



Hammond Law Group, LLC

U.S. Immigration for Physicians

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Cincinnati MD Resource Center





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Nonimmigrants



Nonimmigrant Visa Options for Physicians

- **J-1 Exchange Visitors**
- **J-2 Exchange Visitor Dependents**
- **H-1B Professionals**
- **O-1 Aliens of Extraordinary Ability**
- **TN Professionals under the North American Free Trade Agreement**

J-1 Status

The J-1 program was designed to foster and promote international understanding between the United States and other countries through cultural and academic exchanges.



J-1 Status for Physicians

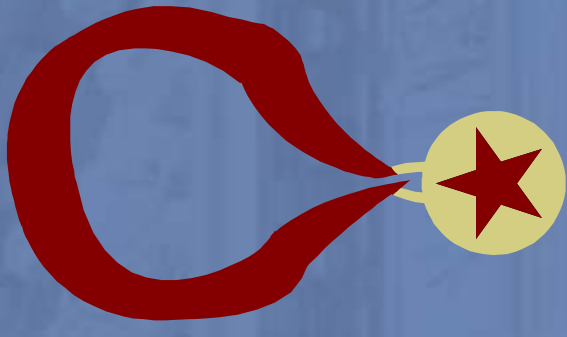
- All physicians entering the United States in J-1 status for Graduate Medical Education (GME) must be sponsored by ECFMG
- J-1 training program must be accredited by ACGME
- Physician must pass USMLE Steps 1 and 2
- Physician must obtain ECFMG Certificate
- Under Section 212(e) any physician who enters the United States in J-1 status for graduate medical education must return “home” for two years

H-1B Status

- **Must be “professional” employment requiring at least a Bachelor’s degree**
- **H-1B status available for physicians in Residency programs providing clinical care**
- **Physician must have state license or authorization to practice at the time the petition is filed**
- **Employer must pay prevailing wage**
- **H-1B visas are limited annually although some employers are “cap exempt”**

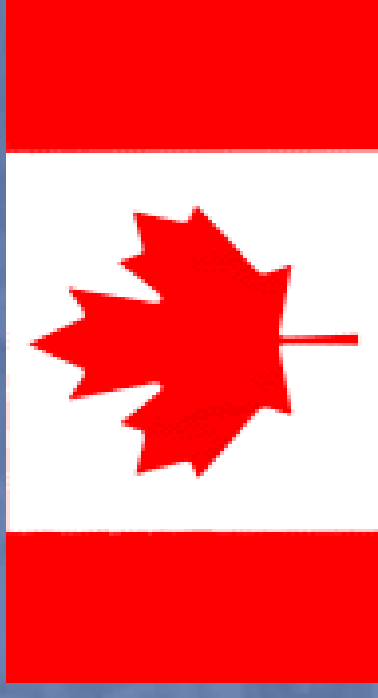
O-1 Status: Aliens of Extraordinary Ability

- **Requires demonstration that physician has received national or international recognition in the field**
- **Difficult to obtain for physicians pursuing Graduate Medical Education who are typically at a very early point in their career**
- **Physician subject to 212(e) remains eligible for O-1 status**



TN Status

- **Must be Canadian or Mexican Citizen**
- **Physicians are eligible for TN status, but cannot provide clinical care**
- **TN status granted in one year increments**
- **No limit to the amount of time in TN status**





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§212(e) and J-1 Waivers



2-Year Home Residency Requirement

- Under Section 212(e) any physician who enters the United States in J-1 status for graduate medical education must return “home” for two years
- A physician subject to 212(e) is not eligible for adjustment of status; immigrant visa; change of status; or an “H” visa
- J-2 dependents of J-1 principal also subject to 212(e) home residency requirement

Options for Physicians Subject to 212(e)

- **Fulfill two year home residency requirement**
- **Obtain a Waiver of §212(e)**
- **Obtain O-1 status**

Two-Year Home Residency Requirement

- **May only be satisfied in the country of nationality or last permanent residence as indicated on Form DS-2019 (formerly IAP-66)**
- **Need not be “continuous”, the two years can be counted in the aggregate**
- **Physician should document time spent in home country**



Waivers

- Interested Government Agency (IGA)
- Persecution
- Exceptional Hardship to a U.S. citizen or Permanent Resident spouse or child
- Physicians who enter the United States in J-1 status are not eligible for “No Objection” Waivers

Interested Government Agency Waivers

- **Conrad 30**
- **Department of Veterans Affairs [VA]**
- **Appalachian Regional Commission [ARC]**
- **Delta Regional Authority [DRA]**
- **Department of Health and Human Services [HHS]**

Conrad 30 Waivers

- Physician must agree to work for three years in a Medically Underserved Area (MUA) or a Health Professional Shortage Area (HPSA)
- Each state has 30 waivers to allocate per year and determines their own program guidelines
- Idaho is the only state without a Conrad 30 program
- Physician must complete three years of service or risk losing their waiver. Transfer to another MUA/HPSA facility available only in exceptional circumstances
- Many physicians find positions eligible for waivers in rural areas with a lack of advanced technology or diverse culture



VA, ARC, DRA, HHS

- Any VA facility can sponsor a waiver, the VA need not be located in an MUA or HPSA and the position need not be primary care
- ARC waivers are available for primary care positions within HPSAs in West Virginia and parts of 12 other states: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee and Virginia
- The DRA is a relatively new program that, despite the \$2000 fee, is generally viewed as “physician friendly” – waivers available for Family Practice, General Pediatrics, Obstetrics or Internal Medicine positions in Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee
- HHS is generally viewed as a defunct waiver program



J-1 Waiver Strategy

- Plan ahead and begin process early
- Research your options
- Establish a timeline
- Establish whether or not a position is “waiver eligible” before pursuing
- Be prepared to extend J-1 status if necessary
- Retain knowledgeable immigration counsel



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Immigrant Visas ("Green Cards")



Immigrant Visa – Physician – “Green Cards”

- Aliens of Extraordinary Ability
- Labor Certification
- National Interest Waivers for Physicians
- Physicians are eligible for other types of immigrant visas
 - Marriage to a U.S. citizen or Permanent Resident
 - Other family based application
 - Asylum
 - Diversity Lottery

National Interest Waiver

- **Physician must agree to work full - time in a federally designated MUA/HPSA or within a VA medical facility for 5 years**
- **CIS holds the position that only primary care qualifies for NIW unless employment is with the VA**
- **Adjustment of Status application can be filed (but not approved) while fulfilling service period**



Aliens of Extraordinary Ability

- **Published Work**
- **National or International Awards**
- **Employment in a critical capacity with distinguished organizations**
- **Published material in professional or major trade publications relating to the physician's work**
- **Membership in Organizations which require outstanding achievements**
- **High Salary**
- **Original contributions of major significance**



Labor Certification

- **Physician must have permanent full-time offer of employment**
- **Employer must demonstrate to the U.S. Department of Labor that there are no qualified U.S. workers available for the position**
- **Labor Certification Application and Immigrant Visa Petition filed by Employer**
- **Physician must intend to work for the Employer in the position described in the application until Permanent Residency granted [note AC21]**

Labor Certification –Recruitment

- **2 Sunday Ads (or 1 Sunday Ad + 1 Trade Journal Ad)**
- **30 day job posting with State Dept. of Labor**
- **10 business days internal posting at worksite**
- **Notice placed in any “in-house” media normally used by the employer to recruit for physicians**
- **3 additional forms of recruitment from the Department of Labor’s list of acceptable forms of recruitment**

Retrogression

Retrogression refers to the backlog created when there are more applicants for immigrant visas than the total number available per year.

- The total number of immigrant visas is divided amongst the various categories of eligibility and further allocated by country of birth
- Each person is assigned a “priority date” (or place in line) according to the date he or she begins the immigrant visa process.
- Can only apply for adjustment of status or obtain immigrant visa when priority date is current

Visa Bulletin - February 2006

- China
 - EB-1 January 1, 2003
 - EB-2 April 1, 2002
 - EB-3 April 22, 2001
- India
 - EB-1 February 1, 2004
 - EB-2 August 1, 2001
 - EB-3 January 1, 2000
- All Other Countries (Except Mexico and Philippines)
 - EB-1 Current
 - EB-2 Current
 - EB-3 April 22, 2001



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