

Doctors Can Clear Immigration Hurdles

FOREIGN NATIONAL PHYSICIANS HAVE SEVERAL OPTIONS FOR REMAINING IN U.S.

BY LAUREN M. SIGG

Foreign nationals who receive graduate medical education/training in the United States in J-1 status are subject to a two-year home residency requirement, which requires a two-year stay in their home country at the end of their education/training. Unless this requirement is fulfilled or waived, the physician is ineligible to change status to other non-immigrant visa categories, obtain an H or L visa, or adjust status to become a legal permanent resident.

The process for obtaining a waiver can be challenging. Once the waiver is obtained, however, there are a variety of immigrant categories that employers/physicians may consider to allow the physician to remain in the United States permanently.

A physician who wishes to remain in the United States (either through a change in non-immigrant status or as a permanent resident) must first fulfill or obtain a waiver of the home residency requirement. The Conrad 30 program is one option that allows J-1 medical doctors to apply for a waiver of this requirement. (See section 214(l) of the Immigration Nationality Act (INA)). Specifically, the Conrad 30 program permits each state's department of health to sponsor up to 30 foreign national physicians for such waivers each year. In exchange for the waiver, the physician must agree to serve for at least three years in a federally designated Medically Underserved Area (MUA) or Health Professional Shortage Area (HPSA). While the require-



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ment for each state differs, the physicians/health care facilities must also generally abide by the following:

- Serve for a period of no less than three years in H-1B status.
- Possess a written contract between the employer and health facility.
- Agree to begin serving within 90 days of the waiver's approval.
- Sign a statement agreeing that they understand the policies of the J-1 waiver program, will comply with the policies, and the information submitted is correct.
- Demonstrate that the health care facility is unable to recruit a U.S. citizen for the position.

If the physician's home country funded the physician's medical education, a no-objection letter from the home country must also be obtained.

The process for obtaining a Conrad 30 waiver can be cumbersome. First,

the health care facility/physician must file a Form DS-3035 with the U.S. State Department. Once filed, the applicant receives a case number. The applicant must then complete any state-specific requirements (that is, conduct recruitment, etc.) and file a request with the state's health department. To move forward with the waiver, the health department must recommend to the State Department that the waiver be approved. If the health department issues a favorable recommendation, the State Department reviews the petition and issues its recommendation to the U.S. Citizenship and Immigration Services (USCIS). Ultimately, the USCIS typically approves the waiver if recommended.

Once approved, the health care facility can move forward with an H-1B petition on behalf of the physician, and the physician must agree to begin working within 90 days. Timing is critical.

Assuming a waiver has been obtained or fulfilled, the physician may wish to become a permanent U.S. resident. There are a number of immigrant categories that the physician/facility can consider when contemplating a green card. For example, the physician may obtain a green card through a family-based petition (for example, if the physician marries a U.S. citizen) or an employment-based, second preference (EB-2) immigrant petition based on the physician's membership in a profession holding an advanced degree (please note that this type of petition requires a Labor Certification). The Labor Certification/PERM process can also be cumbersome, requiring the company to

conduct recruitment and demonstrate that it is unable to locate a U.S. worker who is able, willing, qualified, and available to fill the physician's position.

National Interest Waiver

One of the most common immigrant petitions for physicians is the National Interest Waiver, which waives the Labor Certification requirement if the government determines it is in the best interest of the United States for the physician to remain in this country. To qualify for this waiver, the physician must:

- Agree to work full-time in a clinical practice, generally for a period of five years.
- Serve either in a HPSA, a MUA, a Veterans Affairs facility, a Mental Health Professional Area (for psychiatrists only) or, in certain cases, a Physician Scarcity Area.
- Obtain a statement (known as an attestation) from a federal agency or the state DPH indicating that the physician's work is in the public interest.

Like the Conrad 30 waiver process, the federal or state agency must recommend that the National Interest Waiver be granted, but the waiver is ultimately issued by USCIS. Further, if the physician receives a Conrad 30 J-1 waiver (as discussed above), the three years required for the J-1 waiver generally counts toward the five-year National Interest Waiver requirement. If a National Interest Waiver is granted, the USCIS will not adjust the physician's status until the physician has completed the five years of employment in the underserved area. Please note that certain interim filings are also required to demonstrate that the physician is completing the required employment.

The 'extraordinary ability' green card category is reserved for individuals who possesses extraordinary ability in the sciences, education, business, or athletics and have been recognized nationally or internationally for these achievements.

'Extraordinary Ability'

Although not as common, physicians may also consider whether they qualify for certain employment-based, first preference (EB-1) immigrant categories, such as "extraordinary ability" or "outstanding researcher" categories, which bypass the PERM process. This is usually reserved for physicians who have documented evidence of significant achievements.

The "extraordinary ability" green card category is reserved for individuals who possess extraordinary ability in the sciences, education, business, or athletics and have been recognized nationally or internationally for these achievements. Evidence of such recognition must consist of at least three of the following:

- 1) Receipt of major national or international awards for outstanding achievement in the academic field;
- 2) Membership in associations that require outstanding achievements of their members;
- 3) Published material in professional publications about the physician's work;
- 4) Participation, on a panel or individually, as the judge of the work of others in the same or allied academic field;
- 5) Original scientific or scholarly contributions to the academic field;
- 6) Authorship of scholarly books or articles

in scholarly journals with international circulation;

- 7) A high salary or other remuneration for services; and/or
- 8) Employment of a critical or essential capacity in organizations that have a distinguished reputation.

Further, a physician who has conducted at least three years of research may qualify for the outstanding researcher green card category, which is reserved for those researchers who are internationally recognized as outstanding in a specific academic field and who possess at least three years of research experience in the field. The outstanding researcher category can be a particularly difficult category for physicians, as it is often difficult to demonstrate that their research has received international recognition.

As discussed above, foreign nationals who study in the United States in J-1 status for graduate medical education/training are subject to a burdensome two-year home residency requirement. While there is an established and, at times, unwieldy mechanism to waive this requirement, it is very possible to achieve. Once a waiver has been obtained, the employers/physicians may consider a variety of immigrant petitions to allow the physician to remain in the United States indefinitely. ■



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