

# J1 Waiver Options for Physicians

The vast majority of foreign physicians who come to the United States for graduate medical training are going to be subject to INA Section 212(E) if they obtained such training with a [J1 visa](#). J1 visa holders subject to INA Section 212(E) are required to return to their home country for a period of two year before they may obtain an [H1B visa](#), [L1 visa](#) or [green card](#), unless they receive a waiver of this requirement. J1 visa physicians who are subject to INA 212(E) have three options to obtain a waiver of the home residency requirement.

## **IGA Waiver**

The first option is through an interested government agency (IGA waiver). There are a limited number of US government agencies willing to sponsor a foreign physician for a waiver, through each have similar requirements.

### *Veteran's Health Administration (VHA)*

The VHA will act as an interested government agency for waiver purposes provided that the foreign physician agrees to full time clinical care employment with the VHA for a period of not less than three years. The VHA prefers that the foreign physician be 100% employed at the VHA but will allow 5/8 employment at the VHA and 3/8 employment at an affiliated University. The VHA is required to offer the position to non J-1 waiver candidates first and only if they cannot find a qualified candidate, may the VHA sponsor a foreign physician for a J1 waiver.

### *US Department of Health an Human Services (HHS)*

The HHS will sponsor J1 waivers for foreign physicians performing research as well as for those performing clinical care. In order to be considered for a research related waiver, the foreign physician must show that his or her work within the research program is in the national interest and that his or her efforts are essential for the research to be successful. In order to be considered for a clinical care related waiver, the foreign physician must sign a contract to provide full time primary care services at a medical facility located in a health care professional shortage area for a period of not less than three years.

### *Appalachian Regional Commission (ARC)*

The ARC will sponsor J1 waivers for foreign physicians if the physician agrees to provide primary care

on a full time basis for a medical facility located in a health professional shortage area for a three year period or longer. The foreign physician must be sponsored by a State located in the Appalachian Region before the ARC will consider sponsorship. Appalachian Region States include the following: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia & West Virginia.

#### *State Department of Health (Conrad 30)*

Though not technically an IGA, each State may sponsor up to 30 foreign physicians for J1 waivers per year. For employment based waivers, this is generally the only option for foreign physicians other than the VHA. Each State has different requirement but generally, the foreign physician must agree to work full time for a medical facility located in an underserved area for a period of three years or more.

#### **Fear of Persecution**

The second option is based on an application based on fear of persecution. The USCIS in conjunction with the Department of State may issue a J1 waiver if the foreign physician “would be subject to persecution on account of race, religion or political opinion.” This option is rarely utilized and application processing times are extremely long because there are many sub departments at the USCIS and DOS that have to approve the application. Moreover, where an applicant meets the legal requirements for a persecution based J1 waiver, they will also meet the requirements for [asylum](#) which allows the application to obtain lawful permanent residence ([green card](#)) – no J1 waiver required.

#### **Exceptional Hardship**

The third and final J1 waiver option for foreign physicians is a hardship based waiver. This is the best option for physicians who qualify because there is no three year commitment to work at a facility in a remote location for low pay. Once a waiver is granted, the physician may apply for an [H1B visa](#) to work for any medical facility that will hire him or her. For those applicants who have borderline cases, it may be in their best interest to apply for an IGA based waiver and a hardship based waiver simultaneously. Even better, for those applicants who plan ahead of time, a hardship based application may be made first and, if unsuccessful, may then pursue an IGA waiver.

In order to qualify for a hardship based waiver, the foreign physician must show that his or her departure from the US would impose exceptional hardship on US Citizen or Lawful Permanent Resident Spouse or child. Factors to be considered in hardship cases include medical problems, psychological issues, economic, physical and emotional hardships, loss of employment, educational and health opportunities, hardships to third parties, cultural or religious hardships or disabilities.