THE IMMIGRATION PRESCRIPTION

The Practical Guide to U.S. Immigration For Foreign Born Physicians

(2nd edition)

by

Ann Massey Badmus
Acknowledgments

Sincere thanks to all my clients who have entrusted me with some of the most important decisions in their lives. Many have become friends; all have been unforgettable. I wish you all joy and success.

I want to thank the very special people who make up our team at Badmus Immigration Law Firm. Their professionalism and sincere desire to help our clients are matchless. You are outstanding contributors to our purpose of making the American dream a reality for our clients.

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# Table of Contents

*Introduction*

*Chapter 1*
A Brief History of U.S. Immigration Laws..........................3

*Chapter 2*
The Complex Maze of Immigration Laws..........................11

*Chapter 3*
Studying Medicine in the U.S.............................................21

*Chapter 4*
Visa Options for Medical Residency in the U.S....................27

*Chapter 5*
Waivers of the Two-Year Foreign Residency Requirement......35

*Chapter 6*
The Professional Worker Visa...........................................51

*Chapter 7*
Extraordinary Ability Visas ..............................................63

*Chapter 8*
TN Status.............................................................................69

*Chapter 9*
Treaty Investors ..................................................................75

*Chapter 10*
Establishing Permanent Residency ....................................85

*Chapter 11*
Employment-Based Green Cards .....................................87

*Chapter 12*
Family-Based Green Cards................................................107

*Chapter 13*
The Green Card Lottery......................................................117

*Chapter 14*
Asylum and Refugee Status...............................................121

*Chapter 15*
Responsibilities of Lawful Aliens .....................................129

*Chapter 16*
Naturalization.......................................................................139
Introduction

This book has been written to provide an overview of the immigration process for foreign nationals who wish to study and practice medicine within the United States. Although many of the concepts discussed in this book apply to all immigrants, doctors and medical researchers are eligible for special programs.

In part, this is due to the persistent shortage of medical professionals in some areas of the U.S., particularly in rural and inner-city areas. And sadly, the shortage only seems to be getting worse. In fact, in 2002, applications to U.S. medical schools continued to decline for the sixth consecutive year. As a result, the shortage of qualified medical professionals will only continue into the foreseeable future.

To shore up this gap in vital medical services for millions of Americans, the federal government has created immigration programs to allow foreign-born physicians to work in these underserved areas. In this book, we will discuss these programs. In addition, we will discuss the standard procedures for anyone wishing to immigrate to the U.S.

In particular, we will discuss:

- The options for immigrating to the United States to attend medical school and enroll in residency programs;
- The options for obtaining lawful resident status for physicians trained in other countries;
• The options for obtaining permanent resident (“green card”) status; and
• The process for obtaining full U.S. citizenship.

Before going any further, I’d like to point out that U.S. immigration laws are complex and subject to constant change. In addition, as each person’s situation is different, there is no “one-size-fits-all” solution to immigration. This book provides valuable information on the process but it isn’t a substitute for competent one-on-one legal advice. Therefore, I strongly encourage you to seek the assistance of a competent attorney as you make your way through the maze of immigration options.
THE GREAT AMERICAN MELTING POT
Chapter 1
A BRIEF HISTORY OF U.S. IMMIGRATION LAWS

The history of immigration laws in the United States is unique. In part, this is due to the relative newness of the country. While its European and Asian counterparts have been around for several millennia, the United States was officially settled less than 500 years ago. As a result, while most countries have grown through gradual increases in population, America’s growth has been fueled largely by immigration.

The inscription at the pedestal of the Statue of Liberty reads:

“Give me your tired, your poor, your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore,
Send these, the homeless, tempest-tossed, to me:
I lift my lamp beside the golden door.”

And for most of the United States’ history, this was more than just an idle slogan; it was its official policy.

America was a bastion for those who experienced trouble in their homelands. For instance, in 1845, the potato crop in Ireland failed, causing the Potato Famine. Over the next five years, approximately 500,000 people from Ireland immigrated to the U.S. Likewise, starting in 1860, approximately 2 million people from Poland immigrated to America when social and economic
conditions became unbearable in their homeland. Similarly, a mass exodus from Italy began in 1880 due to a troubled economy, crop failures and a poor political climate. In total, nearly 4 million Italians made America their new home.

These mass migrations were made possible because of America’s “open door” immigration policy. For the first hundred years of its existence, the U.S. placed virtually no restrictions on immigration. In fact, the opposite was true. Several states and the federal government actually encouraged immigration, partly in an effort to attract settlers to tame the North American wilderness. For instance, during the Civil War, Lincoln called on Congress to pass a law to shore up the labor supply in the North. In 1864, Congress responded by passing a law entitled “The Act to Encourage Immigration.”

However, after the Civil War, there was a subtle shift in immigration policy. For the first time, the U.S. began to close its borders to certain groups. In 1875, Congress passed a law prohibiting immigration by prostitutes, criminals and those who were brought forcibly to the United States. In 1882, Congress enacted the Chinese Exclusion Act. This act prevented Chinese nationals from immigrating to the United States for the next ten years and it further denied the right to citizenship to Chinese immigrants already living in the U.S.

These acts were spurred in part by American workers, who claimed that the continual influx of cheap, foreign labor artificially depressed wages. Therefore, after receiving further pressure due to the increased immigration of Italians and Slavs, Congress passed the Immigration Act of 1891. This law added to the list of those denied immigration. Specifically, paupers, idiots, the insane,
diseased persons, and polygamists were excluded. And perhaps most significantly, persons whose passage was paid by another were denied entry into the U.S. This restriction was ostensibly imposed to prevent employers from importing cheap labor.

In 1917, Congress added illiterates, vagrants, stowaways and alcoholics to the list of “undesirables.” Then, beginning in 1921, it introduced the infamous quota system, which favored immigrants from Western Europe. This quota system not only excluded virtually all non-western Europeans but it almost completely dried up the well of immigration.

During the first decade of the 20th century, almost 1 million immigrants entered America each year. By 1930, that number had dropped to less than 250,000. And in 1933, only 23,068 immigrants were admitted into the United States.

Of course, part of this decrease can be attributed to the Great Depression. During the 1930s, the economic climate in the United States wasn’t conducive to widespread migrations. Nevertheless, the quota system did result in the U.S. turning away thousands of people each year. In one particularly disturbing incident, the U.S. government turned away a boat with 930 Jewish refugees, many of whom later died in concentration camps.

Soon thereafter, the United States began to re-open its borders. In 1942, Congress repealed the Chinese Exclusion Act. In 1943, Congress started the “Bracero Program,” which provided for the importation of agricultural workers from North, South and Central America. From 1943 to 1964, millions of Mexicans came to America as agricultural workers.
In 1952, Congress passed another major immigration bill – the Immigration and Nationalization Act. While this law reaffirmed the national origins quota system, it established preferences for skilled workers and relatives of U.S. citizens. Also, in response to the growing communist threat, Congress placed restrictions on those who supported communism, anarchy and other “subversive” beliefs.

The next major shift in U.S. immigration policy occurred in 1965 when Congress drastically changed the quota system, which was the subject of widespread criticism due to its numerical preferences for western Europeans. As a result, the old quota system was replaced with a 20,000 immigrant per country ceiling. In addition, Congress introduced a more expanded preference system. However, the highest preferences were still reserved for skilled workers, refugees, and relatives of U.S. citizens and permanent aliens.

The 1965 Act forms the basis of current U.S. immigration policy. Since then, there have been a number of minor changes to the law (many of which we’ll discuss in later chapters), yet the general framework has remained largely unchanged. The effect of these reforms has resulted in unprecedented immigration, particularly among Hispanics and Asians.

According to the 2000 census, Hispanics and Asians made up almost half of the entire population growth in America from 1990 to 2000. In fact, in California, these two groups accounted for more than 100% of the population growth. Or, in other words, if not for the immigration of Hispanics and Asians, the population of California would have actually declined during this decade.
In all, approximately 1 million people immigrate to the United States each year.

Therefore, as you can see, the United States has been historically a nation of immigrants and continues to be so. In fact, America can credit its incredible success as a nation to its ability to attract and utilize the best and brightest from around the globe. Below is just a partial list of foreign-born immigrants who have made their mark not only on America but also the world.

Famous American Immigrants

Madeleine Albright, Czechoslovakia
Mario Andretti, Italy
Julie Andrews, England
Charles Atlas, Italy
John J. Audubon, French West Indies
Alexander Graham Bell, Scotland
Irving Berlin, Russia
Yul Brynner, Japan
Andrew Carnegie, Scotland
Charlie Chaplin, England
Liz Claiborne, Belgium
Joan Collins, England
Enrico Fermi, Italy
Father Flanagan, Ireland
Felix Frankfurter, Austria
Marcus Garvey, Jamaica
Kahlil Gibran, Lebanon
Samuel Goldwyn, Poland
Cary Grant, England
Andrew Grove, Hungary
Arshile Gorky, Armenia
Alfred Hitchcock, England
Bob Hope, England
Henry Kissinger, Germany
Bela Lugosi, Hungary
Thomas Mann, Germany
Seiji Ozawa, Japan
Itzhak Perlman, Israel
Allan Pinkerton, Scotland
Sidney Poitier, Bahamas
Joseph Pulitzer, Hungary
Knute Rockne, Norway
Arnold Schwarzenegger, Austria
William Shatner, Canada
George Soros, Hungary
Lee Strasberg, Austria
Levi Strauss, Bavaria
Elizabeth Taylor, England
Alex Trebek, Canada
An Wang, Korea
Dr. Ruth Westheimer, Germany
Rudolph Valentino, Italy
U.S. Immigration Law Timeline

1800 1850 1900 1950 2000

1875 Congress creates its first list of “undesirables.”

1882 Chinese Exclusion Act

1891 Congress adds to the list of “undesirables” and outlaws those whose passage is paid by another.

1917 Congress adds more “undesirables.”

1921 Congress introduces quota system.

1942 Congress repeals Chinese Exclusion Act.

1943 Bracero Program

1952 Preferences for relatives and skilled workers.

1965 20,000 immigrant per-country ceiling and expanded preferences.
THE IMMIGRATION LABYRINTH
Chapter 2
THE COMPLEX MAZE OF IMMIGRATION OPTIONS

As discussed in the previous chapter, America has been (and continues to be) dependent upon immigrants. This is particularly true in regards to physicians. According to the American Medical Association, over 20% of all active physicians are graduates of non-U.S. medical schools, or international medical graduates (IMGs). Furthermore, IMGs comprise more than 30% of the active physicians in some specialties.

However, despite our dependence on foreign-born physicians, the U.S. immigration laws can be quite complex. In this chapter, we will discuss the range of options available to the foreign-born physician who wishes to live and practice in the United States. In later chapters, we will explore these options in greater detail but for now, it will be helpful to obtain a “big picture” view of the immigration landscape for foreign-born physicians.

Obtaining Medical Training in the U.S.

To practice medicine in the United States, a physician must graduate from medical school, complete a U.S. residency program and pass licensing examinations. Foreign nationals may enter the U.S. to attend medical school under a student (or F-1) visa. This visa allows a foreign national to stay in the U.S. so long as she is enrolled
full-time in school and for up to a year after graduation to complete additional practical training.

Foreign nationals who have graduated from a medical school outside of the U.S. may enter the country to complete a medical residency program under an exchange (or J-1) visa. One major requirement of this visa is that the foreign national must return to his homeland for two years after completing the residency (the two-year foreign residency requirement). Consequently, a “J-1 Physician” cannot remain to work in the U.S. immediately after completion of his medical residency program.

Needless to say, this presents a formidable obstacle for many foreign born physicians. Fortunately, there are a number of methods to obtain a waiver of the two-year foreign residency requirement. In addition, some foreign nationals avoid this hurdle altogether by completing their medical residency programs with a visa for professional workers (as opposed to the exchange visa). Unfortunately, many residency programs will not sponsor a foreign born physician for a professional worker visa.

**Working as a Physician in the U.S.**

Once licensed to practice medicine, foreign nationals may enter the U.S. to work as physicians under a number of visa programs. The most common program for foreign physicians is the professional workers visa, or H-1B visa. To obtain an H-1B visa, the foreign born physician must be sponsored by an employer. This visa is good for up to six years.

Some foreign physicians are eligible for an extraordinary ability (or O-1) visa. This visa program allows an employer to sponsor any alien worker who has “a level of expertise
indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor.” The visa can be issued for up to three years and can be renewed annually thereafter. As the name implies, this type of visa is only granted to extraordinary physicians.

The North American Free Trade Agreement between the U.S., Canada and Mexico established a new visa category for Canadian and Mexican physicians – TN status. Under this category, Canadian and Mexican physicians may enter the U.S. to work in non-clinical positions, such as researchers. This visa is good for up to one year but it may be renewed annually.

Finally, a small minority of foreign physicians may qualify as treaty investors under the E-2 visa program. The U.S. has treaties with more than 70 countries, allowing citizens of these countries to obtain visas to live in and develop a business in the U.S. Under this program, a foreign physician may reside in the United States indefinitely so long as he develops and directs a business in which he has invested. If a foreign physician obtains the necessary licensing, he may operate his own medical practice with an E-2 visa.

**Permanent Residence Status**

Each of the visa programs previously mentioned (e.g., F-1, J-1, H-1B, O-1, TN and E-2) is a temporary residence program. In other words, it only grants the foreign national the right to reside in the U.S. temporarily for a specified period of time (e.g., up to six years) or for a specified purpose (e.g., to attend medical school).

To obtain permanent residence status (a “green card”), a foreign national must establish a basis for this status.
There are numerous bases for permanent residency, including amnesty, asylum, employment and relatives currently residing in the U.S. There is even a green card lottery. These options will be discussed at length in later chapters. However, in this chapter, we will briefly discuss the employment options most often utilized by foreign-born physicians.

The most common basis for employment-based permanent residence is the labor certification. On this basis, a U.S. employer may sponsor a foreign national for permanent residence; provided that: (1) there are no U.S. workers to fill the position, and (2) the foreign national fits into one of the permitted classes of workers. For this purpose, physicians qualify as advanced degree professionals. Until March 28, 2005, the process for labor certification was often long, sometimes taking up to four years in some parts of the country. The PERM (discussed later) processing of labor certification implemented after that date has reduced processing to two months in most cases, making labor certification a much more viable option.

Another basis for employment-based permanent residency is the national interest waiver. To qualify, the person must be either (1) an advanced degree professional (i.e., U.S. equivalent master’s degree or higher), or (2) an individual with an “exceptional ability.” A person has exceptional ability if she possesses a degree of expertise significantly higher than the ordinary. Furthermore, the foreign national must demonstrate that her prospective employment would advance a stated national interest of the U.S., such as improved healthcare, education or technological competitiveness.
The standards for demonstrating national interest are quite high. For instance, foreign physicians must demonstrate that their work in the U.S. would serve the *national* benefit to a greater degree than would the average U.S. physician. This is only usually the case with researchers and specialists. However, Congress has created a special national interest waiver program for foreign physicians. To qualify, a foreign physician must agree to practice primary care medicine in an underserved area for a period of five years.

In addition to the national interest waiver for advance degree or exceptional aliens, *extraordinary* ability aliens are also eligible for permanent resident status. Like the national interest waiver, an employer sponsor is not required. However, much like O-1 visa recipients, an eligible physician must be extremely accomplished. As a result, this option is not feasible for most physicians.

Finally, foreign physicians interested in research or teaching positions may be eligible for permanent residence as outstanding professors or researchers. To apply, the physician must have an employer sponsor (either a university or research facility) and demonstrate international acclaim as a researcher or professor.

**Becoming a U.S. Citizen**

After living and working as a permanent residence of the United States for a number of years, many foreign-born physicians seek U.S. citizenship. As a general rule, a person is eligible for U.S. citizenship after five years as a permanent resident. The naturalization process requires a would-be citizen to demonstrate good moral character, knowledge of the English language and basic U.S. civics, and an allegiance to the Constitution.
However, during the required period of permanent residency, an alien can delay (or even negate her chances for) U.S. citizenship by taking lengthy trips outside of the U.S., overstaying on visas, committing criminal acts and a host of other activities (many of which are seemingly harmless). Therefore, it’s important that a person on permanent residence status be ever mindful of the naturalization process, which will be covered in detail in a later chapter.

As you can see from the very general overview provided in this chapter, the immigration process for foreign-born physicians can be extremely complex. And please note that we have not even begun to discuss the complexities of immigrating to the U.S. with a spouse and children.

Nevertheless, on the next page, you will find a basic blueprint for immigration for the foreign-born physician.
The Foreign Born Physician Immigration Roadmap

MEDICAL SCHOOL

U.S. Medical School (F-1)

International medical school

U.S. RESIDENCY PROGRAM

Exchange Visitor Visa (J-1)

2-yr Foreign Residency

Waiver

Professional Worker’s Visa (H-1B)

TEMPORARY WORKER VISAS

Extraordinary Ability (O-1)

NAFTA (TN Status)

Treaty Investor (E-2)

H-1B

PERMANENT RESIDENCY

Labor Certification

National Interest Waiver

Extraordinary Ability Alien

Outstanding Professor or Researcher

Other Methods (Amnesty, Asylum, Lottery, Family)

CITIZENSHIP
Chapter 3
STUDYING MEDICINE IN THE U.S.

Obviously, a prerequisite to practicing medicine is to attend medical school. The United States has some of the finest medical schools in the world and as a result, thousands of foreign students come to America each year to study medicine. This is made possible through the student visa program.

This program allows foreign nationals to enter the U.S. for the exclusive purpose of pursuing academic study. Under this visa, a student is allowed to remain in the United States so long as she is making “normal progress” towards obtaining a degree. Therefore, in the case of attending medical school in the U.S., the student may remain in the United States so long as she is making progress towards an M.D. In addition, the student may remain in the country up to one year after graduation to pursue practical training before returning home.

The Application Process

To apply for a student (or F-1) visa, the student must be first accepted into a medical school approved by the U.S. Citizenship and Immigration Services (the USCIS). Obviously, before applying for admission, the student should confirm that the school accepts foreign nationals. Once accepted, the school will provide the student with a Certificate of Eligibility, USCIS Form I-20.
If the student is outside of the U.S., he can apply for his F-1 visa at the nearest U.S. consulate. At the consulate, the student must present the following documents to the consular officer:

- DS-156 Application for Non-Immigrant Visa;
- DS-158 Biographical Information (for males only);
- The Certificate of Eligibility, I-20, provided by the medical school;
- A passport valid for travel. Please note that the passport must have a validity date that extends at least six months beyond the intended period of schooling in the U.S.; and
- One 2x2 photograph.

In addition, the student should be prepared to demonstrate that he is sufficiently proficient in English to attend the particular medical school. The student must also demonstrate that he has (or can earn) sufficient funds to pay all living and school expenses during his stay in the U.S.

Finally, since the F-1 visa is a temporary visa, the consular officer may require evidence that the student has binding ties to a foreign country. The rationale here is that people with family, friends and property in their home country are more likely to return after their studies. For this reason, it's sometimes more difficult for a student to obtain an F-1 visa from a consular office outside of his “home” country.

For instance, let’s suppose a British citizen is on vacation in Brazil when he learns that he has just been accepted to medical school in the U.S. If he goes to the
When the student finally arrives in the United States, she will receive a Record of Arrival-Departure, Form I-94. This document contains her admission number and the proposed length of her stay in the U.S., which will be indicated by “D/S” (duration of status). This means that so long as the student attends school, she will be considered in student status (F-1).

Of course, if the student is already in the U.S. under some other temporary visa, then the process is not so involved. Instead, the student must submit an Application to Extend/Change Nonimmigrant Status, Form I-539, with the USCIS.

For instance, let’s suppose that a Chinese citizen visits the U.S. for the summer under a B-2 visa (a visa for temporary visits for pleasure). While visiting Disney World, she receives the good news that she has been accepted to a medical school in Orlando, Florida. At this point, it would seem silly for her to return to England just to head right back to Orlando. Therefore, in this case, Betty can file a Form I-539 with the USCIS and start school in the fall without first returning to England; providing that her application is approved before school starts.

*Note at this writing there is a proposed USCIS rule that would prohibit a B-2 visitor from changing to student status unless “prospective student” is written on her I-94.*
Working Under an F-1 Visa

A student entering the U.S. under an F-1 visa may generally work on-campus part-time (up to 20 hours per week). Also, after completing the first year of study, he may receive a permit to work part-time off-campus provided that he demonstrates that he is in “good academic standing.” In addition, the student may work full-time during holidays and school vacations.

Finally, in the case of extreme hardship, the student may apply with USCIS to engage in full-time employment. Some examples of “extreme hardship” listed in the federal regulations are:

- Loss of financial aid;
- Loss of on-campus employment;
- Substantial fluctuations in exchange rates;
- Inordinate increases in tuition and/or living costs;
- Unexpected changes in the financial condition of the student's source of support; and
- Substantial medical bills and other unexpected expenses.

Spouses and Children

The spouse and minor children (under 21 years of age) of a student can come to the U.S. in F-2 status. The F-2 visa is strictly tied to the F-1 visa. Therefore, once the student completes her course of study or otherwise loses F-1 status, she and her family must return to their homeland. Likewise, if the student changes her status to some other temporary status (e.g., J-1, H-1B, O-1, etc.), then her family
members automatically lose their F-2 status and must apply to change their status to the corresponding visa status (e.g., J-2, H-2, O-2, etc.).

An important restriction to keep in mind is that family members in F-2 status cannot accept employment. As a result, a student’s source of funds to pay for school and living expenses must be sufficient to support her family members in F-2 status as well. This restriction makes it difficult for some students to bring their families with them when they come to the U.S. to study medicine.

**Changes in Status**

Please keep in mind that an exchange student’s permission to remain in the U.S. is solely dependent upon his status as a student. If the student drops (or fails) out of school, then his status terminates and he (and his family members in F-2 status) must return home. The only way to avoid returning home is to change to some other temporary status before expiration of the F-1 status.

However, a student may transfer to another school and still remain in F-1 status so long as (1) the USCIS is notified of the transfer, and (2) classes begin at the new school within five months. This is the case even if the “transfer” results from graduation. For instance, a student may attend college and then continue on to medical school under an F-1 visa.

Finally, a student may travel outside the U.S. and still retain her F-1 status so long as she returns to the U.S. within five months. To re-enter the U.S., she must simply present a valid passport and a Certificate of Eligibility to custom officials.
Chapter 4
VISA OPTIONS FOR MEDICAL RESIDENCY IN THE U.S.

Another prerequisite to practicing medicine in the United States is attending a residency (clinical training) program. In fact, all state licensing authorities require physicians to attend a U.S. residency program. Typically, a medical residency lasts three to four years. Physicians who wish to specialize must also enter fellowship programs in their chosen specialty. For example, an internist who wishes to specialize in infectious diseases must complete a three-year residency program in internal medicine and a one or two-year fellowship in infectious diseases. Foreign nationals wishing to enter the United States for clinical residency or fellowship training must first obtain either an exchange visitor visa (J-1 visa) or a professional worker visa (H-1B visa).

The Exchange Visitor Visa

The most easily obtainable and widely-used visa for residency training is the exchange visitor visa or J-1 visa. The purpose of the exchange visitor program is to enhance understanding between the people of the United States and the people of other countries through educational and cultural exchanges. The U.S. Department of State (DOS) is the primary government agency administering the exchange visitor program. In order to acquire a J-1 visa, the foreign national must be sponsored by a DOS-approved entity.
The Educational Commission for Foreign Medical Graduates (ECFMG) is the designated visa sponsor for all J-1 exchange visitor physicians engaged in clinical training programs. Consequently, a foreign physician must comply with ECFMG requirements.

**ECFMG Requirements**

The ECFMG has stringent requirements for sponsorship in a clinical training program. Details of the process, including application forms, can be found at [www.ecfmg.org](http://www.ecfmg.org). At a minimum, an applicant for J-1 sponsorship must:

- Be an international medical graduate (IMG), i.e., a graduate of a medical school outside of the United States and Canada. The medical school and graduation year of the IMG must be listed in the *International Medical Education Directory (IMED)* of the Foundation for Advancement of International Medical Education and Research (FAIMER).

- Pass Steps 1 and 2 of the United States Medical Licensing Examination (USMLE) (or an acceptable combination of components of the *former* Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS), the National Board of Medical Examiners (NBME) Part sequence, or the Visa Qualifying Examination (VQE));

- Be certified by the ECFMG (hold a Standard ECFMG Certificate). Certification requires passage of Steps 1 and 2 of the USMLE, the Test of English as a Foreign Language (TOEFL) , and the ECFMG Clinical Skills Assessment (CSA) examination;
Visa Options for Medical Residency in the U.S.

- Hold a contract or an official letter of offer for a position in a program of graduate medical education or training that is affiliated with a medical school. The program must be accredited by the Accreditation Council for Graduate Medical Education (ACGME); and

- Provide a written Statement of Need from the Ministry of Health of the physician’s country of last legal permanent residence (regardless of country of citizenship). This statement should attest that the country needs physicians trained in the proposed specialty and/or subspecialty.

The J-1 Application Process

Upon acceptance to a clinical training program, the physician will receive a Form DS-2019 (formerly IAP-66). Form DS-2019 will describe the clinical training program and the length of the physician’s intended participation in the program.

However, the DS-2019 is only the first step in the J-1 process. The physician must still apply for (and receive) an exchange visitor visa before he can begin the residency training. If the physician is outside of the U.S., he can apply for his J-1 visa at the U.S. consulate of his “home” country, the country of last permanent residence. At the consulate, the physician must present the following documents to the consular officer:

- Valid Form DS-2019;
- Form DS-156, Application for Non-Immigrant Visa;
- Form DS-158, Biographical Information (for males only);
30 The Immigration Prescription

- Contract or offer letter from the residency program describing the training;
- A passport valid for travel (*please note that the passport must have a validity date that extends at least six months beyond the intended period of training in the U.S.*); and
- One 2x2 photograph.

Just as is the case for an F-1 application, the J-1 applicant must demonstrate that she has appropriate medical insurance and binding ties in a foreign country. She must also demonstrate that she can meet any other requirement of the residency program.

When the physician finally arrives in the United States, she will receive a Record of Arrival-Departure. This document contains her admission number and the proposed length of stay in the U.S., which will be indicated as “D/S” (duration of status).

If the physician is already in the U.S. under some other temporary visa, then the process is different. Instead, the physician must apply for a change to J-1 status with the USCIS. The physician must provide the following documents to the USCIS:

- Valid Form DS-2019;
- Form I-539, Application to Extend/Change Nonimmigrant Status with the USCIS;
- Contract or offer letter from the residency program describing the training;
- A copy of a passport valid for travel (*please note that the passport must have a validity date that extends at least six*
Visa Options for Medical Residency in the U.S.

• Evidence that the physician has binding ties in a foreign country

Upon approval of the change of status application, the physician will receive a new I-94 indicating the length of stay as “duration of status (D/S).” If the physician later travels outside the U.S., she must go to a U.S. consulate and apply for a J-1 visa in order to be re-admitted into the country.

Spouses and Children

The spouse and minor children of a medical resident can come to the U.S. in J-2 status. Much like the F-2 visa, the J-2 visa is strictly tied to the J-1 visa. Therefore, once the foreign national completes her residency program or otherwise loses J-1 status, she and her family must leave the U.S. within 30 days. Likewise, if the J-1 resident changes her status to some other temporary status (e.g., H-1B, O-1, etc.), then her family members automatically lose their J-2 status and must apply to change their status to the corresponding visa status (e.g., H-4, O-3, etc.).

Unlike those in F-2 status, spouses or dependent children in J-2 status may work in the U.S. once they’ve applied for and received employment authorization from the USCIS. To obtain an employment authorization document (EAD) for general work authorization, the J-2 spouse or child must complete Form I-765 and provide an acceptable explanation for the work authorization request. Some of the acceptable explanations are:
The Immigration Prescription

- Educational and cultural activities for the J-2 spouse and children;

- Additional money for travel in the US; and

- The J-2 dependent's desire to be more involved in US work, business, and cultural activities.

However, it is not acceptable that the income from the employment is needed for the support of the J-1 principal and the J-2 dependents. After all, one of the conditions of the J-1 visa is that the J-1 visa holder have sufficient financial resources to take care of himself and his family members.

J-1 Visa Obligations and Terms

After obtaining a J-1 status, exchange visitor physicians must maintain their status by applying to ECFMG for renewed visa sponsorship, typically on an annual basis. If the J-1 physician leaves the residency program, then his status terminates and he (and his family members in J-2 status) must leave the country to avoid potential deportation or removal.

The ECFMG limits the duration of participation in graduate medical education to the “time typically required” to complete the program. This generally means the minimum years of training required by an American Board of Medical Specialties (ABMS) member and/or the accredited length of training as defined by the Accreditation Council for Graduate Medical Education (ACGME). At most, a J-1 physician can train in J-1 status for seven years. However, seven years of sponsorship by the ECFMG is not automatic as the ECFMG may limit sponsorship to less than seven years.
Also, the J-1 physician may engage in only training that is approved as stated on Form DS-2019. A Form DS-2019 obtained for a particular program may be used only for that program and is not transferable to another institution or program. Consequently, a J-1 physician may not work, train, or engage in any activity for financial compensation that is outside of the approved Exchange Visitor Program.

Finally, in many ways, the J-1 visa is much like the F-1 visa and a seemingly natural extension of the process for foreign nationals to be educated in the U.S. Under the F-1 visa program, the student can attend college and/or medical school. Under the J-1 visa program, she can continue her medical training in a residency program. However, the J-1 visa is different in one important aspect; it requires the foreign national to return to her home country for two years before she is eligible to immigrate to the U.S. as a temporary professional worker or as a permanent resident.

An important requirement to note here is that the foreign national is required to return to her “home country” (as opposed to just leaving the United States). As a result, any time spent outside of her home country doesn’t count towards fulfilling the two-year requirement. For instance, let’s suppose a foreign national from Botswana attends a U.S. residency program in the U.S. and then spends the next two years practicing medicine aboard a cruise ship in the Caribbean. At the end of these two years, she won’t be able to apply for a temporary worker visa or permanent residence because the two-year requirement requires the foreign national to first return to her “home country” (in this case, Botswana).
H-1B Medical Residents

Each year, hundreds of foreign born physicians attend medical residency programs under H-1B temporary work visas. In order to obtain H-1B status as a medical resident, the foreign national must hold a temporary state license and have passed all parts of the either the FLEX, NBME or USMLE exams (only the USMLE is currently offered). However, most states don’t allow medical residents to take Part III of the USMLE unless they have completed the first year of their residency program. This obviously creates a “chicken and egg” problem for the foreign national who can’t get into a residency program until he’s passed a test which he can’t take until he’s finished the first year of that program.

Fortunately, a few states permit physicians to take the third part of the USMLE before entering a medical residency program. Therefore, foreign nationals who wish to obtain H-1B status must first pass the exam in one of these states.
Chapter 5
WAIVERS OF THE TWO YEAR FOREIGN RESIDENCY REQUIREMENT
(J-1 WAIVERS)

For the J-1 physician who wishes to begin practicing medicine in the U.S. immediately after completing his residency or fellowship, the two year foreign residency requirement imposed by the J-1 visa is obviously a significant drawback. Fortunately, there are three methods of obtaining a waiver of this requirement. In addition, there are other visa strategies which permit the J-1 physician to immediately practice medicine in the U.S. which we will discuss in this chapter as well.

The Hardship Waiver

One method to avoid the two year foreign residency requirement is to obtain a hardship waiver. This waiver is granted when requiring the foreign national to return to her home country would impose an “exceptional hardship” on her spouse and children who are U.S. citizens or permanent residents of the U.S. To establish exceptional hardship, the J-1 physician must meet a two-part test. First, she must show that her family members would suffer exceptional hardship in her home country were they required to return with her for the two-year period. Second, she must show
that her family would suffer *exceptional hardship* if they remained in the United States without her for two years.

As a practical matter, exceptional hardship is difficult to establish. For instance, the fact that the family would have to be separated is not enough to establish exceptional hardship by itself. It usually requires that the foreign residency requirement would force the family to live together in a war-torn or economically-ravaged country or be without necessary medical treatment or social services that are unavailable in the foreign national’s home country. It also requires that the family would suffer equally as much if the physician returned home and left the family in the United States.

For example, Juan is a J-1 physician with a U.S. citizen wife, Jenny, who has multiple sclerosis requiring monthly treatments. She cannot work and depends solely upon Juan for income. Juan is from Bolivia where there is no facility that provides the treatments Jenny must receive. In addition, the average income for a physician in Bolivia is equivalent to $300 per month; far too little to support Jenny if she remained in the U.S. while Juan returns to Bolivia. In this case, the USCIS (and DOS) would probably determine exceptional hardship exists and grant Juan a hardship waiver.

However, please note that this waiver is only available if the foreign national’s spouse or children are American citizens (or at least, permanent residents of the U.S.). Therefore, if a foreign national brings his existing family to the U.S., the hardship exemption is not available to him, regardless of the circumstances in his home country.

To apply for a hardship waiver, the foreign national must file form I-612 with the USCIS and provide evidence
of exceptional hardship (e.g., financial records, country condition reports from the DOS, medical records, evidence of lack of medical facilities in the home country, etc). If both the DOS and the USCIS agree that exceptional hardship exists, the J-1 physician will receive a hardship waiver.

The Persecution Waiver

Another waiver to the two-year foreign residency requirement is the persecution waiver. The USCIS and DOS will waive the foreign residency requirement if it determines that the foreign national is likely to face persecution in her home country based on her race, religion or political opinions. The persecution may be caused by the home country government or a group that the government is unwilling or unable to control.

However, the requirements for asylum may be easier to prove than the persecution waiver. In fact, in most cases where there is a “well-founded fear of persecution,” the foreign national will file an asylum application with the USCIS, rather than a persecution waiver request which must be reviewed by the DOS as well as the USCIS. If the asylum application is approved, the two year foreign residency requirement is waived. The asylum process will be discussed in greater detail in a later chapter.

The Interested Government Agency Waiver

The third and most common J-1 waiver is the Interested Government Agency (IGA) waiver. If a government agency requests a waiver of the foreign residency requirement for a particular physician, then it is almost
The Immigration Prescription

always granted. Currently, there are four IGAs who request waivers for foreign medical graduates:

(1) the Appalachian Regional Commission (ARC) waiver (federal agency);

(2) the Department of Veterans Affairs (VA) (federal agency);

(3) the United States Department of Health and Human Services (HHS) (federal agency);

(4) the Delta Regional Authority, and

(5) the State Health Agencies under the Conrad 30 program.

The ARC Waiver

Although Congress passed legislation in late 2004 which allows federal agencies to sponsor waivers for specialists, the ARC waiver requires the foreign born physician to practice at least 40 hours per week as a primary care physician for a minimum period of three years at a health professional shortage area (HPSA) or medically underserved area (MUA) facility located in the Appalachian region. The Appalachian region includes Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia. The ARC defines “primary care” as internal medicine, family practice, pediatrics, obstetrics and gynecology, and general psychiatry.

The foreign born physician must sign a three-year employment contract that includes a $250,000 liquidated damages clause. Or, in other words, the contract must contain a provision requiring the physician to pay a
$250,000 penalty if he quits the job before the end of the term.

The employer sponsor must also submit documentation of recruitment efforts for the six months immediately preceding the date of the employment contract. These recruitment efforts must include notification of the job opening to all the medical schools/residency programs located in the state where the job is located. Finally, the waiver request must be accompanied with a letter from the governor of the state in question.

The VA Waiver

The VA waiver is available to physicians coming to work in facilities run by the Veterans Administration. Unlike most of the other IGA waivers, the VA waiver is not restricted to primary care physicians nor must the facility be located in a HPSA.

However, the VA will only sponsor a foreign born physician for a J-1 waiver if her services are necessary for the continuation of a specific program and the VA’s efforts to fill the position with a U.S. physician have failed. In that vain, the sponsoring VA facility must submit extensive documentation of national recruitment efforts for the 12 months prior to submission of the waiver application. In addition, the foreign born physician must sign a minimum one-year employment contract.

*Please note that although the VA waiver only requires a one-year contract, the physician must practice with the VA for at least three years to comply with the USCIS waiver requirement.*
40 The Immigration Prescription

The HHS Waiver

The HHS waiver was previously restricted to researchers; however, in June 2003, the HHS began to sponsor clinical practitioners as well. We will discuss both waiver tracks here.

HHS Research Waiver

The HHS Research Waiver is difficult to obtain because the HHS will only sponsor foreign born physicians under “stringent and restrictive criteria.” For instance, HHS must determine that the physician is an “integral” part of a program “of high priority and of national or international significance” and that she “possesses outstanding qualifications, training and experience well beyond the usually expected accomplishments at the graduate, postgraduate and residency levels.” In general, this waiver is only granted for physicians who can document their leadership in research. Also, usually these physicians are employed by distinguished universities or research facilities, who must provide extensive documentation, including unsuccessful recruitment efforts to find a U.S. citizen or permanent resident of comparable qualifications. If the waiver is approved by the HHS, the physician must work with the sponsoring research facility for a minimum of three years.

HHS Clinical Care Waiver

In June 2003, HHS began acting as an IGA to sponsor primary care physicians to work in health professional shortage areas (HPSA) or medically underserved areas (MUAs), as determined by the HHS’ Bureau of Primary Health Care. This policy was in response to the closure of the U.S. Department of Agriculture’s (USDA) waiver program in 2002. For HHS purposes, “primary care
physicians” are defined as physicians practicing general internal medicine, pediatrics, family practice or obstetrics/gynecology.

Although Congress passed legislation in late 2004 which allows federal agencies to sponsor waivers for specialists, the HHS Clinical Care Waiver is available only to primary care physicians and general psychiatrists who have completed their primary care or psychiatric residency training programs within the past 12 months. For example, an internist enters into an employment agreement to work for a facility located in No Man’s Land, Texas, a HPSA. The agreement requires him to start work on July 1, 2005. In order to apply for a HHS waiver, he must have completed his residency training no earlier than June 30, 2004. According to the HHS, this 12-month eligibility limitation ensures that the physicians’ primary care training is current. It also ensures that the physician is not engaged in subspecialty training.

As with the other waivers discussed in this chapter, sponsoring facilities must provide proof of recent recruitment efforts to find qualified physicians who are U.S. citizens or permanent residents. Also, the sponsored J-1 physician must commit to a three year period of service with the sponsoring employer and begin work within 90 days of the USCIS approval of the waiver.

*Delta Regional Authority*

The Delta Regional Authority (DRA) is a federal-state partnership serving a 240-county/parish area in an eight-state region. Led by a Federal Co-Chairman and the governors of each participating state, the DRA is designed to remedy severe and chronic economic distress by stimulating economic development and fostering
partnerships that will have a positive impact on the region’s economy. The DRA waiver requires the foreign born physician to practice at least 40 hours per week as a clinical care physician for a minimum period of three years at a health professional shortage area (HPSA) or medically underserved area (MUA) facility located in the Delta region. The eight states included in the region are Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. The specific counties in this state that are covered by the DRA can be found on the internet at http://www.dra.gov/dra_coverage_map.html.

The DRA will sponsor primary care and specialist physicians and charges a $3000 application fee to process waiver applications.

*The Conrad 30 Waiver*

Traditionally, only federal government agencies could sponsor foreign born physicians for J-1 waivers. However, in 1994, Senator Kent Conrad sponsored a law that created a program under which each state (plus Washington, D.C., Puerto Rico, Guam, and the U.S. Virgin Islands) could sponsor up to 20 physicians for J-1 waivers each year (this number was increased to 30 in 2002). To be eligible for a Conrad waiver, the physician must agree to work for three years in a facility located in a HPSA or MUA.

Each state administers its allotment of waivers and therefore, each state has its own requirements for waiver requests. In general, these policies require a three-year employment contract (usually without a non-compete clause), evidence of the employer’s good faith attempts to recruit U.S. citizen physicians, and evidence that the facility is viable and located in a HPSA or MUA. Most states limit
waiver requests to physicians who will practice primary care. Like the ARC and HHS clinical care waivers, primary care is usually defined as practice in internal medicine, pediatrics, family practice or obstetrics/gynecology, or general psychiatry. However, many states will also grant waiver requests for specialty physicians, provided the HPSA or MUA has a sufficient need for such specialists.

**Waiver Procedures**

*IGA Waivers*

For IGA waivers, regardless of which federal or state agency sponsors the waiver request, the procedures are generally the same. Once the physician obtains an employment contract with a sponsoring employer, she should apply for a waiver review file number from the Department of State. This is the tracking number used to identify the physician’s waiver request file. The physician obtains a file number by completing a waiver review application and paying a fee to the DOS.

Next, the sponsoring employer and the physician must submit a waiver application to the IGA, providing the documents required by the particular IGA’s policy. The IGA will then review the waiver application. If the IGA agrees that the physician’s employment is in the public interest, it will send a waiver request to the DOS. However, the IGA will not be able to forward the request to the DOS without the waiver review file number. This is why it is so important for the physician to apply for this file number as early as possible because processing time for this application may be up to eight weeks.

Once the DOS receives the state waiver request, it will review the request for compliance with federal
immigration law. The DOS will also conduct a security check on the applicant physician. In nearly all cases, the DOS will approve the waiver and forward its recommendation for a waiver to the USCIS for final approval.

The USCIS is the only agency with the authority to approve a waiver. However, it will not approve a waiver without the DOS’s recommendation. Upon receipt of the DOS waiver recommendation, the USCIS will process a Form I-612 waiver application. After processing the application, the USCIS will issue an approval of the two-year foreign residency requirement waiver. The approval notice, commonly called the I-612 approval, will describe the terms and requirements of the waiver so that the physician is aware of her obligations.

**Hardship and Persecution Waivers**

As in the IGA waiver procedure, the first step is to obtain a waiver review file number from the DOS. After this point, however, the procedures for the hardship and persecution waivers are different than IGA waiver procedures.

Once the physician receives the waiver review file number, he must apply for the hardship or persecution waiver directly with the USCIS by completing Form I-612 and paying the appropriate fee. Along with the application, he must submit documentation in support of the waiver request, including an affidavit from the physician explaining why he should receive a waiver.

If the USCIS is satisfied that exceptional hardship or persecution would result if the physician returned to his home country, it will forward the waiver request to the
DOS for its opinion. The DOS will then review the application and respond to the USCIS. If the DOS concurs that an exceptional hardship or persecution has been proven, then the USCIS will approve the waiver request. However, if the DOS disagrees with the USCIS’ determination, then the USCIS will deny the waiver request. Therefore, from a practical standpoint, the DOS determines whether the waiver will be approved.

**Special Case Waivers**

In certain circumstances, a person subject to the two-year foreign residency requirement cannot return to his home country because the home country no longer exists or he has lost citizenship to the home country and cannot obtain a nonimmigrant visa to return to the home country. In such cases, the foreign national may apply directly to the DOS for a waiver of the two-year foreign residency requirement. The DOS requires “compelling and probative evidence” that it is impossible for the foreign national to return to his home country. Unfortunately, the DOS does not provide any guidance as to what documentation would constitute “compelling and probative evidence.”

**The Effect of a Waiver**

It must be noted that a waiver, by itself, does not allow the foreign born physician to live and work in the United States. The waiver simply allows him to apply for a temporary work visa or permanent resident status without first returning to his home land for two years. The process for obtaining temporary work visas and permanent resident status will be discussed in greater detail in the following chapters.
Waiver Obligations

The hardship waiver and the persecution waivers are the most “liberating” of the waivers. Physicians who obtain these waivers are not restricted in terms of employment. Once these waivers are granted, the physician may work for any employer who wishes to sponsor a work visa for him.

By contrast, IGA waivers carry certain obligations that must be fulfilled in order to avoid losing the waiver. In general, all IGA waivers require the physician to begin work for the sponsoring facility within 90 days of the USCIS approval of the waiver and continue work for a total of three years. After completing the three years, the physician is free to work in any location in the United States, provided he obtains the appropriate visa to do so.

Under the USCIS regulations, physicians who receive waivers under the Conrad 30 (State Health Agency request) program must work in H-1B status for the three-year contract period. With one exception, they may not apply for permanent residence until they have completed the third year of the contract. This prohibition will be discussed in greater detail in later chapters. Although there are no USCIS regulations that address other IGA waivers in this regard, the USCIS tends to apply these rules (H-1B status and three year bar on filing for permanent residence) to IGA waivers as well.

Finally, many state Conrad 30 programs and the ARC, DRA, and HHS have periodic reporting requirements where the physician or sponsoring employer must report the status of employment and in some cases, the number of patients served by the physician.
Losing the IGA Waiver

If a physician does not comply with the requirements of an IGA waiver, she will become subject to the two-year foreign residency requirement. To avoid this fate, the physician must prove to the USCIS that she cannot continue employment with the sponsoring facility because of “extenuating circumstances” beyond her control, such as closure of the sponsoring facility or hardship to the physician. In addition, the physician must agree to work for another employer in an underserved area (HPSA or MUA).

There is no laundry list of the facts that constitute hardship to the physician; however, the USCIS has approved a change of employment to another facility in cases where the original sponsoring employer:

- Terminated the physician’s employment;
- Failed to pay the physician’s agreed upon salary; or
- Attempted to force the physician to engage in unethical conduct.

Alternatives to Waivers

A physician who cannot obtain a J-1 waiver immediately may still remain in the U.S. after completion of his residency program by obtaining an extraordinary ability visa (O-1) or a treaty investor visa (E-2). If the physician qualifies for an O-1 or E-2 visa, he must obtain the visa at a U.S. consulate. He cannot obtain a change of status from J-1 to O-1 or E-2 while remaining in the United States. Procedures for the O-1 and E-2 visa are discussed in later chapters. Finally, it is important to note that while the O-1
and E-2 visa permit the J-1 physician to live and work in the United States without first obtaining a J-1 waiver, these visas do not waive the two-year foreign residency requirement. Therefore, if the physician ever desires to become a permanent resident or U.S. citizen, he will have to either return to his home country for two years or obtain a J-1 waiver at some point in the future.
## IGA Waiver Program Comparison

<table>
<thead>
<tr>
<th>Waiver Program</th>
<th>Physician Requirements</th>
<th>Term of Service</th>
<th>Sponsoring Facility</th>
<th>Area of Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARC</td>
<td></td>
<td>3 years</td>
<td>HPSA or MUA in Appalachian region.</td>
<td>Primary care</td>
</tr>
<tr>
<td>VA</td>
<td></td>
<td>3 years</td>
<td>VA facility</td>
<td>No limits</td>
</tr>
<tr>
<td>HHS Research</td>
<td></td>
<td>3 years</td>
<td>University or research facility</td>
<td>Research of national or international significance</td>
</tr>
<tr>
<td>HHS Clinical Care</td>
<td></td>
<td>3 years</td>
<td>HPSA or MUA</td>
<td>Primary care and general psychiatry</td>
</tr>
<tr>
<td>DRA</td>
<td></td>
<td>3 years</td>
<td>HPSA or MUA</td>
<td>No limits</td>
</tr>
<tr>
<td>Conrad 30</td>
<td></td>
<td>3 years (some states require 4 or more years)</td>
<td>HPSA or MUA</td>
<td>Primary care and specialties where needed</td>
</tr>
</tbody>
</table>
PRACTICING MEDICINE IN THE U.S. ON NON-IMMIGRANT VISA STATUS
In the last chapter, we briefly discussed the H-1B visa for professional workers. Physicians and medical researchers meet the definition of “professional workers” for this purpose. Under an H-1B visa, a foreign born physician may practice medicine in the United States for up to six years.

**H-1B numerical limitations**

In 1990, Congress first imposed a 65,000 numerical limitation (“cap”) on the number of new H-1B visas issued on annual basis. Since then the cap has gone through a number of revisions, including the addition of several exemptions from the cap. In 1998, Congress recognized the negative effect of this limit on the ability of American companies to compete globally so Congress raised the annual cap to 115,000 for two years and in 2000 it increased the number to 195,000. For those five glorious years, there seemed to be plenty of H-1B visas to go around. Unfortunately, on October 1, 2003, the number dropped back to 65,000. Not surprisingly, cap was reached 5 months into the fiscal year in February 2004. The situation became more drastic in FY 2005 when the visas were exhausted on October 1 and in FY 2006 when the visas ran out on August 10, nearly two months before the start of the fiscal year.
Currently, up to 65,000 H-1B visas (6,200 for workers from Chile and Singapore, 58,200 for all other nationalities) may be issued each fiscal year for professional workers. The fiscal year begins on October 1 and ends September 30. Because an employer can apply for an H-1B visa up to six months in advance of the anticipated starting date of employment, the USCIS will accept applications for the new fiscal year (October 1) on or after April 1 of the year. In other words, applications can be filed as early as April 1 for an October 1 approval date.

However, some workers are excluded from the cap including physicians who receive a J-1 waiver of the two-year foreign residency requirement and agree to work in a medical shortage area. Also excluded are workers who are employed by universities or colleges or by non-profit organizations affiliated with universities or colleges (“cap-exempt employers”). This is useful for physicians who use H-1B status to complete their residency for such institutions.

In addition, the cap only applies to “new employment,” so in general, a person who already has an H-1B and applies for another H-1B with another employer is not subject to the cap. However, if the worker obtained H-1B status through a cap-exempt employer and then seeks to change employment to an employer that is not cap-exempt, the new application will be subject to the cap. For example, a physician finishes his residency in H-1B status with a university hospital on June 30, 2006. He has a contract with a private facility to start work on July 15, 2006. His new employer will sponsor the H-1B visa but the petition will be counted towards the cap. If the cap has already been reached, the physician cannot work until October 1, 2006, assuming the employer files early enough.
Physicians who completed residency in J-1 status but returned home for two years as required OR who received a hardship or persecution waiver must also be mindful of H-1B cap issues.

Employers

Under this program, the physician must be sponsored by an U.S. employer. Employers can be businesses, non-profit organizations and even government agencies. The only requirement is that the employer must have the ability to hire, fire or otherwise control the physician’s work.

That being said, the employer need not be the entity paying the physician’s salary. For example, often a private practice will contract with a hospital to guarantee a physician employee’s salary. The private practice may be the sponsoring H-1B employer so long as it has the ability to hire and supervise the physician, even though the hospital may ultimately pay the physician’s salary.

Moreover, a self-employed business owner can use her business to sponsor her for a H-1B visa. For example, let’s suppose a foreign national physician forms a professional corporation for the practice of medicine. She will be the sole owner and employee. In this case, the corporation can apply for the physician’s H-1B visa, provided she meets all other requirements for the H-1B.

Physician Qualifications

In order to qualify for an H-1B visa to practice patient care medicine, the foreign born physician must pass all parts of the USMLE, NBME or FLEX, and the English language proficiency test given by the ECFMG. In
addition, the physician must be licensed to practice medicine in her intended state of employment. Usually, this means that the physician must have completed a medical residency in the U.S. However, this does not apply in the case the physician obtains an H-1B visa to complete a U.S. medical residency program.

Furthermore, not all foreign born physicians are subject to these requirements. These requirements only apply to foreign medical graduates (FMGs). For purposes of the H-1B visa, the following foreign born physicians are not considered FMGs:

- Physicians of national or international renown;
- Graduates of U.S. medical schools;
- Physicians not practicing patient care (e.g., medical researchers).

Finally, as discussed in the previous chapter, J-1 medical residents must return home for two years or obtain a J-1 waiver before applying for an H-1B visa.

The H-1B Application Process

To sponsor a physician for an H-1B visa, the employer must first submit a Labor Condition Application (LCA) to the Department of Labor. In the LCA, the employer attests that:

- The physician will be paid the higher of (i) the actual wage paid to similar physicians employed by the employer or (ii) the “prevailing wage.” The prevailing wage is determined by the State Employment Agency or some other valid wage survey;
The Professional Worker Visa

- The physician’s employment will not adversely affect the working conditions of U.S. physicians employed by the sponsor;

- There is no strike or lockout in the course of a labor dispute at the place of employment; and

- The employer has posted the LCA at its principal place of business and every location where the physician will work.

Once the LCA has been filed, the employer can submit an H-1B petition to the USCIS. In this petition, the employer includes documentation demonstrating the physician’s education, experience and required licenses. Unless the employee already holds a valid H-1B visa with another employer, he may not start working for the sponsor until the petition has been approved. The processing time for an H-1B petition varies from 30 to 180 days (depending upon the USCIS service center that has jurisdiction over the place of work). However, the petition may be processed within as few as 15 days if the employer pays a US$1,000 “premium processing fee.” Of course, payment of this fee does not guarantee approval of the petition.

If, as of the date of application, the physician is in the United States under another non-immigrant status, such as J-1, the USCIS can approve a change of status to H-1B. If this happens, the USCIS will simply issue a new I-94 indicating H-1B status for the physician. The physician can then begin work for the employer without first returning to her home country to obtain an H-1B visa from the U.S. consulate there. However, if she later travels internationally (except for short-term travel to Canada or
Mexico), she will have to obtain an H-1B visa before re-entering in the U.S.

If the physician is not in the United States or otherwise cannot be approved for a change of status, then the USCIS will forward the H-1B approval to a U.S. consulate in the country designated in the H-1B petition. The physician must apply to this U.S. consulate for an H-1B visa to enter the country. At the consulate, the physician must present the following documents to the consular officer:

- Form I-797, Approval Notice for the I-129 (H-1B) application;
- An attorney-certified copy of the Form I-129 petition;
- Form DS-156, Application for Non-Immigrant Visa;
- Form DS-158, Biographical Information (for males only);
- Current offer letter from the sponsoring employer;
- Original or certified copies of diplomas, degrees, licenses, and other credentials;
- Form I-797, Approval Notice for the I-612 Waiver of Two-Year Foreign Residency Requirement (if the physician previously held J-1 status);
- A passport valid for travel *(please note that the passport must have a validity date that extends at least six months beyond the intended period of training in the U.S.)*; and
- One 2x2 photograph.

The physician will be interviewed by a consular officer. In some countries, the process can take several weeks due
to security checks. Once the physician receives the visa, she can enter the United States.

Please note that unlike the J-1 visa, the H-1B visa does not require non-immigrant intent. In other words, while the J-1 medical resident is expected to return to his home country at the end of the residency, the H-1B visa holder can intend to stay in the U.S. indefinitely. For this reason, the H-1B applicant does not have to provide evidence of binding ties to his home country. Likewise, he may be issued an H-1B visa while he is in the process of applying for permanent residency.

**Spouses and Children**

The spouse and minor children of an H-1B professional worker may come to (or remain in) the U.S. under the H-4 visa. The H-4 visa is strictly tied to the H-1B visa. Therefore, if the physician loses H-1B status, then she and her family must depart the country. Just as with the F-2 visas, family members in H-4 status may not work.

If family members are in the U.S. in another valid non-immigrant status (e.g. F-2, J-2), they can apply to the USCIS for a change of status to H-4. If the family members are outside the U.S., they can apply to the U.S. consulate for H-4 visas. In either case, family members must present documentation of the family relationship (e.g., marriage certificates, birth certificates, adoption records, etc.).

**Admission Period and Extensions**

In general, a physician can hold H-1B status for a maximum of six consecutive years. Initially, the H-1B petition may request a maximum of three years for any
particular job. After that, an extension request must be filed that can extend the H-1B for another three years, if necessary. Nevertheless, an H-1B worker may not extend her stay beyond six years by simply switching employers. For example, let’s suppose that an H-1B physician works for Employer A for three years, he then enters into a five-year contract with Employer B. In this case, the physician will not be able to serve out the last two years of her contract with Employer B in H-1B status because she will have exceeded the six-year maximum time period for this visa. However, if at any time during this period, the H-1B employee remains outside the U.S. for one year or more, a new H-1B admission period begins and she can hold H-1B status for another six years.

Extensions of H-1B status beyond the six-year limitation are available where the employee has an petition for immigrant worker with the USCIS (I-140 petition) or a labor certification application with the Department of Labor that has been pending for more than 365 days. In this case, H-1B status may be extended for one-year periods. In addition, if the employee has an approved I-140 petition but cannot be approved for permanent residence because of an immigrant visa backlog (described in Chapter 11), H-1B status may be extended for three year periods.

Finally, any request for an H-1B extension with the same employer must be filed before the current H-1B status expires. The filing of the H-1B extension request automatically extends H-1B status for 240 days while the USCIS processes the request. This means that the employee may continue to work although the extension request has not yet been approved. For example, let’s suppose that a physician’s H-1B status is set to expire on
April 30, 2005. So long as the employer files an H-1B petition for an extension on or before April 29, 2005, the physician may continue to work for the employer for another 240 days without an approved extension request. At the end of this 240-day period, the physician will be out of lawful status unless the extension request has been approved. In all likelihood, however, the extension request will be decided in less than 240 days.

Job Changes

Change of Employment

As H-1B physicians are sponsored by their employers, their immigration status is tied to their employment. That is, they can only work for the employer who sponsors the H-1B. Nevertheless, a physician may change jobs provided that the new employer files an LCA and an H-1B petition on her behalf.

In fact, a physician already in H-1B status may start new or concurrent employment when the prospective employer files a new H-1B petition for her (as opposed to waiting until the petition has been approved). This is called “portability” of the H-1B status. The petition is considered filed when the USCIS physically receives the petition. To qualify for portability, the individual must be in H-1B status, the new petition must be filed before the individual’s current authorized stay expires, and the individual must not have been employed without authorization. If the H-1B physician begins the new job upon filing of the petition, and the new H-1B petition is ultimately denied, the physician is no longer authorized to work in that job.

Of course, in the case of a former J-1 physician who has obtained an IGA waiver, things are different. This
physician will be contractually obligated to remain with an employer for three years. In this case, if the physician leaves his job before the end of the three year term, he will violate the terms of his J-1 waiver, unless he can establish the extenuating circumstances described in Chapter 5. As a result, before going to work for another employer, he will be required to observe the two-year home residency requirement.

Concurrent Employment (moonlighting)

There is no limit on the number of concurrent H-1B visas for any employee. Therefore, a physician may work for any number of employers, provided each employer has filed an H-1B on his behalf. This is even the case for physicians subject to a J-1 waiver commitment. For instance, the ARC waiver program requires the physician to work 40 hours per week as a primary-care physician at a HPSA facility located in the Appalachian region. Therefore, so long as the physician meets her obligations to the ARC employer, she may work part-time for another employer, provided that the employer obtains the required LCA and H-1B approvals. This is commonly called a “concurrent H-1B.”

Changes to the Job

Finally, if there are any material changes in the job itself (as opposed to a change of employer), the employer must file an amended H-1B petition with the USCIS. For example, let’s suppose that a physician’s original employment contract requires him to work in Sussex County, Delaware. The LCA and H1-B petitions were approved for work in this county only. However, the employer now wants the physician to work part-time in
Kent County as well. The employer must file a LCA for approval of this new location. The employer must also file an amended H-1B petition when there is a change in the employee’s duties from one occupation to another or a material change in the terms and conditions of employment.

Rights for Physicians and Obligations of Employers

The H-1B visa carries with it many obligations for sponsoring employers and important rights for employees. For one, all employers must pay the H-1B employee the prevailing wage for the position. The prevailing wage is determined by salary surveys conducted by reliable sources. Unfortunately, the Department of Labor does not consider most salary surveys reliable unless they meet specific criteria. As a result, the most reliable wage information is a prevailing wage determination made by the State Employment Security Agency (SESA) in the state where the job is located. If a wage source other than SESA is used, the Department of Labor may require the employer to pay at least the wage suggested by the SESA. In addition, the employer must offer the same benefits (e.g., health, life, disability, and other insurance plans, etc.) to the H-1B employee as it offers to other U.S. workers.

Some employers offer contracts where the physician’s salary is based upon revenue from patient visits. The USCIS will not approve this type of salary structure unless the physician is at least guaranteed an annual salary equal to the prevailing wage.

In addition, if an employer requires the employee to pay the expenses associated with obtaining the H-1B visa, those costs must be deducted from the employee’s wage to determine whether the employer is paying the prevailing
wage. Also, attorneys’ fees can not be deducted from the employee’s paycheck.

Finally, “benching” is strictly prohibited for H-1B employees. Benching is the practice of not paying the employee if he has no assigned work or is temporarily unavailable for work. For example, let’s suppose that an employer hires a computer programmer full-time to provide consulting services to clients. In this case, even if the employee is temporarily between assignments, the employer must continue to pay him the agreed upon full time wages.

Also, employers must pay H-1B employees no later than 30 days after they enter the U.S. in H-1B status, or no later than 60 days after persons already in the U.S. obtain H-1B status. In addition, if the employer terminates the H-1B holder’s employment before the H-1B status expires, the employer must pay the reasonable costs of return transportation of the employee to her country.

The U.S. Department of Labor (DOL) is responsible for enforcing the pay issues imposed by requirements of the labor certification. Consequently, the DOL can conduct investigations on its own or in response to a complaint made by any employee (complaints must be filed no later than 12 months after the alleged violation). If the employer willfully and knowingly violates the labor certification requirements, then penalties will apply. Possible penalties range from $1,000 to $35,000 and from one year to three years debarment (suspension) from filing H-1B visa requests.

If an employer fails to pay the higher of the prevailing wage or actual wage as required by the LCA, the employee may file a complaint with the DOL and obtain back pay,
including interest penalties. Indeed in 2002, the DOL awarded a total of over $1,000,000 in back pay to 19 H-1B physicians whose employer failed to pay the required wage.
Chapter 7
EXTRAORDINARY ABILITY VISAS

U.S. immigration law provides a special class of visa (the O-1 visa) for persons who have an extraordinary ability in the sciences, arts, education, business or athletics. Accomplished foreign physicians can use this visa program to work in the United States for an initial period of three years for each new employer, after which this visa may be renewed indefinitely.

To qualify as an “extraordinary ability alien,” the physician must demonstrate “a level of expertise indicating that the person is one of the small percentage who have risen to the very top of the field of endeavor.” Specifically, the physician must be the recipient of either (i) a major, internationally-recognized award or (ii) at least three of the following distinctions:

- The physician has received nationally or internationally recognized prizes or awards for excellence in his area of expertise;
- The physician belongs to professional associations requiring outstanding achievements of their members, as judged by recognized national or international experts;
- The physician has been the subject of articles in major media or trade publications relating to his work;
• The physician has participated on a panel or as a judge of the work of others in his area of practice;

• The physician has made original scientific or scholarly contributions of major significance;

• The physician has written scholarly articles that have been published in professional journals or other major media;

• The physician has worked in a critical capacity for an organization with a distinguished reputation in the field of medicine; and

• The physician has commanded a high salary or other compensation.

For most physicians, the O-1 visa is simply not an option. However, for the rare physician who qualifies as an “extraordinary ability alien,” there are significant advantages to this type of visa. For example, the O-1 visa can be used to avoid the two-year foreign residency requirement of the J-1 visa. Therefore, rather than being restricted to employers who will sponsor them for an IGA waiver, the extraordinary ability physician may work for any employer willing to sponsor him for the O-1 visa. However, as explained in Chapter 5, the physician must eventually comply with the two-year foreign residency requirement or obtain a waiver, if she ever plans to become a permanent resident.

Also, the O-1 visa may be used by the physician who has reached the six-year limitation period of the H-1B visa (see Chapter 6). In such a case, the physician can extend his employment indefinitely if his employer’s O-1 petition is approved.
The O-1 Process

To sponsor a foreign physician for an O-1 visa, the employer must file a petition, Form I-129, with the USCIS. In this petition, the employer must submit:

- The physician’s employment contract (or at least the terms of employment);
- An advisory opinion written by a peer group or a recognized expert in the physician’s field attesting to the employee’s “extraordinary ability”;
- An explanation of the expected length and location of the employment; and
- Documented evidence that the physician has met the standards set forth above (e.g., publications, articles, awards, etc.).

The processing time for an O-1 petition varies from four to six months but, like the H-1B petition, may be processed within as few as 15 days if the employer pays a US$1,000 “premium processing fee.” However, please note the USCIS reserves the right to ask for additional evidence. If this happens, the 15-day clock restarts when the new information is received by the USCIS. Requests for additional evidence are fairly common with O-1 petitions because of the need to extensively demonstrate the employee’s qualifications.

If the physician is already lawfully in the United States and not subject to the two-year foreign residency requirement, the USCIS will grant a change of status to O-1. However, if the physician is subject to the two-year foreign residency requirement, he must leave the U.S. and apply for the O-1 visa at a U.S. consulate, normally one.
located in his home country. Of course, consular processing is also required if the physician is outside the U.S. when the O-1 petition is approved.

At the consulate, the physician must present the following documents to the consular officer:

- Form I-797, Approval Notice for the I-129 (O-1) application;
- An attorney-certified copy of the I-129 petition;
- Form DS-156, Application for Non-Immigrant Visa;
- Form DS-158, Biographical Information (for males only);
- Current offer letter from the sponsoring employer;
- Original or certified copies of diplomas, degrees, licenses, and other credentials, especially those used to establish extraordinary ability;
- A passport valid for travel (*please note that the passport must have a validity date that extends at least six months beyond the intended period of training in the U.S.*); and
- One 2x2 photograph.

As in the case of the H-1B visa, the physician will be interviewed by a consular officer and in some countries, must be prepared to wait several weeks for the visa because of security checks. Once he receives the visa, he can return to the United States.

Also like the H-1B visa, the O-1 visa does not require non-immigrant intent. Therefore, the applicant does not have to provide any evidence of binding ties to his home country and can concurrently file for permanent residence.
Job Changes and Extensions

Like H-1B employees, O-1 employees may change jobs so long as the new employer has filed an O-1 petition on her behalf. However, unlike the H-1B visa, the O-1 visa is not portable. That is, the new employer’s O-1 petition must be approved before the physician can begin work. Nevertheless, concurrent employment is permitted. Therefore, an O-1 physician may work for more than one employer so long as each employer has sponsored him as an O-1 employee.

If there is a material change in the terms and conditions of employment that may affect the O-1 physician’s eligibility for the O-1, the employer must file an amended O-1 petition. Interestingly, a change in location of the employment from Boston to Dallas would require an amended petition, but a promotion from staff physician to medical director would not.

The maximum validity period for an initial O-1 petition is three years. That is, the physician may work for three years for the employer without filing an extension. At the end of the three-year period, the employer must file an extension request in order for the employment to continue. Of course, any request for an extension with the same employer must be filed before the current O-1 status expires. As in the case of the H-1B extension, the filing of the O-1 extension request automatically extends O-1 status for 240 days while the USCIS processes the request.

Furthermore, each new employment is entitled to a new three-year validity period. Therefore, an O-1 physician can work for Employer A for three years and then contract with Employer B for another three years. After that, the physician can only receive one-year extensions.
Employer Obligations

Unlike the H-1B visa, there are very few employer obligations associated with the O-1. There is no prevailing wage requirement, nor is there any other requirement regarding the salary or benefits to be paid to the O-1 physician. The only similarity to the H-1B is that the employer must pay the reasonable costs of return transportation if it terminates the physician’s employment before the expiration of his O-1 status. Interestingly, the USCIS does not enforce violations of this obligation so the physician must file a private lawsuit if the employer refuses to live up to its obligation in this regard.

Spouses and Children

The spouse and minor children of an O-1 physician may come to (or remain in) the United States in O-3 status. However, they may not work in O-3 status. If family members are in the U.S. in another valid non-immigrant status (and not subject to the two-year foreign residency requirement), they can apply for a change of status to O-3. If the family members are outside the U.S., they can apply to the U.S. consulate for O-3 visas. In either case, they must present documentation of the family relationship (e.g., marriage certificates, birth certificates, adoption records, etc.).
In 1994, the North American Free Trade Agreement (NAFTA) went into effect. NAFTA created a new class of temporary work visa (TN) for certain classes of Canadian (TN-1) and Mexican professionals (TN-2). The following health care workers are eligible for TN status:

- Dentist
- Dietitian
- Medical Lab Technologist
- Nutritionist
- Occupational Therapist
- Pharmacist
- Physician (teaching or research only)
- Physical Therapist
- Psychologist
- Registered Nurse
- Veterinarian

The TN Process

Interestingly, the process for obtaining TN status differs significantly for Canadian and Mexican citizens. In short, it’s much easier for Canadian health care workers to obtain TN status than their Mexican counterparts.

For one, there is no annual limit on the number of Canadian citizens who may obtain TN status. On the other hand, there is an annual cap of 5,500 admissions for Mexican professional workers.

Secondly, Canadian citizens need not visit the U.S. consulate prior to entering the country. Instead, they may
simply arrive at a border post or airport inspection area with the US$50 fee and the following documentation:

- A copy of their degree and employment letters establishing TN eligibility;
- A written offer of employment from a U.S. company; and
- Evidence of Canadian citizenship.

On the other hand, the process for Mexican professional workers is significantly more involved. In fact, the process is very similar to the process for hiring H-1B workers. First, the employer must file an LCA with the Department of Labor promising to pay the prevailing wage. Next, the employer must file a Petition For Non-Immigrant Workers, Form I-129, with the USCIS. After this petition has been approved, the Mexican professional worker must then apply for a non-immigrant TN-2 visa at a U.S. consulate or embassy. She must pay a US$100 fee and provide the consulate officer with the following documentation:

- Form I-797, Approval Notice for the I-129 (TN-2) application;
- An attorney-certified copy of the I-129 petition;
- Form DS-156, Application for Non-Immigrant Visa;
- Form DS-158, Biographical Information (for males only);
- Current offer letter from the sponsoring employer;
- Original or certified copies of diplomas, degrees, licenses, and other credentials;
• A passport valid for travel (*please note that the passport must have a validity date that extends at least six months beyond the intended period of training in the U.S.*); and

• One (1) 2x2 photograph.

The applicant will be interviewed by a consular officer and in most cases, the TN-2 visa will be issued the same day.

**Change of Status**

If the Canadian or Mexican citizen is already in the U.S. with another valid nonimmigrant status, e.g. as a visitor or student, she may change to TN status without leaving the U.S. if the employer files a Form I-129 at the closest regional USCIS office. Processing time may range from two months to six months; however, like the H-1B petition, a TN petition may be processed within as few as 15 days if the employer pays a US$1,000 “premium processing fee.” However, please note that the USCIS reserves the right to ask for additional evidence. If this happens, the 15-day clock restarts when the new information is received by the USCIS. In many cases, it may be easier for Canadian citizens to simply return to Canada and re-enter the U.S. with the same documentation required for the original TN visa.

**Length of Stay**

TN status is a temporary visa status. As a result, the applicant must establish that she intends to return to her home country at some point. Nevertheless, TN status may be renewed indefinitely.
Not surprisingly, the process for renewal varies slightly depending upon whether the foreign national is a Canadian or Mexican citizen. In either case, TN status may be renewed if the employer files a Form I-129 at the closest regional USCIS office. However, Canadian citizens have the additional option of renewing their TN status by simply returning to Canada and re-entering the U.S. with the same documentation required for the original TN visa.

An important thing to note about TN status is that it does not allow a foreign national to have “dual intent.” In other words, a foreign national can’t extend her temporary TN status while applying for permanent residency. Once she applies for permanent residency, she is no longer eligible to renew her TN status.

Job Changes

As the TN employees are sponsored by their employers, their immigration status is tied to their employment. That is, they can only work for the employer who sponsors the TN. Nevertheless, a TN professional worker may change jobs provided that the new employer files Form I-129 to request TN status on her behalf. Once the Form I-129 is approved, the TN professional worker may start employment with the new employer. Unlike the H-1B visa, an amended petition is not necessary for a change in job location with the same employer.

Spouses and Children

The spouse and minor children of a TN professional worker may come to the United States in TD status. They may attend school but they may not work.
If family members are in the U.S. in another valid non-immigrant status, they can apply to the USCIS for a change of status to TD on Form I-539. Otherwise, Canadian citizen family members can apply at a border post or airport inspection area for TD status. Mexican citizen family members can apply at the U.S. consulate for TN visas. In either case, family members must present documentation of the family relationship (e.g., marriage certificates, birth certificates, adoption records, etc.).
Chapter 9
TREATY INVESTORS

The United States has treaties with the following countries allowing nationals of those countries to obtain temporary visas (E-2) to live in and develop a business in the U.S.:

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<th>Country</th>
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<td>Albania</td>
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<td>Norway</td>
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<td>Argentina</td>
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<td>Armenia</td>
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<td>Australia</td>
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<td>Bangladesh</td>
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<td>Belgium</td>
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<td>Bolivia</td>
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<td>Bosnia and Herzegovina</td>
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<td>Cameroon</td>
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<td>Croatia</td>
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<td>Sri Lanka</td>
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<td>Czech Republic</td>
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<td>Ecuador</td>
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<td>Egypt</td>
<td>Macedonia</td>
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<td>Estonia</td>
<td>Mexico</td>
<td>Togo</td>
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<td>Ethiopia</td>
<td>Moldova</td>
<td>Trinidad &amp; Tobago</td>
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<td>Finland</td>
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<td>Netherlands</td>
<td>United Kingdom</td>
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<td>Yugoslavia</td>
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</table>
To qualify as an E-2 treaty investor, a foreign born physician must intend to work full-time to develop his own business in the U.S. He can’t enter the country to work as an employee for another and develop a part-time business “on the side.” The physician must invest his full attention to development of the business.

In addition, the physician must own at least 50% of the business and make a substantial cash investment into the business. To determine if an investment is “substantial,” authorities will compare the amount of the investment to the total cost of purchasing or creating the business. If the business is relatively inexpensive to purchase or create, then the physician will be expected to invest most, if not all, of the required capital. On the other hand, if the business is capital intensive, then a lower percentage of cash investment may be accepted.

Finally, the physician must provide a five-year plan demonstrating that the business will generate enough revenue to support the physician and his family and employ others as well. If the business will only support the physician, then it does not qualify for E-2 status.

**The E-2 Process**

If the physician is currently residing in the U.S. under some other temporary status and is not subject to the two-year foreign residency requirement, she may apply for a change of status to E-2 with the USCIS. Specifically, she must file a petition, Form I-129, with the USCIS. In this petition, the physician must submit:

- Copies of passports of majority shareholders from the treaty country(s);
Treaty Investors

- Business documents such as Articles and Certificates of Incorporation, bylaws, stock certificates, certificate of officers, business license, partnership agreement, as they apply;

- Receipts for equipment and supplies;

- Bank account statements showing capitalization – funds should be wired from the home country;

- Loan agreements or letters of credit, if any;

- Copies of advertisements, press releases, etc. about the new office;

- Trade references, if any;

- Medical license;

- Business plan, including projected revenues, costs, staffing;

- Lease or deed to office/facility space or properties owned by the practice;

- Professional association memberships;

- Photos of the proposed facility, if possible;

- Organizational chart;

- Physician’s resume, copies of diplomas, degrees and relevant transcripts; and

- A statement confirming the physician’s intent to depart upon termination of his participation in the business.

The processing time for an E-2 petition varies from four to six months but, like the H-1B petition, may be processed within as few as 15 days if the employer pays a
US$1,000 “premium processing fee.” Once again, if the USCIS requests additional evidence, the 15-day clock restarts when the new information is received by the USCIS.

On the other hand, if the physician is currently residing outside of the United States, or is subject to the two year foreign residency requirement, she must apply at the U.S. consulate in her home country. She must pay a US$100 fee and provide the consular officer with the following documentation:

- A completed application Form DS-156 and DS-156E;
- Form DS-158 (if male);
- A passport valid for travel (please note that the passport must have a validity date that extends at least six months beyond the intended period of training in the U.S.);
- One (1) 2x2 photograph; and
- The same documentation required as if filing the E-2 I-129 petition in the U.S. described earlier and any documentation required by the consular officer to establish her eligibility for the E-2 visa.

As is the case with H-1B and O-1 physicians, the physician will be interviewed by a consular officer and in some countries, must be prepared to wait several weeks for the visa because of security checks. Likewise, the E-2 visa does not require non-immigrant intent.

**Length of Stay**

Under this visa, the physician may reside in the United States so long as he is running the business. The initial
approval period is for two years. Each approved extension is valid for two years and an E-2 visa may be extended an unlimited number of times.

Interestingly, each approved extension request or entry into the U.S. will be valid for two years at a time, even if the E-2 visa will expire earlier. For example, let’s suppose that an E-2 physician travels internationally and enters the U.S. with less than 30 days left before his E-2 visa expires. In this case, the USCIS will admit the physician and give him a two-year stay on his I-94 entry document. However, if the physician travels outside the U.S. again, he must obtain a new E-2 visa before he can re-enter the U.S.

Spouses and Children

The spouse and minor children of an E-2 treaty investor may come to the United States in E-2 status, regardless of whether they are citizens of the treaty country. For example, let’s suppose that an E-2 investor is an Italian citizen and therefore eligible for the E-2. However, his spouse and children are Brazilian citizens. Brazil is not a treaty country. Nevertheless, the spouse and children are entitled to E-2 dependent status.

Just as with most derivative forms of visa status, spouses and minor children may attend school. In addition, spouses may obtain work authorization by applying with the USCIS on Form I-765.

If family members are in the U.S. in another valid non-immigrant status, they can apply to the USCIS for a change of status to E-2 (again provided the physician or family is not subject to the two year foreign residency requirement). If the family members are outside the U.S., they can apply to the U.S. consulate for E-2 visas. In either case, they
must present documentation of the family relationship (e.g., marriage certificates, birth certificates, adoption records, etc.).
## Non-Immigrant Visa Status Comparison

<table>
<thead>
<tr>
<th>Visa</th>
<th>Eligibility</th>
<th>Length of Stay</th>
<th>J-1 Waiver Prerequisite</th>
<th>Can family members work?</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-1B</td>
<td>Physician must be sponsored by an employer and licensed to practice patient care medicine. Employer must file an LCA.</td>
<td>The maximum period is six years. The initial period is three years with an additional three-year renewal.</td>
<td>Physician must have either observed the two-year foreign residency requirement or obtained a waiver.</td>
<td>No.</td>
</tr>
<tr>
<td>O-1</td>
<td>Physician must be sponsored by an employer and demonstrate “extraordinary ability.”</td>
<td>The initial period is three years but the visa may be renewed indefinitely.</td>
<td>Physician need not observe (or obtain a waiver of) the two-year foreign residency requirement.</td>
<td>No.</td>
</tr>
<tr>
<td>TN</td>
<td>Physician must be sponsored by an employer. Research positions only. For Mexican workers, the employer must also file an LCA.</td>
<td>The visa may be renewed indefinitely but the physician must intend to return home someday.</td>
<td>Physician need not observe (or obtain a waiver of) the two-year foreign residency requirement.</td>
<td>No.</td>
</tr>
<tr>
<td>E-2</td>
<td>Physician must be a citizen of a treaty country, investing own funds in a business that will grow.</td>
<td>The initial period is two years but the visa may be renewed indefinitely.</td>
<td>Physician need not observe (or obtain a waiver of) the two-year foreign residency requirement.</td>
<td>Yes.</td>
</tr>
</tbody>
</table>
GOING FOR THE GREEN (CARD)
Chapter 10

ESTABLISHING PERMANENT RESIDENCY

In the last four chapters, we discussed some of the temporary visas available for foreign-born physicians to work in the United States. In the next five chapters, we’ll discuss the avenues by which these physicians may reside permanently in the U.S.

When a foreign national obtains permanent resident status, it is often referred to as earning a “green card.” This term arose from the fact that the evidence of permanent residence was originally a green-colored card. Interestingly, the green card – Form I-551 – is no longer green in color but the term “green card” is still widely in use.

Obtaining a green card eliminates the need to continually renew temporary visas. This gives a foreign born physician considerably more freedom to pursue other avenues of employment. For instance, a physician in H-1B status may only change jobs if the new employer files a Labor Condition Application (LCA) and an H-1B petition on her behalf.

Obviously, not all employers can make the certifications required in the LCA. As a result, some employers do not hire foreign physicians on H-1B status. However, this is not a problem for a permanent resident, who has the ability to work for any employer. In addition to the increased job flexibility, green card status is the first step towards
citizenship. In fact, in all but the rarest cases, permanent residency is a prerequisite to citizenship.

That being said, the process of obtaining green card status can be arduous and can take several years. On the other hand, in some cases, the process can be as short as one year. It all depends upon the status of the immigrant and her sponsor.

In the next four chapters, we will discuss the four main avenues for obtaining permanent residency in the United States:

• Employment-based Green Cards
• Family-based Green Cards
• The Diversity Lottery
• Asylum
Each year, the USCIS issues up to 140,000 employment-based green cards. These visas are issued based upon a system that establishes priorities for workers depending upon their skill level. In order, the five priority categories are:

- Priority workers;
- Professionals with advanced degrees and persons of exceptional ability;
- Skilled workers, professionals and other workers;
- Special workers; and
- Investors

A worker may apply for more than one category if he or she qualifies under for more than one category. All these categories require the filing of an I-140 Petition for Immigrant Worker at some point in the process.

**Priority Workers**

The first level of priority, EB-1, is reserved for “priority workers.” Approximately 28.6%, or 40,000 visas, are reserved for workers in this category. Medical professionals who qualify for this category include persons
of extraordinary ability and outstanding professors and researchers.

*Person of Extraordinary Ability*

To qualify as a “person of extraordinary ability,” a foreign born physician must meet requirements similar to those for the O-1 visa. Or, in other words, he must prove that he is “one of the few who has risen to the top of his field,” either nationally or internationally. As a result, he must be the recipient of either (i) a major, internationally-recognized award or (ii) at least three of the following distinctions:

- The physician has received nationally or internationally recognized prizes or awards for excellence in his area of expertise;
- The physician belongs to professional associations which require outstanding achievements of their members, as judged by recognized national or international experts;
- The physician has been the subject of articles in major media or trade publications relating to his work;
- The physician has participated on a panel or as a judge of the work of others in his area of practice;
- The physician has made original scientific or scholarly contributions of major significance;
- The physician has written scholarly articles that have been published in professional journals or other major media;
- The physician has worked in a critical capacity for an organization with a distinguished reputation in the field of medicine; or
• The physician has commanded a high salary or other compensation.

The chief advantage of qualifying as a person of extraordinary ability is that the physician can “self-sponsor.” In other words, the physician does not need an employer sponsor. The physician need only show that he intends to continue work in the field of his extraordinary ability. Evidence of this intent can include an employment contract, an offer of employment, or simply an expressed intent to engage in self-employment.

However, as we discussed in Chapter 7, most physicians do not qualify as persons of extraordinary ability. To do so, a physician must produce extensive documentation and the support of medical experts. For many physicians practicing clinical care, this is simply not an option.

**Outstanding Professors and Researchers**

To qualify as an “outstanding professor or researcher,” a foreign born physician must have at least three years of teaching or research experience. Furthermore, she must enter the U.S. to work in a tenure-track teaching or research position at an institution of higher learning or for a public or private research lab. In addition, she must show international acclaim as a researcher or professor by accomplishing at least two of the following achievements:

- Receipt of major prizes or awards for outstanding achievement in her field of expertise;
- Admission into a professional association that requires outstanding achievements of its members;
- The subject of an article in a professional publication detailing her work in the field of expertise;
Participation as the judge of the work of others in the field;

Original scientific or scholarly research contributions to the field; or

Authorship of scholarly books or articles in the field of expertise.

Once again, EB-1 status as outstanding researcher or professor is not available to most foreign born physicians. Even more, for those physicians who are researchers or professors, it can be more difficult to qualify as an outstanding professor or researcher than it is to qualify as a person of extraordinary ability. This is because outstanding professors and researchers must have achieved international acclaim (in contrast to the national acclaim required by the extraordinary ability classification). Finally, unlike the extraordinary ability track, an outstanding professor or researcher must have an employer sponsor.

Professionals Holding Advanced Degrees and Persons of Exceptional Ability

The second level of priority, EB-2, is reserved for professionals with advanced degrees and “persons of exceptional ability.” Approximately 28.6%, or 40,000 visas, are reserved for workers in this category. In addition, to the extent that fewer than 40,000 EB-1 visas are issued in a given year, the excess visas are allocated to this category.

To qualify for EB-2 status, the immigrant must hold an advanced degree (master’s degree or equivalent, or higher) and be a member of a profession, or show he or she has exceptional ability in the sciences, arts or business. All
physicians qualify as professionals with advanced degrees for this purpose.

However, unlike their counterparts who qualify for extraordinary ability EB-1 status, EB-2 physicians must be sponsored by an employer. Furthermore, the employer must obtain a labor certification unless the physician’s work is considered “in the national interest.” Such a physician qualifies for a so-called National Interest Waiver.

The chief advantage to the national interest waiver is that it allows the physician to self-sponsor. As a result, the physician may change jobs or even engage in self-employment so long as other conditions are met. There are two types of National Interest Waivers. The first applies to any individual in any occupation but the second applies only to certain physicians.

*General National Interest Waiver*

To obtain a National Interest Waiver from the employer sponsor and labor certification requirements under this category, the physician’s work must (1) have substantial intrinsic merit, (2) be national in scope, and (3) serve the national interest to a substantially greater degree than an equivalent U.S. worker. Areas of “substantial intrinsic merit” include such things as:

- Improving the US economy;
- Improving wages and working conditions for US workers;
- Improving education and programs for US children and under-qualified workers;
- Improving health care;
The Immigration Prescription

- Providing more affordable housing;
- Improving the US environment and making more productive use of natural resources; or
- A request by an interested government agency.

Most foreign born physicians will not satisfy these criteria. As a practical matter, only researchers and the most renowned specialists have been successful in obtaining a general national interest waiver.

**Physician National Interest Waiver**

Fortunately, Congress has passed special rules regarding National Interest Waivers for physicians who work in VA hospitals or in medically underserved areas. These physicians may obtain permanent residence; provided that they perform full-time medical service in a qualifying facility for five of the six years following the approval of their National Interest Waiver. After the physician has completed all five years of medical service, the DHS will approve the permanent residence application and issue the green card. To the extent the physician has served in an underserved area as part of his J-1 waiver requirements, this time will count towards the five-year requirement.

Another condition to this special type of National Interest Waiver is that the physician must practice general medicine, pediatrics, internal medicine, obstetrics/gynecology or psychiatry, unless he works in a VA facility. Physicians in VA facilities are eligible regardless of their area of specialty.
To support a national interest waiver application, the physician must provide:

- A five-year contract of employment or affirm that he will engage in self-employment for the required period of service;

- Evidence that the location of employment is a designated Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA), or in a Veterans Affairs facility;

- A public interest letter (no older than six months) from a federal agency or department of health of the state where the employment is located;

- Proof of licensing and passage of USMLE examinations; and

- Proof of waiver of the two-year foreign residency requirement for J-1 physicians, if applicable.

If the physician changes employers or moves job location to another underserved area before completing the required five years of service, he must file a new I-140 petition to obtain approval of the new employment. The USCIS will require evidence of medical service which includes copies of tax returns with W-2 or 1099 forms for the five years of service, medical license and an original letter from the employer(s) confirming dates of employment.

**Skilled Workers, Professionals and Other Workers**

This third category of priority, EB-3, is reserved for skilled workers, professionals and unskilled workers. Each
year, approximately 40,000 visas are allocated to this category, in addition to any unused visas in the EB-1 and EB-2 categories. Physicians generally would not use this category for permanent residence.

For this purpose, a “professional” is someone who has obtained a bachelor’s degree and is a member of a profession. A “skilled worker” is someone capable of performing a job that requires two years of training or experience. “Unskilled workers” are those whose jobs do not require two years of training or experience. There is an annual limit of no more than 10,000 visas that may be issued to unskilled workers under this category.

Also, an employer sponsor and labor certification is required without exception for this category.

**Special Immigrants**

The fourth level of priority, EB-4, is reserved for certain classes of workers (e.g., religious workers, long-time employees of the U.S. government in foreign lands, etc.). One of these classes is physicians who entered the U.S. on an H or J visa, and have continuously practice medicine in the U.S. since on or before January 1, 1978 to the present. Each year, approximately 7.1% of the worldwide visas or 10,000 visas are allocated to this category. An employer sponsor is not required for special immigrants.

**Investors**

The fifth level of priority, EB-5, is reserved for investors who are engaged in new commercial enterprises. Each year, 7.1% of worldwide visas or approximately 10,000 visas are allocated to this category (3,000 of these are set aside for targeted employment areas). This category
is similar to the E-2 treaty investor and the purpose is the same – to attract capital for job-producing businesses within the United States. However, the requirements are higher to obtain a green card through investment.

To qualify, the foreign national must invest funds in a new business or in a troubled business. For this purpose, a “new business” may include a pre-existing business that will be purchased by the investor and reorganized to expand by at least 140%. A “troubled business” is one in which the net worth has decreased by 20% in the last year or in the last two years.

To qualify the investor for a green card, a new business must create at least 10 full-time jobs. In the case of a troubled business, the business must continue to employ at least the same number of employees for the next two years.

The investment must be at least $1,000,000, unless the business is located in a “targeted employment area,” one in which the unemployment rate is at least 150% of the national average. In that case, the investment threshold is only $500,000. In areas where unemployment rates are exceptionally low, the DHS may require an investment of up to $3,000,000. The investment may consist of cash, equipment, inventory, other tangible property, cash equivalents and secured loans (provided the investor is personally liable).

For obvious reasons, most foreign born physicians are unable to qualify for green cards as an investor. However, to the extent a foreign born physician can invest at least $500,000 and has the ability and inclination to operate her own practice, this is a viable option.
Labor Certification

For the EB-2 and EB-3 categories, a labor certification and employer sponsorship is required. Again, the only exception is the previously discussed national interest waiver for the EB-2 category. Labor certification is the process whereby the U.S. Department of Labor (DOL) certifies that (1) there is a shortage of minimally qualified U.S. workers for the position offered and (2) the offered employment does not adversely affect the wages and working conditions of U.S. workers. The basic requirements for labor certification are:

- **Full-time employee.** The employer must hire the foreign worker as a full-time employee, not part-time.

- **Permanent job.** The employer must offer a permanent position.

- **Reasonable job requirements.** The minimum educational and experience requirements that the employer specifies for the position must be those customarily required for the occupation. These requirements cannot be tailored to the background of the employee for whom the application is filed. In addition, the employer must establish that the educational and experience requirements are not "unduly restrictive."

- **Salary offered must be the higher of prevailing wage or actual wage.** Like the H-1B requirement, the employer must pay at least the "prevailing" wage for the occupation in the area of intended employment, which is essentially the average wage
that other employers pay for similarly qualified workers. The State Workforce Agency (SWA) of the state of intended employment determines the prevailing wage. In addition, the employer must pay at least the "actual" wage which it normally pays to its own employees who are similarly qualified.

The Application Process

Obtaining an employment-based visa can be a long and arduous process that can take years, even for physicians. For most EB-2 physicians, the first step is for the employer to file a labor certification with the Department of Labor. However, as we discussed above, a labor certification is not required if the physician qualifies for a National Interest Waiver. Likewise, those physicians who qualify as EB-1, EB-4 and EB-5 workers are exempt from the labor certification process.

Before March 28, 2005, the approval of the labor certification could take anywhere from a few months to a few years. The length of the process depended upon the SWAs and the regional offices of the Department of Labor. Nearly 300,000 labor certification applications were caught in this process. To reduce the backlog, the Department of Labor created backlog reduction centers and required all SWAs to send all pending applications to these centers. The Department of Labor expects to adjudicate these applications and eliminate the backlog in a two to three year period starting March 28, 2005.

The Department of Labor also implemented a new procedure to process labor certification applications called PERM. With PERM, the Department of Labor generally decides an application within 60 days of application, a great improvement. However, there are more stringent
recruitment procedures that the employer must follow before an application can be filed and approved. For a professional position like a physician, the employer must engage in extensive recruitment, including two Sunday newspaper advertisements, placement of a job order with the SWA, paper and/or electronic posting on site, and three other forms of recruitment that are included on a list of ten recruitment types by the Department of Labor. These recruitment efforts can be conducted no later than 180 days before filing the labor certification application.

Physicians who will teach as well as perform clinical duties and who are employed by universities may qualify for special handling labor certification. There are several advantages to special handling. First, the recruitment requirement is considerably less stringent. Only one advertisement for the position run in a national professional journal and an onsite job posting are mandated. Second, the application for labor certification can be filed up to 18 months after the physician is appointed to the position. And, most importantly, the Department of Labor will not reject the labor certification even if qualified U.S. citizen or permanent resident physicians responded to the recruitment, so long as the employer can show that the alien physician was the best qualified applicant.

All PERM applications, including special handling applications, can be filed electronically or by mail using form ETA 9089. If electronically filed, the employer must obtain a PERM account from the Department of Labor before the application can be filed.

Once the labor certification has been approved, then the second step is for the employer sponsor to file a Petition for Immigrant Worker, Form I-140. This form
can be filed directly by the physician, without an employer, if he is a priority worker (EB-1) or qualifies for a National Interest Waiver. Along with this petition, the physician (or his employer) must supply evidence to demonstrate that he qualifies as one of the five categories of workers eligible for an employment-based green card.

In many cases, the waiting game begins at this point. Remember, the number of visas issued under each category is subject to an annual cap. Therefore, even if the petition is in order and there is no question as to the physician’s eligibility, his petition will not be approved if there is a backlog of workers “ahead” of him in line so to speak.

To establish the order of priority among workers in the same class, the USCIS uses a “priority date.” For workers subject to the labor certification requirement, the priority date is the date the labor certification was filed. For all other workers, it is the filing date of the Form I-140. Persons with earlier priority dates have preference over those with later dates.

Each month, the U.S. State Department prints a Visa Bulletin. This bulletin lists the eligible priority dates for each class of employment-based visa. For about five years, the priority dates were current for nearly all categories of workers. However, early 2005, the EB-3 category experienced a four year backlog, and in October 2005, in the EB-2 category (which includes most physicians) and EB-1 category for workers from China and India. On the next page, you will find an excerpt from the October 2005 Visa Bulletin.
The Immigration Prescription

Priority Dates for Employment-Based Immigrant Visas

<table>
<thead>
<tr>
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<th>All Chargeability Areas Except Those Listed</th>
<th>CH</th>
<th>IN</th>
<th>ME</th>
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<td><strong>Employment-Based</strong></td>
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<td>2nd</td>
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<td>01NOV99</td>
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<td>3rd</td>
<td>01MAR01</td>
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<td>01MAR01</td>
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<td><strong>Schedule A Workers</strong></td>
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<td><strong>Other Workers</strong></td>
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<td><strong>Certain Religious Workers</strong></td>
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<td><strong>5th</strong></td>
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<tr>
<td><strong>Targeted Employment Areas/Regional Centers</strong></td>
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C = current

As you can see, the priority date was current for the EB-1 and EB-2 categories as of October 2005, except for workers from India and China. An EB-2 physician from...
India with a priority date of May 1, 1999 would have been on the waiting list as of October 2005 because the priority date for EB-2 workers from India was only November 1, 1999.

The backlogs with respect to immigrants from certain countries occur because of the per-country annual limits on green cards. The annual limit for any one country is 7% of the total number of green cards issued in any one year (approximately 50,000). The total number of immigrants seeking green cards from countries such as India, Mexico and the Philippines is usually several times that number. Note that a worker’s place of birth determines their country of chargeability (which per-country limits apply). So if a citizen of India was born in the United Kingdom, he would not be subject to the visa backlog for India.

Once a visa immigrant number is obtained, the petitioner may move along to the fourth and final step of obtaining a green card. If the petitioner is residing in the United States at the time of receiving her visa immigrant number, then she must simply file an Application for Adjustment of Status, Form I-485, with the USCIS.

If the physician holds a current temporary visa, has never overstayed a visa or worked without authorization, and is not otherwise undesirable (e.g., a criminal, a leper, etc.), the application will likely be approved. During the processing of the Form I-485, the physician and his family members will receive employment authorization documents (EAD) and travel documents allowing international travel. However, a travel document is not necessary for travel if the physician has a valid H-1B visa and is still working for the sponsoring employer.
If the physician is outside of the United States at the time he is assigned a visa immigrant number or has overstayed a temporary visa at any time, then he must apply for his green card at the U.S. consulate in the country of his last permanent residence. After the I-140 has been approved, the USCIS will forward the approval to the National Visa Center (NVC). The NVC then notifies the physician of the appropriate forms to complete. Once the forms are completed, the entire package is sent to the designated U.S. consulate. The consulate will then schedule an interview for the physician and any immediate family members.

At the interview, the consular officer will review the physician’s medical examination and criminal record and obtain a security clearance. So long as the physician is not a criminal or a carrier of a communicable disease, the consular officer will approve the immigrant visa. At that time, he will stamp the physician’s passport with the approval. The physician must enter the United States within six months of that approval. Once the physician enters the United States, he is a permanent resident and will be issued a green card as evidence of his status.

Processing times for adjustment of status (Form I-485) can take 2-3 years while consular processing can be completed as early as three months after the I-140 approval. For this reason, many choose to leave the U.S. to pursue consular processing rather than wait for adjustment of status.

Once either the adjustment of status or consular processing has been completed, the physician will receive unconditional permanent residence, except in the case of physicians who obtain permanent residence as immigrant investors (EB-5). These physicians must fulfill the
conditions of their EB-5 status. If these conditions are met within two years, they can file a Petition by Entrepreneur to Remove Conditions, Form I-829, and become an unconditional lawful permanent resident of the United States.

Caveat for Former J-1 Physicians

Physicians who held J-1 status and received a waiver of the two-year foreign residence requirement through a Conrad State 30 program must complete the entire three years of required medical service before they can apply for adjustment of status or consular processing. For example, let’s suppose that Dr. Smith began his three-year service for his J-1 waiver on January 1, 2003. His employer immediately started the labor certification process to sponsor him for a green card and obtained an approved I-140 on June 30, 2005. Nevertheless, Dr. Smith cannot apply for adjustment of status or consular processing until January 1, 2006 – the end of his three-year service requirement.

The only exception to this rule is for physicians who apply for a National Interest Waiver for physicians. In this case, the physician may file the I-140 and the I-485 concurrently, even though he has not completed three years of J-1 waiver service. However, the I-485 will not be approved until the physician has fulfilled his five-year medical service obligation as required by the National Interest Waiver. Nevertheless, the ability to file the I-485 is a real advantage because the physician’s spouse will obtain an employment authorization document (EAD) which will allow him or her during the years that the I-485 is processed. For many physicians, this is the only way their spouse can work with authorization.
Appendix 1 contains a chart comparing the processes for labor certification and National Interest Waiver for EB-2 physicians.

Spouse and Children

The spouse and minor children of an employment-based permanent residence applicant may apply for permanent residence as dependents. The family must apply for adjustment of status (Form I-485) or consular processing just like the principal applicant. It is important to file the Form I-485 or initiate consular processing for a child before he or she turns 21, otherwise, he will no longer be a minor ("age-out") and will not obtain permanent residence with the rest of the family.

Labor Certification v. National Interest Waiver

Although there are various employment-based methods for obtaining lawful permanent residence in the United States, most practicing international medical graduate physicians have two options available to them – the national interest waiver or the labor certification process. Knowing the advantages and disadvantages to each of these procedures is necessary to determine the appropriate route for the physician to follow. A comparison chart for each option can be found on the following pages.
### NIW

**What are the basic requirements for each type of green card process?**

The physician must agree to practice primary care in an underserved area or practice medicine with the VA for a total of 5 years. The 3-year J-1 waiver service will be included in the 5-year commitment.

**What are the steps and forms required for each process?**

*To USCIS only:*
- I-140 Preference Petition
- ETA750B – Biographical Information
- I-485 Adjustment of Status or consular processing

**Is an employer sponsor necessary?**

No.

**Is there a minimum salary requirement?**

No.

**Must the employer show proof of ability to pay the physician’s salary?**

No.

**May the physician be self-employed?**

Yes.

### Labor Certification

**What are the basic requirements for each type of green card process?**

The employer must prove that it has attempted to recruit qualified U.S. physicians and has been unsuccessful in doing so.

**What are the steps and forms required for each process?**

ETA750A, ETA750B, recruitment efforts to State Dept. of Labor
State DOL forwards to US DOL who must approve labor cert.
To USCIS – I-140 Preference petition, I-485 Adjustment of Status or consular processing

**Is an employer sponsor necessary?**

Yes.

**Is there a minimum salary requirement?**

Yes, the employer must agree to pay the prevailing wage at the time the labor certification is filed.

**Must the employer show proof of ability to pay the physician’s salary?**

Yes.

**May the physician be self-employed?**

No. Ownership of the sponsoring employer will likely disqualify the labor certification application.
<table>
<thead>
<tr>
<th>Question</th>
<th>NIW</th>
<th>Labor Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When can the physician file for adjustment of status?</strong></td>
<td>Immediately upon filing the I-140 Preference Petition.</td>
<td>Only after the labor certification is approved, unless the physician is completing a Conrad 30 J-1 waiver program. In that case, the physician must wait until she has completed the 3-year commitment.</td>
</tr>
<tr>
<td><strong>Does the physician need an employment agreement?</strong></td>
<td>Yes, the physician must either provide a 5-year employment contract or an affidavit describing her self-employment.</td>
<td>No, a contract is not required.</td>
</tr>
<tr>
<td><strong>May the physician change jobs and still receive a green card?</strong></td>
<td>Yes, so long as the physician files a new I-140 and continues to work in an underserved area. However, if the physician is subject to a J-1 waiver commitment, she must fulfill that commitment.</td>
<td>Yes, under the following conditions:  1. The I-140 has been approved.  2. The I-485 has been filed and pending for 6 months or more.  3. The new employment is in a similar position.</td>
</tr>
<tr>
<td><strong>How soon can the physician or her spouse obtain an employment authorization document (EAD)?</strong></td>
<td>The physician and her spouse can apply for an EAD when they file the I-485. Typically, the USCIS will not approve the EAD until they have approved the I-140. However, it may issue an interim EAD after 90 days. If physician is currently completing a three year J1 waiver requirement, he or she should not use the EAD so as to remain in H1B status.</td>
<td>After the labor certification has been approved (which can take 1-3 years), the physician may follow the NIW procedure to the left.</td>
</tr>
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## NIW vs. Labor Certification

<table>
<thead>
<tr>
<th>Question</th>
<th>NIW</th>
<th>Labor Certification</th>
</tr>
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<tbody>
<tr>
<td><strong>How soon may the physician obtain travel documents for international travel?</strong></td>
<td>The physician (and family members) can apply for advance parole travel when filing the I-485. Typical processing time is three months to obtain the travel document. If physician is currently completing a three year J1 waiver requirement, he or she should not use the travel document so as to remain in H1B status. Obtain an H-1B visa instead.</td>
<td>After the labor certification has been approved (which can take 1-3 years), the physician may follow the NIW procedure to the left.</td>
</tr>
<tr>
<td><strong>May the physician apply for both types of green cards at the same time?</strong></td>
<td>Yes.</td>
<td>Yes.</td>
</tr>
<tr>
<td><strong>When will the green card be issued?</strong></td>
<td>3-6 months after completion of the 5-year commitment, provided priority date is current.</td>
<td>1-3 years after filing of the labor certification, provided priority date is current.</td>
</tr>
<tr>
<td><strong>What is the best time to apply for the green card?</strong></td>
<td>As soon as possible. The USCIS does not consider any medical service towards the 5-year commitment until the I-140 is approved. The only exception is for service under a J-1 waiver. Also, the physician must complete the 5-year requirement within 6 years of receiving NIW approval.</td>
<td>As soon as the employer is willing because the labor certification can take years. J-1 waiver physicians can start the labor certification process during their 3-year commitments but may not file for adjustment of status until after completing the commitment.</td>
</tr>
<tr>
<td><strong>May the physician use consular processing?</strong></td>
<td>Yes.</td>
<td>Yes.</td>
</tr>
<tr>
<td><strong>When can the physician apply for U.S. citizenship?</strong></td>
<td>4 years and 9 months after becoming a lawful permanent resident.</td>
<td>4 years and 9 months after becoming a lawful permanent resident.</td>
</tr>
</tbody>
</table>

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Each year, the USCIS issues up to 480,000 family-based green cards. To be eligible for a family-based green card, an immigrant must be sponsored by a relative who is either a U.S. citizen or a lawful permanent resident. Similar to employment-based green cards, these visas are issued based upon a system that establishes priorities depending upon the immigrant’s relationship to her sponsor. Needless to say, physicians are granted no more (or no less) of a preference under this system.

The top priority is given to immediate relatives, defined as “children, spouses and parents” of U.S. citizens. There is no numerical limit to the number of green cards issued for immediate relatives each year. Rather, they are deducted from the overall cap of 480,000 per year. In fact, each year, more than 200,000 immigrants receive green cards as immediate relatives.

In order, the four remaining preference levels are:

- **Unmarried sons and daughters of U.S. citizens (1st Preference)**, including children of these sons and daughters. Annually, approximately 23,400 green cards are reserved for these relatives.

- **Spouses and unmarried children of permanent residents (2nd Preference)**. This is, by far, the largest category of family-based green card recipients. Of the green cards allocated to these
persons, 77% are allocated to spouses and unmarried children under the age of 21. The remaining 23% are allocated to unmarried sons and daughters 21 years or older.

- **Married sons and daughters of U.S. citizens (3rd Preference)**, including children of these sons and daughters. Approximately 23,400 annual visas are reserved for these relatives.

- **Brothers and sisters of adult U.S. citizens (4th Preference)**, including children of these brothers and sisters. Approximately 65,000 annual visas are reserved for these relatives.

## Family Relationships Defined

The Department of Homeland Security (DHS) has clear definitions for family relationships.

- **Children** – the definition of a child also provides the basis for the definition of parent, sibling and son or daughter. A child is a person under 21 years of age who is born in or out of wedlock. An adopted child qualifies under this category so long as the adoption takes place before the child reaches the age of 16, and has lived with the adoptive parent for two years in legal custody. However, this two-year residency requirement does not apply to orphans (i.e., adopted children whose natural parents are deceased or have abandoned them). Stepchildren are also included as children of the sponsor so long as the marriage between the parent and stepparent took place before the child reached 18 years of age.
• **Parent** – the definition of a parent is established by the definition of child. That means, a parent is a natural parent or adoptive parent, so long as the requirements for child are met.

• **Son or Daughter** – the definition of son or daughter is a child (as defined previously) who is over the age of 21. This definition is particularly relevant in preference levels one, two and three.

• **Brothers and Sisters** – siblings can petition for one another if they meet the definition of child from one or both parents. That means stepchildren can petition for their stepsiblings and adopted children can petition for their adopted siblings in the same adoptive family. However, adopted children cannot petition for their natural brother or sister if they were not adopted into the same family.

• **Spouse** – a marriage must be valid for the DHS to recognize the spousal relationship. A valid marriage is determined by the law of the place of marriage. If the marriage took place outside the U.S., it is valid so long as the parties complied with the law of that country. Consequently, a common law marriage may be valid for immigration purposes if the state or country recognizes such a marriage. That being said, the marriage cannot violate U.S. public policy, such as a polygamous marriage or an incestuous marriage. If either spouse was previously married, they must have obtained a valid divorce before the remarriage will be considered legitimate. Interestingly, “proxy marriages” where the parties are not in each other’s presence (commonly called “telephone marriages”)
will be valid so long as the parties prove they later consummated the marriage.

**The Application Process**

Obtaining a family-based visa can be an even more lengthy process than that required to obtain an employment-based visa. The first step is for the sponsoring relative to file a Petition for Alien Relative, Form I-130. Along with this petition, the sponsor should include:

- Proof of the petitioner’s U.S. citizenship (i.e., passport, Certificate of Naturalization, or certified birth certificate) or permanent residence (green card);

- If the petition is for a spouse, biographical forms for both spouses, Forms G-325A; and

- Proof of the family relationship (e.g., marriage certificates, birth certificates, etc.).

At this point, with the exception of immediate relative petitions, the green card process is on hold until the foreign national receives a visa immigrant number. Obtaining this number can take years due to annual caps and per-country limits. Each month, the Visa Bulletin lists the eligible priority dates for each class of family-based visa. On the next page, you will find an excerpt from the October 2003 Visa Bulletin.
## Priority Dates for Family-Based Immigrant Visas

<table>
<thead>
<tr>
<th></th>
<th>All Chargeability Areas Except Those Listed</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family-Based</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>15MAY00</td>
<td>15MAY00</td>
<td>01OCT94</td>
<td>22JUL89</td>
</tr>
<tr>
<td>2A</td>
<td>15SEP98</td>
<td>15SEP98</td>
<td>01MAR96</td>
<td>15SEP98</td>
</tr>
<tr>
<td>2B</td>
<td>01MAY95</td>
<td>01MAY95</td>
<td>01DEC91</td>
<td>01MAY95</td>
</tr>
<tr>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>01JUL97</td>
<td>01JUL97</td>
<td>08OCT94</td>
<td>08FEB88</td>
</tr>
<tr>
<td>4&lt;sup&gt;th&lt;/sup&gt;</td>
<td>15DEC91</td>
<td>22JUL90</td>
<td>15DEC91</td>
<td>22SEP81</td>
</tr>
</tbody>
</table>

As you can see, there is more than a six-year wait for persons in the 3<sup>rd</sup> priority group -- married sons and daughters of U.S. citizens. Of course, this is assuming that the prospective immigrant is not from India, Mexico or the Philippines. If this is the case, then the wait can be longer. In fact, the wait is an additional 8 years for Philippine nationals under this category.

Moreover, as you can see, the wait increases with each priority level. Those in the first level -- unmarried sons and daughters of U.S. citizens – have the shortest wait. While those in the fourth level – brothers and sisters of U.S. citizens – have the longest wait. In fact, the wait for Philippine nationals who are brothers and sisters of U.S. citizens is more than 20 years.
Once the sponsored alien receives a visa immigrant number, then he can take the next step in obtaining a green card. If the foreign national already resides in the U.S. under a temporary visa, then she can immediately file an Application for Adjustment of Status, Form I-485, with the USCIS. Along with this form, she must include an affidavit of support (Form I-864) from the sponsor unless she has worked in the U.S. for at least 10 years. The sponsor’s income or assets must meet the minimum poverty level as established by the USCIS. If it does not, then a joint financial sponsor must also submit an I-864 Affidavit of Support. This joint sponsor’s financial status must meet the minimum poverty level as well.

The applicant may wish to also include an application for employment authorization and an application for a travel permit (commonly known as “advanced parole”). For immediate relatives who are in the United States, both the I-130 and the I-485 can be filed simultaneously with the local USCIS office in the home state of the sponsoring relative. Processing times vary from six months to four years for I-485 applications based upon family sponsorship.

On the other hand, if the foreign national resides outside of the U.S., then he must apply for a green card at the U.S. consulate in her home country. The process is nearly the same as consular processing for employment-based petitions. Once the applicant enters the United States, he is a permanent resident and will be issued a green card as evidence of his status.

**Aging Out**

The age of a sponsored child is very important in all priority levels, including immediate relatives. Remember that a child must be under the age of 21 to qualify as an
immediate relative or as an unmarried child under the 2\textsuperscript{nd} preference. In addition, children of sponsored sons and daughters (grandchildren) and children of sponsored siblings (nieces and nephews) must also be under 21 in order to immigrate with the rest of the family. However, because of long processing times and even longer waiting periods for most priority levels, many children “age-out” or reach the age of 21 before the immigrant visa can be issued. Oftentimes, these children are left behind and cannot immigrate with the rest of the family. To address this issue, Congress enacted the Child Status Protection Act (CSPA) on August 6, 2002. The provisions of the Act are fairly complex and address age issues for family and employment-based green cards as well as citizenship.

The child of a U.S. citizen continues to be an immediate relative so long as the citizen sponsor files a Form I-130, Petition for Alien Relative, on behalf of his or her child before he or she turns 21. Therefore, even if the USCIS does not act on the petition until after the child turns 21, the child will be able to immigrate with the rest of the family and not be placed into the 1\textsuperscript{st} priority level (unmarried sons or daughters), where the waiting list is long.

For the priority categories, the formula is more complicated. Under the CSPA, if the Form I-130 is on file before the child turns 21, the child’s age will be determined using the date that the priority date of the Form I-130 becomes current, minus the number of days that the Form I-130 is pending. In addition, the child must seek to acquire the status of a lawful permanent resident within one year of visa availability.

For example, on January 2, 2003, Jim, a U.S. citizen, files an I-130 for his brother, John. The USCIS takes two
years to approve the I-130. John has a daughter, Susan, who is 10 years old. The current waiting time for preference category four is approximately 11 years. On March 13, 2014, the priority date is current for John and he and his family can now immigrate to the U.S. However, Susan is now 21 years old. To determine whether she can immigrate with the family, we must determine her “immigration age” under the CSPA. According to the formula, we use her current age of 21 and subtract the two years the USCIS took to approve the I-130. We calculate that she is 19 for immigration purposes and thus, she can immigrate with the rest of the family.

This same formula applies to children at all other priority levels. Also, it should be pointed out that filing an I-130 may not prevent the child from “aging out” in all situations. For instance, if the child is 25 years old at the time the priority date is current but it only took two years for the USCIS to approve the I-130, then the child will be 23 years old for immigration purposes and ineligible to immigrate with the rest of the family.

**Green Card by Marriage for Immediate Relatives**

Please note that this “express lane” to obtaining a green card is only available for foreign nationals who marry for love (or at least, not *solely* for immigration purposes). If USCIS determines that the marriage is a sham, then it will not issue a green card. Perhaps, more importantly, the Yiddish proverb that states, “She who marries for money earns every penny” is equally applicable to those who marry for a green card.

In determining whether the marriage is “legitimate,” the USCIS will look for:
• Leases showing that the spouses lived in the same place;
• Documents showing that the spouses owned property together; and
• Birth certificates of children.

The process for obtaining a green card by marriage is straightforward. Shortly after the marriage takes place, the U.S. citizen spouse should submit the Petition for Alien Relative, Form I-130, on behalf of his foreign national spouse.

If the foreign national spouse already resides in the U.S. under a temporary visa (even if expired), she should immediately file an Application for Adjustment of Status, Form I-485. On the other hand, if the foreign national spouse is not in the U.S. at the time of the marriage, then the green card process must be initiated from abroad after the Form I-130 approval. This process will usually take anywhere from six months to two years.

However, in the interim, the foreign national spouse may file for a temporary K-3 visa, which will allow her to reside in the U.S. while the green card request is being processed. Also, there is a K-4 visa for her unmarried children under the age of 21.

To apply for K-3 and K-4 visas, the petitioning U.S. citizen spouse must file a Petition for Alien Fiance(e), Form I-129F, after receiving confirmation of the Form I-130 filing with the USCIS. Once approved, the petition will be forwarded to the applicable consulate so that the spouse (and children) may apply for K-3/K-4 visas. In general, this process will take three to six months.
Once the green card application has been approved, the foreign national spouse will receive permanent residence. However, if the marriage is less than two years old at the time the green card application is approved, the foreign national spouse will receive conditional permanent residence valid for a period of two years. During the 90 days before the end of the two-year period, both spouses must file a joint resolution, Form I-751, to make the green card permanent. If the marriage does not survive this two-year period, the foreign national may still apply alone if she has divorced, her spouse has died or she has been battered or subjected to extreme mental cruelty at the hands of her citizen spouse. In the case of a battered foreign national spouse, she must demonstrate that she will suffer extreme hardship if forced to return to her home country.

Caveat for Former J-1 Physicians

Physicians who received a J-1 waiver through Conrad State 30 programs must complete the entire three years of required medical service before they can apply for adjustment of status (Form I-485) or consular processing. This applies even to physicians married to U.S. citizens. For example, let’s suppose that a physician began his three-year service for his J-1 waiver on January 1, 2003. His wife, a U.S. citizen, had filed a Form I-130 six months before. The USCIS approved the I-130 on August 6, 2003. Nevertheless, the physician may not apply for adjustment of status or consular processing until January 1, 2006; the end of his three-year J-1 waiver service.
Chapter 13
THE GREEN CARD LOTTERY

Each year, the vast majority of green cards are issued to employees and relatives of U.S. citizens and permanent residents. However, there are other avenues to obtaining a green card.

One of these avenues is the annual Diversity Visa lottery program, in which 50,000 green cards are issued to randomly selected applicants. The purpose of the green card lottery is to diversify the pool of immigrants coming to the United States by providing green cards to those from otherwise underrepresented countries. As a result,
immigrants from the following 15 countries are NOT eligible for the DV lottery.

- Canada
- China (mainland only)
- Colombia
- Dominican Republic
- El Salvador
- Haiti
- India
- Jamaica
- Mexico
- Pakistan
- Philippines
- Russia
- South Korea
- U.K. (except N. Ireland)
- Vietnam

Immigrants from all other countries are eligible for the green card lottery, provided they have either completed the equivalent of a high school education or have worked for at least two years in a specified occupation. Interestingly, physician is not among the numerous occupations listed. Nevertheless, all physicians are qualified by virtue of their education.

Furthermore, even if a foreign national was born in one of the ineligible countries, he may still be eligible for the lottery if his national origin can be “charged” to another country. An immigrant’s national origin can be charged to his spouse’s country of birth. Likewise, national origin can be charged to the birthplace of the immigrant’s parents if one of them was born outside of the immigrant’s country of birth.

For instance, a physician who was born in Mexico ordinarily would be ineligible to participate in the green card lottery. However, if that physician is married to a spouse from a country that is not on the restricted list, such as Argentina, then her national origin may be “charged” to that country. Furthermore, if one of her parents was born
in an unrestricted country, then she may “charge” her national origin to that country.

Application Process

During a 60-day period each fall, the State Department accepts applications for the DV lottery. “Winners” in this lottery will be eligible to receive green cards for themselves and their immediate family members during the State Department’s next fiscal year. For instance, from November 1, 2003 to December 30, 2003, the State Department accepted applications for the 2005 DV lottery. Winners of this lottery were eligible to apply for permanent resident visas during the State Department’s 2005 fiscal year, which runs from October 1, 2004 through September 30, 2005.

The application process is fairly straightforward but it must be followed precisely. If the applicant fails to do so, then her application will be disqualified. The State Department is very strict in this regard. For instance, of the 10.2 million applications for the 2004 DV lottery, 2.9 million of them were disqualified as invalid.

All applicants must submit Electronic Diversity Visa Entry Forms online at http://www.dvlottery.state.gov. Paper applications are no longer accepted. The applicant must include biographical information about himself, his spouse and all children under the age of 21. Furthermore, the application must include electronic images of each person covered by the application. The State Department has established specific rules regarding these images.

Applicants who are randomly selected as winners of the green card lottery will be notified by mail within 6-8 months of the entry deadline. For instance, for the 2007
DV lottery, winners will be notified between May 1, 2006 and July 31, 2006. Those who are not selected are not notified. In this case, no news is bad news.

On the other hand, once an applicant receives the good news, he must swing into action as he only has a little more than one year to obtain his green card. For instance, winners of the 2007 DV lottery only have until September 30, 2007 to obtain their green cards. If this process has not been completed by that date, then the winner is no longer eligible for a green card. This requirement prevents most J-1 physicians from using the DV lottery, even if they otherwise qualify. Remember that a J-1 waiver requires the physician to complete all three years of the employment contract before he can apply for and receive a green card. Consequently, even if the physician wins the lottery, he is ineligible to apply for the green card until he has completed his commitment.

If the applicant is legally residing in the U.S., then she must file for an Adjustment of Status, Form I-485. Alternatively, if the applicant is outside of the United States, then she must apply at the nearest U.S. consulate. In either case, the applicant's immediate family members listed on the EDV Entry Form must follow the same procedures as the applicant.
The United States has long been a haven for those seeking to avoid persecution, war, famine and domestic strife in their homelands. Current immigration law provides protection for immigrants who have a well-founded fear that they will suffer persecution in their home country based on:

- Political opinion;
- Religion;
- Race;
- Nationality; or
- Membership in a particular social group.

These persons as classified in one of two ways. “Asylees” are immigrants who currently reside in the U.S. and seek asylum to stay in the country. “Refugees” are immigrants who currently reside outside of the U.S. and seek to come to America on the basis of their persecuted status.

Of course, most foreign born physicians do not qualify as either asylees or refugees. Nevertheless, for those who are from war-torn countries or subject to religious, ethnic or other persecution in their homeland, this can be a viable immigration option.
For those who are currently residing in the United States (whether legally or illegally), there are two paths to asylum – affirmative asylum and defensive asylum.

**Affirmative Asylum**

In the affirmative asylum process, the foreign national “affirmatively” files an Application for Asylum and Withholding of Removal, Form I-589, with the USCIS. This application must be filed within one year of entrance into the U.S., unless justified by an unexpected change of circumstances.

For instance, let’s suppose that a foreign born physician immigrates to the United States under a three-year H-1B visa. Two years later, a civil war breaks out in the physician’s home country and reports began to surface that members of his clan are being persecuted. In this case, if the physician applies for affirmative asylum, his application won’t be denied simply because it wasn’t filed within the first year of his entrance into the U.S.

Upon receipt of the application, the USCIS will send a notice to any applicant between 14 and 79 years of age to have his or her fingerprints taken. The fingerprints will be sent to the FBI for a background/security check. In addition, a copy of the application is sent to the State Department, FBI and CIA for background/security checks.

Next, the applicant will be scheduled for an interview with an Asylum Officer at one of the eight regional asylum offices or at a district office. At the interview, the applicant will be asked to take an oath promising to tell the truth during the interview. The Asylum Officer will verify the
applicant’s identity and ask the applicant basic biographical questions. Also, to the extent the applicant has listed a spouse and dependent children on her application, they must attend the interview as well. If an interpreter is needed, then the applicant is responsible for providing the interpreter. The main purpose of the interview is to allow the Asylum Officer to determine if the applicant meets the requirements for asylum and whether any bars apply to being granted asylum.

To qualify as an asylee, the applicant must establish that he has a “well-founded fear” of future persecution in his home country. Furthermore, this persecution must be based on the applicant’s political opinion, religion, race, nationality, or membership in a particular social group. It’s important to note that the burden of proof is placed on the applicant.

One way to demonstrate such a “well-founded fear” is by showing that the applicant has been the victim of past persecution. In that case, a “well-founded fear” will be presumed unless conditions in the applicant’s home country have changed significantly since the time of persecution.

If there has been no past persecution, then the applicant must demonstrate that (1) she would be singled out for persecution or (2) there is a pattern or practice of persecution of people of the applicant’s same political opinion, religion, race, nationality or social membership.

Nevertheless, even if the applicant is successful in establishing a well-founded fear of persecution, he may still be denied asylum if he has:

- Committed a particularly serious crime while in the U.S.;
• Committed a serious non-political crime in another country;

• Been involved in the persecution of others;

• Firmly resettled in another country prior to applying for asylum; or

• Engaged in, or indicated an intention to engage in, terrorist activity or any other activity that would pose a threat to the security of the United States.

Usually, the applicant will be required to return to the asylum office two weeks after the interview to receive a decision on the application. If the USCIS is unable to approve the asylum request and the applicant is illegally residing in the U.S., then the USCIS will refer the applicant to an Immigration Court for a “defensive” asylum proceeding.

In the case of the unsuccessful applicant who is legally residing in the U.S., he will receive a Notice of Intent to Deny. This letter will state the reason(s) the applicant was found ineligible for asylum. The applicant will have 16 days to submit a rebuttal or new evidence. If the applicant fails to respond within this time, the applicant will receive a Final Denial by mail. If a timely rebuttal is received, the Asylum Officer will consider the rebuttal and then either approve or deny the claim. In any event, an unsuccessful applicant may remain in the country under his existing temporary visa.

On the other hand, if the USCIS decides that the applicant is eligible for asylum, the applicant will either be given a Grant of Asylum or a Recommended Approval in the case that it has yet to receive the necessary security clearances. A grant of asylum is for an indefinite period
but it doesn’t give the applicant the right to remain permanently in the United States. Asylum status can be terminated if circumstances change in the applicant’s home country so that the threat of persecution no longer exists. Likewise, it can be terminated if the applicant obtains protection from another country, commits certain crimes or engages in other activities that make him ineligible for asylum status.

Nevertheless, an asylee can apply for certain benefits. For instance, an asylee may apply for a work permit, social security card, travel documents, employment assistance and services through the Office of Refugee Resettlement. In addition, an asylee may request derivative asylum status for any spouse or unmarried child less than 21 years of age as of the date the asylee filed the asylum application. Finally, after one year of asylum status, the asylee and his family members may apply for lawful permanent residence in the United States by filing Form I-485 with the USCIS.

Defensive Asylum

In defensive asylum proceedings, the applicant makes an asylum request in response to being removed from the United States. These cases are heard by Immigration Judges with the Executive Office for Immigration Review. As discussed above, one circumstance in which these cases arise is when an illegal alien has her application for affirmative asylum denied. These cases also arise when foreign nationals who are undocumented or in violation of their status are apprehended. Likewise, if a foreign national is caught trying to enter the U.S. without proper documentation, her case will be sent to an Immigration Judge if the alien is found to have a credible fear of persecution or torture.
A defensive asylum proceeding is a courtroom-like proceeding in which the Immigration Judge hears the applicant’s claim and also hears any concerns raised by the government. The judge then determines if the applicant is eligible for asylum status. The eligibility requirements are the same as those listed earlier in the case of affirmative asylum.

If the Immigration Judge determines that the applicant is eligible for asylum, then the applicant may remain in the U.S. indefinitely and later apply for lawful permanent residence. On the other hand, if the judge determines that the applicant is not eligible for asylum (or any other form of relief from removal), she will order the individual removed from the United States.

Refugees

Every year, the federal government sets a ceiling on the number of persons it will allow resettlement to the U.S. as refugees. For the fiscal year 2003, the ceiling was 70,000. This number was allocated among six global geographic regions as follows:

<table>
<thead>
<tr>
<th>Region</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>20,000</td>
</tr>
<tr>
<td>Former Soviet Union</td>
<td>14,000</td>
</tr>
<tr>
<td>Near East / South Asia</td>
<td>7,000</td>
</tr>
<tr>
<td>East Asia</td>
<td>4,000</td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>2,500</td>
</tr>
<tr>
<td>Latin America / Caribbean</td>
<td>2,500</td>
</tr>
<tr>
<td>Reserved</td>
<td>20,000</td>
</tr>
</tbody>
</table>

In addition, the State Department has established Haitian Migrant Operations and an Indochinese Refugee Program.
Foreign nationals who have been displaced from their homelands due to war, famine, domestic strife or the threat of persecution may apply to be resettled in the United States by contacting the United Nations High Commissioner for Refugees, an international volunteer organization or the nearest U.S. consulate. To qualify as a “refugee,” the applicant must be currently living outside of his home country and unable or unwilling to return due to the threat of well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

However, just as with asylum, a person is not eligible for refugee status if he has been involved in the persecution of others, firmly settled in another country, committed certain crimes or engaged in activities that make him a threat to U.S. security. Also, an individual generally is not eligible for refugee status if he is an immediate relative of a U.S. citizen or a special worker (e.g., religious worker, employee of the U.S. government abroad, etc.). In this case, the person should apply for a green card as discussed in Chapters 11 and 12.

Once the resettlement request has been approved, the refugee (and the immediate family members listed on the resettlement application) can enter the U.S. in refugee status. Just like asylees, refugees may apply for work permits, travel documents. After one year, they may apply for a green card.
Chapter 15
RESPONSIBILITIES OF LAWFUL ALIENS

Although lawful aliens share many of the rights enjoyed by American citizens, the right of a lawful alien to remain in the U.S. is subject to significant conditions. For instance, in order to lawfully remain in the U.S., foreign nationals under F-1 status must maintain full-time enrollment in school. Likewise, H-1B workers must remain employed in order to stay in the U.S. Furthermore, even permanent residents may be removed from the United States under certain circumstances (e.g., the commission of certain serious crimes).

Therefore, it is important for visa holders and permanent residents to abide by these conditions. Failure to do so could result in denial of a visa renewal, green card application, or citizenship application. And, in some cases, a violation of U.S. immigration laws will result in deportation.

Overstays

When a temporary visa holder is admitted into the U.S., he is given a Record of Arrival-Departure, Form I-94. This document contains his admission number and the proposed length of his stay in the U.S. In some cases, the proposed length of stay will be indicated by a date (e.g., three years from the date of entrance into the U.S.). In other cases, the proposed length of stay is indicated as
“D/S” (duration of status), as is the case for F-1 students and J-1 exchange visitors. This means that as long as the visa holder maintains his status (e.g., student, medical intern, etc.), he may remain in the United States.

In any event, it is important that the visa holder not “overstay” his visa. A person with a specific date of departure overstays his visa if he does not leave the U.S. by the date listed on the I-94 or at least, apply for an extension or adjustment of status by that date. In the case of a “duration of status” visitor, he must leave the U.S. within 30 days of the expiration of his program, unless he has previously applied for an extension or adjustment of status.

The penalties for overstaying a visa can be quite severe. If the visa holder overstays by even one day, she is considered to have “unlawful presence” in the U.S. Her visa is immediately cancelled and she can only apply for a new visa in her home country. With few exceptions, unlawful presence will also render the visa holder ineligible for a future change or adjustment of status. If the visa holder is unlawfully present for 180 days or more, and leaves the U.S., she is not eligible to return for three years. If the visa holder is unlawfully present by more than a year, and leaves the U.S., she is ineligible to re-enter the U.S. for ten years.

It should be noted that although these penalties are set by law, they may be waived by the Department of Homeland Security (DHS). However, these waivers are issued only after the visa holder has departed the country and there is no assurance that a waiver will be granted. Therefore, if the waiver is denied, the former lawful alien may be ineligible to return to the U.S. for some period of time. In evaluating waiver requests, the DHS looks at three factors: (1) the importance of the immigrant coming to the
Responsibilities of Lawful Aliens

U.S.; (2) the risk to society posed by allowing the immigrant into the U.S.; and (3) the seriousness of the previous misconduct.

Interestingly, F-1 and J-1 visa holders fare much better than other visa holders with regards to unlawful presence. F-1 and J-1 visa holders are not automatically considered to be “unlawfully present” if they remain in the U.S. after the completion of their program of study. It requires a determination by the DHS or an immigration judge to establish unlawful presence for these visa holders. This is significant because absent such a determination, an F-1 or J-1 visa holder may overstay, leave the U.S., and later return under another visa status. This is simply not possible for a B-1 or H-1B visa holder who overstays. The B-1 or H-1B visa holder would be automatically deemed “unlawfully present” and ineligible for re-entry, unless he received a waiver from the DHS.

Violations of Status

In addition to overstaying on a visa, a foreign national can violate her visa status in other ways. For instance, the spouse of a medical student (F-2) or temporary worker (H-4, O-3, or TD) may not work in the U.S. If the spouse does work, he is subject to removal. He may also be ineligible for a change or adjustment of status.

Criminal Conduct

A lawful alien can be deported for criminal convictions during his stay in the U.S. The USCIS will institute removal proceedings against those who commit “aggravated felonies,” such as murder, arson, rape, or
armed robbery. Fortunately, this is not an issue for most foreign born physicians.

However, immigration law defines an “aggravated felony” very broadly. Therefore, depending upon the wording of a criminal statute, even petty crimes, such as shoplifting and joy-riding, may be considered aggravated felonies. In addition, the DHS may institute deportation proceedings for crimes that were committed decades ago. Therefore, like all persons residing in the U.S., lawful aliens should avoid any and all criminal activity.

**Special Registration**

In response to the terrorist attacks on September 11, 2001, the DHS now requires all males (16 years old or more) from 25 mostly Islamic countries who enter with non-immigrant visas to report to DHS offices for fingerprinting, photographs and to answer questions about their activities while in the United States. If an alien fails to register, he may be detained and possibly removed from the U.S. In addition, he will be ineligible to apply for an extension or adjustment of status.

In addition to the initial reporting requirement, all affected aliens must re-register upon written notification from the USCIS. In addition, they must report any changes of address, job, or school on Form AR-11 SR. Finally, before leaving the U.S., the registered alien must report to an USCIS agent. Failure to do so renders the alien ineligible for re-entry.
The following table sets forth the males who must report to DHS:

<table>
<thead>
<tr>
<th>Group</th>
<th>Males from the Following Countries</th>
<th>Who Were Born on or before</th>
<th>Who Entered the U.S. on or before</th>
<th>Must Register on or before</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>Iraq, Iran, Syria, Libya, Sudan</td>
<td>11/15/86</td>
<td>9/10/02</td>
<td>2/7/03</td>
</tr>
<tr>
<td>Group 2</td>
<td>Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen</td>
<td>12/2/86</td>
<td>9/30/02</td>
<td>2/7/03</td>
</tr>
<tr>
<td>Group 3</td>
<td>Pakistan, Saudi Arabia</td>
<td>1/13/87</td>
<td>9/30/02</td>
<td>3/21/03</td>
</tr>
<tr>
<td>Group 4</td>
<td>Bangladesh, Egypt, Indonesia, Jordan, Kuwait</td>
<td>2/24/87</td>
<td>9/30/02</td>
<td>4/25/03</td>
</tr>
</tbody>
</table>

**Taxes**

Most adults in the U.S., regardless of immigration status or income, must file a federal income tax return annually with the Internal Revenue Service (IRS). In addition, many states collect income taxes and require the filing of an income tax return. In most cases, the deadline for filing a
state return is the same day as the deadline for filing with the IRS – April 15th of each year.

Permanent residents must report all income, no matter where it is earned. Therefore, even income earned outside the U.S. must be reported to the Internal Revenue Service. In some cases, this income will be exempt from U.S. taxation, provided the income is reported on a timely basis and the proper exemption is claimed. Failure to report income (and pay appropriate taxes thereon) can subject a permanent resident to fines and/or imprisonment. It can also jeopardize any future application for citizenship.

In addition to income taxes, most workers are required to contribute to the Social Security Trust Fund. “Social security” is a government-run trust fund that provides benefits to retired and certain disabled workers. It is supported by contributions made by employees and employers. Each contributor is assigned a Social Security Number (SSN).

All employers require their employees to have an SSN. To obtain an SSN, a lawful alien must apply in person at a Social Security Administration Office. She must bring a copy of her passport, Record of Arrival-Departure (Form I-94) and all other documentation necessary to prove that she is lawfully present in the U.S. and authorized to work.

However, despite the fact that all employees must have an SSN, some lawful aliens are exempt from Social Security withholding taxes. For instance, medical students and interns are not required to pay into the Social Security fund so long as they have been in the U.S. less than five years.
Retention of Status

Although a lawful permanent resident is entitled to live and reside permanently in the United States, it is possible to abandon permanent resident status, even if unintentional. At all times, the permanent resident’s main “tie” must be to the United States. If she travels outside the U.S. with the intent not to return or establishes permanent residence elsewhere, she will be deemed to have abandoned her lawful permanent residence in the U.S.

Inasmuch as the United States government is incapable of reading minds, the law has developed objective indicia of intent in order to determine whether a permanent resident has severed “ties” to the United States. Some of these indicia are the filing of U.S. income tax returns, ownership of property in the U.S. and the existence of family members in the U.S.

However, perhaps the most significant indicia is the amount of time spent outside of the United States. Contrary to popular belief, a permanent resident does not maintain her status just because she spends at least one week per year in the U.S. In fact, if such a pattern is spotted at a U.S. port of entry, it can result in an exclusion hearing. As a general rule, any continuous absence of more than six months can be considered an indication of abandonment, especially if the permanent resident takes a job abroad.

For travel abroad, a U.S. permanent resident is required to use the passport from his home country. His green card serves as a visa to return to the United States. However, as a general rule, a green card is valid for re-entry for up to one year. In other words, if a permanent resident is away from the U.S. for more than one year, he can not use his
green card to re-enter. He must obtain a re-entry permit. This permit must be obtained before departing the U.S. and will allow a permanent resident to re-enter the country within two years of his original departure.
CITIZENSHIP: MEMBERSHIP HAS ITS PRIVILEGES
Chapter 16
NATURALIZATION

Due to the continuing restrictions placed upon temporary visa holders and even permanent residents, American citizenship is the ultimate goal for many foreign born physicians. U.S. citizenship entitles the immigrant to all of the rights and privileges of being an American. Furthermore, U.S. citizens may not be deported or removed from the country. This protection seems particularly important to the physician who labors for decades to build a thriving medical practice. Furthermore, citizens have the right to vote, the right to serve on a jury, and the right to hold political office.

Green Card Requirement

The process of becoming a U.S. citizen other than by birth is called “naturalization.” There are many avenues to naturalization but almost all of them require the applicant to first obtain a green card. The only exceptions are for (1) those who performed active military service during World War I, World War II, the Korean War, the Vietnam Conflict and the first Persian Gulf War (1990-1991); and (2) non-citizens who owe permanent allegiance to the U.S.

As most foreign born physicians do not fall into either of these categories, permanent residence is usually essential for naturalization. After holding a green card for five years, any adult permanent resident is eligible to apply for
citizenship. In some cases, the five-year waiting period may be reduced.

For instance, if an alien has served in the U.S. Armed Forces for at least three years, then he may apply for citizenship immediately upon receiving his green card. Also, an alien may apply for citizenship after just three years of permanent residence if she has been married to a U.S. citizen. However, she must still be married to (and living with) her spouse at the time of application. Furthermore, the U.S. citizen spouse must have been a citizen for at least three years.

For applicants who are subject to the 3-year or 5-year waiting period, it is important to note that the applicant must establish “continuous residence” within the U.S. during this time period. This does not mean that the applicant may not travel outside the United States during the period. However, it does mean that the applicant may not be absent from the U.S. for more than six months at a time. If so, her “continuous residence” has been broken and a new 3- or 5-year period will start upon her re-entry.

If it becomes necessary for the permanent resident to leave the U.S. for a year or more, she can preserve her continuous residence by getting the Department of Homeland Security (DHS) to approve an Application to Preserve Residence for Naturalization Purposes, Form N-470. This must be done before leaving the U.S. In addition, if the applicant’s absence from the U.S. was caused by being stationed overseas in the U.S. Armed Forces, then it will be waived. The same is true for an alien who is married to any of the following U.S. citizens who are working overseas for at least one year:

- Members of the U.S. Armed Forces;
Responsibilities of Lawful Aliens

- Employees or individuals under contract with the U.S. government;
- Employees of American institutions of research recognized by the Attorney General;
- Employees of American-owned firms engaged in the development of foreign commerce for the U.S.;
- Employees of public international organizations of which the U.S. is a member (e.g., the United Nations); or
- Clergy for religious organizations with valid presences in the U.S.

In addition to the continuous residence requirement, the applicant must have spent at least half of the waiting period within the U.S. Therefore, applicants subject to three-year waiting period must have spent 18 months in the U.S. Those subject to the five-year waiting period must have spent 30 months in the U.S. Finally, the applicant must live in the state or DHS district in which he applies for citizenship for at least 3 months prior to applying.

Good Moral Character Requirement

Another requirement for citizenship is for the applicant to establish that he is a person of good moral character. In determining whether an applicant has “good moral character,” the DHS will generally look at the three or five-year period before the application for naturalization and consider the following factors:

- The criminal record of the applicant;
- Habitual drunkenness or drunk driving;
• Illegal gambling;
• Prostitution;
• Failure to pay child-support or alimony;
• Persecution of others based upon race, religion, national origin, political opinion or social group;
• Terrorist activities; and
• Knowing and willful failure to register for Selective Service as required for all males (excluding those in non-immigrant status) between the ages of 18 and 26.

In the case of criminal activities, the DHS will weigh the severity and frequency of arrests and convictions. However, a conviction for an aggravated felony or murder creates a permanent bar from naturalization. Likewise, a person who is currently on probation or parole may not apply for citizenship until it has been completed.

Finally, the DHS will react negatively to any falsifications during the application or interview process. If the applicant is found to have lied or omitted important information, his application will be declined. Furthermore, if the DHS later discovers that the applicant lied during the naturalization process, her citizenship may be revoked.

**English Language Requirement**

All naturalized citizens must demonstrate “an understanding of the English language, including an ability to read, write and speak … simple words and phrases … in ordinary usage in the English language.” This requirement is not problematic for most foreign born physicians as English proficiency is a prerequisite for medical residency
programs and licensing exams. However, this requirement could present a problem for spouses and family members who may follow the physician to the United States.

However, this requirement is waived for persons with disabilities. To request an exception, the applicant must file a Medical Certification for Disabilities Exception, Form N-648, with his application. This certification must be signed by a physician.

In addition, older applicants who are long-term permanent residents of the U.S. need not demonstrate proficiency in English. This exception is available for:

- Applicants who are over 50 years of age and have been permanent residents for at least 20 years; and
- Applicants who are over 55 years of age and have been permanent residents for at least 15 years;

## Civics Requirement

In addition to the English language requirement, there is also a civics requirement. In short, all naturalized citizens must demonstrate “a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.” The following are some of the sample questions provided in the DHS Guide to Naturalization.

- Who was the first President of the United States?
- Who is the current President of the United States?
- What are the three branches of our Government?
- How many Senators are there in Congress?
- What is the Bill of Rights?
There are many community-based organizations that provide classes to help applicants pass the civics test.

For those who are disabled, the civics test will be waived provided they file an acceptable Form N-648 with the DHS. In addition for older applicants who are exempt from the English language requirement, the test will be given in the language of their choice. Finally, applicants who are over 65 years of age and have permanently resided in the U.S. for at least 20 years are given a simplified version of the test.

The Naturalization Process

The first step in the process is to apply for citizenship by completing the Application for Naturalization, Form N-400. The application may be filed up to three months before meeting the continuous residence requirements. That is, an applicant may submit the N-400 four years and 9 months after he obtains permanent residence. The application asks a series of biographical questions about the applicant and for information concerning the applicant’s activities while in the United States. In addition, to filling out the application, the applicant must include two photographs and any document requested in the application. The application package must then be mailed to the appropriate DHS Service Center.

Once the application is received, the applicant will receive a letter from the DHS. In this letter, the applicant will be instructed when and where to be fingerprinted. The fingerprints are then sent to the FBI for a background check. If the background check does not reveal any information that would bar the applicant from obtaining citizenship, then the DHS will next schedule an interview with the applicant.
The purpose of the interview is to allow the DHS officer to determine whether the applicant is eligible for citizenship. In the interview, the officer will ask the applicant about her background, her activities in the U.S. and her character. Also, the officer will administer the English language and civics tests (if required).

After the interview, the applicant will be notified of the results of the interview. In some cases, at the end of the interview, the DHS officer will inform the applicant that his application has been granted. In other cases, the applicant will receive notification in the mail. In either case, the applicant will be given a date, time and location for the oath ceremony.

In other cases, the DHS officer will decide to “continue” the application. This happens when the officer needs to obtain additional information or documents to make his decision. It also occurs when the applicant fails the English language or civics test. In this event, the applicant may return for a second test within 60-90 days of the first test. Unfortunately, if the applicant fails the test during this second interview, her application will be denied.

Finally, after the first interview, the DHS can deny the application. In the denial notice, the DHS will explain its reasoning. If the applicant disagrees, he can request a hearing with a DHS officer. If this is unsuccessful, the applicant may file a petition for review in a U.S. District Court.

The Oath

Even after an application for citizenship has been granted, the applicant does not become an official citizen until she takes the Oath of Allegiance to the United States.
In the oath, the new citizen renounces all foreign allegiances, promises to support the Constitution and promises to serve the United States. If the new citizen holds beliefs that prevent her from serving in the military, then she may take a modified oath.

The Oath of Allegiance

_I hereby declare, on oath_,

- That I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom I have heretofore been a subject or citizen;
- That I will support and defend the Constitution and laws of the United States of America against all enemies, foreign or domestic;
- That I will bear true faith and allegiance to the same;
- That I will bear arms on behalf of the United States when required by the law;
- That I will perform noncombatant service in the Armed Forces of the United States when required by the law*;
- That I will perform work of national importance under civilian direction when required by the law; and
- That I undertake this obligation freely, without any mental reservation or purpose of evasion, so help me God.

* This provision is stricken in the modified oath.
Child Citizenship Act

Finally, foreign born children immediately become citizens upon naturalization of a parent if:

- The child is under age 18 at the time of the parent’s naturalization;
- The child is a lawful permanent resident; and
- The U.S. citizen parent has legal and physical custody of the child.

The child does not have to apply for naturalization; rather, he or she simply applies for a certificate of citizenship as evidence of his or her citizenship. The application is made on the form N-600 and requires the following evidence:

- Child’s birth certificate which must include the parents’ names;
- Marriage certificate of the child’s parents, if applicable;
- Proof of termination of the parent’s previous marriages, if applicable;
- Proof of the parent’s U.S. citizenship;
- Documentation of legal custody in the case of divorce, legal separation or adoption;
- Proof of the child’s lawful permanent residence; and
- Full adoption decree, if applicable.
Conclusion

Medicine is not merely a science but an art. The character of the physician may act more powerfully upon the patient than the drugs employed.

Philipus Aureolus Paracelsus (1493 - 1541) German-Swiss physician, Man and the Created World
Archidoxies, c. 1525.

Like the practice of medicine, the practice of law is part science, part art. In this book, I have described for you the science of immigration law -- the rules and regulations that govern legal immigration in the United States. However, immigration law is one of the most complicated areas of U.S. law (second only to tax law) and is changing all the time. And, as any good doctor knows, effective treatment cannot be prescribed without first examining the patient. So while you should use this book as a general guide, seek out an artful immigration attorney to get the right diagnosis and treatment for your specific immigration situation.

For a free 30 minute consultation regarding your immigration matter, call our 24 hour Physician Immigration Hotline at 888-849-9104 or email us at immigration@badmuslaw.com.
Read What Clients Say About Attorney Ann Massey Badmus

"Attorney Ann Badmus is always accessible and prompt"

"I had a very good experience with your legal services. What I admired most was how easily accessible you were and how promptly you returned phone calls or e-mails. Even before I was your client I received information which other lawyers would not have made available to me unless I contracted them. I will highly recommend you to anyone I know looking for a waiver or H-1B. In fact I have already recommended you to a couple."

Jennifer Fynn, MD
Massachusetts

"You can certainly count on them."

"More than a joy it is an asset to have people as reliable as Badmus Immigration Law working with me. All my concerns are answered thoroughly and very timely and they are making this legal process going very smoothly. I will highly recommend them if there is a chance. You certainly can count on them."

William Kcomt, MD
Indiana
"I was very impressed with their professionalism, responsiveness, and approach."

"When I was applying for the green card, I was working in San Antonio. From the date when I submitted my material to Badmus Firm to the date I have the initial approval from INS, it was only 3 months. I was very impressed with their professionalism, responsiveness and approach. Whenever I emailed them an inquiry, they always had the reply on the same day even after my case has been completed. I was very satisfied with their services and have recommended to several people already."

**Xing Li Wang, M.D., Ph.D.**

Texas

"**I am so grateful to Ann Badmus.**"

This message is to express my satisfaction with the services of Ann Badmus, I am so grateful to the firm; I have received professional and friendly service. All my question, concerns and problems have been resolved in an efficient way. I recommend this firm to anyone who has to deal with any immigration service.

**Jairo Fernandez. M.D.**

Florida
"Ann Badmus has made me and my family rest easy."

"I am no blurbologist and also am extremely leery of formal introductions. In communications of this nature superlatives are always used and are often suspect. But there is one constant in my dealings with Ann Badmus this past half year--she has made me, and my family, rest easy with her patient explanations of the deliberately (?) dense travails of immigration matters. I now count Ann not only as my legal representative, but as a good friend. I gladly recommend her to all and everyone."

Ishrat Syed & Shama I. Shakir, M.D.
Mississippi

"They are the most efficient immigration law firm I have ever worked with."

My experience with Badmus Immigration has been an unforgettable one. Their services are superb, fees very reasonable and their prompt responses to all questions cannot be overemphasized. They are in fact the most efficient immigration law firm I have ever worked with. Ever since I got to know of this firm, I have never used any other firm for immigration purposes.

Francis Obeng, M.D.
North Carolina
"I have only good things to say about Atty. Badmus."

I had sought immigration advice from other law offices before and was unhappy with the lack of service and very impersonal manner with which they treated me, especially after I had paid a hefty retainer fee. Nothing of the sort occurred with Atty. Badmus. If anything, she was very approachable, and promptly addressed my questions and concerns. I am very impressed by her professionalism and wish her and her staff the best...I highly recommend Badmus Immigration, without any reservations.

Victoria Maria Diokno, MD
Delaware

"I am very satisfied with Ann Badmus as my attorney. She is a keeper!"

I found out about Ann Badmus last year from a colleague of mine. I had just had a very dissatisfying relation with an attorney and I was looking for someone reliable. I have found Ann and her co-workers to be excellent. The most important thing to me is that they can be reached easily. There is no run around given to me as a client. No "I'm sorry, she's not available" answers from her secretary. Whenever I have left a message for Ann to call me, she has done so readily and in a very timely manner. This is really important to me, because sometimes, I really just need someone to talk to. On more than one occasion, I have called Ann and asked her the same question twice or thrice and each time she has been patient enough to go over explanations with me. She even called me from her
house two days after having her baby because I had left a message that I needed to speak to her. Now that is what I call, A RELIABLE ATTORNEY. Hard to come by nowadays. Overall, I am very satisfied with Ann Badmus as my attorney. She is a keeper! And I intend to do so.

Evelyn Ansa, MD

New York
For over a decade, **Attorney Ann Massey Badmus**, has helped hundreds of foreign physicians realize their dreams of practicing medicine in the United States. Ann practices exclusively in the area of immigration law where she has successfully represented her clients in applications for H-1B, L-1, E-2, O-1 and other temporary visas, waivers of J-1 two year foreign residency requirements, and permanent residence based upon labor certification, extraordinary ability alien, national interest waiver, outstanding researcher, and multinational manager and executive. Ann has also aided clients in family-based immigration cases. Although based in Dallas, Texas, Ann represents clients nationwide from all parts of the world.

A much sought after speaker, Ann presents solutions to immigration issues to interested groups such as Chambers of Commerce, community organizations, and other organizations. She has even taught other attorneys basic immigration law as continuing legal education for these attorneys. Ann has also been quoted regarding immigration issues in several business publications.