

Healthcare Facilities Should Consider The H-1B Visa as an Immigration Alternative

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In recent years, many healthcare facilities have found it increasingly difficult to recruit doctors. As a result, these employers have turned their attention to recruiting foreign physicians, who usually request assistance in obtaining work authorization from the Immigration and Naturalization Service (INS).

One of many possible immigration alternatives is the H1B visa, which is designed for jobs that require a minimum of a bachelor's degree. Although H1B status is designed for temporary employment, an employee with this visa may work in the United States for as long as six years.

In addition, the H1B alternative, which routinely takes three to four months to process, is often the quickest way to obtain work authorization for a foreign employee.

The typical H1B process consists of three steps. First, the employer must determine the prevailing wage for the position in question, the average wage paid to a person filling a similar position in the employer's geographic area. Often, the employer will simply request the prevailing wage from a state agency.

Second, the employer must file a Labor Condition Application (LCA) with the Department of Labor (DOL), in which it certifies, among other things, that it will pay the employee the higher of the prevailing wage or the amount that it ordinarily pays for the position in question.

After the LCA is signed by the DOL, the employer takes the third step of filing the H1B petition with the INS. The INS petition must be supported by many documents, including evidence that the doctor possesses the requisite education and training for the position.

If the INS approves the petition, the employee may begin work immediately if he or she is already in the United States. If the doctor is outside the country, he or she must obtain a visa from an overseas United States consulate or embassy in order to get here.

Special Consideration for Doctors

Licensing. Before the INS will approve an H1B petition for a foreign doctor, it must see proof of a license to practice in the state of intended employment. Therefore, the doctor should begin the licensing process as soon as possible, so that the license is obtained close to the time that the steps leading up to the filing of the INS petition are completed.

Some states, including Wisconsin, will not issue a medical license until the doctor has received his or her visa. This creates a circular problem, since the INS will not ordinarily approve an H1B petition unless the license has been issued. In light of this conflict, the INS will accept a letter from a state indicating that the doctor has satisfied all of the state's licensing requirements except visa issuance.

Credentialing. In order to obtain an H1B visa, a doctor must be properly credentialed. With limited exceptions, this means that the doctor has passed an English equivalency test and that he or she has passed all of the parts of one of three examinations: the Federal Licensure Examination, the National Board of Medical Examiners Examination or the United States Medical Licensing Examination.

Passing a national exam offered by another country, including the LMCC of Canada, will not satisfy this requirement.

J1 Waivers. Foreign medical graduates who pursue their residency in the United States often do so as "J1" nonimmigrants. The J1 visa requires the doctor to spend two years in his or her home country following visa expiration.

This requirement can be waived and the doctor can change his or her status to H1B, although doing so takes a significant amount of time, effort and advance planning. Any healthcare facility that is recruiting a foreign medical graduate who is doing residency in the United States should determine very early in the process whether he or she is in J1 status.

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