

# Challenges in Global Talent Management

How employers navigate the complex world of immigration filings and compliance



# Davis C. Bae

Regional Managing Partner of Fisher & Phillips LLP



Davis Bae is the managing partner of the Seattle office and is co-chair of the firm's Global Immigration practice group. His practice focuses on providing effective immigration solutions for companies in the Pacific Northwest and throughout the United States. His clients are leaders in fields such as software, design, construction, manufacturing, utilities, fine arts, sports, international trade, and engineering.

Davis is a frequent speaker before business and employer associations, including the American Immigration Lawyers Association (AILA), the Washington State Bar Association (WSBA), the National Association of General Contractors, and the Society for Human Resource Management (SHRM). He teaches a course on Law Practice Management as a Lecturer at the University of Washington School of Law.

# Megan Lutes

Senior Corporate Counsel at Convoy, Inc.



Megan Lutes is Senior Corporate Counsel for Convoy, Inc., a technology company that is changing the logistics and transportation industry with the use of modern technology. Convoy was recently named Geekwire's 2018 Tech Titan of the Year and 2019's Deal of the Year. Convoy recently became Seattle's second Unicorn company, being valued at over a billion dollars and is one of the fastest-growing tech companies in the country with offices in Seattle and Atlanta growing in a matter of a few years to 900+ employees. Convoy has been in the news recently with its significant fundraising successes, with impressive investors such as CapitalG (Google's late stage venture arm), Jeff Bezos and venture capital firm Greylock Partners. Megan joins the panel with over a decade of legal experience both at law firms and in-house at large companies in the Puget Sound region. At Convoy she leads its commercial transactions team, handles its employment law matters, and handles its immigration work.

# Claire Marshall

Corporate Counsel at Zillow Group



Claire Marshall is Corporate Counsel at Zillow Group, which houses a portfolio of the largest and most vibrant real estate and home-related brands on the Web and mobile. The company's brands focus on all stages of the home lifecycle: renting, buying, selling, financing and home improvement.

At Zillow Group, Claire is part of the employment team where she advises the company on complex cross-jurisdictional compliance challenges and supports the Human Resources organization. Claire has prior law firm experience in employment litigation defense, including responding to federal and state administrative investigations and charges. She also advised clients regarding compliance with various employment laws and regulations, including the NRLA, FMLA, ADA, paid sick and safe time, and wage and hour issues.

# Why Employers Care

- Access to global talent at risk
- Employer obligations on enforcement.
- Regardless of whether company has foreign workers.
- U.S. economy dependent on international trade.
- Innovation dependent on foreign talent to stay competitive.



# Immigrants are entrepreneurial



## Sergey Brin

- Co-founder of Google
- Immigrated from the Soviet Union to escape persecution



## Toni Ko

- Founder of NYX Cosmetics
- Immigrated from South Korea



PROFESSIONAL MAKEUP



## Reshma Saujani

- Founder and CEO of Girls Who Code
- Immigrated from India



## Pierre Omidyar

- Founder of eBay
- Immigrated from France, son of Iranian parents



# Immigrants and Sciences

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- Immigrants account for nearly half of the US workforce with a science or engineering doctorate, including 60 percent of workers in computer and mathematical sciences.
- In Silicon Valley, 64% of engineers are foreign-born.
- One-fourth of all technology and engineering companies started between 2006 and 2012 had at least 1 immigrant cofounder.
- There are 194,600 immigrants in the U.S. with patents.

# Immigration's place in your company's legal team

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- Aside from a part time function of in-house counsel, how are other groups structured?
  - Employment group
  - HR function
  - Separate immigration attorney or entire immigration group
  - Management by a paralegal or “immigration program specialist”
- Panel discussion: how do you manage this?

# Nonimmigrant vs. Immigrant Visas?

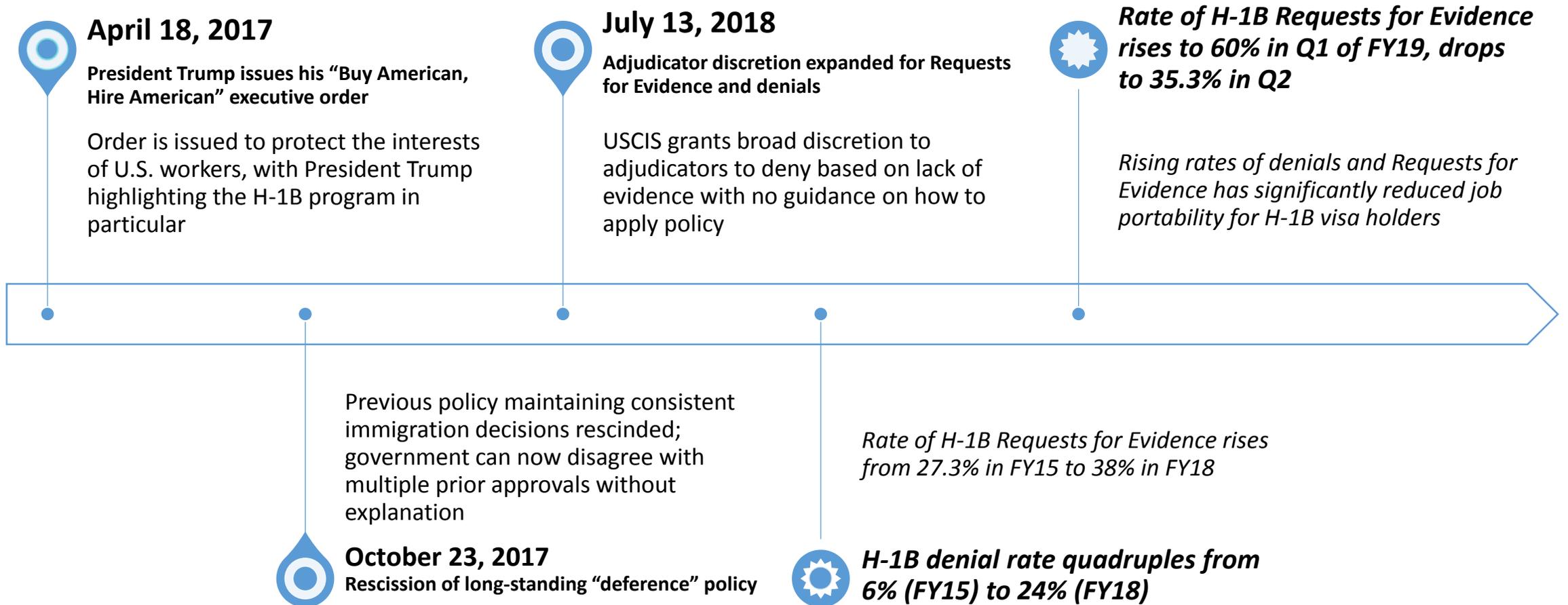
- Nonimmigrant visa (Temporary Visas)
  - Enables the foreign national to get here and/or start working for employer as soon as possible.
    - Benefit obtained as soon as petition filed and/or approved
    - Required for work authorization
- Immigrant visa (Green card)
  - Allows the foreign national to stay here as a permanent resident with the right to work and live in the United States
    - Benefit obtained only at the end of the process.
    - Currently, the process may take several years (longer if from China or India).

# H-1B – Specialty Occupations

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- Petitioner must be a U.S. employer
- Foreign national must be in a “specialty” occupation
- Foreign national must be a qualified individual
- Wage attestations on Labor Condition Application
- Subject to an annual lottery due to oversubscription
- Target for RFEs which spike at over 60%.

# Business Immigration Changes under the Trump Administration



# Business Immigration Changes under the Trump Administration (cont.)

How have these changes affected visa sponsorships, talent retention, and your overall bottom line?

Audience feedback and panel discussion:  
What have you seen?

# I-9 Compliance

So far this year, there have been more than 5,000 Form I-9 notices of inspection issued in the United States. In a typical 12-month period, it was common to see around 3,000 NOI's issued. **We are on track for 8,000 I-9 inspections this year. Again, increased focus will be on businesses located in sanctuary cities/states.**



# Penalties

- Paperwork Violation fines:
  - \$220-\$2,191 **per employee** based on the percentage of forms with errors
- Knowingly hiring/employing unauthorized worker violations (includes situations of constructive knowledge – where you should have known they were not authorized to work based on what you actually knew)
  - Civil Fines
    - \$539 to \$4,313 First Violation per employee
    - \$4,313 to \$10,781 Second Violation per employee
    - \$6,469 to \$21,536 Third+ Violations per employee
  - Criminal Penalties
    - Up to 10 years and/or \$250,000 fine for harboring, smuggling, concealing, or transporting illegal aliens for financial gain



# The Role of Corporate Counsel

- Compliance
  - Managing Outside Vendors and Counsel
  - Contract Compliance
  - I-9 and E-Verify
  - Employment law issues
  - Troubleshooting and explaining risk
- Support
  - Internal Stakeholders
  - Balancing service with policy
  - Managing budgets
  - Process improvements
  - Training managers on processes and legal implications

Panel Discussion: How do you strike a balance between these?

# What lies ahead for 2020?

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- New H-1B lottery process: Radical changes ahead
- New Definitions: “specialty occupation” for H-1Bs
- Increases in filing fees
- Court Decisions on H-4 EAD and STEM OPT
- Harsh adjudications at the USCIS, border and consulates.
- More to come.

# Best practices: Closing Panel Thoughts

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- Establishing a case initiation process.
- Setting up decision matrices.
- Establishing a process for document retention.
- Administrative tasks: legal postings, liaising with managers, lines of communication with outside counsel.
- Creating a process for employment changes: promotions, relocations, and terminations.
- What sets us up for a successful partnership with outside counsel?

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**THANK YOU**  
FOR THIS OPPORTUNITY