

Health Law Webinar

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Fredrikson
& BYRON, P.A.

Immigration Options for Health Care Practitioners

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Determining if the Candidate Requires Sponsorship

Permissible questions:

- Are you presently legally authorized to work for any U.S. employer?
- Will you now or in the future require visa sponsorship?

Physicians

International Medical Graduates

- Residence programs end June 30th
- 212(e) two year home residence requirement
- Ineligible for change of status to H1B or Adjustment of Status until 2 years satisfied or waived



Waivers of 212(e)

- State Conrad 30 waiver
- Exceptional Hardship to US Citizen or Permanent Resident Spouse or Child
- Persecution/asylum
- Government Agency (Veterans Administration, HHS, Appalachian Regional Commission, Delta Authority)

Conrad Waivers

- 30 waivers for 50 states
- Primary care, but many allow specialists
- Worksite location must be in a HSPA/MUA
- 10 Flex waivers (patients reside in HPSA/MUA, but not the clinic)
- Reason for waiver: State interest in attracting physicians to health shortage locations
- Timing: Application process normally opens Sept/October

If Waiver Granted, What's Next ?

- State Recommends Waiver 
Department of State Recommends
Waiver  USCIS Grants Waiver
- File H1B for 3 years based upon
waiver grant
- Must complete full 3 years of service

What if You Can't Get a Waiver?

- O1 Extraordinary ability
 - Sustained national or international acclaim
 - Awards, Publications, Original Contributions to the Field, Judging, Critical Role, High Salary, Publications about them
- Leave the country for two years, return on H1B

H1B Visa

- Cap exempt organization
 - University affiliation
 - Nonprofit
 - Employed at
- Cap exempt physician
 - Conrad waiver physician
 - H1B portability physician

H1B Visa Cont.

- Cap subject
 - H1B lottery (April 1 for an October 1 start date)
- Timing concerns
- ECFMG, Steps 1-3 completed
 - “internationally renowned”

H1B Visa Cont.

- Concurrent H1B (Cap Exempt plus Cap Subject)
 - Multiple Employers
 - “Moonlighting”
- *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015) – worksites not anticipated at the time of filing

Nurses

- H1Bs limited to specialists
- Fast track green card – Schedule A
- Canadian TNs, Australian E3, Chilean/Singapore H1B1
- Visa Screen Certificate (NCLEX)
- Licensure in State of intended employment

Other Health Care Professionals

- Physical Therapists
- Occupational Therapists
- Speech-Language Pathologists and Audiologists
- Medical Technologist and Medical Technicians
- Physician Assistants

Licensing Organizations

- Commission on Graduates of Foreign Nursing Schools (CGFNS)
- National Board for Certification in Occupational Therapy (NBCOT)
- Foreign Credentialing Commission on Physical Therapy (FCCPT)
 - Certification good for 5 years

Green Card Options

- National Interest Waiver and Physician National Interest Waiver
- *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) standards
- Physician National Interest Waiver – 5 years working in a HPSA/MHA/PSA in primary care clinical practice

Green Card Options Cont.

- Extraordinary Ability
- PERM – Labor Certification
 - Schedule A nurses
- Outstanding Researcher

Questions?



Speakers



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