



New Mexico Health Resources 20th Annual Health Provider Retreat

Taos, NM – June 9, 2012

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IMMIGRATION ISSUES FOR PHYSICIANS:

WHAT DOES A RECRUITER AND EMPLOYER NEED TO KNOW?



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IMMIGRATION 101:

ALL YOU NEED TO KNOW IN ONE SLIDE

- Temporary, Nonimmigrant Visa Status
- Permanent Residence
- Citizenship

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IMMIGRATION 101:

TEMPORARY, NONIMMIGRANT VISA STATUS

Definition: Visa status in which the Department of Homeland Security (DHS) controls two (2) important aspects of a foreign national's residence:

- Time allowed in the U.S.
- Activities authorized



IMMIGRATION 101:

TEMPORARY VISA STATUS EXAMPLES

- J-1 Exchange Visitor: ex: Medical Residents & Fellows
- H-1B Temporary Worker: ex: Staff Physicians
- B-1/B-2 Visitors: ex: Temporary Visitors
- Other letter-number combinations including F-1 (students) and O-1 (extraordinary abilities)

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IMMIGRATION 101:

PERMANENT RESIDENCE (“GREEN CARD”)

Definition: Visa status that provides full, open-ended authorization for a foreign national to live and work in the United States, but which can be lost in certain circumstances.

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IMMIGRATION 101:

CITIZENSHIP

Definition: Status carrying Constitutionally-guaranteed rights including the open-ended right to live and work in the United States and which cannot be lost or removed except in highly unusual and extreme circumstances.

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WHO DOES WHAT?

ROLE OF STATES: (NEW MEXICO)

- J-1 Waiver
- Physician Need Statement for NIW

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WHO DOES WHAT?

ROLE OF FEDERAL GOVERNMENT:

- Final J-1 Waiver Approval
- Adjudicating H-1B Petition
- Adjudicating Permanent Residence

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WHO DOES WHAT?

ROLE OF EMPLOYER:

- J-1 Waiver Application
- Filing H-1B Petition
- Sponsoring Permanent Residence

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WHO DOES WHAT?

ROLE OF PHYSICIAN:

- Minimal: Recipient of Actions of Others
Players

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WHO DOES WHAT?

RESULT:

- Immigration of IMG largely controlled by employer/community and New Mexico Department of Health/NMHR (and Not the IMG)

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POOLS OF PHYSICIAN RECRUITMENT USING IMGs

- J-1 Physicians
- H-1B Physicians
- IMGs with Alternative Immigration Options
- Permanent Residents & U.S. Citizens

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3-STEP REQUIREMENT

1. J-1 Waiver
2. H-1B Process
3. Permanent Residence

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STEP #1:

J-1 WAIVER PLACEMENT



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J-1 VISA STATUS: WHAT IS IT? WHY IS IT NEEDED?

- J-1 visa status permits IMGs to obtain post-graduate medical training.
- Admission of an exchange visitor, spouse and children may not exceed the period specified on Form DS-2019, plus a period of 30 days for the purpose of travel.

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J-1 VISA STATUS CONTINUED

- Duration is limited to seven years
- Requires return and physical presence in home country for two years
- Disqualifies alien physician from H-1B visa status or Permanent Residence

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A J-1 PHYSICIAN HAS THREE (3) OPTIONS:

- Return to home country for two years
- Obtain a waiver
- Get visa status other than H-1B and/or permanent residence

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J-1 WAIVER OPTIONS

- Interested Governmental Agency (IGA)
- State Department of Health
- Exceptional Hardship
- Persecution

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INTERESTED GOVERNMENTAL AGENCY (IGA) WAIVERS

- Direct employment: ex: Department of Veterans Affairs (VA), National Institute of Health (NIH), U.S. Army
- Outstanding Research: Department of Health & Human Services (HHS)/NIH

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STATE DEPARTMENT OF HEALTH WAIVERS

- Conrad State 30 Waiver: Clinical Practice for Medically Underserved
- 30 waivers per year
 - 10 waivers in any area
 - 20-30 waivers to medically underserved areas
- Validity: to September 30, 2012



CONRAD STATE 30 WAIVER:

EVERYTHING YOU EVER WANTED TO KNOW AND THEN SOME

- The Evolution of the Conrad Waiver Program: Ten Years of State-Based J-1 Waivers to Physicians by Robert D. Aronson (2009)
- http://www.aronsonimmigration.com/article_2009_evolution_of_conrad_waiver.pdf

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STEPS IN SPONSORING A J-1 PHYSICIAN FOR PLACEMENT

- To sponsor a J-1 Physician for placement in a medically underserved area involves multiple steps (**see Figure 1**)
- A physician must apply for case number from the U.S. Department of State (DOS) and must secure a bona fide offer of employment



Figure 1: Process to Apply/Obtain J-1 Visa Waiver for Physician to Work in Underserved Area

Physician
Typically begins to seek employment opportunities during last year of training and/or completes graduate medical education on J-1 visa

Waiver Process

Physician
Submits Form DS-3035 - J-1 Visa Waiver Review Application to Department of State to obtain case number



Employer
Apply to state agency to request a J-1 visa waiver for physician



State Department of Health
Submits waiver request to Department of State

- May request waiver up to 30 physicians per year
- 10 of the 30 waivers may be from facilities that treat patients residing in underserved areas

Department of State
Processes physician’s case number application, reviews state agency’s waiver request, and makes recommendation to the USCIS



Department of Homeland Security, USCIS
Reviews recommendation, grants waiver of the 2-year home residence requirement, and notifies physician of approval. Also, reviews and approves employer’s petition for physician to obtain employment authorization (H-1B status)



Physician
Upon approval of waiver by USCIS, must agree commence employment within 90 days.



Physician
Upon fulfillment of 3-year employment contract, applies for permanent residence, continued H-1B status, other status, or leaves the United States.

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SPONSORING A J-1 PHYSICIAN

- The health care facility applies to the State Department of Health to request a waiver on the J-1 Physician's behalf
- Each State Department of Health may request a waiver for up to 30 physicians per year, and 10 of the 30 waivers may be for physicians to work in facilities that treat residents of an underserved area

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SPONSORING A J-1 PHYSICIAN

- If, after reviewing the application, the State decides to request a waiver, it submits a letter of request to the U.S. Department of State (DOS)
- If the DOS decides to recommend the waiver, it forwards its recommendation to the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS)

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SPONSORING A J-1 PHYSICIAN

- USCIS is responsible for making the final determination and notifying the J-1 Physician when the waiver is granted
- Based on our experience, after a review for compliance with statutory requirements and security issues, nearly all waiver requests are recommended and granted

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FEDERAL WAIVER REQUIREMENTS

- 30/10 Rule
- 90-Day Rule
- 3-Year Employment Obligation
- H-1B Status

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STATE VARIATIONS: OBJECTIVE

- Primary care vs. Specialty care
- Application periods
- Non-compete clauses
- Filing fees
- Reporting requirements
- Mandatory period of service

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J-1 WAIVER PROGRAM IN NEW MEXICO

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NEW MEXICO J-1 WAIVER PROGRAM

Employer Obligations:

- Acceptance of all patients, regardless of ability to pay
- Medicare & Medicaid
- Automatic Qualification: FQHC
- Need to file Annual Report
- Recruitment required
- No solo practitioners

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NEW MEXICO J-1 WAIVER PROGRAM

Physician Obligations:

- Primary Care vs. Specialty Care
- FLEX slots
- Either NM License or pending application

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NEW MEXICO J-1 WAIVER PROGRAM

Contract Requirements:

- 3-year period of time
- 40 hours/week of clinical medicine
- Start Date: within 90 days of waiver approval
- Liquidated damages up to \$250,000
- No non-compete clauses
- Adherence to New Mexico & U.S. tax laws and requirements

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TIMELINE

- State Processing: Varies
- Department of State: 4-8 Weeks
- USCIS: 4-8 Weeks

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IF WAIVER GRANTED:

- Mandatory 3-year period specifically in **H-1B STATUS**
- USCIS considers transfer requests only in extenuating circumstances, such as closure of the physician's assigned facility



EXCEPTIONAL HARDSHIP

- Hardship to U.S. citizen or permanent resident spouse or child
- Need to show hardship either if anchor relative returns for two years or remains apart
- Processing time: 8-12 months
- Examples: physicians from Middle East, Colombia, severe medical problems

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PERSECUTION WAIVER

- Persecution based on race, religion, or political opinion
- Does not require anchor relative
- Processing time: 8-12 months
- Examples: same as for Hardship Waiver

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WAIVERS BASED ON HOME COUNTRY RELEASE (i.e., “No Objection”)

- Forget about it!

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STEP #2:

H-1B VISA STATUS



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H-1B CAP SITUATION

- 65,000 H-1B visa numbers and 20,000 for U.S. Master's Degree holders
- Application period opens on April 1, but H-1B becomes effective on October 1, 2012
- Numbers still exist this year, but will soon be exhausted



WHO IS EXEMPTED FROM H-1B CAP?

- **J-1 Waiver Physicians**
- Universities
- Non-profit, university-affiliated
- Many H-1B extensions
- Concurrent employment situation
- Working “at” rule

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H-1B APPLICATION PROCESS

- Labor Condition Application
- H-1B Petition to USCIS
- Application for status

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H-1B TEMPORARY WORKER

- Temporary, nonimmigrant classification
- 3 years initially, plus 3-year extension
- Employer specific
- Must fulfill 3-year employment in H-1B status to gain eligibility for permanent residence
- J-1 Physicians are exempt from H-1B cap

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LABOR CONDITION APPLICATION

- Application to Department of Labor
- Acceptable wage and working conditions
- No recruitment obligation to employer, unless H-1B dependent employer
- Quick turn-around

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H-1B PETITION

- Filed to USCIS
- Need to outline nature of job and alien physician's qualifications
- Processing time:
 - 3-4 months per normal route
 - 15 days under Premium Processing



SPECIAL PHYSICIAN DOCUMENTATION

- MD or foreign medical license
- ECFMG Certificate for English language fluency (not required for Canadian physicians)
- FLEX – Steps 1 and 2 or USMLE – Steps 1, 2, 3 (cannot be combined)
- State medical license

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ALTERNATIVE RECRUITMENT OPTION:

PHYSICIAN ALREADY IN H-1B

Warning: This is complex and tricky stuff and will either be beneficial or harmful to your health

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FOLLOW-UP QUESTIONS

- Is H-1B Physician working through J-1 employment?
- Is H-1B Physician now in Training at University employer?
- Is H-1B Physician now in Attending position?

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IF WORKING THROUGH J-1 EMPLOYMENT POSITION

- Has physician completed 3-year obligation with J-1 Waiver sponsor?
- If not, can transfer only if:
 - Extenuating Circumstances
 - Relocation to another medically underserved area



IF H-1B PHYSICIAN NOW IN UNIVERSITY TRAINING

- May have quota cap issues
- Universities are exempted from quota; many/most employers are subject to quota
- If subject to quota: New H-1B numbers become available on October 1, 2009 / application period opens on April 1, 2009



STEP #3: PERMANENT RESIDENCE



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IMGS WITH ALTERNATIVE OPTIONS FOR PERMANENT RESIDENCE

- Family-based immigration
- Well-founded fear of persecution
- Adjustment Portability
- Other government programs

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HOW TO GET PERMANENT RESIDENCE?

- Family-Based Relationships
- Employment
- Fear of Persecution
- Diversity Lottery
- Miscellaneous Programs

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HOW TO LEVERAGE JOB INTO PERMANENT RESIDENCE?

- Option #1: Labor Certification Application
- Option #2: National Interest Waiver

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OPTION #1: LABOR CERTIFICATION APPLICATION

- Purpose:
 - Show unavailability of U.S. applicants for job
 - Show that wages are satisfactory/prevaling
- Requires Employer Sponsorship

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OPTION #1: LABOR CERTIFICATION APPLICATION

4 STAGES

- Recruitment/advertising
- Filing of Labor Certification Application
- Filing of Employer's I-140 Immigrant Visa Petition
- IMGs Application for Permanent Residence

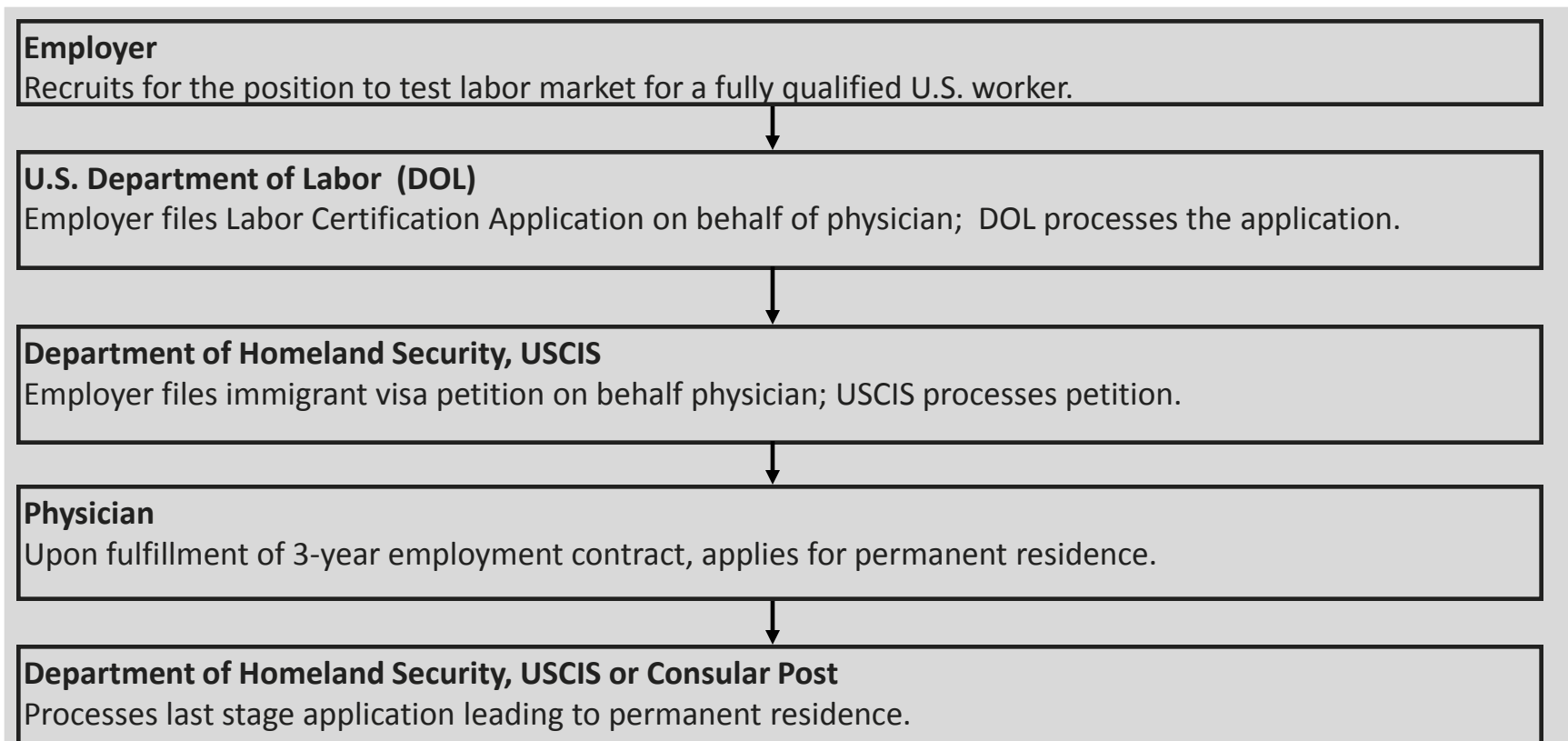
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OPTION #1: LABOR CERTIFICATION APPLICATION

Process to Apply/Obtain Permanent Residence under Labor Certification Application



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OPTION #1: LABOR CERTIFICATION APPLICATION

STAGE #1

RECRUITMENT/ADVERTISING OBLIGATIONS

- Specified steps by U.S. Department of Labor
- 2 Ads in Local Newspaper
- 3/8 Additional Obligations
- Register with U.S. Department of Labor
- Standard: Find Only Fully-Qualified Applicant for Job

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OPTION #1: LABOR CERTIFICATION APPLICATION

STAGE #2

FILING OF LABOR CERTIFICATION APPLICATION

- To U.S. Department of Labor in Atlanta
- Roughly 3-4 Month Processing Time
- Objectives:
 - No fully-qualified U.S. applicant
 - Wages at acceptable level

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OPTION #1: LABOR CERTIFICATION APPLICATION

STAGE #3

I-140 IMMIGRANT VISA PETITION

- Filed to U.S. Citizenship and Immigration Services
- Objectives:
 - IMG fully qualified for position
 - Employer can pay wages

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OPTION #1: LABOR CERTIFICATION APPLICATION

STAGE #4

FINAL APPLICATION FOR “GREEN CARD”

- Adjustment of Status
- Consular Processing

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OPTION #2: NATIONAL INTEREST WAIVER

- Requires placement in medically underserved area
- Physician can Self-Sponsor
- Five-year Obligation
- Covers both Primary Care and Specialty Physicians

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OPTION #2: NATIONAL INTEREST WAIVER

Process to Apply for and Obtain Permanent Residence under National Interest Waiver

Employer or Physician

Submits NIW petition to USCIS; physician must agree to commit to 5 years of service in medically underserved area and, if immigrant visa numbers are available, physician can also file for permanent residence.



U.S. Citizenship and Immigration Services (USCIS)

Processes the NIW petition and gives a timeline in which the 5-year commitment needs to be verified.



USCIS or Consular Post

Upon fulfillment of the 5 years of medical service, USCIS processes the permanent residence application, if one was submitted.

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OPTION #2: NATIONAL INTEREST WAIVER

TWO STAGES

- Filing National Interest Waiver Petition
- Filing for Permanent Residence

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OPTION #2: NATIONAL INTEREST WAIVER

STAGE #1

NATIONAL INTEREST WAIVER PETITION

- Filed to U.S. Citizenship and Immigration Services
- Physician can Self-Sponsor
- Employment must be in Medically Underserved Area
- Five-year Required Period of Service

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OPTION #2: NATIONAL INTEREST WAIVER

STATE PHYSICIAN NEED STATEMENT

- State Department of Health needs to confirm that the “Public Interest” will be served from IMG’s employment in proposed practice site

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OPTION #2: NATIONAL INTEREST WAIVER

STAGE #2

IMG FILES FOR PERMANENT RESIDENCE

- Adjustment of State
- Consular Processing

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PERMANENT RESIDENTS & NATURALIZED CITIZENS



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**IN THIS CASE, HERE IS WHAT THE
EMPLOYER NEEDS TO DO:**

Nothing

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CANADIAN PHYSICIANS

- Fully eligible for medical license
- Still need visa status
- For H-1B: Need USMLE – Steps 1, 2, & 3
- Permanent Residence: Fully Credentialed

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CONCLUSION

- In many instances, it is quite possible to navigate through the immigration system
- Requirements for success:
 - Advance planning
 - Open communication
 - Participation by employer, alien physician, and legal counsel



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