

IMMIGRATION LAW AND THE RECRUITMENT OF INTERNATIONALLY TRAINED PHYSICIANS



“FAQ Regarding Immigration Requirements for
Internationally Trained Physicians”
Prepared for Merritt Hawkins by
The Law Offices of Carl Shusterman

OVERVIEW:

Just as the demographics of the overall population are changing in the United States, so are the demographics of the nation's medical workforce.

Today, approximately one-quarter of physicians in active patient care in the United States are international medical graduates (IMGs). Some of these IMGs are U.S. citizens who graduated from a medical school located abroad. However, many of these physicians were born abroad, and came to the United States to complete medical residencies and fellowships. They must qualify for temporary visas in order to work in the U.S.

It is therefore important for hospitals, medical groups, academic centers, community health centers and other facilities who wish to recruit these physicians to have some understanding of U.S. immigration laws.

What follows are a number of frequently asked questions concerning U.S. immigration laws as they pertain to internationally trained physicians

The questions and answers were prepared by Carl Shusterman, a prominent immigration attorney based in Los Angeles whose 7-attorney law firm specializes in obtaining visas for health care employers located across the U.S. and with who Merritt Hawkins has worked with for over 20 years.

What Is An International Medical Graduate (IMG?)

Any person, U.S. citizen or otherwise, who attended a non-U.S. or a non-Canadian medical school.

How Many IMGs Are There?

Over 200,000. Roughly one-quarter of physicians in active patient care are IMGs. In some specialties, such as the following, they represent more than one-quarter of active physicians:

Anesthesiology	31%
Cardiology	31%
IM	37%
Nephrology	41%
Neurology	31%
Psychiatry	31%

How Many Residents Are IMGs?

Of the 24,000+ residents who complete U.S. medical residency training each year, over 6,000 are IMGs.

Why Should You Consider Recruiting Them?

Apart from their sheer numbers, IMGs have gained wide acceptance among administrators, patients and other physicians. Many department heads, medical directors, heads of medical societies and top specialists are IMGs. By considering IMGs, hospitals, medical groups, academic centers, and other entities seeking physicians can expand the candidate pool without sacrificing quality.

What Must IMGs Do To Practice In The U.S.?

A system is in place to ensure that IMGs have the same skill sets as U.S. or Canadian graduates. To practice in the U.S., IMGs must:

- Obtain the Educational Council of Foreign Medical Graduates (ECFMG) Certificate showing equivalent knowledge to U.S./Canadian medical school graduates.
- To get an ECFMG Certificate they must pass USMLE I and II, and pass the ECFMG English language test. USMLE Part II has been split into two parts: CK (Clinical Knowledge) and CS (Clinical Skills) so that the old Clinical Skills Assessment (CSA) test is no longer given.
- In a number of states, physicians can take USMLE Part III before beginning their residency programs. Physicians who want to enter the U.S. on H-1B visas to do their residencies must have taken and passed USMLE I, II and III and received their ECFMG certification.
- After completion of their residency programs, IMGs may apply for state medical licenses.

What Is A J-1 Visa?

It is an “exchange visitor” visa for those seeking training in the U.S. and is sponsored by the Education Commission for Foreign Medical Graduates (ECFMG). It gives the holder up to 7 years to complete graduate medical education (GME).

However, once GME is completed, the holder *must return to his or her country for 2 years or obtain a waiver of this requirement.*

What Is A J Waiver?

A J waiver exempts the physician from the requirement that he or she return to their home country after completing their residency or fellowship in the U.S.

The most common method of obtaining a waiver is for the physician to be sponsored by an “Interested Government Agency”, either federal or state, and obtain a job in a federally designated Health Professional Shortage Area (HPSA), or a Medically Underserved Area or Population (MUA). States are limited to sponsoring 30 physicians per year for J waivers.

Of these 30 waivers, states may sponsor up to 10 waivers annually for physicians who are not working in HPSAs/MUAs/, but whose patients reside in medically-underserved areas. This policy is mainly to help medical centers in large urban areas that are not in an underserved area but serve a large number of indigents. Examples of this are university hospitals.

In a very limited number of cases, an IMG also can obtain a J waiver if leaving the country would cause the physician’s U.S. citizen or permanent resident spouse and children to suffer “exceptional hardship”.

How Can I Learn Whether a Facility is Located in an Underserved Area?

Contact Carl Shusterman at carl@shusterman.com. Provide him with the facility location (complete address of the location/s where the physician will be employed, including zip code). He will respond via e-mail.

What Government Agencies Sponsor J Waivers?

- The Veterans Administration (VA) - primary care and specialists.
- The Delta Regional Authority (DRA)...primary care, only in certain counties within Mississippi Delta states.
- Department of Health and Human Services (HHS)...Primary care only.
- The Appalachian Regional Commission (ARC) - Primary care physicians only, limited to the Appalachian states.
- For links to the web sites of the J waiver programs of the federal government agencies listed above, see <http://shusterman.com/jwaiversfordoctors.html>

What Is The “Conrad 30” Program?

Not only federal agencies can sponsor doctors for J waivers. Each state Department of Health can participate in the Conrad 30 program, sponsored in 1994 by Senator Kent Conrad of North Dakota.

The program permits international medical graduates (IMGs) who have completed their graduate medical education in the U.S. on J-1 visas to receive a state-sponsored waiver of the two-year home residency requirement if they practice in certain medically underserved areas. President Obama recently signed a bill which extends the Conrad 30 Program for three more years.

Under this program, each U.S. state can sponsor up to 30 primary care physicians and/or specialists each fiscal year for J-1 waivers. Although each state has formulated its own policies and program guidelines, the basic requirements are as follows:

1. The IMG must agree to work in a full-time capacity (40 hours a week) in H-1B status at a practice site located in a federally designated Health Professional Shortage Area (HPSA), a Medically Underserved Area (MUA) or a Medically Underserved Population (MUP).
2. Up to 10 of a state’s 30 annual waiver slots (the so-called “Flex 10”) may be used for practice locations outside of designated shortage areas where the employer can demonstrate that the physician will serve patients who live in shortage areas.
3. The IMG must sign a contract with the health care facility to work at the approved practice site for a period of not less than three years.
4. The IMG must agree to begin employment at the approved practice site within 90 days of receipt of the waiver.
5. If necessary, the IMG must obtain a “No Objection” letter from his or her home country indicating that the home country will not block or dispute the physician’s efforts to obtain a J-1 waiver.

To apply for the J-1 waiver, the IMG must request sponsorship from the Department of Health in the state where he or she intends to practice medicine and complete the J-1 Visa Waiver Application. If the state agrees to sponsor the physician for a J-1 waiver, it will forward the application to the Department of State for a recommendation to the U.S. Citizenship & Immigration Services (USCIS). USCIS is the final authority and determines whether or not to grant the waiver.

Once a J-1 waiver is granted, the employer must submit an H-1B petition and request for a change of status from J-1 to H-1B to the USCIS. Physicians who receive waivers under the Conrad 30 program are exempt from the annual H-1B numerical cap.

Some states attract more IMGs than others. It is very important that physicians and their employers examine the state’s program guidelines to ensure that a complete and proper application is submitted in a timely manner, as most applications are accepted on a first-come, first-served basis. A poorly prepared J-1 waiver request may result in the IMG physician missing out on one of the 30 slots or one of the 10 FLEX spots.

All 50 states participate in the Conrad 30 program. Each has its own criteria for which

physicians they will sponsor. For links to each of the state programs, see <http://shusterman.com/jwaiversfordoctors.html#3>

What Happens Once A J Physician Gets A Waiver?

If the physician is sponsored by an interested government agency, he must change his immigration status to that of an H-1B temporary professional and work for the sponsoring employer for at least three years.

If the physician receives an exceptional hardship waiver, there is no requirement that he work for a specific employer or in an underserved area.

Can The J Physician, Now On An H-1B, Change Employers?

Only if the employer terminates the H-1B doctor or violates the terms of the doctor's contract and only if the new employer is in a HPSA/MUA/PSA. The physician must obtain permission from the Immigration Service in order to change employers.

Can IMGs Start Residency On Any Other Kind Of Visa Besides The J-1?

Yes. Some IMGs enter U.S. residencies on H-1B visas, the temporary visa category for foreign-born professionals. They must pass the same requirements as J physicians, and also pass USMLE Part III before applying for H-1B status. H-1B status may be extended for the duration of the program, not to exceed six years, though under narrow exceptions, a physician can extend his H-1B status longer than six years.

Like the J-1, an H-1B is an "employer-sponsored" visa.

Can Medical Facilities Hire IMGs After They Complete Their Residency Programs On H-1Bs?

Yes. If a physician obtains a suitable offer of employment, he can "transfer" his H-1B status from one employer (the residency program) to another (the medical facility). ***The medical facility need not be located in an underserved area.***

However, the medical facility ***must apply for a green card for the physician at least one year before his H-1B status expires.*** Mr. Shusterman's law firm has been successful in obtaining extensions of the physician's H-1B status beyond the six-year period in such cases. This enables the physician to work for the employer while he is waiting to qualify for permanent

residence in the U.S.

How Long Does It Take For An H-1B Physician Completing Residency To “Transfer” His H-1B From One Employer To Another?

To get an H-1B, the doctor must have passed USMLE I, II & III and be licensed in the state where he will be working. Once licensure is obtained, it then takes about 90 days for the H-1B transfer of employers to be approved. However, the physician may begin working for the new employer as soon as the application for a change of employers is filed with the Immigration Service.

Is There An Annual H-1B Quota?

Yes. The government issues 85,000 H-1Bs per year. This is an important point because this 85,000 cap is often reached very quickly. ***Physicians who receive J Conrad waivers are exempt from the numerical H-1B cap. So are physicians who work at academic institutions, non-profit entities related or affiliated with an institution of higher education, and government or non-profit research institutes.*** If an H-1B physician wishes to transfer from a “cap-exempt” university-related residency program to a “cap-subject” employer, timing is all-important. “Cap-subject” H-1Bs are available starting October 1st each year. However, “cap-subject” H-1B petitions are accepted by the Immigration Service starting April 1st each year. Transferring from “cap-exempt” to “cap-subject” status is complex, and Mr. Shusterman should be consulted in such cases.

How Does a Physician Qualify for Permanent Residence in the U.S.?

While there are various methods of qualifying for permanent residence aka “a green card”. The most common way is for the employer to go through the “PERM” process. PERM requires employers to demonstrate to the U.S. Department of Labor that no U.S. citizen or permanent resident is qualified, willing and able to perform the job. This requires advertising in a major daily paper in the community where the physician is employed and advertising in a major medical journal for the job (usually in JAMA). This PERM application may remain pending at the Labor Department between a few months and not usually longer than one year. Only when the PERM application has been approved may the employer sponsor the physician and his family for permanent residence before the Immigration Service. Please see <http://shusterman.com/perm.html>

Alternatively, a physician who commits to be employed in federally-designated underserved areas for a minimum of five years may apply for permanent residence through a “National Interest Waiver”. This relieves the employer of the necessity of undergoing the PERM

process. A self-employed physician may also apply for a National Interest Waiver. Please see <http://shusterman.com/nationalinterestwaiversphysicians.html>.

Physicians may also qualify for permanent residence through U.S. citizen spouses or other relatives, as investors and through the visa lottery.

For additional information regarding permanent residence, see <http://shusterman.com/greencards.html>

Are There Quotas On Green Cards?

Yes, but most countries do not fully use their quotas so backlogs are usually not a concern. As of the beginning of 2013, only physicians who are born either in India or Mainland China are subject to lengthy quota restrictions.

What Is An “O” Visa?

This is a visa for foreign superstars in their profession. For a physician to qualify, it helps if they have authored numerous papers in professional journals. Please see <http://shusterman.com/o1extraordinaryability.html>

What About Canadian Physicians?

Canadian doctors are a different ballgame. They are not considered IMGs. The Canadian exam (LMCC) is reciprocated for licensure in some 40+ U.S. states.

However, to work in H-1B status, **Canadian physicians must have passed one of the following U.S. examinations – the USMLE, FLEX, or the NBME.**

If they do, and once they obtain licensure in the relevant state, a medical facility may sponsor them for H-1B status.

Can Canadians Practice In The U.S. Without A U.S. Exam?

Yes. Paradoxically, Canadian physicians are required to pass a U.S. exam to qualify for temporary H-1B status, but do have to pass a U.S. exam to qualify for a green card, which allows them to live and work in the U.S. for the rest of their lives.

In the past, the problem has been that if a U.S. employer sponsors a Canadian doctor for a green card without going through the H-1B process first, the time frame to get a green card was quite long – years, in some cases.

But this has changed.

It now takes about 18-24 months from the date that the PERM application is submitted on behalf of a Canadian physician with ***no U.S. exam*** to get a green card. This may be workable in cases where health facilities have long-term physician needs.

Keep in mind that a growing number of young Canadian physicians are taking the USMLE because they realize that this exam is required in order to qualify for H-1B status, another reason the Canadian market has become more favorable.

What Should You Do To Avoid Immigration Problems?

You do not want to get very far down the road with an IMG or a Canadian physician without having their case reviewed by an experienced immigration attorney. ***Make sure the doctor has a clear path to immigration!***

Each case is different, and often multiple immigration strategies are available. In some cases, the physician will have a problem that makes them an unviable candidate. Others may not seem like they are viable, but an experienced immigration attorney may be able to find a way for them to qualify for a visa.

Where Can I Obtain Further Information on Physician-Related Immigration Issues?

For a comprehensive video discussion of physician immigration issues, see Mr. Shusterman's [eight online presentations](#).

You may also visit Mr. Shusterman's Physicians Immigration Guide at <http://shusterman.com/physiciansusimmigration.html> or call him at 213-623-4592 x0.

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