



IMMIGRATION OPTIONS F★R FOREIGN PHYSICIANS

Immigration Newsletter

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Goldstein & Associates, LLC is a law firm specializing in immigration law. Our healthcare immigration practice focuses on helping United States health care professionals and providers. The healthcare practice encompasses J-1 Visa Waivers and National Interest Waivers for physicians; H1B applications; and permanent resident applications for healthcare professionals. We are affiliated with firms in Korea, Hong Kong, Singapore, and India. Using our relationships throughout the international health care community, Goldstein & Associates, LLC can resolve your immigration needs. Our consultations are complimentary and we welcome the opportunity to speak with you and explain how our expertise will benefit you.

J-1 VISA WAIVER OPTIONS FOR PHYSICIANS

Under the terms of a J-1 visa, an International Medical Graduate (IMG) who completes a residency or fellowship in the United States must return to his or her home country to practice for at least two years. *There are, however, two common and successful means of obtaining a J-1 waiver and avoid the two-year foreign residency requirement:*

1. Conrad State 30 Program: An Interested Government Agency (IGA) shows that the IMG is needed in the U.S. to work in a medically underserved area, as designated by the Department of Health and Human Services.
2. A National Interest Waiver.

Conrad State 30 Program

The Conrad State 30 Program authorizes each state to recommend waivers for up to 30 foreign national physicians per fiscal year (October 1 through September 30). The program provides each state flexibility in using foreign national physicians to staff physician shortage areas. At the same time the program affords J-1 visa holders the opportunity to waive their two year foreign residency requirement in exchange for providing primary healthcare and some specialty care in a federally designated physician shortage area for a period of three years. The general requirements for the foreign physician in the state of Pennsylvania are the following:

1. Work at least 40 hours a week for at least 3 years in a medically underserved area;
2. Begin work within 90 days of obtaining the waiver;
3. Obtain a no objection statement by the home government if contractually obligated to the home government;

4. A written contract between the employer and the IMG;
5. A working site that agrees to care for Medical Assistance and Medicare;
6. A statement signed by the IMG stating that he or she has no other pending waiver application; and
7. Evidence proving that efforts to recruit an American physician for the vacancy were unsuccessful.

National Interest Waivers

The National Interest Waiver, which waives the two-year foreign-residence requirement for J-1 visa holders, may be requested by an interested U.S. government agency in the “national or public interest.” The alien must demonstrate how s/he will provide a direct or indirect benefit through regional or local action, and case law suggests the following factors that might satisfy the “national interest” requirement:

1. Improving the U.S. economy.
2. Improving wages or working conditions for U.S. workers.
3. Improving education and training programs for U.S. children and underqualified workers.
4. Improving health care.
5. Providing more affordable housing for young and/or older, poorer U.S. citizens.
6. Improving the environment of the United States and make more productive use of natural resources.
7. A request from a U.S. government agency.

Agencies such as the Department of Housing and Urban Development, the Department of Agriculture, and the Department of Veterans Affairs sponsor National Interest Waivers for foreign physicians. The Department of Health and Human Services (HHS), the Department of Defense, and the Department of Education tend to process requests for scholars and researchers. The program seeking agency support must:

1. Show that the physician will practice in, or in a manner designed to serve, a population in a “health professions shortage area” or a “medically underserved area,” as determined by the U.S. Public Health Service of HHS.

2. Demonstrate that the program has engaged unsuccessfully in extensive recruitment for a U.S. citizen or permanent resident physician for the position for which the exchange visitor is being sought.
3. Provide evidence of a contract between the J-1 physician and the health care provider for two to four years, depending upon the agency.
4. Demonstrate J-1 physician's satisfactory qualifications and strong recommendations.

H-1B NONIMMIGRANT TEMPORARY WORKING VISA

The H1B visa is a non-immigrant visa, which allows a US company to employ a foreign individual for up to six years. The H1B visa is designed to be used for staff in “specialty occupations”, that is those occupations which require a high degree of specialized knowledge.

The following special requirements apply for Foreign Physicians wishing to obtain an H1B visa:

- **H1B Visas and Research:** Foreign medical graduates coming to the US to teach or perform research with only a small amount of patient care will have to show:
 - Foreign or US medical education;
 - Licensed in home country; and
 - License by the state where patient care will be performed.
- **H1B Visas and Clinical Practice:** Engaging in clinical practice or in graduate medical training requires:
 - License or other authorization required by the state where you will practice;
 - Unrestricted license to practice medicine in your country or have graduated from a foreign or US medical school; and
 - Passed one of the following medical examinations:
 - Federation Licensing Examination (FLEX) parts I and II, or an “equivalent examination as determined by the Secretary of Health and Human Services”;
 - National Board of Medical Examiners (NBME), Parts I, II and III;
 - or The United States Medical Licensing Examination (USMLE), Steps 1, 2 & 3

Foreign Physicians are also required to document competency in English such as through passage of TOEFL. The exception to this rule is if you graduated from a US medical school.

Also, most of the above requirements are waived for doctors who are of national or international renown in their area of specialization and who have graduated from a foreign medical school.

GREEN CARD OPTIONS FOR FOREIGN PHYSICIANS

Alien of Extraordinary Ability Immigrant Petition

You may qualify for the EB-1 Alien of Extraordinary Ability category if your work/research received or sustained national or international acclaim in the form of either receipt of a major one-time achievement award (such as a Nobel Prize, Olympic Gold Medal, Academy Award), OR at least three of the following:

- Receipt of lesser nationally/internationally recognized prizes/awards for excellence in your field;
- Membership in associations in your field which require outstanding achievements in your field as judged by recognized experts in your field;
- Publication in major, recognized publications about you and your work in your field;
- Participation as a judge of others in your field;
- Major original contributions to your field;
- Authorship of scholarly articles in your field published in major publications;
- Display of your work in exhibitions or showcases;
- Playing critical role for distinguished organizations;
- Commanded very high salary compared to others in your field;
- Commercial success in the performing arts.

National Interest Waiver Immigrant Petition

Approval of a national interest waiver means the alien is not required to have a job offer and is not required to go through the labor certification process. In *In Re: New York State Department of Transportation*, the INS Associate Commissioner adopted a three-part test for national interest waiver approval, which stands as a precedent decision:

1. The alien beneficiary must seek to work in an area of “substantial intrinsic merit”;

2. The alien beneficiary's work must have a benefit which "will be national in scope"; and,
3. The alien beneficiary must "serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications."

Please refer to the J-1 Visa National Interest Waiver for additional details.

Employer Sponsored Green Card Application (PERM)

PERM is the process for obtaining labor certification, the first step of the green card process for foreign nationals seeking permanent residence through their employment. To obtain an approved PERM Labor Certification, the employer must prove (through newspaper advertising and other recruiting methods) that they were unsuccessful in recruiting a qualified U.S. worker for a certain position.

Employer Sponsored Green Card applications involve the following three steps:

1. PERM Labor Certification Application
 - 30 Days of Advertisement and Recruitment
 - 30 Day Mandatory Waiting Period (from the last date of advertisement/recruitment)
2. I-140 Immigrant Petition for Alien Worker
3. I-485 Application to Register Permanent Residence

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Practice Areas

Business Immigration

- Specialty Occupation Visas (H1B)
- Employment Based Permanent Residence
- Student Visas (F1)
- Visitor Visas (B1/B2)
- Exchange Visitor Visas (J1)
- Outstanding Researchers (O1)
- Aliens of Extraordinary Ability
- National Interest Waiver Green Cards
- Multinational Manager Green Cards
- Intra Company Transferees (L1A/L1B)
- Investor/Treaty Visas (E1/E2)

Specialized Services

- Asylum & Refugee Status
- Deportation Matters
- Consular Processing
- Extreme Hardship Waivers
- 2 yr Foreign Residency Waivers
- Conrad State 30 Waivers
- Formation of US Corporation
- Contract and Lease Negotiations
- Banking Services

Family Immigration

- Family Based Permanent Residence
- Marriage Based Permanent Residence
- International Adoptions

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