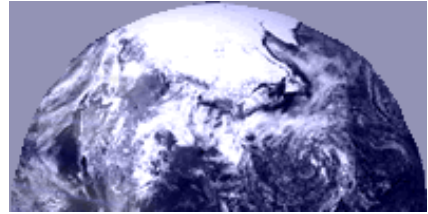


Thompson Immigration Law Associates

Providing U.S. & Global Immigration Solutions
to Businesses Around the World



U.S. Immigration For Foreign Healthcare Workers

10900 NE 4th Street; Suite 2300
Bellevue, Washington 98004
Ph: 425.894.2660
Fax: 425.671.4716

Email: contact@thompsonimmigration.com
<http://www.thompsonimmigration.com>
(Practice Limited to Immigration Law)

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1 FIRM OVERVIEW

Thompson Immigration Law Associates is a global business immigration law firm located in Bellevue, Washington. Thompson Immigration handles all immigration needs generated by corporations and professionals for both the United States and other countries around the world.

1.1 FIRM SUMMARY

Thompson Immigration is owned and led by P. Robert Thompson. Mr. Thompson is a seasoned attorney with 20 years' experience as both a trial lawyer and a global business immigration attorney with experience with over 30 countries.

Thompson Immigration was established in 2002, in the middle of the last IT "market adjustment" when many immigration law firms who focused on the IT industry were downsizing or going out of business. Despite the existing market conditions, Mr. Thompson was able to maintain and expand an employment-based law firm. This is because of Mr. Thompson's entrepreneurial spirit and his ability to think "outside the box". This ability is best demonstrated by the fact that Thompson Immigration utilizes visa categories that are not commonly used by other immigration lawyers.

This same spirit has kept Thompson Immigration successful during the current "economic readjustment".

1.2 OBJECTIVES

Thompson Immigration's objectives include:

- To provide the highest level of service possible so as to set the standard for what companies from around the world expect from a top business immigration law firm.
- To exceed customer's expectations with regard to the timeliness and responsiveness of the firm.
- To develop a relationship with clients that will allow clients to feel comfortable that their and their employees' immigration needs are being met in the safest manner possible, while still maintaining the business goals and needs of the company.
- To provide educational services to clients in the form of immigration updates and free seminars to minimize the chance that clients will commit an error that will expose itself or its employees to liability.

Immigration law is 50% law and 50% human nature. Immigration matters must be presented in a manner that is persuasive, yet easily understood by the immigration or border officer who is reviewing the application. If an immigration officer cannot understand an application, (s)he will be inclined to deny the application.

1.3 SERVICES PROVIDED

Thompson Immigration handles all types of business visa or work permit issues to all regions of the world, including:

- Short- and long-term business visas for moving employees across international boundaries.
- U.S. investor visas for both immigrants and nonimmigrants.
- U.S. intra-company transfer visas between existing and newly-established multinational corporations.
- U.S. work permits and other “professional” visas (such as H-1B visas).
- Permanent residency green card applications for foreign workers who wish to remain indefinitely in the U.S. or other countries. This includes permanent residency applications for foreign nationals who marry U.S. citizens.
- Naturalization applications for foreign nationals wishing to become U.S. citizens.
- Defense of companies against law suits brought by the government or employees alleging violations of U.S. immigration laws.

1.4 CLIENT SUMMARY

Thompson Immigration has a broad range of corporate and professional clients, including:

- Individual investors and business owners.
- Small to multinational corporations.
- Professionals seeking to work or establish a business within the United States.
- IT Technology firms.
- Manufacturing companies.
- Architectural and other design-oriented firms.
- Hospitals and medical practices.
- Dental practices.
- Import/export companies.
- Private utility companies.

1.5 COMPETITIVE EDGE

Thompson Immigration's competitive advantage is based on numerous factors, including experience, specialization, use of cutting edge technology and adaptability.

1.6 EXPERIENCE

Robert Thompson brings to Thompson Immigration 20 years’ of experience as both a trial lawyer and a business immigration lawyer. Mr. Thompson graduated from the George Washington National Law Center in Washington, D.C., the 12th best law school in the United States. He then practiced eight years in Washington, D.C., one of the four toughest markets for lawyers in the United States for some of the largest law firms in the United States, before moving to the Seattle, Washington, area.

Mr. Thompson worked for the Federal government promulgating regulations for the U.S. Environmental Protection Agency. He also has seven years' experience as a trial lawyer and environmental lawyer; but has practiced exclusively business immigration law since 1996.

This combination of governmental experience, litigation and business immigration experience has served Thompson Immigration's clients well. Thompson Immigration approaches each immigration filing like it is a paper trial, presenting information to government agencies in a manner that reflects a client's needs in the best light possible. This is especially important when dealing with government employees and immigration officers at ports of entry who are not lawyers. *This approach is one reason why other attorneys regularly refer clients to Thompson Immigration or utilize our services in an "of counsel" capacity.*

1.7 SPECIALIZATION

Thompson Immigration has specialized its practice in one field of immigration law; namely, business immigration law. This fact is a critical distinction for clients who are seeking immigration counsel. The reason is that very few immigration law firms specialize in business immigration.

U.S. immigration law is a complex and ever-changing field of law. Indeed, many of the regulatory policies enacted by the Citizenship and Immigration Services and other immigration agencies are not promulgated through a formal rulemaking process, but rather through policy memos that are not published. By limiting its practice to business immigration, Thompson Immigration can assure its clients that it is knowledgeable about every new issue arising in this complex field of law.

Most immigration law firms handle every aspect of immigration into the United States, including family-based immigration, asylum cases, refugee cases, and essentially any other type of case that walks in the door.

On the other extreme is the large corporate law firm that has only one or two immigration attorneys on staff. These attorneys rarely practice immigration law on a full-time basis, and oftentimes practice immigration law only as a courtesy to the firm's large corporate clients. As such, it is difficult for them to keep up with the myriad changes that occur on a monthly and even weekly basis in the immigration field. Those large firm attorneys that do practice immigration law on a full-time basis generally provide limited services to one or two large corporate clients.

This leaves a small percentage of immigration lawyers that specialize in business immigration. Of these, most do not have litigation experience. Moreover, there are only a handful of lawyers in the entire United States that handle immigration matters to countries other than the United States.

1.8 USE OF CUTTING EDGE TECHNOLOGY

Thompson Immigration has always used cutting edge technology in its practice, and continues to "push the envelope" in this area. Thompson Immigration was one of the first law firms in the United States to effectively use the Internet as a marketing platform.

Other examples of how Thompson Immigration is using cutting edge technology include:

- Most of Thompson Immigration's communications are handled electronically. This includes the use of electronic questionnaires (or "Data Information Sheets") and the transmittal of immigration forms and supporting documents in a secure electronic format. Because of this, there is little or no time delay or extra

cost associated with Thompson Immigration's communications with either its U.S. or overseas clients.

- Because Thompson Immigration could not find any commercially available immigration forms software that provided the flexibility desired, Thompson Immigration developed its own software platform from which it prepares all of its clients' immigration forms.
- Through its proprietary software system, Thompson Immigration can prepare customized Data Information Sheets that fit the specific needs of each client. In fact, some clients use these Data Information Sheets as a way to ensure that foreign candidates have valid immigration status before hiring them.
- Thompson Immigration has invested heavily into mobile technology. Using this technology, Mr. Thompson can answer telephone calls and emails, and connect to the Internet from anywhere, even in places that do not have WiFi access. He can also prepare documents, and connect and even operate his office computer from anywhere in the world. This allows Mr. Thompson to work on client matters no matter where he is located.
- Thompson Immigration will shortly start making video updates and video seminars which can be viewed by clients at their convenience either on line or on their mobile phones.

1.9 ADAPTABILITY

Another aspect of Thompson Immigration that is fairly unique among law firms is how Thompson Immigration adapts its practice to its clients' needs and desires. Thompson Immigration is constantly seeking new ways to modify how its practice is run so it can provide better service to its clients in what we like to consider as an informal "partnership" between Thompson Immigration and its clients. Some examples of specific operational changes that were made at a clients' request include:

- Doing away with a telephone receptionist and having attorneys answer their own telephones.
- Installing a telephone system in which all calls not answered by the office line are automatically transferred to an individual's cell phone.
- Incorporating daily messages on Mr. Thompson's answering service so that clients are aware if Mr. Thompson is in meetings or is otherwise unavailable on any given day.

Thompson Immigration's goal is to be just as convenient to work with whether we are located next door or around the world.

1.10 FIRM MANAGEMENT

1.10.1 MANAGEMENT BACKGROUND

Thompson Immigration is a sole proprietorship established under the laws of the State of Washington. The principal of Thompson Immigration Law Associates, P. Robert Thompson, Esq., has been a practicing attorney since 1989. He has practiced exclusively business immigration law since 1996. Mr. Thompson is one

of just a handful of U.S. attorneys who is experienced in global immigration matters. Mr. Thompson has handled business migration matters to over 30 countries.

Mr. Thompson received a Bachelor of Science degree in Chemical Engineering from the University of Maryland in 1982. After working in the chemical industry for three years, Mr. Thompson went to law school at the George Washington National Law Center, in Washington, D.C. This law school was ranked as the 12th best law school in the United States. Mr. Thompson worked full-time while attending law school at night. During this time, Mr. Thompson worked on Capitol Hill as a lobbyist on forestry issues. He also spent two years with the U.S. Environmental Protection Agency drafting regulations regarding existing chemicals in the chemical industry.

After graduation, Mr. Thompson worked for eight years in the Washington, D.C. area as a trial lawyer and environmental lawyer. In 1996, he joined a small immigration firm and fell in love with the practice of immigration law. He has practiced business immigration law exclusively since that time.

In 1998, Mr. Thompson convinced a Midwest law firm to open a West Coast office in Seattle. Mr. Thompson managed this office until 2002, when he bought out the office and started Thompson Immigration Law Associates.

Mr. Thompson is a member of numerous immigration and business/trade associations, including:

- American Immigration Lawyer's Association.
- District of Columbia Bar.
- Maryland State Bar.
- International Who's Who of Entrepreneurs.
- National Register's Who's Who of Executive and Professionals.
- Society of Human Resource Managers.
- Northwest Recruiters Association.
- Northwest Entrepreneurs Network.
- World Trade Center.
- Foundation for Russian American Economic Cooperation.
- Trade Development Alliance of Greater Seattle.

1.10.2 FIRM STAFFING

Thompson Immigration keeps its overhead (and consequently its legal fees) low by utilizing staff on an "as-needed" basis across the United States. This takes advantage of the time zone differences for keeping work moving forward quickly. Thompson Immigration also has working relationships with other attorneys who can assist when a large influx of work is received, or when Mr. Thompson is out of the office for an extended period of time. Such flexibility allows Thompson Immigration to maintain sufficient capacity to adapt to any work load.

2 U.S. IMMIGRATION – WHO REGULATES WHAT?

The United States has one of the most structured and detailed immigration codes in the world, with many government agencies regulating various parts of the immigration process. U.S. immigration laws are implemented by the following government agencies:

- U.S. Department of Justice:
- Immigration and Naturalization Service (INS) (now the USCIS and related agencies).
- U.S. Department of Homeland Security:
 - Citizenship and Immigration Services (CIS or USCIS).
 - Immigration and Customs Enforcement (ICE or USICE).
 - Customs and Border Protection (CBP or USCBP).
- U.S. Department of State.
- U.S. Department of Labor.

Thompson Immigration practices primarily before the U.S. Citizenship and Immigration Services, the U.S. Department of Labor and the U.S. Department of State.

2.1 WHAT IS THE DIFFERENCE BETWEEN A "VISA" AND "STATUS"?

A "visa" or "visa stamp" is issued by the U.S. Department of State at a U.S. Embassy or consulate. A visa allows a foreign national to *enter* the United States. This is because the State Department has jurisdiction everywhere outside of the United States. In other words, a foreign national with valid nonimmigrant status may exit the United States at any time. However, he or she may not re-enter without a valid State Department visa stamp.

Nonimmigrant "status" is what a foreign national receives when his or her nonimmigrant petition is approved by USCIS. This status is only valid within the United States. This is because the USCIS only has jurisdiction within the United States. In other words, if a foreign national has valid nonimmigrant status, he or she may remain in the United States for the duration of that status without having to worry about obtaining a visa stamp from the U.S. State Department.

A foreign national's I-94 card determines how long an individual may remain in the United States. This card is completed by a foreign national when they enter the United States, and is stamped with the appropriate visa type and duration of stay on the actual card by the immigration officer at the port of entry. It is important to note that the I-94 card controls over all other immigration documents issued by the USCIS – including an individual's "official" status approval.

There are a few exceptions to the rule with regard to needing a visa stamp to enter the United States. Specifically:

- If a foreign national travels to either Canada or Mexico for less than 30 days, the foreign national may use his or her I-94 card as a re-entry document.
- For prospective immigrants (*i.e.*, for those foreign nationals who have filed to become a permanent resident or green card holder), a visa is not required to re-enter the United States so long as the individual has been issued an "advance parole" travel authorization from the USCIS.

3 INTRODUCTION TO U.S. IMMIGRATION FOR FOREIGN HEALTHCARE WORKERS

The United States has one of the most structured and detailed immigration laws in the world, with many government agencies regulating various parts of the immigration process. The healthcare field is probably the most highly regulated area of all.

Every physician and many other healthcare providers have special credentialing requirements they must comply with before they can enter the United States to work. While these credentialing requirements slow down the overall immigration process, they also help ensure that a foreign healthcare worker has the equivalent credentials as a U.S. trained healthcare worker. They also establish a more objective system that allows foreign healthcare workers and potential U.S. employers the ability to know more definitively determine whether a particular foreign healthcare worker will qualify for a work visa or green card.

3.1 “CREDENTIALING” VERSUS “LICENSING”

To understand how the U.S. immigration system is applied to foreign healthcare workers, two concepts must be distinguished - credentialing and licensing.

- “Credentialing” refers to a process *established solely for immigration purposes* that must be completed before a foreign healthcare worker may obtain a U.S. work visa or green card. This credentialing process is designed to ensure that a foreign healthcare worker’s education is equivalent to that received in the United States; that their license to practice in their country of origin is unrestricted and unencumbered; and that the foreign healthcare worker has passed both English language and technical competency examinations.
- “Licensing” is a set of requirements established by each State in the United States as a prerequisite for most healthcare professionals (both foreign and U.S. citizens) to practice in that State.

A foreign healthcare worker must, therefore, comply with more requirements in order to work than a U.S. citizen. In fact, it is possible for a foreign healthcare worker to be fully licensed in the State where they intend to work, yet still be unable to obtain a work visa or green card because they have not met all of their credentialing requirements.

Not all foreign healthcare workers are subject to immigration credentialing requirements. Only foreign physicians and those healthcare workers covered by the “VisaScreen” credentialing program need to comply with extra credentialing requirements. All other foreign healthcare workers must only comply with the licensing requirements established by the State in which they intend to work.

4 FOREIGN MEDICAL GRADUATES (“PHYSICIANS”)

A "foreign medical graduate" is any foreign national who:

1. Is a graduate of a medical school located outside of the United States, Canada and Puerto Rico; and
2. Is coming to the United States principally to perform services as a member of the medical profession.

A foreign medical graduate is inadmissible into the United States if he or she is an "unqualified physician." An unqualified physician is a physician who has graduated from an unaccredited medical school and seeks to enter the United States principally to perform services as a member of the medical profession. An exception to this rule is if the foreign physician has passed Steps I, II & III of the United States Medical Licensing Examination ("USMLE") and is competent in both oral and written English.

While this inadmissibility rule applies only to medical graduates coming to the United States "principally to perform services as members of the medical profession", the U.S. Citizenship and Immigration Services ("USCIS") has interpreted this to include medical diagnosis and patient treatment, as well as medical research and teaching.

The rule does not apply to foreign medical graduates who enter the United States as a dependent of another foreign national, U.S. citizen or permanent resident.

4.1 CREDENTIALING AND LICENSING REQUIREMENTS

4.1.1 CREDENTIALING REQUIREMENTS

The credentialing requirements for foreign physicians is administered by the Educational Commission for Foreign Medical Graduates (<http://www.ecfm.org/>). The ECFMG certification process addresses three areas:

1. Whether the foreign medical graduate has the necessary educational and licensure credentials; specifically:
 - a) They have completed all educational requirements to practice medicine in the country in which their education was received;
 - b) They have graduated from a four year medical school listed in the WHO's World Directory of Medical Schools; and
 - c) They have an unrestricted and unencumbered license or certificate of registration to practice medicine in the country in which they received their medical education (*this requirement will not be required in the near future*).
2. Whether the foreign medical graduate is competent in both oral and written English; and
3. Whether the foreign medical graduate has passed the necessary technical competency examinations; specifically:
 - a) Steps I, II & III of the United States Medical Licensing Examination (<http://www.usmle.org>) (*the USMLE is used for both credentialing and licensing purposes*).

An ECFMG certificate of successful completion of the above credentialing and examinations is an essential prerequisite for any foreign medical graduate who wishes to enter the United States to work in a clinical setting. It is also required by the U.S. Department of Labor as a prerequisite for foreign medical graduates for apply for a permanent residency green card.

There is no exemption from the requirement that a foreign medical graduate demonstrate that they are competent in both oral and written English. It is even required if the candidate was born or has lived in a country where the native language is English. Only those foreign physicians who graduate from an LCME-accredited medical school in the United States, Puerto Rico, or Canada are “exempt” from this English language requirement. But this is because such graduates do not fall within the definition of a “foreign medical graduate”. The English language proficiency requirement may be fulfilled either through the English examination prepared by the ECFMG, which is originated from the Test of English as a Foreign Language (“TOEFL”), or if the foreign physician previously has taken the ECFMG English examination, by taking the TOEFL. The TOEFL is administered by the Educational Testing Service (<http://www.ets.org>).

4.1.2 LICENSING REQUIREMENTS

Each State has its own set of licensing requirements. These requirements are tracked by the Federation of State Licensing Boards, and can be found at the following URL address: http://www.fsmb.org/usmle_eliinitial.html.

4.2 NONIMMIGRANT VISAS FOR FOREIGN PHYSICIANS

4.2.1 TN VISAS (FOR CANADIAN AND MEXICAN NATIONALS)

A TN (or “Trade NAFTA”) visa can be obtained by Canadian and Mexican citizens under the North American Free Trade Agreement (“NAFTA”). A Canadian or Mexican physician may enter the United States on a TN visa, but only for teaching and research purposes. The physician may not engage in any patient contact other than “incidental contact” that occurs because of his or her teaching or research duties.

To qualify for a TN visa, a foreign physician must possess an M.D., Doctor en Medicina, or a state/provincial license. However, most physicians in teaching and/or research positions do not need to possess a license in the State of intended employment since they will not be working in a clinical setting. However, some States do require a less restrictive faculty license for physicians in such positions.

A TN visa is now a 3-year visa that can be extended indefinitely. A Canadian citizen may apply at the U.S.-Canada border. However, a Mexican citizen must apply for a new TN visa at the U.S. Embassy or consulate in Mexico.

4.2.2 H1B VISAS (FOR ANY NATIONALITY)

The United States' standard work visa is the 3-year H1B visa. A foreign physician may qualify for H1B status if:

1. They are coming to the United States at the invitation of a non-profit, private education or research institution or agency to teach or to conduct research; or
2. They have met all of their credentialing and licensing requirements (*discussed above*).

Note that most Canadians do not sit for the U.S. credentialing examinations because 41 States recognize the standard Canadian examination, the Medical Council of Canada Qualifying Examination ("MCCQE") (formerly the Licentiate of the Medical Council of Canada, or "LMCC") for *State licensure* purposes. However, the MCCQE is not adequate for *immigration credentialing* purposes. Therefore, Canadian physicians must meet more stringent credentialing requirements for an H1B work visa than they do to apply for permanent residency (*i.e.*, a green card) within the United States.

For teaching and research positions, a foreign physician need not present evidence of having passed the USMLE. However, such a physician cannot engage in any patient contact other than "incidental contact" that occurs because of his or her teaching or research duties. Most physicians in teaching and/or research positions do not need to possess a license in the State of intended employment since they will not be working in a clinical setting. However, some States do require a less restrictive faculty license for physicians in such positions.

4.2.3 J-1 VISAS AND WAIVERS

Most foreign physicians entering the United States to pursue graduate medical training (*i.e.*, a residency or Fellowship program) do so through the J-1 "exchange visitor" program. This program is administered by the U.S. State Department. The credentialing requirements are administered by the Educational Commission for Foreign Medical Graduates ("ECFMG").

All J-1 physicians must comply with a two-year foreign residency requirement. This requirement requires them to return to their home country for at least two years before they can change their nonimmigrant status or apply for an immigrant visa or green card. The only exception to this rule is for Canadian physicians who wish to enter the United States on TN status.

There are, however, waivers of the two-year foreign residency requirement. While this topic is beyond the scope of this Portfolio discussion, Thompson Immigration can assist in obtaining these waivers. For foreign physicians, a waiver of the two-year foreign residency requirement is usually obtained through an interested government agency and generally requires that the foreign physician provide services in a Health Professional Shortage Area ("HPSA"), Medically Underserved Area ("MUA") or similar shortage area for a designated period of time.

4.3 IMMIGRANT VISAS ("GREEN CARDS") FOR FOREIGN PHYSICIANS

Many foreign physicians apply for an employment-based green card through the "PERM" labor certification green card process. This three-step process involves:

1. Testing the local labor market and then filing a PERM labor certification application with the U.S. Department of Labor ("DOL");
2. Filing an I-140 immigrant visa petition with the U.S. Citizenship and Immigration Services ("USCIS"); and
3. Filing an I-485 adjustment of status application with the USCIS.

4.3.1 THE “PERM” LABOR CERTIFICATION APPLICATION PROCESS

Under the PERM process, before a U.S. employer may sponsor a foreign national for a green card, it must prove to the U.S. Department of Labor that there are no U.S. workers “ready, willing and able” to perform the job for which the foreign national is being sponsored. This is done through the PERM recruitment process.

There are several mandatory recruitment steps for all PERM applications. There are also additional steps required for “professional” positions, such as for a physician. All recruitment in preparation for filing a PERM application must be performed for at least 30 days. The recruitment must be started no earlier than 180 days before a PERM application is filed, and must be completed at least 30 days before a PERM application is filed. However, for “professional” positions, one of the additional recruitment steps may be performed within 30 days of the filing of a PERM application.

Once a PERM application is filed, the DOL’s new computer system will analyze the application to determine whether it fits the criteria requiring an audit by the DOL. If not, the computer will still randomly select applications for routine audits. Even if the computer system does not flag an application for an audit, a DOL representative may still review the application manually and flag it for an audit. If audited, an employer has only 30 days to respond to the DOL. As such, every employer must assume it will be audited by the DOL and be prepared for such an eventuality.

4.3.1.1 THE “PERM” PROCESS FOR FOREIGN PHYSICIANS SPONSORED BY A UNIVERSITY

The DOL's labor certification regulations contain a separate procedure for foreign nationals employed as college or university teachers. These procedures are known as "special handling". These special handling procedures can benefit foreign physicians who are being sponsored by university-affiliated hospitals or clinics if the foreign physician has a faculty appointment in addition to his or her clinical responsibilities.

The standard for approving a special handling labor certification application is easier to meet than the standard for a regular labor certification application. For example, instead of showing that no qualified U.S. worker applied for the job, the college or university must merely show that the alien beneficiary is the best-qualified candidate for the position. In addition, the DOL will accept recruitment completed within 18 months before the filing of the special handling labor certification application. This relieves the employer from having to re-advertise for the position.

4.3.1.2 WAIVER OF THE LABOR MARKET TESTING AND JOB OFFER REQUIREMENTS

For many foreign physicians it may be possible to bypass the labor certification process entirely by requesting a waiver of the job offer requirement because it is in the "national interest" of the United States. Under this process, the foreign physician files an I-140 Immigrant Petition for Alien Worker directly with the USCIS. He or she can do this through their employer or independently. In other words, foreign physicians may sponsor themselves for a “national interest waiver” green card. The foreign physician does this by showing that their work serves the "national interest" (*e.g.*, by improving health care). This process is especially useful in those States that do not permit hospitals to employ physicians directly.

Foreign physicians in J-1 status, who have filed and/or obtained a waiver of the two-year foreign residency requirement through an interested government agency, often employ this immigrant visa option. For

example, criteria used to determine whether an individual's work serves the national interest includes the fact that the foreign physician's services improves this countries' health care, and that an interested government agency has requested a J-1 waiver. A waiver application from an interested government agency is typically supported with extensive documentation on the urgent need for the physician's immediate services to meet a community's primary health care needs, including confirmation that the facility involved is located in a medically disadvantaged community. However, it is important to note that it is not necessary for a foreign physician to obtain his or her two-year foreign residency waiver through an interested government agency in order to qualify for a national interest waiver green card.

To obtain a national interest waiver green card, a foreign physician must comply with the following special requirements:

1. The foreign physician is required to work in a shortage area designated by the Department of Health and Human Services ("HHS") or in a Department of Veterans Affairs ("VA") facility for five years. Note that the VA facility does not have to be in a certified shortage area.
2. The service time must be completed within six years' of the job offer waiver.
3. The foreign physician must obtain a determination from the HHS, VA or another federal agency that has knowledge of the physician's qualifications or from a State Department of Public Health that the physician's work is in the public interest.
4. Unless the foreign physician is working in a VA facility, his or her area of specialty must be in one of the following HHS-specified specialties: family or general medicine, pediatrics, general internal medicine, obstetrics/gynecology, or psychiatry.

A foreign physician may file an I-485 Application for Adjustment of Status with the USCIS at the same time as the I-140 petition with national interest waiver request. However, the USCIS will not process the I-485 Application until the foreign physician's five-year period of medical service is completed.

4.3.2 THE IMMIGRANT VISA PETITION AND ADJUSTMENT OF STATUS PROCESS

Once the PERM labor certification application is certified by the DOL, the sponsoring employer files an I-140 Immigrant Petition for Alien Worker with the USCIS. The purpose of an I-140 is to demonstrate to the USCIS that the sponsored employee has the qualifications as set forth in the PERM application and through the ECFMG credentialing process, and that the sponsoring employer has the ability to pay the prevailing wage for the position being sponsored in the geographic area where the position is located.

If visa numbers are available, the sponsored employee can also file an I-485 Application for Adjustment of Status, along with an I-765 Application for an Employment Authorization Document ("EAD") and an I-131 Application for an Advance Parole Travel Document.

- The purpose of the I-485 application is to request that the USCIS convert the applicants' immigration status from "nonimmigrant" to "immigrant", or "permanent resident".
- The purpose of an "EAD" is to allow a foreign national to work as a "prospective immigrant" (*i.e.*, they no longer need to rely on their nonimmigrant status for work authorization).
- The purpose of an "advance parole" travel document is to allow a foreign national to travel outside of the United States as a "prospective immigrant". Without an advance parole, a foreign national will be deemed to have abandoned their green card application when they exit the United States.

The only exception to this rule is if the foreign national is traveling on an “H” or “L” nonimmigrant visa.

One major benefit of the EAD and advance parole applications is that a person on advance parole need not renew their nonimmigrant visas at a U.S. Embassy or consulate. This is seen as a significant benefit by most foreign nationals.

Another major benefit is that after a foreign national’s I-140 has been approved and his or her I-485 has been pending for at least 180 days, the foreign national may transfer his or her green card application to a new employer. This provides some flexibility to a foreign national whose I-485 has been pending for a long time.

5.1 THE REGISTERED NURSE DEBATE

No position has generated more interest or more conflict than the employment of foreign registered nurses within the United States. Failure of the U.S. government to allow for the employment of foreign registered nurses seems to make no sense. However, there are policy considerations that impact the political debate within the United States on this issue.

For example, the U.S. Department of Labor has designated only two positions, registered nurses and physical therapists, as the only positions within the entire United States where a shortage of qualified applicants has been accepted as a fact. However, Congress has consistently refused to create a new working visa category for registered nurses. Because of this, only Canadian and Mexican registered nurses can obtain a work visa and work in the United States. All other registered nurses must enter the United States on immigrant visas (*i.e.*, as green card holders).

However, other than for a short period a few years ago, Congress has so far not failed to expand the number of immigrant visas that are available for registered nurses, or create a new employment category for registered nurses. Instead, Congress has grouped registered nurses into the same employment category as all foreign nationals who have either a bachelor's degree or two years of experience in their field of expertise. This employment category consistently has a large backlog of applications. This makes it so any U.S. employer who wishes to sponsor a registered nurse for a green card must wait 5-7 years (at a minimum) after filing a green card application before the registered nurse may enter the United States. Very few U.S. employers are willing to invest in a potential employee who they may not see for 5-7 years, if ever. Because of this, the sponsorship of foreign registered nurses – one of only two positions which the U.S. government has designated as a shortage occupation -- has almost completely stopped within the United States.

This is not to say that the U.S. Congress is not addressing this issue. In fact, opening up additional immigrant visas for foreign registered nurses is one of the few "professional" immigration categories Congress has been willing to seriously consider.

The main policy reason why many nursing (and other) organizations oppose opening up the U.S. market to more foreign registered nurses is the fact that there is a shortage of registered nurses in all parts of the world. So if the U.S. allowed more foreign registered nurses to enter the United States, we would be depriving other, less developed countries from having enough registered nurses to meet their needs.

Whether one agrees with this position or not, it must be remembered that of all the "professional" positions that foreign nationals are needed to fill in this country, foreign registered nurses are, in our opinion, on the top of the list when it comes to Congress addressing and resolving the issue of how to meet this country's shortage of qualified candidates.

5.2 CREDENTIALING AND LICENSING REQUIREMENTS

5.2.1 CREDENTIALING REQUIREMENTS

In 2003, the U.S. Citizenship and Immigration Services ("USCIS") finalized regulations addressing the certification of many healthcare workers through the VisaScreen certification process. For nurses, these regulations covered:

- Licensed Practical Nurses;
- Licensed Vocational Nurses; and
- Registered Nurses.

For nurses, this certification program is administered by the Commission on Graduates of Foreign Nursing Schools (<http://www.cgfns.org>).

The VisaScreen process addresses three areas:

1. Whether the foreign nurse has the necessary educational and licensure credentials; specifically:
 - a. They have completed all educational requirements to practice in the country in which their education was received;
 - b. That such requirements are comparable to those of a person trained in the United States for the same position; and
 - c. They have an unrestricted and unencumbered license in the country in which they received their education.
2. Whether the foreign nurse is competent in both oral and written English; and
3. Whether the foreign nurse has passed the necessary technical competency examinations.

All foreign nationals who enter the United States on or after July 26, 2004, who are working in a clinical setting in a VisaScreen occupation must have a VisaScreen Certificate. This includes both immigrants (*i.e.*, green card holders) and nonimmigrants, and includes foreign nationals who were educated in the United States. However, a VisaScreen Certificate is not required for a foreign nurse who enters the United States or who changes their status within the United States as a dependent of a nonimmigrant foreign national, a U.S. citizen or permanent resident.

The English language proficiency requirement may be fulfilled either through the Test of English as a Foreign Language ("TOEFL"), which is administered by the Educational Testing Service (<http://www.ets.org>).

IMPORTANT: A VisaScreen certificate is not the same as a CGFNS certificate. Even if a foreign nurse has already obtained a CGFNS Certificate, they will still need to obtain a VisaScreen Certificate. This is because a CGFNS Certificate is used for many purposes, only one of which is for U.S. immigration purposes. However, because the VisaScreen process is administered by a division of the CGFNS, obtaining a VisaScreen Certificate after obtaining a CGFNS Certificate is really just an administrative process.

5.2.1.1 ALTERNATIVE TO THE VISASCREEN CERTIFICATE

A foreign nurse is also admissible to the United States if the foreign nurse presents a CGFNS certified statement in lieu of the VisaScreen Certificate. CGFNS is, again, currently the only approved credentialing organization authorized to issue such a certificate. A foreign registered nurse is eligible for the certified statement if:

1. They have an unrestricted RN license in the State of intended employment, and that State verifies that foreign licenses are authentic and unencumbered as part of the licensing process;
2. They have passed the NCLEX-RN exam, which is administered by the National Council of State Boards of Nursing (<https://www.ncsbn.org/nclex.htm>);
3. Their nursing program language of instruction was English;
4. The nursing program was located in Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom or the United States, or any other country designated by CGFNS (such as Trinidad and Tobago); and
5. The nursing program was in operation before November 12, 1999, or has been approved by CGFNS.

5.2.1.2 EXEMPTION FROM THE ENGLISH PROFICIENCY REQUIREMENT AND EDUCATIONAL COMPARABILITY REVIEW

As previously discussed, the VisaScreen Certificate requires that the education, training, experience and licensure of a foreign healthcare worker be comparable to that required of a U.S. nurse in the same occupation. In addition, the VisaScreen Certificate requires English proficiency. However, the following foreign nurses educated in the United States are exempt from the education comparability review and the English proficiency requirements:

1. Nurses graduating from programs accredited by the National League for Nursing Accreditation Commission (www.nlnac.org) or the Commission on Collegiate Nursing Education (<http://www.aacn.nche.edu>); and
2. Nurses who graduated from a college, university or professional training school in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom or the United States.

5.2.2 LICENSING REQUIREMENTS

Each State has its own set of licensing requirements. These requirements are tracked by the National Council of State Boards of Nursing (<https://www.ncsbn.org/515.htm>).

5.3 NONIMMIGRANT VISAS FOR FOREIGN NURSES

5.3.1 TN VISAS(FOR CANADIAN AND MEXICAN NATIONALS)

A TN (or "Trade NAFTA") visa can be obtained by Canadian and Mexican citizens under the North American Free Trade Agreement ("NAFTA"). For a registered nurse, the required credentials include a state, provincial, federal license, or a baccalaureate (Canada) or licenciatura (Mexico) degree. The foreign nurse must also meet all of the credentialing and language requirements under the VisaScreen Certificate program.

A TN visa is now a 3-year visa that can be extended indefinitely. A Canadian citizen may apply at the U.S.-Canada border. However, a Mexican citizen must apply for a new TN visa at the U.S. Embassy or consulate in Mexico.

5.3.2 H1B VISAS FOR REGISTERED NURSES (FOR ANY NATIONALITY)

The United States' standard work visa is the 3-year H1B visa. To qualify for an H1B visa, both the foreign national and the position being sponsored must qualify for an H1B visa. Specifically:

- A foreign national must have a U.S. bachelor's degree or foreign equivalent, plus any certifications and licenses required for the position; and
- The position being sponsored must also typically require a U.S. bachelor's degree.

Unfortunately, registered nursing positions in the United States typically only require an Associate's degree. Therefore, even if a registered nurse qualifies for an H1B visa, the position for which they are being sponsored will not qualify for an H1B visa.

5.3.3 NURSING POSITIONS THAT QUALIFY FOR H1B VISAS

There are some specialized nursing positions that do typically require the equivalent of a U.S. bachelor's degree or higher as the minimum requirement for entry into that specialized field. These positions require training or certifications that go beyond a typical RN position. Of course, this also assumes that the sponsoring employer requires all prospective employees to hold an advanced practice certification for the position being sponsored. For example, if an APRN position requires that the employee be certified in that practice, then the nurse will be required to possess an RN or at least a BSN and some additional graduate level education (such as a master's degree).

The following nursing occupations (clinical and non-clinical) may qualify for an H1B visa:

1. Advanced Practice Registered Nurses ("APRN").
2. Clinical Nurse Specialists in such fields as acute care, adult, critical care, gerontology, family, hospice and palliative care, neonatal, pediatric, psychiatric, mental health and women's health.
3. Nurse Practitioners in such fields as acute care, adult, gerontology, family, neonatal, pediatric, psychiatric, mental health and women's health.

4. Certified Registered Nurse Anesthetists.
5. Certified Nurse-Midwives.
6. Certain specialized nursing positions that require a higher degree of knowledge and skill than a typical registered nurse. For example, those positions for which certification examinations may be available to registered nurses who are not advanced practice nurses. Such certifications demonstrate that the RN possesses additional clinical experience in certain areas, such as:
 - a. School health nurses.
 - b. Occupational health nurses.
 - c. Rehabilitation nurses.
 - d. Emergency room nurses.
 - e. Critical care nurses.
 - f. Operating room nurses.
 - g. Oncology nurses.
 - h. Pediatric nurses.
7. Certain administrative nursing positions, such as "Nurse Managers" or "Nursing Service Administrators" that are supervisory level positions that require an RN and a graduate degree in nursing or health administration.

5.3.4 H1C VISAS

The H1C visa category was specifically designed for registered nurses. However, this visa applies only to hospitals that are located in disadvantaged areas. Currently, there are less than 20 hospitals that qualify for H1C status within the United States. In addition, the number of H1C visas is limited to 500 per year, with each State being limited to sponsoring 25 H1C nurses each year. In addition, the H1C category does not recognize nursing education received in Canada. Because of these limitations, the H1C visa category is not a viable option for most foreign nurses or U.S. hospitals.

5.3.5 H2B VISAS

The H2B visa category allow U.S. employers to bring both skilled and unskilled workers from foreign countries to temporarily engage in non-agricultural employment in the United States. However, this visa is only available to fill an employer's temporary need, which is designated as a position that will last less than one year. The U.S. government has taken the position that all U.S. nursing positions constitute permanent (*versus temporary*) employment. Because of this, the H2B visa category is not a viable option for foreign nurses.

6 OTHER "VISASCREEN" HEALTHCARE WORKERS

6.1 CREDENTIALING AND LICENSING REQUIREMENTS

6.1.1 CREDENTIALING REQUIREMENTS

In 2003, the U.S. Citizenship and Immigration Services ("USCIS") finalized regulations addressing the certification of many foreign healthcare workers through the VisaScreen certification process. In addition to nurses, these regulations covered:

- Occupational Therapists;
- Physical Therapists;
- Speech-Language Pathologists and Audiologists;
- Medical Technologists (also known as Clinical Laboratory Scientists);
- Physicians' Assistants; and
- Medical Technicians (also known as Clinical Laboratory Technicians).

The following organizations administer the VisaScreen program:

- The Commission on Graduates of Foreign Nursing Schools (<http://www.cgfns.org>):
 - Physical Therapists;
 - Occupational Therapists;
 - Speech-Language Pathologists;
 - Audiologists;
 - Medical Technologists;
 - Physicians' Assistants;
 - Medical Technicians.
- The National Board for Certification and Occupational Therapy (<http://www.nbcot.org>):
 - Occupational Therapists.
- The Foreign Credentialing Commission on Physical Therapy (<http://www.fcctp.org>):
 - Physical Therapists.

The VisaScreen process addresses three areas:

1. Whether the foreign healthcare worker has the necessary educational and licensure credentials; specifically:
 - a. They have completed all educational requirements to practice in the country in which their education was received;
 - b. That such requirements are comparable to those of a person trained in the United States for the same position; and
 - c. They have an unrestricted and unencumbered license in the country in which they received their education.
2. Whether the foreign healthcare worker is competent in both oral and written English; and

3. Whether the foreign healthcare worker has passed the necessary technical competency examinations.

All foreign nationals who enter the United States on or after July 26, 2004, who are working in a clinical setting in a VisaScreen occupation must have a VisaScreen Certificate. This includes both immigrants (*i.e.*, green card holders) and nonimmigrants, and includes foreign nationals who were educated in the United States. However, a VisaScreen Certificate is not required for a foreign nurse who enters the United States or who changes their status within the United States as a dependent of a nonimmigrant foreign national, a U.S. citizen or permanent resident.

The English language proficiency requirement may be fulfilled either through the Test of English as a Foreign Language ("TOEFL"), which is administered by the Educational Testing Service (<http://www.ets.org>).

IMPORTANT: A VisaScreen certificate is not the same as a CGFNS (or equivalent) certificate. Even if a foreign healthcare worker has already obtained a CGFNS Certificate, they will still need to obtain a VisaScreen Certificate. This is because a CGFNS Certificate is used for many purposes, only one of which is for U.S. immigration purposes. However, because the VisaScreen process is administered by a division of the CGFNS, obtaining a VisaScreen Certificate after obtaining a CGFNS Certificate is really just an administrative process.

6.1.1.1 EXEMPTION FROM THE ENGLISH PROFICIENCY REQUIREMENT AND EDUCATIONAL COMPARABILITY REVIEW

The following foreign healthcare workers who were educated in the United States are exempt from the education comparability review and the English proficiency requirements of the VisaScreen process:

1. Occupational therapists graduating from programs accredited by the Accreditation Counsel for Occupational Therapy Education of the American Occupational Therapy Association (<http://www.aota.org>);
2. Physical therapists graduating from programs accredited by the Commission on Accreditation and Physical Therapy Education of the American Physical Therapy Association (<http://www.hpta.org>);
3. Speech-language pathologists and audiologists graduating from programs accredited by the Counsel on Academic Accreditation and Audiology and Speech Language Pathology of the American Speech-Language-Hearing Association (<http://www.asha.org>); and
4. Healthcare workers who graduated from a college, university or professional training school in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom or the United States.

6.1.2 LICENSING REQUIREMENTS

Each State has its own set of licensing requirements, which are too varied for the number of positions covered by the VisaScreen program to be outlined here.

6.2 NONIMMIGRANT VISAS FOR “OTHER” FOREIGN HEALTHCARE WORKERS

6.2.1 TN VISAS (FOR CANADIAN AND MEXICAN NATIONALS)

A TN (or "Trade NAFTA") visa can be obtained by Canadian and Mexican citizens under the North American Free Trade Agreement ("NAFTA"). A TN visa uses an objective system to determine whether an applicant qualifies for the visa. This is done by listing the specific requirements each healthcare professional must meet to qualify for a visa. Specifically, a TN visa is available for the following healthcare professionals with the following credentials:

- Dentist: D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license.
- Dietitian: Baccalaureate or licenciatura degree; or state/provincial license.
- Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States): Baccalaureate or licenciatura degree; or post-secondary diploma or post-secondary certificate and three years experience.
- Nutritionist: Baccalaureate or licenciatura degree.
- Occupational Therapist: Baccalaureate or licenciatura degree; or state/provincial license.
- Pharmacist: Baccalaureate or licenciatura degree; or state/provincial license.
- Physiotherapist/Physical Therapist: Baccalaureate or licenciatura degree; or state/provincial license.
- Psychologist: State/provincial license; or licenciatura degree.
- Recreational Therapist: Baccalaureate or licenciatura degree.
- Registered Healthcare worker: State/provincial license; or licenciatura degree.

A TN visa is now a 3-year visa that can be extended indefinitely. A Canadian citizen may apply at the U.S.-Canada border. However, a Mexican citizen must apply for a new TN visa at the U.S. Embassy or consulate in Mexico.

6.2.2 H1B VISAS (FOR ANY NATIONALITY)

The United States' standard work visa is the 3-year H1B visa. To qualify for an H1B visa, both the foreign national and the position being sponsored must qualify for an H1B visa. Specifically:

- A foreign national must have a U.S. bachelor's degree or foreign equivalent, plus any certifications and licenses required for the position; and
- The position being sponsored must also typically require a U.S. bachelor's degree.

It is oftentimes hard to determine whether a particular position will qualify for an H1B visa. For example, Radiation Therapists historically have not been able to qualify for an H1B visa. However, with more and more hospitals requiring specialized training in this field, it is now more common for a Radiation Therapist to qualify for an H1B visa. Other positions, such as Physical Therapists, routinely qualify for H1B visas.

6.2.3 H2B VISAS

The H2B visa category allow U.S. employers to bring both skilled and unskilled workers from foreign countries to temporarily engage in non-agricultural employment in the United States. However, this visa is only available to fill an employer's temporary need, which is designated as a position that will last less than one year. It is unlikely that the U.S. government will accept that a pharmacist position could be a temporary (*versus permanent*) position. Because of this, the H2B visa category is not a viable option for foreign healthcare workers.

7 FOREIGN PHARMACISTS

A "foreign pharmacy graduate" is a pharmacist whose undergraduate pharmacy degree was conferred by a recognized school of pharmacy outside the 50 United States, the District of Columbia, and Puerto Rico. As such, U.S. citizens who have completed their pharmacy education outside the United State are considered to be "foreign pharmacy graduates," whereas foreign nationals who have graduated from schools in the United States are not considered to be foreign pharmacy graduates.

7.1 CREDENTIALING AND LICENSING REQUIREMENTS

7.1.1 CREDENTIALING

There are no U.S. government-mandated credentialing requirements for foreign pharmacists. However, in order to become licensed within the United States, a foreign pharmacist must go through a certification process that is administered by the National Association of Boards of Pharmacy (<http://www.nabp.net>) through its Foreign Pharmacy Graduate Examination Committee. This certification process addresses three areas:

1. Whether the foreign pharmacist has the necessary educational and licensure credentials; specifically:
 - a. They have completed all educational requirements to practice in the country in which their education was received;
 - b. That such requirements are comparable to those of a person trained in the United States for the same position (*for example, foreign pharmacy graduates who earned their degree after January 1, 2003, must have earned their professional degree from a five-year curriculum program in order to apply for FPGEC Certification*); and
 - c. They have an unrestricted and unencumbered license in the country in which they received their education.
2. Whether the foreign pharmacist is competent in both oral and written English; and
3. Whether the foreign pharmacist has passed the necessary technical competency examinations.

The English language proficiency requirement may be fulfilled either through the Test of English as a Foreign Language ("TOEFL"), which is administered by the Educational Testing Service (<http://www.ets.org>). There is no exemption from this requirement. As such, it is imposed even if the candidate was born or has lived in a country in which the native language is English.

A foreign pharmacy graduate must also pass the North American Pharmacist Licensure Examination (NAPLEX), which tests an applicant on the knowledge, judgment and skills of an entry-level pharmacist; and oftentimes the Multistate Pharmacy Jurisprudence Examination (MPJE), which tests an applicant on both federal and state laws and regulations. Both of these tests are administered by the NABT.

7.1.2 LICENSING REQUIREMENTS

Each State has its own set of licensing requirements. These requirements are tracked by the National Association of Boards of Pharmacy (<http://www.nabp.net>).

It should be noted that most States require a candidate to complete internship hours (*generally 1500 hours*) under the supervision of a registered and licensed U.S. pharmacist in what is generally known as an “Intern Pharmacist” position.

7.2 NONIMMIGRANT VISAS

7.2.1 TN VISAS (FOR CANADIAN AND MEXICAN NATIONALS)

A TN (or “Trade NAFTA”) visa can be obtained by Canadian and Mexican citizens under the North American Free Trade Agreement (“NAFTA”). For a pharmacist, the required credentials include a baccalaureate or licenciatura degree; or state/provincial license.

It is also important to note that the TN occupations list does not include “Intern Pharmacist”. As such, it is probable that a Canadian or Mexican national who qualifies for an “Intern Pharmacist” position within the United States will not qualify for a “Pharmacist” TN visa.

A TN visa is now a 3-year visa that can be extended indefinitely. A Canadian citizen may apply at the U.S.-Canada border. However, a Mexican citizen must apply for a new TN visa at the U.S. Embassy or consulate in Mexico.

7.2.2 H1B VISAS (FOR ANY NATIONALITY)

The United States' standard work visa is the 3-year H1B visa. To qualify for an H1B visa, both the foreign national and the position being sponsored must qualify for an H1B visa. Specifically:

- A foreign national must have a U.S. bachelor's degree or foreign equivalent, plus any certifications and licenses required for the position; and
- The position being sponsored must also typically require a U.S. bachelor's degree.

As such, a pharmacist position qualifies for an H1B visa. However, because of many States' licensure requirements, many intern pharmacists cannot qualify for an H1B work visa. Whether a foreign pharmacist graduate will qualify for an H1B visa as an intern pharmacist depends on whether the State of intended employment requires a bachelor's degree as a prerequisite for working as an intern pharmacist.

7.2.3 H2B VISAS

The H2B visa category allows U.S. employers to bring both skilled and unskilled workers from foreign countries to temporarily engage in non-agricultural employment in the United States. However, this visa is only available to fill an employer's temporary need, which is designated as a position that will last less than one year. It is unlikely that the U.S. government will accept that a pharmacist position could be a temporary (*versus permanent*) position. Because of this, the H2B visa category is not a viable option for foreign pharmacists.

8 IMMIGRANT VISAS (“GREEN CARDS”) FOR FOREIGN HEALTHCARE WORKERS OTHER THAN PHYSICIANS

All foreign healthcare workers (*other than registered nurses and physical therapists*) must apply for an employment-based green card through the “PERM” labor certification green card process. This three-step process involves:

1. Testing the local labor market and then filing a “PERM” labor certification application with the U.S. Department of Labor (“DOL”);
2. Filing an I-140 immigrant visa petition with the U.S. Citizenship and Immigration Services (“USCIS”); and
3. Filing an I-485 adjustment of status application with the USCIS.

The first step in this process is not required for registered nurses or physical therapists. This is because the U.S. Department of Labor has designated registered nurses and physical therapists as “shortage occupations”. As such, an employer is not required to prove that there is shortage of qualified U.S. workers by testing the local labor market.

8.1 THE “PERM” LABOR CERTIFICATION APPLICATION PROCESS

Under the PERM process, before a U.S. employer may sponsor a foreign national for a green card, it must prove to the U.S. Department of Labor that there are no U.S. workers “ready, willing and able” to perform the job for which the foreign national is being sponsored. This is done through the PERM recruitment process.

There are several mandatory recruitment steps for all PERM applications. There are also additional steps required for “professional” positions. All recruitment in preparation for filing a PERM application must be performed for at least 30 days. The recruitment must be started no earlier than 180 days before a PERM application is filed, and must be completed at least 30 days before a PERM application is filed. However, for “professional” positions, one of the additional recruitment steps may be performed within 30 days of the filing of a PERM application.

Once a PERM application is filed, the DOL’s new computer system will analyze the application to determine whether it fits the criteria requiring an audit by the DOL. If not, the computer will still randomly select applications for routine audits. Even if the computer system does not flag an application for an audit, a DOL representative may still review the application manually and flag it for an audit. If audited, an employer has only 30 days to respond to the DOL. As such, every employer must assume it will be audited by the DOL and be prepared for such an eventuality.

8.2 THE IMMIGRANT VISA PETITION AND ADJUSTMENT OF STATUS PROCESS

Once the PERM labor certification application is certified by the DOL, the sponsoring employer files an I-140 Immigrant Petition for Alien Worker with the USCIS (*for registered nurses and physical therapists, the I-140 is the first step in the green card process*). The purpose of an I-140 is to demonstrate to the USCIS that the sponsored employee has met the requirements set forth through the VisaScreen credentialing process, and that the sponsoring employer has the ability to pay the prevailing wage for the position being sponsored in the geographic area where the position is located.

8.2.1 HEALTHCARE WORKERS RESIDING IN THE UNITED STATES

If visa numbers are available, the sponsored employee can also file an I-485 Application for Adjustment of Status, along with an I-765 Application for an Employment Authorization Document ("EAD") and an I-131 Application for an Advance Parole Travel Document, at the same time as their I-140 petition.

- The purpose of the I-485 application is to request that the USCIS convert the applicants' immigration status from "nonimmigrant" to "immigrant", or "permanent resident".
- The purpose of an "EAD" is to allow a foreign national to work as a "prospective immigrant" (*i.e.*, they no longer need to rely on their nonimmigrant status for work authorization).
- The purpose of an "advance parole" travel document is to allow a foreign national to travel outside of the United States as a "prospective immigrant". Without an advance parole, a foreign national will be deemed to have abandoned their green card application when they exit the United States. The only exception to this rule is if the foreign national is traveling on an "H" or "L" nonimmigrant visa.

One major benefit of the EAD and advance parole applications is that a person on advance parole need not renew their nonimmigrant visas at a U.S. Embassy or consulate. This is seen as a significant benefit by most foreign nationals.

Another major benefit is that after a foreign national's I-140 has been approved and his or her I-485 has been pending for at least 180 days, the foreign national may transfer his or her green card application to a new employer. This provides some flexibility to a foreign national whose I-485 has been pending for a long time.

8.2.2 HEALTHCARE WORKERS RESIDING OUTSIDE THE UNITED STATES

If a foreign national is not residing in the United States, they do not apply for a "green card" through the USCIS. Instead, they apply for an "immigrant visa" through the U.S. State Department at the U.S. Embassy or consulate located nearest to their place of residence. There is no difference between a "green card" and "immigrant visa". Both confer "permanent residency" to a foreign national. The only difference is which government agency grants the permanent residency.

Therefore, for foreign nationals who do not reside in the United States, once their I-140 petition is approved, the next step is to apply for an immigrant visa using Form DS-230. Once the required forms and supporting documentation are received by the U.S. Embassy or consulate, it will schedule the foreign national for an interview. The foreign national must take all of the required documentation (*including both originals and a copy for the Embassy or consulate*) to the interview where a consular officer will review the documentation and issue the foreign national an immigrant visa. This immigrant visa is the foreign nurse's authorization to enter the United States as a permanent resident and begin to work for his or her sponsoring employer.

8.2.3 CREDENTIALING AND LICENSING REQUIREMENTS DURING THE GREEN CARD PROCESS

The U.S. government does not require a foreign healthcare worker to have the VisaScreen certificate when an I-140 petition is filed. However, the foreign healthcare worker must obtain a VisaScreen certificate before they can obtain a green card from the USCIS or an immigrant visa from a U.S. Embassy or consulate.

Nor must a foreign healthcare worker be licensed in the State where they intend to work when an I-485 application or DS-230 application is filed. The VisaScreen certificate is accepted as evidence that the worker should have no difficulty in obtaining a license once they enter the United States. However, once in the United States, the foreign healthcare worker must adhere to the licensing requirements of the State where they intend to work. This is not the case for a foreign pharmacist or other non-VisaScreen healthcare position.