

PERMANENT RESIDENCE (GREEN CARDS) FOR PHYSICIANS

There are two typical routes to permanent residence for physicians who have received a waiver of the two-year home residence requirement. Regardless of the route taken to the green card, the employee must be employed in H-1B status for a minimum of three years to satisfy the J-1 service requirements. Please note that physicians who did not get a waiver of the two-year home residence requirement *may* also be able to take advantage of the NIW route, but it does depend upon the particular state. The two routes are compared below.

PERMANENT RESIDENCE BASED ON LABOR CERTIFICATION	PERMANENT RESIDENCE BASED ON NATIONAL INTEREST WAIVER
<ul style="list-style-type: none"> • Employer must test labor market to determine whether there are qualified, ready, willing and able U.S. workers to fill the position(s). The manner in which the market is tested is prescribed by the DOL and must, at minimum, include 2 print ads and three other types of recruitment. It is generally a more extensive than the recruitment efforts that must be submitted with the J waiver application. All advertising must be less than 180 days old when the application is submitted. • Employer files the labor certification with the DOL via its electronic system – PERM. The DOL may “audit” the underlying documentation to ensure that the representations made in the electronic application are supported by documentary evidence. • Once the labor certification is approved (from 2 months to 1 year (if audited)), the employer files an immigrant petition with the USCIS. • The employee may file for adjustment of status upon completion of three years in H-1B status assuming an immigrant visa is available. 	<ul style="list-style-type: none"> • Employer and employee must enter into a contract of employment to provide medical services in the underserved area for five years. The five year period may include the three years already required by the J waiver. • The state department of public health must provide a letter of support. • Employer or employee submits an immigrant petition based on the national interest waiver directly to the USCIS. • Employee may simultaneously submit an adjustment of status application with the immigrant petition (assuming an immigrant visa is immediately available). It will not, however, be finally adjudicated until the employee submits evidence of five years of employment in the underserved area.

Which route? As with all things, it depends.

NATIONAL INTEREST WAIVER

- The national interest route is less time-consuming, less expensive and more sure.
- The national interest waiver generally can be filed more quickly than the labor certification, though states may have rules that only permit filing after the physician has served a certain amount of time in the state. For physicians from India and the People's Republic of China (PRC) are always anxious to file for permanent residence as soon as possible because there is a very long wait for an immigrant visa. Filing an immigrant petition or labor certification establishes their place in line for the immigrant visas.
- The national interest waiver *may* allow the physician to file for adjustment of status concurrently with the immigrant petition.
 - The adjustment of status filing is very advantageous largely because it permits spouses to obtain employment authorization.
 - Adjustment of status is not immediately available to all physicians as there may be a wait for an immigrant visa that prevents them from filing an adjustment of status. Physicians from India and the People's Republic of China are subject to a very long wait for immigrant visas.
- For many reasons, it may not be desirable to enter into a five year contract for either the employer or employee.
- If the relationship terminates, it may still be possible for the employee to continue with the green card process as long as he or she continues to work in an underserved area even with a different employer or self-employed.

LABOR CERTIFICATION

- The labor certification requires substantial work on the part of the employer as several different avenues of recruitment must be employed to test the labor market in accordance with strict standards as required by the Department of Labor. The standard for adjudicating the labor certification is that there are *no* qualified, ready, willing and able U.S. workers to take the position. Qualified means someone who possesses the minimum, objective qualifications. Thus, even if the temporary employee is far more qualified than subsequent U.S. worker applicants, it is not a consideration in the process.. The employee will not be able to file for adjustment of status until he or she has completed three full years of employment. Of course, physicians from India and PRC, as mentioned above, may have a much longer wait than three years.
- If the relationship breaks down before the last step in the process (the adjustment of status) has been filed and pending for at least 180 days, the green card process may have to be started over with a new employer

Physicians may ask you to pursue both avenues.