

IMMIGRATION SOLUTIONS FOR PHYSICIANS AND THEIR EMPLOYERS

*FREDRIKSON'S HEALTHCARE
IMMIGRATION SOLUTIONS TEAM*

International Medical Graduates: Pathway to Work Authorization and Lawful Permanent Residence

Our immigration laws governing physician immigration were created at a time when the prevailing belief was that the nation had a physician surplus and that IMGs lacked the medical skills, cultural competence, and linguistic capabilities to practice medicine in the United States. As a result, U.S. immigration laws take a generally restrictive attitude toward IMG immigration, imposing such limiting measures as: a blanket two-year home residence obligation irrespective of the need for medical practitioners in the IMG's home country; special credentialing requirements over and above those set for their U.S. counterparts; complexities and delays arising from a variety of sources, including quota limitations and licensure processing times; and restrictions to IMG employment mobility.

The basic underlying policies of U.S. immigration laws for physicians have simply not kept up with a changing reality in which there are pronounced and demonstrated shortages in the physician workforce and the professional practice capabilities of IMGs now exist on par with their U.S. counterparts. In addition, the following factors further complicate matters: IMGs deservedly have professional objectives that need to be factored into their immigration strategy; employers have the responsibility to recruit skilled medical practitioners in a timely and efficient manner; in many instances, the spouses of IMGs possess advanced training and education, so their professional needs also need to be considered; and there is a broad array of other factors that impact an immigration case, including state licensure agencies and credentialing boards of the medical profession.

Above all, IMG immigration involves an area of legal practice that is incredibly important and socially beneficial — that is, hiring IMGs into practice positions that provide gap-filling services for the nation's medically vulnerable patient populations.

THE FOUR STAGES OF IMG IMMIGRATION

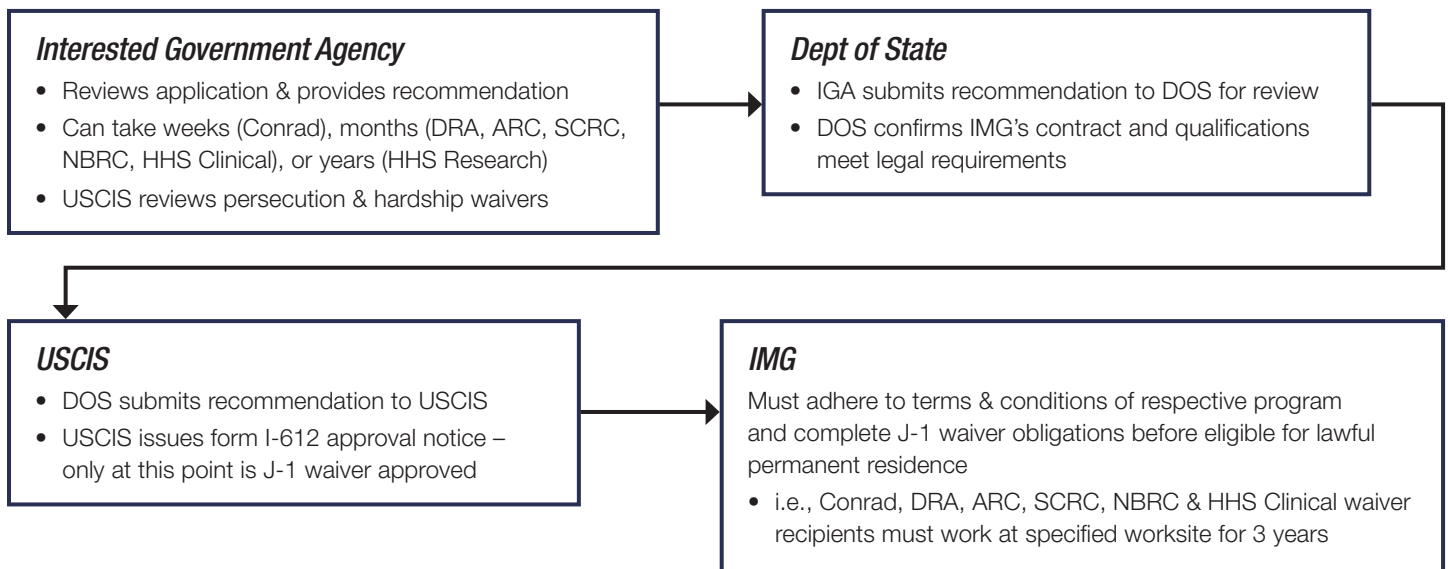
1. GRADUATE MEDICAL EDUCATION

An IMG's immigration and professional journey in the United States begins with the need to gain eligibility for medical licensure, which requires enrollment in an ACGME-accredited program of Graduate Medical Education (GME). Most IMGs will secure immigration status for completion of their GME through a J-1 visa, which carries with it a two-year home residency requirement. Some GME programs provide IMGs with immigration status through a cap-exempt H-1B visa.

2. J-1 WAIVERS

The predominant visa for GME purposes is the J-1 Exchange Visitor classification. Regardless of the IMG's country of nationality, each and every J-1 clinical physician has a mandatory obligation to return to his/her home country for a two-year period of time. As long as this two-year home residence obligation remains, an IMG is ineligible for an H-1B visa, L visa, and/or permanent residence, which virtually eliminates their long-term prospects for employment and residence in the United States.

J-1 physicians can either return to their home country for two years or seek to obtain a J-1 waiver of their two-year home residency obligation. The process for obtaining a waiver encompasses various government agencies as follows:



There are three primary pathways to obtain a J-1 waiver:

Waiver Type	Legal Basis
Persecution waiver	Based on J-1 physician's fear of persecution in the home country due to race, religion, or political opinion.
Hardship waiver	US Citizen or Lawful Permanent Resident spouse or child of J-1 physician must demonstrate exceptional hardship if two-year home residency obligation is fulfilled.
Interested Govt. Agency waiver: <ol style="list-style-type: none"> 1. Conrad State 30 program 2. Appalachian Regional Commission (ARC) 3. Delta Regional Authority (DRA) 4. Southeast Crescent Regional Commission (SCRC) 5. Northern Border Regional Commission (NBRC) 6. Health and Human Services (HHS) Clinical Waiver 7. Health and Human Services (HHS) Research Waiver 8. Government Agency 	Employer must demonstrate to a federal or state agency that recruitment of a J-1 waiver physician serves the public interest. <ol style="list-style-type: none"> 1. Each state can recommend 30 IMGs. Must work in or provide care for patients coming from a HPSA/MUA for 3 years. States may set additional requirements. 2. Practice primary medical care, psychiatry, or subspecialty full-time for 3 years in an Appalachian Region HPSA. 3. Practice general/family medicine, internal medicine, pediatrics, OB/GYN, or psychiatry full-time for 3 years in a Delta Region HPSA. Specialists possible if HPSA has need. 4. Practice general/family medicine, internal medicine, pediatrics, OB/GYN, or psychiatry full-time for 3 years in a Crescent Region HPSA. Specialists possible if HPSA has need. 5. Practice general/family medicine, internal medicine, pediatrics, or OB/GYN full-time for 3 years in a Northern Border Region primary care HPSA or MUA, or psychiatric care in a designated Mental Health Professional Shortage Area. 6. Practice family medicine, internal medicine, general pediatrics, OB/GYN, or psychiatry in a HPSA (score of 7+) within 12 months of IMG becoming Board certified/eligible. 7. IMG conducting nationally important research and is essential to the research program. 8. VA Hospitals & Military branches can sponsor J-1 physician waivers.

J-1 Physicians can self-sponsor a persecution waiver and a hardship waiver, provided their individual circumstances meet the legal requirements demonstrating well-founded fear of persecution or exceptional hardship to a qualifying spouse or child. Most J-1 waivers are obtained through sponsorship by an employer seeking an interested government agency waiver. Notably, J-1 physicians are not eligible to obtain a waiver of the two-year home residency obligation through a “no objection” statement.

3. NONIMMIGRANT VISAS FOR IMGs

At all stages of residence in the United States, an IMG (or, for that matter, any other foreign national) needs to maintain appropriate visa status. There are special rules pertaining to nonimmigrant visa entitlement for IMGs. A nonimmigrant visa strategy needs to be formulated as part of an IMG’s longer-term immigration and professional plans, as well as an employer’s desire for long-term retention.

IMGs who are the recipients of a J-1 waiver through an interested government agency are eligible to change into H-1B status and are cap exempt. IMGs who are recipients of a J-1 persecution or hardship waiver can change status to that of H-1B, but must be employed through a cap-exempt employer or be selected as a recipient of an H-1B registration selection notice in the annual cap lottery.

If an IMG has not been in J-1 status, and instead completed GME while in cap-exempt H-1B status, the IMG can consider remaining in H-1B status through a cap-exempt employer, being mindful that the maximum amount of time allowed in H-1B status is six years. This six-year maximum can be extended in specific instances, and should be discussed with immigration counsel.

If a J-1 physician is not the recipient of a J-1 waiver, there may be alternative options. These should be considered in two categories: (1) those sponsored by an employer, and (2) those in which the IMG could self-petition.

Employer Sponsored	Self-Petition
<ul style="list-style-type: none"> • O-1: Individual of “extraordinary ability” • TN: Citizens of Canada or Mexico. Teaching & research focus with only incidental patient contact 	<ul style="list-style-type: none"> • F-1: Return to school as an F-1 student (generally for a Masters or PhD program). • E-2: Citizens of a E-2 treaty country; requires investment in a U.S. business. • TPS: Citizens of countries with authorized TPS; allows for work authorization. • Asylum: Individual scenarios may meet the legal requirements.

If these options are not viable, a J-1 physician could also consider extending J-1 status or determining if their spouse had an option for nonimmigrant status and change to a corresponding dependent status.

4. PERMANENT RESIDENCE OPTIONS: OBTAINING THE “GREEN CARD”

The ultimate objective for many IMGs and certainly a prerequisite to long-term retention by employers is permanent residence, which enables an IMG and his/her dependent family members to reside on a long-term basis in the United States and to possess unrestricted employment authorization, or U.S. citizenship.

Immigrant Visa Petition
<ul style="list-style-type: none"> • First, an IMG must secure an approved immigrant visa petition • There are three primary avenues by which IMGs pursue an employment-based immigrant visa. <ul style="list-style-type: none"> o PERM Labor Condition Application: An IMG’s employer must test the labor market to establish it is unable to recruit a sufficiently qualified U.S. worker to fill the position. The employer can then request USCIS approve an immigrant visa petition for the IMG for the specific position it is unable to fill. The IMG and the employer must agree that the IMG will be in the position when it is time to file for adjustment of status. o Physician National Interest Waiver (PNIW): A physician who commits to working in an HPSA or MUA for five years, or who has already worked in an HPSA or MUA for five years, can apply for an immigrant visa. This petition can be sponsored by the IMG independently or by the IMG’s employer. Once the IMG has completed the five-year service obligation, the IMG can work elsewhere and still attain permanent residency through the approved PNIW immigrant visa once a visa number is available. o Outstanding Professor and Researcher: Some IMGs working as physician-scientists, largely in academic institutions, may be able to attain permanent residence upon a successful claim that they are an outstanding academic figure. This requires employer sponsorship. This process could avoid substantial immigrant visa number backlogs faced by IMGs from certain countries (mainly India). • Even if an IMG is working through J-1 waiver requirements, it is highly advisable to start the permanent resident process so that the IMG can file the final application for permanent residence—the I-485 adjustment of status application—immediately upon fulfillment of the three-year period of H1B employment or once a visa number is available.

Adjustment of Status Petition

- Second, the IMG and dependent family members must file for adjustment of status, (or if desired, consular processing abroad at a U.S. embassy) once a visa number is available.
- Due to annual country quotas, an IMG who has otherwise completed any necessary J-1 waiver commitments and has an approved immigrant visa petition may still be subject to a country backlog (historically citizens of India & China in the EB-2 category).
- The availability of immigrant visa numbers is updated on a monthly basis in the Visa Bulletin of the U.S. Department of State.

Naturalization

- Naturalization is the process by which a Lawful Permanent Resident becomes a United States Citizen.
- Lawful Permanent Residents are eligible to apply for naturalization five years (three years for U.S. Citizen spousal applicants) after obtaining Lawful Permanent Resident status.

The process to lawful permanent residence takes place in two stages, and can be followed by naturalization.

There is no “one size fits all” approach to permanent residence. Rather, U.S. immigration laws permit multiple pathways to permanent residence based on family relationships, employment, humanitarian reasons, and various special programs. In each instance, an IMG should work with immigration counsel to holistically assess the facts and design appropriate strategies for permanent residence that factor in a wide range of both personal and professional considerations.

FREDRIKSON'S HEALTHCARE IMMIGRATION SOLUTIONS TEAM

Fredrikson's Healthcare Immigration Solutions Team (HIST) partners with healthcare employers, IMGs, and healthcare professionals to navigate the complex immigration systems affecting IMG employment. We work to expand the pool of physician candidates for healthcare employers, and we are committed to achieving the objectives of IMGs and healthcare professionals for stable immigration status and meaningful and challenging professional careers. Above all, we work diligently to demystify the immigration process, develop a true partnership among the stakeholders in our immigration cases, and earn the respect and trust of the clients we serve across the United States and globally. We offer clients a comprehensive experience with access to a team with decades of healthcare immigration law experience, fredlaw.com/immigration, and one of the nation's premier Health Law departments fredlaw.com/healthcare.



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