



## **Fox Rothschild Podcast**

### **Featuring Partners Catherine Wadhvani and Laura Deddish Burton**

*We're talking today on FoxCast with Catherine Wadhvani in Pittsburgh and Laura Deddish Burton in Greensboro, North Carolina about the topic of J-1 Physician waivers. Catherine and Laura recently presented a webinar on J-1 Waivers. Catherine co-chairs the firm's Immigration Group and for more than 20 years has focused exclusively on immigration law, representing clients in nearly all types of business immigration matters. Laura is board certified by the North Carolina State Bar as a specialist in immigration law. Her practice centers on immigration and international law, with an emphasis on obtaining visas for foreign health care professionals. Catherine, Laura, good morning.*

**Laura Deddish Burton:** Good morning.

**Catherine Wadhvani:** Glad to be here.

***Question:** Catherine, let's start with you. With a focus on employers, why are J-1 Waivers important in the health care field?*

**Catherine Wadhvani:** In short, providing J-1 Physician Waiver sponsorship is a really great way for U.S. employers to find the necessary physicians that they need to serve their patients. This is particularly so for employers who are in health professional shortage areas or medically underserved areas such as rural areas where it's typically very difficult to recruit and retain U.S. physicians.

***Question:** What do we mean when we refer to J-1 Physicians?*

**Laura Deddish Burton:** Well, there are several ways for an international medical graduate or IMG to come to the U.S. for graduate medical training. When an IMG is admitted to the U.S. in J-1 Alien Physician Exchange Visitor status, then the IMG becomes subject to the two-year home presence rule. This basically just means that the physician must return home for two years before being able to return to the U.S. in H-1B status or to obtain U.S. permanent residence, also called a green card.

***Question:** So how does that benefit U.S. employers?*

**Laura Deddish Burton:** Fortunately, Congress recognized that in many areas of the country, there is a tremendous shortage of physicians in various areas of practice. So, Congress provided the possibility for J-1 Physicians to remain in the U.S. to work. In other words, the physician can either return to their last residence abroad for two years and then return to the U.S., or if they're able to obtain a waiver, they can simply remain in the U.S. to work after they finish their graduate training.

***Question:** What do you mean by "J-1 Waiver"?*



**Catherine Wadhvani:** So there are lots of types of J-1 waivers. The most common one is probably the Conrad State 30 J-1 Waiver Program. The Conrad program exists under federal law, but it's administered by the State Health Departments. Each state under this program may approve up to 30 waivers every federal government fiscal year. And, the federal government fiscal year begins on October 1st of every year and ends on September 30th, so that makes this J-1 Waiver season.

*Question: What's involved in obtaining a Conrad J-1 Waiver?*

**Catherine Wadhvani:** Typically three agencies are involved in the review and processing of a J-1 waiver application, and that's the case with a Conrad waiver too. The Conrad applications are filed with the state health departments, but also reviewed by the U.S. State Department, Waiver Review Division, and the U.S. Citizenship and Immigration Service.

*Question: You mention that the state health departments are involved. Does each state follow the same set of rules?*

**Catherine Wadhvani:** There are some common elements in Conrad applications because each application has to meet federal requirements. But in fact, each state can create its own rules with regard to timing and substantive requirements. So for example, one state might accept applications on a continuous basis until all 30 waiver applications are used, while another might establish a deadline for waiver filings or establish phases to prioritize the review and approval of the applications. And also, the content of the Conrad waiver applications varies from state-to-state. And of course, the processing times vary among the various different health departments and agencies.

*Question: What are some common elements in Conrad J-1 waiver applications?*

**Laura Deddish Burton:** As Catherine noted, there are state-specific differences in the waiver program. Some of the common elements include such things as the physician's agreeing to work full-time for three years in that qualifying location, agreeing to begin working within 90 days of USCIS's approval of the waiver application and agreeing to work in a designated underserved area or provide care to patients who reside in such an underserved area.

*Question: So a Conrad Waiver physician doesn't necessarily have to work in a shortage area?*

**Laura Deddish Burton:** Most are employed in the shortage area, but each state may approve up to 10 of the Conrad waivers for physicians who provide services to underserved patients, but the medical facility itself might not be within the designated shortage area. But again, most Conrad physicians must work in an area that the U.S. Department of Health and Human Services has designated as either a health professional shortage area, HPSA, or a medically underserved area or an area that has a medically underserved population.

*Question: And are waivers available for both primary care and specialist physicians?*



**Laura Deddish Burton:** Generally yes. Usually the Conrad waivers go to primary care physicians, and the rules vary from state-to-state on what type of physician is given preference in the program, but both primary care and specialty physicians can obtain waivers.

*Question: You mentioned that there are other types of J-1 physician waivers, what are some of the other types?*

**Catherine Wadhvani:** In addition to Conrad Waivers, there are interested government agency waivers, or also known as IGA waivers. There are hardship waivers, there are persecution waivers. So, if a state does use all 30 of its Conrad waiver numbers, there are still other possible options for waivers.

*Question: Tell us about interested government agency waivers.*

**Catherine Wadhvani:** OK, there are many agencies that can sponsor J-1 physician waivers. Some have formal programs; others do not. Perhaps some of the most popular IGA waiver programs include the Appalachian Regional Commission programs, or ARC, and that covers all HPSAs within Appalachia. There's also the Delta Regional Commission and the Health & Human Services programs.

*Question: And hardship waivers and persecution waivers?*

**Catherine Wadhvani:** These are types of waivers which a physician could pursue on his or her own, and that would be for example a hardship waiver, would be if there is hardship to a U.S. citizen or permanent resident spouse or child of the J-1 physician, and if that spouse or child would suffer hardship if the physician went home for two years without them, if they went as a family to the person's home country. There are also persecution waivers, and that would be if the physician fears that he or she would be persecuted in their home country, because of race, religion or political opinion.

*Question: Laura, if a government-sponsored J-1 Waiver alone doesn't provide a physician with work authorization and a means of staying in the U.S., what does?*

**Laura Deddish Burton:** It's sort of a two-pronged program. Once they have a Conrad waiver or an IMG waiver, the waiver commitment must be completed in an H-1B Specialty Occupation Temporary Worker status. The H-1B visa itself is required to be able to fulfill the three-year commitment in the shortage area.

*Question: What about the H-1B Cap?*

**Laura Deddish Burton:** The H-1B cap is important to keep in mind, because there are a limited number of H-1B visas each year. If a physician obtains a Conrad or an ARC J-1 Waiver, that physician is then exempt from the annual cap and remains so after the three-year commitment period. A J-1 Physician who receives a Hardship Waiver or a Persecution Waiver, on the other hand, is subject to the cap. If a physician is cap subject, it can be difficult for a non-exempt



employer to obtain a cap number. So that's something to keep in mind as an employer when you are looking at international medical graduates.

*Question: What are some of the conditions considered for eligibility for an H-1B?*

**Laura Deddish Burton:** The H-1B is a specialty occupation visa, and a physician does qualify as a specialty occupation. So things that are important to look at are the specific employer-employee relationship, the petition filed by the employer. In those cases a physician may not "moonlight" or work for another provider on a separate H-1B visa and can only engage in specific activities that are set out in that initial petition. If an employer wants to place a physician at a third-party site, that has to be disclosed in the petition, and then if the physician is going to work for another employer, it would require a separate petition. So that gets fairly complicated.

There are visas available for academic positions, if they're going to be teaching or researching, medical training, and what we're mostly talking about which is the post-training clinical positions. That physician has to have a medical degree, pass the USMLE exams, have an ECFMG certificate, be proficient in English and almost always currently have a medical license in the state where they'll be practicing.

*Question: What are an employer's obligations?*

**Catherine Wadhvani:** There are a number of requirements for an H-1B employer. The attestations stem from the labor condition application that's part of the H-1B petition package. Those include things like that the employer agrees to pay the higher of prevailing or actual wage that they pay to other workers in the same group, that they'll offer the same working conditions, that there's no strike or lock-out and things like that. The employer also has to maintain a public access file and retain that for the required number of years. And the employer also has to watch and make sure that at all times, for that three-year waiver period, complying with the J-1 waiver requirements which can also include reporting requirements to the health department.

*Question: Laura, are there alternative visas that may come into play in the physician context?*

**Laura Deddish Burton:** Yes. We most frequently see that if an employer or physician is not able to get one of the 30 waivers or other IGA waivers during the fiscal year. In such a case, we might look at something like the O-1 extraordinary ability alien visa, which while it doesn't waive the home residency requirement, it could defer it. So that's something that could allow a physician to work in the U.S. even if the waiver isn't immediately available. Now the physician must demonstrate sustained national or international acclaim, but they really don't have to be extremely experienced. More of what is looked at are things such as numerous, significant publications, cutting-edge research, work at a top academic medical center, or other distinguished accomplishments that could bring the physician toward the top of their profession.

*Question: What is the pathway for an alien physician to obtain permanent U.S. residence, otherwise known as a green card?*



**Catherine Wadhvani:** There are a number of different pathways for a physician to become a U.S. permanent resident. First of all, let me give an overview. There are employment-based options. There are family-based options which would usually be the spouse sponsoring the physician, a U.S. citizen or a green-card holder or spouse sponsorship. There's also political asylum for a physician who's afraid to return home to their home country. Most commonly we see the employment-based green card options, and that would include, most often we see PERM labor certification which is sponsored by the employer and does require a test of the job market by the employer. We also see a lot of EB-2 Physician National Interest I-140 Waivers, which that one requires a physician to work in the shortage area for not three years for the waiver commitment, but for a total of five years on a full-time basis. There are some other things too, like an EB-1 Alien of Extraordinary Ability Petition, which can be self-petitioned, also the National Interest Waiver option can be self-petitioned by the physician too. But the extraordinary ability, that's really for people at the top of their field. There's a parallel position to what Laura described in the O-1, called an outstanding professor or researcher option. But again that's not so much for clinical, but there are a number of options, and in most options the physicians do want to become U.S. permanent residents and stay here in the U.S. to work.

*Narrator: Well, unfortunately, we're about out of time for today. Catherine and Laura, thank you for your time and for sharing your knowledge about this very complex topic. And listeners, to confidentially discuss your organization's opportunities or concerns, please contact Catherine Wadhvani in Pittsburgh at 412-394-5540 or at cwadhvani – that's C-W-A-D-H-W-A-N-I – at foxrothschild.com, or Laura Deddish Burton in Greensboro at 336.378.5566 or at lburton – that's L-B-U-R-T-O-N – at foxrothschild.com.*

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