10 Immigration Rules Every Physician Recruiter Must Know

Presented by Badmus Law Firm
January 28, 2009
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On your GotoMeeting control panel, you will see a Question and Answer pane. Click on the right arrow to expand the Q&A pane.

Type and send your question.

We will answer questions during the Q&A session at the end of the presentation.
Featured Speaker

Angela M. Lopez
Attorney, Badmus Law Firm
Angela has more than 6 years of experience representing and counseling physicians and medical employers in all aspects of immigration law.
Martha James, "Marty"
Attorney, Badmus Law Firm
Marty has more than 10 years of experience providing representation to and counseling physicians and medical employers in all aspects of immigration law.
Featured Speaker

Ann Massey Badmus
Attorney, Badmus Law Firm
Ann has more than 15 years of experience providing strategic advice and counsel to physicians and medical employers on issues of immigration law.
Webinar Agenda

• Avoiding Discrimination Claims in Hiring IMG Physicians
• Placing J-1 Physicians
• Placing H-1B Physicians
• Placing Physicians with O-1 or Pending Green Cards
• Question and Answer
# International Medical Graduate (IMG) Statistics

## US and IMG Physician Population Overview

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Physician in US</td>
<td>902,053</td>
</tr>
<tr>
<td>Number of IMG Physicians</td>
<td>228,665 (from 127 countries)</td>
</tr>
<tr>
<td>% of IMG Physician in US</td>
<td>25.3%</td>
</tr>
<tr>
<td>% of IMG in Residency Programs</td>
<td>28.2%</td>
</tr>
<tr>
<td>% of IMGs in Primary Care</td>
<td>37.6%</td>
</tr>
<tr>
<td>% of USMGs in Primary Care</td>
<td>31.9%</td>
</tr>
<tr>
<td>% of IMGs in Patient Care</td>
<td>80.1%</td>
</tr>
<tr>
<td>% of IMG in Academics</td>
<td>16.2%</td>
</tr>
</tbody>
</table>

Source: Physicians Characteristics and Distribution in the U.S. 2007 Edition; AMA, Chicago, I Medical Graduates by Specialty*
### Percentage of the IMG population within each specialty

<table>
<thead>
<tr>
<th>Specialty</th>
<th>%</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal Medicine</td>
<td>36%</td>
<td>55,467</td>
</tr>
<tr>
<td>Anesthesiology</td>
<td>29%</td>
<td>11,757</td>
</tr>
<tr>
<td>Psychiatry</td>
<td>31.4%</td>
<td>13,080</td>
</tr>
<tr>
<td>Pediatrics</td>
<td>28%</td>
<td>20,180</td>
</tr>
<tr>
<td>Family Medicine</td>
<td>17.8%</td>
<td>21,669</td>
</tr>
<tr>
<td>Obstetrics/Gynecology</td>
<td>17.8%</td>
<td>7,589</td>
</tr>
<tr>
<td>Radiology</td>
<td>18.8%</td>
<td>1,536</td>
</tr>
<tr>
<td>General Surgery</td>
<td>20%</td>
<td>7,976</td>
</tr>
</tbody>
</table>

Source: Physicians Characteristics and Distribution in the U.S. 2007 Edition; AMA, C

* These data exclude residents and students.
# International Medical Graduate (IMG) Statistics

## Top ten countries of medical education for IMG physicians

<table>
<thead>
<tr>
<th>Rank</th>
<th>Country</th>
<th>Percentage</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>India</td>
<td>19.9%</td>
<td>47,581</td>
</tr>
<tr>
<td>2</td>
<td>Philippines</td>
<td>8.7%</td>
<td>20,861</td>
</tr>
<tr>
<td>3</td>
<td>Mexico</td>
<td>5.8%</td>
<td>13,929</td>
</tr>
<tr>
<td>4</td>
<td>Pakistan</td>
<td>4.8%</td>
<td>11,330</td>
</tr>
<tr>
<td>5</td>
<td>Dominican Republic</td>
<td>3.3%</td>
<td>7,892</td>
</tr>
<tr>
<td>6</td>
<td>Russia</td>
<td>2.5%</td>
<td>6,039</td>
</tr>
<tr>
<td>7</td>
<td>Grenada</td>
<td>2.4%</td>
<td>5,708</td>
</tr>
<tr>
<td>8</td>
<td>Egypt</td>
<td>2.2%</td>
<td>5,202</td>
</tr>
<tr>
<td>9</td>
<td>Korea</td>
<td>2.1%</td>
<td>4,982</td>
</tr>
<tr>
<td>10</td>
<td>Italy</td>
<td>2.1%</td>
<td>4,741</td>
</tr>
</tbody>
</table>

Source: 2007 AMA Masterfile
Avoiding Discrimination Claims in Hiring

Immigration Fact No. 1 – Anti-Discrimination Laws Do Apply

Federal law prohibits discrimination in hiring, including, but not limited to:

- Unequal treatment because of citizenship or immigration status
- Unequal treatment because of nationality, which includes place of birth, appearance, accent and language
- Asking for specific documents from employee, such as “Green Card” or “work card”
- Having a citizen-only hiring policy
Avoiding Discrimination Claims in Hiring

Steer clear of the following language in job postings:

"Only U.S. Citizens"
"Citizenship Required"
"Only U.S. Citizens or Green Card Holders"
"H-1Bs Only"
"Must have a U.S. Passport"
"Must have a green card"
Employment Eligibility Questions You Can Ask

Best Practice Questions

1. Are you currently authorized to work in the United States?
   Yes – stop inquiry
   No – may ask about current immigration status but do not inquire about basis of current employment authorization

2. Will you now or in the future require sponsorship for employment visa status (e.g., H-1B status)?

Alternative Question if employer has consistent hiring policy limited to persons protected as to citizenship status

Are you a U.S. citizen, permanent resident alien, temporary resident alien, applicant for temporary resident status, refugee or asylee?
   Yes – stop inquiry
   No – can eliminate applicant from consideration
Placing J-1 Physicians

Immigration Fact No. 2 –
Two Year Foreign Residency Requirement for J-1 Physicians

After residency or fellowship training is completed, all J-1 physicians must return to home country for two years or obtain a waiver of this requirement before he or she can be employed in H-1B status or adjust to permanent residence (“green card”).

Home Country - Country of last citizenship or permanent residence (even if dual citizenship retained) before J-1 visa
Immigration Fact No. 3 – Waivers of the Two-Year Foreign Residency Requirement (“J-1 Waivers”)

Three types of waivers for J-1 Physicians

• Interested Government Agency (IGA)
• Hardship
• Persecution
Placing J-1 Physicians

Typical Interested Government Agency (IGA)
- Conrad 30 State Program
- Department of Veterans Affairs (VA)
- United States Department of Health and Human Services (HHS)
- Appalachian Regional Commission (ARC)
- Delta Regional Authority (DRA)
Conrad 30 State Program

- Administered by each state health agency
- 30 slots per fiscal year – October 1 to September 30
- Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA) –
  - [http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx](http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx) - Health Resources and Service Administration website to determine HPSA or MUA designation
  - Flex 10 slots available for facilities not located in HPSA/MUA but serve HPSA/MUA population
- Three year contract required (some states require more) – non-compete clause prohibited
- Primary care or specialty, depending upon state
Appalachian Regional Commission (ARC)

- Federal agency covering Appalachian region
  - [http://www.arc.gov/index.do?nodeld=2](http://www.arc.gov/index.do?nodeld=2) for states in ARC region
- Three year contract required
- HPSA or MUA required
- Primary care – outpatient only
- $250,000 liquidated damages clause
- No limit on number of waivers per year
Placing J-1 Physicians

U.S. Department of Health and Human Services (DHHS)

• Federal agency covers entire United States

• Two types of waivers
  – Research – physician is integral part of research program and has outstanding qualifications
  – Clinical care – primary care in HPSA with 7 score, public health center, rural health clinic, or tribal medical facility, three year contract required – non-compete clause prohibited

• No limit on number of waivers per year
• Credentials verification required (1-4 months)
Placing J-1 Physicians

Delta Regional Authority (DRA)

- Federal/State agency covering eight state region
  - [http://www.dra.gov/](http://www.dra.gov/) for list of eight states
- Three year contract required – non-compete clause prohibited
- HPSA or MUA required
- Primary care or specialty
- $3000 application fee
- No limit on number of waivers per year
Placing J-1 Physicians

Department of Veteran Affairs (VA)

- Administered by VA
- Primary care or specialty
- 1 year contract minimum but 3 years work required by USCIS
- No limit on number of waivers per year
Placing J-1 Physicians

Immigration Fact No. 4 – J-1 Waiver Obligations

- Must work in **H-1B** status for minimum of three years as an employee, not independent contractor, of sponsoring employer
- Periodic reporting to state or federal sponsoring agency
- Cannot change employer unless extenuating circumstances
  - e.g. termination by employer (not for cause), breach of contract by employer. Personal reasons usually not valid for change of employer
- Cannot finalize permanent residence application until waiver service is completed
Placing J-1 Physicians

Immigration Fact No. 5 – Timeline for J-1 Waiver Process

- Employer and Physician apply to IGA
- IGA issues recommendation to Department of State (DOS) (1 to 3 months)
- DOS issues recommendation to USCIS (1 to 2 months)
- USCIS issues final waiver approval I-612 (1 to 3 months)
- H-1B petition filed and approved (1 to 4 months)
- Total time – 4 to 12 months
Strategic Planning for Placing J-1 Physicians

- Start job search immediately after 2\textsuperscript{nd} year of residency or one year before completion of fellowship
- Finalize employment by early Fall of 3\textsuperscript{rd} year of residency or final year of fellowship
- Target employers located in HPSA/MUA who agree to a three-year contract and no non-compete clause
- Refer physician or employer to immigration attorney early in process
H-1B Physicians Defined

- IMG Physicians who completed residency or fellowship with H-1B visa (no J-1)
- J-1 Physicians who returned to home country for two years after residency or fellowship completed
- J-1 Physicians who obtained hardship or persecution waiver and seek employment
Immigration Fact No. 6
H-1B Physicians are Subject to H-1B Cap

- Limit of 65,000 new H-1B visas per fiscal year (except Free Trade Act (FTA) nationals)
- 20,000 per fiscal year for persons who hold US Master’s degrees or higher
- Fiscal year runs from October 1 to September 30
- Employers may apply for H-1B on April 1 with a start date of October 1
- In 2008, over 150,000 new H-1B petitions filed on April 1
H-1B Cap

Who is subject to the cap?
- First time H-1B beneficiaries (employee)
- Beneficiaries who already hold H-1B status but were employed by cap-exempt employers

Cap-exempt employers
- Universities and non-profit petitioners affiliated with post-secondary educational institutions
- Government research organizations and non-profit petitioners affiliated with government research institutions
- For-profit employers who place physician at a non-profit, university-affiliated facility for at least 50% of work week

Cap-exempt beneficiaries
- Physicians who are beneficiaries of J-1 IGA waivers
Immigration Fact No. 7 – Employer Obligations for H-1B

- Employer must pay minimum of prevailing wage or actual wage, whichever is higher, for the term of the H-1B
  - [http://www.flcdatacenter.com/](http://www.flcdatacenter.com/) - Department of Labor wage data for prevailing wage
  - Salary must be guaranteed at prevailing wage or actual wage – productivity bonuses okay after minimum guarantee
- Employer must pay ACWIA fee of $750 (25 or fewer employees) or $1500 (greater than 25 employees) unless exempt
- Physician must be on payroll within 30 to 60 days from H-1B approval date, regardless of pending hospital privileges
- Physician must be an employee of sponsoring employer; however, independent contractor possible if physician forms corporation or LLC
Immigration Fact No. 8 –
Period of Stay and Employment are Limited

• H-1B status can be valid up to 3 years initially, renewable for 3 more years.
• 6 year maximum stay with some exceptions -
  – 1 year extensions available after 6th year if green card application pending for at least one year
  – 3 year extension available if green card application is on hold because of limited availability of green cards
• Physician is eligible for another 6 years after 1 year outside U.S.
• No specific contract term requirement
Placing H-1B Physicians

Immigration Fact No. 9 – H-1B Portability

- If employee is already in H-1B status and changing employers, new employer must file H-1B petition
- May start new employment upon filing of new H-1B petition – need not wait for final approval
- Concurrent H-1B petitions are permitted – “moonlighting”
Placing H-1B Physicians

Strategic Planning for Placing H-1B Physicians

- Start job search immediately after 2nd year of residency or one year before completion of fellowship
- Finalize employment by early Fall of 3rd year of residency or final year of fellowship
- Target cap-exempt employers or employment
- If competing for non-exempt H-1B, have contract in place by February so that H-1B petition can be filed on April 1
- Encourage early application for medical license
- Refer physician or employer to immigration attorney early in process
Immigration Fact No. 10 –
Other Work Authorization for IMG Physicians

O-1 Visas – extraordinary ability

- Physician has “risen to the top of the field”
- Allows work for specific employer
- One to three year validity periods
- Can be extended indefinitely
- Physician can change employment so long as new employer files and is approved for new O-1
- J-1 waiver not required so can be “stop-gap” visa when waiver not available
Employment Authorization Document (EAD)

- Issued with pending green card application
  - Family
  - Employment
  - Diversity Lottery
- Limited period of authorization – must renew before expiration
- Can work for any employer
- If green card application denied, no longer authorized to work
Question and Answer Session
"Immigration law is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in gold."

- USCIS spokeswoman Karen Kraushaar
Facts of individual situations differ.

The information provided here is general in nature and should not be relied upon for specific situations.

Consult with an experienced immigration attorney to get the right diagnosis for your candidate’s specific situation.
Join our Recruiter Advantage Program

• Answers to your immigration questions without charge – no more wasted time on placements that won’t work because of immigration issues
• Priority appointments for your employers and candidates - fast service for faster placements
• Monthly updates on immigration news affecting physicians, including current availability of Conrad State 30 waiver program slots
• Free educational seminars for you, your employers, and your candidates
• A complimentary copy of *The Immigration Prescription* for your candidates and employers
• Free announcements of your jobs to our database of physicians
• Exchange of website links

Email recruiterhelp@badmuslaw.com to join the Badmus Law Firm Recruiter Advantage Program
We Value Your Feedback!

So we may serve you better, please complete the brief survey that you will receive via email one hour after the conclusion of this program.

Give us your feedback and you could win a $50 gift card!
Thank You!

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