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Immigration Options for Physicians and Researchers



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IMMIGRATION OPTIONS FOR PHYSICIANS AND RESEARCHERS

**PRESENTATION FOR THE
BRIGHAM AND WOMEN'S HOSPITAL**

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AGENDA

- Basic structure of immigration system
- Maintenance of nonimmigrant status
- Issues unique to certain J-1 exchange visitors
- Principal Pathways to Permanent Residency
 - Employment
 - Family
- Basic Green Card Application Process
- Quotas and Nationality

STRUCTURE OF US IMMIGRATION SYSTEM

- **U.S. CITIZENS – by birth or naturalization**
- **FOREIGN NATIONALS**
 - **Lawful Permanent Residents – Immigrants**
 - **(“Green Card” Holders)**
 - **Nonimmigrants – Persons Temporarily Permitted In U.S.**
 - **Refugees/Asylees/TPS/ DACA/ DAPA**
 - **Persons present without lawful status**

MAINTENANCE OF STATUS

- To gain permanent residence in the U.S., generally must maintain lawful status throughout time in U.S.
- H-1B is the best bridge to permanent residence:
 - Up to six years (or beyond) of professional work time in the U.S.
 - No need to demonstrate temporary intent during a visa application or when entering the U.S.
 - May maintain H-1B status while pursuing permanent residence status

RELEVANT NONIMMIGRANT WORK VISAS MEDICAL PROFESSIONALS

- **B-1** – visitors for business
- **E-3** – Australians only
- **E-1/E-2** – Treaty traders/Treaty Investors
- **F-1** – students: pursue higher degree & new OPT & STEM OPT
- **H-1B** – temporary professionals
- **H-1B1** – Singaporeans and Chileans
- **J** – exchange scholars/trainees
- **L** – intra-company transferees
- **O** – persons of extraordinary ability
- **TN** – Canadians & Mexicans under NAFTA

EXECUTIVE ACTION H-4 EMPLOYMENT

- **MAY 26, 2015 – USCIS BEGAN ACCEPTING EMPLOYMENT APPLICATIONS**
 - **H-4 DEPENDENT SPOUSE MUST DEMONSTRATE HIS OR HER SPOUSE IS MAINTAINING H-1B NONIMMIGRANT STATUS AND EITHER OF THE FOLLOWING:**
 - **H-1B SPOUSE IS PRINCIPAL BENEFICIARY OF AN APPROVED FORM I-140, IMMIGRANT PETITION**
- OR**
- **H-1B SPOUSE HAS H-1B STATUS PURSUANT TO THE AMERICAN COMPETITIVENESS IN THE 21ST CENTURY ACT**

SPECIAL ISSUES

UNIQUE TO J-1 VISA HOLDERS

The 2-year Home Residency Requirement (2YHRR): Applies to:

- **“Foreign Medical Graduates” or those receiving medical training, clinical residency, or fellowships.**
- **Dependent spouse also subject.**
- **“J-1 Research Scholars” who receive government funding to support their work; OR**
- **“J-1 exchange visitor’s home country is in need of their skills (“Skills List”)**

J-1 ANALYSIS

- **Are you really subject to the 2 Year Home Residency Requirement?**
- **Review documents**
- **Seek final review by U.S. Department of State
– Advisory Opinion Letter**

IF YOU ARE SUBJECT TO THE 2 YEAR HOME RESIDENCE REQUIREMENT

- **2 years may be aggregated during multiple stays in the home country over any number of years after J-1 stay is completed, e.g. while in F-1 or O-1 status**
- **Must fulfill 2YHRR before eligible to change status to H-1B or file an application for permanent residence**
- **No change of status to other nonimmigrant status. Must consular process.**

2 YHRR MAY BE WAIVED

Four types of waivers:

1. Interested Government Agency (IGA):

US government agency requests a waiver of the requirement where the physician is actively and substantially involved in a program or activity sponsored by or of interest to such agency; or via a state Department of Public Health (called: Conrad 30) See:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/primarycare-healthaccess/healthcare-workforce-center/workforce-help/j1/>

WAIVERS, CONTINUED

- 2. Hardship: Exceptional hardship would be suffered by the physician's U.S. citizen or lawful permanent resident spouse or child; or**
- 3. Persecution: The physician would be subject to persecution on account of race, religion, or political opinion if returned to the home country.**
- 4. "No objection" statement, usually from the government of the home country (not applicable to Medical Trainees)**

NOTE: If J-2 child is turning 21 or divorce, may act independently for waiver

WAIVER PROCEDURE

- Starting point for waivers is submission of information at US Department of State website through Form DS-3035,

<http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver.html>

- Procedure varies according to which type of waiver you wish to pursue
- Timing Considerations are vital
- Travel: Generally, once you obtain waiver can become subject again to 2YHRR through a different J-1 program or extension

LICENSE & TIMING

- Waiver recommendation, or not subject to 2YHRR
- Must have medical license at time of filing H-1B. Issues re: license necessary or can duties fit within “observation only”
- USMLE all three tests must be complete
- ECFMG Certificate

LAWFUL PERMANENT RESIDENT- IMMIGRANT CATEGORIES

- **Family Based**
- **Employment Based**
- **Diversity Lottery**
- **Investment**
- **Asylum/Refugee**
- **Others: HRIFA, CAA, VAWA, Etc.**

FAMILY BASED

- **Sponsored by U.S. Citizen:**
 - **Parent; Spouse; Son or Daughter – married or unmarried of any age and Siblings;**
 - **Immediate Relatives (IR's) of U.S. Citizens: Parent, spouse or unmarried minor child (under 21) of a U.S. Citizen.**
 - **There is no annual quota for IR's & those who have been inspected & admitted may apply for adjustment of status in the U.S., even if they violate their status, overstay or work illegally**
- **Sponsored by Lawful Permanent Resident**
 - **Spouse**
 - **Unmarried son or daughter**

PERMANENT RESIDENCE (GREEN CARD) OVERVIEW

Permanent Residency for vast majority of immigrants is based on family reunification

Category	Fiscal 2013
Total New Immigrants	990,553
Family Reunification	650,406
Employment based	161,110 of which there were only 58,345 principal workers: EB-1 A: 4,064 EB-1B: 3,117 EB-2: 31,130 EB-3: 20,034
Asylees and Refugees	119,630

EMPLOYMENT BASED

- **EB-1(a) Person of Extraordinary Ability**
- **EB-1(b) Outstanding Professor or Researcher**
- **EB-1(c) International Manager or Executive**
- **EB-2 Masters Degree/Exceptional Ability**
- **EB-3 Bachelors Degree/Other Workers**

VISA BULLETIN, MARCH 2016

[HTTP://WWW.USCIS.GOV/VISABULLETININFO](http://www.uscis.gov/visabulletininfo)

EMPLOYMENT BASED IMMIGRANT CATEGORIES	ALL OTHER COUNTRIES	CHINA	INDIA	PHILIPPINES	MEXICO
<u>EB-1</u> <i>Filing Date</i>	Current	Current	Current	Current	Current
<i>Final Action</i>	Current	Current	Current	Current	Current
<u>EB-2</u> <i>Filing Date</i>	Current	01 Jan 13	01 Jul 09	Current	Current
<i>Final Action</i>	Current	01 Aug 12	15 Oct 08	Current	Current
<u>EB-3</u> <i>Filing Date</i>	01 Jan 16	01 May 15	01 Jul 05	Current	01 Jan 10
<i>Final Action</i>	01 Jan 16	01 Jun 13	15 Jul 04	01 Jan 16	15 Mar 08

EB-1(A): PERSON OF EXTRAORDINARY ABILITY

- The EB-1(a) category is for aliens of extraordinary ability in the sciences, arts, education, business or athletics. May Self-Sponsor.
- Same criteria as O-1 Nonimmigrant category
- Receipt of "major, internationally recognized award, such as the Nobel Prize

- OR at least 3 of the following:

EB-1(A): PERSON OF EXTRAORDINARY ABILITY (CONTINUED)

- Receipt of lesser nationally or internationally recognized prizes/awards
- Member in associations that demand outstanding achievement for membership
- Published material about you in professional publications
- Judged the work of others, either individually or on a panel – peer reviewer
- Original scientific, scholarly, artistic, athletic, or business-related contributions of major significance
- Authorship of scholarly articles in professional publications or other major media;
- Leading or critical role in distinguished organizations
- Commanded large salary
- Other comparable evidence

EB-1(B) OUTSTANDING PROFESSOR OR RESEARCHER

REQUIRES:

- An offer of employment from a U.S. university or institution of higher learning, offering you a tenure or tenure-track teaching position in your academic field or a permanent research position in your academic field; and
- At least 3 years of teaching and/or research in your academic field; and
- Evidence that you are recognized internationally as outstanding in your academic field. This evidence must consist of at least two of the following eligibility criteria:

EB-1(B) ELIGIBILITY CRITERIA

- Receipt of major prizes or awards for outstanding achievement;
- Membership in associations that require their members to demonstrate outstanding achievements;
- Published material in professional publications written by others about the alien's work in the academic field;
- Participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field;
- Original scientific or scholarly research contributions in the field;
- Authorship of scholarly books or articles (in scholarly journals with international circulation) in the field.

EB-2 MASTERS DEGREE OR EXCEPTIONAL ABILITY

- Have U.S. Masters Degree or foreign equivalent **OR**
- Evidence of Exceptional Ability **AND**

- Labor Certification **OR**

- National Interest Waiver (NIW) – 2 types:
 - General
 - Physicians only

NATIONAL INTEREST WAIVER

- Examples of work deemed to be in the “National Interest” of the United States are pursuits that:
 - Promote economic development
 - Improve wages and working conditions
 - Improve education and training programs for children and under-qualified workers
 - Improve health care, or
 - Provide more affordable housing for the young and/or old and poor
- Must show that national interest will be adversely affected if waiver is not granted

NATIONAL INTEREST WAIVER PHYSICIANS

- Requires 5-year commitment to work in a medically underserved area or at a VA facility
- State Department of Public Health or VA must find that work is in the public interest
- 5 years can be as an H-1B, O-1, or with Employment Authorization Document (EAD)
- May count time spent before filing petition toward 5 year commitment if in lawful H-1B or O-1 status
- Specialists historically allowed, litigation is ongoing

PERMANENT EMPLOYMENT CERTIFICATION (LABOR CERTIFICATION)

Labor Certification is the authorization by the U.S. Department of Labor for a U.S. employer to sponsor an alien worker:

- After a search for qualified workers;
- At the **minimum** education, skills and training necessary to do the job; and
- At the required wage.
- The current method of Labor Certification is called “**PERM**” and is done on-line
- Perm cases are currently averaging 8 to 30 months from time the application is filed

SPECIAL HANDLING LABOR CERTIFICATION

- **Special Handling:** available only to colleges and universities.
- **Requirements:**
 - Position offered must be full time and permanent
 - Position must involve some classroom teaching
 - Research positions may qualify as long as there is some teaching component
 - Institution must demonstrate that sponsored worker was the most qualified candidate (specific procedures apply)
 - Must file application within **18 months of selection** (generally, the offer date)

SCHEDULE A LABOR CERTIFICATION

Schedule A

Pre-certified occupations:

- **Group I: Nurses, Physical Therapists**
- **Group II: Alien of exceptional ability in sciences or arts (requirements similar to extraordinary ability)**

LABOR CERTIFICATION CONTINUED

- **EB-1's do not need Labor Certification**
- **EB-2's DO need Labor Certification except those with a National Interest Waiver**
- **EB-3's DO need Labor Certification**

THANK YOU FOR ATTENDING

QUESTIONS?