

J-1 Waivers in a Nutshell
by: Naveen Bhora*

International Medical Graduates (IMGs) face a complex scheme of U.S. immigration laws. This article will provide an overview of options available to IMGs who wish to remain in the U.S. after completing their training.

Most IMGs come to the U.S. on J-1 visas for graduate medical training. J-1 visas are sponsored by the Educational Commission for Foreign Medical Graduates (ECFMG). Through its certification program, ECFMG assesses the readiness of IMGs to enter residency or fellowship programs.

Spouses and children may accompany the J-1 physician to the U.S. on J-2 visas. Unlike most other dependent visas, J-2s entitle their holders to work authorization.

Once a physician and accompanying family members enter the U.S. on the J visas, they are all required to return to their home country for two years before they can obtain an H or L visa, or permanent residency. It is also possible to become subject to this two-year home residence requirement by pursuing research sponsored by U.S. or foreign government agencies or by obtaining training in the U.S. that is included in the State Department's "Skills List". It is important to note that J-1 visitors who subsequently acquire citizenship in another country must still fulfill the requirement in the original country of nationality or last permanent residence that is listed on Form DS-2019.

The simplest solution is to fulfill the requirement by returning to one's country of citizenship or last permanent residence. This may be done in increments and over a span of several years. Depending upon eligibility, one can also postpone the requirement by acquiring an alternative temporary visa such as J-2, O-1, TN, F-1, E-1, E-2 or E-3. But if the long-term goal is to become a permanent resident, then the IMG should consider several waiver options.

Federal agencies and state departments of health collectively known as "interested government agencies" (IGAs) grant the most common waivers. These waivers include the

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Conrad State 30 Program; Veterans Administration; Appalachian Regional Commission; Delta Regional Authority; and Department of Health & Human Services (HHS).

Generally, all IGA waiver requests must be filed by an employer and the place of employment must be in a Health Professional Shortage Area; a Medically Underserved Area; or a VA Hospital. The State Departments of Health may grant five of the 30 annual Conrad slots to non-underserved locations. Most States favor issuing waivers to primary care physicians (e.g. internal medicine, family practice, OB/GYN, psychiatry or pediatrics), although some may sponsor sub-specialists. Once the waiver is granted, the physician must work on a full-time basis in the designated underserved area for at least three years on H-1B status.

Physicians who are academic researchers may apply for the HHS Research Waiver. The physician must be engaged in research of national priority and interest to the HHS. Accordingly, performing NIH-funded research is important. The IMG must show how s/he is essential to the program, and the employer must show that no replacement can be found.

Alternatively, the physician may file a waiver based on exceptional hardship or fear of persecution. While no employer sponsorship is required to qualify for a hardship waiver, the IMG must have a qualifying “anchor” relative – a U.S. citizen or permanent residence spouse or child. For the hardship waiver, the IMG must explain how the anchor relative(s) will suffer unusual and/or extreme hardship. The IMG must prove hardship to the anchor relatives if they were to remain in the U.S. without the J-1 physician and also if they were to accompany the J-1 physician to the home country. It is important to explain how a combination of hardships will make the suffering worse than that borne by an average American separated from his/her family. In other words, the degree of hardship must be greater than loneliness, anxiety and altered financial circumstances. For a persecution waiver, the IMG must demonstrate that he or she *would* be subjected to persecution in the home country. This is a higher standard than the “well-founded fear” of persecution within the asylum context.

Both hardship and persecution waivers may be filed at any time. The initial application is filed with the U.S. Citizenship and Immigration Services (USCIS). If the USCIS determines that hardship or persecution exists, the State Department will then balance the hardship or persecution against the J-1 program and policy. The benefit of one of these two waivers over the IGA waivers is that the IMG is not required to complete an additional three-year period of employment.

Lastly, it is important to note that a waiver application is the first hurdle to permanent residency. The physician must still apply for an immigrant visa through an employment or family-based petition. For a discussion of immigrant visas options please visit www.wolfsdorf.com or contact Naveen Bhora at nbhora@wolfsdorf.com or (212) 899-5040.

