Immigration And International Medical Graduates: Frequently Asked Questions

Who Does MHA Use To Handle Physician Immigration Cases?

For over 15 years, Merritt, Hawkins & Associates has retained the services of The Law Offices of Carl Shusterman to handle physician immigration cases. Mr. Shusterman and his associate, attorney Ellie Najfabadi, are nationally acknowledged experts in physician-related immigration law. Much of the information in this FAQ was provided by their offices (note that Merritt, Hawkins & Associates is not a legal firm and does not offer legal advice.) Contact information for their offices is as follows.

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What Is An International Medical Graduate (IMG?)

Any person, U.S. citizen or otherwise, who attended a non-U.S. or a non-Canadian medical school.

How Many IMGs Are There?

Close to 200,000. Roughly one-quarter of physicians in active patient care are IMGs. In some specialties, such as the following, they represent more than one-quarter of active physicians.

Anesthesiology 31%
Cardiology 30%
IM 32%
Nephrology 40%
Psychiatry 31%

How Many Residents Are IMGs?

Over 23,000 residents come out of U.S. residency training each year. Over 5,000 are IMGs
Why Consider Them?

Apart from the numbers, IMGs have gained greater acceptance among administrators, patients and doctors. Some have communications issues, but many department heads, medical directors, heads of medical societies and top specialists are IMGs. By considering IMGs, hospitals, medical groups and other entities seeking physicians can expand the candidate pool without sacrificing quality.

What Must IMGs Do To Practice In The U.S.?

A system is in place to ensure that IMGs have the same skill sets as U.S. or Canadian graduates. To practice in the U.S., IMGs must:

- Obtain the Educational Council of Foreign Medical Graduates (ECFMG) Certificate showing equivalent knowledge to U.S./Canadian med school graduates

- To get an ECFMG Certificate they must pass USMLE 1-2, and pass the ECFMG English language test. USMLE Part II has been split into two parts: CK (Clinical Knowledge) and CS (Clinical Skills) so that the old Clinical Skills Assessment (CSA) test is no longer given.

- They can take USMLE Part III after one year of residency. Those wanting to enter the U.S. to do a residency on H-1B status, must have taken and passed USMLE I, II and III and received their ECFMG certification.

- Must complete a U.S. based residency program.

Not all IMGs who apply for ECFMG Certification can pass the tests. Generally, it is some of the best students/physicians from other countries who are able to meet the necessary qualifications.

What Is A J-1 Visa?

It is a visa for those seeking education/training in the U.S. and is sponsored by the Education Commission for Foreign Medical Graduates (ECFMG) it gives the holder up to 7 years to complete graduate medical education (GME)

However, once GME is completed, the holder must return to his or her country for 2 years or obtain a waiver of his two-year home residency through an Interested Government Agency.
**What Is A J-Waiver?**

A J waiver gets the J-1 visa holder out of the two-year residency requirement.

To get a waiver, the J doctor must be sponsored by an “Interested Government Agency” and obtain a job in a federally designated Health Professional Shortage Area (HPSA) or a Medically Underserved Area (MUA).

Effective fiscal year 2005, some states are issuing up to 5 waivers to physician who are not working in underserved areas, but serve a large underserved population. The policy is mainly to help medical centers in large urban area that are not in an underserved area but serve a large number of indigents. Examples of this are some teaching hospitals in NY.

In a very limited number of cases, an IMG also can obtain a J waiver if leaving the country would cause the doctor’s United States Citizen or Permanent resident spouse or children to suffer extreme hardship. Extreme hardship waivers are extremely difficult to obtain, unless the physician’s US citizen child or spouse has an illness that cannot be treated in the home country or the political situation in the home country is dangerous to the well being of the child and/or spouse.

**How Can I Find Out If My Facility/Client Is In A HPSA Or MUA?**

Contact Ellie Najfabadi with the client’s location (complete address of the location/s where the physician will be employed including zip code)

Both urban and rural areas can be HPSAs/MUAs. An individual hospital can be an MUA. But the physician has to actually work in an office located in an HPSA/MUA.

**WHAT GOVERNMENT AGENCIES SPONSOR J WAIVERS?**

- The Veterans Administration.................VA facilities - primary care and specialists

- The Delta Regional Authority….primary care and specialists, Mississippi Delta states only see – [www.dra.gov](http://www.dra.gov)

- Department of Health and Human Services...Primary care only, very few hospitals qualify (the location where the physician will be employed must have a HPSA designation score of 14 and up.) In addition, the employer must be a FQHC clinic. Few employers qualify. Limited to community health centers located in qualified areas.

- The Appalachian Regional Commission…….Primary care doctors and psychiatrists only, only in the Appalachian states
**What Is The “Conrad 30” Program?**

Not only federal agencies can sponsor doctors for J waivers. Each state Department of Health can participate in the Conrad 30 program, sponsored by Kent Conrad, a senator from North Dakota and Senator Sam Brownback of Kansas. The program allows each state to sponsor 30 J doctors for waivers each year.

As of now, all 50 states are participating.

*All participating states have slots for primary care and specialists, except California, which only has slots for primary care.*

**What Happens If The State Has Used Up Its Quota Of 30 Waivers?**

States vary as to when the quota period begins and some states do use up their annual numbers quickly – so this is an important factor to check. If the numbers are used up, no more will be available until the next quota period begins.

**What Happens Once A J Physician Gets A Waiver?**

The physician “adjusts his status” to an H-1B temporary work visa and must work for a particular employer in a HPSA or MUA for 3 years.

**Can The J Physician, Now On An H-1b, Change Employers?**

Only if the employer terminates the H-1B doctor or violates the terms of the doctor’s contract and only if the new employer is in a HPSA/MUA. The physician has the burden of proof and must have a termination letter in writing and must have documents to show that the employer violated the terms of his or her J-1 waiver agreement and/or Contract.

**Does The Doctor Have To Be An Employee And Does An Income Guarantee Show Employee/Employer Status?**

The physician has to be sponsored as an employee. This can be the group, hospital, an individual doctor, or some other entity acting as the physician’s employer. However, for immigration purposes, the group can be the employer even if the hospital is fronting the income guarantee.

**Can IMGs Enter Residency On Any Other Kind Of Visa Besides The J-1?**

Yes. Some IMGs can enter U.S. residency on H-1B visas, the temporary visa for foreign professionals. They must pass the same requirements as J physicians, only they must have passed USMLE Part III before applying for H-1B status with the INS. The H-1B is good for the duration of the program, not to exceed six years. After which the holder must return home – *unless the physician shows that he or she has applied for a labor*
certification and/or I-140 petition and it has been pending before the government for one year or more. It is important that physicians in the U.S. on H-1B status doing their residency/fellowship apply for their green card during the last year of the fellowship.

The H-1B is an “employer-sponsored” visa, so to get one a foreign professional must find a U.S. employer to sponsor them.

In the case of doctors, the sponsor is the residency program.

**Can Medical Facilities Use IMG’s Who Are Completing Their Residency On H-1bs?**

Yes – all the physician needs is an offer of employment, and they can “transfer” from one employer (the residency program) to another (the medical facility.) The employer does not have to be in a HPSA or MUA.

However, the doctor must be able to obtain a green card before the H-1B expires. If the doctor gets out of residency with 2 or 3 years left on his H-1B, in most cases he will be able to obtain a green card before his H-1B expires. Even if the H-1B expires, an extension is possible. In most cases, Mr. Shusterman’s office can find a way to get a doctor who trained on an H-1B a green card, even if they do not have a great deal of time left on their H-1B.

The physician must apply for their permanent residency once they have 15 months left on their H-1B. Failure to do so may result in them having to return home for one year. This is especially true for physicians from India, China, Philippines and Mexico.

**How Long Does It Take For An H-1b Doctor Completing Residency To “Transfer” His H-1b From One Employer To Another?**

To get an H-1B, the doctor must have passed USMLE I, II & III and be licensed in the state where he’ll be working. Once licensure is obtained, it then takes about 30-90 days for the H-1B to come through, unless the doctor or the employer wants to pay for “Premium Processing, “ in which case the H-1B is guaranteed in 15 days. “Premium Processing” costs $1,000.

**Isn’t There An Annual H-1b Quota?**

Yes. The government will issue 65,000 H-1Bs per year. This is an important point because all H-1Bs are used up until October 1, 2006 – except for J waiver doctors, who are not subject to the cap.

Currently, if Merritt, Hawkins identifies a candidate who trained on an H-1B, they can’t start working until October 1, 2006 – provided that the employer has filed the paperwork 6 months in advance. (i.e. H-1B filed on April 1, 2006) Any 2006 graduates who trained on an H-1B that are being recruited now must be put into immigration processing in an expeditious manner.
What Does It Take To Get A Green Card?

Whether the doctor was on a J-1, but now is working in H-1B status, or whether they transferred their H-1B from their residency and now are working in H-1B status, they will need to get a green card.

There are several ways to do this – the standard way is by going through “Labor Certification” – a process of proving that no U.S. citizen or permanent resident is qualified, willing or able to take the job. This requires advertising in a major daily paper in the community where the doctor will be working and advertising in a major medical journal for the job (usually in JAMA). This process takes considerably less time than it used to.

More time can be removed from the process through the “National Interest Waiver” though this only works for primary care doctors working in underserved areas. It is not necessary to run ads for the job to obtain a National Interest Waiver. To get a National Interest Waiver it’s important to show that the employer is in a HPSA or a MUA and the employer is willing to give the physician a five-year contract. The physician can also open his or her own practice in an underserved area and receive an income guarantee from the hospital.

Is There A Quota On Green Cards?

Yes, but most countries don’t use their quota so backlogs are not a concern in many cases.

However, the State Department expected backlogs to start forming for persons born in India or Mainland China in December 2005

What Is An “O” Visa?

This is a visa for foreign superstars in their profession. For a doctor to get one they have to have a stellar publishing record – the bar is very high.

What About Canadian Physicians?

Canadian doctors are a different ballgame. They are not IMGs. The Canadian exam (LMCC) is reciprocated for licensure in some 40+ U.S. states.

However, to get an H-1B, Canadian doctors must have a U.S. qualifying exam – the USMLE, FLEX, or the NBME.
If they do, and once they obtain licensure in the relevant state, they can be in and working in as little as two weeks, *(but only if the H-1B quota has not been used up, as it is now)* and the employer or physician is willing to pay a $1,000 fee for “Premium Processing.”

Once they are on the H-1B they then can apply for a green card.

**Can Canadians Practice In The U.S. Without A U.S. Exam?**

Yes. Interestingly, U.S. employers can sponsor Canadian doctors for a green card, even if they have no U.S. exam. In other words, Canadians must have a U.S. exam to get a temporary, H-1B visa, but do not need a U.S. exam to get a green card, which allows them to stay here for life.

In the past, the problem has been that if a U.S. employer sponsors a Canadian doctor for a green card without going through the H-1B first, the time frame to get a green card was quite long – years, in some cases. *But this has changed.*

It now takes about **8 months** from the date the labor application is filed for a Canadian doctor with **no U.S. exam** to get a green card. This is quite workable in some cases, so the time is right for health facilities to consider the Canadian market.

Keep in mind that a growing number of young Canadian doctors are taking the USMLE because they know they need it to get an H-1B, another reason the Canadian market has become more favorable.

**What Should You Do To Avoid Immigration Problems?**

You don’t want to get very far down the road with an IMG or a Canadian without having their case reviewed by Carl Shusterman or Ellie Najfabadi. *Make sure the doctor has a clear path to immigration!*

Each case is different with multiple immigration strategies available. In some cases, the doctor will have a problem that makes them an unviable candidate. Others may not seem like they are viable, but often Carl or Ellie can find a way. Be knowledge on immigration, but know when to defer to the experts.

**How Much Does It Cost To Immigrate An IMG?**

Mr. Shusterman’s legal fees are as follows:

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<th>Fee</th>
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<tr>
<td>J Waiver</td>
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<td>Green card</td>
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In addition, there are associated filing fees required by the government.