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HFTP[®]

Hospitality Financial and
Technology Professionals

1+ year into the Trump Administration: The Major Immigration Changes that Hospitality Organizations Need to Know

Discussion with Keith Pabian

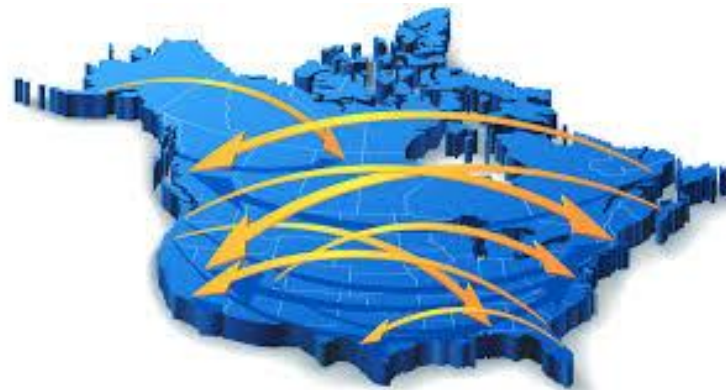
Founding Partner

Pabian Law, LLC



About Pabian Law

- ▶ Pabian Law is a premier national immigration law firm that specializes in representing private clubs, resorts, hotels, and other seasonal businesses across the United States.
- ▶ Pabian Law, LLC focuses on guiding our seasonal business clients in all immigration aspects of the seasonal business, from defining the period of seasonality through the consulate and embassy process. We have been recognized as one of the preeminent immigration practices in North America for our hard-work, client dedication, and our fast and efficient results.



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Roadmap of today's conversation

- ▶ Understanding visa options for hospitality organizations
- ▶ Overview of President Trump's immigration initiatives and priorities
- ▶ How do these initiatives and priorities affect your organization?
- ▶ Visa options for your organizations under the Trump administration
 - ▶ Seasonal options
 - ▶ J-1 visas
 - ▶ H-2B visas
 - ▶ Year-round options
- ▶ Immigration trends & potential issues
- ▶ A look into our immigration crystal ball



Audience question #1

- ▶ Does your organization currently utilize visas to sponsor foreign nationals:
 - ▶ Yes
 - ▶ No
 - ▶ What is a visa?



Definitions

- ▶ U.S. Department of Homeland Security
- ▶ U.S. Citizenship & Immigration Services
- ▶ J-1 visa
- ▶ H-2B visa
- ▶ H-2B numerical cap
- ▶ Returning Worker Exemption
- ▶ H-2B transfers



Immigration Options under the Trump Administration

- ▶ J-1 visas
- ▶ H-2B visas
- ▶ H-1B visas
- ▶ O-1 visas
- ▶ Country specific options
- ▶ Green card sponsorship
- ▶ DACA





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Seasonal
options

The J-1 visa



- ▶ Temporary exchange visitor visa
- ▶ Cannot be used for ordinary employment - must have bona fide training and experience components
- ▶ Most common categories for hospitality organizations:
 - ▶ Interns
 - ▶ Cannot work in unskilled or casual labor positions or positions that require more than 20 percent clerical/office support work
 - ▶ Summer work
 - ▶ Visa holder must have completed at least one semester of post-secondary academic study
 - ▶ Program length may not exceed 4 months



Pro's and con's of J-1 visas

Pro's

- ▶ Petition goes through a third party agency - your organization does not need to petition on its own
- ▶ Able to staff seasonality for short periods of time (4 months or less)
- ▶ Can be a cost-effective seasonal staffing option
- ▶ Previously less regulations affecting your organization than H-2B visas

Con's

- ▶ Short duration (4 months or less)
- ▶ Inexperienced workers
- ▶ Hard to bring back J-1 visas year-to-year
- ▶ Cultural element is very important
 - ▶ Must give people an experience
- ▶ Getting more and more regulated
 - ▶ Is summer work & travel going away?



Potential changes to J-1 visas

Enforcement of J-1 cultural experience requirement

- ▶ Do the job duties provide a learning experience for the visa holder about the United States' culture?
- ▶ Positions such as Housekeepers, Dishwashers, etc. could be ineligible
- ▶ Taking J-1 visa holders to a baseball game will no longer be enough

J-1 visa employers be subject to enhanced regulations

- ▶ Employers now need to pay for housing, transportation, wages, etc.
- ▶ Minimum hours requirements
- ▶ Overall, more time and money would need to be spent on J-1 visas
 - ▶ Remember, J-1 visas are usually only available for a 4 month period

New regulations could be a mix of both of the above.

Audience question #2

- ▶ Would substantial J-1 visa reform impact your organization?
 - ▶ Yes, it would be devastating
 - ▶ No, we do not rely on J-1 visas
 - ▶ We do use J-1 visas, but we would be fine if there is substantial reform as we staff through other avenues and do not rely entirely on J-1 visas



About the H-2B Seasonal Visa

- Seasonal visa petition (available for up to 10 months)
- Need to apply every year
- Employee will need to leave USA annually for about 3 months at a minimum or transfer to another employer
- Imperative to prove seasonality/peak load of business
- Employer sets requirements of petition (ex. experience, education, etc.)
- Can apply for employees in-country (transfer) or out-of-country (embassy/consulate)
- Application process involves U.S. Department of Labor, U.S. Citizenship & Immigration Services and if employees are outside USA, consulates and embassies
- HEAVILY regulated by government
- **Should plan to start process 6½ months before the beginning date of need**



When to start the H-2B visa process?

- ▶ Winter seasons (Florida, Arizona, etc.)
 - ▶ Mark your calendars: **APRIL 1ST!!!**
- ▶ Summer seasons (all others)
 - ▶ Mark your calendars: **OCTOBER 1ST!!!**



Common H-2B hospitality positions



Why the H-2B visa?

- ▶ H-2B visas are helpful for:
 - ▶ The J-1 and college student problem
 - ▶ Beginning and end of season - longer season
 - ▶ Professionalism
 - ▶ Trend toward H-2Bs: you get your employees for when you need them
 - ▶ Protecting against the unknown of the future of J-1 visas
 - ▶ Avoiding costs of recruiters
 - ▶ Finding employees willing to perform the jobs
 - ▶ Remote employers
 - ▶ Low unemployment
 - ▶ Foundation of year-round employment options
- ▶ And for some...processing times have improved!!!

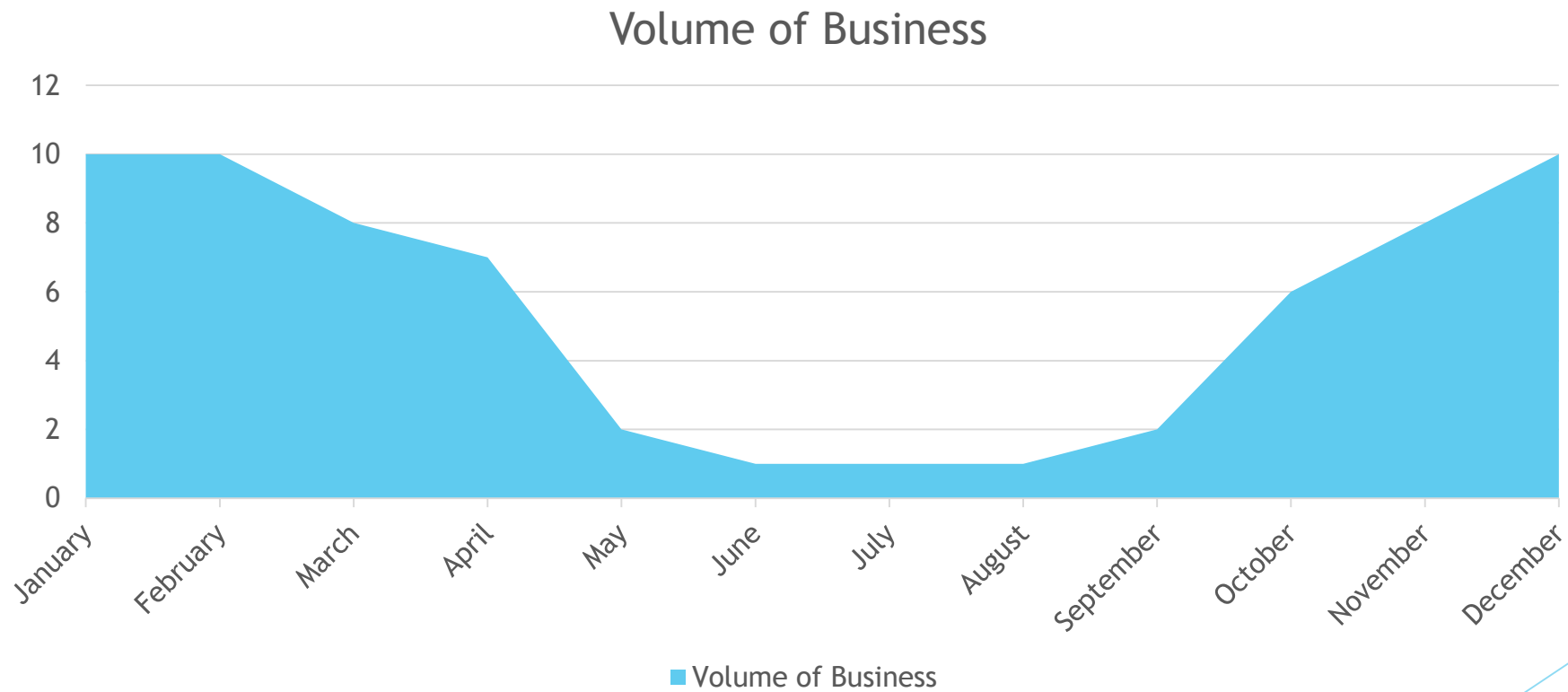


H-2B Employer obligations

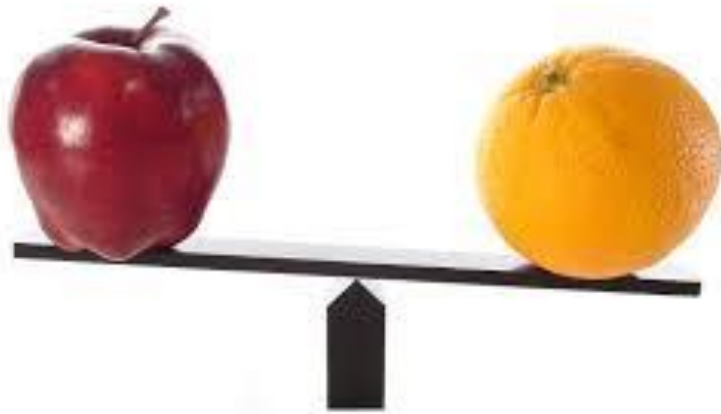
- ▶ Hours per week (35 hours per week)
- ▶ Nearly impossible to file petitions late
- ▶ Payroll deductions - housing ONLY!
- ▶ $\frac{3}{4}$ payment rule
- ▶ Travel expenses and visa-related and work-related fees/costs
- ▶ US worker and notice provisions
- ▶ Obligations with use of Recruiter
- ▶ Compliance and retention requirements
- ▶ Penalty - \$10,000 USD per violation



What is seasonality?



Winter-season vs. summer-season petitions



The Trump Effect & Hot Topics



Trump's immigration agenda

- ▶ Enforcement, enforcement, enforcement
 - ▶ Audits
 - ▶ Targeting individuals
 - ▶ Local law enforcement assistance
- ▶ Protect US jobs
- ▶ Immigration reform
 - ▶ H-1B
 - ▶ NAFTA/TN
 - ▶ J-1
 - ▶ End of Temporary Protected Status (TPS) for many countries
- ▶ Security measures
- ▶ Executive Actions
 - ▶ Buy American, Hire American
 - ▶ Border Wall
 - ▶ Travel Ban
 - ▶ Review of H-1B visas
 - ▶ DACA



Current Trump visa initiatives

- ▶ Audits
- ▶ Requests for Evidence
- ▶ Moving targets
- ▶ Delays at agencies
- ▶ Consular delays
- ▶ Targeting specific countries (ex. Haiti)
- ▶ Additional/enhanced security checks
 - ▶ Includes internet searches, company websites, and social media!



How do Trump's immigration initiatives and priorities affect your organization?



Impacts on hospitality organizations

- ▶ J-1 visa reform or termination
- ▶ Trend toward H-2B seasonal visas
- ▶ Increase in H-2B audits
- ▶ H-2B visa cap and the Returning Worker Exemption
 - ▶ Reopening of H-2B visa cap
 - ▶ Will Returning Worker Exemption become permanent?
- ▶ H-2B visas are here to stay!
 - ▶ Only immigration “positive” change since Trump took office
- ▶ Fees at US Department of Labor for Prevailing Wage Determinations and ETA filings (?)
- ▶ End of Temporary Protected Status for many countries
- ▶ Revised eligible country list for H-2B visas (goodbye Haiti)



New trends and developments

- ▶ Low unemployment - how are you finding people?
- ▶ J-1 visa reform - it's coming!!!
- ▶ H-2B visa cap
- ▶ Increased interest in H-2B visas by hotels and resorts
 - ▶ Not just for clubs anymore!
- ▶ Increased scrutiny of staffing companies that sponsor their employees for visas
 - ▶ Why does this affect you?
- ▶ Termination of Temporary Protected Status (TPS)
- ▶ Green card sponsorship



Hot Topics of H-2B visas

- ▶ Industry trend away from J-1 visas (or supplementing J-1's with H-2Bs)
 - ▶ Increased interest in H-2Bs by winter-season specifically (even “smaller” organizations)!
- ▶ Lesser workforce at beginning and end of seasons
 - ▶ Careful with staggering
- ▶ Housing considerations
 - ▶ State wage and hour laws and effects on housing
- ▶ Transportation requirements (legal vs. practical)
 - ▶ Potential tips:
 - ▶ Provide budget to employees
 - ▶ When driving, relocation expense vs. travel expense reimbursements (?)
- ▶ Working with managers to understand departmental needs (within the budget)
- ▶ More government scrutiny of petitions with new training models
- ▶ New government offices becoming involved - new review standards!

TRENDING
NOW



Hot Topics of H-2B visas (cont.)

- ▶ Exchanging employees between winter and summer-season organizations
 - ▶ Saves travel costs (?)
 - ▶ Saving recruiter costs
 - ▶ Finding the right partner
 - ▶ Dates of season
 - ▶ What if other organization will not release employees at start of season?
 - ▶ Qualified employees
 - ▶ 3 year rule (watch out!)





Let's fully
understand H-2B
visa transfer
petitions



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Winter season-specific H-2B Trends & Issues

- ▶ Increased H-2B interest from “smaller” clubs
- ▶ Petitions filed with the USCIS California Service Center
- ▶ **NEW** - major focus on peakload seasonality
 - ▶ Why is this an issue?
- ▶ **NEW** - petitions denied by USCIS for hospitality organizations
- ▶ **NEW** - Uptick in Notices of Deficiency and Requests for Evidence (about 50%+ of petitions are receiving these)
 - ▶ Solution: need to clearly explain your organization & issues in seasonality documents
- ▶ **NEW** - Audits!!!
- ▶ **NEW** - increased interest by summer-season organizations to partner on in-country transfers

Solution to the above problems: always utilize a law firm experienced in H-2B visa petitions to file your applications!!!



Summer season-specific H-2B Trends & Issues

- ▶ Increased H-2B interest from “smaller” clubs
- ▶ H-2B cap continues to be an issue
 - ▶ Can you plan around it?
- ▶ **NEW** - Uptick in Notices of Deficiency and Requests for Evidence (about 50%+ of petitions are receiving these)
 - ▶ Solution: need to clearly explain your organization & issues in seasonality documents
- ▶ **NEW** - Audits!!!
- ▶ **NEW** - increased interest by summer-season organizations to partner on in-country transfers

Solution to the above problems: always utilize a law firm experienced in H-2B visa petitions to file your applications!!!





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Should you be concerned about the numerical cap?



- ▶ HUGE issue for your summer-season organizations
- ▶ Winter-season organizations:
 - ▶ Pre-January 1st start date = you should be safe from numerical cap concerns
 - ▶ There are substantially less winter-season applications
- ▶ Summer-season organizations:
 - ▶ What can you do to solve this problem?

Update on H-2B cap relief



H-2B Audits

- ▶ Why are they occurring?
- ▶ What are we seeing in audits?
- ▶ What is being requested?
- ▶ What are the penalties for non-compliance?
- ▶ What can I do to best prepare for audits?



Audience question #3

- ▶ Of the issues discussed, what is the biggest concern for your organization?
 - ▶ H-2B visa cap
 - ▶ Audits
 - ▶ End of Temporary Protected Status for many countries
 - ▶ J-1 visa reform
 - ▶ Employee stress due to Trump initiatives



Year-round immigration options

- ▶ H-1B visas
- ▶ O-1 visas
- ▶ Country specific visas
 - ▶ TN
 - ▶ E-3
 - ▶ H-1B1
- ▶ U.S. Lawful Permanent Residency (Green Cards)



Is the time right for employing foreign nationals at your organization?

- ▶ J-1 visas
- ▶ H-2B visas
- ▶ Year-round visa options
- ▶ Green card sponsorship



Looking into the Pabian Law crystal ball...



My predictions for the next 2½ years

- ▶ Much immigration-focused rhetoric
- ▶ Unlikely to see any real immigration reform, but you will see and feel changes
 - ▶ The real immigration wall
- ▶ Audits
- ▶ Changes to J-1 visas → move toward H-2B visas
- ▶ Increased and sustained focus on actions of individuals



Questions?

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