

College of Medicine Visa Waiver Request Procedure

Overview

Introduction

The following procedures must be followed to submit a request for sponsorship of a faculty candidate immigration Visa Waiver through the Oklahoma State Department of Health. Questions about these procedures should be directed to the COM Office of Finance as noted below.

Background:

International Medical Graduates holding a J-1 Visa are not permitted to work in the United States without returning to the home country for 2-years (a condition of J-1 status). The home residency requirement may be postponed or waived by the Citizenship and Immigration Service (CIS). A new Visa is issued when a waiver application is approved by CIS. The review and approval process may require up to six months from the time of submission to the federal agency. The application and review process is multifaceted, requiring specific actions by the waiver candidate, the prospective employer, the "interested government agency" (e.g., Oklahoma State Department of Health or the Veteran's Administration) and the Federal reviewing agencies (e.g., US Department of State, CIS, and Health and Human Services). Available waiver positions are communicated to interested government agencies at the beginning of the federal fiscal year (October 1). Due to the inherent complexity of this process, and the impact of certain actions within the review process on the faculty candidate's legal status in the United States, it is strongly recommended that the hiring COM Department follow the procedures noted in "College of Medicine Procedure for Requesting Visa Waiver Approval" as outlined below and detailed in Attachment A.

Overview of Procedure for Requesting Visa Waiver Approval:

If faculty recruitment conditions indicate that an International Medical Graduate (IMG) is the most qualified candidate for a faculty position, then immediate determination of each candidate's Visa status should be made. If a candidate holds a J-1 Visa a change in Visa status will be required before that candidate can legally work in a regular full-time faculty position. The application steps for a Visa waiver enlist the involvement of multiple campus, state and federal agencies as well as the personal legal counsel secured by the faculty candidate. Briefly, the procedure includes:

- A. Deadline: March 1 annually. Identify IMG Candidate Visa Status
- B. Deadline: March 1 annually: Request Approval to Seek Visa Waiver from the Executive Dean, COM. Approval, Denial or a request for additional information will be returned within 45-days. If request is approved, Office of Finance will develop Preliminary Contract Letter
- C. Review and Complete Visa Waiver Checklist (on-going through waiver approval or denial)
- D. Deadline: October 1 annually: Develop Required Documentation to Support the Proposed Candidate
- E. Deadline: May 31 annually: Develop Letter of Support for the Proposed Candidate

A description of each step is provided in "College of Medicine Procedure for Requesting Visa Waiver Approval" (Attachment A) and Visa Waiver Checklist (Attachment B).

Questions

If you have questions or require assistance with the process application please do not hesitate to contact Ms. Lisa Thompson in the Office of Finance at 271- or the OUHSC Office of Human Resources at 271-2190 (Vicky Martin x- 44707).

Attachment A - College of Medicine Procedure for Requesting Visa Waiver Approval
Attachment B - College of Medicine Visa Waiver Checklist

Anne Barnes
Office of Finance

College of Medicine Visa Waiver Request Procedure

Attachment A

Effective Spring 2005 the OUHSC College of Medicine procedure for requesting International Medical Graduate (IMG) Visa waiver approval follows:

- A. **Identify IMG Faculty Candidate Visa Status.** If the candidate pool or qualifications of U.S. graduates are insufficient to produce a qualified U.S. candidate for a faculty position, International Medical Graduates (IMG) may be considered. When this occurs, Departments are encouraged to:
 - a. Query any faculty candidate who is not currently a citizen of the United States about their current Visa status. Seek written approval from the COM Dean to continue this recruitment (See item B).
 - b. Remind the candidate that the University of Oklahoma does not provide or pay for personal legal counsel and indicate that the candidate may need personal legal counsel as a guide through the Visa and/or Visa waiver application process if the candidate does not currently hold a Visa which permits work in the United States. Describe the process of seeking an appropriate primary appointment site (e.g., Veteran's Administration, Children's Hospital or Department Clinic) for the faculty candidate. Each primary appointment site will require a specific justification and waiver application process. The designation "primary appointment site" refers to the Visa waiver process ONLY.
 - c. Identify the most appropriate primary appointment site for the candidate and follow procedures specified for the associated Visa waiver request (e.g., Veterans Administration, State Conrad 30 Primary Care, State Conrad 30: Specialty Physician, or O-1 Visa: Note, IMG faculty candidates currently holding a J-1 Visa are not currently eligible for conversion to an O-1 Visa).
- B. **Request Approval to Seek Visa Waiver from the COM Executive Dean.** Requesting a Visa waiver for an IMG faculty candidate in the recruitment and appointment process requires pre-approval from the COM Executive Dean. A Department Chair may initially submit an e-mail request for consideration for the following calendar year at any time between July 1 and March 1. Note: (1) the federal fiscal year (Oct 1 – Sept 30) governs waiver slot availability and the application process specified by the Oklahoma State Department of Health (OSDH) and (2) required justification materials (Item E below) must be forwarded with the IMG faculty candidate's waiver application. The OSDH Conrad 30 Program is discretionary. There is no guarantee that an applicant will be supported by OSDH or approved at the federal level for waiver of the two-year home residency requirement.
- C. **Review and Complete Visa Waiver Checklist.** On notification of pre-approval by the COM Executive Dean, the Office of Faculty Affairs will forward a dated copy of the "College of Medicine Visa Waiver Checklist" to the Business Manager for the requesting department and to OUHSC Human Resources. The checklist must be completed and a copy returned to the Dean's Office with the DRAFT letter of support. Items on the Visa Waiver Checklist are on-going through U.S. Citizenship and Immigration Services (CIS), formerly the Immigration and Naturalization Service (INS), approval or denial of the request. Reports are provided to CIS at 6-month intervals for 3 years.
- D. **Develop Required Documentation.** The Department, College and University are required to provide documentation that is submitted with the IMG faculty candidate's waiver application. The candidate will be asked to submit documentation through his or her legal counsel if such counsel has been retained. Specific items required at this time are highlighted in Item E and detailed in Attachment B.
- E. **Develop Letter of Support for the Proposed Candidate.** The requesting Department must prepare a DRAFT letter of support for the IMG faculty candidate, specifying his or her credentials and providing a detailed justification that explains why this IMG faculty candidate is the only individual who can fill the position. A final version of the letter of support will be prepared in the Dean's Office and forwarded to the OSDH if the candidate is an appropriate applicant under State Conrad 30 provisions. Copies of the final letter will be provided to the IMG faculty candidate and the Department; a copy will also be placed in the candidate's recruitment/college personnel folder. The Department may provide a copy to the IMG faculty candidate's legal counsel if requested.

College of Medicine Visa Waiver Checklist

Attachment B

This checklist is a procedural map for coordinating Department, College and OUHSC Human Resources communication and tasks that must be completed during faculty recruitment and hiring for an International Medical Graduate. Reference to a specific action step should enable clearer communication (A) regarding the IMG faculty candidate's status and (B) between OUHSC, the IMG faculty candidate and/or his or her legal representative.

CHECKLIST A: General Information Needed to Prepare a Waiver Request

1. **Description of Potential Applicant Pool Status.** Please review the known applicant pool status for potential availability of U.S. graduates to fill anticipated faculty vacancies during 2008 - 2010. A brief summary of national qualified candidate pool of U.S. medical school graduates must be forwarded to Office of Finance by March 1st, annually. Justification for IMG Visa Waivers requires documentation that no qualified U.S. applicant is available. This may be demonstrated in part by the status of the U.S. applicant pool in a specialty or subspecialty and through responses to national advertising for available positions. Data regarding the applicant pool should be available through applicable academic and specialty associations.
2. **Describe Service to the Underserved.** Waiver applications from an "interested government agency" (e.g., Oklahoma State Department of Health) must indicate that the physician to be employed will provide service to an underserved population. Specific data must be available to document the level of participation the employer/site currently has from that population, the lack of available practitioners to serve that population, and the "sliding fee scale" or collections rate from that population (e.g., Medicaid, Medicare, uninsured). This information must be provided with the Executive Dean's letter to the OSDH.
3. **Contact OUHSC Human Resources.** Visa waiver applications must be coordinated through OUHSC Human Resources. When an IMG faculty candidate has been identified contact this office for updates on required application forms, dates, deadlines and University procedures.

CHECKLIST B: Recommend Best Primary Appointment Site for the New Hire

4. **Identify Primary Appointment Site.** Identify the most appropriate potential primary appointment site and/or Visa type with consideration given in the following order:
 - a. Is the IMG faculty candidate eligible for the **Veteran's Administration** or the **Children's Hospital** to be the site of primary practice?
 - i. **VA:** This requires that the candidate serve as a salaried VA physician with a minimum 5/8ths appointment. The remaining time (up to 3/8ths) can be spent at OU Medical Center or OU Physicians. If the appointment can be through the VA follow the procedure to hire a new IMG faculty member as specified by the VA Chief of Staff.
 - ii. **Children's Hospital:** OSDH requested and received approval from the U.S. Department of Health and Human Services for Children's Hospital to be designated as a facility serving the underserved. Physicians practicing at Children's Hospital may receive priority consideration for the OSDH Conrad 30 Primary Care waiver request. If the candidate will provide services at Children's Hospital then a request for regular Conrad 30 waiver application is appropriate. Procedures for pre-approval and drafting a support letter to be forwarded to OSDH by the Executive Dean, College of Medicine should be followed.
 - b. **O-1 Visa.** Is the candidate eligible for an O-1 Visa due to "extraordinary ability"? The O-1 Visa is for an initial term of up to 3-years; indefinite annual extensions are possible as long as the temporary nature of the position can be demonstrated. It does not waive the 2-year home residency requirement. An O-1 Visa holder can seek permanent resident status in the United States. An O-1 Visa holder is not eligible for an H-1B Visa. If the candidate is eligible for an O-1 Visa follow the application procedures specified by OUHSC Human Resources.

College of Medicine Visa Waiver Checklist

Attachment B

- c. H-1B Visa. Does the candidate currently hold a J-1 Visa and remain liable for fulfilling the 2-year home residency requirement? To secure an H-1B Visa a request must be forwarded to the Oklahoma State Department of Health (OSDH), if the candidate is not eligible for a 5/8th VA appointment. Requests for waiver sponsorship through OSDH must be preceded by a letter to OSDH from the COM Executive Dean. The Department Chair must seek pre-approval as specified in Item B of Attachment A: "College of Medicine Procedure for Requesting Visa Waiver Approval."
- d. "Green card" or **Permanent Resident Status**. Qualified IMG faculty candidates with a "green card" or permanent resident status, as designated by the U.S. Citizenship and Immigration Service, can be offered a position through the regular faculty appointment process without further Visa or Visa waiver consideration. The IMG faculty candidate's Curriculum Vita should indicate this status (e.g., U.S. Citizen, Naturalized Citizen or Permanent Resident). If the IMG candidate is in the process of obtaining this status a work permit may be required. Departments and IMG faculty candidates should follow procedures specified by OUHSC Human Resources. Additional information: <http://uscis.gov/graphics/howdoi/legpermres.htm>.

CHECKLIST C: Preparing a Waiver Request through the OSDH Conrad 30 Program

The Oklahoma State Department of Health Conrad 30 program is discretionary and waiver applications submitted to OSDH are not guaranteed sponsorship. A letter of priority and support from the COM Dean ensures the OSDH that the College of Medicine and State of Oklahoma have a critical need for the waiver. If approved for waiver, the IMG faculty member, or his or her counsel, will be required to submit documentation to the DOS through OSDH twice a year to confirm compliance with the IMG faculty candidate's 3 year service obligation.

I. Initial steps – pre-employment at OUHSC. Coordinate through OUHSC Human Resources.

1. **Department of State Data Sheet Application**. This data sheet application along with a filing fee of \$215.00 (paid by the IMG faculty candidate, or his or her legal counsel) is submitted to the DOS in order to obtain a case number to track the processing of the J-1 Visa waiver application. At present, the processing time for data sheet applications is approximately 5-weeks. IMG faculty candidate's legal counsel should provide this application directly to him or her.
2. **Submit J-1 Waiver Application to the Oklahoma State Department of Health**. The J-1 waiver application is submitted to OSDH, by the OUHSC Human Resources department with documentation. This initiates the formal submission of materials, following the Dean's support letter and request for OSDH to serve as an interested government agency to recommend waiver of the two-year home residence requirement. OSDH will begin accepting applications on October 1 and indicates approximately 2 weeks processing time.
3. **Transfer J-1 Waiver Application to the DOS**. If the OSDH deems the IMG faculty candidate's employment to be "in the public interest," a letter and the J-1 waiver application will be forwarded to the Director of the DOS requesting a favorable recommendation to the CIS, for granting a waiver. The DOS acts as the "official sponsor" of the J-1 waiver application. At present, the processing time for J-1 waiver applications at the DOS is approximately 2 months.
4. **Transfer J-1 Waiver Application to the CIS**. Upon receipt of the DOS recommendation, the CIS may grant a waiver of the two-year home residence requirement to the IMG faculty candidate. At present, the processing time for J-1 waiver applications at the CIS is approximately 3 months.

College of Medicine Visa Waiver Checklist

Attachment B

II. Materials Required to Complete the J-1 Waiver application:

1. **Draft Overview Support Letter.** From the department to the COM Executive Dean. This letter includes specifics that must be provided to the OSDH. Please review the draft carefully to ensure accurate representations; prepare the letter on the Department's letterhead and forward 1-copy electronically to COM Office of Finance (c/o: Thompson, Lisa M. (Dean's Office-COM) (HSC)). The final letter will be printed on COM letterhead and signed by the Executive Dean, OUHSC College of Medicine.
2. **Employment Agreement.** The University has been informed that the DOS does not accept "Offer Letters." The OUHSC Office of Legal Counsel has revised the preliminary offer letter to fit DOS requirements of a "contract" as well as State law.. The IMG faculty candidate "contract" must meet the following DOS requirements.
 - (1) The complete practice site address;
 - (2) Guaranteed base salary, a provision for benefits which are separate from base salary (e.g., insurance, annual vacation, sick leave, continuing medical education, holidays);
 - (3) A three (3) year term;
 - (4) 40 hours baseline, days and hours of practice, and a statement that on-call and travel times are not included in minimum hours;
 - (5) Medical discipline;
 - (6) A statement that the physician agrees to meet the requirements set forth in Section 214(l) of the Immigration and Nationality Act;
 - (7) A statement that the starting date of employment will be within 90 days of receiving an approval of the J-1 waiver application from the USCIS (the "contract" should not state a specific commencement or expiration date);
 - (8) A statement that all amendments shall adhere to State and Federal J-1 Visa waiver requirements, and
 - (9) No non-compete clause is included.
3. **Recruitment Efforts.** Must be specified. Copies of recruitment advertisements (e.g., advertisements in journals, internet advertisement, job postings at residency programs) will be needed as an attachment to the candidate's application to OSDH. This is a crucial condition of the waiver application and it must be clear that the University has made extensive efforts to recruit a U.S. physician. **Note: for faculty who will have a 5/8th or more VA appointment, specific advertising requirements apply for the VA. Consult the Office of the VA Chief of Staff before proceeding with recruitment of an IMG faculty candidate whose primary appointment may be at the VA.**
4. **Names and CVs of Non-Foreign Physicians.** If a Department receives applications from U.S. and non-U.S. physicians in the recruitment process, please provide the following: 1) list of the names and the Curriculum Vitae from each applicant (both U.S. physicians and foreign physicians), 2) whether or not any U.S. physicians were interviewed (if they were not interviewed, please indicate the reason why they were not interviewed), 3) date of interview, and the lawful reason for not hiring any of the U.S. physicians.
5. **List of Physicians in the Specialty of the IMG Candidate Who are Currently in Oklahoma.** This list must include all physicians who specialize in the area of the IMG faculty candidate. This list must be consistent with the physicians listed in the COM Executive Dean's support letter.

III. Additional Material may be requested by the IMG faculty candidate's Legal Counsel. Please be prepared to provide:

1. **Community Support Letters.** A minimum of three (3) letters from members of the community in

College of Medicine Visa Waiver Checklist

Attachment B

support of the J-1 waiver application. These letters may come from local hospital administrators, local physicians, county medical society, mayor, county/city council, and local businesses (**in this order of preference**). Community letters should stress the following: **(1)** the need for a physician in the specific specialty/sub-specialty in the service area and **(2)** the OUHSC's overall commitment to servicing the medically underserved patient population. Support letters should be:

- Held for use by the IMG faculty candidate's legal counsel; they will be requested at the appropriate time. At the time letters are forwarded a copy should be sent to OUHSC Human Resources for the candidate's file.
- Addressed to: Oklahoma State Department of Health; Oklahoma State Waiver Program; Mr. Mike Brown; 1000 NE Tenth Street; Oklahoma City, OK 73117-1299. **These letters must NOT be sent directly to OSDH. They are a component of the application package. Sending them separately may delay processing of the IMG faculty candidate's waiver request.**

2. **Medical services to low-income population.** Please provide evidence of the OUHSC COM Department and/or Section (in which the IMG faculty candidate will be appointed) commitment to the low-income population. This evidence may include Medicare and Medicaid receipts or a spreadsheet documenting percent of patients who are low-income and collections records.
3. **Fee Schedule.** Indicate if and how fees are adapted for persons with limited financial means or those who are uninsured. (The COM does not have a "sliding fee scale," which is typically information provided by the pending IMG employer. As such the COM must indicate to the federal agency that underserved persons will be able to utilize the services of this IMG faculty candidate and provide narrative evidence that such underserved persons are currently served by the Department faculty.)
4. **Enrollment in SoonerCare.** A notarized affidavit to be signed by a designated individual at OUHSC and the Faculty candidate agreeing to enroll as a SoonerCare provider.
5. **NOTE: If requested to provide Form G-28 - Notice of Entry of Appearance as Attorney.** The support letter from the COM Executive Dean to the OSDH is sufficient to indicate the University's intent to hire the IMG faculty candidate within 90-days of waiver approval. OSDH, as an interested government agency, should not need further verification. The IMG faculty candidate's legal counsel may request form G-28 for designation as a "temporary representative" of the OUHSC COM. If so, indicate to Counsel that such representation is not required. If Counsel does not understand, refer them to University Legal Counsel (Peggy-Clay@ouhsc.edu or Jill-Raines@ouhsc.edu) who can determine if the situation is such that approval for such temporary representation should be sought from the University General Counsel. Look for language such as, "This form needs to be dated and signed by Dr. Andrews/the COM Executive Dean to authorize our firm to represent OUHSC in this matter only."

IV. Materials Required from the Faculty Candidate. Note: Legal counsel for the IMG faculty candidate must be secured by the candidate. OUHSC does not provide or pay for individual legal counsel. Typically, faculty candidates requesting J-1 Visa Waivers will need to complete and provide the following materials to their counsel:

1. **Statement of Physician Agreement to Contract Terms.** This form must be reviewed, dated, and signed by the faculty candidate in the presence of a Notary Public.
2. **Department of State (DOS) Exchange Visitor Attestation Form.** This form must be reviewed, dated, and signed by the faculty candidate in the presence of a Notary Public.
3. **Medical Licensure Affidavit.** This form must be reviewed, dated and signed by the faculty candidate in the presence of a Notary Public.

College of Medicine Visa Waiver Checklist

Attachment B

4. **Enrollment in SoonerCare.** A notarized affidavit must be signed by a designated individual at OUHSC and the IMG faculty candidate agreeing the candidate will enroll as a SoonerCare provider.
5. **No Contractual Obligation with Home Country.** This statement establishes that the IMG faculty candidate is not contractually obligated to return to his or her home country. This statement needs to be reviewed, dated, and signed by the IMG faculty candidate in the presence of a Notary Public.
6. **Letters of Recommendation.** The IMG faculty candidate must provide a minimum of three (3) letters of recommendation from physicians, fellowship/residency program directors, or others knowledgeable of his or her performance. These letters should stress the following: **(1)** outline with some specificity the particular talents that the faculty candidate exhibited in the field of medicine; **(2)** highlight any particular insights the faculty candidate has exhibited while examining patients, and his or her overall commitment to patients, and dedication to patient's health and well-being; **(3)** state that this work could only be pursued by a person with exceptional dedication and talent in the specific field of medicine. Letters secured by the faculty candidate need to present a strong and convincing statement regarding the individual's knowledge, skills and abilities with regard to his or her field of medicine and overall skills as a physician. Support letters should be:
 - Held for use by the IMG faculty candidate's legal counsel; they will be requested at the appropriate time. At the time they are forwarded to the candidate's counsel a copy should be sent to OUHSC Human Resources.
 - Addressed to: Oklahoma State Department of Health; Oklahoma State Waiver Program; Mr. Mike Brown; 1000 NE Tenth Street; Oklahoma City, OK 73117-1299. **These letters must NOT be sent directly to OSDH. They are a component of the application package. Sending them separately may delay processing of the candidate's waiver request.**
7. **Oklahoma State Medical License.** The faculty candidate must provide a copy of his or her application for an Oklahoma State Medical License or, if already licensed, a copy of the license itself.
8. **Form G-28 - Notice of Entry of Appearance as Attorney.** This form needs to be dated and signed by the faculty candidate to authorize the legal firm to represent him or her in this matter only. Source for form and updates: <http://uscis.gov/graphics/formsfee/forms/g-28.htm>.

Office of Finance
College of Medicine

February 4, 2008 *vnw and ab*

i In 1994, Congress passed Public Law 103-416, that created the J-1 Physician Visa Waiver Program. The program is also known as the "Conrad 30 Program." Each state is allowed 30 recommendations each federal fiscal year (October 1 – September 30) to the U.S. Department of State. The U.S. Department of State reviews the application and makes a recommendation to the Bureau of Citizenship and Immigration Services (BCIS) (formerly the INS) as to whether or not the residency waiver should be granted. The BCIS makes the final determination. The process takes approximately 4-5 months.