



AMERICAN OSTEOPATHIC ASSOCIATION

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U.S. VISAS

Disclaimer: this document is intended as informational and is only a starting point on research for U.S. visa information. The laws and regulations pertaining to visas may change over time. Those who are interested in obtaining U.S. visas may want to consult with their own legal counsel.

H-1B Temporary workers of distinguished merit and ability visa

The H-1B allows foreigners, in specialty occupations to temporarily work for U.S. employers. H-1B work-authorization is strictly limited to employment by the sponsoring employer. Additionally, for the H-1B visa the employer is the applicant's sponsor.

If a foreign worker in H-1B status quits, or is dismissed from the sponsoring employer, the worker can find another employer, apply for a change of status to another non-immigrant status, or must leave the US.

The current law limits the number of aliens who may be issued a visa or otherwise provided H-1B status to 65,000. However, any foreigner who works at a university or non-profit research facility is excluded from this number.

H-1B Eligibility

H-1B is available to a qualified person to temporarily work in a specialty occupation for who a labor condition application has been certified as filed with the U.S. Department of Labor.

A qualified person is one who:

- Has an appropriate degree for the occupation;
- Has education, specialized training, and/or progressively responsible experience equivalent to the required degree in positions directly related to the specialty; and
- Holds an unrestricted state license or registration authorizing practice of the specialty occupation in the state of intended employment (no license is needed for teaching or research).

Terms of Admission and Stay

The H-1B applicant's stay must be temporary. Those who hold an H-1B status may have immigrant intent; filing of a labor certification or immigrant petition will not defeat any application for initial or continued H-1B visa status.

The time limit on H-1B status is a maximum of six years. The applicant may file a petition for a one-time AC21 extension for one year (I-140 petition). Additionally, a new six-year period of stay may be allowed once the foreign worker has spent one year outside the United States after the initial entry.

A specialty occupation is an occupation that requires:

- Theoretical and practical application of a body of highly specialized knowledge; and
- Attainment of a bachelor's degree or higher in the specific specialty

Physicians (DO and MD) are qualified under the specialty occupation requirements for H-1B classification. However, graduates of a foreign medical school are limited:

- They must pass the FLEX or the designated equivalent (NBME or USMLE), or

- Their activities are restricted to research, teaching, or both, at/or for a public agency or nonprofit organization
- They must pass the English proficiency exam given by the ECFMG

This limitation does not apply to foreign graduates of American medical schools. An international graduate of a medical school in the United States, who is in all respects qualified for nonimmigrant classification, is eligible to participate in a medical residency in the United States. In addition, any physicians who is to perform direct patient care, needs to have any license or other authorization required by the state of intended employment.

A Labor Condition Application Filing is required:

To employ an alien in a specialty occupation the H-1B petitioner must satisfy the Department of Labor's (DOL) regulations for every geographic area where the alien will work. The H-1B petitioner demonstrates its current and prospective compliance with DOL's regulations by submitting a DOL-Certified Labor Condition Application (LCA) (DOL Form ETA 9035) with the H-1B petition.

H-1B Filing Procedure

Step 1: File the LCA (Form ETA 9035) with the DOL. The LCA must be certified as accepted before the H-1B petition is filed with the USCIS.

The LCA must contain the following four attestations (see <http://222.lca.doleta.gov>)

1. The wage offered is at least an "actual wage";
2. Working conditions offered will not adversely affect workers similarly employed;
3. There is no strike or lockout; and
4. Notice of the LCA has been given and will be given the employees by notice to their union, or, if none, by prominent posting.

Step 2: File H-1B petition with the USCIS. (see <http://www.uscis.gov> – Form I-129). For initial H-1B, complete and file the following:

- USCIS Form I-129 with H Supplement
- Certified LCA (DOL Form ETA 9035)
- Form G-28 (if a lawyer is representing the petitioner)
- Filing fee per 8 C.F.R. § 103.7(b)
 - An *additional filing fee of \$1,500* has been imposed on all new H-1B petition and H-1B extension filings. (Employers of fewer than 26 people need pay only an extra fee of \$750.) Further, an "anti-fraud" fee of \$500 is imposed upon all H-1B filings, thus adding a combined total of up to \$2,000 to the basic I-129 petition filing fee.
- Employer's supporting letter and documentation, demonstrating eligibility for H-1B status
- Any written contract between employer and alien (if none, include terms of agreement in supporting letter)

Step 3: Once the petition is approved by USCIS, the H-1B visa is obtained at a U.S. consulate abroad with the following documents:

- State Department Form DS-156 (family members usually apply for H-4 status)
- Form DS-157 for each male applicant aged 16 to 45
- I-797 showing approval of H-1B petition
- Copy of the original H-1B petition filed with the USCIS
- Letter on letterhead of the petitioning H-1B employer, confirming the temporary position remains available to the visa applicant and reiterating the nature and terms of the temporary employment
- Application fee plus reciprocity fee, if applicable (see <http://www.usembassy.state.gov>)
- Photograph of each applicant over the age of 16
- Passport for each applicant

J-1: Exchange Visitor Program Visa

The "J" visa is for educational and cultural exchange programs designated by the Department of State, Bureau of Consular Affairs. Participants include professional trainees in the medical and allied fields; and international visitors coming for the purpose of traveling, observing, consulting, conducting research, training, sharing, or demonstrating specialized knowledge or skills, or participating in organized people-to-people programs.

J-1 Eligibility

J-1 exchange visitors are subject to the general conditions of admission applicable to all non-immigrants. Additionally, they are subject to the following requirements:

- Have a foreign residence to which they intend to return; and
- Qualify for one of the many J-1 categories. One of these categories specifically includes foreign medical graduates (FMGs).

J-1 Category: Foreign Medical Graduates (FMG)

FMGs are defined as foreigners who have completed medical school and who are qualified to practice medicine in a foreign state.

An FMG seeking to come to the United States to pursue an internship, residency, specialized clinical training, may do so in J-1 status under the sponsorship of the Educational Commission for Foreign Medical Graduates (ECFMG). Specific information and forms to obtain ECFMG sponsorship are available from the Director, Division of Special Programs, ECFMG, 3624 Market Street, Philadelphia, PA 19014, phone: (215)386-5900; fax: (215)386-9196; Internet home page: www.ecfm.org. See, e.g., ECFMG, Exchange Visitor Sponsorship Program: Initial Application Instructions and Information, available at www.ecfm.org/evsp/index.html (last visited Aug. 24, 2009).

An FMG will only be granted a J-1 visa by meeting the following requirements:

1. The school that is offering the medical training or education must be accredited by a body approved for this purpose by the Secretary of Education and must agree in writing to admit the FMG and assume responsibility for the exchange visitor's education and training. Bodies approved include Commission on Osteopathic College Accreditation (COCA) and the Liaison Committee for Medical Education (LCME). Additionally, any participating hospital (GME program) must join in the agreement.
 - a. NOTE: an FMG who is a J-1 holder may only work if it is an integral part of the residency program. Moonlighting at other medical facilities or emergency rooms is not allowed.
2. The exchange visitor must be a graduate of a school of medicine accredited by a body approved for this purpose by the Secretary of Education, have passed parts I and II of the National Board of Medical Examiners (NBME), osteopathic equivalent or other equivalent exam.
3. Be competent in oral and written English to be adaptable to the educational and cultural environment at the place of study or training.
4. Is qualified to participate satisfactorily in the program for which the individual is coming to the United States.
5. The exchange visitor must have made a commitment to return to his home country upon completion of the exchange visitor program, and his home country must have provided written assurance that there is a need in that country for people with the skills that the exchange visitor has acquired in the U.S.
6. The exchange visitor must furnish the U.S. Department of Homeland Security (DHS) each year with an affidavit that he is in good standing with the program and will return to his home country when the program has been completed.

A J-1 nonimmigrant's stay in the United States to participate in a graduate medical education or training program is limited to the time typically required to complete such a program, up to a maximum of seven years. But a J-1 nonimmigrant may stay longer if the noncitizen demonstrates, to the satisfaction of the Department of State, that the country to which the individual will return has an exceptional need for a person with additional education or training.

All J-1 visa holders are subject to the two-year home residence requirement. A foreign medical graduate is barred from reapplying for another visa until establishing that he or she has resided and been physically present in the country of his/her nationality or last place of residence for at least two years following departure from the United States.

The visa holder may obtain a waiver of the two-year home residence requirement. Be aware, physician waivers are a constantly changing area of law and are very difficult to obtain. Generally, the following are situations in which an exchange visitor may seek a waiver:

1. Undue and unanticipated hardship to the exchange visitor's family in the U.S.
2. Upon request of an interested government agency;
3. When the exchange visitor faces persecution in his home country;
4. When the exchange visitor's home country declares that it does not object to the waiver;
5. Medical practice for an interested government agency; and
6. Medical practice in an underserved area.

Changing Immigrant Status

A change from J-1 status to another nonimmigrant status is limited for FMGs to the H-1B status (Form I-539). Frequent changes are suspect and are not likely to be granted. Most J-1 visa holders must still fulfill the two-year home residence requirement, or obtain a waiver of the requirement, before being granted a different nonimmigrant or immigrant status

J-1 Filing Procedure

Step 1: The individual must apply for admission through a J-1 program designated by the United States' State Department Exchange Visitor Program and Designation Staff, located within the State Department's Bureau of Educational and Cultural Affairs. For physicians (DO and MD) the program is sponsored by the ECMFG.

The sponsoring agency or private organization's Responsible Officer (RO) will issue and sign a Form DS-2019 (Certificate of Eligibility for Exchange Visitor Status), which describes the period and terms of the proposed visit.

Step 2: The potential J-1 exchange visitor must demonstrate to the satisfaction of the consular officer that he or she has:

- A properly executed Form DS-2019;
- Sufficient funds or arrangements to cover his or her expenses;
- Sufficient knowledge of the English language to undertake the program;
- A residence abroad that the alien has no intention of abandoning.

Filing requirements:

- DOS Form DS-156
- DOS Form DS-157 (for males 16 - 45)
- DOS Form DS-158 (supplemental form required for foreign students)
- DOS Form DS-2019 issued by student's academic institution
- Documentation providing evidence of foreign student's intent to return to home country at end of studies, and proof of financial resources sufficient to remain in United States without need for employment
- Valid unexpired passport with at least six months of remaining validity at time of application for principal applicant and each accompanying family member
- Passport-sized photograph.
- \$100 visa application fee
- Visa reciprocity fee

- See http://travel.state.gov/travel/abroad_embassies.html for the website of the consulate with jurisdiction over the applicant's home and <http://travel.state.gov/visa/reciprocity/index.htm>.

F-1: Student Visa

Foreign academic students can apply for a temporary student visa that expires at the end of their education. The student must have a residence in a foreign country that they intend to return to. The student must be qualified to pursue a full course of study at an established college or university or other academic institution that agrees to make reports to the U.S. Department of Homeland Security (DHS) regarding the attendance of the student. The visa classification symbol for an academic student is F1.

Admission to an Academic Program

A foreign student must contact the academic institution before contacting any government agency. The school must determine that the student intends to undertake a full course of study and possesses the requisite academic qualifications and financial resources. If so, the school will issue a certificate of eligibility (Form I-20) verifying that:

- The student has submitted a written application for admission to the academic program;
- The school has evaluated the student's application, transcripts, or other records of courses taken, proof of financial responsibility, and other supporting documents; and
- The student meets all the standards of admission to the academic program and has been accepted for enrollment in a full course of study.

Applying for the F-1 visa at a U.S. Consulate

To obtain an F-1 visa from a U.S. consulate, the applicant must complete and submit State Department Forms DS-156 and DS-158. Male applicants between the ages of 16 and 45 will also have to complete and submit Form DS-157.

Along with these forms, the applicant must also:

- Present the I-20 certificate issued by the academic institution.
- The student must also present proof of financial resources (usually an affidavit of support (Form I-134) executed by a relative) and establish that he or she is destined to the school specified in the Form I-20;
 - Financial resources must be sufficient to cover the full course of study, not just the applicant's initial year. In addition to documenting the applicant's and his or her family's personal resources, an applicant should document any financial aid from: (1) the school in the form of a scholarship, fellowship, assistantship, grant, or loan; (2) the student's home government; (3) private organizations or institutions; or (4) others who are not immediate family.
- Show a foreign residence to which he or she intends to return;
- Show intent to enter the United States only temporarily, overcoming the presumption of immigrant intent that attaches to most nonimmigrant visa applicants.
- Be a "bona fide" student, qualified for and intending to pursue a full course of study. Full course of study may be satisfied by some of the following situations:
 - Post-graduate study or post-doctoral study or research at a college or university, certified by a designated school official as a full course of study.
 - On-campus employment, if pursuant to the terms of a scholarship, fellowship, or assistantship, is deemed to be part of the academic program of a student otherwise taking a full course of study.

Terms of Admission and Stay

- F-1 visa applicants who have not yet made a decision regarding which school they wish to attend may enter on B-2 visas and apply to change their status to F-1 after school selection.
- No specific time limits are imposed on F-1 status. F-1 students are typically admitted for the period of time it takes the student to complete the described academic program, or "Duration of Status," as long as a full course of study is maintained during the F-1 period of stay.

- The School must estimate the time an average foreign student needs to complete a course of study. It may add a grace period of no more than one year.

Employment Authorization

Generally, an F-1 student may be authorized to accept part-time employment:

- On-campus, if it does not exceed 20 hours per week;
- Off-campus, due to severe economic hardship, if it does not exceed 20 hours per week;
- As an intern at an international organization; or
- For the purpose of curricular or optional practical training.

Unless employment is specifically authorized, accepting employment is a violation of F-1 status, rendering the student removable. Procedurally, a student applies for off-campus or practical or optional training work authorization by submitting Form I-538 to the DSO. The DSO decides whether to recommend the work authorization.

Optional practical training (OPT) is an ideal way for F-1 students to stay in the United States for up to 29 months after they finish their degree. F-1 students need not have secured employment before obtaining OPT. Nor need they obtain prior permission from USCIS, other than to obtain the I-765 Employment Authorization Card. Moreover, F-1 graduates granted OPT can switch between employers during their OPT period without first obtaining USCIS approval.

Eligibility and Procedure to Gain Admittance as an F-1 Student

Essential Items for any F visa application submitted to a U.S. Consulate:

- DOS Form DS-156
- DOS Form DS-157 (for males 16 - 45)
- DOS Form DS-158 (supplemental form required for foreign students)
- USCIS Form I-20 issued by student's academic institution
- Documentation providing evidence of foreign student's intent to return to his or her home country at the end of studies, and proof of financial resources sufficient to remain in United States without need for employment
- Valid unexpired passport with at least six months of remaining validity at time of application for principal applicant and each accompanying family member
- Two (2) passport-sized
 - See the State Department website on photograph standards at http://travel.state.gov/passport/pptphotos/composition_checklist.html.
- \$100 visa application fee
- Visa reciprocity fee
 - See http://travel.state.gov/travel/abroad_embassies.html for the website of the consulate with jurisdiction over the applicant's home and <http://travel.state.gov/visa/reciprocity/index.htm>.

Canada and Mexico - Border Commuter Students

The "Border Commuter Student Act of 2002", created a new visa classification for Canadian and Mexican citizens and residents who seek to commute to the United States for the purpose of full-time or part-time study at a DHS-approved school. These academic students are permitted to study on either a full-time or part-time basis.

Border Student Eligibility and Requirements

- A "border commuter student" is a national of Canada or Mexico who is admitted to the United States as an F-1 nonimmigrant student enrolled in a full course of study in an approved school located within 75 miles of a U.S. land border.

- A DSO may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study, as long as the reduced course load is consistent with the student's approved course of study
- The student must maintain residence in his or her country of nationality, and seek admission to the United States at a land border port of entry.
- The student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or professional objective, albeit on a part-time basis.

Terms of Admission and Stay

- Unlike other F-1 students, border commuter students are admitted for a date certain. The DSO is required to specify a completion date on the Form I-20 that reflects the actual semester or term dates for the commuter student's current term of study.
- A new Form I-20 will be required for each new semester or term that the border commuter student attends at the school.
- These special rules do not apply to a national of Canada or Mexico who is: (a) residing in the United States while attending an approved school as an F-1 student; or (b) enrolled in a full course of study.

Employment

- A border commuter student may not be authorized to accept any employment in connection with his or her F-1 student status, EXCEPT for curricular practical training or post-completion optional practical training.