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J-1 WAIVER + WORK VISA PROCESS

By Tom Roach

The process for getting a Foreign Medical Graduate (FMG) from their J-1 Visa Student/Training Status to legal employment status is essentially as follows:

J-1 WAIVER. A J-1 Visa requires an FMG to return to home for 2 years before he or she can return to the U.S. to accept employment. Therefore, before an FMG can legally accept employment in the U.S., a “Waiver” of that 2 year return-to-home requirement is required. Such a “Waiver” is a 3-step process. Step #1 requires either a State or some other “Interested Government Agency” (IGA) to “recommend” that the Physician be granted a Waiver. Of course, the State or some other IGA, will only make such a “recommendation” after they have been provided detailed documentation, which justifies the need for such a waiver in a geographical area.

Assuming an FMG can get the State or an IGA to recommend the Waiver, the FMG goes to Step #2, which is the United States Department of State (DOS) in Washington, D.C. The DOS has responsibility for the J-1 Visa (and Waiver) Program. DOS reviews the Waiver information and assuming DOS concurs with the visa waiver recommendation of the State or the IGA, the FMG goes to Step #3, the Citizenship & Immigration Service (CIS).

CIS reviews the information again and, assuming CIS concurs with the 2 prior recommendations from the State/other IGA and DOS, the Waiver is granted by CIS.

Now, the Physician need not return home for 2 years before accepting an offer of employment in the U.S. However, he or she is then “just another foreigner” in the U.S. The second half of this process is to obtain a Work Visa for the FMG.

WORK VISA. Once an FMG has received a State-sponsored J-1 waiver, in order to work the FMG must obtain an H1-B Professional Employment Visa. Obtaining the H1-B Employment Visa is a three-step process. Step #1 is ascertaining the Prevailing Wage for the M.D. for the geographical area he or she will be working in. Step #2 is

the approval of a Labor Condition Application from the U.S. Department of Labor. Step #3 is receipt of the H1B Professional's Employment Visa from CIS after submission of all the appropriate documents to the appropriate CIS Regional Processing Facility. It is at this stage that the FMG must also apply for and be granted a change of status from his J-1 status to the H1-B status.

The H1-B visa is only a temporary visa; it is limited in duration. It does, however, allow the FMG to begin working, usually for a period of three years.

GREEN CARD. Once an H1-B Employment Visa is received, the FMG will probably want to obtain a "Green Card" by which he or she can remain and work in the U.S. indefinitely. To obtain such a "Green Card" ordinarily takes two forms: the "National Interest Waiver" process or the "Labor Certification" Process.