

Opportunities Open for H-1B FMGs

By Reuben S. Seguritan

Foreign Medical Graduates (FMGs) should understand the options now available to them under current immigration rules. In the main, the law allows H-1B FMGs to enter the US to render direct patient care, a opportunity once reserved only for FMGs under the J-1 status.

Previously, H-1B FMGs were permitted entry to the US primarily to teach and conduct research for research or public or nonprofit private educational institutions. This general restriction applied only to medical graduates of foreign universities, not to aliens who graduated from US schools.

H-1 FMGs must meet the following conditions if they will perform direct patient care:

- (a) They should have passed Parts 1 & 2 of the FLEX, or equivalent exams designated by the Secretary of Health and Human Services such as the National Board of Medical Examiners certifying examinations (Parts I, II, & III) and the US Medical Licensing Examination (Steps 1,2 & 3);
- (b) They should have passed English proficiency test given by the Educational Commission for Foreign Medical Graduates (ECFMG);
- (c) They should have a full and unrestricted license to practice medicine in a foreign state; and
- (d) They should have a license or authorization to practice medicine if the state of intended employment requires such.

The first three conditions stated above are not required of graduates of US medical schools. They must, however, obtain a state license.

The 1990 Act has imposed a numerical limitation of 65,000 for all H-1B petitions and this includes alien doctors. These petitions, as all other H-1B petitions in general, are also subject to the labor condition process, that is, a labor condition approval must first be obtained from the US Department of Labor. Procedures do not at all differ from other H-1B petitions. A petition for H-1B status must be filed with the INS supported by an approved Labor Condition Application (LCA).

Now that H-1B FMGs may go into internship or residency and engage in employment opportunities, the prospect for this category becomes even more attractive than the J-1 visa which, previously, was the only category which allowed for such options. While H-1B FMGs may extend their stay to a total duration of six years, J-1 FMGs may only stay for the duration of their training programs after which they must comply with a two-year foreign residency requirement.

At present, it is understandable why J-1 FMGs still outnumber those under an H-1B. For one thing, the amendment has just been introduced and many employers have not yet been made aware of the clear advantages. But more importantly, even as some have known of the existing opportunities, employers still opt for the J-1 exchange visitors program for its more familiar and less cumbersome procedures.

There are only two major requirements for obtaining the J-1 status: First, FMGs must have obtained a sponsor; and secondly, they must pass only Steps 1 & 2 of the USMLE.

All in all, it seems FMGs may have more room to maneuver under an H-1B status than under a J-1, despite their more complex requirements and procedures. A J-1 visa may practically close off all options when the exchange program is up. A change of status, should FMGs change their mind and decide to stay, is hardly possible. J-1 FMGs must, with very rare exceptions, return home and comply with the two-year foreign residency requirement, as soon as their program expires.

Given the residency, internship and employment opportunities now available for H-1B FMGs which once have been reserved for the J-1 status, it is clear that the H-1B status may prove more beneficial to FMGs.