Immigration Pathway for Medical Students and Trainees

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March 20, 2019
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To view the video recording **click here**. You’ll be directed to Canvas, enter and then the video is in Panopto. This recording was provided by Yale Medical School. We appreciate their support of this program.
• Unlawful Presence Memo for F, M, and J
  - Unlawful presence starts the day after student no longer pursues course of study or training, or the day after an unauthorized activity.

• H-1B Cap Update

• H4 EAD Update, and New I-539
Practical Training and Beyond

• All medical students are eligible for one year of post-completion OPT
• Can apply as early as 90 days period to the end date, but must apply prior to the end of the 60 day grace period and within 30 days of the DSO’s request in SEVIS.

• Clinical training options after the end of OPT
  • J-1: More common clinical trainee category, sponsored by ECFMG, and allows for 7 years of GME
  • H-1: Six-year maximum, but green card concerns become apparent sooner.
  • Other paths: O-1, derivative categories.
• All Physicians who come to the US for GME are subject to the 2-year home residence requirement.

• What is the home residence requirement?
  • Cannot obtain H-1B or L-1 visa stamp
    • Note: “visa”, so not applicable to Canadians (but watch out for Buffalo CBP!)
  • Cannot obtain green card
  • Cannot change status inside the US

UNLESS... return to home country for 2 years OR obtain a waiver.
Complying with Home Residence Requirement

• What is your home country? Check DS-2019
  • Country of nationality
  • Country of last permanent residence

• Must reside in home country for 2 years – trips outside the country must be subtracted
  • 24 months in the aggregate.
  • Summers? Week-by-week?
  • Evidence of satisfaction: employment letter/paystubs, credit card/bank statements, lease, passport/I-94s, etc.

• Canadians have special way to fulfill by living in Canada and working in the US.
J-1 Waivers

• Conrad 30, including VA, and other IGA shortage waivers (DRA, ARC, HHS)
  • 3 year commitment to work in an underserved area
• HHS Research Waivers
  • For physicians working on high level research at an academic center
• Hardship waivers
  • Based on exceptional hardship to US citizen or permanent resident spouse or child
• Persecution waivers
  • Based on fear of persecution if forced to return to home country
# J-1 Waivers – A Comparison

<table>
<thead>
<tr>
<th>Shortage Waivers</th>
<th>Hardship Waivers</th>
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<tr>
<td>• Lifetime exemption from the H-1B cap.</td>
<td>• Must be counted against the cap if employer not exempt.</td>
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<td>• Can change status in the US from J-1 to H-1B.</td>
<td>• Must leave the US and obtain a visa stamp to reenter in a new status. May not change in the US. Green card is the exception.</td>
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<td>• Must serve 3 years in underserved area before obtaining green card.</td>
<td>• Can obtain green card directly after waiver approval.</td>
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<td>• Must have an employment agreement signed to file application.</td>
<td>• No employer sponsorship needed</td>
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Shortage Waivers

• Basic general requirements:
  • Must have 3 year employment agreement
  • Must agree to work 40 hours per week in a HPSA or MUA depending on state rules
    • For block scheduled physicians, like hospitalists, the required commitment typically is 160 hours per month. Whether 40 hours per week or 160 hours per month, the commitment is exclusive of call, travel, research time.
    • Flex waivers – Each state has up to 10 for doctors working in non-underserved areas serving patients from underserved areas. Requirements and usage vary by state. Not available for DRA, ARC or HHS waivers.
  • Must agree to start work within 90 days of waiver approval
Shortage Waivers – State Variations

- Every state and federal agency has different rules/priorities for allocating waivers.
  - Employment agreement
  - Primary care vs specialists (Hospitalists?)
  - Filing deadlines
  - Recruitment
  - Payor mix – Medicaid/Medicare/Self-pay/Insured
  - Sliding fee scale/charity care policy
Shortage Waivers - Contract Issues

- Requirements vary by state, but common issues include:
  - Termination without cause
  - Non-competes usually not allowed
  - Might require specific language about agreement to comply with waiver rules
  - Locations must be specified; sometimes disallow any locations not underserved
  - Liquidated damages – some states allow, some programs require, some prohibit
  - Other requirements
    - Commitment period – minimum of 3 years but some states might ask for more
    - 40 Hours per week or 160 hours per month?
• Plan on spending 3 years in your waiver location. Changes are allowed with three requirements to be met:
  • Contract for balance of commitment period
  • Move to another underserved area even if original waiver was a Flex.
  • Must show extenuating circumstances
    • High burden
    • Cannot just be buyer’s remorse
    • Examples: employer isn’t paying promised wage; you are laid off; hospital outsources function to staffing company, etc.
Finding a waiver job
  • No central repository of underserved areas or jobs available.
  • Recruiter

Process/Timing: State/Agency → DOS → USCIS then apply for H-1B.

Changing status at the end of the waiver process.
  • Doctors who obtain underserved area waivers are personally exempt from the H-1B cap, but it applies to those with hardship/persecution waivers.
  • Doctors with underserved area waivers can change from J-1 to H-1B status in the US. Doctors with hardship/persecution waivers must consular process.
  • A doctor with a hardship/persecution waiver married to a US citizen may proceed directly to a green card. Doctors with underserved area waivers may begin green card processing during the 3 three years but must complete the service to complete green card processing.

Spouses

Fees and money issues
  • Attorney fees
  • Government fees
  • Bonuses/Stipends – recent clarifications by ECFMG and the Dept of State for J-1 doctors
• Employer must pay the prevailing wage

• Six year maximum (unless certain milestones in the green card process are achieved); F-1 med students also get one year of OPT.

• Does not have to be in an underserved area

• No minimum contract term

• Employer must pay all fees associated with the petition.

• H-1B Cap...
H-1B Cap

• Annual limit of 85,000 H1Bs may be used = “H-1B cap” (includes the 20,000 for US advanced degree holders).

• Cap cases go through a lottery every April for an October 1 start date. New regulation changes the order of the cap lottery.

• 3 kinds of institutions are exempt from the cap, whether they are the employer or just the worksite:
  • Institutions of higher education
  • Nonprofits affiliated with or related to an institution of higher education
  • Nonprofit or governmental research institutions

• Most doctors who train on H-1Bs are cap exempt during their residency/fellowship. If you join a private/for profit practice after training, the cap is an issue.
The Basics on Green Cards

• Two Best Paths to a Green Card for Physicians:
  • Labor certification – 3 step process to prove that a US worker is not qualified and available for the position.
  • National Interest Waiver – 5 year commitment to work in an underserved area.

• Other employment-based options
  • EB-1 Extraordinary Ability
  • EB-1 Outstanding Research
  • Dhanasar National Interest Waiver

• Marriage to US citizen
Questions?

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