2)
- Family Members (F-2, J-2, H-4, L-2, O-3, TD)



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H-1B Visas

- Basic requirements:
 - Job Offer
 - Prevailing Wage
 - Bachelor's or higher degree
 - Specialty occupation
- Dual intent
- Procedure and processing times:
 - Quota & Exemptions
 - Length of approval
 - Extensions
 - Spouses & Work Authorization

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Other NIV Options

- **Extraordinary Ability (O-1)**
 - National or international renown
 - Employer-sponsored
- **Canadian/Mexican Professionals (TN)**
 - Profession must be on the NAFTA list
- **Intra-Company Transferees (L-1)**
 - Oversees subsidiary/affiliate transfers
 - Manager/Executive or Specialized Knowledge
- **Treaty Traders/Investors (E-1/E-2)**
 - National of treaty country
 - 50% of company owned by treaty nationals

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Employment Visa Comparison

	H-1B	L-1 A / L-1B	TN
Basic requirements			
Specific country	No	No	Canada and Mexico
Job Offer Required	Yes	Yes	Yes
Prevailing Wage	Yes	No	No
Bachelor's or higher degree	Yes	No (except for L-1 Professional)	Each profession has its specific requirements
Specialty occupation	Yes	L-1A = Managerial/Executive L-1B = Specialized Knowledge	NAFTA designated professions
Procedure and processing			
Quota	Yes	No	No
Length of approval	6 years (3, 3)	L-1A = 7 years (3, 2, 2) L-1B = 5 years (3, 2)	Renewable indefinitely in 3-year increments; Mex frequently limited to 1 year in practice
Work authorization for spouses	No (except when green card is in process)	Yes – must apply for EAD	No
Dual intent	Yes	Yes	No

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Common NIV Processing Issues

- Requests for Evidence (“RFE”)
 - Immigration agency seeks additional information regarding a benefit request
 - Common in H-1B adjudications
 - Processing delays can impact HR onboarding
- Delays in visa issuance at Department of State
 - Administrative Processing
 - Limited availability of visa appointments

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What is Permanent Residency?

- Authorization to live & work indefinitely in the United States
- “Immigrant Visa”
- The “Green Card” or “Form I-551”
- Not always ‘forever’ – may be abandoned or taken away



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Employment-Based Immigrant Procedures and Categories

- First Preference (EB-1)
 - Extraordinary Ability, Outstanding Researcher, Multinational Manager or Executive
 - Exempt from Labor Certification Requirements
- Second Preference (EB-2)
 - National Interest Waiver of the Labor Certification
 - Labor Cert. required: Advanced Degree Professionals, Bachelor's Degree plus 5 years of experience
- Third Preference (EB-3) (Labor cert required)
 - Skilled Worker (2+ years experience), Bachelor's Degree

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Employment-Based Permanent Residency Procedure

- Employer-sponsored or self-sponsored
- Labor certification or extraordinary/national interest/exceptional
- Multiple petitions
- Multi-step process (Labor Cert → I-140 → I-485)
- I-485 approval = green card
- Non-immigrant status?
- Policy issue: evaluation of permanent residence eligibility at time of hire

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Permanent Residency Quotas, Where Are We Now?

Visa Bulletin for April 2022

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	01APR19	C	01SEP14	C	C
3rd	C	01APR18	C	22JAN12	C	C
Other Workers	C	01AUG15	C	22JAN12	C	C
4th	C	C	15JUN17	C	C	C
Certain Religious Workers	C	C	15JUN17	C	C	C
5th Non-Regional Center (C5 and T5)	C	C	C	C	C	C
5th Regional Center (I5 and R5)	C	15DEC15	C	C	C	C

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Recruitment Questions About Immigration Status

- Non-Discrimination Requirement
 - No Discrimination Allowed Between U.S. Citizens, U.S. Nationals, Permanent Residents, Asylees, Refugees, and 1986 amnesty program's "Temporary Residents."
 - Recruiters NOT allowed to ask, "Are you a U.S. Citizen?" or "Do you have a Green Card?"
 - Recruiters NOT allowed to request specific documents or to require "more or different" documents than the minimum required.

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Recruitment Questions About Immigration Status cont'd

- Employers May Elect Not to Hire Candidates Needing “Immigration Sponsorship”
- Recruiters ARE allowed to ask, “Are you legally authorized to work in the United States?” *followed by* “Will you now or in the future require sponsorship for an employment visa status?” (e.g., H-1B visa status)

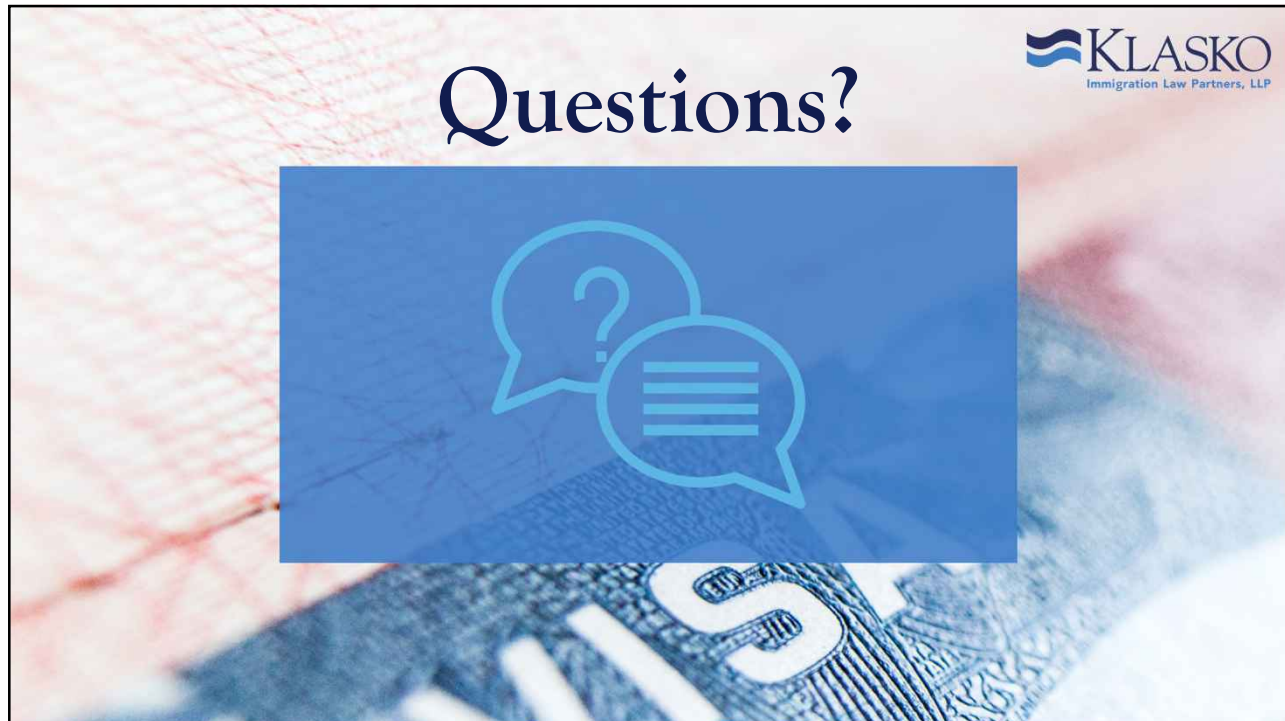
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Family-Based Immigration

- Sponsored
 - “Immediate relatives” (never a quota)
 - U.S. Citizens sponsoring sons & daughters, siblings
 - Green Card holders sponsoring their spouses, children, unmarried sons & daughters (over 21 years of age)
- Derivative – can apply to Employment-based cases too
 - Spouses
 - Children under the age of 21



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For Further Information


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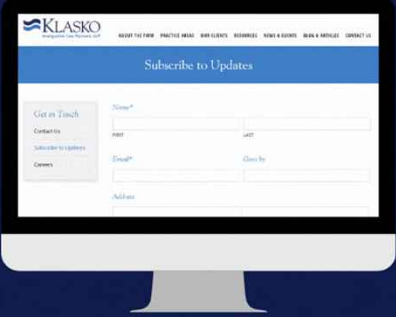


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Anusree (Anu) Nair is a partner at Klasko Immigration Law Partners' Philadelphia office. She focuses her practice on business immigration by helping investors, scientists, doctors, and other highly skilled professionals achieve their immigration goals. 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.

Anu Nair
Partner

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

Her experience is far-reaching on an array of immigrant and nonimmigrant matters ranging from a high-volume of routine cases to complex issues requiring creative solutions.

Natalia has considerable experience in obtaining a diverse roster of nonimmigrant visas. 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.

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 fluent in Ukrainian and conversational in Russian.

Natalia Gouz
Senior Associate



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Myriam Jaidi is a Senior Counsel and assists clients with all types of immigration matters. A dedicated advocate, Myriam is driven by a long-standing love of helping people thrive wherever they dream to do so.

Myriam has represented professionals, companies, non-profits, and individuals on a broad range of cases including permanent residence cases (based on labor certification, extraordinary ability and multinational transfers), nonimmigrant matters (B, E, F, H-1B, J, L, O, TN, etc.), family-based sponsorship, and citizenship matters. She is also experienced with defending individuals facing removal and successfully litigating before the Immigration Court and the Board of Immigration Appeals.

Myriam has helped clients navigate the complexities of consular processing (including National Interest Exceptions and other travel ban issues during the coronavirus pandemic) and has assisted individuals with humanitarian forms of relief, including Deferred Action for Childhood Arrivals (DACA), T visas for trafficking victims, U visas for crime victims, Violence Against Women Act (VAWA) relief for battered spouses, parents and children, as well as asylum, withholding of removal, waivers and requests for prosecutorial discretion.

Myriam previously taught Family-based Immigration Law & Procedure at CUNY School for Professional Studies, and Immigration Law for Paralegals at City College in New York. Myriam speaks English, is proficient in French, and is intermediate in spoken Moroccan Arabic.

Myriam Jaidi
Senior Counsel



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