

Frequently Asked Questions about Visas

1. After a medical residency program, what immigration options does a foreign medical graduate have?

The most common immigration options are as follows:

One: J1 residency → J-1 waiver → H-1B visa → Green card → Citizenship

Two: J1 residency → J-1 waiver → O-1 visa → Green card → Citizenship

Three: H-1B residency → H-1B change of employer → Green card → Citizenship

2. After completing a residency program, does the resident need an H-1B visa to start working?

Yes, an H-1B visa or other employment-related visa is required to work lawfully in the United States.

3. If a physician is affiliated with a university, is he exempt from the H-1B cap?

If the healthcare facility is a nonprofit entity affiliated with a university, the physician may be exempt from the H-1B cap.

4. Can a physician who only wants to work part-time qualify for an H-1B visa?

H-1B status may be granted for part-time work. An individual may apply for permanent residence through employment and may submit a green card application (lawful permanent residence) while physically present in the U.S. ("adjustment of status" application) or at a consular post abroad (immigrant visa application). The green card application process generally has several steps and is usually commenced by a sponsoring employer.

Step 1: The employer submits an immigrant petition with the USCIS requesting that the sponsored doctor be categorized in an employment-based immigrant classification (which is usually first or second preference). Please note that some second preference petitions require the submission of an approved labor certification.

Step 2: If the immigrant petition is approved and a visa number is available for the doctor's classification, the sponsored doctor may apply for a green card. If an immigrant visa number is available, the doctor may apply for an immigrant visa at the consular post in his or her home country. If the doctor is lawfully present in the U.S., the doctor may submit an application for adjustment of status. When a doctor submits this application, he or she may also request a travel document (Advance Parole) and employment authorization (EAD).

5. May a physician change employers once he or she becomes a lawful permanent resident?

When a worker is granted lawful permanent residence based on an employer's sponsorship, it is generally based in part on the assertion that the worker intends to work for the petitioning employer. This requirement has lost some relevance with changes in legislation in recent years. Nevertheless, it is a requirement that is worth noting. That being said, a lawful permanent resident is free to work and live where he or she chooses in the U.S. Although a green card does have an expiration date, permanent residence does not expire if the card expires. However, a lawful permanent resident must have his or her green card to re-enter the U.S. and to demonstrate employment authorization.

6. Can a physician who is a lawful permanent resident apply for U.S. citizenship? Will this change affect his/her employer?

An individual may apply for naturalization after being a lawful permanent resident for five years. There are other requirements that must be met, such as certain physical presence and good moral character requirements. Naturalization does not affect the applicant's employment.

7. What is a J-1 waiver?

A J-1 waiver relieves a foreign medical graduate from the obligation to return to his or her home country for two years, and allows the foreign medical graduate to apply for an immigration status that would allow him or her to remain and work lawfully in the U.S.

8. What is the Conrad 30 J-1 visa waiver program?

This program allows states to sponsor up to 30 IMGs on an annual basis who agree to serve in federally designated shortage areas. These areas may be rural or inner-city communities that have difficulty recruiting physicians. Although the exact requirements vary from state to state, the standard requirements are as follows:

- Full-time offer of employment (40 hours per week) as a primary care physician in a federally designated shortage area within a particular state
- Letter of need from the healthcare facility supporting the physician's J-1 waiver application
- Three-year employment contract
- "No-objection" letter from the physician's home country, when necessary

Rural areas, inner cities, American Indian reservations, and other federally designated shortage areas often experience difficulties in the recruitment and retention of physicians. In many

cases, the ability of healthcare facilities to remain open and provide the necessary healthcare to the population depends on having an adequate staff of physicians. Due to these difficulties, many communities turn to the recruitment of international medical graduates with a J-1 visa to fill their physician needs. Healthcare facilities in these designated shortage areas can sponsor candidates for a J-1 waiver to allow the physician to work in lawful H-1B status.

The most popular way for a physician on a J-1 visa to obtain a waiver that allows the physician to change his or her status to H-1B is to find a J-1 waiver job in a designated shortage area. These jobs have specific requirements and the filing procedure and requirements may vary depending on the specific shortage area. Furthermore, although the H-1B visa does not count toward the annual cap, there are certain restrictions that must be followed.

9. How long does it take to obtain a J-1 waiver?

Processing times varies depending on the caseload of the agencies involved. Currently, it can take four to eight months to complete adjudication of a J-1 waiver.

10. Does a resident need a waiver to work at a healthcare facility?

If a resident is in the U.S. on J-1 status, he or she must have a status change to H-1B to work at a healthcare facility. To change status, the J-1 resident must obtain a waiver. If a resident is in the U.S. on H-1B status, a waiver is not needed to work for a healthcare facility. In this case, the resident does need to request a change of employer.

11. How far in advance does a J-1 resident need to apply for a J-1 waiver?

It is recommended that J-1 residents apply at least four to eight months in advance to ensure they remain in lawful status while their J-1 waiver application is pending.

12. When a physician on a J-1 waiver is concerned about the stability of a facility, what can he or she do?

If a physician is on the Conrad 30 program, he or she must demonstrate extenuating circumstances before being able to change employers. Extenuating circumstances include the closing of a facility or hardship to a spouse.