

Immigration Overview for International Medical Graduates

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This article outlines current immigration laws and policies that affect the physician community. This particular legal area has become increasingly important owing to the emerging shortage of physicians in the workforce and the maldistribution patterns largely affecting rural and inner city communities. As a result of the inability of domestic physicians to satisfy these emerging needs, a number of new initiatives have been developed of particular relevance to the immigration of international medical graduates (IMGs).

This article deals with three broad areas of relevance to the immigration of IMGs:

1. Temporary, nonimmigrant visa options for foreign physicians
2. The J-1 waiver process for physicians
3. Options in order to qualify for permanent residence

Immigration Law Overview

All foreign nationals enter the United States in one of two broad immigration categories—either under a temporary, nonimmigrant visa or as a permanent resident. There are comparative advantages to both these categories. In the case of the temporary, nonimmigrant visa classifications, it is usually possible to gain this type of immigration coverage in a relatively short time. The two most commonly used temporary, nonimmigrant classifications by IMGs are the J-1 Exchange Visitor program and the H-1B Temporary Worker classification. Both these classifications, however, limit a physician's duration of residence in the United States and impose strict limitations on the range of employment authorization, although they do have the advantage of being relatively quick to obtain. In contrast, permanent residence provides a foreign national with both an unlimited duration of residence and full, unrestricted employment authorization, although the processing time is much greater.

Temporary, Nonimmigrant Classifications

Most IMGs in graduate medical education (GME) programs arrive under the J-1 Exchange Visitor program, although the H-1B Temporary Worker category is becoming increasingly utilized.

The J-1 program is administered by the Educational Commission for Foreign Medical Graduates (ECFMG), working under the authorization of the US Department of State. J-1 training programs are intended to provide a broad range of foreign nationals with educational, employment, and training opportunities in the United States. For the past 30 years, the J-1 Exchange Visitor Program has been the preferred visa classification for IMGs doing their medical training in the United States.

To become eligible to enroll in GME, an IMG needs to establish that his/her medical competency is equivalent to that of a US physician. This professional equivalency is established through the issuance of ECFMG certification. To gain an ECFMG Certificate, an IMG needs to fulfill the following requirements:

1. Pass stipulated examinations—currently, the US Medical Licensing Examination (USMLE), Steps 1 and 2 Clinical Knowledge and Clinical Skills—to establish medical competence and English language competence
2. Pass the ECFMG English language examination to establish English language competence
3. Possess an MD degree from a foreign medical school listed in the *International Medical Education Directory* of the Foundation for Advancement of International Medical Education and Research (FAIMER®)

All J-1 trainees must receive ECFMG certification, except for graduates of Canadian medical schools, who are exempt from this requirement because Canadian medical education and training are accredited under US standards (or considered equivalent to US education/training).

Upon entry into the United States, an IMG is authorized to pursue a clinical GME program for up to 7 years to achieve stipulated training objectives. Each year, the GME program, in conjunction with the IMG, needs to file an extension application with the ECFMG.

Without exception, all J-1 physicians engaged in clinical training activities are subject to a mandatory 2-year home residence obligation, regardless of country of citizenship or last permanent residence. *Note:* This 2-year home residence requirement applies to every physician who enters the United States under an ECFMG-sponsored J-1 clinical training program. To ultimately qualify for permanent residence and/or an H-1B visa, an IMG must either return to his/her home country for a 2-year period or obtain a waiver of this 2-year obligation.

J-1 Waiver Strategies

As noted above, all ECFMG-sponsored J-1 physicians—regardless of country of citizenship—are subject to an obligation to return to their home country for a mandatory 2-year period of time. Unless and until this 2-year home residence is either fulfilled (ie, by returning specifically to the home country) or waived (ie, eliminated), a physician under law is barred from obtaining an H-1B visa and/or permanent resident status. Therefore, it is critically important for long-term immigration prospects for a J-1 physician to obtain a waiver of the 2-year home residence requirement. US laws do contain various provisions enabling J-1 physicians to obtain such waivers.

A waiver of this obligation is available only on the basis of at least one the following three grounds:

- If the J-1 physician will suffer from persecution in his/her home country or country of last permanent residence
- If fulfillment of the obligation will subject a US citizen spouse or child to exceptional hardship
- Based upon a recommendation issued by a government agency interested in the physician's continued residence/employment in the United States

Without question, the vast majority of J-1 physicians who receive waivers do so through recommendations issued by government agencies. Generally speaking, such waivers fall within the following three basic patterns:

- Employment by a federal agency, such as the Department of Veterans Affairs
- Recognition of outstanding academic and research achievements, as determined by the Department of Health and Human Services
- Service to medically underserved patient populations, so as to allow either a state department of health or a federal agency to recommend a waiver as a matter of public interest

Statistically, the vast majority of J-1 physicians have obtained waivers through a program known as the Conrad State 30 program, which essentially empowers each state to recommend waivers for up to 30 physicians per fiscal year. These waivers specifically require the physician to practice medicine (either primary care or specialty) in a designated medically underserved location.

Most states now recommend waivers to medical specialists as well as to primary care practitioners. Effective December 2004, the waiver program was enlarged by allowing up to five waivers to be issued to physicians who, while not working in a designated medically underserved area, nevertheless benefit the indigent and the medically underserved. Furthermore, the physician needs to practice medicine in the community for at least 3 years, working specifically in H-1B status. Any premature departure from the community could result in a loss of the waiver as well as immigration status.

While the Conrad waiver program will sunset on June 1, 2008, it has been a widely used program for the recruitment to and retention of physicians in traditionally underserved communities. As of this writing, the Congress is considering an extension of this program, and it is widely believed that an extended waiver program will be passed and signed into law.

In addition, various federal agencies also maintain J-1 waiver programs, including the Department of Health and Human Services, the Delta Regional Commission, and the Appalachian Regional Commission. Most federal agencies, however, limit their waiver programs to primary care physicians, even though the law was liberalized in December 2004 to cover medical specialists. The federal agencies do not, though, have any quota limitation on the number of waivers that they can recommend.

H1-B Temporary Worker

Instead of taking part in the J-1 Exchange Visitor program, with its home residence obligation, an increasing number of foreign physicians are entering the United States under the H-1B Temporary Worker provisions. This visa classification enables a foreign national to enter the United States for professional-level employment for up to 6 years. In most instances, H-1B coverage can be obtained within approximately 60-90 days, although there are provisions for expediting the processing of an immigration case. The H-1B quota of 65,000 is normally exhausted early on in the federal fiscal year, but physicians working within universities and most university-affiliated institutions as well as J-1 physicians holding waivers are exempted from the H-1B quota.

To qualify for H-1B benefits, an IMG must meet the following four criteria:

- Possession of a full, unrestricted state medical license or the “appropriate authorization” for the position
- An MD degree or a full, unrestricted foreign license
- English language competence as established either through graduation from an accredited medical school or by holding an ECFMG Certificate
- Passage of the Federation Licensing Examination (FLEX) or its equivalents—the National Board of Medical Examiners (NBME), Parts I, II, and III, or the USMLE, Steps 1, 2, and 3

As a result of the FLEX equivalency issue, many Canadian physicians do not qualify for H-1B benefits. The standard Canadian medical credential—the Licentiate of the Medical Council of Canada (LMCC)—is widely accepted among the states for medical licensure purposes. Therefore, most Canadian physicians have traditionally not had any reason to sit for the FLEX or its equivalents. Over the course of recent years, a significant number of Canadian physicians are now sitting for the USMLE precisely in order to gain H-1B eligibility as a clinical physician in the United States.

Permanent Residence Strategies

A foreign national can qualify for permanent residence in various ways, ranging from familial relationships with US citizens or permanent residents to fear of persecution that would merit refugee entitlement. In most instances, though, an IMG will need to qualify for permanent residence based upon an employment position. There are three basic pathways to permanent residence based upon employment as a physician.

Pathway One

The “normal” route to permanent residence involves a three-step process. The first and arguably most complex stage is the Labor Certification Application process. This is a procedure conducted under the auspices of the US Department of Labor to establish that the employment of a foreign national will in no manner harm the US labor market, particularly by taking a job away from a fully qualified US worker. Therefore, acting under a complex recruitment/advertisement procedure, the employer needs to show that the IMG is not simply the best-qualified applicant for the position but is the only fully qualified candidate for the specific position. Effective March 28, 2005, the Labor Certification Application process was reengineered into the PERM Program, which places certain constraints on this process but speeds up considerably the processing time for such applications.

After completing the Labor Certification Application process, the employer needs to submit an Immigrant Visa Petition to the US Citizenship and Immigration Services (CIS, formerly the Immigration and Naturalization Service), establishing the complete suitability of the IMG for the position. Upon approval of this petition, the IMG is then able to actually apply for permanent residence either through a CIS District Office (adjustment of status) or through a US Consular post (consular processing).

Note: An IMG must possess either an ECFMG Certificate or an MD degree from an accredited medical school (ie, generally US or Canadian). Also, an IMG cannot finalize the application for permanent residence status if he/she has an unfulfilled or unwaived J-1 2-year home residence obligation.

Pathway Two

A second pathway to employment-related permanent residence is based upon National Interest Waiver criteria. In this instance, an IMG has a streamlined, expedited pathway to permanent residence if it can be shown that the IMG's employment as a physician carries potential major benefits to areas of high national interest. Under recent revisions to the law, both primary and specialty care physicians who are working in designated medically underserved areas can qualify for permanent residence pursuant to a National Interest Waiver. Any physician using this pathway, however, has an obligation of working in a designated medically underserved community for a minimum of 5 years.

Pathway Three

A third option to permanent residence is available to physicians of extraordinarily high professional capabilities, working either in clinical practice or in academic medicine. Such individuals may qualify for permanent residence under an expedited procedure established for Aliens of Extraordinary Ability and Outstanding Professors or Researchers.

Final Word

In conclusion, our immigration laws for physicians are complex, but with advance planning, it is often quite possible to attain desired immigration objectives in a time-efficient manner. Slowly but surely, our immigration laws and policies are creating some new opportunities that enable IMGs to attain immigration status based on practice in the profession, particularly if working in designated medically underserved areas. When all is said and done, we as a nation have complex and ever-expanding needs for physicians, particularly those willing to serve in isolated areas and those willing to treat minorities, ethnic populations, and the indigent. Over the years, foreign physicians have been one of the most effective physician population groups for addressing medically underserved populations, and our immigration laws have developed several meaningful and effective initiatives intended to facilitate the relocation of foreign physicians into positions of maximum benefit to various US population groups.

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