

Immigration Pathways for Recruitment

Maine Rural Health and Primary Care Program

Matthew Webster

October 17, 2023

Fredrikson



Where Law and Business Meet®

Agenda

Immigration as a Recruitment & Retention Tool

Overview of IMG Physician J-1 Waiver Programs

IMG Physician Retention & Permanent Residence

Nurses and Allied Healthcare Staff

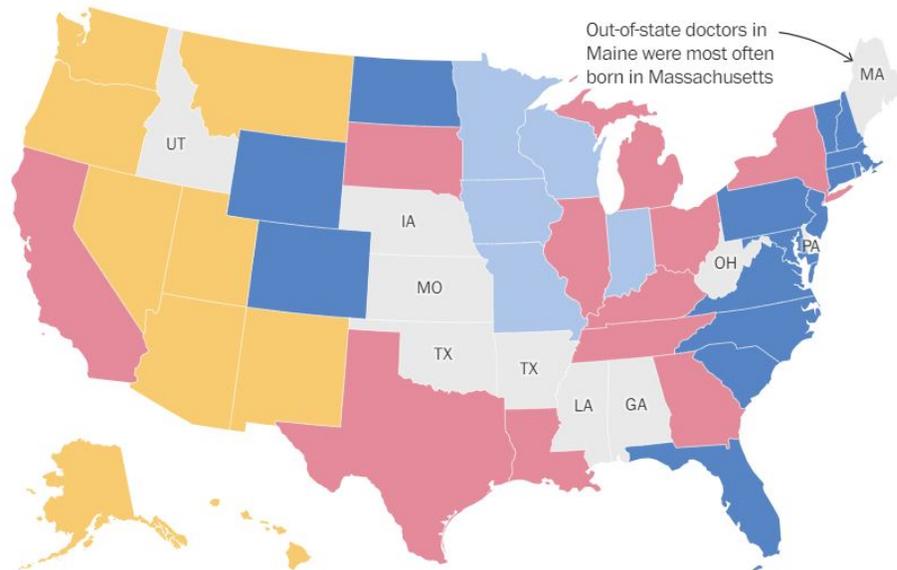
Dentists – Immigration, Recruitment & Retention

Immigration as Recruitment Tool

Including India reshapes the doctor-origin map

Most common birthplace for out-of-state physicians, 2012-2021

■ New York ■ India ■ California ■ Illinois ■ Other (see label)



Note: Includes employed physicians ages 30 to 65

Source: Census Bureau's American Community Survey

DEPARTMENT OF DATA / THE WASHINGTON POST

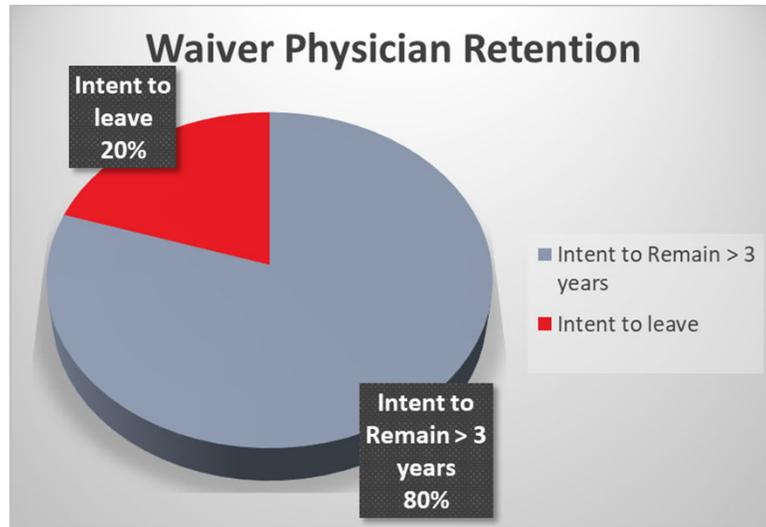
Van Dam, Andrew. "The states that produce the most doctors, artists and writers, and more," The Washington Post (Aug. 18, 2023), available at: <https://www.washingtonpost.com/business/2023/08/18/states-most-artists-writers/>

Immigration as Recruitment Tool

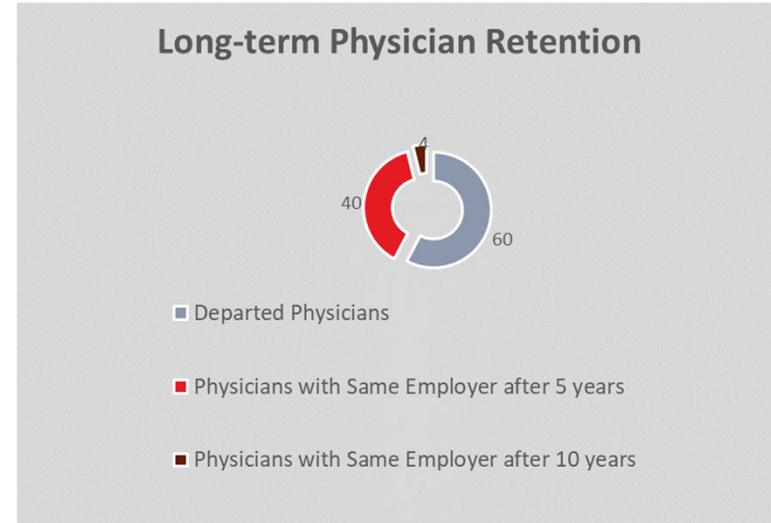
- Expand Pool of Physicians (1/4 IMGs)
- Incentives for Rural & Medically Underserved Placements (1000+ /year)
 - ***HHS processed 350 Clinical Waivers in FY2022, 450 in FY2023, and more than 600 in FY2024***
- Elevated Professional Practice
- DEI & Culture Considerations
- Keystone to Competitive Recruitment

Immigration as Recruitment Tool

Retention >3 years



Long-term Retention



<https://www.ruralhealthinfo.org/topics/j-1-visa-waiver>

Immigration as Recruitment Tool

Questions/Concerns

- Unfamiliarity with process/requirements
- Complexity/uncertainty
- Timing (esp. recruiting)
- Expense
- Short-term/Long-Term Retention
- Community Receptivity
- Spousal Concern/Isolation

Benefits

- Legal counsel can assist with process/requirements, providing competitive advantage vis-à-vis other states/institutions
- Timing is earlier which enables “first round” draft picks
- Legal \$ < Ongoing Vacancy & Recruitment \$
- Retention prospects better for J-1 waiver physicians (term contract)
- Better clinical outcomes/wait times drives community receptivity
- Spousal support can drive retention/satisfaction

Immigration as Recruitment Tool

- **BOTTOM LINE:** The J-1 Waiver is likely the #1 priority of an IMG physician looking to match, and family immigration and permanent residence are likely #2.





Overview of IMG Physician J-1 Waiver Programs

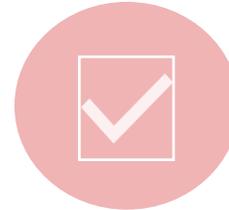
Exchange Visitor Program: A Brief Primer



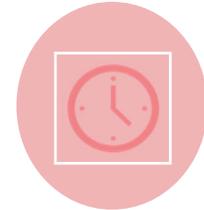
DEFINITION:
J-1
EXCHANGE
VISITOR



WHY
PHYSICIANS?



ECFMG &
DEPARTMENT
OF STATE



TIME &
ACTIVITY
LIMITATIONS

Physicians – 2-Year Home Residence Obligation

- Blanket coverage to ALL J-1 clinical trainees
- Requires residence and physical presence in HOME COUNTRY
- Implications:
 - Ineligibility for an H-1B visa
 - Ineligibility for permanent residence
- Conversely: does not disqualify eligibility for other nonimmigrant visas (O-1, TN, etc.)

Physicians - Options for J-1 Physician on Completing GME?



- #1 Return home for two years
- #2 Obtain a waiver of two-year home residence obligation
- #3 Qualify for alternative visa status other than H-1B

Physicians - Bases for J-1 Waivers

- Exceptional hardship to USC relative
- Persecution
- Interested Government Agency (IGA) sponsorship
 - Conrad State 30 Program/State Department of Health
 - Delta Regional Authority/Appalachian Regional Commission
 - Department of Health and Human Services

Release/no-objection statement from home country unavailable for IMG physicians

What are the Federal Requirements for IGA Waivers?

Conrad Program Only - Limit of 30 waivers/fiscal year

- Medically underserved placements: up to 30
- FLEX waivers: 10

Full-time employment/ 40 hours clinical care in HPSA/MUA/MUP worksite

Need to agree to work in position within 90 days of waiver issuance

3-year H-1B employment obligation

Conrad State 30 Waiver Program: What Is It?

- Allows state DOH to recommend up to 30 physicians/ year who will serve the public interest
- Public policy focus: expanding the safety net
- Federal-State partnership
 - Federal: creates basic structure
 - State:
 - *Fill in the blanks*
 - *Administer the program to meet needs of State*
 - *NOTE: Unless codified or subject to state regulations, State DOH has wide latitude to craft Conrad 30 program to meet **patient needs & maximize waiver usage***

Maine - State Conrad Waiver Requirements

- FIFO
- 6 months of recruitment
- Semi-annual reporting requirements
- Notifications of material changes within 10 days

<https://www.maine.gov/dhhs/mecdc/public-health-systems/rhpc/j1-visa-waiver-program.shtml>

- Only **24/50** states filled all 30 Conrad slots.
- Only **19%** of Conrad 30 waiver slots were filled by Primary Care Physicians
- **77%** of Conrad 30 slots were for Specialists
- **70%** of Conrad 30 slots were for non-rural placements

FFY 2022 10/21 to 9/22									
State	Primary Care	Psych	Specialists	Rural	Non-Rural	Rural / Non-Rural Split	Flex 107	FY 22 Total	
Alabama	0	1	24	1	24		5	25	
Alaska	1	0	0	1	0		0	1	
Arizona	8	1	21	14	16		6	30	
Arkansas	7	0	23	20	10		10	30	
California	17	5	6	No Data Available				28	
Colorado	4	0	6	1	9		4	10	
Connecticut	2	1	27	0	30		0	30	
Delaware	3	3	21	24	3		9	27	
Dist. Of Col	8	1	0	0	9		0	9	
Florida	3	1	25	1	28		1	29	
Georgia	1	0	29	0	13		0	30	
Hawaii	3	2	8	1	12		10	13	
Idaho	0	0	5	2	3		0	5	
Illinois	7	1	22	5	25		1	30	
Indiana	11	2	17	3	27		0	30	
Iowa	6	1	23	4	26		2	30	
Kansas	1	0	17	1	17		4	18	
Kentucky	3	0	27	12	18		10	30	
Louisiana	8	1	21	20	10		10	30	
Maine	No Data Available								
Maryland	10	4	16	10	20		7	30	
Massachusetts	4	1	21	6	20		6	26	
Michigan	6	3	21	12	18		0	30	
Minnesota	5	2	23	11	19		8	30	
Mississippi	0	0	10	8	2		3	10	
Missouri	2	0	26	2	26		0	30	
Montana	No Data Available								
Nebraska	4	0	14	7	11		10	18	
Nevada	2	0	13	0	15		1	15	
New Hampshire	16	1	11	13	15		10	28	
New Jersey	6	0	5	0	11		2	11	
New Mexico	6	2	22	20	10		10	30	
New York	1	1	28	2	28		0	30	
North Carolina	2	1	15	6	12		8	18	
North Dakota	1	1	8	0	10		10	10	
Ohio	2	0	27	2	27		10	29	
Oklahoma	0	1	29	9	21		10	30	
Oregon	13	1	16	8	22		3	30	
Pennsylvania	2	2	26	7	22	1	4	30	
Puerto Rico	0	0	0	0	0		0	0	
Rhode Island	6	1	23	0	30		10	30	
South Carolina	1	0	23	3	21		7	24	
South Dakota	3	0	9	0	12		9	12	
Tennessee	1	0	29	13	17		2	30	
Texas	6	2	22	1	26	3	0	30	
Utah	1	1	3	0	5		3	5	
Vermont	1	0	6	3	4		7	7	
Virginia	8	2	22	10	20		0	30	
Washington	5	2	18	6	19		0	25	
West Virginia	4	0	24	6	22		1	28	
Wisconsin	3	2	19	10	14		10	24	
Wyoming	0	0	4	0	4		2	4	
Totals	214	50	857	286	786	4	226	1,119	
Filled all slots								24	

<https://www.3rnet.org/j1-filled>

Department of Health and Human Services Waivers

- Primary Care Only
 - Family practice, general pediatrics, obstetrics/gynecology, general internal medicine, or general psychiatry; and
 - Board certified or board eligible in primary care discipline in the last 12 months
- Previously FQHC; Now HPSA Score of 7 or Higher
 - NEW REQUIREMENT: HPSA worksites “proposed for withdrawal” do not qualify independently
- Endorsement from State Department of Health
- Sliding Fee Scale

Once Waiver Recommended by Agency

- Requires subsequent clearance by DOS and USCIS
- Timelines vary (generally 18-20+ weeks for waiver approval)
- Can file H-1B petition on DOS recommendation (preferable: USCIS I-612 receipt notice)
- 3-year H-1B employment obligation

H-1B Process



- Nonimmigrant Visa Status
- 6-Year Limit
- Mandatory 3-Year H-1B Obligation
- Two-Step Process
 - Labor Condition Application
 - H-1B Petition

Physicians – Options Instead of Clinical Waiver

Option for HHS
Research
Waiver

Canadian H-1B
entry exception

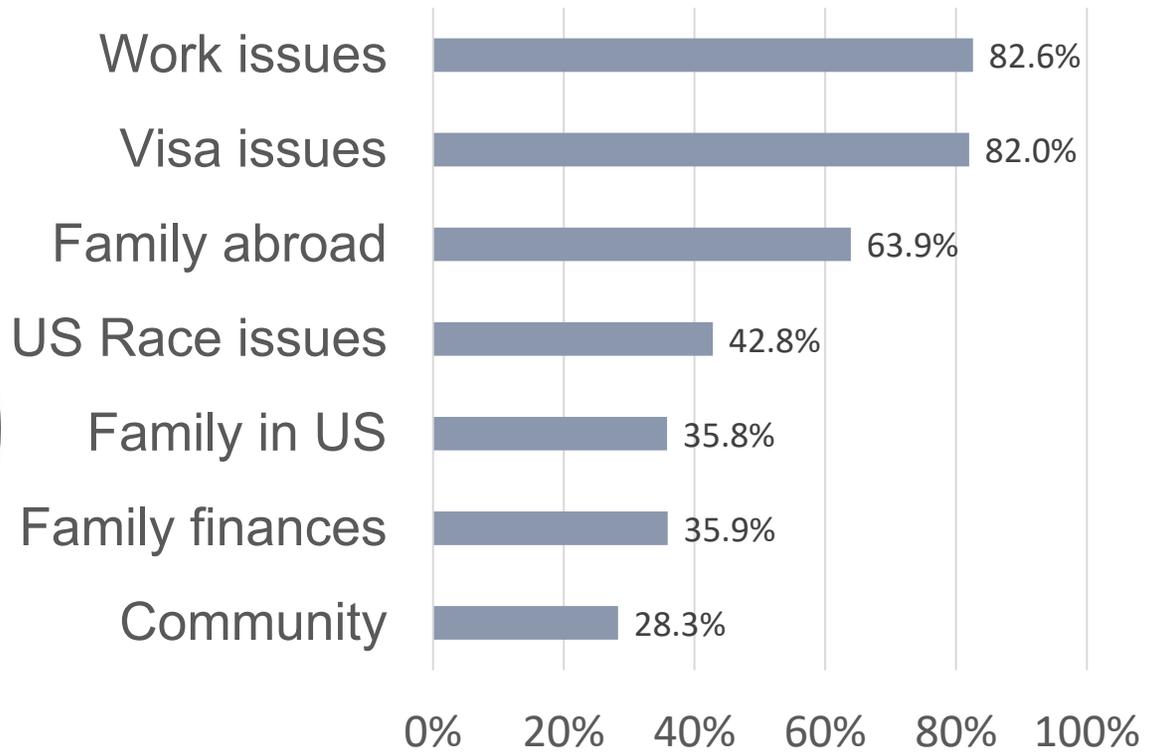
Other
nonimmigrant visa
options (O-1,
F-1, TN, E-2)

Extend J-1, if
possible

Spousal Option

Asylum/TPS

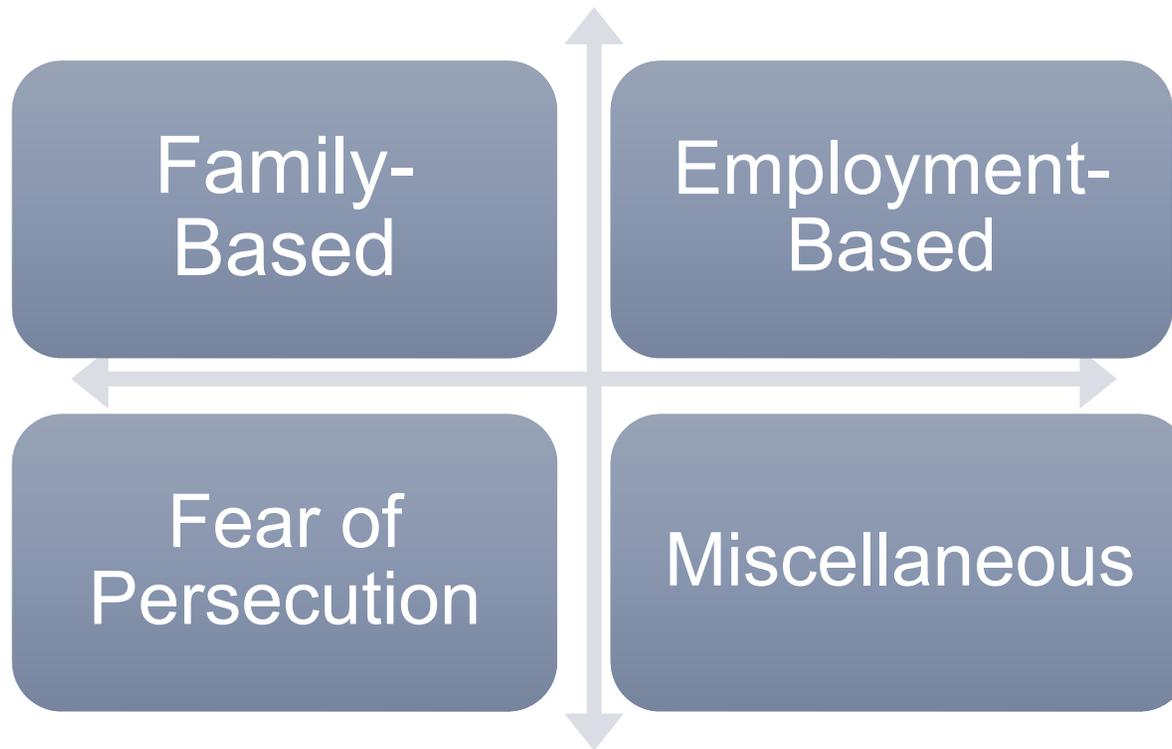
Sources of stress:
% respondents with moderate or severe stress from various sources





IMG Physician Retention & Permanent Residence

Basic Strategy Options for Permanent Residence

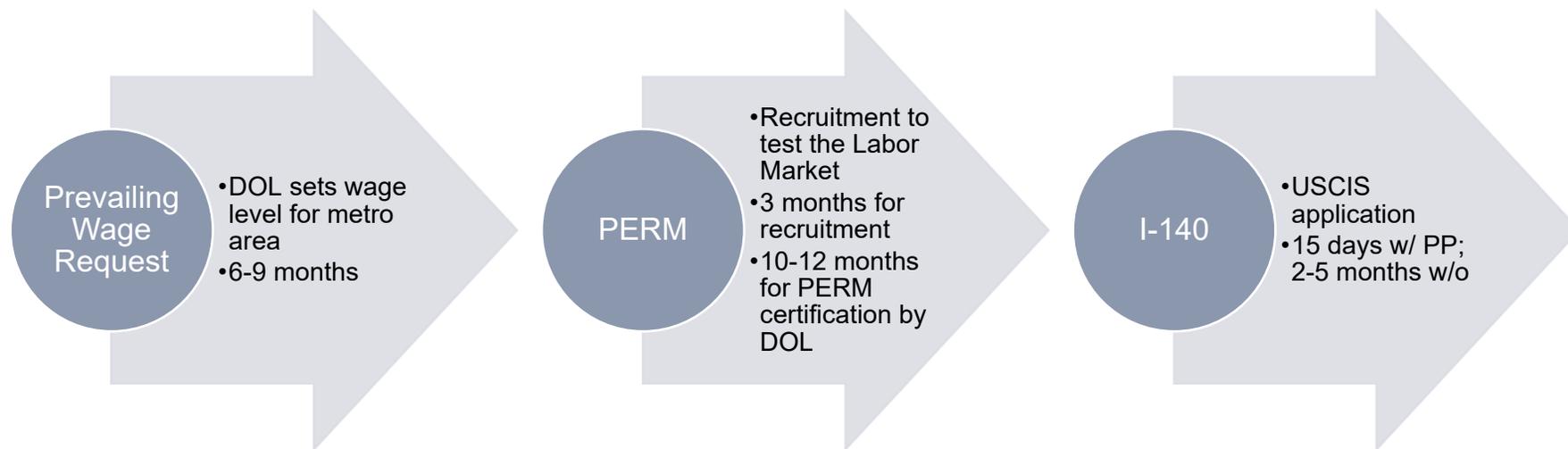


Permanent Resident Options

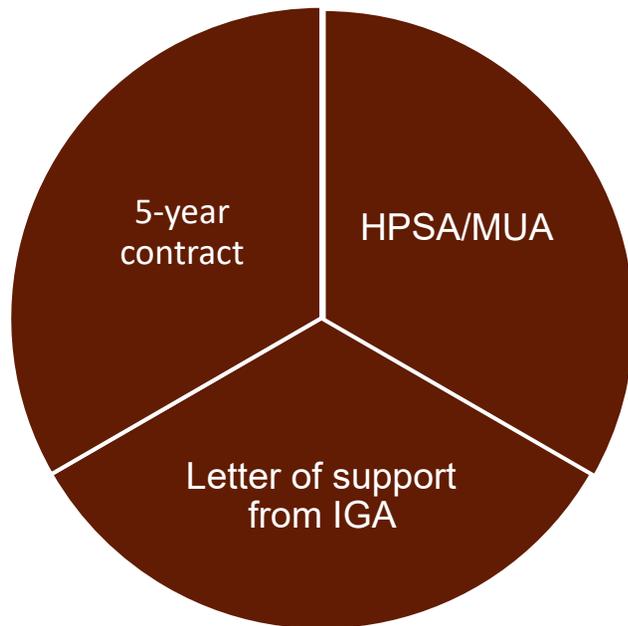


1. PERM Labor Certification
2. Physician National Interest Waiver (PNIW)

PERM Process



Physician National Interest Waiver



- Permits early green card application (EAD/AP card)
- H-4 EAD Option
- Earlier priority date (essential for Indian and Chinese physicians)



Dentists: Immigration, Recruitment, & Retention

How does Dentist Immigration differ from Physician Immigration

No J-1 visa issues

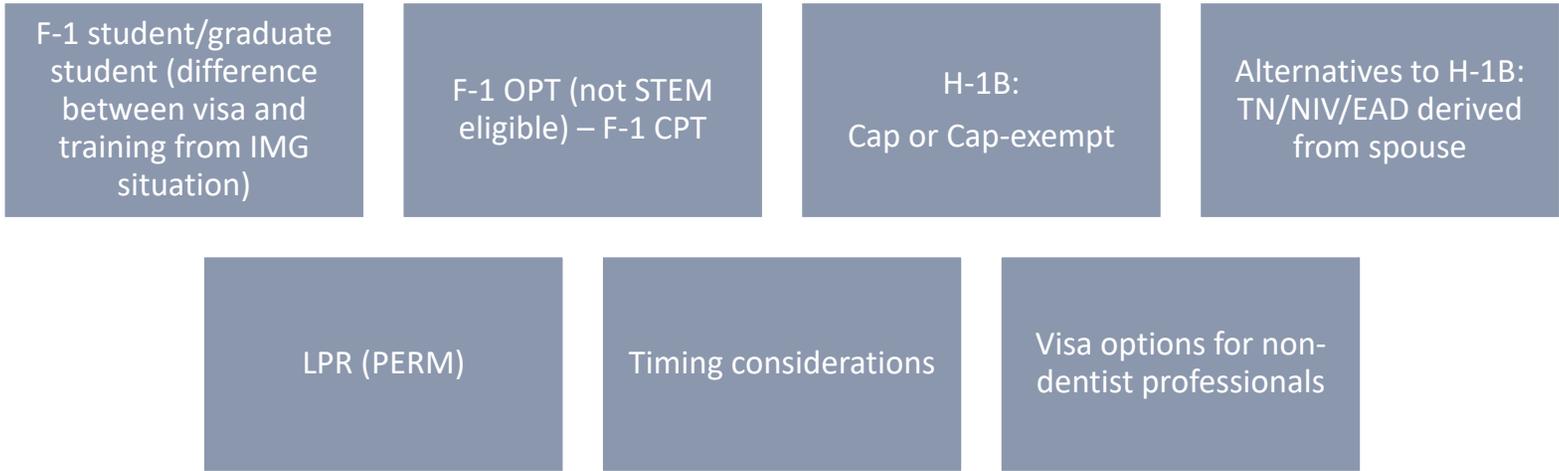
No 2-year home residence obligation

No National Interest Waiver option

Greater concern with H-1B quota

Dentists not “essential workers”

Lifecycle of International Dentist



H-1B Temporary Worker Provisions

Big Issue: Cap-Subject vs. Cap-Exempt

When to start H-1B Sponsorship Process

Requires authorization for position

Prevailing Wage

Timeline for H-1B case

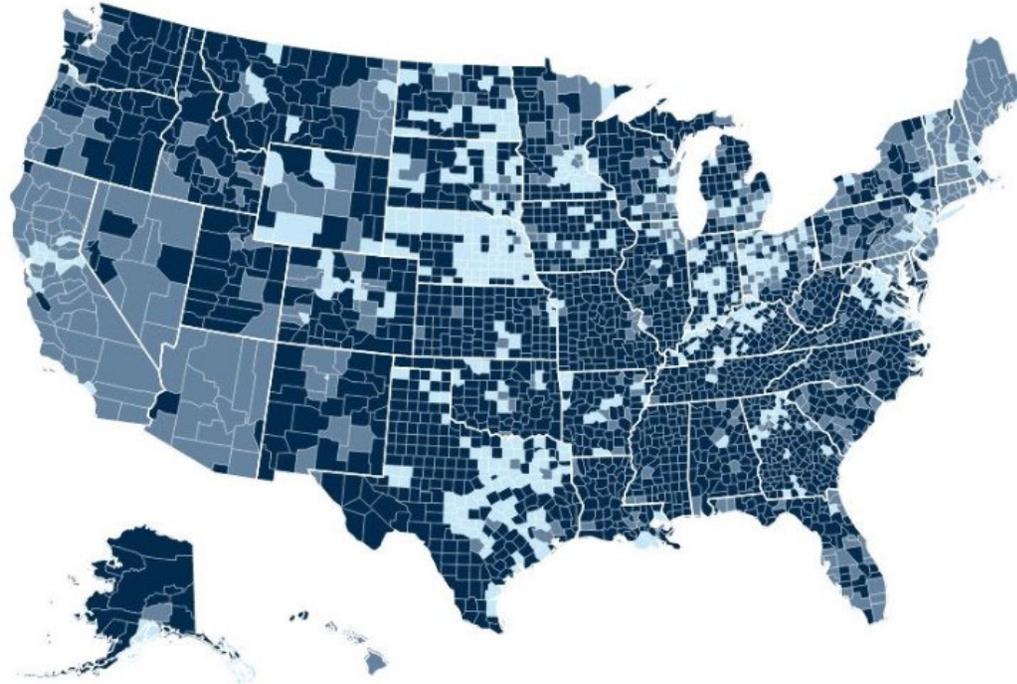
Role of Accrediting Agencies

Almost all states in the US require dentists educated in the US to possess a DDS (Doctor of Dental Surgery) or DMD (Doctor of Dental Medicine).

Degree must be from a university-based dental education program accredited by the American Dental Association [Commission on Dental Accreditation](#) (ADA CODA).

If degree from a country other than the US or Canada, need an evaluation from a credentialing agency that certifies that degree equivalent to American dentistry degree.

Health Professional Shortage Areas: Dental Care, by County, 2021



Source: data.HRSA.gov, April 2021.



Nurses and Allied Healthcare Staff: Immigration, Recruitment, & Retention

Immigration for Nurses

Issues

- Current State of Nurse Workforce
- Expanding role of nurses to address healthcare shortages

Solutions

- Immigration Options
- Nurse Staffing Agencies

H-1B “Specialty Occupation” Status for Nurses

- Certain Nursing Positions are eligible for H-1B

- *Advanced Practice Registered Nurse/APRN (Masters)*
- *NP (Masters)*
- *RN (Assoc./Bachelors)*
- *ADN (Associate degree)*
- *LPN (1 year)*
- *CNA*

H-1B Restrictions:

- Specialty Occupation = Bachelor’s degree
- Consequence:
 - *Most RNs are ineligible for H-1B Status*
- Exceptions:
 - *Normal to industry (APRN/NP)*
 - *Special needs of employer*

H-1B Submission for Nurse

Identification
of “specialty
occupation”

State
licensure

VisaScreen

Alternative Visa Status



- TN (Canada/Mexico only)
- F-1 OPT
- NOTE: VisaScreen is a mandatory, blanket requirement (even if U.S. nursing school graduate)

“VisaScreen”: Section 343 Healthcare Worker Certificate

- Nurses (RN, LPN/LVN)
- Physical Therapists
- Occupational Therapists
- Medical Technologists
- Medical Technicians
- Audiologist
- Physician Assistants
- Speech-Language Pathologists

Schedule A



“Schedule A” – list of fields with DOL-identified shortage



- No PERM recruitment required
- DOL has pre-certified that these positions are in short supply



- Physical Therapists: Must possess all qualifications required by state
- Professional Nurses: Full state nursing license OR CGFNS certificate OR passed NCLEX-RN

Permanent Resident Process for Nurses



Nurses – Permanent Residence Strategies

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01AUG22	01JUL19	C	C
2nd	01JAN23	01JAN20	15MAY12	01JAN23	01JAN23
3rd	01FEB23	01SEP20	01AUG12	01FEB23	01JAN23
Other Workers	15DEC20	01JUN17	01AUG12	15DEC20	15MAY20
4th	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19
Certain Religious Workers	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19

- EB-3 vs. EB-2
- Backlogs
- Cross-chargeability

Allied Health Professionals - Considerations



- VisaScreen vs. non-VisaScreen professions
- Licensure provisions
- H-1B option
- TN occupational categories
- Immigrant Visa options

Allied Health Professionals – H-1B

- Cap subject or cap exempt?
 - Exempt = nonprofit affiliated with institution of higher education
 - If subject = register in annual lottery
- Bachelor's degree in a specific field required
 - Normal across industry
 - Employer normally requires
 - Due to specialized nature of specific role
- Candidate possesses the required degree
- Must pay the prevailing wage
- Six year maximum
 - Timing to begin immigrant visa – LPR sponsorship policy?

Allied Health Professionals – TN (Canada/Mexico)

Medical Professionals

Dentist
Dietitian
Medical Lab/Technologist
Nutritionist
Occupational Therapist
Pharmacist
Physician (teaching/research)
Physiotherapist/Physical Therapist
Psychologist
Rec. Therapist
RN

Support Professionals

Accountant
Management Analyst
Computer Systems Analyst
Biochemist
Biologist
Chemist
Epidemiologist
Geneticist
Pharmacologist
Research Assistant

Allied Health Professionals – Immigrant Visa Options

- PERM (EB-2 or 3)
- National Interest Waiver (EB-2)
- Outstanding Researcher or Professor (EB-1)

Keys to Success

- Early & Open communication
- When to call immigration counsel:
 - *Case initiation*
 - *Government audit*
 - *Changes in work duties, location, or pay*
 - *Changes in organizational structure*
 - *Strike, lockout, furlough, or layoffs*
- Identify Organizational Immigration Policy
- Begin Immigration Process in Advance



Contact Information



Matthew Webster

Attorney

612.492.7234

mwebster@fredlaw.com

Thank you!

Fredrikson

Where Law and Business Meet[®]