

Everything You Need To Know About Hiring Foreign Medical Graduates

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CLARK HILL PHYSICIAN IMMIGRATION TEAM

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INTRODUCTION: THE J-1 VISA

- Foreign Medical Graduates (FMGs) are nationals of countries other than the United States who have undergone residency and/or fellowship training in the United States.
- Most FMGs undertake their training in either H-1B or J-1 status.
- All physicians undertaking training in J-1 status are sponsored and regulated by the Educational Commission on Foreign Medical Graduates (ECFMG).
- All ECFMG-sponsored J-1 physicians have a built in requirement which mandates that the physician return to his/her home country for two years before he/she may obtain most other nonimmigrant statuses and lawful permanent residence in the United States. This is called the two year Home Residence Requirement (HRR).

WAIVING THE TWO YEAR HOME RESIDENCE REQUIREMENT

- The physician may waive the two year HRR and remain in the United States to accept permanent employment if he/she is able to obtain the support of an Interested Government Agency (IGA) or can prove Hardship or Persecution if he/she were forced to return to the home country.
- A No Objection Statement from the physician's home country does not override the HRR but will be required if the physician received government funding for their training.
- We will discuss all three types of J-1 waivers and potential alternatives to the J-1 waiver for your reference, but our main focus will be on Interested Government Agency (IGA) waivers because these are employer-sponsored.

COMPARISON OF IGA WAIVERS – STATE PROGRAMS

- Conrad State 30 Program
 - Every state can grant up to 30 J-1 waivers each year to physicians who will treat the medically underserved. In almost every state, the application period begins on October 1 of each year for physicians to start work the following summer.
 - FLEX waiver option: states can give 5 or 10 waivers each year to physicians working in non-underserved areas but more competitive states will not do so.
 - Some states are amenable to subspecialists, while others highly prefer primary care. Psychiatry is considered primary care in most states.

COMPARISON OF WAIVER PROGRAMS – FEDERAL

- Federal J-1 Waiver Programs
 - Unlimited number of waivers available each year and throughout the year
 - Mostly limited to underserved areas (HPSAs, MHPsAs, MUAs), some limited to primary care
- Appalachian Regional Commission: <https://www.arc.gov/j1visawaiver>
- Delta Regional Authority: <http://dra.gov/initiatives/promoting-a-healthy-delta/delta-doctors/how-to-apply/>
- U.S. Department of Health & Human Services:
<https://www.hhs.gov/about/agencies/oga/about-oga/what-we-do/visitor-exchange-program/supplementary-b-clinical-care.html>
- U.S. Department of Veterans Affairs:
https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2383

IGA WAIVERS – HOW DO THEY WORK?

- After conducting recruitment efforts, you locate a physician completing training in J-1 status the following year
- Find which IGA can sponsor the waiver – state or federal program and specific requirements for each
- Offer physician a minimum of a three year employment agreement to provide 40 hours per week of direct patient care
- Physician will request a case number from the Department of State (DS-3035 application)
- Supporting documents are collected and the waiver request is filed with IGA (2 weeks to 3 months processing)
- The IGA will forward the recommended waiver to DOS (4-6 weeks processing)
- DOS will forward the recommendation to USCIS (4-12 weeks processing)

WHAT GOES INTO THE WAIVER REQUEST?

- General Requirements (not all the same for each state or agency):
 - Employment contract: termination without cause, non-compete, and liquidated damages clauses; fixed base annual salary
 - Proof of recruitment: facility and physician recruitment
 - Community support letters
 - Attestations from the employer and employee
 - Medical licensure: apply early, especially if in a state where FCVS is required
 - Other documentation if a subspecialist or non-underserved area

HARDSHIP AND PERSECUTION WAIVERS

- Who qualifies?
- What are the processing times?
- What agencies review the case?
- Examples of what works
- Special considerations
- Temporary Protected Status

AFTER THE J-1 WAIVER APPROVAL, THE H-1B VISA

- In exchange for the waiver of the two year HRR, former J-1s must work for three years in H-1B status.
- Does the H-1B cap apply?
- Timing of waiver grant and H-1B filing
- Should the physician plan to apply for a visa stamp abroad or change of status?
- Physician may request an Extension of DS-2019 (J-1 status) for board exam
- Issues with J-2 spouses

SPECIAL ISSUES RELATED TO H-1B STATUS

- Training in H-1B and cap exemption
- Six year limit
- H-1B to J-1 to H-1B
- J-1 to H-1B to H-1B (post commitment)
- Canadians: Canadian Citizens are *visa* exempt, and can exit the U.S. and reenter in H-1B status without a J-1 waiver

OPTIONS IF PHYSICIAN CANNOT GET A WAIVER THIS YEAR

- O-1 (Extraordinary Ability) – must show three of the following:
 - Receipt of nationally/internationally recognized awards
 - Membership in an organization that requires outstanding achievement
 - Published materials about you in professional publications
 - Judgment of the work of others
 - Original scientific work of major significance
 - Authorship of scholarly material
 - Employed in a critical capacity for an organization with a distinguished reputation
 - Commands a high salary
- * Note that this category is mostly applicable to subspecialists
- * If subject to HRR, must apply for O-1 visa abroad – cannot change status

WHAT'S NEXT: LAWFUL PERMANENT RESIDENCE

- Employer Sponsored Permanent Residence, a/k/a “PERM”
- Three broad steps:
 - Labor Certification: Prevailing Wage Determination (PWD) and recruitment to test the U.S. labor market
 - I-140 Petition for Immigrant Worker
 - Adjustment of Status Application
- Can begin process at any time during physician’s three year J-1 waiver commitment and can file I-140 petition during three years (set priority date)
- Cannot file for green card until priority date current and three years complete

WHAT'S NEXT: LAWFUL PERMANENT RESIDENCE

- National Interest Waiver (NIW)
 - Self Petition
 - Must be working in a medically underserved area.
 - Letter of Support and five year contract
 - How does it benefit physician and his/her family?
 - EAD and Advance Parole for Spouse and Children (if EB-2 all other)
 - Setting priority date (If Indian/Chinese)
- Extraordinary Ability Petition (EB-1): same criteria as O-1 nonimmigrant visa
- Family Based Petition
- Asylum: eliminates the HRR

THANK YOU – ANY QUESTIONS?



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