

We will start momentarily at 2pm ET



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ACS WEBINARS™
October 14, 2010



Navigating U.S. Immigration – Updates for International Scientists



Presenter: Kelly McCown, Attorney at Law
McCown and Evans LLP



Moderator: Jong de Castro, Ph.D.
Charles Drew University of Medicine and Science

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Navigating U.S. Immigration – Updates for International Scientists

**Kelly McCown
Attorney at Law
McCown & Evans LLP**

American Chemical Society
October 14, 2010

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Common Nonimmigrant Visas for Chemists/Scientists

- H-1B/H-1B1/E-3 specialty occupation
- O-1 extraordinary ability
- J-1 research scholar or student
- F-1 student
- TN chemist

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H-1B Updates

- H-1B quota still available: 41,000 used as of 10/8 (about 10 weeks of usage left); 15,400 from Master's exemption used
- Once cap reached, no H-1Bs until 10/1/11 unless employer is "exempt"
- If OPT valid through 4/1/11, covered by "cap gap" – work authorized until 9/30/11
- Once approved for H-1B, no cap issue for 6 years

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H-1B Updates

- H-1B processing currently 3-4 months
- H-1B Requests for Evidence (RFEs) *doubled* from 2008 to 2009
 - CSC: 13% in 2008 → 25% in 2009
 - VSC: 14% in 2008 → 29% in 2009

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Common H-1B RFE Issues

- Proving employer-employee relationship
- Company ownership by worker
- Relationship of degree to occupation
- Proving a “need” for the worker
- Proof of track record/premises
- Questioning any offsite work
- Proving wages paid in past to worker (for extensions)

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Strategies for Avoiding and Responding to H-1B RFEs

- Address weak areas proactively
- Submit offer letters, submit lease, confirm location of worksite, clearly state employee count at worksite
- Be ready for short deadlines on RFEs
- Make it easy for USCIS – repeat requests, then respond
- Use tabs

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Common Immigrant Visa Categories for Chemists/Scientists

- EB-1 Extraordinary Ability
- EB-1 Outstanding Researcher
- EB-2 National Interest Waiver
- EB-2/EB-3 PERM
- EB-5 Investor
- Diversity Visa (DV) Lottery

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Immigrant Visa Processing Updates

- Most PERM cases taking 8+ months, through some cases filed Apr/May 2010 approved
- PERM audit queue about 15 months; approval becoming more difficult after audit
- PERM supervised recruitment on the rise
- I-140 petition processing is 4 months
- I-485 case processing is 4-5 months

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Top 5 Pitfalls in EB-1 I-140 Cases

- Not carefully defining field of endeavor
- Not proving importance of publications
- Not proving originality and significance of contributions
- Arguing that citations are “published material” about foreign national
- Using only letters from people with whom you have worked

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Top 5 Pitfalls in NIW I-140 Cases

- Not defining the substantial intrinsic merit carefully
- Not explaining how work will/could have national impact
- Not proving how benefit to nation outweighs going through PERM process
 - Self-employment
 - Substantial disruption

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Responding to RFEs on EB-1 and NIW I-140s

- Remember preponderance of evidence standard (“probably true,” or “more likely than not”)
- Respond to concerns, but go back to the statute and regulations to argue that criteria met
- Clearly explain benefit of the work for the U.S.

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Q&A SESSION



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Thursday, October 21, 2010, 2-3 p.m. EDT

Sparking Discovery – Chemists in the Community


Al Hazari, Ph.D., University of Tennessee, Knoxville.



Thursday, October 28, 2010, 2-3 p.m. EDT

Programs and Funding Opportunities for Manufacturers and Small Chemical Businesses – Part II

Ben Vickery, M.S., National Institutes of Standards and Technology.



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