



Three-Part Telephone & E-mail Seminar:

## Consular Processing For Experts

*Speakers: Jan Pederson, Greg Siskind, Jill Bussey Ellen Freeman, Kehrela Hodkinson, Joanne Orizal, Laurel Scott, Heather Segal, Priscillia Suntos, James Wolf and Elaine Witty*

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### Seminar Outline

#### FIRST Phone Session on April 20: NIV Issues

- Third Country National NIV Applications In Canada And Mexico
  - Border Posts: overview of who can and cannot apply.
  - Rationale for limitations on who cannot apply.
  - Appointments always necessary.
  - Necessary forms: DS-160
  - At which posts can List of 26 and T-7 apply?
  - Is there a case for a TCN not applying in Canada or Mexico, if eligible to do so?
  - Border Post review of right to counsel at visa interviews.
  - Circumstances under which an applicant not issued a visa at a border post can return to the United States.
- Home Country Visa Applications
  - Appointments almost always necessary. Check waiting times on DOS and consular post website for details.
  - Research post policies, personnel and local red flags.
  - CIS approved petitions (H, L, O, P) are not a promise of a visa.
  - Prepare the client for the interview and ensure visa applications are completed accurately and completely.
  - Documents applicant should bring to the interview.
  - Waiver of personal appearance.
  - What to do when there is a glitch at the visa interview:
    - Security clearances, NCIC Checks, and Hits in the Database: the applicant forgot about the arrest for pot or shoplifting 30 years ago.
    - Petition Issues: Job Inflation and Skills Tests - does the job exist and can the employer afford to pay the wage?

#### SECOND Phone Session on May 12: IV Issues

- Considerations in Consular Processing.
  - Unlawful presence and effect on application
  - Risk that the applicant's visa and/or immigration history may result in delay or denial.
  - Readjudication of labor certifications, visa petitions and qualifications of applicant. < India in posts consular at>
- "Following-to-join" issues.
  - Documents to file with the consular posts.
  - When can principal alien's entitlement to LPR status be readjudicated at the IV interview of the "following-to-join" spouse or child?
  - When may the IV issuance be properly delayed and for how long? (Issue arises in Manila when principal alien adjusted status as a nurse; Issue arises when principal alien adjusted status as an asylee or through legalization; Issue arises when consular officer questions whether principal alien in F2A (unmarried minor child) and F2B (unmarried, adult son or daughter) cases is maintaining his/her principal place of residence and domicile in the United States at the time of the interview.)
- Considerations in family-based petition cases.
  - When blood relationship questioned, may attorney insist on DNA test and through what mechanism? Often much time would be saved through DNA testing, particularly when the alternatives are returning an approved petition to CIS and/or awaiting the outcome of a local investigation.
  - Strategies to resolve relationship questions locally in lieu of petition return to CIS.
  - I-864 issues (E.g. Whether petitioner "resides" in the United States.)
- Processing of an "Age-Out" Case.
- Processing of a Child Status Protection Act (CSPA) Case.
- "Portability of an approved alien labor certification and I-140" to immigrant visa processing

#### THIRD Phone Session on June 2: Waiver Practice in Consular Processing

- Nonimmigrant Visa Waivers of Inadmissibility.
  - General Issues:
    - Who is eligible for a 212(d)(3) waiver?
    - Which grounds can be waived?
    - Which grounds cannot be waived?
    - The life of a waiver.

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- Procedures for requesting a 212(d)(3) waiver.
  - Request made to consular officer after refusal.
  - Consular officer can either recommend or refuse to recommend to overseas DHS office that a waiver be granted.
  - DHS has final authority to grant or deny waiver.
  - Appeal procedures if consular officers refuses to make favorable recommendation and winning strategies.
- Processing Times and Procedures.
  - When the waiver request must or may be sent to the Visa Office by the consular officer.
- Criteria considered in waiver request/approvals.
  - Matter of Hranka effect?
  - How big, how bad and how long ago was the prevarication?
  - How long ago was the conviction and how serious was the crime?
  - Evidence of reformation and remorse.
  - Purpose of trip. Does life-saving medical treatment trump a trip to Disneyland?
  - Consular officers are directed to apply a balancing test; weighing the equities against the negative factors. How this works in practice.
- Immigrant Visa Waivers of Inadmissibility
  - General Issues
  - Who is eligible for a waiver?
  - Which grounds can be waived?
  - Which grounds cannot be waived?
- Procedures for requesting a waiver.
  - Form I-601 filed with consular officer for most grounds.
  - Consular officer must forward I-601 to DHS office overseas for adjudication.
  - Fingerprints and G-325A often required.
  - Send client to IV interview fully documented with respect to both possible grounds of ineligibility and reasons why waiver should be granted.
- Coming to America when a visa isn't issued.
  - Humanitarian Parole
  - Visa Waiver at port-of-entry
  - 212(d)(4) waiver at land border port of entry



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### ABOUT THE SPEAKERS

**Jan Pederson** (Discussion Leader) has been dedicated to the practice of immigration and nationality law for over twenty years. She has successfully represented thousands of clients and is masterful at resolving complex immigration issues. Ms. Pederson's impressive list of clients includes renowned physicians, urban and rural health care providers, Fortune 500 companies, television networks, entertainers, computer personnel and other professionals. She is a leading advocate for the rights of J-1 Physicians in the United States and has been key to the passage of legislation to benefit them. She is also the publisher of J-1 Physician News; and lectures nationally and internationally to foreign physicians. She seeks solutions for her clients beyond the immigration laws and does not hesitate to seek solutions from The White House and Congress, if necessary. She has been a key advocate on the restoration of the National Interest Waivers for J-1 Physicians and in increasing the Conrad State 20 J-1 Waiver Program to the Conrad State 30 Program. She served as president of the Washington, D.C. Chapter of the American Immigration Lawyers Association (AILA); as an elected director of the national Board of Governors of AILA for eighteen years. She has served as a chairperson of the Physicians Task Force of AILA for many years and has also served as chairperson of the AILA Visa Office Liaison Committee and Refugee Committee. She was the recipient of the prestigious national award, The Edith Lowenstein Award, in 1997 for excellence in the advancement of the practice of immigration law.

**Greg Siskind** is a partner in Siskind Susser's Memphis, Tennessee, office. After graduating magna cum laude from Vanderbilt University, he received his Juris Doctorate from the University of Chicago. Mr. Siskind is a member of AILA, a board member of the Hebrew Immigrant Aid Society, and a member of the ABA, where he serves on the LPM Publishing Board as Marketing Vice Chairman. He is the author of several books, including the J Visa Guidebook and The Lawyer's Guide to Marketing on the Internet. Mr. Siskind practices all areas of immigration law, specializing in immigration matters of the health care and technology industries. He can be reached by email at [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com).

**Jill Bussey** Jill Marie Bussey leads our Global Immigration Practice, overseeing the development of project and individual case strategies to address the recruitment and transfer of human resources throughout the world. In this role she manages the visa and work permit needs of international professionals, managers, and executives. This area of her practice focuses on developing strategic relationships with a deep network of attorneys across the globe to develop highly specialized nonimmigrant and immigrant visa programs that address both long-term and short-term business needs. She works closely with clients to identify and advise them on matters of compliance, emerging trends and the potential implications on their business. She is adept at developing strategies to address unique immigration requirements for expatriates, including: U.S. permanent residents and dependents accepting long-term assignments abroad; accessing citizenship status to facilitate family-based immigration; and managing multiple destination assignments. With over a decade of experience in business immigration spanning a broad sector of industries including Fortune 500, government and private sector commercial entities, as well as non-governmental organizations, Jill has a deep understanding of the multiple drivers and participants involved in the immigration process. In addition to her Global Immigration experience, Jill gained extensive experience with U.S. immigration matters while she served as an attorney for a multi-practice global law firm in Washington, D.C. Jill's background in business law has made her particularly adept at advising organizations undergoing corporate changes and expansion to the U.S. She is experienced with all aspects of U.S. business immigration including nonimmigrant and immigrant categories and is an effective advocate for clients facing agency backlogs and challenges with issues related to their immigration status. Jill is an active member in her community and Member of the Board of Directors for a non-profit organization that serves the foreign-born community in Central Maryland.

**Ellen Freeman** is of counsel at K&L Gates, LLP. Ms. Freeman has practiced in the area of immigration law for over 11 years. She focuses her practice on biotech, pharma and academia. She assists clients in industries ranging from health care to manufacturing, on the full spectrum of immigration issues including advising corporate entities regarding the immigration impact of corporate reorganizations, mergers, acquisitions and divestitures, including drafting opinion letters regarding continuous employment eligibility of foreign national employees, and assisting start-up and foreign companies with the establishment of U.S. operations, corporate entity formation and recruitment of talent. While in law school, Ms. Freeman served as a teaching assistant for the Legal Analysis and Writing Program. She won the 1998 Niagara International Moot Court in Chicago. While living in the former Soviet Union, Ms. Freeman assisted an international humanitarian organization with the distribution of aid and resettlement of civil war refugees who were displaced during a conflict in Moldova in 1992.

**Kehrela Hodkinson** was admitted to the California State Bar in 1980, after graduating from Loyola Law School in Los Angeles. She established her first law office in Los Angeles, California in 1982, where her practice concentrated on nonimmigrant visas and employment and family-based immigration matters. After moving to San Francisco, California in 1987, she founded a second immigration law firm and continued to provide expertise relating to temporary and permanent visas for business personnel and family-based immigration. Since 1994, Ms. Hodkinson has exclusively practiced US immigration and nationality law in London. Ms. Hodkinson represents a broad range of corporate and individual clients in connection with nonimmigrant visa matters, immigrant visa petitions, extraordinary ability petitions and family-based immigrant petitions. In addition, she provides advice relating to maintaining permanent resident status and expatriation issues. Ms. Hodkinson is a founding member of the Academy of Business Immigration Lawyers (ABIL), a think tank dedicated to promoting best practices in immigration client service and law firm management and has been nominated by her peers to the International Who's Who of Business Immigration Lawyers. She is a member of the American Immigration Lawyers Association, the American Bar Association, and American Women Lawyers in London. Ms. Hodkinson is a frequent speaker at professional conferences regarding US visa processing in London and is often asked to testify before UK courts with respect to US immigration ramifications related to child custody matters and issues regarding treaty investor/treaty trader status.

**Joanne Orizal** has practiced immigration law in greater New York for 25 years, both at large corporate law firms and in immigration boutiques. She

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has handled an array of immigration legal matters with a focus on business immigration.

**Laurel Scott** is the Founding Attorney at Scott and Associates. She received a BA from Simon's Rock College, a Master's Degree from Duke University, and a Law Degree from Temple University where she completed the Temple University Immigration Law Clinical. She spent a year studying at the Queen's University of Belfast and completed an internship at the European Parliament. She started work on her first waiver of inadmissibility in 2003 and quickly realized that waivers were an ideal niche for her new firm. Over the years, she emerged as one of the nation's leading experts in this type of case, publishing numerous articles on the subject and speaking at many events for immigration lawyers. She currently volunteers on AILA's Refugee, Asylum and International Programs Committee, a group that advocates for improvements in CIS' procedures and policies. She travelled extensively prior to having children, spending over two months in each of the following countries: Belgium, Bolivia, France, Germany, Guatemala, Israel, Jamaica and the United Kingdom. She is the single mother of two children, Isaac (born 03/16/2001) and Anita (born 06/12/2003)

**Heather Segal** is a partner at Guberman, Garson Immigration. She is widely recognized for her expertise in immigration law and she speaks regularly at conferences and seminars throughout the world. She practices exclusively in the area of Canadian immigration law and American Consular and Border immigration law. She is currently a Director on the AILA Board of Governors and has spoken at numerous AILA conferences. She is a member of the AILA Customs and Border Protection Liaison Committee. Ms. Segal is also Chair of the American Chamber of Commerce Cross Border Committee. She was voted by her peers as one of the world's leading practitioners in corporation immigration law in Who's Who Legal Corporate Immigration. She was the Chapter Chair of the American Immigration Lawyers Association, Canada Chapter (2002-2004) and a liaison for the U.S. Citizenship and Immigration Services Buffalo District Office for AILA Canada (2002 – 2004). She has held the position of Vice Chair of the American Immigration Lawyers Association, Canada Chapter (2000-2002) and Treasurer of the American Immigration Lawyers Association, Canada Chapter (1998-2000). As well, Ms Segal was a member of the American Immigration Lawyers Association National Office Border Issues Committee (1999-2001) and served on the national AILA Border Watch Task Force (2001 – 2002).

**Priscillia Suntoso** was admitted to the Massachusetts Bar in 2002, after graduating from Suffolk University Law School in Boston. In 2005, she was admitted to the Massachusetts District Court and the U.S. Supreme Court. In 2009, she was IDEAS-Indonesia Fellow at Massachusetts Institute of Technology (MIT) Sloan School of Management in Cambridge, Massachusetts. An accomplished pianist, she also holds a Bachelor of Music in Jazz Composition from Berklee College of Music and an MBA from Suffolk University. She has written many articles for the American Immigration Lawyers Association (AILA) and other legal publications since 2001, and was Associate Editor for Immigration Option for Religious Workers (1st Edition, 2005). She has lectured on immigration law before many community organizations in U.S. and Indonesia. Between 2006 – 2009, she was a part of the President's Advisory Council, Security and Defense Advisor's Office in Jakarta, Indonesia, serving President Susilo Bambang Yudhoyono. Currently, she practices at Jan H. Brown, P.C. in Manhattan, New York.

**Elaine Witty** is founding partner of Witty Law Group, PLLC located in New York City. She is former Senior Counsel to AV rated national immigration law firm Siskind Susser in Memphis, TN. Ms. Witty is past Executive Director of the Office of Refugee and Immigrant Affairs at the Human Resources Administration under Mayor Michael R. Bloomberg. She also served as Director of Legal Affairs for Citizenship New York City, a mayoral citizenship initiative, developed by Mayor Rudolph W. Giuliani. Ms. Witty is currently a member of the Executive Board of the Federal Bar Association's Immigration Law Section and Chair of the Legislative Committee of the Tennessee Bar Association's Immigration Committee. She is past Chapter Chair of the New York Chapter of the American Immigration Lawyers Association. Ms. Witty is the recipient of the Brooklyn Bar Association Volunteer Lawyers Pro Bono Award in recognition of her tireless work on behalf of low-income Brooklynites. Ms. Witty has taught immigration law seminars at New York Law School, City University of New York, City Bar Association, Federal Bar Association Immigration Law and Labor Law Sections, and the American Immigration Lawyers Association's National, Mid-South Chapter, New York Chapter, and Rome District Chapter Conferences. She is the author of numerous articles on immigration law including: overview of immigration law, consular processing, waivers of inadmissibility, religious worker eligibility, and immigration law for the family law practitioner. Ms. Witty is a graduate of the Benjamin N. Cardozo School of Law and Yeshiva University, Stern College for Women. She is admitted to practice in the states of New York, New Jersey, and Tennessee. Ms. Witty is admitted to the Federal Courts: the Eastern District of New York, the Southern District of New York, the United States District Court for the District of New Jersey, the Western District of Tennessee, the United States Court of Appeals for the Sixth Circuit and, the United States Supreme Court. Her practice areas include employment based immigration, litigation and deportation defense, family based immigration with a specialty in waivers of inadmissibility, naturalization and derivative citizenship, and religious worker cases. She can be reached at [elaine@wittylaw.com](mailto:elaine@wittylaw.com)

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