

Making the Immigration Match for International Physicians:

What Every International Medical Graduate Resident and Fellow Needs to Know about Immigration Pathways in the U.S.

Immigration Webinar

August 22, 2024

Fredrikson

The logo for Fredrikson, featuring the name "Fredrikson" in a bold, black, sans-serif font. A red horizontal bar is positioned below the "Fredrikson" text, starting from the left and extending under the "F", "r", "e", and "d" characters.

Agenda

Overview of IMG Physician J-1 Waiver Programs & Options

IMG Physician Permanent Residence

Key Considerations & Questions

Complications of IMG Job Search

In addition to finding an ideal practice area, IMG residents/fellows also need to consider the following:

1. Timing – Many immigration processes are **time-intensive** and **time-sensitive**
2. Employer Type – Employer **type** and **location** may impact immigration options
3. Employer Sponsorship – Employer support for **nonimmigrant & immigrant**
4. Spouse/Family – Options and employer support for **spousal employment** and **family immigration options**



Overview of IMG Physician J-1 Waiver Programs

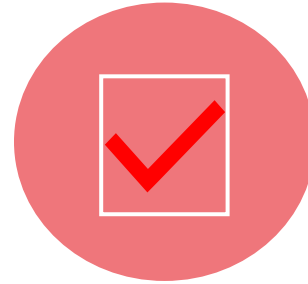
J-1 Exchange Visitor Program: A Brief Primer



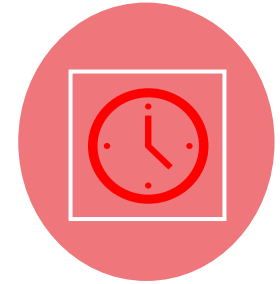
DEFINITION:
J-1
EXCHANGE
VISITOR



WHY
PHYSICIANS?



ECFMG &
DEPARTMENT
OF STATE



TIME &
ACTIVITY
LIMITATIONS

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.)

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



Bases for Physician J-1 Waivers

- Interested Government Agency (IGA) sponsorship
 - Conrad State 30 Program/State Department of Health
 - Regional Commissions (DRA, ARC, SCRC, NBRC)
 - Department of Health and Human Services (HHS)
- Exceptional hardship to USC relative
- Persecution

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

Can only receive ONE waiver – first waiver approved controls

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***


State Conrad Waiver Nuances that Matter

 Special Application Periods (“First in, First out,” 60-day filing period, phased filings, etc.)

 Primary Care vs. Specialty Care

 Primary Care: Definition & Scope

 Historical Usage Numbers & Competitiveness

 Limitations on Underserved Designations


 FLEX Policy & Competitiveness

 Non-Compete & Other Contract Language Requirements

 Departure Policies & Reporting Requirements

 Limitation on # of waivers per employer

 Additional forms/affidavits?

 Timing of program application/consideration/decision periods

Historical Waiver Usage (FY22)

- In FY22, **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	28	2	28		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	285	786	4	225	1,119
Filled all slots								24

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

Conrad State 30 Waiver Programs: Key Points

Plan Early!

- October 1 is the start of federal Fiscal Year and the opening date for most state Conrad 30 programs
- Some states (MN, NM, GA, etc.) permit early filing but don't make decisions until after 10/1
- Ideally you would match summer before end of residency/fellowship

Timing for state notifications

- Depending on the timing of the state notifications, you may have time to file another waiver if not selected in that state's Conrad 30 program

Likelihood of success?

- Understand the competitiveness of that state's Conrad 30 program & whether any other unlimited waiver programs are available

Department of Health & Human Services Clinical Waiver

Primary Care Only

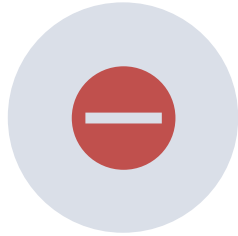
- Family practice, general pediatrics, obstetrics/gynecology, general internal medicine, or general psychiatry; and
- Board certified or board eligible in primary care discipline in the last 12 months

Previously FQHC; Now HPSA Score of 7 or Higher

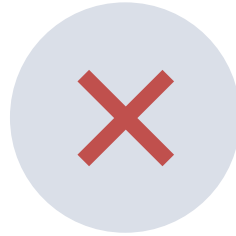
Endorsement from State Department of Health

Sliding Fee Scale

Delta Regional Authority (DRA) Waiver Program



LIMITED TO HPSA /
MUA/MHPSA/MUP
WITHIN DRA REGION



NO QUOTA



45-DAY MANDATORY
RECRUITMENT WITHIN
12 MONTHS OF SUBMISSION



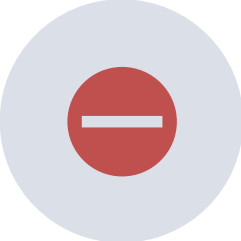
SPECIALTY & PRIMARY
CARE PHYSICIANS



<https://dra.gov/>

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Appalachian Regional Commission (ARC) Waiver Program



LIMITED TO HPSA / MUA
WITHIN ARC REGION



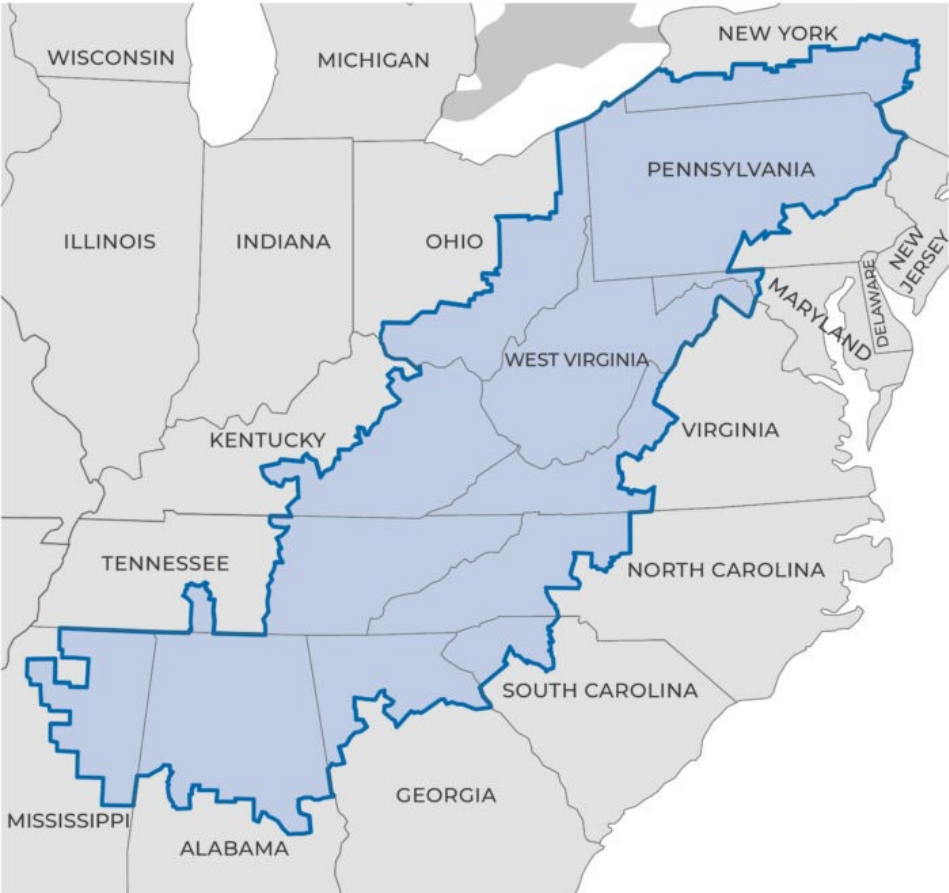
NO QUOTA



6-MONTH MANDATORY
RECRUITMENT

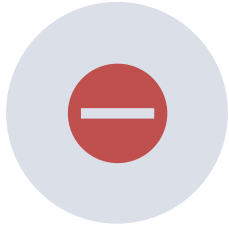


PRIMARY CARE,
PSYCHIATRISTS, AND
SUB-SPECIALTY
PHYSICIANS

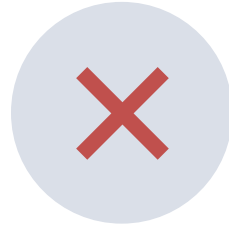


<https://arc.gov/>

Southeast Crescent Regional Commission (SCRC) Waiver Program



LIMITED TO HPSA /
MUA WITHIN SCRC
REGION



NO QUOTA



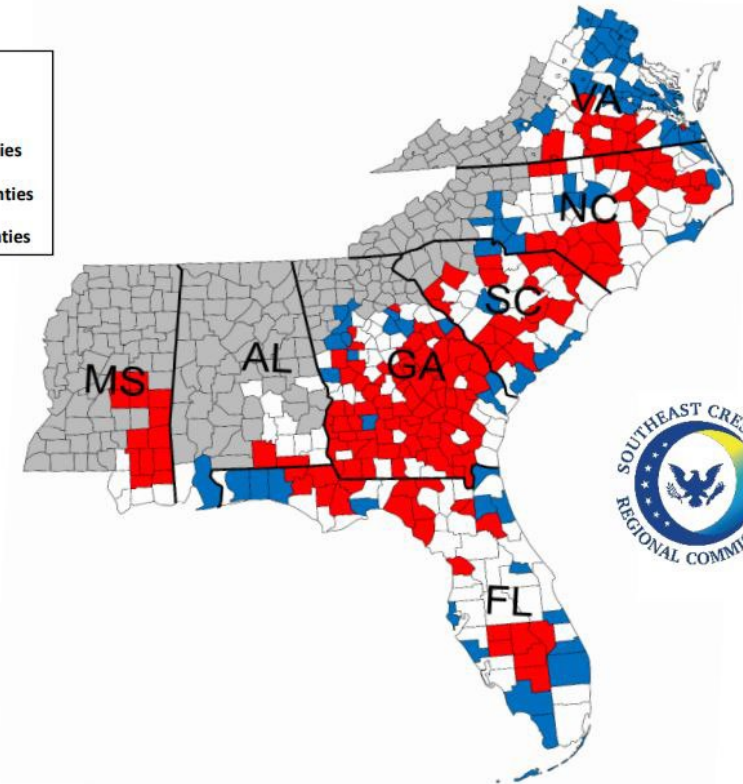
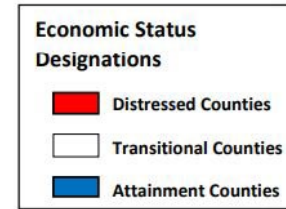
45-DAY MANDATORY
RECRUITMENT



\$3000 APPLICATION
FEE; \$3000 EXPEDITE
FEE (45 DAYS)



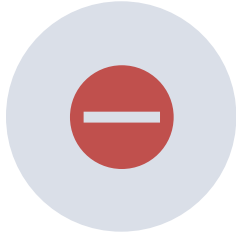
PRIMARY CARE,
PSYCHIATRISTS, AND
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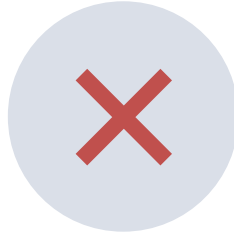
https://scrc.gov/sites/default/files/2024-07/fy24_scr regional_map.pdf

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Northern Border Regional Commission (NBRC) Waiver Program



LIMITED TO HPSA / MUA
WITHIN REGION
(ME, NH, NY, VT)



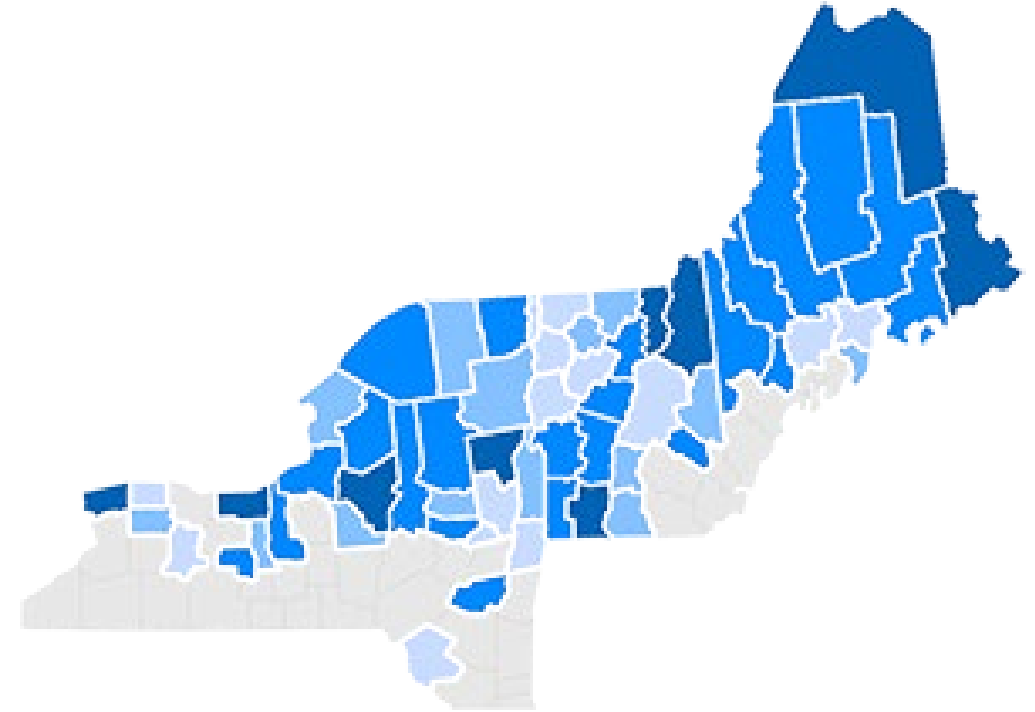
NO QUOTA



6-MONTH MANDATORY
RECRUITMENT



PRIMARY CARE,
PSYCHIATRISTS, AND
SUB-SPECIALTY
PHYSICIANS



<https://www.nbrc.gov/>

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 (preferably at least USCIS I-612 Receipt Notice)
- 3-year H-1B employment obligation



H-1B Process

- Nonimmigrant Visa Status
- 6-Year Maximum*
- Mandatory 3-Year H-1B Obligation
 - Except in extenuating circumstances
- Two-Step Process
 - Labor Condition Application with DOL
 - H-1B Petition with USCIS



Family Considerations

- J-2 two-year home residency requirements
 - J-1 waiver covers J-2 dependents
 - Exception for death, divorce, child over 21
 - If fulfilling home residency requirement, each individual must complete physical presence in home country
 - Individual present in both J-1 and J-2 status requires two waivers
- Spouse Employment Authorization
 - Dependent EAD
 - Independent work authorized status

Department of Health & Human Services Research Waiver

For individuals with highly engaged research scholarship within their field of interest or high priority to the agency

Program and activity engaged in should serve the national or international interest

Peer reviewed by NIH

Requires research component to position and at an institution engaged in research

Can take 2+ years for review

Exceptional Hardship Waiver

- Hardship must be to US citizen or lawful permanent resident spouse or child
- Evaluate hardship if relocate or separate
- Must be beyond normal hardship expected from temporary relocation or separation
- Consider country conditions, medical conditions, financial circumstances
- Process:
 - Filed with USCIS.
 - If recommended DOS must recommend.
 - USCIS issues final approval.
- Timing & Travel considerations: 18-24 months for adjudication

Persecution Waiver



Demonstrate persecution based on race, religion, or political opinion



Persecutor must be government or group government is unwilling or unable to control



Standard: “Would be subject” – higher standard than asylum



Process:

Filed with USCIS

If recommended DOS must recommend

USCIS issues final approval



Timing & Travel considerations: 18-24 months for adjudication

Waiver Alternatives

Alternative Options to work without securing a waiver:

- Canadian citizens and H1B visas
- O1 Extraordinary Ability
 - 3 of 10 regulatory requirements showing extraordinary ability in the field of endeavor (research focus)
 - Totality – how in sum your accomplishments establish working in the top of the field
 - Must secure the visa abroad

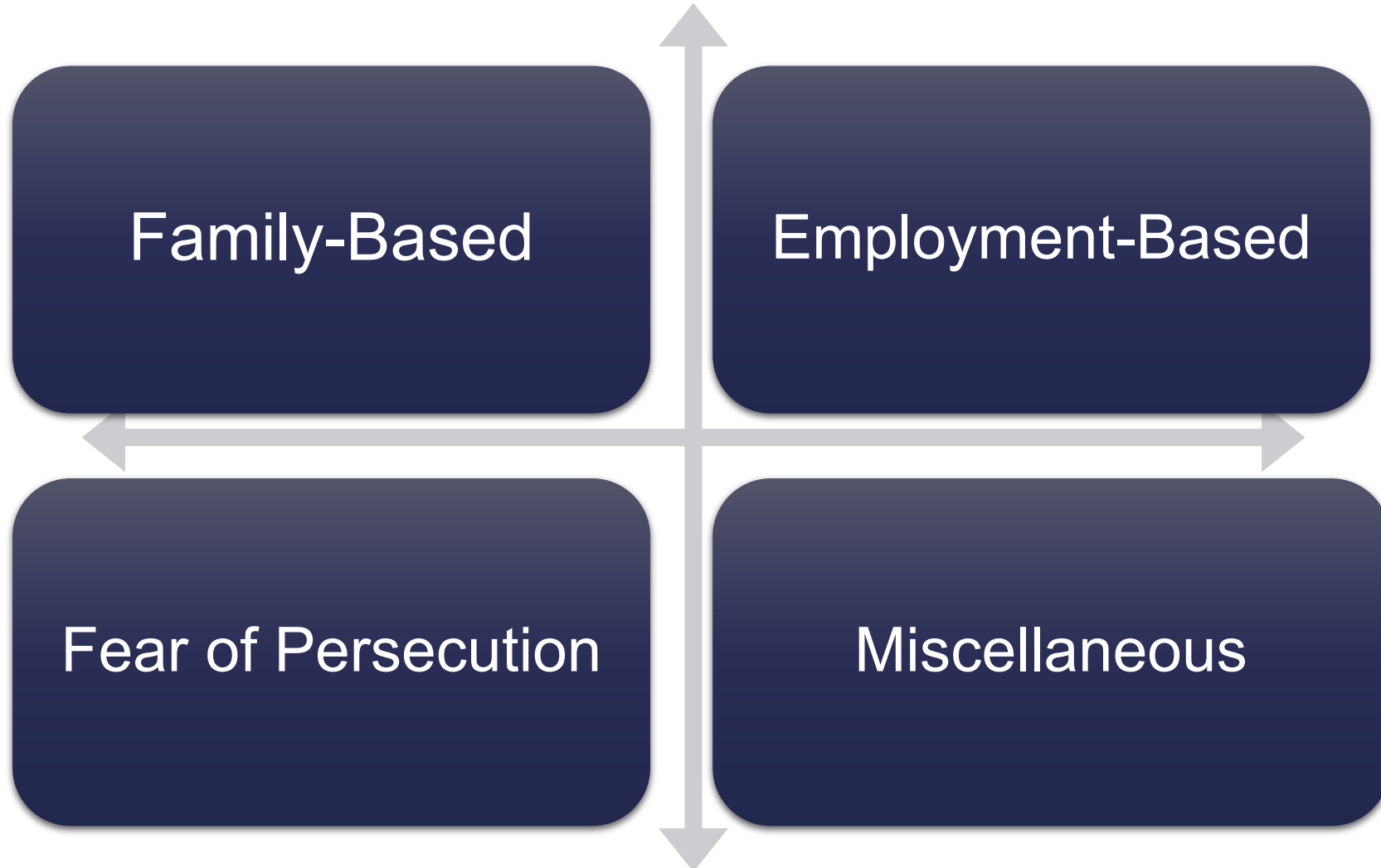
TN (no clinical work)

E2

TPS/Asylum

IMG Physician Permanent Residence

Basic Strategy Options for Permanent Residence



Permanent Resident Options



1. PERM Labor Certification



2. Physician National Interest Waiver (PNIW)

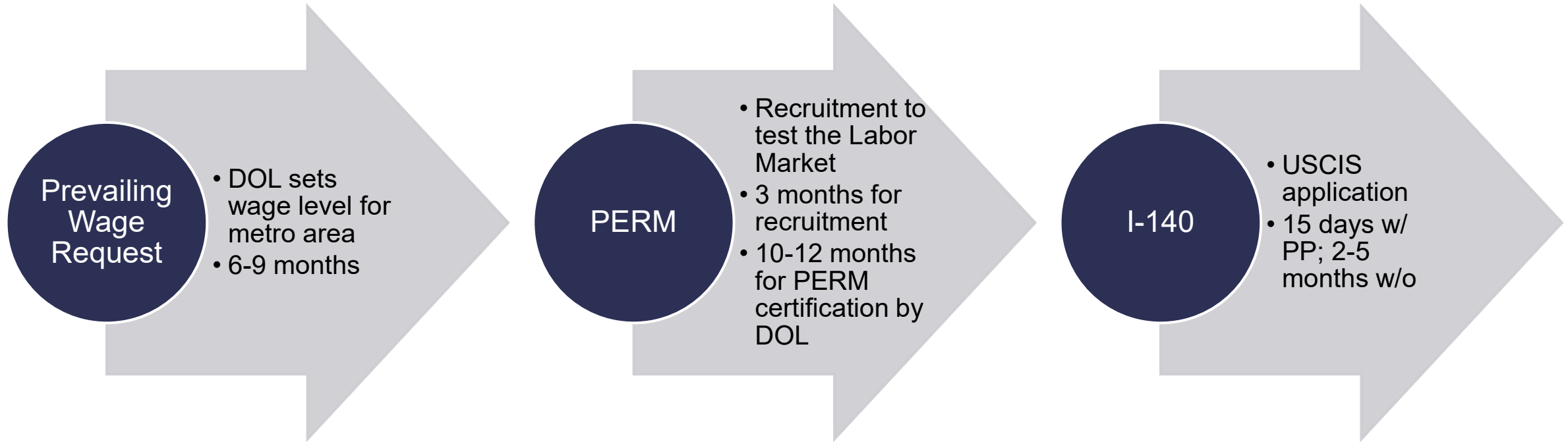


3. EB-2 NIW



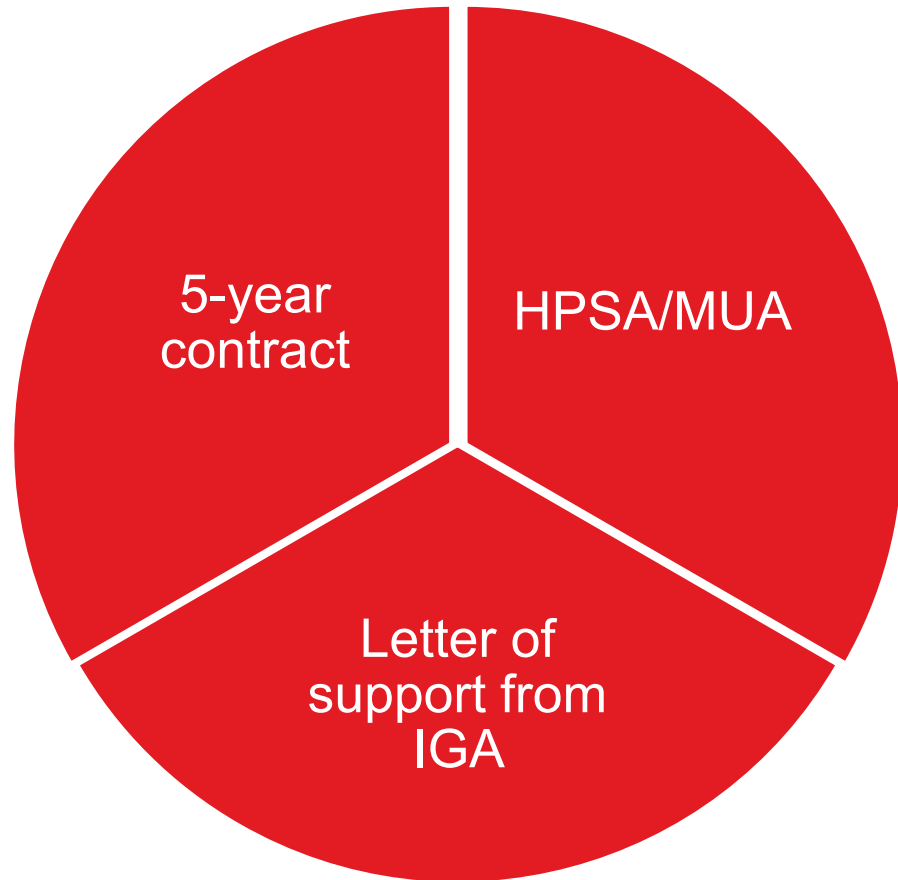
4. EB-1

PERM Labor Certification Process



- Tied to sponsoring employer
- Success dependent on test of labor market

Physician National Interest Waiver (PNIW)



- Permits early green card application (EAD/AP card)
- H-4 Spouse EAD Option
- Earliest priority date (essential for Indian and Chinese physicians)
- Portable between employers

National Interest Waiver (NIW)

- Demonstrate work is in the U.S. national interest
- Traditionally focused on nationally beneficial research where employee is advancing field to a greater degree than others
- EB-2 preference category
- No recruitment required
- Self-petition option
- Premium processing for decision in 45 days
- Discretionary case-by-case decision by the agency
- H-4 spouse EAD option

Outstanding Researcher (EB-1B)

- Focus is on excellence of the physician
 - Requires meeting 2 of 6 categories
 - International recognition of outstanding achievements in field
 - Usually research focused: Publications, original research, awards, judging, leadership roles, high salary, international recognition.
- EB-1 preference category
- No recruitment required
- Employer sponsored petition
- Premium processing decision in 15 days
- Discretionary case-by-case decision
- H-4 spouse EAD option



Monthly Visa Bulletin

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01NOV22	01FEB22	C	C
2nd	15MAR23	01MAR20	15JUL12	15MAR23	15MAR23
3rd	01DEC20	01SEP20	22OCT12	01DEC20	01DEC20
Other Workers	01DEC20	01JAN17	22OCT12	01DEC20	01MAY20
4th	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
Certain Religious Workers	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
5th Unreserved (including C5, T5, I5, R5)	C	15DEC15	01DEC20	C	C
5th Set Aside: Rural (20%)	C	C	C	C	C
5th Set Aside: High Unemployment (10%)	C	C	C	C	C
5th Set Aside: Infrastructure (2%)	C	C	C	C	C

**September 2024 Final Action*

- DOS updates the Visa Bulletin monthly based on available visa numbers
- Can advance or retrogress
- Determines when individual can file for permanent residence (“green card”) based on country of birth, not nationality

Making the Match: Key Considerations & Questions

- Do you sponsor physicians for waivers?
 - How many, and anyone I can speak with before accepting an offer?
- What retention programs/initiatives do you have?
- Do physicians stay on after the 3 years?
- Do you sponsor physicians for permanent residence? When?
- Do you support paying for physician families?



Presenters



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Thank you!

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