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1. **The Immigration Brochure for the Foreign Medical School Graduate**

The following information will provide you with answers to many common questions. Due to the intricacies inherent in these laws, it is suggested that you obtain the services of an attorney engaged in the practice of Immigration Law to assist you.

1. **What is an H-1B Petition?**

An H-1B petition is submitted by a sponsoring U.S. employer to the United States Citizenship and Immigration Service, requesting them to allow the employer to hire a specific potential international employee for a temporary period of time. The position must require at least the equivalent of a four year U.S. Bachelor’s degree and the candidate must have the requisite degree, or the equivalent based on experience. It can be used to employ an International medical school graduate for a residency or fellowship position, if all parts of the USMLE exam have been passed. (See other memos for exceptions to this rule). It can also be utilized for research positions.

1. **Will I be allowed to work once the petition is approved?**

USCIS will issue Form I-797, Notice of Action, once the petition is approved. If you have not violated your immigration status by working without permission from USCIS or remaining in the United States past the time authorized by the USCIS, then, if requested, Form I-797 will also change your status to H-1B and will authorize you to work for the petitioner. It will also list a start date and end date. Once the start date has been reached, you can commence employment. If you have violated your status, or are outside the United States or in the US and not specifically requested, Form I-797 will not change your status or provide employment authorization. In that case, you must obtain an H-1B visa from a U.S. Consulate, prior to commencing employment.

A new petition must be filed and approved for each employer. You can have multiple H-1B petitions. You can commence employment with a new employer once the H-1B petition has been filed, if you are presently employed in the United States in H-1B status and have not violated your status, assuming you meet licensure requirements and the commencement date listed on the H-1B petition has been reached.

1. **What is Form I-94?**

Form I-94 is/was the card issued to you by USCBP upon your entry into the United States. It is endorsed with your non-immigrant status. If you obtain an H-1B visa at a U.S. Consulate, the I-94 will be endorsed with H-1B status at the time that you enter the United States, allowing you to work for the entity that filed the H-1B petition on your behalf. When a petition for H-1B status is filed on your behalf while you are in the United States in a legal non-immigrant status, USCIS may grant the change of status or extension of status, if same is requested, and note same on an I-94 which is attached to the bottom of Form I-797, Notice of Action. Form I-797 will document any changes, including extensions, changes of status and employment authorization.

Presently, these cards are not always being issued at entry. The end date of your entry is most likely written by the entry stamp endorsed in your passport. Nonetheless, it is strongly recommended that you go to the following website and confirm that you were admitted in the appropriate status and until the appropriate end date. Please contact your attorney if there is any discrepancy.

<https://i94.cbp.dhs.gov/I94/request.html;jsessionid=J0nQRftQnxKYdL7TfPKJ88gv3f35WyrJpL13SftxbtvccD8FXGgz!1516101203>

1. **What is the Labor Condition Application?**

The LCA is an application that all employers must submit and have accepted by the Department of Labor, in order to file H-1B petitions and extensions of H-1B status with USCIS. See memos on my website for more information.

1. **Why are some hospitals reluctant to file an H-1B petition for a validity period greater than one year?**

USCIS Regulations require employers to pay the return transportation of the beneficiaries of H-1B status to their home country in the event that they are terminated prior to the expiration of the H-1B petition. Since the contract of employment is usually only for one year, the hospital may want to limit the time of the H-1B petition for one year. Additionally, in States where a permit is required for residency or fellowship, the permit is usually only valid for 1 year and USCIS will limit the duration of the H approval to 1 year. If there is no permit requirement and if requested, H-1B status can be granted for an initial period of up to three years. Generally, one can remain in H-1B status for up to six years. See elsewhere in this memo re: extensions past the 6th year. The J 1 is the less burdensome process for a hospital seeking to employ a physician in a residency or fellowship and this would certainly be a factor in their not proceeding with an H – 1B.

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1. **Can immediate family benefit from my H-1B status?**

Your spouse and children can apply to change their status to H-4 if they are in the US with you and have not violated their immigration status. If they are outside the United States or have violated their status, they can apply for H-4 visas at the U.S. Consulate in their home country. However, please see discussions in the H-1B memos regarding individuals who remain illegally in the United States for more then six months and then leave. The H-4 visa does not authorize the bearer to be employed in the US. Additionally, Social Security cards are usually not issued. If issued, the card will be endorsed with the phrase, “not valid for employment.”

1. **Can I travel outside the United States while in H-1B status?**

You can travel outside the United States while you are in H-1B status. However, in order to return, you must have an H-1B visa endorsed in your passport. The visa must be valid through your return date. Visas can only be placed in the passport at a U.S. Consulate. Please check with your attorney prior to departing the United States for an H-1B visa. Security clearances are performed on visa applicants. The clearances can take a few weeks or several months. Processing times are unpredictable.

1. **Can I apply for a visa in Canada or Mexico or another Consulate besides my home country Consulate?**

US Consulate offices usually process third country nationals for visas. However US Consulates in Mexico and Canada may only process third country nationals if they previously had an H-1B visa in their passport. If you do apply for a visa in Canada or Mexico and it is refused, you will not be allowed to return to the United States with just the H-1B approval notice. You must go to the U.S. Consulate in your home country and apply for the visa there. Please consult with an attorney prior to departing the United States for a visa.

1. **Can a hospital sponsor me for Resident Alien Status (“Green Card”)?**

A hospital can assist you in obtaining permanent resident status. The process is quite involved and may require an application to the Department of Labor, prior to filing a petition with the USCIS. The job market in the United States must be tested. It must be established to the Department of Labor that there are no U.S. Citizens, Permanent Residents or legalized refugees/asylees qualified for and wanting the job. Presently the Department of Labor and USCIS are denying Labor Certification cases submitted for PGY positions.

1. **Why is the H-1B status preferred over the J-1 status?**

International Medical School Graduates entering the United States to participate in a J-1 program are representing to the U.S. Government that they will return to their home country for two years after the completion of the program. However a waiver of this requirement may be obtained if the physician finds a position in a Health Professional Shortage Area (HPSA), a Medically Underserved Area (MUA), or a VA facility. Additionally, a waiver may be requested if returning to your home country would cause severe hardship to a family member who is a US Citizen. The H-1B status does not contain the two-year foreign residency requirement. There are more options to obtaining Attending positions if one is in H-1B status, compared to J-1 status.

Furthermore, the spouse of a J1 who has obtained J2 status can file for employment authorization

Additionally, when applying for a J1 visa at a US Consulate or a J2 dependent visa, the applicant will have to establish that they have ties to their home country and will be returning home after completion of the J1 program. H1 and H4 visa applicants do not have to establish ties to their home country.

1. **Can I obtain a New York State medical license after I complete my medical residency program?**

In the summer of 2012, New York State began issuing full licenses to individuals who completed residency and were in a valid employment based nonimmigrant status. Previous to this change in policy which was a result of a lawsuit,, a physician in a valid employment based nonimmigrant status, could only obtain a license to practice medicine after completion of Residency if they were going to be employed in a HPSA, MUA, or a hospital designated as a “Regent Hospital” by New York State.

1. **Can I change to the H-1B status after I have obtained J-1 status?**

J-1’s issued for PGY positions are subject to the two year home residency requirement. If USCIS approves an H-1B Petition on behalf of an individual in J-1 status, it should not grant a change of status with the approval of the petition or grant Employment Authorization. The physician would have to apply at a U.S. Consulate for an H-1B visa. The Consulate should refuse to issue a visa until the physician fulfills the two-year foreign residency requirement from the previous J-1 status, or obtains a waiver. Even if the Consul issues a visa, the physician will have to fulfill the two-year foreign residency requirement before obtaining permanent resident status. Thus, nothing is gained by trying to switch from J-1 to H-1 status, unless a waiver has been obtained.

1. **Can I fulfill the two-year foreign residency requirement anywhere outside the United States?**

No. You must return to your home country, as listed on form DS2019, for two years. Additionally, any time spent outside the home country during this two year period, must be made up.

1. **I have a job opportunity which will commence after I complete my J-1 two year obligation in my home country. When can I file the H petition?**

Present USCIS policy requires that the petition be filed after you complete the two year obligation.

1. **Do I need a license for Post-Graduate Training?**

Every state has its own license requirements. For example, in New York State, a physician in an accredited residency training program does not need a license or permit. However, a participant in a Fellowship program in New York State may need a Limited Permit to participate in the program and to obtain H-1B status. In Pennsylvania, Connecticut, Illinois, Massachusetts and Ohio, among other states, a training permit or license is needed. In New Jersey, the facility will obtain a blanket license for its first-year residents. After the first year, a license or permit is needed.

1. **Can I commence employment after obtaining H-1B Status, even if my Social Security Card has not been issued?**

Currently, it is taking 1-3 months to obtain Social Security Cards. When applying for the card, the Social Security office will issue a letter to you confirming that you have applied for same. The Social Security website specifically states that the individual who possesses said letter can commence employment. This is obviously dependent on being in a valid non-immigrant status which allows employment. If the SSA office tells you that according to their records, you do not have an immigration status qualifying you for a social security card, please notify this office. Occasionally, USCIS does not update the database that the SSA office accesses to check your immigration status.

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