

Chapter 4. Transitioning to the United States*

Eleanor M. Fitzpatrick, MA, and Tracy Wallowicz

VISA ISSUES

Visitor Visas

- *Initial Visa Application Process*
- *Visa Options for GME Training*

J-1 Visa Sponsorship for GME Training

H-1B Visa for GME Training

- *Implications of Personal and Professional Difficulties during GME Training*
- *Maintaining Visa Status*

OTHER LOGISTICAL ISSUES RELATING TO TRAVEL

Initial Entry into the United States

SUMMARY

* Excerpted from *The International Medical Graduate's Guide to US Medicine & Residency Training* (edited by Patrick C. Alguire, Gerald P. Whelan, & Vijay Rajput, ACP Press, 2008). For more information, click [here](#).

VISA ISSUES

Understanding and complying with immigration guidelines is critical for foreign national physicians interested in pursuing GME training in the United States. U.S. immigration law is governed by specific federal regulations defined in the Immigration and Nationality Act (INA). The entry and monitoring of foreign nationals in the United States is coordinated through strict inter-agency coordination among various branches of the Department of Homeland Security (DHS) and the Department of State (DoS) (Table 4-1).

=====

Table 4-1: Roles of Department of State (DoS) & Department of Homeland Security (DHS) in Visa Oversight

Bureaus within Department of Homeland Security (DHS) Responsible for Immigration Policies, Procedures, and Enforcement

- U.S. Customs and Border Protection (CBP): security of America's borders
- U.S. Immigration and Custom Enforcement (ICE): investigations, detention, removal, intelligence, SEVIS
- U.S. Citizenship and Immigration Service (CIS): adjudications previously performed by INS

Bureaus within Department of State (DoS) Responsible for Management of Visa Processes

- Bureau of Educational and Cultural Affairs: oversight of all Exchange Visitor Programs
- Bureau of Consular Affairs: U.S. consulate review of visa eligibility

=====

In reviewing visa issues as they relate to foreign national physicians, it is important to be familiar with the terms *visa* and *visa status*.

A *visa* is a permit issued by an official at a U.S. consulate or embassy abroad that is stamped on or affixed to the passport. The visa represents the approval to seek entry to the United States for a specific purpose and related immigration classification (e.g., B-1/B-2 Visitor, J-1 exchange visitor physician, H-1B temporary specialty worker).

Visa status reflects the specific legal classification in which the foreign national is formally admitted into the United States. It also denotes the duration of approved stay. Visa status is confirmed by a Customs and Border Patrol (CBP) officer at the port-of-entry for an initial entry or by the regional service center officer of U.S. Citizenship and Immigration Services (USCIS) for those who seek a change of status after arrival. All foreign nationals must abide by the terms and dates of the visa status noted on the I-94 card, Arrival/Departure Record or Notice of Action.

Visitor Visas

For many foreign national physicians, their initial introduction to the U.S. immigration system occurs when they apply for a visa to come to the United States to take the USMLE Step 2 Clinical Skills (CS) examination, to interview with GME programs, and/or to participate in clinical observerships. Most foreign national physicians who enter the United States for these purposes do so on visitors' visas (B-1 for "business" or B-2 for "tourism"). However, citizens from some designated countries may be admitted to the U.S for up to 90 days without a visa under a special visa waiver program (see http://travel.state.gov/visa/temp/without/without_1990.html). In all cases, physicians who enter the country as temporary visitors must be prepared to document the purpose of travel, the proposed length of stay, and a clear intent to return to the home country or country of last legal permanent residence.

When preparing to visit the United States, physicians must compile all official documentation related to their planned activities. Such documents must include, but may not be limited to, the items listed in Box 4-1.

=====

Box 4-1: Documentation for Planned Trip to the United States

- Step 2 CS and/or Step 3 registration and confirmation
 - Confirmation letters for interviews
 - Certification of current school enrollment and/or employment in one's home country
 - Any other medical credentials
 - A return airline ticket
 - Financial records
 - Confirmation letter for physician or medical student for pre-approved participation in clinical observerships or clerkships at U.S. academic medical centers
- =====

Initial Visa Application Process

As a general rule, all nonimmigrant visa applicants are required to appear for a personal interview at a U.S. embassy or consulate presumably in one's home country. Scheduling the initial visa interview and then waiting for the security clearance can take months. Therefore, preparation and planning is essential. Foreign national physicians or medical students are advised to contact the consulate well in advance for information on scheduling times and specific application requirements (Box 4-2).

Box 4-2: Initial Visa Application Process Requirements

- Form DS-156, "Application for Nonimmigrant Visa"
 - Form DS-157, "Supplemental Application for Nonimmigrant Visa"
 - Biometric finger printing
 - Fees
 - Name checks
 - Security clearances
-
-

Web sites for U.S. embassies and consulates can be found on the DoS homepage at <http://usembassy.state.gov>. Timelines for visa appointments and general processing information can be found at http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php.

A B-1 or B-2 visitor visa restricts a foreign national to participation in non-paid activities and is limited to a maximum stay of six months, based on the discretion of the reviewing customs officer. Upon arrival to the United States, a port-of-entry official reviews the individual's proposed plan, financial information, etc. and determines an appropriate end date of authorized stay. The date is marked on the individual's I-94 card (Arrival/ Departure Record). Foreign national physicians and medical students must be extremely careful not to violate the terms of their visa status or overstay the dates of authorized stay as marked on the I-94 card. There are serious penalties for visa violations and overstays which can negatively impact one's future immigration options.

Visa Options for GME Training

Foreign national physicians who secure contracts for U.S. GME positions must obtain an appropriate visa prior to beginning the training program. There are various temporary, non-immigrant visa options available for GME training. The most common include the J-1 "Exchange Visitor" physician category and the H-1 B "Temporary Worker in a Specialty Occupation".

Foreign national physicians may also qualify to train as medical residents/fellows with a valid employment authorization document (EAD). The USCIS grants this work authorization in conjunction with a variety of immigrant and non-immigrant petitions (e.g., F-1 Student on Optional Practical Training (OPT), J-2, dependent of a J-1 principle, family of a U.S. citizen or legal permanent resident, refugee or asylee status). In exceptional cases, foreign national physicians may also qualify for O-1 visas that are reserved for "Individuals of Extraordinary

Ability”. The O-1 visa requires superior credentials and documented international renown and, therefore, is rarely used for GME training purposes.

Teaching hospitals, like all U.S. employers, are responsible for complying with federal guidelines associated with the hiring of non-U.S. citizens. Immigration and employment laws mandate that teaching hospitals pay certain filing fees and assume administrative oversight of foreign national physicians participating in their GME programs. It is not uncommon for hospitals to limit the types of visas (e.g., only J-1 or only H-1B) they will accept for trainees enrolling in their programs. Foreign national physicians are advised to inquire about the immigration options offered by the programs they are considering prior to filing initial residency applications. It is important to clearly understand specific regulatory requirements, restrictions, costs, timelines, and institutional policies that apply to the various visa/immigration options.

J-1 Visa Sponsorship for GME Training

Historically, the J-1 has been the most common visa classification used for foreign national physicians in GME training. The J-1 is a temporary nonimmigrant visa reserved for participants in the Exchange Visitor Program. As a public diplomacy initiative of the DoS, the Exchange Visitor Program was established to enhance international exchange and mutual understanding between the people of the United States and other nations. In keeping with the Program’s goals for international education, J-1 physicians are required to return home for at least two years following their training before being eligible for certain U.S. visas. Exceptions can be made in the case of waivers (see below).

The DoS designated the ECFMG as the sole visa sponsor for all J-1 physicians who participate in clinical training programs. ECFMG administers its sponsorship program in accordance with the provisions of the DoS and federal regulations. ECFMG is responsible for ensuring that J-1 physicians and teaching institutions meet the federal requirements for participation. ECFMG does not sponsor physicians for other U.S. visa types.

Foreign national physicians who seek J-1 sponsorship to enter graduate medical education (GME) programs must fulfill a number of general requirements as detailed in the application materials published by ECFMG. See Box 4-3 for the minimum J-1 requirements a physician applicant must have.

Box 4-3: Minimum J-1 Visa Requirements

- Adequate prior education/training and English competence
 - ECFMG certification
 - Statement of Need from the Ministry of Health
 - Contract for a GME position
-
-

The current requirements for ECFMG certification ensure that J-1 physicians have “adequate prior education and training to participate satisfactorily in the program for which they are coming to the United States” and have “competency in oral and written English.” The current ECFMG Certification requirements (see Chapter 2) include the primary source verification of the

final medical diploma and transcript by ECFMG with the medical school and passing scores on the USMLE Step 1, Step 2 CK, and Step 2 CS.

J-1 physician applicants must also provide ECFMG with a Statement of Need from the central office of the Ministry of Health of the country of most recent legal permanent residence. The Statement of Need, which follows specific regulatory language, documents the home government's support for the specific training that the J-1 physician will pursue and confirms the physician's intent to return to home to practice medicine upon completion of training in the United States. The Statement of Need is consistent with the compulsory obligation of the two-year home residence requirement for all J-1 physicians, and their J-2 dependents. The home residence requirement requires that J-1 physicians and accompanying J-2 dependents reside in the home country for an aggregate of at least two years before being eligible for certain changes or adjustment in visa status in the United States. Various legal options have evolved to allow J-1 physicians to waive the return home obligation, the most common being employment in a U.S. medically underserved area (MUA) or Health Professions Shortage Area (HPSA).

J-1 sponsorship for GME training is dependent on a contract or official letter of offer for a GME position. Each J-1 physician applicant must secure the training contract prior to applying to ECFMG for visa sponsorship. ECFMG is authorized to sponsor physicians for training in base residencies and subspecialty fellowships that are accredited by the Accreditation Council for Graduate Medical Education (ACGME) as well as for some advanced non-standard fellowships. J-1 sponsorship is generally issued in increments of one year in conjunction with the GME academic year of July 1 through June 30 and so must be renewed annually.

Once a physician has been approved for J-1 sponsorship, ECFMG creates an electronic record for the physician in the Student Exchange Visitor Information System (SEVIS) and issues Forms DS-2019, "Certificate of Eligibility for Exchange Visitor (J-1) Status". Through an interagency partnership between DoS and DHS, SEVIS tracks and monitors the activities of all J-1 visa holders. A foreign national physician with an active SEVIS record and an original Form DS-2019 may apply for J-1 visa and/or visa status from agencies of the U.S. Government.

J-1 physicians may request ECFMG sponsorship for dependent spouses and minor children. The J-2 spouse may seek employment authorization through USCIS to work in any position for which they are qualified, including GME training. The duration of stay for the J-2 is limited to the approved timeline for the J-1 principal and cannot be extended independent of the primary visa holder.

J-1 physicians are responsible to comply with all U.S. laws and regulations pertaining to foreign nationals. Various regulations govern the scope, pathway, and duration of the activities pursued by a J-1 physician. The scope of training and employment authorization derived from J-1 visa sponsorship is specific to the training proposal approved by ECFMG. J-1 physicians are specifically prohibited from employment outside of their GME program. This prohibition includes moonlighting (i.e., paid clinical work beyond the core requirements of the GME program whether in the institution sponsoring GME or elsewhere) (see Chapter 7).

J-1 physicians must pursue a predefined, progressive educational pathway. ECFMG sponsors J-1 physicians for medical specialty training at the base residency level through subspecialty training in advanced fellowships. J-1 physicians are permitted to change specialty once within the first two years of sponsorship. A request to change medical specialty requires reestablishing eligibility for sponsorship, including confirmation that the proposed training can be completed within the maximum duration of participation. J-1 physicians are eligible for a maximum of 7 years of training, provided that they are progressing in an approved GME

program. The duration of sponsorship is directly linked to the standard board certification requirements as established by the member boards of the American Board of Medical Specialties (ABMS) and/or the ACGME-accredited length of the program. J-1 sponsorship can be extended briefly to remain in the United States for an ABMS-member board certification exam.

To ensure strict regulatory compliance, the J-1 visa sponsorship process requires close coordination between the teaching institution, the physician applicant and ECFMG. Each academic institution designates a Training Program Liaison (TPL) to serve as the official representative to communicate with ECFMG regarding all J-1 matters. TPLs can be the source of a great deal of assistance and information, and J-1 physicians should establish good working relationships with their TPL at each program in which they enroll throughout the duration of their ECFMG-sponsored training.

H-1B Visa for GME Training

The H-1B visa is reserved for temporary workers in specialty occupations who hold professional degrees. Today, the H-1B is offered by many institutions for GME training. In addition to a medical degree and a valid ECFMG certificate, foreign national physicians who are interested in applying for H-1B visas must pass USMLE Step 3 and qualify for the appropriate medical license in the state where the training will take place. Competency in English is also required for the H-1B. Passing USMLE Step 2 CS satisfies the language requirements as the clinical skills exam includes an assessment of spoken English.

The H-1B work/training authorization is employer-specific and requires visa sponsorship directly through the teaching hospital. To sponsor a qualified foreign national physician for a GME position on an H-1B visa, the teaching hospital must file petitions with both the USCIS and the Department of Labor (DoL). The petitions require detailed information about the position being offered including program, location, wage rate and contract dates as well as evidence of the credentials of the individual applicant. Additionally, the sponsoring hospital must confirm that the foreign national will be paid the appropriate salary for the position. As the prospective employer, the teaching hospital must incur certain filing fees associated with the H-1B petitions and must also agree to cover the return home transportation costs, in the unlikely event that the physician be dismissed from the training program before the official end day.

The maximum duration of continuous training/employment in H-1B status is 6 years in most cases. Petitions are approved based on the length of the training contract, not to exceed three years at one time. An approved H-1B petition cannot be transferred for use at another institution, program, or position. The H-1B physician may seek to change positions or transfer to a different hospital/employer; however, a new petition may be required. Mandatory reporting and periodic updates on H-1B physicians is required.

An H-1B physician may have dependent spouse and children accompany them to the U.S. in H-4 status. There is no independent work authorization granted to H-4 dependents; however, participation in educational studies is permitted. The duration of legal stay for the H-4 dependent is directly tied to the timeline of the H-1B principal.

Unlike the J-1, the H-1B visa does not impose a mandatory home residency requirement or a service obligation. Therefore, foreign national physicians who train on H-1B visas may be eligible, in some cases, to pursue direct steps toward permanent resident status (Tables 4-2 and 4-3).

Table 4-2: J-1 and H-1B Visas for GME Training

	J-1 Visa	H-1B Visa
Regulatory oversight	Departments of State & Homeland Security, ECFMG	Departments of Labor & Homeland Security
Exams	USMLE Steps 1, 2CK, 2CS	USMLE Steps 1, 2CK, 2CS, 3
Time limit	7 years maximum	6 years maximum
Funding	Multiple sources acceptable	U.S. employer salary only
Home country requirements	Strong ties to home country, 2-year home rule	None
Employment for spouse?	Yes; J-2 can apply for work authorization	No; no work permit for H-4

Table 4-3: Documentation Typically Required When Applying for J-1 or H-1B Visa

J-1 Visa	H-1B Visa
Form DS-2019, Certificate of Eligibility, signed in blue ink by the Regional Advisor at ECFMG, with a future expiration/end date	Original Form I-797, Notice of Action issued by U.S. Citizenship and Immigration Services, showing approval of an H-1B petition, with a future expiration/end date
Form DS-158, Contact Information and Work History for nonimmigrant Visa Applicant	Copy of H-1B petition filed by employer on physician's behalf (in some cases only a copy of the Form I-129 petition and Labor Condition Application may be sufficient; check with consulate)
Form DS-156, Application for Nonimmigrant Visa, with photos	Form DS-156, Application for nonimmigrant Visa, with photos
Form DS-157, Supplemental Nonimmigrant Visa Application (generally required of all male applicants between the ages of 16 and 45)	Form DS-157, Supplemental Nonimmigrant Visa Application (generally required of all male applicants between the ages of 16 and 45)
Valid passport	Valid passport
Application and reciprocity fees (check with consulate for fee amounts and how they must be paid)	Application and reciprocity fees (check with consulate for fee amounts and how they must be paid)
SEVIS fee, if applying for a J-1 visa to begin a new program	–
Documents that demonstrate nonimmigrant intent (i.e., proof of intent to return home)	–

Implications of Personal and Professional Difficulties during GME Training

In general, foreign national physicians enrolled in GME training face similar personal and professional challenges as their U.S. citizen counterparts. Health, family, and marital issues,

as well as personnel or academic difficulties, can result in an interruption or even termination of a resident's contract. In addition to the emotional, professional, and financial concerns tied to such challenges, foreign national physicians whose visa status is based on enrollment in medical residencies must be keenly aware of the immigration implications of diverting from pre-approved activities and timelines. U.S. immigration regulations and labor laws are not entirely consistent. Therefore, careful review of the nuances of each status is required. Foreign national physicians must be careful to maintain continuous training and immigration records.

Requests for leaves of absence, changes to part-time status, resignations from training, and so on must be pre-approved by the visa sponsor (ECFMG for J-1s, teaching hospitals for H-1Bs, O-1s, etc.). No change should be made without first verifying permissibility of altering the approved educational plan and then clarifying the necessary steps to return to GME training in the future, should that be the physician's intent. Official termination from a GME position may require prompt departure from the United States. In such cases, physicians should contact the visa sponsor for instructions and may also want to consult with an immigration attorney.

A request to transfer institutions for any reason while under active contract requires a formal release from the current program. Eligibility to accept a second offer and apply for a transfer is contingent upon release from the original program. For immigration purposes, it is essential to coordinate a seamless transfer to avoid any gap in training dates. When considering fellowship training or practice options, including J-1 waiver positions. (For in-depth discussion of J-1 visa waivers, see R. Aronson, "Immigration Overview for International Medical Graduates," State Medical Licensure Requirements and Statistics. AMA: Chicago; 2004:97-8.) Foreign national physicians are warned against making multiple commitments. Misrepresenting one's intentions or inaccurately reporting one's immigration status or eligibility could be considered a legal or ethical violation and cause long-term negative consequences for physicians.

Maintaining Visa Status

In addition to meeting the academic standards required to progress through GME, foreign national physicians must maintain valid visa status in order to continue to train at U.S. teaching hospitals. Maintaining status requires, but is not limited to, the items listed in Box 4-4.

Box 4-4: Maintaining Visa Status

- Active participation in approved training program: specific site, salary, dates, etc.
 - J-1 physicians must maintain full-time status in the program
 - Unauthorized employment is considered a violation of status (including moonlighting)
- Possession of requirement documents/records confirming visa status
 - For J-1: DS-2019, for H-1B: I-797 with valid dates
 - I-94 record with "Duration of Status" (D/S) or future end-date
 - Valid passport
- Compliance with all reporting requirements
 - Reporting U.S. residential address to U.S. Government (Form AR-11) within 10 days of any move

- Notification to appropriate offices (i.e., ECFMG, TPL, GME program director, U.S. Government) of proposed changes in location of course of training, leaves of absences, terminations, extensions, etc.
- Complying with any special registration requirement as instructed by a U.S. government official at port-of-entry, etc.
- Strict adherence to applicable U.S. laws and regulations

OTHER LOGISTICAL ISSUES RELATING TO TRAVEL

Foreign national physicians are not required to travel outside the United States every year in order to apply for a new visa. The visa stamp in the passport serves as a permit for a foreign national to enter the United States. The visa stamp can expire after the individual arrives, and the foreign national may legally remain in the United States provided she or he complies with the terms, obligations and dates of the “visa status” as noted above (e.g., J-1, H-1B). However, it is important to note that a foreign national who departs the United States is required to have a valid visa stamp in the passport to be eligible to return. Visas are only issued at U.S. consulates/embassies abroad.

Since a new visa is needed for re-entry, it is not advisable for foreign national physicians with expired visas and/or those who changed visa status within the United States to travel internationally during the training year. Current U.S. visa application processes can involve long waits for consular appointments and security clearances. At present, there is no expedited processing available for background checks. Therefore, it is very hard to guarantee timely return to the training program.

Foreign national physicians who must travel outside the United States are advised to review the dates and purpose of their travel with the GME program director(s) and administrative staff prior to finalizing their plans. A discussion about potential delays and contract provisions for making up lost time, for example, should take place before departure. Physicians should also contact the specific the U.S. embassy or consulate where they intend to apply for the visa to inquire about application procedures, documentation, requirements, and timeframes. It is critical for foreign national physicians (and dependents) to be aware of the documents that will be required for re-entry to the United States. Additional information on travel is available on the ECFMG Web site at <http://www.ecfmg.org/evsp/travel.html>.

Initial Entry into the United States

Foreign nationals initially entering the US on J-1 visas may enter the country up to 30 days before the start of their contract. However, those on H-1B visas may not enter the country until 10 days before their contract start date.

SUMMARY

Immigration is one of many variables to consider when selecting a U.S. GME program. Foreign national physicians are encouraged to research their visa options very carefully. Institutional policies, procedures, budgets, and deadlines vary widely among teaching hospitals and even among programs within the same institution. Ultimately, the foreign national physician

enrolled in U.S. GME training must understand, respect, and comply thoroughly with all U.S. immigration laws and institutional guidelines.

References

- ECFMG Exchange Visitor Sponsorship Program. Visit ECFMG's Web site at www.ecfm.org/evsp for access to the J-1 Visa Sponsorship Fact Sheet. Its Exchange Visitor Sponsorship Reference Guide provides application materials and important updates.
- U.S. Department of State Exchange Visitor Program (DOS-EVP) at <http://exchanges.state.gov/education/jexchanges>.
- U.S. Citizenship and Immigration Services at www.uscis.gov.
- U.S. Department of Homeland Security at www.dhs.gov/dhspublic.
- U.S. Embassies and Consulates at http://travel.state.gov/visa/questions_embassy.html.