



NIH VFC Newsletter Immigration 101 Symposium Special Edition

Contributing to global science development by building careers

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Immigration 101 Symposium

The Second-Annual Informational Seminar for Visiting Fellows at the NIH

*Organized by the Visiting Fellows Committee in Collaboration with the
Division of International Services, NIH*

Introduction

By Ravikiran S. Yedidi, PhD

The Visiting Fellows Committee (VFC), a sub-committee of the National Institutes of Health (NIH) Fellows Committee (FelCom), is comprised of visiting fellows from different countries across the globe. During their training at NIH, the visiting fellows (VF) encounter various immigration related issues and challenges. To help the VF community at the NIH clarify immigration queries, and based on the overwhelming positive response regarding the first Immigration-101 seminar held in September 2013, the Second Annual Immigration-101 Symposium took place on October 2, 2014. Along with the Division of International Services (DIS), the VFC successfully organized this event to include four breakout sessions about: (a) lawful permanent resident options, (b) the J-1 to H-1B transition, (c) the 212(e) rule, and (d) the J-1/G-7 program. These sessions ran in parallel twice, so that the VFs could attend their top two choices of seminars.

More than 170 people attended this event, making it a big success. The Immigration-101 Symposium hosted more than 10 DIS officials, including the Director of DIS, Mr. Candelario Zapata. Other DIS delegates include Ms. Amy Powers (Immigration Policy Analyst), Ms. Sarah Royalty (Lead Immigration Specialist), Mr. Dan Smith (Lead Immigration Specialist), Ms. Annie Shih (Immigration Specialist), Mr. Mike Park (Immigration Specialist), Ms. Katie McLaughlin (Immigration Specialist), and Ms. Katie Newberger (Program Support). Each session

started with a brief five minute video recording of Mr. Zapata's introductory remarks (video prepared by DIS officials), followed by the presentations from the DIS officials. The sessions concluded with Q&A from the audience. To further help the VFs during this event, the DIS set up a booth (the "Lucy booth") with DIS officials, Ms. Jennifer Jantos (Immigration Specialist) and Ms. Rebecca Custer (Immigration Specialist), to answer immigration-related questions between the sessions. In addition to the above-mentioned DIS officials, Ms. Katie Franklin (Management Analyst), Ms. Dora Bermudez (Software Support Engineer), and Ms. Annette Cruz (Receptionist) played critical roles in setting up the teleconference connections for remote participants from other NIH campuses, assisting with the registration process, and taking care of other supporting actions during the event. Based on the overall success of this event, the VFC and DIS will continue to host this symposium as an annual event.

The content of this Special Edition has been read and approved by the Department of Immigration Services (DIS).

Lawful Permanent Resident Options

By Ping Chen, MD, PhD

In the session on Legal Permanent Resident (LPR) Options, the director of the Division of International Services, Mr. Candelario Zapata,

provided an overview of the eligibility requirements and qualifications necessary to permanently reside in the United States (US).

The definition of an LPR is an individual who has been legally afforded the privilege of residing permanently in the United States as an immigrant; the United States becomes that individual's primary country of residence. In general, people become an LPR because they would like to live permanently in the US, have unrestricted employment, get protection under local, state, and federal laws, and apply for US citizenship or naturalization after five years. However, there are responsibilities and restrictions that come with becoming an LPR, such as paying taxes on worldwide income; registering in the Selective Service System for males 18-26 years old; obeying local, state, and federal laws; and lacking the eligibility to vote. Furthermore, residency may be revoked and an individual may be subject to deportation hearings if he/she does not abide by the laws.

The second part of the discussion involved the common paths to becoming a US LPR. These include asylum/refugee status, the diversity lottery, family-based eligibility (e.g. through marriage to a US citizen or LPR), and employment-based eligibility (EB). The most relevant path for many visiting fellows is the last option, which includes two sub-categories. One sub-category requires a job offer and the other does not. The first sub-category includes Outstanding Professor or Research 1st Preference and Labor Certification (PERM) 2nd/3rd preference. The second category is less restrictive in that a job offer is not required and consists of Extraordinary Ability 1st Preference and National Interest Waiver (NIW) 2nd Preference. More information about these sub-categories can be found on the website of US Citizenship and Immigration Services.

There are several factors that must be considered before applying for permanent residence under the second category. An individual should ask themselves: Are they eligible? Are they at the top of their field? Are they outstanding in their field and have a job offer plus three years of

experience? Is their work critical to the US national interest? Throughout the talk, there was an emphasis on the importance of documenting as many achievements as possible. Some examples include receiving awards, belonging to scientific societies, references to work, being a judge for scientific competitions, contributing in the field, publications, exhibition of an individual's work, holding a critical role in the place of employment, obtaining a high salary, commercial success, etc.

Third, Mr. Zapata mentioned some tips on how to improve the preparation of an LPR application. These included allowing time to build up credentials and documenting achievements. He also mentioned options to continue working as a non-immigrant by a holding O-1 or Trade-NAFTA (TN) visas. Finally, self-petition through an attorney is an alternative option to obtain LPR status.

Fourth, he introduced the application process with filing I-140 form and I-485 form, a timeline, as well as an application fee. Once the I-140 form is approved, people can apply for an immigrant visa if the visa, is available in the preference categories, by either filing an I-485 application for adjustment of status (within the U.S.), or requesting consular notification and applying for a visa at a consulate (outside the U.S.). The timeline is variable among different countries and regarding different categories, but it can be explored at the U.S. Department of State Visas website (<http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html>).

There is one more important issue for visiting fellows who hold a J-1 visa. Most J-1 visas require an individual to return home for two years once he/she finishes their studies in the US, according to the 212(e) Home Residence Requirement. Therefore, evidence of a waiver or that the individual returned home for an aggregate two-year period must be presented before becoming LPR.

Finally, it is crucial to keep in mind that most positions are time-limited and that most government processes are quite lengthy. Therefore, plan, plan, and plan! For additional questions,

please address emails to DISLPR@mail.nih.gov.

Please note this article and the lecture given by DIS representatives are for informational purposes only and do not constitute legal advice. For further information, please contact the DIS directly.

Conversion from J-1 to H-1B Visa Status

By Delphine Quenet, PhD

Most postdoctoral fellows at the NIH who are neither citizens nor lawful permanent residents of the US are J-1 Exchange Visitors. This non-immigrant program provides an incredible opportunity to train in the US for five years (see this issue, “Facilitating Exchange: 212e and J-1 exchange visitor”). The goal of the program is specific: the exchange between people from the US and the other nations to increase mutual understanding of knowledge and culture. Upon completion of this program, J-1 Exchange Visitors are expected to return to their home country.

However, the postdoctoral experience may provide an unexpected opportunity to establish a career in the US. Depending on the nature of the research, this opportunity would usually demand the conversion from exchange visitor to an employment-based status. The most common conversion is to H-1B status, which is a non-immigrant status for temporarily employed foreign workers (Immigration & Nationality Act Section 101(a)(15)(H)). H-1B status, which generally allows a six-year maximum duration, requires a petitioning employer to sponsor an employee, who is named the beneficiary. The US Citizenship & Immigration Services (USCIS) must approve all H-1B petitions. At the NIH, H-1B sponsorship is only available for those in full-time equivalent (FTE) positions, i.e. individuals offered a Research Fellow or Clinical Fellow appointment or higher.

Changing from J-1 to H-1B status takes time and has to be completed in the correct order; early

planning and good organization are essential. First, one needs to determine if s/he is subject to the two-year home country physical presence requirement (Immigration & National Act, Section 212(e), or “212(e)”). All J-1 Exchange Visitors whose J-1 status is sponsored by the NIH are indeed subject to 212(e) by virtue of receiving US Government funding. This is true even if one is a J-1 Exchange Visitor who is not funded directly by the NIH, such as those receiving an outside grant or those using personal funds. Changing to H-1B status—whether from within the US or by applying for an H-1B visa abroad—requires a J-1 waiver for those subject to 212(e). Details on satisfying 212(e) can be found in this issue (see the article, “Facilitating Exchange: 212e and J-1 exchange visitor”).

The first step in this process is the submission of a FTE case request to the Division of International Services (DIS) by a fellow’s laboratory. DIS will then advise on the process, including the waiver application. While the waiver process is ongoing, an H-1B petition can be prepared to a limited degree, but not yet submitted to the USCIS. To prepare the petition, the laboratory, the NIH Office of Human Resources, the DIS, and the beneficiary (i.e., the scientist) prepare a complete description of the new full-time employment position and establish appointment dates. H-1B status is date specific, and these dates must be chosen carefully as they cannot be changed once submitted. The appointment dates are dependent on the Institute/Center (IC) request, the scientist’s current immigration status end date, the pay period start date, and the processing times of the USCIS. A certified Labor Condition Application (LCA) is also necessary to include with the H-1B petition. For this purpose, the DIS posts a 10-day notice to the laboratory and submits an LCA to the Department of Labor (DOL). The final H-1B petition submitted to USCIS will contain the petition for non-immigrant worker (Form I-129), H classification supplement to form I-129, H-1B data collection, DOL-certified LCA, supporting documents from scientist, filing fee exemption supplement, and the filing fees (including a fraud fee for new H-1B petitions, paid by the employer).

The speed at which one's petition is adjudicated depends on the type of processing chosen and the current volume of petitions at the USCIS. Regular processing costs \$325 and has a 2-4 month timeline, without a guarantee. Premium processing carries an additional charge of \$1225, but guarantees adjudication in 15 calendar days. Under premium processing, USCIS ultimately issues one of the following by day 15: approval, request for evidence, or notice of intent to deny. The approval notice (Form I-797A) from USCIS is transmitted to the DIS and includes effective dates of H-1B status and the scientist's new I-94.

During this transition from J-1 to H-1B, travel abroad is strongly discouraged. Indeed, the application for a waiver indicates the intention to stay in the US, in contrast to J-1 status, which requires intent to depart the US at the end of the approved stay. Moreover, travel during an application to change status is considered abandonment of that request. Consequently, one will be invited to stay abroad and apply for an H-1B visa at a US consulate before re-entry into the US.

Once again, advance planning and organization are both key, and the full process of changing from J-1 to H-1B takes significant time, as many government agencies are involved (e.g., USCIS, Department of Labor, Department of State, NIH). Someone interested in obtaining H-1B status should start planning as early as possible and ask for the help of an immigration specialist at the DIS (<http://dis.ors.od.nih.gov/>).

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Facilitating Exchange 212(e) and J-1 Exchange Visitors

By Varun Sethi, MD

The purpose of the J-1 program is to facilitate the

mutual understanding and exchange of ideas between the people of the U.S. and other nations. This can involve the exchange of ideas, allow researchers to train at institutions like the NIH, and take knowledge back to their home countries. The 212(e) rule stipulates that visitors on a J-1 visa must return to their home country for at least two years at the end of the exchange program. An individual becomes subject to 212(e) when one: receives government funding (e.g., visiting fellows at the NIH), possesses a specialized skill or knowledge needed back in the home country, or receives graduate medical education or training as a J-1 Alien Physician (e.g., an Alien Physician sponsored by the Education Commission for Foreign Medical Graduates (ECFMG)). Additionally, the holder of a J-1 will become subject to 212(e) if the J-1 transfers from one non-212(e)-subject institution to a 212(e)-subject institution.

Restrictions and allowances

When subject to 212(e), an individual cannot change immigration status from inside the US (except to A/diplomat or G/international organization status). In addition, the J-1 bearer cannot re-enter the US under H/L/LPR (immigrant) status. However, when subject to 212(e), the bearer *is eligible to remain* in J-1 status, extend it, transfer to another institution, or re-enter the US under a new program in another J-1 category. Depending on eligibility, other options include: re-entering the U.S. under the A or G visa, applying for O-1 status (employer sponsored), going back to school (F-1), or traveling as a temporary visitor B1 (WB) or B2 (WT). Yet, the bearer is still subject to 212(e) unless the home country residence requirement is filled or a waiver is obtained.

Overcoming the 212(e) requirement

Options to overcome 212(e) include returning to the country of legal permanent residence (as per DS-2019) for an aggregate two years or obtaining a waiver. A waiver application can be based on (i) a "No Objection Statement" (NOS) from the individual's home country; (ii) an interested government agency, where the application is filed

by the employer (the NIH only supports staff scientist or higher designations); (iii) persecution; (iv) hardship; or (v) State Department of Health waiver.

Procedure to apply for the waiver

For a waiver based on the NOS, the individual directly initiates this application with the Department of State (DOS), and has the home country government submit the NOS directly to DOS. The NOS has to be specifically worded and should be sent to the DOS via diplomatic channels. Since NIH is a US government organization, the DOS will then contact NIH (through DIS) to submit a sponsor view within 90 days. The NIH's decision on whether to provide favorable or unfavorable sponsor views for the applicant is returned to the DOS; this process can be tracked online through the DIS. The DOS then reviews the documents, which takes 6-8 weeks, and sends a recommendation to approve or deny the NOS waiver to the US Citizenship and Immigration service (USCIS). USCIS will then formally approve or deny the waiver. This entire process takes 4-6 months on average, mostly depending on how long the home country takes to send the NOS to the DOS.

The NIH waiver policy requirements for favorable sponsor views can be met by receiving a full-time equivalent (FTE) employment offer from the NIH (for a duration of at least 13 months) or a long-term offer from another employer outside the NIH, but inside the US. The NIH will confirm the employment offer with the prospective employer. Furthermore, the skills, knowledge, and training received at the NIH must be necessary for this future position. The new job is not limited to bench research, but may be in other sectors (e.g., science policy or science writing). Additional requirements for the outside employment offer include: acceptance of the job offer by the individual and submission of a job offer letter detailing the position (i.e., the duration, title, location, salary, and start date). The new employment does not have to be on an H-1B visa. The DIS takes an average of 30 days for this review. On receipt of the waiver based on the

outside job, the J-1 bearer would need to start the new position either by the end date on the current DS-2019 or when the immigration category changes, whichever comes first. The J-1 bearer cannot return to NIH in any work related capacity for two years following departure. This also applies to any J-2 dependents that may also have been working at NIH.

Dependents cannot apply for their own waiver, with the exception of death of or divorce from J-1 holder. Typically a J-1 waiver will cover the J-2, unless the J-2 had previously held J-1 status, especially if NIH sponsored. In this case, the dependent would have to apply for his or her own waiver and must meet the NIH waiver policy requirements.

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The G7 Program

Extending One's Stay at the NIH

By Heba Diab, PhD

What is the G-7 program?

The G-7 program is a J-Exchange Visitor Program that allows individuals in the Research Scholar category to extend beyond the allotted five years. This is not a separate immigration classification.

How long can the extension be?

There are several scenarios that would allow an extension in the G-7 program. However, all extension requests beyond the maximum duration must fit within current NIH policies, such as the NIH 5 year/8 year rule.

Why does an individual have to start the application program at least 6 months before their current program ends?

The application process is quite long and goes through many revisions. The Immigration Specialists said they have never received the “perfect” application and all require numerous revisions. Also, the exceptional extensions must be recommended by the NIH through the Division of International Services (DIS) and peer-reviewed by the Office of Intramural Research (OIR). Final approval is granted through the Department of State (DOS) and the Department of Homeland Security (DHS). The time it takes to obtain all approvals can be quite variable. Also, if the case is denied, the IC needs time to adjust and the applicant needs time to find a new position.

Upon being offered a job that starts after an individual’s tenure expires at the National Institutes of Health (NIH), can that individual apply for the G-7 Program and remain at the NIH until the new job begins?

No. The G-7 extension is NOT a bridging mechanism. An individual’s potential contribution to the NIH and the government, not his/her personal challenges, is the major deciding factor in application approval.

What is required by the Immigration Specialists to start the process?

The Immigration Specialist has a checklist of items required for the application:

- At least 6 months lead before visa expiration
- Form 829-1, part I & II
- A completed G-7 Memo
- A Career Development Plan (CDP)
- A completed NIH 1861- Purchase Request Form
- A request for DOS/DHS Extension of J-1 Exchange Visitor
- An updated CV
- Copies of all DS-2019 forms
- A copy of the most recent I-94 record

Why does an individual need a CDP?

The CDP should be continually updated during a postdoctoral fellow’s tenure at the NIH, but should

especially be prepared at the end of one’s fourth year. A fellow should consider the following when writing a CDP:

- Having an honest discussion with his/her PI about their progress and plans. Individuals should ensure that both they and the PI are clear about the fellow’s goals.
- Asking oneself if the plan is realistic. This is a key issue. It will be obvious if a fellow submits a career development plan that has not been well thought-out or prepared. For example, if a fellow has no publications, and no publications in preparation, it will be very difficult to justify that he/she can produce meaningful data in the additional year being sought.
- Highlighting past and future mentoring efforts.
- Including all scientific activities outside of the NIH (e.g. presentations or conferences).
- Including all peer-reviewed publications.
- Describing any career planning meetings a fellow may have had with someone from the Office of Intramural Training and Education (OITE) (this will show that an individual is proactive about his/her career).
- Mentioning any past or future job searches.

Once approved for the G-7 program for a terminal extension, can an individual work at the NIH after completing his/her extension?

No. Once an individual agrees to an “exceptional” or “terminal” extension such as the exceptional 6th year or terminal 3-month extension under the G-7 program, one cannot work for the NIH intramural program again for TWO years. There are no exceptions for this. However, the individual can still work at any other institution outside of the NIH, provided he/she has valid work authorization.

If an individual was a postdoctoral fellow outside of the NIH for two years as a J-1 Research Scholar and is now a fellow at the NIH, how many years can he/she stay at the NIH?

The individual can stay another THREE years at the NIH as a J-1 Research Scholar. He/she can then apply for another TWO years at the NIH in the G-7 Program. Please note that the overall time as a postdoctoral fellow is still scrutinized and there should be a justification of why more than five years of overall postdoctoral research is needed.

If the individual wants another one-year extension after completing five years at the NIH under the NIH 5 year/8 year rule, this will be the “exceptional” case and that person must see an Immigration Specialist to start the G-7 application process. It is important to remember that once a person accepts an “exceptional” or “terminal” extension, he/she CANNOT work for the NIH intramural program for two years after they complete their tenure.

Can a fellow travel outside of the United States while the G-7 paperwork is pending?

No. Travel is not recommended during this time if the individual does not have a valid J-1 visa.

What happens if the application is denied?

The Immigration Specialists provide honest assessments about the likelihood of an individual’s application being denied or accepted before the process begins. Although they try their best to submit a strong and complete application, it may be difficult to foresee all potential problems. Depending on why an application is denied, modifications to the application can be made to comply with the requests for a second chance at approval.

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Concluding Remarks

By Ravikiran S. Yedidi PhD

As described in this special edition of the VFC Newsletter, the J-1 visa is intended for training purposes at the NIH for the visiting fellows. As addictive as life in the US can be, it is a challenge to legally stay here and thus we hope that the VFs that attended this event acquired knowledge about proper legal procedures. For further inquiries regarding immigration-related questions please contact the DIS at 301-496-6166 or <http://dis.ors.od.nih.gov/DISHelpDesk.aspx>.

If you would like to see more of these types of events at the NIH, please contact the co-chairs of the VFC; their contact information is listed below.

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Looking for Leadership Opportunities?

Join the NIH Visiting Fellows Committee (VFC),
an organization that is:

- Dedicated to building community amongst the NIH's diverse fellow population.
- Committed to bringing career building resources and events to the fellows of the NIH.

Become a voice regarding issues of importance to
visiting fellows.

Help your career as you help your colleagues.

Contact either of the Visiting Fellows Committee
officers below to find out about being a part of the
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