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WHITEPAPER

YOUR EMPLOYER'S ATTORNEY IS NOT YOUR ATTORNEY:

The Independent Legal Rights Every
H-1B, L-1, and TN Professional Must
Understand

Your company has immigration counsel.
Now you do too.

Executive Summary

Year after year, professionals on H-1B, L-1, TN, and O-1 visas make career-defining immigration decisions – switching jobs, riding out green card backlogs, surviving layoffs, renewing visas – without once speaking to an attorney whose loyalty runs to them rather than to their employer.

The reason goes to the structure of the system itself.

Employer-sponsored immigration is handled by counsel hired and paid by the employer. That attorney answers to the company; not to you. Their job is to keep the company compliant, not to safeguard your personal immigration future. Nobody in this arrangement has done anything wrong; the conflict of interest is not a bug; it is how the ethics rules are designed to work. It just happens to leave the employee without representation.

What follows is a plain-language explanation of where employer immigration counsel's authority ends, what independent immigration counsel for professionals actually means in practice, and why getting your own attorney – before a career event demands it – is among the most important things a visa-holding professional can do.



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1 SECTION

The Structural Conflict at the Heart of Employer Immigration

1.1 Who Does Your Employer's Immigration Lawyer Actually Represent?

When a company retains an immigration law firm to handle H-1B filings, PERM labor certifications, or L-1 transfers, the law firm has one client: the employer. Full stop. The attorney-client relationship in employer-sponsored immigration is formed between the law firm and the company; not between the law firm and you. That distinction has real consequences.

Specifically, the employer's attorney:

- Cannot advise you on options that conflict with your employer's workforce strategy
- Cannot share information with you that is privileged between the attorney and the company
- Cannot prioritize your personal green card timeline over the employer's filing schedule
- Cannot advise you on what happens to your status if you leave; because your departure is not in the employer's interest
- Cannot represent you if a dispute arises between you and your employer over your immigration case

The Fundamental Rule of Immigration Representation

In employer-sponsored immigration, the attorney-client relationship connects the law firm to the employer. The visa-holding employee is the beneficiary of the petition; not the client. That difference, though it sounds technical, shapes every interaction you have ever had with that attorney and every piece of advice you have or have not received from them.



1.2 The Five Situations Where This Conflict Becomes a Crisis

During quiet stretches – routine H-1B extensions, PERM filings progressing on schedule – this misalignment tends to stay out of sight. It surfaces at moments of professional transition, and those moments arrive for almost everyone who has been in the employer-sponsored system long enough.

The five most common are:

Inflection Point	What the Employer's Attorney Focuses On	What the Employee Needs
Job change or promotion	New LCA compliance; role reclassification for H-1B	Portability eligibility; risk to green card priority date; new employer strategy
Layoff or RIF	WARN Act compliance; workforce reduction logistics	Grace period options; post-layoff status preservation; emergency alternative visa strategy
H-1B lottery outcome	Company workforce planning if employee not selected	Personal O-1, NIW, EB-1A, TN, or self-petition alternatives
Green card backlog management	PERM compliance; employer obligation management	Priority date strategy; EB-2 NIW self-petition analysis; EB-1A eligibility assessment
Employer acquisition or merger	I-9 compliance; successor-in-interest analysis for the company	Personal status continuity; portability to new entity; independent options if position is eliminated

The 5 Crisis Inflection Points



Job Change
or Promotion



Layoff
or RIF



H-1B Lottery
Outcome



Green Card
Backlog



Acquisition
or Merger

Employer Counsel:

LCA / H-1B
compliance

WARN Act
logistics

Workforce
planning

PERM
compliance

I-9 /
successor
analysis

Employee Needs:

Portability
& priority
date

Grace period
& alternatives

O-1, NIW,
EB-1A options

NIW / EB-1A
self-petition

Status
continuity



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1.3 What 'Parallel Representation' Means in Practice

Retaining independent immigration counsel does not mean going to war with your employer. The practice at IS Law Firm is built around a parallel representation model; a separate attorney, working alongside the employer's existing counsel, whose only job is to advise the employee. No conflict, no coordination that crosses professional lines, and no distortion of advice by competing loyalties.

This approach is ethically straightforward because the two representations serve entirely different clients. There is no improper overlap. The employer's attorney manages the company's compliance obligations. The employee's attorney answers only to the employee, and advises accordingly.



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2 SECTION

What Your Employer's Immigration Lawyer Cannot Tell You

2.1 The Advice Gap; A Structured Analysis

The table below maps the immigration questions that matter most to working professionals against what employer-retained counsel can and cannot address. The gaps are not abstract; they represent genuine legal exposure that a significant number of visa-holding professionals are carrying right now, often without realizing it.

Immigration Question	Can Employer's Attorney Answer?	Why Not	Independent Counsel Required?
Should I change employers?	No	Advice would conflict with employer's retention interest	Yes
What happens to my I-485 if I leave?	Partial; employer compliance only	Portability analysis requires employee-side review	Yes
Am I eligible for EB-1A or NIW self-petition?	No	Self-petition routes employer out of the equation entirely	Yes
What is my 180-day portability window?	Employer-side version only	Employee risk analysis requires separate counsel	Yes
Can I consult with you if there's a dispute?	No; conflict of interest	Cannot represent both employer and employee	Yes
What are my options if I'm laid off?	Company-focused grace period management	Employee options – O-1, NIW, B-2, change of status – not employer's concern	Yes
What if I want to negotiate my PERM role?	Not possible; conflict	Role negotiation implicates employer's labor certification compliance	Yes



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The Advice Gap: What Employer's Counsel Cannot Answer

Should I change employers?	NO	YES
What happens to my I-485 if I leave?	PARTIAL	YES
Am I eligible for EB-1A or NIW?	NO	YES
What is my 180-day portability window?	PARTIAL	YES
Can I consult if there's a dispute?	NO	YES
What are my options if laid off?	NO	YES
Can I negotiate my PERM role?	NO	YES



2.2 The Green Card Backlog Trap

For nationals of India and China, the employment-based backlog is not an inconvenience; it is a generational problem. EB-2 and EB-3 applicants from India sponsored through the PERM process are looking at wait times that can stretch into decades. The professionals most exposed to that reality are the ones whose entire immigration strategy has been delegated to an employer-retained attorney who has never been asked to look beyond the employer-sponsored pathway.

The EB-2 National Interest Waiver (NIW) and EB-1A Extraordinary Ability categories allow professionals to self-petition; cutting out the PERM process and eliminating employer dependency entirely. Neither category is reserved for Nobel laureates. Both are used regularly by physicians, engineers, researchers, technology executives, and other skilled professionals who satisfy established evidentiary criteria. Whether a given professional qualifies is an analysis their employer's attorney has never been asked to perform, and in most cases never will be.

The NIW and EB-1A Self-Petition Gap

The employer's immigration attorney was not hired to tell you whether you could bypass your employer's process entirely. Their scope is limited to what the company needs filed. An independent attorney can run a self-petition eligibility analysis in a single consultation; a conversation that, depending on the individual's profile, may materially affect how they approach their long-term immigration planning.



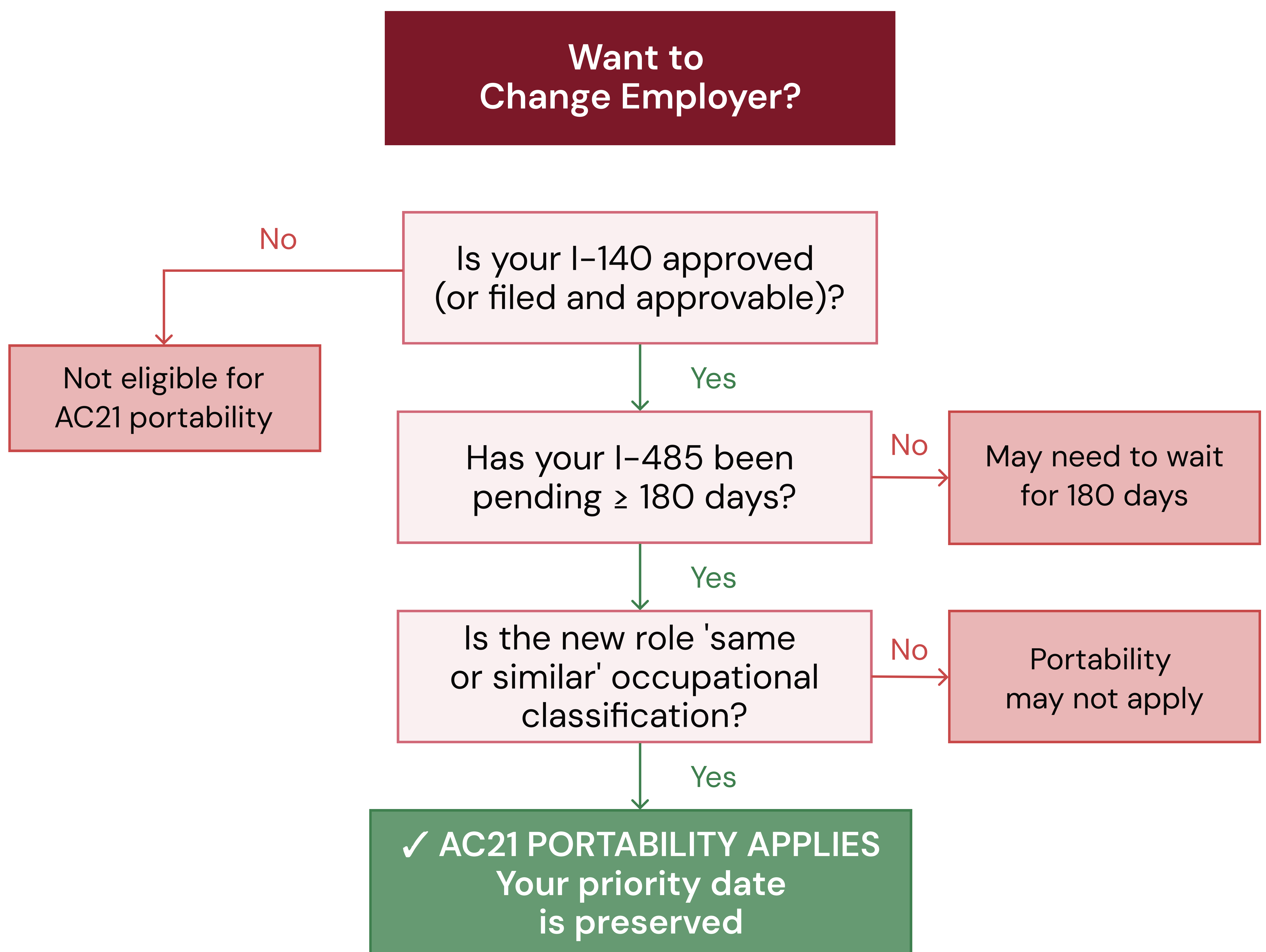
2.3 The H-1B Portability Window; The Most Misunderstood Rule in Employment Immigration

Under AC21 (the American Competitiveness in the Twenty-First Century Act of 2000), an H-1B holder whose I-140 has been approved – or whose I-140 was filed concurrently with the I-485 and remains approvable – and whose I-485 adjustment of status application has been pending for 180 days or more, may change employers or job roles without losing their priority date, provided the new position falls within the same or a similar occupational classification. Critically, the 180-day clock runs from the date USCIS received the I-485, and portability under INA § 204(j) (8 U.S.C. § 1154(j)) applies even where the I-140 was not yet formally approved at the time of the job change, so long as it is ultimately approvable. Portability is among the strongest protections the law gives to employment-based green card applicants; and it is, in this attorney's experience, among the most consistently misunderstood.

The 180-day window, the same-or-similar standard, and the way portability interacts with maintaining valid nonimmigrant status are not self-explanatory, and the stakes of getting them wrong are significant. An employer's attorney applies portability from the company's vantage point. The employee needs to understand what it actually means for their own options.



AC21 Portability Eligibility Flow



*The 180-day clock runs from USCIS receipt of I-485, not from USCIS approval.
Consult independent counsel to confirm same-or-similar analysis.*



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3 SECTION

Who Needs Independent Immigration Counsel; A Professional Profile

3.1 The Target Professional

This practice at IS Law Firm serves professionals across a range of visa categories and employer sizes. What they have in common is not their immigration status; it is the fact that their personal immigration interests do not map cleanly onto what their employer's filing program is built to handle. Some are actively dealing with a problem. Others are simply starting to ask questions nobody has answered for them yet.



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Profile	Primary Risk Without Independent Counsel
H-1B holder considering a job change within 1–3 years	Priority date loss; portability miscalculation; new employer H-1B timing risk
L-1B employee whose transfer was arranged by the sending company's law firm	No independent assessment of L-1A eligibility, O-1 viability, or employer-independent options
PERM-sponsored professional in multi-year EB-2 or EB-3 backlog	No analysis of NIW or EB-1A self-petition eligibility; employer dependency without alternative
Physician at employer-sponsored J-1 waiver site	Conrad 30 / IHS waiver terms not independently evaluated; obligations not assessed from employee perspective
Professional at company with active layoff risk	No emergency planning; grace period options not structured in advance of separation
O-1 employee approaching visa expiration	Extension framing, evidentiary package, and independent advisory not employer's concern
Executives and senior engineers with national recognition	EB-1A eligibility not assessed; employer controlling green card path when self-petition may be faster
Professionals who have never spoken with an attorney independent of their employer	No baseline understanding of personal rights, options, or exposure



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3.2 The Northern Virginia Professional; A Specific Market Context

Northern Virginia is home to one of the densest concentrations of employer-sponsored visa holders in the country. The technology, defense contracting, and healthcare sectors that define this region – Amazon HQ2, Booz Allen Hamilton, Leidos, SAIC, Northrop Grumman, Capital One – collectively sponsor tens of thousands of H-1B, L-1, and TN professionals at any given time.

What these professionals share is that their employers run substantial, well-staffed immigration programs; programs that are genuinely good at what they do, and genuinely limited to what they are designed to do. None of those programs have a mechanism for looking out for the individual employee's personal immigration future. That only happens if the employee makes it happen.

IS Law Firm built this practice specifically for this market; structured around the employee's interests rather than the employer's compliance calendar, and designed to complement, not disrupt, whatever employer-sponsored program the client is already part of.



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4 SECTION

The Independent Immigration Counsel Engagement; What to Expect

4.1 Personal Immigration Status Review

The starting point for most clients is the Personal Immigration Status Review; a confidential, one-on-one assessment of where the individual actually stands: current status, pending filings, risks on the horizon, and options the employer's process has never surfaced. It is built around the client's specific case history, not a general checklist.

The Status Review covers:

- Current status validity and maintenance requirements
- Green card priority date analysis and backlog projection
- AC21 portability eligibility and same-or-similar analysis
- NIW and EB-1A self-petition eligibility assessment
- Career-change immigration strategy options
- Employer-change timeline and risk assessment
- Emergency planning triggers and preparation



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4.2 Employer-Sponsored Strategy Second Opinion

Where an employer is already managing an active PERM, I-140, or I-485 case, independent counsel can look at the same record through a different lens; one focused on the employee rather than the company.

What turns up in those reviews is often things the employer's attorney had no reason to flag:

- PERM job description that unnecessarily narrows future portability options
- I-140 filed in the wrong preference category
- NIW or EB-1A eligibility that would allow the professional to file independently and bypass the backlog
- Missed opportunities to preserve priority dates across employer transitions



4.3 Post-Layoff Emergency Planning

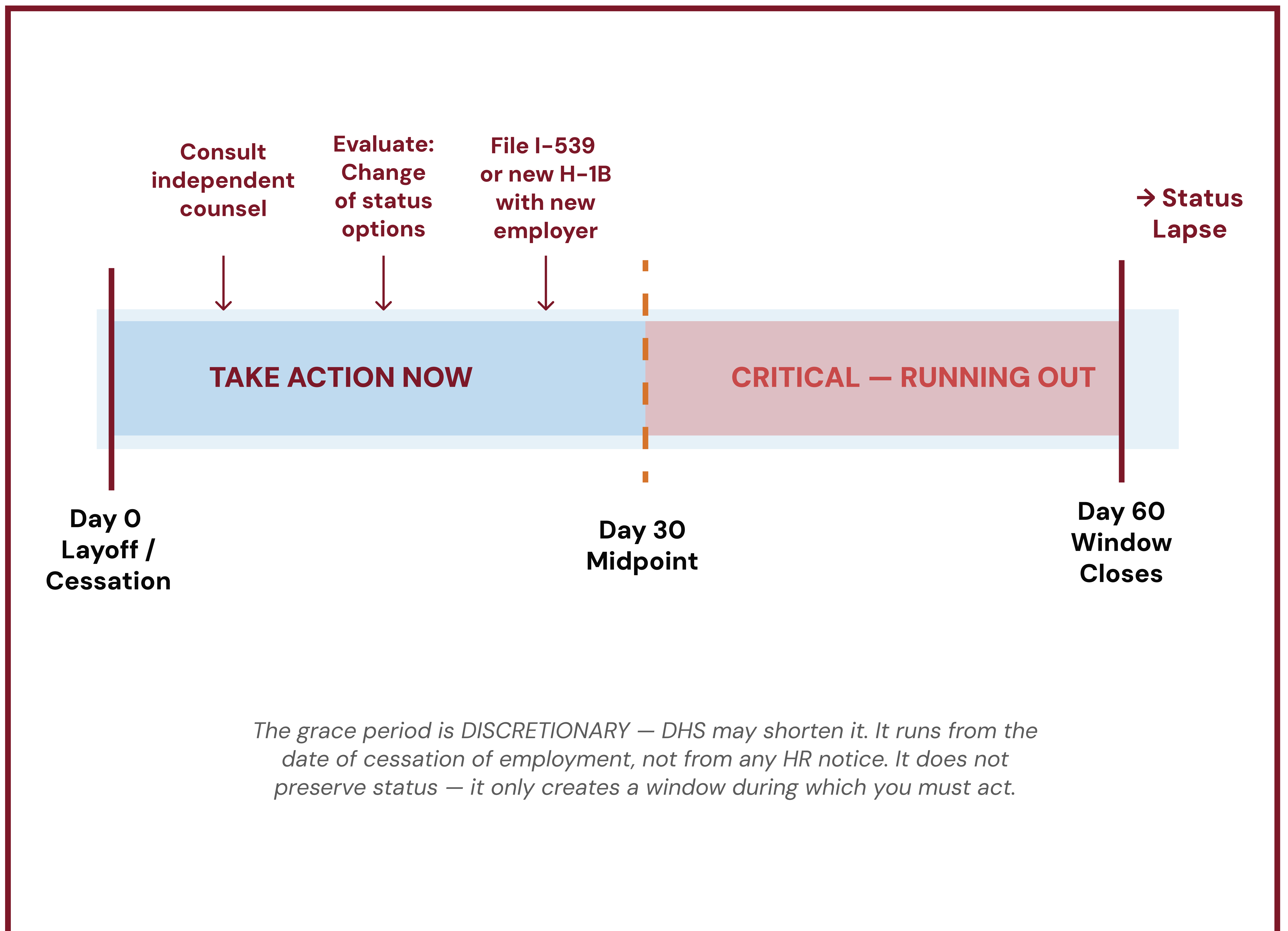
A layoff is, from an immigration standpoint, the most time-pressured event most visa-holding professionals will ever face. The 60-day grace period for H-1B, L-1, and certain other status holders does not manage itself; it opens a window within which specific, sequential decisions must be made: whether to pursue a change of status, what alternative visa categories may apply, and how to preserve a priority date or pending I-485 through the transition. The SBO4 practice prioritizes post-layoff consultations and aims to respond promptly to time-sensitive inquiries. Days matter in this context, and we treat them accordingly.

The 60-Day Grace Period; What It Is and What It Is Not

Under 8 C.F.R. § 214.1(l)(2), workers in E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN status are not considered to have failed to maintain nonimmigrant status solely on the basis of a cessation of employment; for up to 60 consecutive calendar days or until the end of the authorized validity period, whichever is shorter. Two points are critical and frequently misunderstood. First, the 60-day window runs from the cessation of employment itself, not from any formal HR notification or paperwork date. Second – and this is a point many professionals learn only too late – the grace period is discretionary. DHS may shorten or eliminate it based on the facts and circumstances of a particular case. It is not an unconditional right. The grace period creates a window during which the individual must take affirmative legal action; it does not itself preserve status. Independent counsel retained before a layoff event, not after, puts the professional in a materially stronger position to understand and act on the options available to them.



The 60-Day Grace Period: A Closing Window



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5 SECTION

The Long-Term Case for Independent Counsel

5.1 Immigration Is a Long Game; And Your Employer's Timeline Is Not Your Timeline

The EB-2 backlog for Indian nationals, as of mid-2026, runs into decades. H-1B holders, on average, change employers more than twice before reaching permanent residency. And the career path of virtually every professional on an employer-sponsored green card will include, at some point, at least one significant event – a job change, a promotion into a different role, a company restructuring, a layoff – that forces a personal immigration decision their employer's attorney is neither positioned nor retained to help them navigate.

Retaining independent counsel is not about preparing for the worst. It is about recognizing, early enough to act on it, that the immigration decisions that matter most in a professional's career are personal decisions; and personal decisions require an attorney who is actually working for you.



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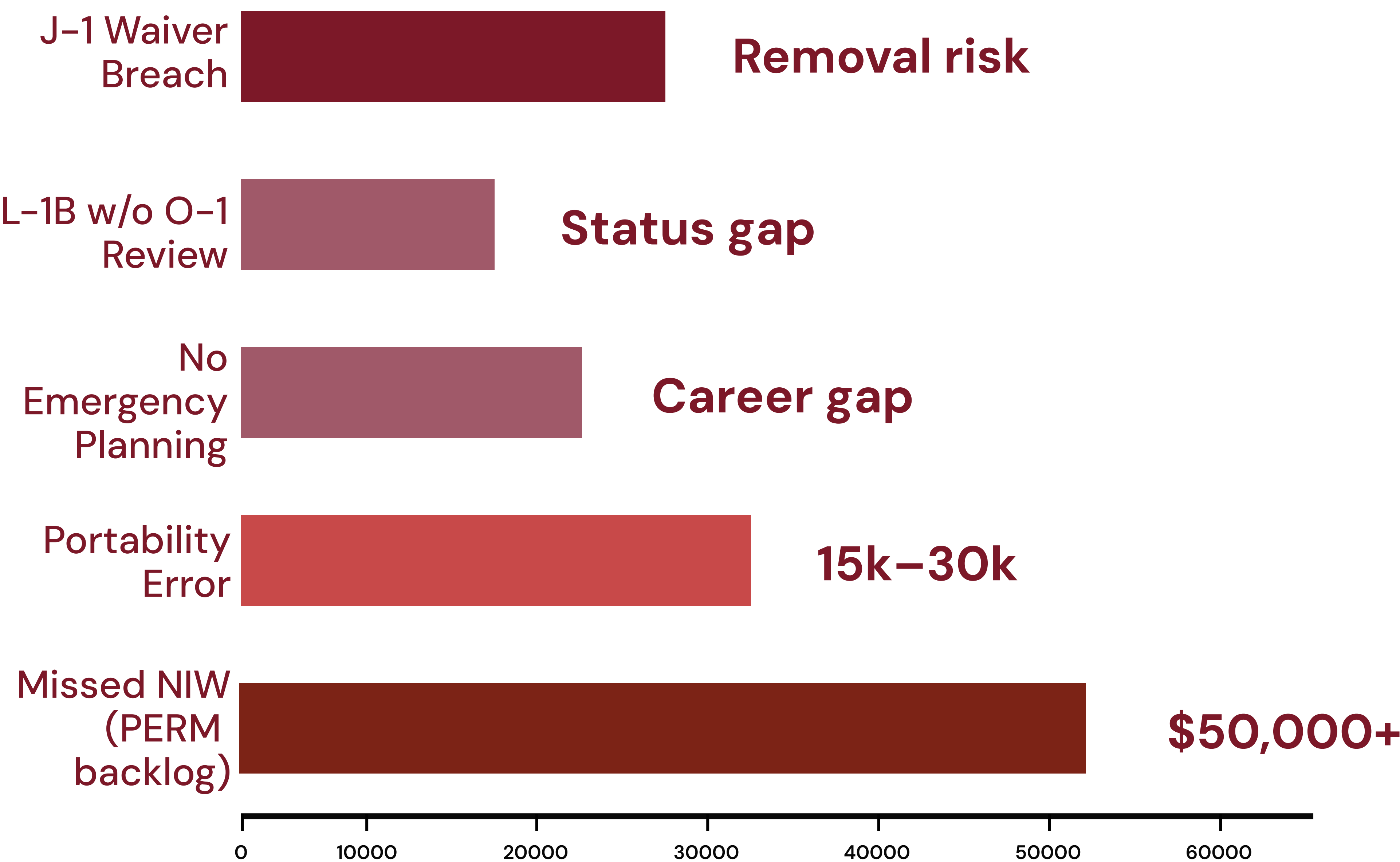
5.2 The Cost of Not Having Independent Counsel

The table below illustrates the types of financial and timeline consequences that can arise when professionals navigate major immigration events without independent counsel. The figures shown are illustrative estimates based on the kinds of outcomes immigration practitioners commonly observe; actual costs and timelines vary significantly depending on individual circumstances and cannot be predicted or guaranteed.

Event Without Independent Counsel	Typical Outcome	Illustrative Cost / Timeline Range
Missed NIW eligibility; 5 years in PERM backlog	Priority date waiting in EB-2 India queue	10–30 additional years in backlog; \$50,000+ in employer dependency costs
Portability error at employer change	I-485 denied or priority date lost	\$15,000–\$30,000 in refile costs; 12–18-month delay
No emergency planning before layoff	Status lapse; overstay; forced departure	Reentry bar; career interruption; family disruption
L-1B without independent O-1 assessment	L-1B denial; no alternative pathway identified	6–12-month gap in authorized status; career interruption
J-1 waiver terms not independently reviewed	Breach of waiver obligation; removal consequences	Potential removal; 2-year home residence requirement reimposed

Cost of Not Having Independent Counsel

Financial Exposure



Timeline Delays



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6

SECTION

How IS Law Firm's Independent Immigration Counsel For Professionals And Employees Practice Work

6.1 Non-Adversarial Parallel Representation

IS Law Firm's Independent Immigration Counsel practice works alongside your employer's immigration attorney; not in opposition to them. Our engagement with you does not create a conflict with your employer's legal program and does not put you in a difficult position professionally. It simply ensures that when the decisions that belong to you come up, you have someone in your corner who is actually working for you.

The Northern Virginia professional market, with its concentration of large technology and defense employers running sophisticated immigration programs, is precisely the environment where this gap between employer-focused and employee-focused representation tends to be widest; and where the consequences of that gap show up most clearly when something goes wrong.



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6.2 Confidentiality and Independence

Every IS Law Firm engagement is fully confidential. Your employer does not know you have consulted with us. Our advice is privileged between you and IS Law Firm. There is no coordination with your employer's counsel without your explicit consent. That confidentiality is not incidental; it is the whole point. Advice given without concern for how it will be received by your employer is fundamentally different advice than what you get from counsel who serves both.



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