

Kate Kalmykov ([00:13](#)):

Hello everyone, and welcome to the Immigration Insights Podcast, hosted by the Business Immigration and Compliance Group at Greenberg Traurig. My name is Kate Kalmykov and I am your host and I co-chair the group at GT, along with my partner Courtney Brooks, who is joining us today to discuss AI-driven RFEs that we are getting from USCIS. Hello, Courtney, and welcome to our podcast.

Courtney Brooks ([00:44](#)):

Hi, Kate. Thanks for having me.

Kate Kalmykov ([00:47](#)):

So as we know, USCIS has really at behest of the administration been issuing a lot of RFEs, really examining immigration applications closely these days. And we've definitely seen a surge both in the number of RFEs that applicants are getting across categories, but we have also seen that these are broader and that they are asking questions that haven't been asked before, that they are pulling data from other government agencies, from the news, from business listings like Dun & Bradstreet or Vibe and so we are seeing a lot more in our practice. And that is definitely something that companies and applicants need to prepare themselves for because RFEs are becoming the norm rather than the aberration in immigration practice.

([01:51](#)):

So in general, we know that USCIS using AI in the processing of cases. Do you want to talk a little bit about that and then we can go through the different visa categories with our listeners?

Courtney Brooks ([02:05](#)):

Absolutely. I would say that one thing our clients are seeing is really just, to your point, the data analytics that are driving RFEs. So when we're seeing data that's pulled in from a lot of different sources, but also the ability for officers in a shorter period of time to look into the documents that are provided in a much more detailed fashion, I guess we could say. So gone are the days where you're providing a lot of support documentation and the officers have a limited period of time to review and may focus on certain aspects of the case more than others. I think now officers are really taking a holistic look at all of the elements of the case. It's consistency, fact-checking externally, and that's really impacting how thorough the RFEs are. We can see very quickly that officers are able to issue RFEs that don't just cover one point, but may cover many points. Or if they are covering limited points, they will cover those points in very great detail.

Kate Kalmykov ([03:13](#)):

Absolutely. And it seems like to your point regarding consistency, they're looking at consistency in a company's immigration filing. So if you're saying one thing in one filing and providing different data in another, that's being flagged. And a lot of times we see that when companies are using multiple providers who don't have access to the same information, that can create inconsistencies.

([03:41](#)):

And we also see it on the individual level. So many times now when an applicant applies, for example, for a green card, USCIS will go back to their visa application submitted many, many years ago at the consulate, maybe even for a tourist visa, and comparing data that was provided by the applicant and comparing it to what's provided at the green card stage and flagging inconsistencies. Now this can be a serious issue because they can allege that there was a misrepresentation made, even though it may

have been innocent because maybe the dates don't match up or maybe with employment we frequently see that individuals may have had concurrent employment or multiple roles at one time, but they only listed one. And now when they go to apply for the green card, they're providing a more fulsome answer and the Service sees that oftentimes in a negative light and we have to explain to them that a misrepresentation was not made.

[\(04:41\)](#):

Likewise, sometimes a lot of our C-suite executives and high net worth individuals use agencies in their home country to assist them with preparing visa applications to the consulate, particularly for tourist visas in the past. And many times those companies may have submitted data that was inaccurate, the dates don't match, the positions don't match, the residences don't match, and then it gets flagged later on and it can become a serious issue. So it's important to keep copies of everything that is submitted in an individual's immigration application and also to review for consistency.

[\(05:25\)](#):

But let's go into the business immigration context. So we are seeing a lot more RFEs in the H-1B category and it seems that they are AI generated. We can often tell because the language will repeat from RFE to RFE. It will pull in data from sources that we didn't include in the application and it's questioning a lot of things. So specialized occupation, for example, RFEs are back. So I know Courtney, you work on a lot of H-1Bs with your clients, what are you seeing in that context?

Courtney Brooks [\(06:04\)](#):

Sure. One of the things that we're seeing is an increased focus on degree relation to the position. So not only whether a degree is related to the position, but why. I think a lot of times in the past we could give statements, make statements, explain that something was related, explain that something was needed, but now there's really this added layer of focus on exactly why that is. So gone are kind of just the statements and perhaps subjective evidence, but really a lot more objective evidence across all of the visa categories that we'll talk about today I think would be fair to say. But tying that degree to the position, explaining that a position is a specialty occupation.

[\(06:52\)](#):

And then in connection with that as well, we're seeing more questions on wage levels and job complexity. And with the changes that we've seen in the forms that support an H-1B petition, really looking for consistency among the forms and the LCA and the explanation and a lot of external sources that you mentioned as well. So what does a company have on their hiring website for similar roles or the same role? What have they used in the past? Does their description align with what we're seeing in different locations? It's again, much easier for officers to check a variety of different sources and prior petitions to understand why a statement that we're making is or is not true and whether they're going to question that.

[\(07:39\)](#):

So one of the things that you were mentioning just now that reminds me a lot of what we see in the H-1B context is going back to those prior petitions and looking if we indicated that someone or a particular position required a certain number of years of experience, why however many years later is that going to be different? And is it the number of years later that we would expect it to be for someone who is advancing in their particular position? So really looking at things from a variety of different angles and then issuing significantly complex occupational and general RFEs on the H-1Bs.

Kate Kalmykov [\(08:19\)](#):

We also see a lot of RFEs that will discuss maintenance of status. And this is so important because many of our H-1Bs have changed status in country and were students and then got selected in the H-1B lottery. And sometimes students may work without authorization, they may not be aware that there's a lot of limitations in the F-1 category of where they can work during their academic course of study. They're limited to 20 hours on campus per week or curricular practical training that has to be approved as part of their degree program by the International Student Office and submitted through SEVIS, or they get OPT work authorization post-graduation and they have to work for a company in a position that's related to their field of study.

(09:13):

And sometimes we will see violations where perhaps they worked during their course of study, maybe they worked during the OPT period, but it was completely unrelated to what their degree was in. And now we see more and more RFEs also questioning that. And I think there, USCIS definitely reviewing using AI tools, information against other databases where that information can be contained.

Courtney Brooks (09:44):

To the point that you made about status maintenance, I think also we were starting to see a little bit before the use of AI was as prominent as it is now, officers looking at pay statements, et cetera, to try to identify whether individuals on an H-1B had moved from one location to another and were then accordingly not maintaining status or whether the company had certain wage issues, et cetera. So that has become increasingly easy to be able to crosscheck a lot of those things as well. And something that I think we'll continue to see not only at the H-1B stage, but then when we're looking at future green cards and perm applications, et cetera.

Kate Kalmykov (10:28):

That's a really good point. Work locations are a big one, and with the popularity of remote work ever since COVID, it's just becoming more and more of an issue.

(10:40):

Now another category where we have really seen a surge in RFEs is the L-1 category. So the L-1 is an intercompany manager or executive or an L-1B is somebody who has specialized knowledge in their field or of the company's products or services. So I think in 20 years of practice, we see sort of cycles of RFEs related to L. Sometimes they focus on new offices. Sometimes they're just across the board. Maybe somebody already had L status or they're working for an established company, but we get this sort of kitchen sink RFE as we like to call it that's 10 to 12 pages long asking for a ton of information. So what kind of things, Courtney, are we seeing in the L-1 RFEs?

Courtney Brooks (11:35):

We're seeing very detailed L-1 RFEs. I would say this is probably one of the greatest points of frustration for clients right now, potentially even more so than the H-1Bs. I guess it most certainly depends on the client. But we are seeing a large focus on what an individual's actually doing, what their reporting chain looks like. So less focus really on what the title actually is, but what the job description then is. And then supporting documentation for direct reports. Are they professional employees? Asking for a very in-depth or very in-depth supporting documentation for that as well, payroll, resumes, degrees of all of the employees. And as you mentioned, we see this ebb and flow and it's not the first time we've had this type of trend from an L-1 RFE perspective, but it is the first time we see technology that's able to cross-reference everything that's available online and in other databases, et cetera.

(12:37):

We've also seen, at least in my experience, an increase in focus on the supporting corporate documentation to show relationship as well. I think that is in large part because of the complexity of determining those relationships in some instances, and maybe in the past, given the time limitations that officers had or depending on the types of cases that officers typically adjudicated, what their level of knowledge was with respect to corporate law and various relationships. And AI is now helping officers connect those dots, at least that's what I imagine is happening, and resulting in their ability to ask more in-depth and more sophisticated corporate questions regarding relationships.

Kate Kalmykov (13:18):

Absolutely. And sometimes, they're pulling information that may be out of date, but they're definitely using Vibe, they're using Dun & Bradstreet. They're trying to assess information through multiple databases. And that includes, by the way, for employees, their social media.

(13:37):

And that is something that HR needs to warn them about is that the AI is combing through social media. And so if we're saying you're now in an executive or managerial position and your LinkedIn doesn't reflect that, that can be flagged in these AI-driven RFEs.

(13:54):

They're also looking for where are you located? So if you're posting and you have a public profile and maybe you're working remotely on a beach somewhere in an exotic location, they're going to question whether you are truly overseeing staff, setting direction, having hiring and firing authority, budgetary authority, all of the things that go into an L-1.

(14:19):

Now in terms of the O-1, these are superstars, our extraordinary ability aliens. We have also seen RFEs that are really going through an in-depth AI search in reviewing whether someone truly has national or international acclaim and whether they are at the top of their field of endeavor. And here, we have the O-1, which is the non-immigrant work visa, but we also have the EB-1A, which is the green card counterpart. We really see that the RFEs do not necessarily give deference to a prior O-1 approval. If you are requesting an extension of O-1 status or if you're trying to move from an O-1 to the EB-1A green card, just because you were given and recognized as O-1 in the past doesn't mean necessarily that you will be at the green card or extension stage. They're really looking for updated information to show that you've made original contributions and that they have been sustained so that you have continued to make contributions.

(15:29):

So Courtney, let's talk a little bit about the O-1 RFEs.

Courtney Brooks (15:34):

Yeah, I think this one is particularly tough because earlier when I talked about how the government is really looking for objective evidence and not subjective evidence, in my mind, these classifications are really about as subjective as they get in the immigration context. We're really trying to explain someone's background and their extraordinary ability and what has gotten them to that point. And because every field is different and every individual is different, it does become very subjective when an officer is looking at things. And I believe in these categories we're also seeing really a drive for that objective evidence.

[\(16:10\)](#):

It's also one of the most, I would say, content-heavy petition types that we do with immigration. And that means that historically it has most certainly been a challenge to get through everything. And now that AI is able to help officers go through things, that can also help them do better research on the statements that we're making on particular publications or if we're talking about awards and media coverage and judging and all of those things where maybe we're referencing certain organizations that are abroad that would take some significant time to do research to make determinations. Officers have more of that information at their fingertips and they're going to be more stringent regarding what they're going to accept in terms of standards.

[\(17:00\)](#):

And I would say that those standards have been increasing because of that. And at minimum that they're asking more questions about the various statements that we're making and our arguments regarding those rising to the level of extraordinary ability.

Kate Kalmykov [\(17:16\)](#):

Now it's also interesting because for example, with an O-1, we often get an opinion from a professional organization that attests to whether the applicant has extraordinary ability. And it seems that they are definitely not giving deference to that. They want to go through their own search. They want to go through the criteria. It's no longer enough to have three out of eight or 10 criteria. They also want you to go through a final merits determination.

[\(17:47\)](#):

And they are doing a lot of independent checking. So for example, I recently did a case for a dancer who won numerous awards across Asia and we got an RFE back that said, "Well, you have awards in Asia, but what about the rest of the world?" And that's not the requirement and that's not the criteria because it's either you have sustained national acclaim, you could be a national champion and that would be enough, or you could be an international and Asia is a continent, so that necessarily includes different countries.

[\(18:23\)](#):

But that's the kind of RFEs that we have to fight back and push back against because they're really doing this rigorous final merits determination. And the final merits determination essentially is, okay, you met at least three of the criteria, but tell us again why we should consider you extraordinary?

Courtney Brooks [\(18:45\)](#):

I think that's a really good point, Kate, because just the fact that officers are using AI doesn't mean, just like anyone who's using AI, that AI is always going to be correct or that the statements or questions that an officer may be asking are correct. So I think when we are in this time of AI use, it is still really critical for a counsel that is looking at petitions to make sure that they are analyzing and understanding the questions, the evidentiary requirements, et cetera, so that in responding to RFEs, we're able to make the legal arguments that are necessary, not simply explaining or rather assuming that the statements are correct. So I think there's an added layer there for counsel as well that becomes really, really quite critical.

[\(19:40\)](#):

When you were talking about the additional research and vetting that officers are doing, I also think that's where individuals who are writing testimonial letters, not only professionals or experts, but also

the testimonial letters that we get from individuals who have worked with the client in the past and are attesting to their extraordinary ability, they're really making sure that those statements and work dates are accurate and line up. Oftentimes people may be reaching out to someone who is happy to help them. We need to make certain that the time can be cross-referenced, that when other sources are being pulled in, that we're very accurate with those supporting documents as well.

Kate Kalmykov ([20:21](#)):

That's a really great point. A lot of times I think when we counsel clients, we also tell them pick referees that don't know you because obviously whoever you worked for is going to say you're wonderful, you did a great job. But if you can find someone who's well-known in the field that knows about your work and can attest to it, it gives so much more weight than somebody who has a relationship with you in the eyes of USCIS. Which is of course completely counterintuitive to how a normal reference given where you actually want to hear from somebody who worked with the individual, but for this category, oftentimes we find that that carries more weight.

([21:03](#)):

Now a similar category is National Interest Waivers. So National Interest Waivers are a request for the government to waive the labor certification process that most employers go through when they sponsor foreign nationals in the U.S.. The typical PERM Labor Certification process requires that you advertise the position, and if there are qualified U.S. workers that respond and are available for the position, you can't proceed with sponsoring the foreign national because the goal of labor certification is protection of U.S. workers.

([21:38](#)):

Now an exception to that in the U.S. immigration law is the National Interest Waiver that says this person's work is so important. It's in the national interest. Let's waive the PERM process because it's more important for us to have this individual in the U.S. than it is for us to protect U.S. workers for this particular position for this particular area that they specialize in.

([22:02](#)):

And National Interest Waivers, their RFE and frankly denial rate has just skyrocketed in the past year. I was looking at it recently and I was just shocked. But we are seeing a lot of requests likewise in this category and a lot of the requests really focus on please confirm what is of national importance, what qualifies for that.

([22:30](#)):

So the law is broad. It doesn't just say, for example, cancer research is in the national importance, or focusing on, for example, being a hedge fund manager and bringing economic benefit is of national importance. In the past, I've done National Interest Waivers for opera singers who I've argued are in the cultural national importance for us to have. It's very broad because the national importance can be economic, it can be scientific, it can be healthcare, it can be cultural, it can be so many different things. It can be for athletes, it can be in shortage occupations.

([23:09](#)):

But the RFEs that we really are seeing are questioning what is of national importance and why are you and your work in particular of national importance not just in your home country, but for us to have in the United States? And a lot of times they sort of conflate the requirement with saying, "And show us the impact it's already made in the U.S." Well, that's very difficult to do if you're overseas and there is no

requirement for you to be here or to have work experience in the U.S. before filing for a National Interest Waiver. But that is a trend we are seeing in some of these AI generated RFEs.

[\(23:48\)](#):

Courtney, we're also seeing RFEs in the NIW context that focus on implementation and future impact of work and how are we dealing with those?

Courtney Brooks [\(24:00\)](#):

Sure. I think one of the things that we're doing in terms of approaching the NIW RFEs is trying to find the extent we can supporting evidence that we can put into either the initial petitions or of course the RFEs if questioned. And a lot of times that's looking to as well, what has the individual or organization done? What are future plans for that individual or organization? What's publicly available for us to actually pull from? Or what can an organization provide to demonstrate what continued R&D plans are, for example, or anything that we can actually show to indicate that the individual is going to continue to make an impact.

[\(24:45\)](#):

We're also looking at what the government is indicating is in the national importance. So are we able to pull government press releases or projects or contracts or things that are available to demonstrate how what the individual is doing, the organizations with which they've worked or their field in general is something that is a focus of the United States in an objective way, so that we're not only able to make the argument because as you mentioned, the classification is so broad, but we're able to provide some sort of objective evidence that others consider this to be very important as well.

Kate Kalmykov [\(25:24\)](#):

Yes. So I think the takeaway is measurable outcomes is what they're looking for.

[\(25:32\)](#):

Now let's turn to I-9 compliance. This is one of my favorite topics. And I think AI is very much being used in the I-9 compliance context. So employers are required within the first three days of hire to verify the identity and work eligibility of all new hires regardless of whether they're U.S. persons or international. And they are subject to inspection by the government, most notably Immigration and Customs Enforcement, though sometimes the Department of Justice can get involved if there are claims of discrimination of some sort.

[\(26:12\)](#):

Now in the I-9 context, we have been seeing a surge in activity because the administration has very much been focused on making sure that employers are in compliance, that they're not hiring individuals that are not work authorized. And in March, they actually issued enhanced penalties and basically said, "We're not going to forgive errors like we have in the past made in the I-9 context. If you make an error on a form, it doesn't mean we're going to say, okay, we'll forgive you if you correct it later on."

[\(26:46\)](#):

But what I think they're also doing is they're really using AI to verify company operations. They're going through their websites, their public records, third-party databases, and sometimes they may link different companies. So for example, real estate owners or developers may have many different entities and maybe they issue a notice of inspection and they see like, "Hey, this entity is non-compliant. The I-9s don't exist. They're done incorrectly. Now let's search for what other entities this developer owns and



let's audit the rest of them." And it becomes from a small audit, a huge thing that may impact the company's budget and their operations.

(27:35):

They're also checking employer consistency among filings, which obviously we have talked about, but I think we should focus on it some more. Because rather than just questioning it, there's sort of a presumption of you submitted misleading information and companies have to refute that. So what are some best practices that we suggest in those cases?

Courtney Brooks (28:00):

Sure. And I think really if I sum up what you're saying, and I would agree completely, immigration filings are now becoming sort of enterprise-wide compliance tools and filings. I always talk about the micro and the macro. Anyone can file one individual application that on its own looks fine. But when you're looking at it in the macro sense, and of course it can be challenging as you mentioned earlier, Kate, when you have filings that are across different providers over the years or perhaps you may have been with a provider that wasn't extremely focused on compliance and now you find yourself in a compliance environment. I think it's really-

Kate Kalmykov (28:45):

I think also, if I just jump in, one of the most egregious examples is when a company allows foreign nationals to hire their own counsel to make immigration filings on their behalf. And that is just so hard to control and it is so hard because you don't have access to the records, you're signing things under penalty of perjury that may not be accurate. And you don't know subsequently if someone else hires them, if they're using updated documents or not. That I think usually is the number one trigger for an audit.

Courtney Brooks (29:21):

Yeah. I think also from a best practice perspective with compliance, making sure that you have processes internally for how anything that is going to be provided with an immigration application is approved so that not a variety of different individuals internally can sign letters that individuals may be taking to use for immigration benefits, that we have an internal practice and protocol, potentially internal audits that are done, that you're looking not only at a go forward basis, but looking at what has been done in the past and what that may mean. And if you do spot inconsistencies, coming up with a plan for how you're going to address those inconsistencies, if there's anything you can do to remedy that and still be truthful moving forward. So it does take looking internally and at past practices to ensure that you are able to engage in best practices moving forward.

(30:18):

I also think that looking at consistency across not only immigration filings, but publicly available information as well. So we know that USCIS and officers are looking at this. So this is something that companies should be looking at as well as counsel that's preparing applications. And really having a strategy where you're building a case that's going to be easy for an officer to review from both a technology perspective, but also the officer if the officer, him or herself is looking at that application. So really taking into account how things are going to be reviewed, how we are presenting a case, the types of arguments that we're making, and trying to make it as easy for the government as possible to understand what the story and the picture and the petition actually is saying. And then again, making sure that it's consistent because if not, that's going to be pointed out.



Kate Kalmykov ([31:17](#)):

Absolutely. And I think we've never seen such coordination among government agencies as we see right now. So for example, we know that the DOL and the USCIS are coordinating things together. We know that the IRS and USCIS are coordinating things together because we have clients that get requests that reference tax returns. On the I-9 audits, we see that there are payroll records that may not match all of the I-9s that are being flagged. Even at naturalization interviews, officers know when an applicant has not paid or has gone into a payment plan on their tax returns and they are denying those applications, which I'm sorry, but in 20 years of practice we have not seen them do that or have that information at the tip of their fingertips.

Courtney Brooks ([32:14](#)):

I've seen that come up at CBP as well in terms of unpaid taxes in the past, et cetera. So I agree, it's just really crossing all agencies at this point in time. We're seeing an increase in the type of information that Social Security is requesting when they are looking into certain things as well. I would say we're also seeing an increase at the state level of audits and investigations of I-9s and E-Verify use, et cetera. So really just a lot of teamwork that's happening now.

([32:49](#)):

So I know you said we'd talk about I-9s and employer compliance, but I actually think that what you said about the cross-agency work and the increase in collaboration and sharing is really the key to what we're seeing from compliance efforts and what we'll continue to see moving forward because it's working.

Kate Kalmykov ([33:07](#)):

Absolutely. So I think in terms of takeaways, organization and consistency right now is key. You have to get your departments talking to each other. You have to get your immigration filings in order and standardized. Whether you work with one provider or multiple providers, you need to have a meeting of the minds and make sure you're sharing the most up-to-date information knowing that it will be verified.

([33:34](#)):

I think we also need to keep in mind that AI pulls from the internet. So you can also use AI to see what the government may see ahead of filings. And if you are concerned about maybe bad press or something that was posted, it's maybe in some cases beneficial to address it head on before the government does. And many times we suggest that and we do checks like that and we do background checks and we do all kinds of checks with our clients. We work oftentimes hand in hand with other practice groups like the employment law group to do stuff like that, bankruptcy for example, or tax.

([34:20](#)):

So Courtney, what is your sort of takeaway here for our listeners today before we wrap?

Courtney Brooks ([34:26](#)):

Yeah, I was going to add, and I would say this is probably a great takeaway, be prepared to provide more. Try to get comfortable with the fact that greater detail is going to be needed and speak with internal stakeholders about the fact that you're going to need greater detail and oftentimes more planning to pull documents. When we respond to RFEs, of course, companies, typically it's going to be relatively urgent. We want to get things turned around even if we have a particular period of time, but

also because in some instances we may be receiving these for time-sensitive transfers or individuals who are onboarding.

(35:05):

So the more documentation we can pull upfront, even if we may not be including it for strategic reasons in the initial filing, to have things ready and to make sure that the organization as a whole is prepared to provide greater detail. That's something I would be a takeaway for clients for sure, because it's tough to see a shift in what you have to provide and it's cumbersome.

Kate Kalmykov (35:29):

And I think it's generating a lot of angst that there are so many RFEs that the processes in general are taking longer. They're taking longer at the consulate, they're taking longer with USCIS, but that is becoming a new part of practice. It is something that we have to adapt to and we will deal with it, but it may take a little bit more work as you correctly noted.

Courtney Brooks (35:50):

Right. And I think transparency with employees about the fact that this is a trend, not that it means that an application's not going to be approved, but when there's that open communication with employees surrounding what's actually happening, which may feel different than the last time someone applied for an H-1B as an example. If the environment was different and the RFEs were different or the information being requested was different, that really just making sure that we understand that it is a stressful time in immigration for employees. In many instances, they're seeing that things are more challenging, they feel that. And the more communication surrounding what to expect within the process that employers can provide, the more comfortable individuals are going to be when they do see that yes, they've gotten an RFE, but that's pretty standard right now so they're not falling out of the normal process for what we're seeing.

Kate Kalmykov (36:45):

Thank you so much for joining us today. Your insights are always appreciated. And we hope that we'll continue to update our viewers and our listeners on what's happening with the AI use, because I think more than anything, this is the thing to watch because it's going to impact adjudications, it's going to impact RFEs, NOITs, denials. It's going to impact how appeals are handled at the AAO and of course travel. So this is such an important topic for business immigration. Thank you so much, Courtney.

Courtney Brooks (37:21):

Thanks for having me, Kate.