

From Graduate Training to Green Card December 12, 2012

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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

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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

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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**

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Spouses

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

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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

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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?

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Money Issues

1. Government fees
2. Attorney fees
3. Expenses
4. Bonuses

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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

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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

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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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