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Immigration Law Partners, LLP

Students & Scholars (H-1B, O-1 & Permanent Residency)

Romina Gomez | Carolina Ribas

October 9, 2024

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Romina Gomez
Senior Associate

Romina Gomez is a Senior Associate with the Firm's Philadelphia office and works with both corporate and individual clients on a wide range of business and family-based immigration matters. She has worked in immigration law for over fifteen years.

As a child of monolingual immigrant parents, Romina learned to become an advocate for those trying to navigate unfamiliar and often confusing systems and agencies. She now uses these advocacy skills to guide corporate clients in their efforts to hire and retain quality individuals from the initial consultation to throughout the green card process.

Prior to joining Klasko Immigration Law Partners, Romina had her own practice based in Philadelphia and provided legal services to corporate clients and individuals on a variety of nonimmigrant and immigrant options, including applications for E, H-1B, TN, L-1, labor certifications, and immigrant petitions. She also has experience with marriage and family-based immigration, naturalization, and humanitarian visas, including VAWA applications for abused spouses and U visas for victims of crimes.

Romina received her Bachelor of Arts degree in Mathematics from Bryn Mawr College and earned her J.D. from Temple University, Beasley School of Law.

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Carolina Ribas
Associate



Carolina Ribas is an associate in the firm's Philadelphia office and focuses her practice primarily on employment-based immigration for multinational corporations and their sponsored employees. She is passionate about the skill-sharing that global knowledge can encourage and how it drives innovation, growth, and diversity.

Carolina represents multinational corporations, startups, small companies, executives, specialists, artists, and many more. She loves interacting with and helping people from all walks of life find stability, happiness, and growth. She takes pride in providing guidance, support, and encouragement to her clients as they struggle to navigate U.S. immigration laws. Carolina also handles various types of immigration cases including family-based immigration, U-visas, and Violence Against Women applications.

Carolina is drawn to immigration law because she watched her parents work hard to build a new life and assimilate to a new culture, and at the same time, navigate the complex U.S. immigration laws. She wanted to dedicate her career to helping families stay together, build their best lives, and facilitate the movement of people and knowledge throughout the world.

Carolina received her bachelor's degree in Political Science, Spanish, and Italian from the University of Delaware. She attended Widener University School of Law on a full scholarship. She graduated cum laude and is now admitted to practice law in Delaware and New Jersey. In addition, she is also admitted to the U.S. District Court for the District of New Jersey. She is an active member of the Philadelphia Chapter of the American Immigration Lawyers Association (AILA). Carolina speaks Portuguese, Spanish, Valencian, English, and has advanced comprehension of Italian.

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Agenda

- H-1B: Cap Subject vs. Cap-Exempt
- Alternatives to H-1B
- Permanent Residency Options

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H-1B Visas

- Employer, position, and location specific
- Basic requirements
 - Job Offer
 - Part-time or full-time
 - Specialty occupation
 - Job requires bachelors or higher degree in specific field
 - Prevailing wage
- H-4 dependent visa available for spouses and children under 21

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H-1B Visas

- Length of approval and extensions
 - 3-year initial approval and 3-year extension
 - 6 year maximum – any combination of employers
 - Extensions beyond 6 years
 - Recapture time out of U.S.
 - 1 year extension if file labor certification application or immigrant petition one year before expiration
 - 3-year extension if immigrant petition approved and quota backlog

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Cap-Subject H-1B Quota

- What is it, and what does it mean?
 - 65,000 visas
- Separate quota for US-educated advanced degree holders
 - 20,000 visas
- Separate options for Chile and Singapore under H-1B1
- Timing
 - March registration
 - April 1 – first day to file if selected in lottery
 - October 1 start date

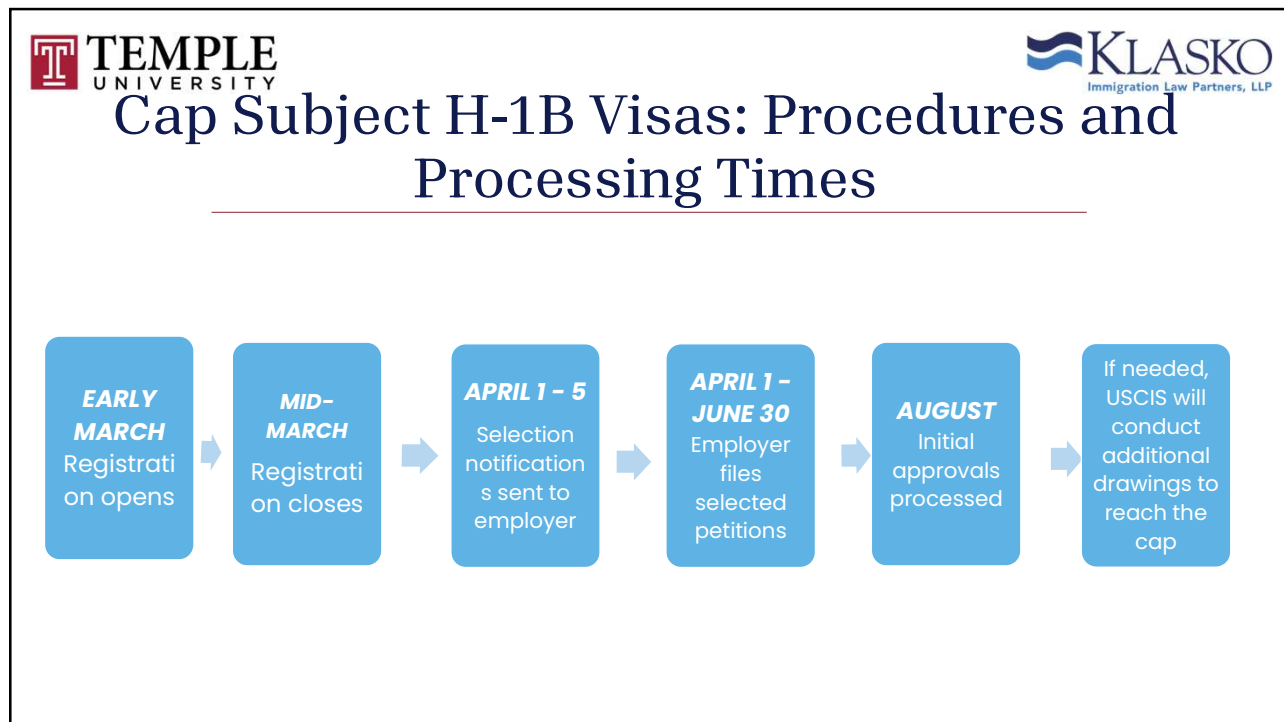
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Selected Petitions

- Premium processing (if available) requires USCIS to adjudicate a case in 15 days
- Premium processing can be paid by foreign national
- **Note:** Processes & fees are subject to change

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H-1B Timing and Work Authorization

- **Cap Gap Extension:**
 - If F-1 OPT/STEM OPT ends after April 1, but before October 1, cap gap rule automatically extends work authorization to October 1st
- Other work authorization such as L-1 or H-4 EAD will need to be valid until the H-1B petition start date (October 1st)
- If your work authorization (excluding STEM OPT) expires before October 1st, you may require a change of status or consular process based on circumstances

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H-1B Visas

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- H-1B portability
 - Present H-1B status, including grace period
 - Commence employment upon new employer filing petition
- Spouses
 - H-4 cannot work (in most instances)
- Dual intent
 - Travel/pursue green card

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Quota-Exempt Employment

- Who is not subject to the quota?
 - Universities
 - Nonprofit institutions affiliated with universities
 - Employed "at" exemption
 - Nonprofit or government research organization
 - Concurrent employment
 - Previous H-1B
 - Singapore/Chile H-1B; Australian E-3

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TN Status

- Available to Canadian or Mexican citizens – not permanent residents
- Must be sponsored by employer in a listed profession in the agreement
- Initial approval is valid for up to three years
- Renewable, no regulatory upper limit but must continue to show nonimmigrant intent
- Pure Non-Immigrant intent!

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TN Status (cont'd)

- No prevailing wage requirement
- Canadian nationals – apply at border / Mexican at Consular post
- Eligible occupations:
 - Accountants
 - Systems Analysts
 - Engineers
 - Lawyers
 - Scientists
 - Economists
 - Management Consultants
 - Mathematicians/actuaries
 - Others

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Extraordinary Ability (O-1) Visas

- Who is “Extraordinary”
- National or international renown
- “One of a few at the top of his peers”
- Petitioner must be employer or agent
- Length of visa
 - 3 years
 - 1 year extensions
 - Can extend indefinitely

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Extraordinary Ability (O-1) Visas

Qualification Criteria for Science, Education, Business or Athletics:

- Received a national recognized prize or award for excellence
- Has membership in an association that requires outstanding achievements in a particular field of expertise
- Was subject to published material in a scholarly publication or major media
- Made an original scientific, scholarly or business contribution of major significance in the field

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Extraordinary Ability (O-1) Visas

- Documentary evidence often includes:
 - Original contributions
 - Publications
 - Discussion of work by others
 - Service as a judge of the work of others
 - Employment with prestigious organizations
 - Awards
 - Memberships
 - High salary
 - Comparable evidence

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Extraordinary Ability (O-1) Visas

Frequently Asked Questions:

1. Do I need an employer sponsor?
 - Employment offer required for EB-1B and O-1
 - EB-1A and NIW can self-sponsor, may be strengthened with employer support

2. How many publications do I need?
 - Only one criterion of many; not required in every case
 - Quality v. Quantity
 - Industry or media publications

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Extraordinary Ability (O-1) Visas

3. Do I need a certain job title or salary?

- Job title not as important as the work being done
- Salary is one criterion that can be considered, not determinative alone

4. What do I need to know about referees?

- Appropriate number varies
- Leverage professional networks
- Strive for diversity – different backgrounds, geographic location, etc.
- Consider a referee's own qualifications/employer

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Extraordinary Ability (O-1) Visas

5. What do I need to know about referees?

- Appropriate number varies
- Leverage professional networks
- Strive for diversity – different backgrounds, geographic location, etc.
- Consider a referee's own qualifications/employer

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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
- Can take 18-36 months to obtain just with processing delays; visa quotas extend the process to 10+ years for applicants from India

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Permanent Resident Status




- Family
- Investment
- Asylum
- Lottery
- Employment



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Permanent Resident Status Employment

- Employer-sponsored or self-sponsored
- Multiple petitions
- Quotas
 - Visa Bulletin (www.travel.state.gov)
 - Per country limit – 7% currently
 - Country of birth
 - Cross-chargeability
 - Allocated by:
 - Priority date – place in line
 - Preference category – EB-1, EB-2, EB-3, etc.




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Permanent Resident Status Employment *(cont'd)*


- Preference Categories
 - EB-1
 - Generally, no quota wait, except sometimes China and India
 - EB-2
 - National interest waiver/Physician National Interest Waiver
 - Labor certification requiring a master's degree OR a bachelor's degree plus 5 years of progressive experience
 - Quota waits vary. Longer wait for China and India
 - EB-3
 - Labor certification requiring bachelor's or 2 years experience
 - Quota wait for India, China, and Philippines



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Permanent Resident Status Employment *(cont'd)*


- Self-Sponsored
 - Extraordinary ability
 - EB-1
 - Standard
 - National or international reputation
 - "One of few at the top of peers"
 - Key is defining field of expertise specifically
 - Extensive documentation required
 - Reference letters critical



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Permanent Resident Status Employment *(cont'd)*

- National Interest Waiver (NIW)
 - EB-2
 - Standard
 - Exceptional ability or advanced degree
 - Substantial merit
 - National interest
 - Extensive documentation required
 - Reference letters critical




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Permanent Resident Status Employment *(cont'd)*

- **Employer-Sponsored**
 - Outstanding Researcher
 - EB-1
 - Standard
 - "Permanent position"
 - International recognition
 - 3 years of teaching/research experience
 - Extensive documentation required
 - Reference letters critical

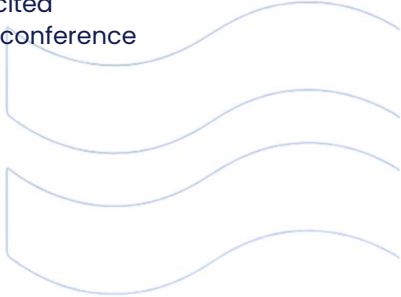


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Permanent Resident Status Employment *(cont'd)*

- **Evaluating Eligibility**
 - CV Evaluation
 - Authorship
 - 1st author publications
 - Evidence of contribution if not 1st author
 - In process; submitted; accepted; published; cited
 - Book chapters, editor's notes, review articles, conference pubs
 - Citations
 - Footnote v. discussion
 - Presentations
 - Peer review



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Permanent Resident Status Employment *(cont'd)*

- Evaluating Eligibility
 - Importance/narrowness of field of expertise
 - Ability to explain importance
 - Significance
 - Increasingly important for all criteria, not just contributions
 - Impact on field and other researchers
 - Why YOU?
 - Referees



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Permanent Resident Status Employment *(cont'd)*

- Choosing Referees
 - How many?
 - Good CVs
 - Prestigious institutions
 - Diversity
 - Geographic
 - Institutional
 - Impartiality/independence



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Permanent Resident Status Employment *(cont'd)*

- Labor Certification Application (PERM)
 - Employer sponsored
 - Prevailing wage – position & location specific
 - Test the labor market to determine if there are any minimally qualified U.S. workers who are interested in the position
 - Very regimented process lasting about 12-18 months
 - A lot of involvement by HR/Manager/Recruiters



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Permanent Resident Status Employment *(cont'd)*

- Labor Certification Application (PERM)
 - 4 Part Process
 - 1. Define requirements
 - 2. Prevailing wage
 - 3. Recruitment
 - 4. Labor Certification



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Permanent Resident Status Employment *(cont'd)*

- Labor Certification Application (PERM)
 - Defining Requirements
 - Minimum education required
 - Years of employment experience
 - Skills and/or training



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Permanent Resident Status Employment *(cont'd)*

- Labor Certification Application (PERM)
 - The foreign national must be able to document possession of the skill before joining the employer. The most common form of such documentation is a letter from the HR representative or supervisor of the foreign national's prior employer.
 - The education, experience and/or training, and skill sets will be used in the recruitment efforts conducted in connection with the application for labor certification and will be used to assess whether any U.S. worker is qualified for this position.



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Permanent Resident Status Employment *(cont'd)*


- Labor Certification Application (PERM)
 - Prevailing wage
 - Requested from the Department of Labor
 - Department of Labor issues prevailing wage determination within 6 months



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Permanent Resident Status Employment *(cont'd)*

- Labor Certification Application (PERM)
 - Recruitment
 - Position must be advertised in compliance with regulations
 - Employer must assess all applicants
 - Foreign national cannot be involved in this process
 - Several months



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Permanent Resident Status Employment *(cont'd)*


- Labor Certification Application (PERM)
 - Labor Certification Application
 - No qualified U.S. workers identified
 - File application with Department of Labor
 - Processing time



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Permanent Resident Status Employment *(cont'd)*

- I-140 Petition
 - 1st step for EB-1 and national interest waiver
 - 2nd step for PERM
 - Employee documents education and experience
 - If adjustment of status, file concurrently with I-485 if quota current
 - If consular immigrant visa processing, approval sent to National Visa Center



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Permanent Resident Status Employment *(cont'd)*

- I-485 (Application for Adjustment of Status to Permanent Resident)
 - Cannot file until quota is current
 - Importance of filing
 - Do not need to maintain visa status
 - Can file for spouse and child
 - Can get Employment Authorization Document (EAD) and Advance Parole



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Questions?



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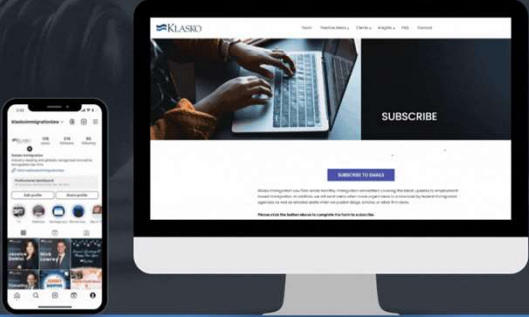
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