

Conrad J-1 Waiver Program for Wisconsin Closed – Other Options

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On October 17, 2019, the Wisconsin Department of Health Services (DHS) announced that all 30 of the available Conrad J-1 waivers for Wisconsin had been claimed. The program, which provides for a waiver of the 2-year home residency requirement for foreign medical residents if they provide primary or mental health care shortage areas in Wisconsin, is no longer accepting any further applications. Until next year's Conrad program opens up, there are some options available for rural health systems wanting to hire foreign medical graduates who are subject to the 2-year home residency requirement.

Canadians. Although Canadian physicians who complete fellowships and residencies in the U.S. are often technically subject to the 2-year home residency requirement, there is a work-around that can effectively allow them to stay in the U.S. in H-1B status. (Canadian physicians are not eligible for TN status unless they are accepting research or teaching positions). Because Canadians do not need visa stamps in their passports, employers who wish to employ Canadian physicians subject to the 2-year home residency requirement may request an approval of an I-129 petition for a Canadian physician. Although this strategy allows the physician to stay in the U.S. in H-1B status, the physician would not be able to pursue a green card. Therefore, employers who pursue this strategy would need to apply for the Conrad J-1 waiver program the following year, if possible, in order to waive that home residency requirement. Employers should remember the normal limits of the H-1B visa program—unless classified as exempt from the H-1B cap, the employer will need to enter the H-1B lottery for FY 2020 on April 1, 2020 to win one of the 85,000 H visas available year, for an October 1 start date.

Persecution or Hardship Waivers. The Department of State (DOS) may grant waivers of the 2-year home residency requirement in certain cases of persecution or hardship. If the J-1 visa holder would be persecuted due to race, religion, or political opinion if they return to the home country, the DOS may grant a waiver. With a hardship waiver, the DOS may grant a waiver if the physician can demonstrate that extreme hardship conditions that would need to be endured should a foreigner be required to adhere to the two-year physical presence requirement.

No Objection Letter. Foreign nationals subject to the 2-year home residency requirement have the ability to request a "No Objection Statement" from their home government. Under this process, the physician would submit an application to the DOS, which then requests the No Objection Statement from the applicant's home country embassy in Washington D.C. The employer and physician should familiarize themselves with the specific home country's No Objection Statement process, all of which are slightly different. For example, India requires that the applicant obtain multiple permissions from the applicant's local, state and central government in India before applying to the Indian consulate in the U.S.

One final option is to have the candidate locate and work another 1-year fellowship until the Conrad program opens up again next year in Wisconsin. All of these options require the aid of an immigration attorney experienced in obtaining waivers of the 2-year home residency requirement.

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