

International Medical Graduates - From Training to Working

By Reaz H. Jafri, Esq.

Historically a hub for immigrants, it is common knowledge that New York's teaching hospitals are heavily dependent on international medical graduates (IMGs). Many of these residents and fellows are typically in the US in either J-1 or H-1B visa status. When considering an IMG for a permanent position, a threshold question for the hospital that trained the IMG or a subsequent employer that wants to hire the IMG is "how do I keep this physician?" This article will briefly examine the immigration issues facing the IMG and options available to employers so that the IMG can remain in the US permanently after completing training.

H-1B or J-1?

The two most common types of visas that an IMG is trained are the H-1B and J-1. The H-1B is a visa that is valid for a period of six years. Under certain circumstances, an H-1B's six-year maximum can be extended. If eligible for lawful permanent resident (LPR) status – colloquially referred to as green card – there are generally no legal barriers for an H-1B to become an LPR.

A J-1 is much trickier. By law, a J-1 must return to his or her country of nationality or last permanent residence for a minimum of two years or obtain a "waiver" of this requirement before being eligible to change status to LPR or H-1B. By statute, each state is permitted to recommend a maximum of 30 J-1 waivers annually. New York's "State 30" program supports waivers of the home residence requirement for J-1 physicians who either agree to practice in federally-designated underserved areas or to provide services to persons who live in such areas. Assuming it meets the underserved area requirement, an employer files an application for a waiver directly with New York State Department of Health, which receives many more than 30 applications annually, making the selection process more difficult. The requirements for a J-1 waiver are complex. Employers and IMGs are advised to consult experienced immigration attorneys that routinely specialize in this area.

Medical Licensure

Before discussing how one hires an IMG for a permanent clinical position, the employer and the IMG must be cognizant of our state's archaic medical licensing requirement. New York is one of a few states that requires a person to be either a

US citizen or an LPR before being eligible for an unrestricted medical license. An IMG who is neither may be issued a "limited medical license" (LML), which is restricted only as to where the IMG may work and not in the services the IMG may render. An LML is valid for three years but may be extended if an IMG is actively pursuing LPR status. Once issued an LML and authorized to work as a physician in New York, the next issue to resolve is, "what is the correct visa category?" An IMG may work temporarily as a physician either as an H-1B or O-1. The O-1 is a visa classification for persons with "extraordinary ability." While a J-1 may not change status to H-1B or LPR without satisfying the two-year home residence requirement or obtaining a waiver, the J-1 may apply for an O-1 visa, which is initially valid for three years. However, the time limit can theoretically be extended indefinitely, subject to the LML issue.

Since the H-1B and/or the O-1 are temporary visas, employers and IMGs must find a path to a "green card." This is usually done in one of several ways. The most common way is "labor certification."

Labor Certification

Labor Certification is a process whereby an employer seeks permission from the US Department of Labor to sponsor an IMG for a green card. This requires the employer to test the US job market for qualified US workers who are ready, willing and able to work. Since presumably US employers only hire IMGs they need, and when US workers are not available, a carefully crafted application for labor certification is usually certified. Once certified, the employer files a petition with the US Citizenship and Immigration Services (USCIS) to sponsor the IMG for a green card. If an "immigrant visa" is available to the IMG, the IMG may apply immediately for a green card and the process is completed. If an immigrant visa is not available to the IMG (as is the case for those born in China or India), then it will be several years before the IMG is eligible to apply for a green card. During this time and until an immigrant visa becomes available, the employer should be able to extend the IMG's H-1B indefinitely.

National Interest Waiver

Certain outstanding IMGs may have accomplishments or expertise that distinguishes them from their peers. In these

cases, the employer (or the IMG individually) may bypass the labor certification requirement and apply directly with USCIS to be classified as an "immigrant." As with the labor certification, if an "immigrant visa" is available, the IMG may immediately apply for a green card. If an immigrant visa is not available to the IMG (Chinese and Indian IMGs), it will be several years before the IMG is eligible to apply for a green card. During this time and until an immigrant visa becomes available, the employer should be able to extend the IMG's H-1B indefinitely.

Outstanding Researchers/ Professors

Employers engaged in research may also bypass the labor certification requirement and file a petition directly with USCIS to classify the IMG as an immigrant if the IMG is an "outstanding" researcher or professor. If an IMG has at least three years of research or teaching experience, this is often an attractive option for teaching hospitals with robust research programs. It is noteworthy that immigrant visas are available in this category for all nationalities – hence, it is particularly attractive for nationals of India and China

Pre-hiring Considerations and Conclusion

Immigration – like healthcare – can be a daunting experience. When considering an IMG as a candidate for permanent employment, employers are advised to consult with experienced practitioners to identify and address any immigration issues up front. Some issues are straightforward and others are quite complex. Given the critical importance of IMGs to New York and its diverse population, there is no question that the state will continue to attract the best and brightest minds to our world-class training programs. And since New York employers would logically want to keep these well-trained and qualified physicians within the Empire State, having an appreciation of immigration law and its interplay with IMGs is essential.

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