The Immigration Prescription for J-1 Visa Waiver Success

Presented by Ann Massey Badmus, Immigration Attorney, Badmus Law Firm

After residency or fellowship training is completed, all J-1 physicians (i.e., foreign medical graduates or international medical graduates) must return to their home country for two years or obtain a waiver of this requirement before they can be employed in H-1B (professional or specialty occupation) status or adjust to permanent residence ("green card").

In this webinar, Badmus discusses the two-year home country rule, J-1 visa waivers; H-1B visa basics for physicians; and the path to permanent residence or green card.

TWO-YEAR HOME COUNTRY RULE

Badmus explains the two-year home country rule, which states that international physicians agree to return to their home country for two years before obtaining H-1B status or green card.

J-1 VISA WAIVERS

Badmus reviews the three types of visa waivers available to J-1 physicians: Interested Government Agency (IGA); hardship waiver; and persecution waiver. Badmus also explains that J-1 physicians can obtain their waivers through a number of programs, including the Conrad 30 State program, the Veterans Administration, the Department of Health and Human Services, and others.

Essentially, a J-1 waiver is a joint application by a physician and employer. Once a physician finds an employer, he or she applies to the particular agency that’s willing to sponsor the visa waiver. The IGA may take between one and three months to review, then forward to the Department of State (DOS) for its review. If the IGA approves the application, then the DOS is likely to approve as well, says Badmus. The DOS will also review the waiver application to make sure it complies with federal requirements and complete a security/background check on the applying physician. The U.S. Citizenship and Immigration Service (USCIS) is the final authority for waiver approval and its review takes typically between one and three months. Physicians must have a H-1B waiver in addition to the J-1 waiver.

To obtain a hardship waiver, a J-1 physician must show evidence that his or her family will suffer exceptional hardship (e.g., medical, financial) if he or she has to return to the home country, leaving family behind.

To obtain a persecution waiver, a J-1 physician must show some kind of persecution by the government or by a political or religious group that will try to restrict or imprison him or her. Badmus says this is a more difficult type of waiver requiring strong evidence.

H-1B VISA BASICS

Badmus explains that H-1B visas are for any occupation with positions requiring US bachelor’s degrees or higher.

Physicians must have medical and state licenses in order to apply. Physicians also need to show employer evidence, and self-employment is now allowed. Badmus reviews the H-1B cap (whereby the government only issues a certain number of these visas per year) and the timeline during which candidates are able to apply.

Physicians can be on H-1B status for three years and up to six years with some exceptions; physicians are eligible for another six years after they’ve been out of the country for one year. H-1B portability means that physicians with H-1B status can change employers and start working as soon as the new employer files the petition, without having to wait until it is approved.
PATH TO PERMANENT RESIDENCE (GREEN CARD)

Badmus says many application options are available for J-1 physicians, including PERM Labor Certification, National Interest Waiver (NIW), EB-1 status, and family petition.

PERM Labor Certification is the most widely used application. It requires that the employer apply for the green card and must prove that the employer has not found a citizen or person with green card already for that position. The employer must pay the prevailing wage and the physician must be qualified at time of filing of labor certification.

National interest waivers may be granted for those whose work is of national interest (e.g., research) and for physicians in clinical practice who agree to practice for five years in an underserved area.

EB-1 status applies to physicians who can show evidence of outstanding ability. Badmus says this is for a physician who is internationally renowned or is one of the few physicians who have risen to the top of the field either in the US or in his home country. While obtaining EB-1 status is advantageous (no wait time), Badmus says it requires much evidence.

Family sponsorship means the J-1 physician has a spouse who is a US citizen or a child who’s 21 or older and can serve as sponsor.

Badmus is author of The Immigration Prescription, which details the process for international medical graduates to legally practice medicine in the United States. It is available at no charge to AAN Job Fair attendees by contacting annbadmus@badmuslaw.com.