From Graduate Training to Green Card
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The J-1 Path

What Does the Home Residency Requirement Mean?

• Not eligible for an immigrant visa or change of status

• No H-1B or L visa stamp

• No change of status from J-1 to other non-immigrant categories
J-1 Waivers

Two major ones available to MDs

- Interested government agencies (via state health office (30 slots), Delta Regional Authority, Appalachian Regional Commission, HHS or VA)

- Exceptional hardship
Basic Requirements for Shortage Waivers

- Position is in a shortage area – HPSA or MUA/MUP (except certain State 30 “flexibility” slots)
- Three year commitment to work in H-1B status
- 40 hours per week in shortage area
- Can be either primary or specialty medicine depending on program
- Most states will now consider specialists
Other Requirements

• Accept Medicare, Medicaid and indigent patients

• Document recruitment

• Timing is important – can take several months to process
J-1 Waiver Common Contract Issues

• Service obligation period

• Hours per week

• Commence employment within 90 days of waiver

• Non-compete and liquidated damages clauses

• Termination provisions
Moving During the Waiver Period

• Must show new position is in a shortage area (even if a FLEX slot)

• Must have a contract for the balance of the three years

• Must show there are extenuating circumstances justifying the transfer
Other Options

• HHS Research
• VA
• Hardship Waiver
• O-1s
• E-2s
Spouses

1. J-1 spouse
2. J-2 spouse
3. H-1B spouse
4. Permanent resident spouse
5. US citizens
H-1B Path

• Must pay the prevailing wage

• Six year maximum

• Does NOT need to be in underserved area

• No minimum contract term

• Cap applies to many cases
The H-1B Cap

• Most MDs exempt for their training programs

• First position subject to the H-1B cap after finishing training will be where cap issue arises

• Non-profits affiliated with universities or non-profit research institutions are exempt

• Exemption based on location of employer and/or who is signing the paycheck

• Only one location needs to qualify if MD working at multiple places

• Green card may be a feasible alternative
Questions to Ask Facilities Regarding H-1B Cap

- Is the employer a not-for-profit? If not, will the physician work at any locations where the facility is owned by a not-for-profit company?
- Are any of the locations where the doctor will be working part of a university or non-profit research hospital or connected in any way with a university or non-profit research institution?
- If the doctor is working in a hospital setting, does the hospital have educational programs for nurses, medical residents or others?
Money Issues

1. Government fees
2. Attorney fees
3. Expenses
4. Bonuses
Assessing the Case (Triage)

• In Status? Out of Status? Latent problems?
• J visa past, present or future?
• School? Research? Work? Options?
• Does Time / Timing Work?
• Are there “Special” issues or concerns?
Time / Timing

• Maximum Length of Stay
  – J-1 = 7 years
  – H-1B 6 years (BUT Extensions of one or three years – AC21- if Immigrant Visas are unavailable and Immigrant Visa petition is filed and approved)

• Processing Times
  – J-1
  – H-1B (There is a risk that no visas will be available if the petitioner is Cap Subject)
  – Immigrant Visa
    • NIW
    • Labor Certification
Green Cards

• Option 1 – National Interest Waiver
• Option 2 – Labor Certification
  » Includes longer waits for
  » Indian/Chinese Nationals
• Option 3 – Return to Home Country
• Option 4 – EB-5 Immigrant Investor Visa
• Option 5 – EB-1 Extraordinary Ability and Outstanding Researchers
National Interest Waivers

• 5 year commitment
• Primary or Specialty care
• Shortage area
• Supporting agency
• Can apply for adjustment at start of processing
• Court case injecting new life into program
Labor Certifications

• Test of the US job market

• Not exactly “real world”

• Usually successful

• Plus – need not be in shortage area

• Negative – slow, can’t complete process until J-1 time over
Fulfill 212(e) / 2YRRR

- Return to “Home” Country
  - Country of nationality
  - Country of last “Residence”
- Two Years “in” Country
  - Only count time in country
- Who Must Fulfill
  - Current law applies to both
- Affirmative Basis Required to Return
EB-5 Immigrant Investor

- Jobs Creation Act (Immigrant Investor Visa)
  - Minimum $1M / $500K (hardship area)
  - Must create 10 NEW Jobs
- Conditional Residence For 2 Years
  - Must show 10 permanent jobs after 2 years
  - Processing Time currently 8 – 12 months
- Pilot Program Option
- Key Benefit – Visas Immediately Available
Schedule a Free Consultation

Physicians are not charged consultation fees at Watson Law Offices. Feel free to email us to schedule an appointment by phone or in person.

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