Comparing J-1 Exchange Visitor, H-1B Specialty Occupation, E-3 Specialty Occupation, and O-1 Nonimmigrant Visa Statuses for Residents and Clinical Fellows

(Revised January 2019)

GME Policy: GME prefers that residents and clinical fellows who need a visa status supported by the University of Colorado Denver obtain a J-1 visa in the Alien Physician category sponsored by ECFMG. However, there are other visa statuses that could be sponsored by the University of Colorado Denver. Contact Nancy McKay in GME at 303-724-6028 for information about the J-1 Alien Physician category and Amy Bello in ISSS at 303-724-0795 for information on other visa options before making any promise to a prospective international resident or clinical fellow that the University will support a particular visa type. There are important considerations with respect to eligibility, timing, and time limits for any non-immigrant visa which must be reviewed on a case-by-case basis. This document provides only a limited overview and does not take into account individual circumstances which may greatly impact visa options. Programs will make the decision regarding type of Visa that they will accept in their program.

ISSS and GME have prepared this document to help clinical programs understand the limited visa options available for physicians or physicians-in-training who want to practice medicine in the U.S. This document compares the various nonimmigrant visa types that permit the practice of medicine in the United States. This document does not address every category of employment authorization document (EAD) or other immigration statuses that do not require employer sponsorship and which some applicants might be able to acquire independent of the University of Colorado Denver.

Note that certain requirements for an ECFMG certificate and completion of all or part of the USMLE’s may be different from program and Colorado medical license requirements. (Please refer to ECFMG website for current requirements http://www.ecfmg.org/certification/requirements-for-certification.html)

GME requires all international medical graduates (IMGs)* to have an ECFMG certificate and to have passed all three steps of the USMLE** (Interns are only required to have Step 1 upon entering program and Step 2 by mid intern year and must complete Step 3 in their second year). These GME requirements remain in effect even if a particular visa status does not require them.

*An international medical graduate is a physician who received his/her basic medical degree or qualification from a medical school located outside the United States and Canada.

**Under certain limited circumstances, GME will allow IMGs 90 days from their arrival to schedule, complete, and pass Step 3 of the USMLE.

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J-1 Alien Physician (Clinical) Status: Appropriate for international medical graduates who meet the requirements for ECFMG (Educational Commission for Foreign Medical Graduates) sponsorship. Provided that they meet all of the other requirements, ECFMG will sponsor international medical graduates in both accredited and non-accredited programs. More paperwork is required with a non-accredited program, but ECFMG-sponsorship is possible. Note that ECFMG prohibits moonlighting. In addition, J-1 Physicians sponsored by ECFMG are not allowed to bill. This means that this category may not be used for Instructor/Fellows.

Advantages: ECFMG is responsible for issuing documents and managing all visa issues. ECFMG will sponsor physicians for up to 7 years as long as they are participating in an ACGME accredited program. ECFMG may agree to sponsor a physician for a longer period of time, but only in very unique and compelling circumstances. The university does not have to file a Labor Condition Application (LCA) with the U.S. Department of Labor or petition USCIS for approval, nor do programs have to pay USCIS filing fees. J-2 spouses are eligible to apply to for work permission. Nancy McKay in the GME office coordinates all ECFMG sponsored J-1 visas in the Alien Physician category.

Disadvantages: Physician must have a residence abroad that s/he has no intention of abandoning and the intent to return to his/her home country after completing graduate medical education. Physician must also be able to obtain statement of need from his or her home country.

J-1 Alien Physicians are subject to the two-year home residence requirement, without exception. This means that the physician must spend two years in her or his country of citizenship or last legal permanent residence before s/he can return to the U.S. in H-1B status or as a permanent resident, unless s/he is able to obtain a waiver of the requirement. Waivers for physicians are relatively difficult to obtain and it may not be possible to start the waiver process until after the entire GME program in US is completed.

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Optional Practical Training (F-1 Student Status): A foreign national who earned his/her M.D. degree in the U.S. while in F-1 Student status is generally eligible for 12 months of Optional Practical Training (OPT) following the completion of that degree. OPT is work authorization that can be used anywhere in the U.S. provided that the foreign national is working in his/her field of study. A student who just completed an M.D. degree may use OPT for the first year of his/her residency program.

Advantages: The student is responsible for working with the school where the M.D. degree was earned to submit the application. The student is also responsible for paying the application fee. Therefore, the program does not need to take any immediate action with respect to the individual's immigration status.

Disadvantages: OPT is only good for 12 months, and must begin within 60 days of date the F-1 student graduates. A foreign national in F-1 status must have valid work authorization to engage in any activity for which s/he will receive compensation, e.g., orientation. This means that an F-1s work
authorization would need to begin on June 23 and NOT July 1. It also means that the 12 months of OPT would end on June 22 of the following year, and NOT June 30.

By allowing a student to begin his/her residency while on OPT, the program commits to sponsoring the resident for H-1B status for the remainder of the residency training. Because of OPT timing issues, individuals who begin their residency programs while on OPT may end up with H1B start dates that do not perfectly line up with residency year start dates.

While an individual is on OPT, s/he is still in F-1 Student status and must continue to report employment and address changes to the Designated School Official (DSO) at his or her school. S/he must also obtain a travel signature from a DSO when travelling outside the U.S.

H-1B Specialty Occupation Status: Appropriate for any professional employment position that requires a minimum of a bachelor's degree or higher degree in a specific field for a person holding the required degree and any required license. At the University of Colorado Denver this includes residents and clinical fellows, who are considered employees for IRS and visa sponsorship purposes. Eligibility for H1-B status requires a foreign medical graduate to have passed all 3 steps of USMLE. All international medical graduates, except Canadians, must also have an ECFMG certificate to apply for H-1B status. A foreign national who completed his/her medical training in the U.S. is not required to have passed USMLE Part III to apply for H-1B status. Note, however, that GME requires an ECFMG certificate and proof of the passage of all 3 steps of the USMLE for all international medical graduates.

Advantages: It may be easier to obtain an H1B visa stamp than a J-1 visa stamp because H-1B applicants are allowed to have immigrant intent and aren't required to maintain a residence abroad. The initial H1B petition can be filed for a period of three years, as can extensions, up to a maximum of six years total. If a resident/fellow was already in the U.S. in H-1B status with a previous employer, s/he can begin working for the University of Colorado Denver as soon as we have proof, in the form of a USCIS receipt notice, that we filed an H1B petition on behalf of the resident/fellow.

Disadvantages: Program must pay prevailing wage* and USCIS filing fees.** ISSS must file a Labor Condition Application (LCA) with the U.S. Department of Labor (DOL) prior to filing the H1B petition, identifying and posting the LCA at ALL training sites in advance. Without premium processing, adjudication of an H1B petition can take 6 months or longer, not including ISSS and DOL processing times prior to filing. Generally, H-4 spouses cannot work, although there are limited exceptions. If a resident/fellow is terminated before the expiration date of the I-797 Approval Notice, the program must pay reasonable transportation costs to resident's/fellow's home country or country of last permanent residence.

The maximum possible time in H1B status is six years unless the resident/fellow is able to file an employment-based petition for permanent residency before the end of his/her 5th year in H1B status. Six years can be insufficient to complete an entire GME program. If a foreign medical graduate, the H1B employee must have passed all 3 parts of the USMLE, and have ECFMG certificate before H1B
petition can be filed, even if not required by GME, program, or Colorado Department of Regulatory Affairs for licensure (exceptions to some of the documentary requirements available only to clinical faculty, residents with national/international reputation, or graduates from US medical schools).

*The prevailing wage is based on a customized survey of wages in the Rocky Mountain Region that ISSS and GME obtain from AAMC.

**Filing fees: I-129 Filing Fee $460 + Anti-Fraud Fee $500 (employer’s initial petition only) + I-539 Filing Fee $370 (for family members in the US) + Premium Processing Fee $1,410, if required or desired.

E-3 Australian Specialty Occupation Status: Limited to Australian citizens. Like H-1B status, eligibility for E-3 status requires that the employment be in a specialty occupation. Residents and fellows meet this requirement.

Advantages: No requirement that applicants maintain a residence abroad. If employee is outside the U.S., E-3 status can be obtained without having to file a petition with USCIS or pay filing fees. Although the employee is not required to have USMLEs or ECFMG certificate to be eligible for E-3 status, GME requires that ALL international medical graduates, including Australians, have ECFMG certificate and must have passed all three parts of the USMLE. There is no maximum limit to the length of time a person can hold E-3 status, but a person may remain in the U.S. in E-3 status for only two years at a time. An Australian citizen who is subject to the two-year home residence requirement can obtain an E-3 visa outside the US and then enter the U.S. in E-3 status.

Disadvantages: Employer must pay prevailing wage and file LCA, as with an H-1B. ISSS must track validity of LCA to ensure that it is consistent with validity of E-3 status, which can be difficult if employee travels frequently. Employee must pay a visa application fee at US Consulate abroad.

O-1 Persons with Extraordinary Ability in Sciences: A resident would not generally be eligible for O-1 status, but there may be rare instances where a clinical fellow with a strong research and publication record might be. The evidentiary bar for O-1 status is high and a successful petition requires that the Beneficiary have an international reputation along with a significant publication record, internationally recognized prizes or awards, publications about her or his work, service as the judge of the work of others, and other such evidence demonstrating his or her extraordinary ability. The initial O-1 petition can be filed for up to three years; subsequent extensions are limited to a one year validity period, with no limit on the overall length of time a person can hold O-1 status.

Advantages: Visa does not require that physician have all three USMLE’s or ECFMG certificate, though international medical graduates must still comply with all of GME’s requirements. Someone who is still subject to the two-year home residency requirement can obtain an O-1 visa outside the US and enter in O-1 status.
Disadvantages: Requires substantial and comprehensive documentation of the employee’s international reputation and extraordinary ability, with no guarantee that a petition will be approved. ISSS recommends that program and/or prospective employee hire outside immigration counsel to assist with this petition, because of difficulty in securing approval for a physician in training. Requires USCIS filing fees* and if the resident/fellow is terminated before the validity period of his/her O-1 status ends, employer must pay for return transportation to the home country.

*I-129 filing fee $460, plus premium processing fee, if required or desired, of $1,410.