

How Healthcare Employers Can Use Work Visas to Help Solve Staffing Shortages for Physicians, Nurses and Allied Health Professionals

Jeanne Kildow, Immigration Attorney
Borene Law Firm – U.S. & Global Immigration
jkildow@borene.com, 612.321.0082, www.borene.com

Temporary Work Visas for Nurses, Allied Health Professionals, and Physicians

Work Visas for Nurses

TN (Trade NAFTA) or
H-1B Specialty Occupation Worker

- ▶ Registered Nurses (RN)
- ▶ Clinical Nurse Managers
- ▶ Nurse Practitioners
- ▶ Other Specialty Nurses

Work Visas for Other Health Professionals

- ▶ Audiologists
- ▶ Chiropractors
- ▶ Clinical Laboratory Scientists
- ▶ Dental Assistants
- ▶ Dental Hygienists
- ▶ Dentists
- ▶ Dietitians
- ▶ Marriage and Family Counselors
- ▶ Medical Assistants
- ▶ Medical Physicists
- ▶ Medical Technologists
- ▶ Nutritionists
- ▶ Occupational Therapists
- ▶ Optometrists
- Pharmacists
- Physical Therapists
- Physician Assistants
- Radiologic Technologists
- Social Workers
- Speech–Language Pathologists
- Veterinarians
- and many other health professionals

TN Category for Medical/Allied Health Professionals Who are Citizens of Canada or Mexico

- ▶ Dentists
- ▶ Dietitians
- ▶ Medical laboratory technologists
- ▶ Nutritionists
- ▶ Occupational therapists
- ▶ Pharmacists
- ▶ Physicians (teaching or research only – not clinical doctor)
- ▶ Physiotherapists/ Physical Therapists
- ▶ Psychologist
- ▶ Recreational Therapist
- ▶ Registered Nurse (with State/Provincial license or Licenciatura degree)

E-3 Visa for Nurses and Other Health Professionals from Australia

Four-year bachelor's or higher degree that matches the job is required

- ▶ Initial 2-year approval and can be extended indefinitely
- ▶ Not subject to the H-1B quota (lottery)
- ▶ Spouse can work, too

Immigration Options for Physicians

Work Visas for Physicians

- ▶ Anesthesiologists
- ▶ Cardiologists
- ▶ Emergency Medicine Specialists
- ▶ Endocrinologists
- ▶ Family Practice Specialists
- ▶ Gastroenterologists
- ▶ Geriatric Medicine Specialists
- ▶ Gynecologists
- ▶ Internal Medicine Specialists
- ▶ Nephrologists
- ▶ Neurologists
- ▶ Obstetricians
- ▶ Oncologists
- ▶ Orthopedic Surgeons
- ▶ Ophthalmologists
- ▶ Pediatricians
- ▶ Psychiatrists
- ▶ Pulmonary Disease Specialists
- ▶ Radiologists
- ▶ Rheumatologists
- ▶ Surgeons (General)
- ▶ Surgeons (subspecialists)
- ▶ Urologists
- ▶ and many other Specialist Physicians

Current Status of Physician (Residency/Fellowship Training Status): J-1 or H-1B?

- ▶ If J-1, need for a J-Waiver of the two-year home residence requirement?

Primary Care or Specialist?

H-1 B Approval is Employer-Specific

H-1B Annual Numerical Limitation

Cap-Subject or Cap-Exempt?

- ▶ H-1B *Prevailing* Wage Requirement
- ▶ H-1B *Actual* Wage Requirement

- ▶ ECFMG Certification
- ▶ USMLE Steps 1, 2 and 3
- ▶ Minnesota Medical License

Part-Time or Full-Time?

Minimum Requirements for the Position?

- ▶ Professional Credentials (Graduate Medical Education, Specialty Board Certification?)
- ▶ State Medical License, DEA Certification?
- ▶ Specific Experience Required?

H-1 B Time Limitations

- ▶ Three Year Initial Approval
- ▶ Six Year Max
- ▶ Exceptions may permit more than six years

Other H-1 B Issues

- ▶ Scope of Employment
- ▶ Job Duties
- ▶ Work Sites

H-1B Department of Labor Requirements

- ▶ Labor Condition Application (LCA)
- ▶ LCA Public File
- ▶ Internal Postings

Timing of Filing of H-1 B Petition

**All Legal Services / Attorneys
Fees, Filing Fees and Expenses
for Temporary H-1B Work Visas
and Permanent Labor
Certifications (PERM)
Must be Paid by the Employer**

Any material changes in the details or terms of the H-1B employment, generally require advance written approval from the Immigration Service and/or the U.S. Department of Labor, such as changes in:

- ▶ Work Sites
- ▶ Hours
- ▶ Salary

Permanent Residence Sponsorship (Green Cards)

- ▶ PERM Labor Certification Application
- ▶ Physician NIW (National Interest Waiver)
- ▶ Many other options

**Best Practice Tip -
How Not to Run Afoul of
Citizenship, Nationality, and
Immigration Status Anti-
Discrimination Rules and
Regulations in the Hiring Process**

Anti-Discrimination Provision of the Immigration and Nationality Act (INA)

Prohibits discrimination against those that appear foreign or that speak English with an accent, during the process of:

- ▶ Job recruitment,
- ▶ Job interviewing,
- ▶ Job offer,
- ▶ I-9 employment authorization verification.

The Immigration & Nationality Act (INA) is a Federal law that applies to ALL employers

“Magic Questions” – In the recruitment/hiring context, these two questions (and these two questions only) have been determined to be acceptable and not in violation of the anti-discrimination rules of the Immigration and Nationality Act as relating to inquiries about visa sponsorship and/or current U.S. immigration status:

1. “Are you legally authorized to work in the U.S.?”
2. “Will you now or in the future require sponsorship for employment visa status (e.g., H-1B visa status)?”

There can be great value in doing some advance screening of certain international job candidates with the help of immigration counsel.

Is work visa sponsorship an option that could enable us to hire this job candidate?

- ▶ How long will the process take?
- ▶ How much will it cost?
- ▶ How soon can we lawfully put this person on payroll?

Timing Considerations in the Visa Sponsorship Context

Plan ahead:

Beginning the immigration sponsorship process 6–12 months ahead of time is not too early. Government processing delays have significantly increased, due to the pandemic.

Questions?

Jeanne Kildow
Immigration Attorney
Borene Law Firm

jkildow@borene.com

612.321.0082

www.borene.com

BORENE
U.S. & GLOBAL IMMIGRATION LAW

©Borene Law Firm P. A. 2022