

How to Work as a Neurosurgeon in the US if you are a Foreign Medical Graduate by David Leopold

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There are different visa options for neurosurgeons that trained outside of the United States and want to practice here. Immigration attorney David Leopold goes into detail on what you need to do to work in the US if you trained somewhere else and then provides answers to the most frequently asked questions.

Getting Started

If you are a Foreign Medical Graduate (FMG) who received your medical degree outside the U.S. you must complete the following four steps to practice in the U.S.:

1. ECFMG Certification

You must receive certification from the Educational Commission for Foreign Medical Graduates (ECFMG). The ECFMG assesses the readiness of international medical graduates to enter US residency or fellowship programs. The process for certification is described in the *ECFMG 2009 Information Booklet* which is available at www.ecfmq.org.

2. USMLE Step1 and Step 2

Applicants for ECFMG certification must first pass Step 1 and Step 2 of the United States Medical Licensing Examination (USMLE). The USMLE is the three-step examination for medical licensure in the United States. It provides a common system to evaluate candidates for medical licensure and is sponsored by the Federation of State Medical Boards of the United States, Inc. (FSMB) and the National Board of Medical Examiners (NBME).

FMGs taking Steps 1 and 2 of the USMLE register with ECFMG which processes your application, determines your eligibility, and notifies you of the outcome of your application. If you apply to take the USMLE, you are required to read the USMLE *Bulletin of Information* on the USMLE website at www.usmle.org.

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ECFMG requires that applicants pass the USMLE Steps 1 and 2 within a 7 year period. Step 2 of the USMLE has two separately administered components, the Clinical Knowledge (CK) component and the Clinical Skills (CS) component. Thus, once an applicant passes a Step, s/he will have 7 years to complete the other Step(s) required for ECFMG certification. To be eligible for Step 1, Step 2 (CK and CS) you must be a graduate of a medical school outside the U.S. or Canada that is listed in the International Medical Education Directory (IMED).

3. USMLE Step 3

To be eligible for Step 3, FMGs must have passed Steps 1 and 2 and must be certified by the ECFMG. The USMLE program recommends that for Step 3 eligibility, licensing authorities require completion, or near completion, of at least one postgraduate training year in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA). Eligibility for state licensure requires that you complete Step 3 of the USMLE and to do so, you must meet the Step 3 requirements set by the state licensing authority in the state where you intend to practice medicine. FSMB serves as the registration entity for all Step 3 applicants.

For complete information on Step 3 eligibility requirements, contact the FSMB at P.O. Box 619850, Dallas, Texas, 75261-9850 or the medical licensing authority in the state in which you intend to practice. A complete list of the medical licensing authorities is available the *USMLE Bulletin of Information* at page 35.

4. Residency Program Requirements

After ECFMG certification, if you wish to become board eligible or board certified by the American Board of Neurological Surgery (the "ABNS"), you must complete an ABNS accredited neurosurgical residency training program. *You will have to complete a neurosurgery residency program in the US regardless of the training you have received overseas.* **If you have not completed a US residency, you will not be ABNS Board Eligible and may be limited in your job opportunities as a result. If you have completed a neurosurgery residency program outside of the United States, you may wish to contact the ABNS to determine whether there is a possibility of receiving any credit for your prior training towards the completion of an ABNS-accredited neurosurgery residency program.**

Working and Living in the U.S.?

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As an FMG, your admission to the U.S. is governed by number of governmental departments and agencies, including the U.S. Department of State (DOS), travel.state.gov, the U.S. Department of Labor (DOL), www.dol.eta.gov, and three bureaus of the U.S. Department of Homeland Security (DHS), www.dhs.gov: U.S. Citizenship and Immigration Services (USCIS) www.uscis.gov, U.S. Immigration and Customs Enforcement, (ICE) www.ice.gov, and U.S. Customs and Border Protection (CBP), www.cbp.gov.

Generally, if you are a foreign citizen, entering the U.S. as a nonimmigrant (temporary) or immigrant (Lawful Permanent Resident (LPR) or “Green Card” holder) requires several steps.

First, you, your employer or a relative, must file a petition with the USCIS to be classified in one of the nonimmigrant or immigrant visa categories. If the USCIS approves the petition, you must to go to a U.S. embassy or consulate overseas to apply for a nonimmigrant (temporary) or immigrant (permanent) visa.

Second, upon arrival at a U.S. Port of Entry, the visa is presented to the CBP inspector who will determine whether you can be admitted to the U.S.

Third, if you are coming to the US as a nonimmigrant (i.e. temporarily), the inspector can authorize your admission for any length of time up to the expiration date on the visa. If you are coming to the US as an immigrant, the inspector can issue LPR or “green card” status. Note: under certain circumstances USCIS may adjust the status of a nonimmigrant in the U.S. to LPR status.

What Temporary and Permanent Visa Options Are Available to You as a Foreign Medical Graduate?

To be admitted to the U.S. to participate in Graduate Medical Education (GME), you need a visa that permits employment or training. Most of the FMGs enter the U.S. on a J-1 Exchange Visitor visa or an H-1B Specialty Occupation visa. You cannot sponsor yourself for a J-1 or any other work visa, such as an H-1B or an O. All work visas require program or employer sponsorship. The ECFMG sponsors FMGs for J-1 visas and employers sponsor FMGs for H and O visas.

J-1 Exchange Visitor Program

The most common visa used to participate in U.S. GME programs is the J-1 visa. To apply for a J-1 visa, you must:

1. Have passed the USMLE Step 1 and Step 2,
2. Have a valid ECFMG Certificate at the time of commencement of training,
3. Hold a contract or an official letter of offer for a position in a program of graduate medical education or training that is affiliated with a medical school, and
4. Provide a statement of need from the Ministry of Health of the country of last legal permanent residence regardless of country of citizenship. This statement must provide assurance that the country needs specialists in the area in which you will receive J-1 training—neurosurgery. It also serves to show that you intend to return home for 2 years when you finish your training.
5. The ECFMG generally sponsors J-1 exchange visitors for a 7 year period.

Two-Year Home Residency Requirement

If you have been admitted to the U.S. in J-1 classification, you are obligated to return to your country of residence for two years before you will be eligible to change your status to H-1B temporary worker or to obtain LPR (“green card”) status in the U.S. It is not always possible to time the receipt of a waiver with the completion of a residency program. Some FMGs make other interim arrangements while waiting for waiver processing. These include, obtaining an O visa (if they can prove they have an employer sponsor and can prove they qualify as an alien of extraordinary ability; completing a fellowship in the U.S. in J-1 status or in Canada; or returning home pending completing of the waiver process in the U.S.

Waivers of the J-1 Two-Year Home Residency Requirement

There are several waivers of the two-year residency requirement which relieve the FMG two year home residency requirement:

Persecution. You must demonstrate that you will suffer from persecution in your home country or country of last legal permanent residence. For example, a Sudanese physician, who also has been active in the political opposition to the government of Sudan, and can demonstrate s/he will suffer persecution on account of his or her political activity, may qualify for a waiver;

Hardship. You must demonstrate that fulfillment of the residency requirement would result in exceptional hardship to your U.S. citizen or LPR spouse and/or children. For example, a physician whose U.S. citizen spouse suffers from a rare kidney ailment that cannot be treated in the physician’s home country may qualify for a hardship waiver;

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Interested Government Agency (IGA). Sponsorship for a waiver by an IGA which is interested in the physician's continued employment in the U.S. The Department of Health and Human Services (HHS) and the Department of Veterans Affairs (VA) are U.S. agencies that currently sponsor FMGs for J-1 waivers. In addition, through the Conrad-30 program, state departments of public health may sponsor up to 30 J-1 primary care physicians per year for waivers to serve in Health Professional Shortage Areas (HPSAs) or Medically Underserved Areas (MUAs). Some states also sponsor sub-specialists upon a showing of need in the service area. Generally, the state departments of health administer the Conrad-30 program within each state. While all states give priority to the placement of primary care physicians (ob-gyn, psychiatry, family medicine, internal medicine, pediatrics) some states also place sub-specialists, including neurosurgeons, in HPSAs and MUAs. The particular policy of each state can be determined through consultation with its J-1 Conrad-30 waiver policy. States that do place sub-specialists, such as neurosurgeons, generally have very specific requirements for the sponsoring health care facilities. If you are considering applying for a Conrad-30 waiver, it is critical to first determine whether your potential employer will qualify as a sponsoring health care facility. The rules governing this process differ from state to state and it is advisable to first consult an attorney familiar with the Conrad-30 waiver process.

H-1B Specialty Occupation Visa

The H-1B visa is for temporary workers in specialty occupations who hold professional-level degrees. You may be eligible for an H-1B visa if you:

1. Have passed steps 1, 2, and 3 of the USMLE,
2. Have passed an English language exam, and
3. Hold a full, unrestricted state medical license in the state in which you will train.
4. The advantage of the H-1B visa is that, unlike the J-1, it does not have a two year home residence requirement. The H-1B generally allows a foreign national to enter the U.S. for professional level employment for up to six years which generally cannot be extended unless the physician remains physically present outside the U.S. for a period of not less than 1 year. This time limit can create a problem for neurosurgery residents as the residency programs generally last more than 7 years, thus requiring the resident to enter the U.S. in J-1 status and be subject to its 2 year home residency requirement. Another advantage to an H-1B visa is that unlike the J-1 visa, there is no requirement that the FMG "intend" to return to his or her home country and the end of his or her stay in the U.S. This

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permits the FMG to complete the green card process while in H-1B classification. For example, the employer of a physician may sponsor the physician for a green card while the physician is already employed in H-1B status. If the employer begins the green card process before the end of the physician's 5th year in H-1B status, and the process is not completed, but remains pending at the end of the physician's 6th year in H-1B status, the physician's H-1B status can be extended in 1 year increments, until the green card is issued or the case is denied. A physician can self-sponsor if s/he can show she is of extraordinary ability in his or her field or that the admission of the physician, without the need for employer sponsorship, is in the national interest.

O-1 Extraordinary Ability

The O visa is available to qualified physicians even if they are ineligible for H status because they are subject to the J-1 2 year home residency requirement and have neither gone home nor received a waiver. In order to qualify for an O visa, you have to demonstrate extraordinary ability in your field. This means you have to show sustained national or international acclaim through nationally or internationally recognized awards in the specific medical field, published material about your accomplishments, original contributions of major significance, peer review, or authorship of scholarly publications. For example, if you have published scholarly articles of major significance in your specialty in prestigious medical journals, served on a panel as a judge of the work of others in your field of specialization, and have work that has been cited by others in journals or academic articles, you may qualify for O-1 visa classification. Note: this is not an exclusive list. There are several other combinations of achievement which might qualify you for O-1 status.

The O-1 visa can be helpful to FMGs in several situations. First, even if you are subject to the J-1 home residency requirement, you can still qualify for an O-1 if you have a sponsoring employer and can show extraordinary ability.

Another advantage to an O-1 visa is that, unlike the H-1B, it does not require that you have passed USMLE Steps 1, 3, and 3 or obtained an ECFMG certificate. But remember, you are still required to meet the medical licensing requirements of the state in which you intend to practice medicine. Also, even if you are successful in getting O-1 status, you will still be subject to the J-1 home residency requirement until you go home for 2 years or receive a waiver.

But beware; receipt of O-1 classification does not satisfy your 2 year home residence requirement. Even if you work in the U.S. for years as an O-1 physician, you will still need to obtain a J-1 waiver or return to your country of last residence for 2 years before you will qualify for an H-1B visa or a green card.

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Whether or not an O-1 visa is a good option for you depends on your personal goals. If your long-term plan is to return to your home country, this could be a good Visa. If, however, you would like to stay in the US, this could present certain challenges in the future.

Lawful Permanent Resident (LPR) or “Green Card” status

LPR status will permit you to permanently work and live in the U.S. After 5 years you may be eligible to apply for U.S. citizenship. If you hold a temporary visa, such as an H-1B, you are not required to apply for a green card, nor does any temporary immigration status automatically lead to green card status. If you want to apply for a green card, your employer needs to initiate the process for you on the basis of a desire to employ you on a permanent basis.

How do you apply for a green card? The process generally involves 3 steps:

1. Alien Labor Certification or “PERM”

This process requires your employer to demonstrate to the DOL that there is no minimally qualified U.S. physician, in the specific field, who is able, willing, and available to fill the position.

2. Petition for Alien Worker

Once the DOL grants labor certification, your employer then files a Petition for Alien Worker with the USCIS. During this process, your employer must prove to the USCIS that it intends to hire you permanently and can pay the appropriate wage.

Application to Adjust Status to Lawful Permanent Resident

Once the labor certification and petitioning process are complete, the government will consider your green card application. Your family members may also apply for green cards. This process, known as Adjustment of Status, is primarily designed to ensure that there is nothing in your or your family members' backgrounds that would prevent the issuance of a green card. Note: unless the physician is subject to a visa backlog, that is, unless there are no available immigrant visas for the physician's country of nationality, the adjustment application may be filed together with the employer's immigrant visa petition. For example, today, if you are a native of India or China, you must wait several years for an

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immigrant visa because there are many more applicants than there are visas. The good news is that even if you are backlogged, you can remain in H-1B status, beyond the 6 year maximum stay, as long as your employer has successfully completed the immigrant visa petitioning process.

Not All Physicians Require Labor Certification

There are several exceptions to the requirement that the employer first recruit a U.S. physician before filing a green card application on your behalf. You may qualify for one of these exceptions if you meet the criteria set up by the government for any of the following:

1. You are a physician of extraordinary ability,
2. You are an outstanding researcher or professor, or
3. You are a physician of exceptional ability whose work is in the national interest.

Extraordinary Ability

You may be classified as a physician of “extraordinary ability” if you have demonstrated extraordinary ability in your field. Like the O-1 visa described above, it is awarded to only a small percentage of physicians who have risen to the very top of their profession. One of its advantages is that it does not require labor certification or a job offer.

Outstanding Researchers and Professors

Your employer may sponsor you if you are an internationally recognized researcher or professor who is deemed outstanding in your academic field and you will be conducting research.

National Interest Waiver

The labor certification requirement can also be waived in the national interest if you are deemed to be an exceptionally qualified physician and your work is deemed to have intrinsic merit, be national in scope, and the national interest would be adversely affected if a labor certification were required. Physicians may also qualify for a national interest waiver of the labor certification requirement if he or she is willing to work in a health professional shortage area or for the Veterans Administration for at least five (5) years, not including any time in J-1 status.

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Frequently Asked Questions and Answers:

1. How do I find a job that can provide a J-1 visa waiver? It is best to limit your search to facilities in Health Professional Shortage Areas and States that will support waivers for nonprimary care (subspecialist) physicians.
2. If I am not board-eligible in the US, are there any job opportunities for which I might be eligible? To practice medicine you need state licensure; not necessarily board eligibility or certification. However, many institutions will require board eligibility or certification as a pre-requisite to a staff position.
3. If I obtain an O-1 visa, who can employ me? O visas are employer specific and, therefore, O-1 visa classification may only be obtained for you by a petitioning employer. Therefore, if an employer petitions on your behalf for O-1 classification, you will already have a job offer.
4. I have heard that I can get an institutional visa to work at an academic medical center without taking my USMLE's. Is that true? How do I do I apply for the institutional visa? There is no such thing as an "institutional visa". However, if you are not licensed, you may qualify for an H-1B visa if your job entails research only and no clinical care.
5. If I am not board-eligible in the US, can I cover a Level I Trauma center? This is a question of state licensing law, best answered by consultation with the appropriate state medical board.

This article is for informational purposes only and does not constitute legal advice. For legal advice for your specific situation, please consult an attorney.

About David W. Leopold

David W. Leopold practices immigration, visa, and citizenship law in Cleveland, Ohio as principal of DAVID WOLFE LEOPOLD & ASSOCIATES CO., LPA. His diverse client base includes include major health care institutions and teaching hospitals, individual clinical and research physicians and residents, and other health care professionals. Mr. Leopold is the President-elect of American Immigration Lawyers Association (AILA), the premier bar association of immigration lawyers and professors in the U.S. and has served as AILA's top liaison to the Department of Homeland Security's key enforcement bureaus. Mr. Leopold has testified as an immigration law expert before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. In addition to his full time national immigration practice, Mr. Leopold directs the immigration curriculum and serves as an adjunct professor of immigration law at the Case Western Reserve and Cleveland-Marshall Schools of Law. He has earned Martindale-Hubble's highest AV rating,

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is listed in *The Best Lawyers in America* and has been named an *Ohio Super Lawyer*. Mr. Leopold lectures on immigration law throughout the U.S., has served as a Senior Editor of the *Immigration & Nationality Handbook*; and as a contributing author to the *Visa Processing Guide*.

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