

BUSINESS IMMIGRATION LAWS UPDATE IN THE CNMI

2018 CNMI District Conference

**Nelson J. Xu, Esq.
BAUMANN, KONDAS and XU, LLC**

LAW FIRM OF
BK&X

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KONDAS
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Welcome!

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In the News

We're the law firm of
Baumann, Kondas & Xu,
and we're experts in U.S. immigration
and related business law and family law.

We offer expert counsel and legal services for individuals, families, investors and companies with immigration and business concerns.

We have the knowledge, skills, judgement and experience to guide you successfully through the complex and changing U.S. immigration system.

We are well acquainted with all aspects of immigration law for the U.S.A, including citizenship, Green Cards, family reunification, spouse and fiancée petitions, deportation defense and relief from removal, and all kinds of visas for professionals, skilled workers, families and businesses.

We help a wide range of companies which include, but are not limited to, accounting firms, airlines, banks, bridal services, churches, international and local construction companies, hotels and resorts, insurance and health care plans, multi-national petroleum corporations, restaurants, retail stores, schools, telecommunications / technology firms, and shopping centers.

Our firm has 25 years experience practicing in Guam and the Commonwealth of the Northern Mariana Islands (C.N.M.I). We are a team of four attorneys with a support staff of 11.

Our offices are located in the capital city of Hagatna, Guam at a pivotal point in the Pacific between America and Asia.

Law Firm of Baumann, Kondas & Xu, LLC

Suite 903, DNA Building

238 Archbishop Flores Street

Hagatna, Guam 96910 U.S.A.

Telephone: 1 - (671) 477-9084/5

Facsimile: 1 - (671) 477-9087

E-mail attorneys at:

Ladd A. Baumann

Ladd.Baumann@baumannnguam.com

Mark E. Kondas

Mark.Kondas@baumannnguam.com

Nelson J. Xu

Nelson.Xu@baumannnguam.com

Shane F.T. Black

sblack@baumannnguam.com

Whatever your immigration needs, we invite you to call or come see us. Your first consultation with an attorney is **FREE** of charge at **Baumann, Kondas & Xu.**



Website: www.baumannkondasxu.com

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An Overview

Immigrant Visas (Green Card)

- Family Based
- Employment-Based
- Other Special Immigration

Non-Immigrant Visas

- Work Visas
- Others

FAMILY-BASED PREFERENCES

Immediate Relatives of U.S. Citizens

- Spouse, Parents, Children (Under 21)
- No Waiting Period

Preferences

- F1 – Unmarried Sons and Daughters of U.S. Citizens
- F2A – Spouses and Children of Permanent Residents
- F2B – Unmarried sons and daughters (21 years of age or older) of Permanent Residents
- F3 – Married Sons and Daughters of U.S. Citizens
- F4 – Brothers and Sisters of Adult U.S. Citizens

An abstract graphic at the top of the slide featuring a wavy, layered design with a color gradient from yellow and orange on the left to green and blue on the right, set against a black background.

EMPLOYMENT-BASED PREFERENCES

EB 1

Priority Workers

- Extraordinary Ability

Outstanding Professors and
Researchers

Multinational Managers or Executives

EB 2

Members of Professions holding advanced degrees or persons of exceptional ability

- NATIONAL INTEREST WAIVER (NO PERM)

PROFESSIONALS WITH ADVANCED DEGREE (YES PERM)

EXCEPTIONAL ABILITY (YES PERM)

EB 3

Skilled Workers

•(YES PERM)

Skilled Workers (2 yrs experience)

Professionals (College degree only)

EB 4

Certain Special Immigrants

•RELIGIOUS WORKERS

- Organization – bona fide non-profit religious organization
- Religious worker (2 year experience)

EB 5

Employment Creation

•IMMIGRANT INVESTORS

- Regional Center
- Direct Investment



United States Department of State
Bureau of Consular Affairs

VISA BULLETIN

Number 15 Volume X

Washington, D.C.

IMMIGRANT NUMBERS FOR MARCH 2018

A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

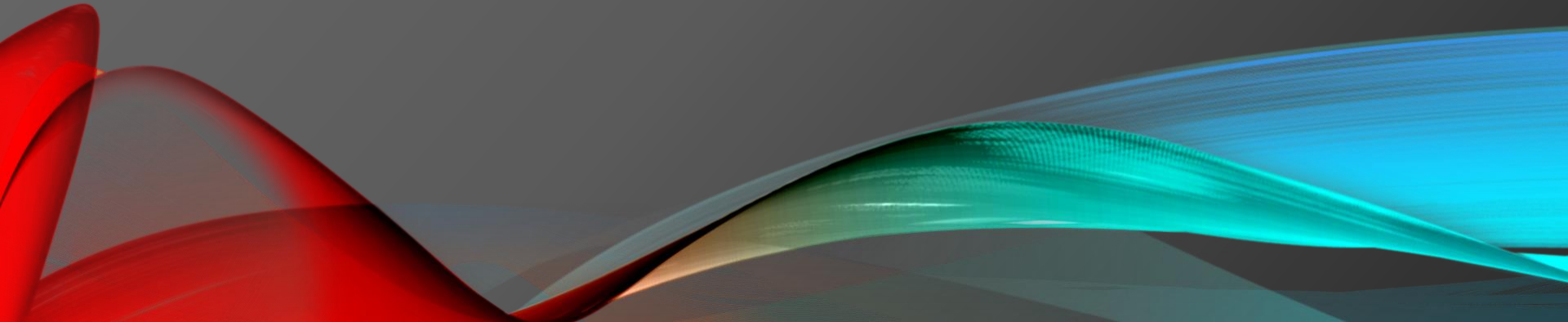
<u>Family-Sponsored</u>	All Charge-ability Areas Except Those Listed				
	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES	
F1	22MAR11	22MAR11	22MAR11	22JUL96	15OCT05
F2A	22MAR16	22MAR16	22MAR16	01MAR16	22MAR16
F2B	01MAR11	01MAR11	01MAR11	15OCT96	08SEP06
F3	15DEC05	15DEC05	15DEC05	22JUN95	22MAR95
F4	22AUG04	22AUG04	01FEB04	15NOV97	22NOV94

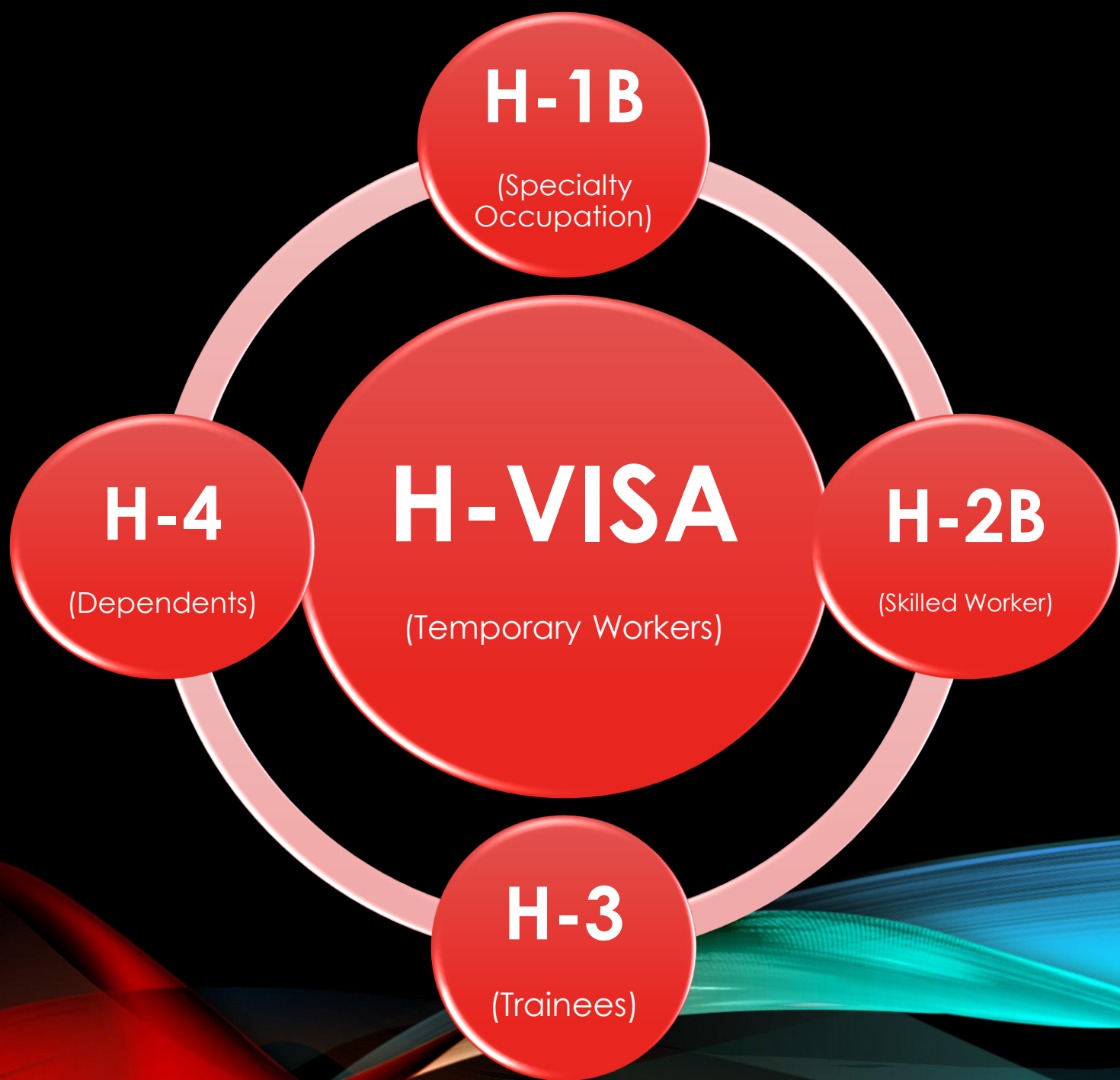
A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

<u>Employment-Based</u>	All Charge-ability Areas Except Those Listed					
	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	
1st	C	C	C	C	C	C
2nd	C	08DEC13	C	15DEC08	C	C
3rd	C	15NOV14	C	01JAN07	C	01MAY16
Other Workers	C	01MAR07	C	01JAN07	C	01MAY16
4th	C	C	01DEC15	C	01JUL16	C
Certain Religious Workers	C	C	01DEC15	C	01JUL16	C
5th Non-Regional Center (C5 and T5)	C	22JUL14	C	C	C	C
5th Regional Center (I5 and R5)	C	22JUL14	C	C	C	C

MOST COMMON NON-IMMIGRANT WORK VISAS





H-1B VISA

H-1B Visa is for professionals such as

- Teachers in all the private schools
- Doctors
- Medical Professionals
- Accountants at CPA firms
- Architects and engineers at professional architectural and engineering firms
- Architects, engineers and other similar jobs at construction firms
- Engineers and systems analysts at telecommunications companies and data processing businesses
- Data administrators and related jobs at insurance agencies

CAP

- Numerical of 85,000. Guam and CNMI Cap exemption expires December 31, 2019.

Enforcement

- Enforcement efforts are increasing
- Site visits are more common
- Penalties for non compliance are increasing

H-2B VISA

Eligible Countries

Philippines, Taiwan, Korea, Japan, Thailand, Etc.

H-2B Visa is for temporary skilled labor

- ❖ Skilled labor must have at least 2 years of experience
- Common in the construction business

Temporary Need

- One time occurrence (3 Years)
- Seasonal Need (9 Months)
- Peakload Need (9 Months)
- Intermittent Need (9 Months)

Procedures of applying for H-2B Visa

- Prevailing Wage Determination (USDOL)
- SWA Recruiting US workers (CNMI DOL)
- USCIS Petitions
- Consular Processing
- POEA Clearance (the Philippines)

ONE TIME OCCURRENCE:

The law requires a Petitioner to show one of the following to establish a temporary need based on a “one-time occurrence”

- The Petitioner has not employed workers to perform the services or labor in the past, and the petitioner will not need workers to perform in the future; or
- The Petitioner has an employment situation that otherwise permanent, but a temporary event short duration has created a need for temporary workers. See 8 CFR 214.2(h)(6)(ii)(B)(1)

PEAKLOAD NEED:

To establish a peakload need, the law requires a petitioner to “establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis *due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner’s regular operation.*” (Emphasis added.) See 8 CFR 214.2(h)(6)(ii)(B)(3).

- It is clear from the regulation that a peakload need must be of a limited duration. That does not mean that a peakload need may not recur on a periodic basis.

H-2B ISSUES UPDATE

National Defense Authorization Act (NDAA) – Military Realignment Visas

- What will Department of Defense (DOD) do?

Litigation – Non-Military Realignment Visas

- No Appeal from USCIS.
- Where do we go from here?

L VISA (INTRA COMPANY TRANSFER)

Qualifying relationship (parents, branch, subsidiary, affiliate)

Managerial or executive responsibilities for more than one year in the past three years (L-1A) abroad

Functional Manager, Matter of Z-A-, Inc., Adopted Decision 2016-02 (AAO Apr.14, 2016)

Blanket L allows large companies (\$25 million per year in sales) to prequalify and get expedited treatment for L visa applications

Recent anti L-1 visa fraud program means that USCIS requests more documentation

L-1 telephone contacts and site visit are becoming more common

E VISA (TRADER AND INVESTOR)

Treaty Countries

- Japan
- Korea
- Philippines
- Taiwan
- Australia

Investor (Principle Owner) or Employee

Active investment and hiring of U.S. workers (E2) or trade volume and percentage of the international trade with the U.S. (E1)

CW ISSUES IN THE CNMI

Historical Background

- The Consolidated Natural Resources Act of 2008 (CNRA)

Transitional Period

- November 28, 2009 – December 31, 2019

CW Cap

- FY2018 – 9998
- FY2019 – 4999
- FY2020 - 2,499 (Until 12/31/2019)

NMI Economic Expansion Act

- No CW1 for SOC 47-000 “Construction Extraction Occupations”

LAW FIRM OF BK&X

BAUMANN
KONDAS
& XU

*Attorney-at-Law
specializing in
business visas
and family
immigration.
Bilingual in
English and
Chinese.*



Website: www.baumannkondasxu.com

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In the News

Nelson J. Xu, J.D., Ph.D. Partner

Nelson J. Xu is a partner in the law firm of Baumann, Kondas & Xu, LLC -- one of Guam's leading law firms in U.S. immigration and business law. Xu became a partner in 2010 after working as an associate attorney with L.A. Baumann & Associates for five years.

Xu specializes in business visas and family immigration. He has twelve years of legal experience in civil litigation and general business law.

Born in Shanghai, China, he is bilingual in English and Chinese.

Xu holds a Juris Doctor from Hamline University School of Law in St. Paul, Minnesota; a Ph.D. in Economics of Education from the University of Illinois at Champaign, Illinois; an M.Ed. in Educational Administration from Pennsylvania State University in State College, Pennsylvania; and a B.A. in English and American Language and Literature from Fudan University in Shanghai, China. As an undergraduate student, he attended a one-year exchange program at Beloit College, Wisconsin.

Xu is a member of the Guam Bar Association, the Northern Mariana Islands Bar Association, and the New York Bar Association. He also is a member

E-mail: Nelson.Xu@baumannguam.com
Phone: 1 - (671) 477-9084 / 5 Fax: 1 - (671) 477-9087
Office & Mailing Address: Suite 903, DNA Bldg.,
238 Archbishop Flores St., Hagatna, Guam 96910 U.S.A.

Bar Association Admissions and Professional Memberships:

American Immigration Lawyers Association
Guam Bar Association, Active Member
Northern Mariana Islands Bar Association, Active Member
New York Bar Association, Inactive Member
U.S. District Court of Guam
U.S. District Court for the Northern Mariana Islands
Supreme Court of Guam
Supreme Court of Northern Mariana Islands
Supreme Court of New York

Work Experience:

2010 to present	Baumann, Kondas and Xu, LLC Partner	(Hagatna, Guam)
2005 to 2009	L.A. Baumann & Associates Associate Attorney	(Hagatna, Guam)
2000 to 2004	Mair, Mair, Spade & Thompson, Attorneys-at-Law Associate Attorney	(Hagatna, Guam)
2000	Kennedy & Graven, Attorneys-at-Law Law Clerk / Assisted lawyers in authoring chapter of Municipal Law in <i>Minnesota Practice</i>	(Minneapolis, Minnesota, USA)
1999	Moss & Barnett, Attorneys-at-Law Summer Associate	(Minneapolis, Minnesota, USA)
1998 to 1999	Green Tree Financial Corp. Law Clerk	(St. Paul, Minnesota, USA)
1988 to 1989	Shanghai Investment & Trust Corp. Foreign Exchange Trader in Shanghai, China Intern in Hamburg, Germany	

END OF PRESENTATION

Thank you!