

PHYSICIAN IMMIGRATION OVERVIEW

International Medical Graduate (IMG) immigration involves an area of legal practice that focuses on providing physician services by placing IMGs into practice areas that provide gap-filling services to the nation's medically vulnerable patient populations.

The term "IMG" refers to foreign nationals needing visas in order to practice medicine as an attending physician – usually, but not always, starting with the need to obtain a J-1 waiver. In most instances, IMG's undertake their medical education at international medical schools that are not accredited under U.S. standards. As a result, they need to undergo specific credentialing requirements to establish their professional capability to qualify for state medical licensure as well as immigration status.

With advanced and focused planning, and given the pervasive shortage of physicians in the domestic workforce, it is recurrently possible to qualify IMGs for immigration status that enable them to practice medicine where there is a shortage of medical professionals.



There are generally three primary areas of concern for IMGs:

1. J-1 WAIVER OPTIONS

IMGs undertaking Graduate Medical Education (GME) in the United States predominantly enter and conduct their training while in J-1 status. This status confers a two-year home residency obligation, whereby the IMG cannot change to H or L status, or apply for lawful permanent residency, until the IMG has returned to his/her home country for two years or received a waiver of this obligation and completed the waiver requirements.

There are three methods by which a J-1 physician can waive this two-year home residency obligation:

1. Persecution waiver
2. Hardship waiver
3. Interested Government Agency waiver, which includes:
 - Conrad State 30 waiver
 - Delta Regional Authority (DRA) waiver
 - Southeast Crescent Regional Commission (SCRC) waiver
 - Appalachian Regional Commission (ARC) waiver
 - Department of Health & Human Services Clinical waiver
 - Department of Health & Human Services Research waiver
 - Other government agency waiver (VA Hospital or Military)

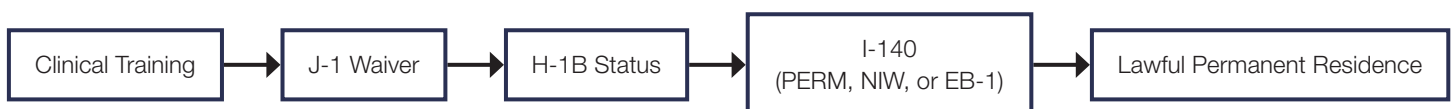
A recipient of an Interested Government Agency waiver is H-1B cap-exempt and may change into H-1B status. J-1 Physicians are not eligible to waive their two-year home residency obligation through a “no objection” statement.

If an IMG is unable to obtain a J-1 waiver, other nonimmigrant options could be considered, including the following:

- O-1 individual of extraordinary ability – sponsored by an employer
- TN for citizens of Canada or Mexico – sponsored by an employer
- H-1B for citizens of Canada who are visa exempt – sponsored by an employer
- F-1 student – sponsored by academic institution upon enrollment
- E-2 for investors from treaty countries – self petition
- Temporary Protected Status (TPS) – self petition
- Asylum – self petition
- J-1 extension of status
- Dependent beneficiary of spouse’s status

All foreign nationals must maintain valid nonimmigrant status while in the United States until becoming a Lawful Permanent Resident.

The Immigration Lifecycle for Foreign Physicians



2. IMMIGRANT VISA PROCESS

The first step in becoming a Lawful Permanent Resident is to qualify for an immigrant visa. The U.S. immigration system has a complex system of issuing immigrant visas through family relationships, employment, fear of persecution, and various special programs. IMGs seeking employment-based immigrant visa sponsorship typically follow three pathways:

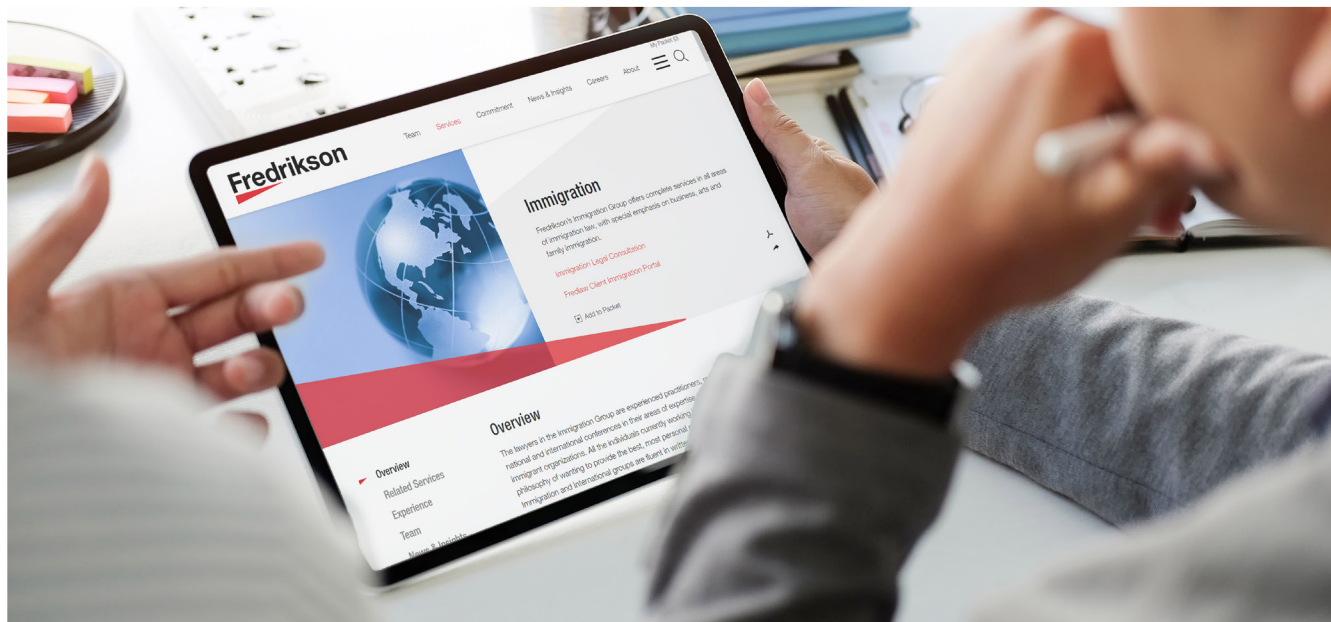
1. PERM Labor Certification Process: An employer must test the labor market and determine that no qualified U.S. workers are available for the IMG's position. This immigrant visa is tied to an employer and a specific position.
2. Physician National Interest Waiver: An IMG must have a prospective contract to work for five years in a Healthcare Professional Shortage Area (HPSA) or Medically Underserved Area (MUA), or demonstrate five years of service in a HPSA or MUA.
3. Outstanding Professor and Researcher: Some IMG's working as physician-scientists, largely in academic institutions, may be able to attain permanent residence upon a successful claim that they are an outstanding academic figure. This requires employer sponsorship. This process could avoid substantial immigrant visa number backlogs faced by IMGs from certain countries (mainly India).

3. LAWFUL PERMANENT RESIDENCE

Once an IMG has completed any necessary J-1 waiver requirements, has obtained an approved immigrant visa petition, and a visa number is available, the IMG and any dependent family members may apply to adjust status to that of a Lawful Permanent Resident (LPR). Due to annual country quotas, an IMG who has otherwise completed any necessary J-1 waiver commitments and has an approved immigrant visa petition, may still be subject to a country backlog. Historically, India and China have experienced backlogs in the EB2 immigrant visa quota lines; natives from other countries have traditionally not been subject to backlogs. The availability of immigrant visa numbers is updated on a monthly basis in the Visa Bulletin of the U.S. Department of State.

Lawful Permanent Residents are eligible to apply for naturalization after remaining in the U.S. for five years (three years for U.S. Citizen spousal applicants) after obtaining LPR status.

There is no "one size fits all" approach to physician immigration. Rather, IMGs and their employers should work with immigration counsel to holistically assess the facts and design appropriate strategies for ongoing work authorization and permanent residence that factor in a wide range of both personal and professional considerations.



FREDRIKSON'S HEALTHCARE IMMIGRATION SOLUTIONS TEAM

Fredrikson's Healthcare Immigration Solutions Team (HIST) partners with healthcare employers, IMGs, and healthcare professionals to navigate the complex immigration systems affecting IMG employment. We work to expand the pool of physician candidates for healthcare employers, and we are committed to achieving the objectives of IMGs and healthcare professionals for stable immigration status and meaningful and challenging professional careers. Above all, we work diligently to demystify the immigration process, develop a true partnership among the stakeholders in our immigration cases, and earn the respect and trust of the clients we serve across the United States and globally. We offer clients a comprehensive experience with access to a team with decades of healthcare immigration law experience, fredlaw.com/immigration, and one of the nation's premier Health Law departments fredlaw.com/healthcare.



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