



Panel I – Hot Topics Nonimmigrant Visas (NIV)

**THE NEW JERSEY INSTITUTE FOR
CONTINUING LEGAL EDUCATION**

**ADVANCED CORPORATE IMMIGRATION LAW
CONFERENCE**

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The Panel

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Changes At The Regulatory And Sub-Regulatory Level, Not The Legislative Chambers

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- **Case Study: L-1B Re-Definition**
 - Report of the Office of Inspector General (OIG)
 - ✦ “Implementation of L-1 Visa Regulations” published on August 15, 2013 (Report No. OIG-13-107)
 - L-1B adjudication standards at USCIS & consular posts: “more likely than not” vs. “Clearly approvable”, disparity in training
 - VIBE (Validation Instrument for Business Enterprises), FDNS & the “fraud-everywhere” view
 - Agency guides & policy memoranda vs. non-precedent AAO decisions
 - Shift from Field Manual to Online Policy Manual – moving target

Changes At The Regulatory And Sub-Regulatory Level, Not The Legislative Chambers

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- **Case Study: L-1B Re-Definition**
 - OIG Report reviews L-1B eligibility criteria from *Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 66 (Comm. May 20, 1988), through *Matter of [name not provided]*, WAC-07-277-53214, (AAO, July 22, 2008), a/k/a “GST”
 - Says statute, regulations & Service memoranda are vague, circular & provide insufficient clarity:
urges USCIS to publish definitive guidance

“Paperless” I-94 Form

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- **Procedural Challenges**

- Name/ DOB data entry error impedes traveler obtaining record
- CBP inspectors unfamiliar with non-coterminous end validity dates, e.g., E visas, reciprocity-limited visas, visa for old employer + I-797 for new employer
- Documents trigger substantive challenges at POE, e.g.,
 - ✦ 5-year L-1 visas
 - ✦ H-1Bs working at 3rd party sites
 - ✦ B-1 in lieu of H-1B

RFE And Denial Templates: What Do They Teach Us?

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- **CIS Speaks Through Its RFE (Request for Evidence) and Denial Templates**
 - Structure of a successful response matches the structure of the RFE/ NOID (Notice of Intent to Deny)
 - Response should draw from the wording of RFE, from the INA and regulation, from sub-regulatory guidance formerly found in the AFM (Adjudicators Field Manual), and increasingly, the online guides
- **Convincing the adjudicator: strategies**
 - Denial template - what is the rationale for denial?

The Practical Application Of The 5-year L Visa

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- Paperless I-94 Form
- Interaction of dealing with consulate vs. port-of-entry; consular re-adjudication
 - As with O-1s, L-1s at post face the not-all-in-PIMS problem: Many re-adjudications are due to consular officers not seeing the whole petition, unless you can get it in front of them

Emerging Issues Relating to Visa Dependents

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- Impact and consequences of DOMA (The Defense of Marriage Act, 1 U.S.C. § 7 and 28 U.S.C. § 1738C) on non-immigrant visa processing
- Co-habiting partners and other members of larger households

Advanced Issues For A Mobile Workforce

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1. Globalization, technology, and telecommuting
2. Limits to H, L, and E telecommuting/ rovers
3. Unannounced, random DHS/ FDNS site visits/ inquiries
4. Managing remote teams
5. Evidence of a virtual office
6. LCA wage and posting issues for roving/ multi-site/online workers

Questions?

