

# The J1 Foreign Residence Requirement

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## Medical Training and 212(e)

Every year, many foreign medical graduates come to the United States on a J1 visa to complete their medical training as residents or fellows. Foreign medical graduates must pass the U.S. Medical Licensing Examination (USMLE), complete a medical residency in the U.S. and become licensed in a particular state to qualify to practice medicine.

J1 visas for medical training are issued by the Department of State with the intent that participants return to their home countries after their training is complete. The J1 visa is, at its core, an exchange visa. J1 medical graduates benefit their home countries with the medical knowledge with the training acquired in the U.S. Accordingly, Physicians with J visas must return to their country for two years before being allowed to obtain either H-1B status or permanent residence in the United States. This two-year home residency requirement is created by section 212(e) of the INA and will be notated as a “212(e) subject” on visas and other government documents. J1 physicians who return home for two years and intend to return to the United States must be careful to fully document their time outside of the country.

## Waiver of 212(e)

Obtaining a waiver of the 212(e)-residency requirement is difficult, but there are various paths for obtaining such a waiver. 212(e) Waivers are processed initially by an Interested Government Agency, and then the Department of State who recommends the case to the U.S. Citizenship and Immigration Services.

## Hardship or Persecution

If a 212(e) subject J1 visa holder can be eligible for a waiver if they can demonstrate that extreme hardship would be inflicted on members of their family who are permanent residents or U.S. citizens if they must return to their home country. Similarly, a 212(e) subject J1 visa holder can be eligible for a waiver if they can demonstrate they will be persecuted if required to return to their home country. Hardship and persecution waivers are rare and require significant supporting evidence to be successful.

## Interested Government Agency Waivers

Independent government agencies may also submit a request to the Department of State to recommend a J1 Waiver. Such waiver requests are discretionary and are subject to internal agency policy. Interested government agencies (IGAs) submit their request to the Department of State who in turn informs the U.S. Citizenship and Immigration Services who ultimately issues the waiver. Agencies that have sponsored J1 waivers include the Department of Health and Human Services, the Department of Defense, and, in limited circumstances, the Department of Veterans Affairs and the Department of Agriculture.

## DHHS Exchange Visitor Program

The HHS has two tracks for J1 waiver recommendations.

### HHS Research

The first track is for individuals who are performing health research in an area of significant interest to the HHS. HHS relies on subject matter experts for its waiver review process and will require detailed information regarding the applicant, the research they are conducting and the institution supporting the waiver.

### HHS Clinical Care

The second track is for clinical care physicians who plan to practice primary care (family medicine, general internal medicine, general pediatrics, obstetrics & gynecology) or general psychiatry at a qualifying health center. The HHS's most recent guidelines allow physicians to apply under the program who plan to practice at any health facility that has or is in a location that has a Health Professional Shortage Area score of 7. HHS are subject matter experts, and waivers submitted to the HHS require specific evidence regarding the health facility, the patients and the physician.

## State Waivers and the Conrad 30 Waiver Program

The Conrad 30 waiver program aims to address the shortage of qualified doctors in medically underserved areas and allows J-1 foreign medical graduates to apply for a waiver of 212(e), provided they agree to serve for three years in an area with a medically underserved population in H1B status. Each state and the District of Columbia has 30 J1 waiver spots per fiscal year, and they have unique requirements for J1 waiver submission. The Conrad 30 program has certain overall requirements that all potential applicants must meet:

- The foreign medical graduate must have been admitted to the United States with a J1 visa to receive graduate medical training;
- The foreign medical graduate must enter into a bona fide, full-time employment contract to practice medicine in H-1B nonimmigrant status for at least three years at a healthcare facility located in an area designated by the U.S. Department of Health and Human Services (HHS) as a Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP) or serving patients who reside in a HPSA, MUA, or MUP.
- The foreign medical graduate must obtain a “no objection” statement in writing from their home country if they are contractually obligated to return to their home country upon completion of the exchange program.
- The foreign medical graduate must agree to begin employment at the health care facility specified in the waiver application within 90 days of receipt of the waiver, not the date their J-1 visa expires.

### **Conrad 30 Waiver Process**

Foreign medical graduates seeking a Conrad 30 waiver have three steps to complete: first, they must obtain the IGA sponsorship of a State Health Department, then they must submit a J1 Waiver Application with the Department of State, and finally, they must obtain a cap-exempt H1B visa to begin working in their medically underserved area. Once their three years in H1B status under the conditions of the waiver are complete, the physician would then be eligible to apply for legal permanent residence or a different status. If a physician fails to meet the terms of their three-year waiver, they will be again subject to 212(e).

### **National Interest Waivers for Physicians**

National Interest Waivers are available for physicians who choose to continue practicing medicine in their J1 waiver area. National Interest Waivers (NIW) are a Petition for Immigrant Worker and can allow for a direct path to a green card. Physicians must practice clinical medicine full-time in a designated shortage area for a five-year period to qualify for the NIW petition. The NIW petition will allow the Physician to adjust their status to legal permanent resident or apply for an immigrant visa.