

**HEALTHCARE
EMPLOYER'S**



**GUIDE TO
J-1 VISA
WAIVERS**

THE HEALTHCARE EMPLOYER'S GUIDE TO J-1 VISA WAIVERS

A short guide for hospitals and medical facilities in underserved areas

Part 1: Overview of the Conrad 30 J-1 Visa Waiver Program

Part 2: Securing a J-1 Visa Waiver

Part 3: Must-Know Deadlines

Part 4: Other Business Visas for Foreign-born Physicians



ABOUT THE AUTHOR:

Michael Murray, JD has devoted his career to working with hospitals, institutions of higher education, and businesses large and small to find the best solutions for their immigration law needs. Whether obtaining work visas or assisting employees through the Permanent Residence process, Michael is a trusted advisor who can be counted on to find efficient, practical solutions that work for your organization. Michael has assisted numerous private and public schools to establish F-1 Foreign Student Programs. He provides training and counseling on SEVIS compliance. Michael is also an expert in the field of I-9 compliance and has defended companies in government initiated I-9 investigations. He may be reached at michael@fordmurraylaw.com.

Intro

What's new with the Conrad 30 Program?

This past year provided immigration practitioners and other stakeholders with unexpected challenges in the J waiver process. "Premium processing," the U.S. Citizenship and Immigration Services' expedite procedure, was suspended leaving employers scrambling to meet anticipated start dates for their physicians. The expedite process was eventually reinstated, but there is no word on whether it will remain an option for 2018 Conrad H-1B petitions.

With this uncertainty in mind, we advise employers to start their recruiting as soon as possible, so that the J waiver applications for any candidates can be prepared and filed with time to spare in case of any government delays.

Part 1:

Understand the Conrad 30 J-1 Visa Waiver Program

What is the Conrad 30 J-1 Visa Waiver Program?

Every year foreign physicians who graduate from U.S. residency and fellowship programs, known as FMGs (foreign medical graduates), are in search of hospitals and practice groups who will support them in continuing their careers in the U.S. If these physicians held a J-1 Exchange Visitor visa during their graduate medical education in the U.S., they are required to return to their home countries for a 2 year period before they can continue their careers in the U.S.

The provision of the immigration law that requires that the physicians return home for two years, known as 212(e), can be waived in specific instances. One common way to waive the 212(e) requirement is under the Conrad 30 Program, where a hospital or health center makes an application to a state Department of Health, requesting that the that the two year home residency requirement be waived in exchange for the physician's 3 years of service in a health professional shortage area or medically underserved area. The details of this annual program differ by state, but a Conrad waiver will likely be the best way for your healthcare facility to recruit and retain highly-qualified foreign physicians.

Part 2:

How to secure a Conrad 30 J-1 Visa Waiver for a foreign physician

The Conrad 30 Program runs on the federal fiscal year, and therefore most states will begin accepting applications between September 1st and October 1st. Each state program receives 30 waiver slots per year and must meet certain federal requirements, although each state can also create its own standards and protocols. In general, a Conrad waiver application must demonstrate that the FMG will be working full-time in a qualifying underserved area, and that the FMG agrees to work for the sponsoring healthcare facility for at least three years. Additional state-specific requirements may include letters of recommendation and evidence of a medical license and other professional credentials.

A sponsoring healthcare facility must be in health professional shortage areas (HPSA) or medically underserved areas (MUA), except in limited circumstances. These include areas that are designated as having shortages of primary medical care, dental or mental health providers, and/or areas with a specific patient population that is underserved (based upon levels of Medicare and Medicaid reimbursements and other factors.)

How to apply for the Conrad 30 J-1 Visa Waiver

To secure a Conrad J-1 Visa Waiver for a foreign physician, employers must start the process well in advance of the employment start date (typically the physicians graduate from the residency or fellowship in June or July and begin work at the hospital in July or August). The filing window for the state programs typically opens between September 1st and October 1st (the year prior to the anticipated start date), and in larger states such as New York, Texas, and California, the 30 waiver slots will be exhausted in the first weeks of availability, if not the first day. In other states, the slots will remain available

for several months, while low-usage states like North Dakota and Wyoming may not exhaust all of the slots for the entire fiscal year.

Employer criteria

The initial application is filed with the state's Conrad 30 J-1 Visa Waiver program, which is usually found within the state's Department of Health and Human Services or the equivalent. In addition to the physician criteria stated above, the state program will want to know the following about the employer:

- Has it made a good faith effort to recruit a U.S. physician for the position?
- Does the facility have the resources and retention program in place to retain the physician for longer than the minimum 3 year service period?
- Is the facility located in a qualifying underserved area?

Part 3:

Must-know Deadlines

How long does the Conrad 30 J-1 Visa Waiver application process take?

The Conrad waiver application will take several weeks to several months to process at the state level. If approval is recommended, the application is forwarded to the U.S. State Department's J-1 Waiver Review Division (WRD) in Washington, DC. The WRD will take 8 to 12 weeks to conduct its review. If approval is recommended by the WRD, the application is transferred to the U.S. Citizenship and Immigration Services (USCIS) for final processing of the J-1 Waiver. The sponsoring healthcare facility will then need to file an H-1B petition with USCIS to change the physician's status from J-1 to H-1B Nonimmigrant Worker to facilitate the start of post-training work with the employer. The physician must then serve out the 3 year period with the employer/J-1 Waiver sponsor in order to fully waive the 212(e) two year home residency requirement.

Sponsoring a foreign physician in this manner opens up a new, talented pool of physicians for hospital and physician groups to hire. Although the legal process is multi-faceted and complex, working with an experienced business immigration attorney can make the process much more manageable and transparent.

Don't miss your window of opportunity

This overview of the Conrad 30 Program deadlines is designed to help you plan, interview, obtain necessary Visas and file J-1 Waiver applications without missing your window of opportunity.

- **Know optimal time to interview:**

Interviewing foreign physicians will start the summer before expected graduation from residency/fellowship (for example, if a doctor will graduate in Summer '18, candidates should be identified, ideally in Summer '17—though new candidates may be secured any time before the 30 Conrad slots expire in the state);

- **Know when to file a waiver application:**

J-1 Waiver Applications should be filed as close to the beginning of the filing window, usually in Sept. or Oct., as possible, though new filings can be made up to the expiration of the 30 slots depending on the rules of each State Program;

- **Factor in time for an H-1B Visa:**

H-1B status must be obtained before the foreign physician can begin work at the facility – and note, a state medical license must be secured before the H-1B visa status can be issued by USCIS.

- **Allow enough time for State Dept. Review Board:**

In order to make the July/August start date, employers will want to make sure the J-1 Waiver application has progressed to the State Department Waiver Review Division in the April to the early May timeframe.

Part 4:

Other Business Immigration Visas for Foreign-born Physicians

The United States is predicted to have a significant shortage of qualified physicians in the next several decades. As the Baby Boomer generation continues to age, and with medical advances keeping seniors alive longer and longer, the U.S. population is requiring more medical care. In addition, the doctors from this generation are retiring at a rapid pace, which means fewer physicians are available to provide the care that is needed.

With this shortage of good doctors on the horizon, the United States has created or amended several visa types to help bring in the needed physicians. The following pages provide information on additional US employment-based visas that could be appropriate for foreign born physicians.

H-1B Visas

The H-1B visa is the primary way businesses hire foreign nationals for the U.S. workforce. This visa type can be used by professionals in many industries, including doctors. The basic requirements for an H-1B include a job offer with a U.S. employer in a "speciality occupation", or a job that requires a bachelor's degree or higher.

In addition, an FMG must have already completed their medical degree from either a U.S. based school, or an acceptable school in a foreign country. The physician will also need to apply for, and receive, a medical license for the state in which they plan on working. Finally, the FMG will need to complete either the United States Medical Licensing Examination (USMLE) parts I, II and III or the Federation Licensing Examination. If approved, an H-1B is generally valid for three years, and can be extended for a total of six years. Depending on whether or not the employer is exempt from, or subject to, the annual H-1B quota, an H-1B petition for a prospective hire needs to be prepared far in advance with the help of skilled business immigration attorneys like those at FordMurray.

Part 4: Visas (Continued)

O-1 Visas

The O-1 visa for individuals with extraordinary ability in their field can be a good option for well-established doctors who are looking to come to the U.S. to practice. An O-1 is also available for physicians who are subject to the 212(e) two year home residency requirement, but are not yet eligible or able to obtain a waiver. This visa, however, does require a significant amount of documentation and an employer sponsor. To be approved for an O-1 an FMG needs to be able to demonstrate (through awards, publications, and other similar evidence) that they have risen to the top of their specific field. The FMG's abilities must be corroborated by a consultation letter, which is essentially an official letter of recommendation from someone in their field.

While it can take some time to gather all of the documentation and support letters required to apply for an O-1 Visa, the approval period is actually quite fast. Once the petition is submitted, O-1 visas are typically approved or denied within a few weeks. If approved, an O-1 is generally valid for three years, and can be extended in one year increments.

TN Visa

An FMG from Canada or Mexico who is going to work in the U.S. in a research or teaching position may be a perfect candidate for a TN visa. A physician on a TN is able to work with patients directly; however, the total amount of time providing patient care should make up less than 10% of their duties. A TN is generally approved for an initial 3 year validity period and can be extended.

E-3 Visa

The E-3 visa is similar to an H-1B and has the same credential requirements, but is reserved for Australian nationals. The processing of the E-3 visa is also simplified, with many applicants able to apply directly at a U.S. Embassy or Consulate in Australia with documents provided by their prospective employer. An E-3 is generally valid for two years, and can be extended indefinitely.

Part 4: Visas (Continued)

Get Help with Your Visas

While it can be intimidating to get a visa to come work in the United States, don't give up. The U.S. is in need of great physicians and with a little work, this can be a great opportunity for you. FordMurray Law is here to help you find the right visa for your specific situation and guide you every step of the way in achieving your business immigration goals. Whether you are a U.S. employer or individual foreign-national, we are here to work on your behalf and make the entire process as simple as possible.

LEARN MORE:

Visit www.fordmurraylaw.com to learn more about Business Immigration solutions for the healthcare industry, or contact Attorney Michael Murphy at michael@fordmurraylaw.com.