



IMMIGRATION OF FOREIGN PHYSICIANS

This memorandum describes the actions needed to obtain permanent residence for a foreign physician based on clinical employment, and to achieve authorization to practice medicine in the United States as a nonimmigrant. This memorandum does not discuss immigration based on family relationships. Physicians who are married to United States citizens or lawful permanent residents, or who are the sons or daughters of United States citizens, or who are the unmarried sons or daughters of permanent residents have additional options to obtain permanent residence.

TEMPORARY RESIDENCE IN THE UNITED STATES

H-1B Visas

Physicians may also be sponsored for temporary H-1B nonimmigrant visas, allowing them to practice medicine in the United States for up to six years. In general, the physician must have passed the FLEX examination or an equivalent (NBME or USMLE Parts 1,2,3); must have demonstrated competency in English; and must have obtained a license in the state of intended practice to be awarded an H-1B visa for patient care. Physicians who are of national or international renown do not have to satisfy these requirements.

The process of obtaining H-1B status is complex. Before filing a Petition for a Nonimmigrant Worker with US Citizenship and Immigration Services (USCIS), a prospective employer must file a Labor Condition Application with the United States Department of Labor. The Labor Condition Application certifies that the wage, working conditions, and benefits offered to the temporary worker are comparable to that paid to others with similar experience. The employer must maintain detailed records on how the *actual wage* offered to the physician has been computed, and separate records on how the *prevailing wage* has been determined. Information concerning the Labor Condition Application including the salary offered must be posted on the business premises, and be available to the public. Interested parties may comment. Initially, the Department of Labor reviews the Labor Condition Application only for completeness and obvious inaccuracies, and lacking such, will issue a certification within seven days. If interested parties comment or complain, the Labor Condition Application will be considered in detail. The sponsoring employer may be subject to fines, and prohibited from filing future immigration petitions if, for example, the wages are determined to be substandard or there was misrepresentation in filing the Labor Condition Application



Once a Labor Condition Application is approved by the Department of Labor, the sponsor files a Petition for a Nonimmigrant Worker with USCIS. The base fee for petitions is \$780 (with a \$50 discount for online filing). For-profit employers also pay fees to support asylum programs - \$600 or \$300 for small petitioners. With some exceptions, employers pay a “training fee” of \$1500 (or \$750 if they have 25 or fewer employees) for each initial H-1B application and first extension. This amount may not be reimbursed by the employee. A further fee of \$500 to be used for anti-fraud programs is required for initial applications. H-1B visa status is only valid for employment with the sponsoring petitioner, and any change of employment requires approval of a new petition.

In addition to the labor condition application, a complete position description including terms and conditions of employment, and evidence of the temporary worker’s qualifications for the position must accompany the petition. Prospective workers in the United States on another nonimmigrant visa, for example as business visitors (B-1) or students (F-1), sometimes may change to H-1B status. Those not able to change status, or not present in the United States, must take the notice of approval to the United States Consulate where they reside and apply for an H-1B visa to enter the United States. Petitions are generally approved for a three-year period, and may be extended for a total of six years. If the physician is the beneficiary of an approved Immigrant Petition for Alien Worker with a backlogged priority date (see below), H-1B status may be continued beyond the usual 6-year maximum.

TN Visas

Physicians who are citizens of Canada or Mexico may also come to the United States to engage in research or teaching with a TN visa, which is available pursuant to the U.S.- Mexico-Canada Agreement (“USMCA”). These visas are renewed annually with no overall time limit. Physicians may only use TN visas for research or teaching. For Canadians, the process of obtaining TN status is streamlined. Documentation including proof of citizenship, a detailed letter from the United States employer describing the position offered, and evidence of credentials may be presented to immigration authorities directly at the United States – Canada border. Mexicans must present their applications to a U.S. consulate and obtain a visa. TN status is granted in increments of three years, with no overall time limit.

PERMANENT RESIDENCE IN THE UNITED STATES

In general, in order for a physician to be granted an immigrant visa, or adjusted to status as a lawful permanent resident, he or she must first obtain a Permanent Employment Certification (PERM) through an offer of employment by a sponsoring hospital, medical care provider, or a physician or group in private practice.

Application for Permanent Employment Certification

The purpose of the Application for Permanent Employment Certification is to confirm that no U.S. physician would be displaced by the hiring of a foreign physician. Prior to filing the PERM application, the sponsor must demonstrate that no qualified United States physician (e.g., citizen, permanent resident, asylee or refugee) is available for the position. The sponsor must engage in extensive recruitment including advertising through the state unemployment service, newspapers, journals, online, and posting at the employer's premises. The wage offered to the alien physician must be at least the "prevailing wage" for a similar position in the area, as determined by the state employment security agency. The day the application is received by the Department of Labor becomes the "priority date" for issuance of an immigrant visa to the physician. The U.S. allows a fixed number of new immigrants each year, and if the annual quota is exceeded, the priority date determines who may immigrate first. In recent years, backlogs have developed for persons born in India and China, and it may take years to immigrate.

Immigrant Petition for Alien Worker

After a labor certification is obtained, the sponsor then files an Immigrant Petition for Alien Worker with the US Citizenship and Immigration Service (USCIS). This petition requires an approved labor certification, proof that the foreign physician has all the necessary qualifications for the position, and proof that the sponsor had the ability to pay the prevailing wage offered in the labor certification when the labor certification application was filed. After USCIS approves an Immigrant Petition for Alien Worker, the physician may be processed for permanent residence either at the United States Consulate where the physician normally resides or at the USCIS office having jurisdiction over the physician's residence in the U.S.

If the physician will be processed overseas, US Citizenship and Immigration Service transmits the file to the Department of State. The Department of State then contacts the intending immigrant physician, and requests biographic data for all family members. Spouses and unmarried children under the age of 21 may immigrate with the physician.

Waiver of Application for Alien Employment Certification

U.S. immigration law does provide for a waiver of the normal job offer and labor certification requirement when the Department of Homeland Security "deems it to be in the national interest." Immigrant petitions requesting a job offer waiver are presented directly to USCIS without any processing by the Department of Labor.

The law states that the Department of Homeland security *shall grant* a national interest waiver to any alien physician who agrees to work full time for five years in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care

facility under the jurisdiction of the Secretary of Veterans Affairs, provided a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

Note that the physician must remain in the shortage area *for five years* before obtaining a "green card." Because five years is a long time to project for any career, a labor certification application is often the better route to immigration.

Adjustment of Status or Consular Processing

If the physician is in the United States and there is no visa backlog for his or her country, the physician may apply for permanent residence by mail to the USCIS concurrently with the Immigration Petition for Alien Worker. Adjustment in the United States is possible so long as the physician, and family members applying, have not been out of status or worked without authorization for more than 180 days since the last lawful nonimmigrant entry to the U.S. If someone has been out of status for six months and leaves the U.S. for any reason, he or she will be barred from immigrating for 3 years; and those out of status for a year will be barred for 10 years. A medical examination by an USCIS-approved physician must be submitted with the application. Applicants for permanent residence (with some variation depending on age and sex) must show that they have a specified list of immunizations as part of the medical examination.

The medical examination is reviewed to confirm no disqualifying condition such as active tuberculosis. In addition, various agency security checks are conducted to verify that the applicant has no criminal record. Unless he or she is maintaining H-1B status, a physician who has applied for adjustment to permanent residence status may not leave the United States during the processing period without prior permission of USCIS. USCIS often approves permanent resident applications without an interview, sending a notice of approval via mail.

If the physician requests processing in the home country, the approved Immigrant Petition is sent to a U.S. Consulate. The United States Consulate conducts various government checks based on biographic information supplied by the foreign physician. The Consulate then sends a notice to the physician and family members to appear at the Consulate for an interview, and to present formal applications for immigrant visas. As with processing in the U.S., prior to the interview, all prospective immigrants to the United States must undergo physical examinations, and demonstrate compliance with the immunization requirements. Applicants for immigrant visas must also provide police clearances from their native country and all other countries where they resided for more than 6 months. The formal application for an immigrant visa elicits information to determine whether an intending immigrant is admissible to the United States. Reasons to find someone inadmissible and to deny the visa include criminal or terrorist activity, drug abuse, communicable disease of public health significance, or communist party membership. Once the Consul issues visas, immigrants must enter the United States within six months.

THE J VISA FOREIGN RESIDENCE REQUIREMENT

Many foreign medical graduates come to the United States on a J visa to complete their residency or fellowship training. These visas are issued under Department of State programs, with the intent that participants return to their home countries with the knowledge and training acquired in the U.S. Physicians with J visas must return to their country for two years before being allowed to obtain either H-1B1 status or permanent residence in the United States. ***Obtaining a waiver of this requirement is onerous.*** The two-year home residence requirement may be waived through a demonstration of extreme hardship to members of a physician's family who are permanent residents or citizens of the United States, by showing the physician would be persecuted if forced to return to his or her country, or through a request by a United States government agency or a State for a waiver. "Hardship" and "persecution" requests must be carefully documented, both with regard to the family situation and the conditions in the physician's home country, but are possible in rare circumstances.

Any independent government agency may request that the Department of State recommend a waiver. Government agencies willing to request waivers include the Department of Veterans Affairs (VA), the Department of Health and Human Services, the Appalachian Regional Commission, and the Delta Regional Authority. These agencies request waivers at their discretion, based on informal policies that change frequently. The Department of State in turn recommends a waiver to the USCIS, which actually grants the waiver.

To obtain a waiver of the foreign residence requirement through an Interested Government Agency, the Immigration and Nationality Act requires that the physician have a three-year employment contract for full-time practice in a shortage area, or with the VA. ***All physicians obtaining interested government agency waivers for clinical practice are barred from obtaining permanent resident status until they have been employed in H status with the sponsoring employer for three years.*** If the physician does not remain in the shortage area for three years, the two-year foreign residence requirement reattaches. Changes of employment to another sponsor will only be permitted under extenuating circumstances or hardship, and a new H-1B petition must be approved prior to changing employment. Physicians who have maintained their status may change from J to H status without leaving the U.S.

The **Department of Health and Human Services** has two programs, one to recommend waivers for nationally or internationally renowned researchers who are essential to a program of special interest to the United States government; and another for physicians who will practice in certain physician shortage areas. [HHS Exchange Visitor Program | HHS.gov](#)

The **Department of Veterans Affairs** will request a waiver if extensive recruitment efforts have been unsuccessful, and the physician is essential to the requesting VA Medical Center. The VA may request waivers, regardless of whether the Medical Center is located in a shortage area, and there must be a three-year commitment. As with other interested government agency waivers, the physician is not eligible for permanent residence prior to completion of the 3 years in H status.

The **Appalachian Regional Commission** (ARC) will act as an interested government agency and recommend a waiver of the two-year foreign residence requirement for physicians who agree to practice medicine for three years in a Health Professional Shortage Area (HPSA) in the Appalachian Region, which includes thirteen states. Requests for waivers must be supported by one of the Appalachian states, and the written recommendation of the Governor or designee is required. The sponsoring organization must demonstrate that it has tried unsuccessfully to recruit U.S. physicians. The ARC waiver program has brought many excellent foreign physicians to the Appalachian area where they are sorely needed. To ensure that the physician will remain in the Appalachian region for three years, the ARC requires that a specific clause be included in the physician's agreement with the sponsor. The clause must state that the physician will pay damages of \$250,000.00 should he or she leave the Appalachian Region within three years. The ARC further requires the physician to sign a statement agreeing to remain in the region for three years, and to report to the ARC and the state semi-annually. The ARC will not allow contracts to have "no compete" clauses, as the agency's paramount objective is to retain physicians in shortage areas. [J-1 Visa Waivers - Appalachian Regional Commission \(arc.gov\)](#). The Northern Border Regional Commission has recently implemented a J-1 Visa waiver program modeled generally after the ARC. <https://www.nbrc.gov/content/J1Visa>.

To further its goal of bringing development to the Mississippi Delta region, the Delta Regional Authority will also request waivers for primary care or specialty physicians who will go to communities in the delta region that are designated as HPSAs or Medically Underserved Areas. Extensive efforts to recruit U.S. physicians must be shown, and letters of support from other primary care providers are required. The physician must have a three-year contract to practice in the rural area, and non-compete clause are not permitted. [Delta Doctors | Delta Regional Authority \(dra.gov\)](#)

Finally, individual **States** may act as interested government agencies to request waivers of the foreign residence requirement for physicians who will go to areas designated by the Department of Health and Human Services as underserved. Each state may request waivers for up to thirty physicians per year, provided the physician will practice medicine in a designated shortage area, or serve patients living in a shortage area. States can determine how many "Flex" waivers may be granted to physicians who will provide medical care to patients in designated areas although the practice location itself is not in a designated area. In all cases, the physician must sign a statement confirming agreement with the contractual requirements of Sections 214(l)(1)(B) and (C) of the Immigration and Nationality Act.

Once the foreign medical graduate obtains a waiver of the foreign residence requirement, a separate nonimmigrant or immigrant petition must be approved before the physician may begin practicing medicine. See information above regarding temporary and permanent residence in the U.S.

Although the complexity of our immigration laws presents hurdles to achieving temporary or permanent residence for physicians, such residence can be realized. The intricacies of the law, and the unique factors presented by each applicant, require that immigration cases be evaluated individually by a knowledgeable immigration attorney.