

Alert | Immigration & Compliance



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J-1 Visa Waiver Options for Physicians

Many international medical graduates come to the United States under a J-1 visa to pursue medical education, training, or a fellowship program. In most cases, the J-1 medical graduate will be subject to a two-year residency requirement if the program was financed by the U.S. government or if their country is designated by the U.S. Department of State as requiring services of certain **skills**. As a general rule, J-1 visa holders who are subject to the two-year residency requirement must return to their home country at the end of the program unless they are able to waive this requirement.

Without the waiver of the two-year residency requirement, the J-1 medical graduate would not be able to apply for an H-1B visa — one of the most common visa categories — or obtain permanent residency. (Note there is an exception for Canadian citizens who can obtain H-1B status while in the United States.)

We have identified the main waivers available for J-1 medical graduates and their requirements:

1. Waiver by an Interested Government Agency (IGA)

In this case, a government agency expresses interest in retaining the international medical graduate and recommends to the U.S. Department of State and Department of Homeland Security to waive the two-year residency requirement.

The most common IGA waivers are the Conrad 30 and the Department of Health and Human Services (HHS). These so called “shortage area waivers” are programs administered by each state to sponsor

international medical graduates that commit to work in shortage areas with a preference for physicians in primary care. The process is subject to strict requirements and deadlines determined by each state.

Below are the main requirements:

Conrad 30/“State 30” Waiver Program

- Administered by the Department of Health of any of the 50 United States. Each state has specific requirements, timelines, and deadlines. Some states give preference or limit eligibility to primary care over specialties.
- There is a 30-waiver limit per state for requests granted each year. Success mostly depends on the volume of applicants and the preference given to the physician’s category of practice. While in most cases a physician may be able to apply for this waiver while their license is in process, not having a full medical license may determine a different timeline.
- The location of employment is the most critical element in pursuing this waiver as it is reserved for physicians that will commit to work in federally designated Health Professional Shortage Areas (HPSA) or Medically Underserved Areas (MUA/MUP). States may fill up to 10 “flex slots” for candidates to work in an area that is not designated as a HPSA/MUA but that still serves residents in underserved areas.
- Requires a commitment to work full time under a three-year contract.

U.S. Department of Health and Human Services (HHS) Waiver Program

- No limit on the number of waivers available each year (not limited to 30 per year).
- Available to physicians who will practice in primary care (which typically includes family medicine, general internal medicine, general pediatrics, obstetrics & gynecology, or general psychiatry – this determination may vary per state). It is not available for physicians in specialties or who have pursued fellowship training.
- Requires a commitment to work full time under a three-year contract.
- Physicians must have completed their primary care or psychiatric training programs no more than 12 months before the date of commencement of employment under their contract with the sponsoring facility/institution.
- Employment must be located in an area designated as an HPSA with score of 07 or higher.

The IGA waiver presents several benefits, in addition to the removal of the two-year residency requirement, including:

- H-1B Cap Exemption: The H-1B program allows companies and qualified employers in the U.S. to temporarily employ foreign workers in specialty occupations. There is an annual cap of 65,000 H-1B visas per fiscal year and U.S. Citizen and Immigration Services (USCIS) conducts a lottery to select candidates who can apply for H-1B status. Unless exempted, the candidate will have to go through the lottery process. With the IGA waiver, the medical graduate qualifies for H-1B cap exemption. This means the physician will not be subject to the H-1B lottery and can secure an application with USCIS.

- Change of Status within the United States: In general, physicians in J-1 status who have received medical education or training cannot move to another immigration status except to A or G classifications. 8 USC 1258. This means the physician would need to process the H-1B visa at a consular post outside the United States to be able to then enter in H-1B status. However, the regulations carve an exception to the general rule. 8 USC 1184 (l) provides that a J-1 physician who receives a waiver of the two-year residency requirement upon a request by an interested government agency or State agency (IGA waiver) can change status to H-1B. This provides for a smooth transition from J-1 to H-1B status without needing to leave the United States.

2. Exceptional Hardship Waiver

This waiver is typically used in situations where the J-1 visa holder has a U.S. citizen or Lawful Permanent Resident spouse or child. It requires the physician to demonstrate that the family member (spouse or child) will suffer exceptional hardship if the physician were required to return to their home country for two years.

In contrast with the IGA waiver process, this waiver is filed directly with USCIS for recommendation to the U.S. Department of State. Once the Department of State issues its recommendation, it returns the filing to USCIS for final adjudication. In addition, the hardship waiver does not provide the ability to change status in the United States or exempt the physician from the H-1B annual cap.

3. Persecution Waiver

This waiver requires the J-1 visa holder to show that they would suffer persecution in their home country based on race, religion, or political opinion. Similar to the hardship waiver, this waiver is filed directly with USCIS for recommendation to the U.S. Department of State. Once the Department of State issues its recommendation, it returns the filing to USCIS for final adjudication. The persecution waiver does not provide the ability to change status in the United States or exempt the physician from the H-1B annual cap.

Additional Visa Options

In some instances, it may not be possible to file a J-1 waiver due to the timeline or requirements and it may be necessary to evaluate other visa options to allow the foreign physician to remain and work in the United States. The O-1, extraordinary abilities visa, presents an alternative, but it should be noted that this type of petition receives high scrutiny from USCIS since the majority of J-1 physicians are at the beginning of their careers. Proper documentation in relation to publications, peer review, and independent research are important factors to highlight if available.

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