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No Employer? No Problem!

Self-Sponsored Options for the Extraordinary

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Benefits of EB-1

Why is EB-1 Heating Up?

- Wait times compared to EB-2 and EB-3
- Tech Layoffs & H-1B Workers:
 - Recruitment for PERM
 - PERM Submissions
- Dependent age-out issues

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Filing Without Employer Sponsorship

Types of EB-1 Petitions:

- EB-1A: Extraordinary Ability
 - Employer sponsorship NOT required
- EB-1B: Outstanding Professor or Researcher
- EB-1C: Multinational Managers and Executives

- EB-2 National Interest Waivers
 - Employer sponsorship NOT required

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EB-1A	EB-2 NIW
<p>Must demonstrate substantial acclaim for their achievements through winning a major award or meeting 3 of the below 10 criteria and pass the Overall Merits Test.</p>	<p>Must have a proposed endeavor for pursuing work in field and must have an advanced degree from a U.S. institution or foreign equivalent. No employment requirement, but must pass a three-pronged test.</p>
<ul style="list-style-type: none"> ✓ National or international award ✓ Membership in exclusive association ✓ Professional press coverage ✓ Judge the work of others ✓ Significant original contributions ✓ High compensation ✓ Written scholarly articles ✓ Art exhibitions ✓ Critical role in distinguished organization ✓ Commercial success in the performing arts 	<ul style="list-style-type: none"> ✓ Proposed endeavor has substantial merit and national importance ✓ Applicant is well-positioned to advance the proposed endeavor ✓ Endeavor would be beneficial to the U.S. to waive the job requirements offer

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Hypothetical #1

- Indian clinician researcher in Cardiovascular Medicine
- 10 publications; 2 first-author
- 40-50 citations
- No peer review (manuscript or grant review, etc.)
- Handful of speaking engagements

How would we counsel this individual to work to develop an EB-1A?

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EB-2 to EB-1

Positioning yourself to go from EB-2 to EB-1

- File an EB-2 NIW to establish Priority Date if strongest case
- How to strengthen EB-1A:
 - Focus on criteria you can control
 - Focus on quality vs. quantity
 - Document your achievements
 - Get involved and build your network

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Hypothetical #2

- High-level technology professional with an advanced STEM degree laid off by H-1B employer
- In middle of employer-sponsored PERM; no I-140
- Not from India or China (or country with a visa backlog)
- Some tech-related publications or academic service

How would we counsel this individual regarding an EB-1A filing?

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Timing Considerations & Strategy

- Don't rely only on employer-based filings
- Don't wait until a layoff occurs to consider self-sponsored options – be proactive
 - It may take several months to prepare a strong EB-1A; H-1B grace period is 60-days
 - I-140 alone does not provide status or work authorization
 - Even in the absence of a layoff, self-sponsorship provides more flexibility
 - Premium processing
 - Post-sixth year H-1B extensions

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Hypothetical #3

- Semi-retired business professional looking to move to the United States for professional and personal reasons
- No active full-time employment; some high-level board positions
- History of high compensation
- History of high-level roles with major corporations
- Strong industry publication record

How would we counsel this individual regarding an EB-1A filing?

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Other EB-1 Adjudication Factors

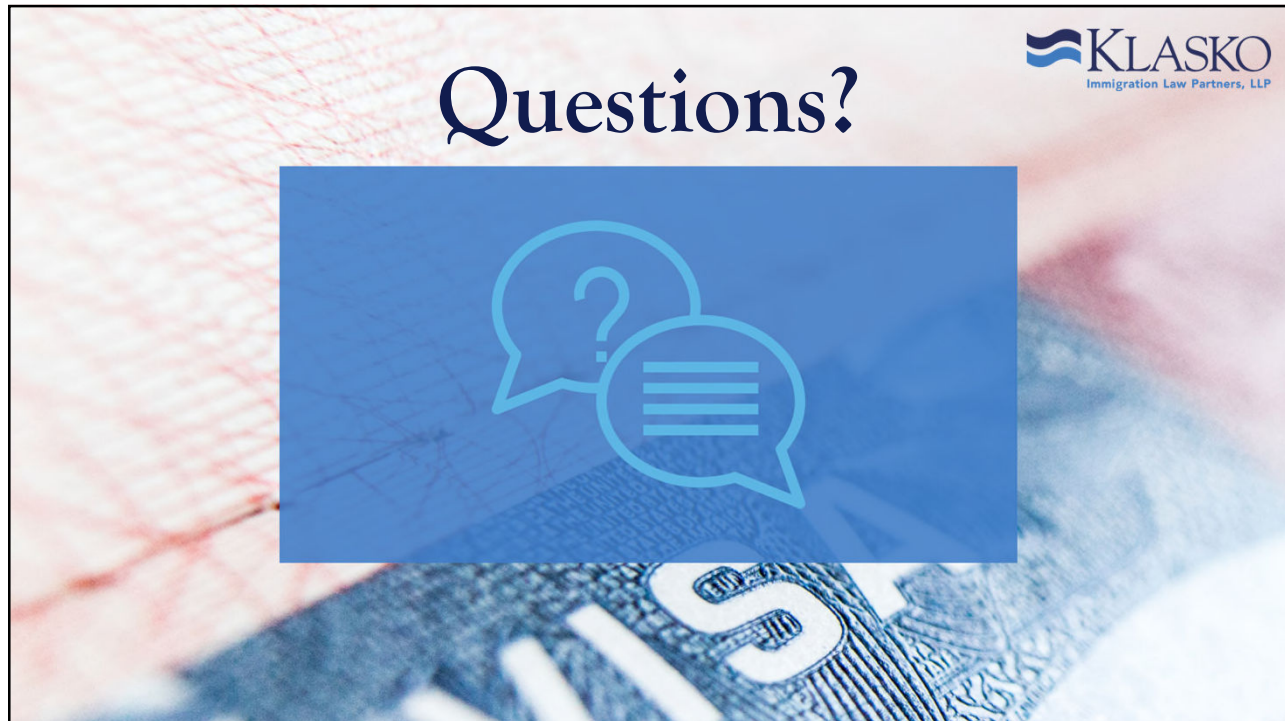
- *Kazarian* “Overall Merits” assessment
 - High level of RFE activity at this step of EB-1A adjudications
 - Resulting in a lot of litigation, but currently unsuccessful
- Substantial prospective benefit
 - Requirement under the INA; not explained in the regulations

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Other EB-1A Issues

- Recent EB-1 retrogression for India and China
- Possibility of further retrogression as EB-1A demand increases in response to delays in other preference categories

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For Further Information



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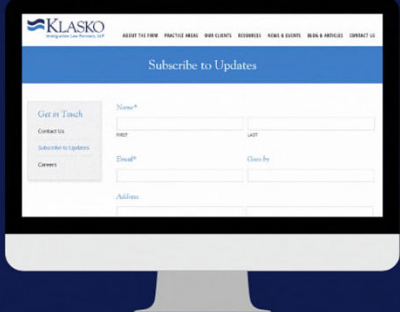
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Anusree (Anu) Nair is a partner at Klasko Immigration Law Partners' Philadelphia office. She focuses her practice on business immigration by helping investors, scientists, doctors, and other highly skilled professionals achieve their immigration goals.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

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Allie K. Dempsey
Senior Associate


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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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Nigel D. James
Associate

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Nigel James navigates intricate immigration laws to streamline employment and family-based immigration matters for corporate and individual clients.

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). 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 B.A. in Biological Sciences from Clemson University and his J.D. from the Villanova University Charles Widger School of Law.

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