Immigrant Options
AND
Non-Immigrant Options
J-1 Status for Graduate Medical Education and training

- Foreign doctors participating in US internships and residencies may be admitted for length of program, with a maximum of 7 years, typically.
- J-1 physicians engaged in clinical residencies are sponsored by ECFMG
J-1 Status for Graduate Medical Education and training

Two-year foreign residence requirement if sponsored by ECFMG.

- If J-1 alien is subject to foreign residence requirement, he may not change non-immigrant status (or obtain H professional worker or specialty worker status) until either (1) returns back home for 2 years or (2) obtains a waiver of the two-year foreign residence requirement.

- Note that physician is not barred from obtaining a new visa status, such as an O-1 extraordinary alien, even without a waiver. However, not eligible for H non-immigrant status.
J-1 Status for Graduate Medical Education and training, continued..

- Note that Canadian nationals are largely exempt from obtaining a visa and may obtain new status at the border.
- No moonlighting allowed in J-1 status;
- Restrictions on changing from J-1 researcher to ECFMG sponsored (12 months).
Waivers of Foreign Residence Requirement

- In order to remain in the United States, physician must obtain a waiver of the two-year foreign residence requirement.

- One waiver is a “Conrad” waiver through a state health department (30 per year); the physician must work in a medically underserved area or in a health professional shortage area for 3 years. Possibility of “flex” slots as well if worksite not HPSA.
Waivers of Foreign Residence Requirement, continued..

- Primary care but also specialists allowed in individual status (State must demonstrate shortage of doctors in specialty)
- Other waivers through interested governmental agencies (IGA Waiver). Some agencies which will sponsor J-1 physicians:
Waivers of Foreign Residence Requirement continued..

- Department of Health and Human Services for physician in underserved areas (i.e. community health centers, rural hospitals, and other health care providers) for physicians practicing in underserved areas requiring a three-year commitment.
Waivers of Foreign Residence Requirement continued..

- Sponsorship through Health and Human services for health-related research (J-1 academic physicians) for those primarily engaged in academic research in an area of high national priority.

- Waiver through the Veterans Administration (requires a 3 year commitment for work at one of the VA facilities).
Statutory requirements for IGA Waivers as follows:

- If physician contractually obligated to return to his home country, government must furnish the State Department with a Statement of No Objection;
- J-1 doctor must demonstrate full-time offer of employment at a health facility or health care organization;
- The employment must be determined to be in the public interest;
Statutory requirements for IGA, continued..

- J-1 doctor must agree to begin employment at such facility within 90 days of receiving the waiver;
- He or she must also agree to work at that health facility or organization for at least 3 years (absent extenuating circumstances such as the closure of the facility or hardship to the alien, in which case alien must demonstrate another bona fide offer of employment at a health facility or a health care organization for the remainder of the 3 year period.
Statutory requirements for IGA, continued..

• In the case of the request by a Federal agency (other than full-time medical research or training) or by a State Health Department, the beneficiary must practice medicine in H-1B status in a geographic area designated by the Secretary of Health and Human Services as having a shortage of health care professionals.
HHS Waiver Requests

- State of SC, with a limited number of Conrad spots (30), often requests that spots for primary care or mental health be reserved for the Dept. of Health and Human Services.
- HHS submits recommendation to DOS; DOS then submits waiver request to USCIs for final approval.
- Requirements:
  - HPSA number and FIPS/Census Track/Zip code of the facility
  - Medicare/Medicaid and sliding fee scale
  - Proof of recruitment efforts for US physicians
  - 3 letters of recommendation from US residents who know and can attest to the physician’s work
  - HHS application
  - Supporting letter from facility identifying the graduate, describing efforts of recruitment, job duties and beneficiary’s qualifications
  - Addtl. Documentation proving HPSA score (7 or higher)
  - State Health Dept. letter of support
  - Physician attestation
  - Prevailing wage data
  - Copy of employment agreement between facility and physician reflecting necessary immigration provisions, including 3 year full-time commitment.
  - Physician credentials and CV
Medically Underserved Areas

- Whether sponsored by the Appalachian Regional Commission, Conrad Waiver, or even Health and Human Services, all of these programs have following common elements:
- Work in area facing shortage in medical services and in particular primary care
- Facility should be located within health professional shortage area designated by HHS or medically underserved areas (MUAs) as well as medically underserved populations (MUPs) (sometimes recognized)
Medically Underserved Areas, continued..

- Head of the health care facility employing the physician must submit a declaration stating the facility is located in the HPSA or MUA-MUP and provide medical care to both Medicare and Medicaid eligible patients and indigent, underserved patients. Declaration should also list the HPSA or MUA member. (Note the “Flex” spots under the Conrad program)
Medically Underserved Areas, continued..

• Primary care preferred including internal medicine, pediatrics, obstetrics, gynecology, psychiatry and family practice. However, Conrad program will allow specialists with demonstrated shortage of doctors to provide appropriate medical specialty in the designated area. Some states prohibit specialty training while others permit it and if it directly relates to primary care needs.
Medically Underserved Areas, continued..

- All of the sponsorship programs require a minimum time commitment from the J-1 physician. The Conrad program requires a three-year commitment.

- While Conrad program does not require employer to show it is engaged in good-faith recruitment, most states have in place such a requirement or require some evidence of recruitment in the preceding six months.
Medically Underserved Areas, continued..

• State agency issues its recommendation “in the public interest” for the Conrad waiver (ban on multiple IGA requests and multiple agency waiver). State decides whether to impose a bar on non-competition clauses in contracts under the Conrad program.
H-1B Professional or Specialty Worker Status

- Jobs requiring at least a Bachelor’s Degree or higher
- H-1B cap not applicable to Conrad physicians. However, there is an exception for medical universities from the cap or non-profit affiliated institutions; Exception to Cap also for non-profit research organizations or governmental research organizations
- Cannot be applicable to physicians who have received a waiver based on §214(I)
H-1B Professional or Specialty Worker Status, continued..

- H-1Bs can be used for residencies, although there is a prevailing wage requirement which sometimes presents a problem for employers.
- H-1B is good for 3 years at a time, up to a limit of 6 years; H-1B allows “dual intent” by which the physician may be in the United States temporarily but still have an intention of residing permanently in the USA;
H-1B Professional or Specialty Worker Status

- To qualify, alien must pass USMLE, steps 1, 2, and 3, and hold an ECFMG (Educational Commission for Foreign Medical Graduates) certification and possess a valid state license.
- Spouse and children in admitted in H-4. However, spouse cannot work in H-4 status.
H-1B Specialty Workers

- A total of 65,000 visas are available annually for foreign nationals in "specialty occupations." A specialty occupation involves the theoretical and practical applications of a body of highly specialized knowledge, and the attainment of a Bachelor’s Degree (or its equivalent) or higher degree in the specific specialty. A job requiring such a Bachelor’s Degree is also essential.
H-1B, continued...

An employer seeking to hire a professional from abroad must first file and obtain approval of a labor condition application filed with the Department of Labor making the following attestations:

- No strikes or lockout at the place of employment;
- The alien will be paid higher of the actual wage or the "prevailing wage" for the offered position; and
- No U.S. workers will be adversely affected by the hiring of the alien
H-1B, continued...

- H-1B visas may be conferred in three-year increments. A total of six years is permissible in H-1B status, but may be extended in certain circumstances where (1) an employer has filed a labor certification for the employee prior to the end of 6 years in H-1B status seeking permanent residence, or (2) filed an immigrant petition, either of which has been pending for a year.
Physician is in the United States working, for example, in H-1B capacity.

If previously sponsored through an interested governmental agency (e.g. Conrad Waiver) for a waiver of foreign residence requirement (former J-1 alien), physician must work 3 years before becoming eligible to apply for permanent residence. (Exceptions: National Interest Waiver)

Physician may apply to “adjust status” while in the United States. Family members apply for adjustment at the same time.
National Interest Waivers

- Physician must work 5 years in medically underserved area before obtaining green card
- Adjustment application, however, can be filed even before the physician has met three-year requirement. Filing early allows the spouse to obtain work authorization pursuant to adjustment application. Physician and spouse (and children) may obtain travel permission.
National Interest Waivers

- Physician qualifies as advanced degree professional (2nd employment-based preference)

- Time in H-1B status may count toward 5 year commitment.
National Interest Waivers, continued..

- Physician must work in a shortage area and must have a full-time employment contract in a medically underserved area, and a supporting letter from the Department of Health of the relevant state stating that the alien’s work is in the public interest, or that the alien will continue to be employed at the Veteran’s Administration Hospital.
“PERM”
Labor Certification Application

- Employer sponsorship through the Department of Labor
- Employer must advertise and recruit for US workers and demonstrate there are no qualified, willing, and able US workers for the position
- After the Department of Labor approves the case, the employer may file an immigrant petition.
- As long as visas remain current in the 2nd employment-based category, physician may concurrently file for adjustment of status if he/she has met the three-year commitment

**NOTE: Visa Retrogression for Indian, Chinese born**

- Labor Certification is not required where a National Interest Waiver is filed
QUESTIONS