



by Matthew Porter

How to Market Oneself in Changing Times

I am a fan of the American poet laureate, Bob Dylan. He wrote songs that relay axiomatic conditions of the human experience. When Dylan sang, “You better start swimmin’ or you’ll sink like a stone, for the times they are a-changin’,” he captured the spirit of social and political upheaval that characterized the 1960s. Like a teacher using a metaphor as a tool for enlightenment, Dylan’s anthem for change dared people to go outside their comfort zones and overcome the obstacles that stood in the way of change. This idea can inspire today’s young business immigration lawyer to embrace the change that governs the practice of immigration law and market oneself in a new and unique way.

The Changing H-1B Visa

Case in point: On January 8, 2010, Donald Neufeld, U.S. Citizenship and Immigration Services (USCIS) Associate Director, Service Center Operations, issued a [memorandum](#) that immediately sent shock waves through the legal and business community. USCIS’s stated purpose for issuing the “Neufeld memo” was to strengthen the integrity of the H-1B program by making USCIS’s requests for evidence (RFE) more consistent and reliable, which the agency believed would level the playing field for those seeking H-1B benefits. The memo, however, caused a shift away from approving H-1B visas for beneficiaries working as third-party worksite consultants. It, therefore, became less cost-effective for companies to sponsor and employ foreign workers under the H-1B program because of the additional work necessary and the higher likelihood that an application would receive an RFE. Business immigration lawyers needed to build the attorney-client relationship during a tumultuous period with the intent of assuring clients that the H-1B visa was still viable. Here is where the skills of marketing come into play.

The Four “Ps” of Immigration Marketing

In the quest to find answers to problems caused by

immigration policy changes, the business immigration lawyer may discover that building a successful practice and marketing oneself in a fickle environment lies in the ability to use change to his or her advantage. The young immigration lawyer—whether recently admitted to the bar or having just hung his or her shingle—can use the Neufeld memo, or any other changing rule or agency guidelines, as a marketing tool.

In every industry, there are four major elements of a business’s marketing mix: (1) product, (2) price, (3) promotion, and (4) place. These are commonly known as the “four Ps” of marketing. In the immigration context, the four Ps have a slight variation. They are (1) product, (2) promotion, (3) partnership, and (4) providing a path. Each change in the law presents a new opportunity to provide better services to the client (product), establish oneself as the expert on that subject (promotion), and create an ongoing relationship through collaboration with the client (partnership) to provide new processes or procedures (providing the path) to achieve a client’s goals.

How to Use the Neufeld Memo

The Neufeld memo, for example, sets forth changes in immigration policy that provide an immigration lawyer the perfect opportunity to put the four Ps of immigration marketing into practice. The memo sets forth 11 factors that must be addressed in preparing any third-party placement H-1B visa—whether for a request for extension, transfer, or new petition. It effectively requires employers to fundamentally change the way they hire and manage their employees. The business immigration lawyer can strengthen client relationships by clearly explaining what new evidence is necessary under the changing policy, and, more importantly, why it is now necessary.

For an H-1B visa in the post-Neufeld memo era, a new employee’s duties should



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be clearly stated in the initial offer of employment and should remain constant throughout the chain of contracts—through any middle vendors—to the ultimate end-client. The work order should be reviewed to ensure that the employee is referenced by name and that his or her duties are consistent with the initial offer. Because the work order is a standardized document, it may not be sufficient to document a full three-year H-1B approval, even if the assignment is expected to be long-term. The end-client letter, therefore, should provide that the H-1B worker’s project is expected to continue during the next three years. The clients may not understand why they must make these changes. Thus, the business immigration lawyer must show clients the quality of the documentation they must maintain as a part of their business practice in order to receive H-1B visas.

The business immigration lawyer can use his or her knowledge of the Neufeld memo requirements to help the client incorporate best practices and procedures into its business model. The product that an attorney offers is the service of ensuring that the client complies with the new requirements. An attorney can promote him- or herself as the expert by counseling the client to revise its policies and procedures to ensure that the requisite supervision and control elements are properly addressed. This will certainly involve collaboration and partnership with the client and may require the attorney to visit the client’s headquarters to examine the company’s human resources practices. This partner-



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ship involves revising the client company’s policies and procedures manual or employee handbook to require, among other things, mandatory weekly calls, site visits, training sessions (in person or by webinar), and evaluation of the work product of the assigned employee. Since USCIS examines the evidence, not crafty arguments, in deciding whether to approve or deny a visa petition, the lawyer must provide the path to approval by reviewing and reworking the supporting documentation.

Change Is Good

The business immigration lawyer today should support and nurture clients during the entire visa process, regardless of the visa category sought. Dylan sang “the order is rapidly fadin’, and the first one now, will later be last, for the times they are a-changin’.” The times have changed in the H-1B context and will continue to change, creating a greater need to provide comprehensive business immigration solutions. This is a perfect opportunity to review your strategic plan to ensure that your business is focused on some variation of the four Ps of immigration marketing. The Neufeld memo provides just one example of the many opportunities for the business immigration lawyer to creatively market oneself and create long-lasting relationships with clients. Change does not have to be frightening—it can be the start of a beautiful relationship! ▼

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