

Consider Immigration Issues When Hiring Int'l Medical Grads

By **Nora Katz and Vinh Duong** (November 14, 2023)

Across the U.S., health care systems face ongoing and growing challenges with staffing physicians to meet their communities' health care needs. The causes of the physician shortage are multifaceted — an impending retirement cliff of existing physicians, medical school enrollment and graduation rate plateaus, physician distributions clustered in urban and affluent areas, and an aging baby boomer generation that requires more medical care.

All contribute to the growing unmet demand for health care providers.

In particular, health care systems struggle to recruit primary care physicians and physicians to work in rural and medically underserved areas. For many health care systems, the reality is that there simply are not enough physicians to meet patient demand.

One potential solution to address the challenges of attracting physicians to underserved areas is to recruit and hire international medical graduates. These skilled professionals, who have completed their graduate medical education in the U.S., can provide valuable contributions to the health care system.

However, many health care institutions are hesitant to recruit international medical graduates due to concerns related to visa sponsorship and the associated complexities of such sponsorship. These complexities often involve navigating various visa categories, compliance with immigration laws and regulations, and understanding the intricacies of the application process.

This article will explore common concerns and issues that arise when recruiting, hiring and retaining international medical graduates, as well as ways to use immigration to address physician staffing shortages in underserved areas.

While the complexities and nuances of our U.S. immigration system may pose some challenges for employers seeking to sponsor foreign workers, recruiting international medical graduates as a strategy to address physician staffing shortages should not be discounted outright.

Many international medical graduates are eligible to be sponsored for U.S. work visas if certain criteria are met. When considering recruiting international medical graduates and assessing their eligibility for sponsorship, health care recruiters should ask the following questions.

1. What status does the international medical graduate hold while completing training?

International medical graduates generally need to complete U.S. residency training before they are eligible to practice in the U.S. Most international medical graduates will complete this training in either H-1B or J-1 status. While U.S. employers can recruit international



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medical graduates who are approaching the end of their training programs, the physician's status may limit their options.

Training in J-1 status

Many international medical graduates who enter U.S. graduate medical education programs do so as participants in the U.S. Department of State's J-1 Exchange Visitor Program, which is an educational and cultural exchange program.

International medical graduates participating in graduate medical education in J-1 status are required to return to their home country or last legal residence abroad for at least two years at the conclusion of their training, unless they obtain a waiver of this two-year home residence requirement from the U.S. Department of Homeland Security at the request of a state or federal agency and agree to practice in qualifying underserved area for a minimum of three years.

For-profit employers with practice sites in designated health professional shortage areas or medically underserved areas/populations can qualify to sponsor international medical graduates for a J-1 waiver. International medical graduates who receive a J-1 waiver must agree to complete a three year service commitment to work in the qualifying underserved area.

Training in H-1B Status

International medical graduates who complete their training in H-1B status are subject to the H-1B cap, an annual limit on the number of available H-1B visas.

As a result, it can be difficult to employ these international medical graduates at for-profit companies. However, it is not impossible, and health care institutions can explore various avenues, such as nonprofit affiliations or cap-exempt H-1B positions, to employ these physicians.

2. Do the employer and practice site qualify to sponsor this international medical graduate?

After determining whether an international medical graduate is completing their training in J-1 or H-1B status, the next step is to determine whether the health care systems and practice site can support sponsorship.

To hire an international medical graduate who needs a J-1 waiver, the practice site must be in a designated health professional shortage area or medically underserved area or population.

Some states will also accept applications if the practice site is not located in an underserved area, but the patients travel from surrounding underserved communities. These flex waivers are largely limited, but are certainly an avenue worth exploring.

Finding a way to hire international medical graduates who trained in H-1B status at for-profit health care systems is often more complicated. Each year, there is a limited number of H-1B visas available — the H-1B numerical cap — for employees of for-profit companies, which are granted through a lottery selection process.

Some physicians are not subject to the H-1B cap, including physicians who receive a J-1

waiver and physicians who have previously been counted against the cap. Similarly, certain entities are exempt from the cap, including universities or colleges and related nonprofit entities, nonprofit research organizations, and government research organizations.

The majority of international medical graduates training in H-1B status have not been selected in the H-1B cap lottery. Typically, they train at teaching hospitals that are affiliated with institutions of higher education, which are exempt from the H-1B lottery process.

Once they finish training, though, they need to either (1) be selected in the H-1B cap lottery, (2) work for an exempt entity, (3) work at an exempt entity or (4) apply for a different type of nonimmigrant visa or work authorized status.

H-1B Cap Lottery

Each year, U.S. Citizenship and Immigration Services conducts a lottery to award H-1B slots to enough foreign workers to meet its 85,000 annual cap. This number includes 20,000 slots reserved for candidates who earned a master's degree or higher from a U.S. educational institution.

Employers submit registrations for all employees they hope to sponsor and USCIS conducts its lottery in March. Employers can then submit an H-1B petition for any selected registrations.

Work for an Exempt Entity

If an H-1B international medical graduate will work directly for one of the cap-exempt entities listed above, the physician is not subject to the H-1B cap. The physician can continue extending H-1B status for up to six years, after which point they will only be able to continue working if certain steps in the green card process are completed. It is worth confirming how many years the physician trained in H-1B status during the recruiting and hiring process.

Work at an Exempt Entity

H-1B international medical graduates can qualify for cap-exempt status if they will be employed by a for-profit entity but will be placed to work at a cap-exempt entity.

For example, a surgeon who works for a for-profit physician group but operates at a nonprofit teaching hospital could qualify for a cap-exempt H-1B visa. Similarly, a physician who has an approved H-1B petition to work for a cap-exempt entity can apply for a concurrent H-1B at a for-profit entity as long as the physician continues working for the cap-exempt entity.

Apply for a Different Type of Visa

Unlike J-1 waiver physicians who must complete their three-year waiver commitment in H-1B status, physicians who trained in H-1B status are not limited in the types of visas they can apply for, so long as they meet the visa qualifications.

The O-1 visa, which is reserved for individuals with extraordinary skills and abilities, can be an option for international medical graduates with outstanding qualifications, such as extensive publications, awards and a distinguished work history. This visa category allows the hiring of individuals who have demonstrated extraordinary achievements in their field.

While it can be a more stringent option to pursue, it offers a pathway for retaining highly skilled international medical graduates.

The physician national interest waiver allows international medical graduates to apply for a green card while completing a five-year commitment to work in an underserved area. Similar to the J-1 waiver, the physician national interest waiver requires the physician to practice in a health professional shortage area or medically underserved area or population.

Depending on the physician's country of birth and the visa bulletin priority date status, certain physicians can file a green card application very quickly based on a physician national interest waiver, which allows them to secure an employment authorization document to work in the underserved area.

The H-4 employment authorization document allows spouses of H-1B sponsored employees with an approved I-140 to apply for an employment authorization document allowing them to work at any location. If a physician is married, exploring whether the spouse's status allows for a work authorized dependent status can be a valuable option.

Given the extra legwork described above, many employers may wonder, why bother?

As health care administrators in rural or underserved areas know all too well, it is increasingly difficult to recruit and retain talented physicians in these areas, particularly primary care physicians. International medical graduate physicians often train in primary care.

Furthermore, because these physicians require employer sponsorship, they have a vested interest in staying with a certain employer for an extended period of time. J-1 waiver physicians are required to work at the sponsoring practice for a minimum of three years, unless extenuating circumstances beyond their control arise, necessitating a new placement.

International medical graduates who pursue a physician national interest waiver to secure their green card are required to commit to serving five years in an underserved area. During these required time periods, many physicians build their practice and become valuable members of the community, choosing to stay even beyond the required years.

The shortage of physicians in the U.S. has reached alarming levels, creating a significant disparity in health care access and impacting vulnerable populations disproportionately.

Both rural and urban areas are grappling with limited availability of health care providers, resulting in delayed treatments, extended wait times for appointments, and, in some cases, inadequate medical care. The effects of this shortage have been particularly pronounced in primary care fields, where patient demand continues to outpace the supply of qualified physicians.

By harnessing the skills and dedication of highly trained international medical graduates, health care systems can address the pressing health care disparities faced by underserved communities.

Sponsoring international medical graduates benefits the international medical graduates seeking to work in the U.S., but also brings profound advantages to medically underserved populations that are often forgotten and left without adequate care.

Recruiting and retaining international medical graduates can significantly benefit U.S. health care systems facing growing physician shortages. While there are complexities and challenges associated with visa sponsorship and retention commitments, such as travel restrictions, licensing requirements, and the timing involved in obtaining a waiver or visa status, these issues can be effectively addressed with careful planning and support from health care institutions.

By understanding and actively participating in waiver programs, exploring visa options, and creating supportive work environments, health care organizations can successfully integrate international medical graduates into their workforce, ultimately improving the delivery of health care services to their communities.

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