Immigration Options for International Physicians & Scientists
Overview

- Immigration planning scenarios
- J-1 waivers
- Nonimmigrant work visas
- Permanent residence options
- Immigration timeline strategies
- Q & A
Overview

• All non-U.S. citizens and non-permanent residents require a visa to enter the U.S.
• Employer may sponsor an employee for nonimmigrant visa to authorize work
• Nonimmigrant visas are valid for temporary period
• Employer may sponsor an employee for permanent residence ("green card")
Case Sample #1

• Dr. Smith is from Canada and will finish Surgery fellowship on June 30, 2016;
• Has an offer as Assistant Professor at UAMS, starting July 1, 2016;
• Holds J-1 status and is subject to 2-year home requirement.
• What are his options?
Case Sample #1

- J-1 waiver, then H-1B
- TN (available to Canadians only)
- H-1B without J-1 waiver (available to Canadians only)
- O-1
- Fulfill two-year requirement in Canada
Nonimmigrant Visas (J-1)

- J-1 Exchange Visitor Visa:
  - Issued by employing institution (no attorney needed)
  - Many physicians perform GME in J-1 status
  - May last up to 7 years, depending on program
  - All physicians who do GME in J-1 status are subject to 2-year home residence requirement

- Spouse/children: J-2 visa (spouse may apply for work authorization)
Nonimmigrant Visas (J-1)

- Being subject to 2-year home residence requirement means that J-1 holder:
  - Must return home for 2 years before eligible for H or L visas, or permanent residence
  - May not change status in the U.S.
  - May be eligible for other visas (J-2, O-1, TN, F-1, E-3) by applying abroad
Nonimmigrant Visas (J-1)

• If “subject,” J-1 holder may:
  – Fulfill 2-year requirement in home country (country of citizenship or last permanent residence);
  – Obtain another nonimmigrant status and stay in the U.S. (note: 2-year requirement will still apply); or
  – Obtain a waiver of 2-year requirement
J-1 Waiver

• Waivers of 2-year requirement:
  – No-Objection Waiver (not available if “subject” because of GME)
  – Interested Government Agency Waiver (i.e., Arkansas Department of Health, VA or Department of Health & Human Services)
  – Hardship Waiver
  – Persecution Waiver

• Special considerations for Fulbright scholars
J-1 Waiver

• Interested Government Agency Waiver:
  – Any state or federal agency may serve as IGA
  – Examples of agencies: State Departments of Health, Veterans Administration, Department of Health & Human Services
  – Each agency has specific requirements
  – Waiver application must be sponsored by employer
  – Applicant must serve interests of the agency (show funding or other public interest)
Conrad State 30 Waiver

- IGA for UAMS physicians: AR Department of Health (Conrad State 30 program)
- Waiver must be sponsored by an employer
- Employment must be located in:
  - Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA)
  - Areas outside of HPSA/MUA that serve underserved populations: at least 30% of applicant’s patients must reside in underserved areas
- Employment contract cannot have non-compete clause
- Employment in underserved area must be for 3 years
Conrad State 30 Waiver

• To qualify for a waiver, physician must:
  – Have completed a U.S. residency training program
  – Provide primary care medical services (defined as Family Medicine, Pediatrics, OB/GYN, IM) or general psychiatry services
  – Provide specialty medical services if there is a shortage of specialists
  – Commit to work at least 40 hours per week for three (3) years in the designated underserved area
Conrad State 30 Waiver

• To qualify for a waiver, employer must:
  – Have a legitimate need for physician’s services
  – Show that another suitable candidate could not be found (i.e., demonstrate recruitment efforts)
  – Show that physician will provide critically needed medical services to an underserved area or patients who come from underserved areas (patient origin study is required if facility is not located in designated underserved area)
Conrad State 30 Waiver

• Physician must complete 3-year commitment with the sponsoring employer in H-1B status
• If does not complete 3 years, waiver may be revoked
• May start permanent residence process during the 3-year commitment, but may not finish it until 3 years are completed
• No transfers unless extenuating unforeseeable circumstances beyond physician’s control
Conrad State 30 Waiver

- Fiscal year starts on October 1
- Only up to 30 waivers per year (and up to 10 flex waivers)
- State Department of Health may run out of waivers before fiscal year ends
- Consider recruiting early to file waiver application on October 1
- UAMS is not in a designated area – patient origin study is required; Arkansas Children’s Hospital is designated
- Keep confirmation of all recruitment efforts
J-1 Waiver

- Hardship Waiver:
  - Must demonstrate exceptional hardship to U.S. citizen (USC) or Lawful Permanent Resident (LPR) spouse or child
  - Hardship to the J-1 waiver applicant is not enough
  - Must show that USC/LPR spouse or child will be subjected to exceptional hardships if:
    - USC/LPR spouse or child remain in the U.S. without the J-1; and
    - USC/LPR spouse and child accompany the J-1 to home country
J-1 Waiver

• Persecution Waiver:
  – J-1 holder may qualify for a persecution waiver if can demonstrate a fear of persecution in the home country
  – Must present documentary evidence of persecution
J-1 Waiver

• Processing periods:
  – IGA/Hardship/Persecution (1-6 months)
  – DOS (6–8 weeks)
  – USCIS (6–8 weeks)

• Filing fee:
  – DOS case number: $120 (can be paid by either employer or employee)
Nonimmigrant Visas (H-1B)

• H-1B Specialty Occupation Visa requirements:
  – Must hold bachelor’s degree or equivalent in a specific specialty (e.g., Biology, Chemistry, Mathematics, etc.)
  – Job must require at least bachelor’s degree in specialized field

• “Specialty occupation” – requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor’s or higher degree in the specific specialty as a minimum for entry into the occupation
Nonimmigrant Visas (H-1B)

• Special requirements for International Medical Graduates (IMGs) in clinical jobs:
  – Must hold M.D. or equivalent
  – Must hold ECFMG certificate (unless graduate of LCME-accredited school)
  – Must pass steps 1, 2 (CK & CS), and 3 of USMLE
  – Must hold license in the state of employment
• Exempt from USMLE requirement if can show national or international renown
Nonimmigrant Visas (H-1B)

• H-1B filing process:
  – H-1B petitions are handled by UAMS internally
  – Waiver must be approved (at least by DOS)
  – License must be issued
  – Doctors who received a Conrad waiver qualify to change status from J-1 to H-1B
  – Recipients of other waivers must process H-1B abroad
Nonimmigrant Visas (H-1B)

• Entities not subject to H-1B cap (normally, 65,000 limit):
  – Institutions of higher education (universities, colleges, teaching hospitals);
  – Non-profit organizations affiliated with institutions of higher education (must have affiliation agreement)

• Physicians who obtained waivers by committing to work in an underserved area for 3 years are not subject to H-1B cap

• Individuals working at an exempt institution are not subject to H-1B cap
Nonimmigrant Visas (H-1B)

- Validity period of H-1B visa:
  - 3 years, plus 3-year extension (total 6 years)
  - May extend beyond 6-year maximum if:
    - Green card started more than 1 year before H-1B expiration (will get 1-year extensions)
    - Immigrant visa (I-140) approved, but employee may not file adjustment application (I-485) because subject to visa retrogression (will get 3-year extensions)

- Spouse/children: H-4 visa (no work authorization, except if certain I-140s approved)
H-4 Spouse EAD Exception

• H-4 spouse may apply for EAD if:
  – H-1B spouse holds an approved immigrant visa petition (Form I-140); or
  – H-1B spouse was granted extra H-1B time because:
    • 365 days have passed since establishing a priority date; or
    • I-140 is approved and priority date is not current

• EAD applications take 90 days to process
Nonimmigrant Visas (H-1B)

• Employer’s responsibilities:
  – Pay all H-1B expenses, including attorney and filing fees (except optional premium processing fee)
  – Pay required wage
  – Offer same benefits as to U.S. workers
  – Attest that no strike at workplace
  – Maintain Public Access File
  – If H-1B worker terminated, must pay for return transportation home (if worker returns home)
Nonimmigrant Visas (H-1B)

- H-1B USCIS filing fees:
  - Standard fee: $325
  - Fraud prevention and detection fee: $500 (only with initial filing)
  - Training fee (only for cap-subject employers for initial filing and first extension):
    - $1,500 for employers with 26 or more employees
    - $750 for employers with 25 or fewer employees
  - Premium processing fee (optional): $1,225
Nonimmigrant Visas (H-1B)

• Employer-specific visa (must work for sponsoring employer only)
• May work for multiple employers (need concurrent petitions)
• May work full-time or part-time
• May transfer to another employer if transfer petition is filed
• Material changes to employment (salary, duties, location, hours) may require amended petition
Case Sample #2

- Dr. Miller is a renowned cardiologist from the U.K. with multiple awards and publications.
- She wishes to practice medicine at UAMS.
- She is eligible for an AR medical license but has not passed all steps of USMLE.
- What visa can she get?
Case Sample #2

- Take USMLEs and apply for ECFMG certification
- H-1B as a researcher
- H-1B for physicians of national or international renown
- O-1
H-1B for Renowned Physicians

• Usually, H-1B clinicians must have: license, all USMLE steps, and ECFMG certification.

• Physicians of national or international renown are exempt from USMLE and ECFMG requirements.

• High legal standard: awards, publications, original contributions, leadership service.
Nonimmigrant Visas (O-1)

• O-1 Extraordinary Ability Visa requirements:
  – Must demonstrate “sustained national or international acclaim and recognition for achievements”
  – Must show that has risen to the top of the field

• Spouse/children: O-3 visa (no work authorization)
Nonimmigrant Visas (O-1)

• How to demonstrate “sustained acclaim:”
  – Evidence of a one-time achievement (a major, internationally recognized award); or
  – Evidence of at least 3 regulatory criteria
• Valid for 3 years, with 1-year extensions
• May extend O-1 visa indefinitely
• O-1 USCIS filing fee: $325 (premium processing available)
• Fees may be paid by either employer or employee
Nonimmigrant Visas (O-1)

• Must meet at least 3 of the following criteria:
  – National or international awards
  – Membership in associations in the field that require outstanding achievements
  – Published material about beneficiary
  – Participation as a judge of the work of others
  – Original scientific or scholarly contributions of major significance
  – Authorship of scholarly articles in professional journals
  – Employment in a critical/essential capacity for organizations with distinguished reputation
  – High salary or remuneration for services
Case Sample #3

- Dr. Shah is from India, has a Ph.D. in Physics and has spent 5 years in H-1B status since arriving in the U.S.
- She spent 6 months abroad during the past 5 years.
- UAMS now wishes to sponsor Dr. Shah for permanent residence.
- What are her options?
Case Sample #3

• If reach 6-year maximum limit:
  – Recapture time spent abroad (keep travel records);
  – Extend H-1B beyond 6 years (if green card filed)
  – Qualify for another non-immigrant status
  – Go abroad for 1 year (re-starts 6-year clock)

• Because of 6-year maximum, must start long-term planning early (no later than in 5th year)
Immigrant Visas

- Immigrant visa is path to permanent residence (two- or three-step process)
- Options depend on job, employee’s qualifications, employer’s involvement
- Each case is analyzed individually to determine the best strategy
Immigrant Visas (PERM)

- PERM Labor Certification process:
  - Test of local labor market for available U.S. workers, able, willing and qualified for the job
  - Recruitment conducted before applying to DOL
  - If no able, willing and qualified U.S. workers, DOL will certify PERM application
  - If U.S. worker applies for the job and meets the minimum requirements, application may be denied
Immigrant Visas (PERM)

• Employer’s responsibilities:
  – Establish minimum requirements (educational, training, experiential) for the job
  – Recruit for a minimally qualified U.S. worker
  – Offer to pay prevailing wage
  – Pay attorney fees and recruitment costs

• Employee may not participate in recruitment
Immigrant Visas (PERM)

• All recruitment must be done 30-180 days prior to filing with DOL
• All potentially qualified U.S. applicants must be interviewed to determine whether qualified
• U.S. applicants: U.S. citizens, permanent residents, refugees or asylees
• Non-U.S. applicants do not have to be considered
Immigrant Visas (Special Recruitment PERM)

• Special Recruitment PERM requirements:
  – Available to university/college teachers only
  – Job must have a teaching component
  – Must file PERM within 18 months of selection for the job
  – Job must be advertised in national journal (print ad or online ad)
  – Ad requirements: location, title, duties, job requirements
Immigrant Visas (Special Recruitment PERM)

• DOL will certify application if:
  – University conducted competitive recruitment and selection process; and
  – Foreign worker is more qualified than any U.S. worker who applied for the job

• Employer must post notice for 10 days or provide to CBU

• Employer must pay prevailing wage
Immigrant Visas (PERM and Special Recruitment PERM)

- After PERM approved, may file immigrant visa petition (I-140)
- Employer must show ability to pay worker’s wage (annual report, tax return, audited financial statements, or confirmation letter)
- Employee must meet job requirements (education, training, experience)
Immigrant Visas (PERM and Special Recruitment PERM)

• If no visa retrogression, beneficiary may file Adjustment of Status Application (I-485)

• Visa retrogression:
  – Backlog in immigrant visa availability for certain categories (EB-3 for all countries; EB-2 for China and India)
  – Not eligible to file I-485 until priority date (PD) becomes current
  – PD established when PERM filed
Immigrant Visas (PERM and Special Recruitment PERM)

• Filing fees:
  – PERM: no fee
  – I-140: $580 (premium processing available)
  – I-485: $1,070 per applicant (premium processing not available)
  – Either employer or employee may pay fees

• Processing periods:
  – PERM: 6-8 months if no audit
  – I-140: 6-9 months (15 days if premium)
  – I-485: 6-9 months
Immigrant Visas (EB-12)

• Outstanding Professor or Researcher

Immigrant Visa requirements:
  – Available to professors or researchers only
  – Must be sponsored by an employer (no self-sponsorship)
  – Must demonstrate international recognition as outstanding in the field
  – Must have at least 3 years of teaching/research experience
Immigrant Visas (EB-12)

• Must meet at least 2 regulatory criteria:
  – Major prizes or awards for outstanding achievement
  – Membership in professional associations that require outstanding achievements
  – Published material about beneficiary’s work
  – Participation as a judge of the work of others
  – Original scientific or scholarly contributions
  – Authorship of scholarly books or articles
Immigrant Visas (NIW)

• National Interest Waiver requirements:
  – Work must be of intrinsic merit;
  – Benefit to U.S. must be national in scope; and
  – National interest will be adversely affected if labor certification were required.

• EB-2 immigrant classification (subject to retrogression for China and India)
Immigrant Visas (NIW)

- Must have advanced degree or exceptional ability
- Government funding is important
- May self-sponsor
- May file I-485 concurrently if visa number available
- No premium processing available
Immigrant Visas

• Present as much evidence as possible to meet more than minimum requirements
• May file I-485 concurrently if visas available
• If employer-sponsored, employer must demonstrate ability to pay the wage
• If self-sponsored, must demonstrate that will work in the field
Immigrant Visas

• USCIS filing fees:
  – I-140: $580 (premium processing available, except for NIW)
  – I-485: $1,070 per applicant (premium processing not available)
  – All fees (including attorney fees) may be paid by either employer or employee

• Processing periods:
  – I-140: 6-9 months (15 days if premium)
  – I-485: 6-9 months
Thank you for attending

Questions?

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