

# ~ IV BUSINESS SOLUTIONS ~

## WHEN ALL ELSE FAILS

Friday, October 29, 2021  
11:15-12:15 p.m.



### Presented By:

- Linda Rose (DL)
- Maggie Murphy
- Neena Wiora

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## LITTLE KNOWN FACTS ABOUT OUR PANELISTS

- Linda: Jazz musician; training to climb Mt. Kilimanjaro
- Maggie: Travel and Music - just got back from a yacht cruise through the Croatian islands while listening to Yacht Rock
- Neena: Trivia nerd; wants to time-travel to Jane Austen's world; loves 70s music

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## I-140 DOWNGRADES

- **EB-2 to EB-3** – Not an issue today, but likely to recur tomorrow
- **Best practices**
  - Which box to check and why
  - How to return erroneously rejected petition
  - How to avoid a wrongful rejection
- **New PERMs** - EB-2, can I do an EB-3 I-140?
- How to insert a downgrade petition into pending AOS
- Evidence needed at all stages



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## UPGRADES

- How to get EB-2 classification for an EB-3 PERM?
- Draft EB-3 perm with EB-2 exceptional ability in mind – must anticipate and use exceptional ability language in the PERM
- Upgrade with new PERM or EB-1 -- How to associate new I-140 with pending AOS?



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# PERM

## BENEFICIARY OWNERSHIP

- **FACTORS TO CONSIDER**

- FN hiring control
- Relation to corp. officers, directors, employees;
- Incorporator or founder
- Ownership interest
- Management
- On board of directors
- One of small number of employees
- Qualifications identical to requirements
- “Inseparable” from business

See *Modular Container*, 89 I&N 228 (July 16, 1991). See also *Matter of MMB Stucco, LLC*, 2011 PER 00715 (BALCA May 7, 2012). No single factor controls. *Matter of Carolina*, 2016 PER 00420 (BALCA June 28, 2018).

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# PERM

## FAMILY RELATIONSHIPS



- Relationship created by blood, marriage, or adoption
- Cousins of all degrees
- Aunts and uncles
- Grandparents and grandchildren
- In-laws
- Step-family members

See *Bestkey Solutions*, 2014 PER 1248 (BALCA April 6, 2018), quoting OFLC FAQ. See also *Matter of Carolina*, 2016 PER 00420 (BALCA June 28, 2018); *Matter of Professional Dialysis Center, LLC*, 2016 PER 00657 (BALCA June 6, 2018).

This issue comes up at the I-140 stage, too. Favorable decisions: *In re: 15757576* (AAO) Apr. 15, 2021; *In re: 11198725* (AAO) Mar. 12, 2021).

“We Are Family” by Sister Sledge

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45<sup>th</sup> Annual Conference on Immigration and Nationality Law session  
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