



NIH VFC Newsletter

Special Edition

Immigration 101 seminar

Contributing to global science development by building careers

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Immigration 101

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 Yedidi, PhD

Visiting fellows comprise a major portion of the NIH postdoctoral population. To address issues and topics of interest that are relevant to the visiting fellows, the Visiting Fellows Committee (VFC), a subcommittee of the NIH Fellows Committee (FelCom), developed the VFC-Brown Bag Series. Due to an overwhelming response to the first brown bag event, which touched on visa issues, the VFC organized a larger, more informative event entitled Immigration 101 that was held on September 18, 2013.

With over 120 fellows in attendance, the Immigration 101 seminar hosted a panel of five representatives from the Division of International Services (DIS): Mr. Candelario Zapata, DIS director, Ms. Amy Powers, immigration policy analyst, Mr. Dan Smith and Mr. Brian Daley, lead immigration specialists, and Ms. Rebecca Custer, immigration specialist.

During the first hour, Ms. Powers discussed an overview of topics such as the J-1 Exchange Visitor visa, J-1 “212e” (Two-Year Home Country Physical Presence Requirement), J-1 to H1-B transfer, and US Lawful Permanent Residence (LPR) options. The second hour of the event was devoted to questions by the audience for the panelists; most of these questions focusing on the J-1 to H1-B transfer process along with others addressing permanent residency issues. Please

continue reading below for more detailed information from the Immigration 101 seminar.

The Division of International Services (DIS) and Lawful Residency Options within the US

It is All About Timing

By Martin Lang, PhD

Foreign scientists at the NIH may consider staying in the US once their training under a J-1 visa is completed. The options to lawfully remain in the US include the request of another non-immigrant visa (e.g., H1-B) or the application for US Lawful Permanent Residence (LPR). This article summarizes the key points presented by Ms. Amy Powers on this topic, as well as on the mission of the Division of International Services (DIS) at the NIH. The material in this article is for educational and informational purposes only and does not constitute legal advice.

The Division of International Services

The DIS assists all of NIH, including remote sites, in all immigration-related matters. The DIS works with Institutes and Centers to facilitate the recruitment of foreign national scientists and to ensure that the NIH maintains compliance with all

applicable immigration laws. DIS officers provide guidance and immigration-related services to all foreign national scientists and their dependents. Assistance can be requested from the DIS through their website at <http://dis.ors.od.nih.gov/>, via email at dis@mail.nih.gov, or by telephone at 301-496-6166. DIS officers are readily available to provide help and advice with immigration-related issues during walk-in hours or by appointment. The DIS office is located in building 31 on the NIH main campus in Bethesda.

Home Country Physical Presence Requirement (212e)

The J-1 Exchange Visitor visa program is an exchange program allowing foreign scientists to spend some time in the US to gain specific knowledge/training and return home to share the skills they acquired. The exchange is enforced by the Two-Year Home Country Physical Presence Requirement, which obliges certain J-1 Exchange Visitors to go back to his/her home country for a minimum of two years once the J-1 visa status expires. This rule is also known as the “212e” (a section of the US Immigration and Nationality Act) and applies to all scholar visa (J-1) applicants who either receive government funds (e.g., NIH funds); possess a specialized skill or knowledge that is considered in short supply in the home country; or to every physician who receives graduate level medical education or training within the US.

Generally, the 212e rule also implies that an Exchange Visitor is unable to change his/her immigration status from within the US as long as the two-year home residency requirement is not fulfilled. In addition, he/she is not allowed to enter the US with an H visa, L visa, or as a US permanent resident. However, there are some allowances to this rule. For example, J-1 Exchange Visitors are eligible to have their J-1 statuses extended or transferred. They are also eligible for temporary visitor visas (e.g., for tourism or business) and study visas (F-1). However, these exceptions will only postpone the 212e rule, which must still be fulfilled.

In order to be allowed to lawfully stay in the US once the two-year rule applies, there are two ways to fulfill the 212e requirement:

- Return to home country for an aggregate of two years: types of documents required to prove an aggregate of two years spent in home country are not specified; hence, there is flexibility in how it is proven.
- Obtain a waiver to the 212e rule: there are different ways to get a waiver, including a No-Objection Statement (see below), a high interest in your skills by an interested government agency, persecution, hardship (spouse or children in the US), and medical practice in an area of the US with a shortage of doctors.

How to obtain a waiver through a No Objection Statement

One way to overcome the 212e rule is to obtain a No-Objection Statement (NOS) - a document from the home country that states no opposition to the applicant remaining in the US. A request for a NOS needs to follow several steps: Start the procedure for a NOS waiver by applying online with the US Department of State (DOS) and get a waiver case number; mail all requested documents and fees to the DOS; ask for the NOS to the home country government, which will submit it directly to the DOS. After consulting the J-1 sponsor (e.g., NIH) through the request of a Sponsor Views, the DOS will decide to recommend or not recommend a waiver, upon which the US Citizenship and Immigration Service (USCIS) will approve or deny the waiver. This whole process can last several months and it is therefore important to start the application process early. However, caution is advised before starting the process too early, as J-1 extensions and transfer are prohibited once the Sponsor Views are submitted. It is also worth emphasizing that international travels are not recommended and may be complicated during the entire NOS waiver application process.

The NIH can support a NOS waiver if the candidate has an employment offer from the NIH

or an employment offer in a similar field outside the NIH.

- Employment with the NIH implies a Full-Time Equivalent (FTE) job offer. Ideally, a completed and signed request should be sent to the DIS 12 months in advance by the Institute/Center. The FTE position should be of at least 13 months duration to show a long-term commitment and to allow for government benefits.
- Employment outside the NIH requires a bona-fide written job offer with a signed acceptance. The job should be a scientifically related position to the one held at the NIH, a long-term commitment, and be placed outside of the NIH but within the US. Again, the issuance of this waiver requires time and at least 30 days should be allowed for the DIS to review the documents. Also, it should be considered that there might be limitations on staying and returning to the NIH upon requesting this type of waiver by the NIH. More precisely, after receipt of the waiver, the applicant must leave the NIH at the end date listed on the current DS-2019 form or the date the status is changed to another immigration category, whichever comes first. It is extremely important to understand that there is an annual limit of H1-B visas that can be issued by certain US institutions. However, institutions of higher education, non-profit, and government research institutions are cap-exempt.

Since there are several different possibilities to obtaining a waiver to the 212e rule, one should be proactive in searching the appropriate pathway before exhausting the J-1 visa! Importantly, at each job interview, keep your immigration status in mind and be informed whether you will need sponsorship from an employer for an employment-based immigration status or for US Lawful Permanent Residence (LPR).

Lawful Permanent Residence

US Lawful Permanent Residence (LPR), commonly known as the green card, can be requested through different paths: it can be family-

based, employment-based, due to asylum/refugee, or through the Diversity Lottery. Employment-based LPR petitions can be made with a job offer, for example through justification as an outstanding researcher; however, without a job offer is also an option by showing possession of an extraordinary ability or through the request of a National Interest Waiver (NIW). Since the procedure for an LPR request can be complex, an immigration attorney could be consulted; however, do your research to make sure the attorney is certified in immigration law. Also learn about the attorney's experience; organizational memberships; accessibility (local or national); and fees. Always read everything before signing any contracts or agreements.

In conclusion, every personal story is different and may require different actions. Keep in mind that visiting fellows are responsible for maintaining a lawful immigration and employment status for themselves as well as for their dependents! Therefore it is important to stay informed and ask questions about one's own immigration status (e.g., duration, renewal, etc.). In every case, keep copies of all achievements and immigration documents and always plan ahead if changes need to be made. Immigration-related processes take time, but can be handled by being informed, planning on time, and continuously following up on paperwork in progress!

Time for questions and answers

Q&A

By Khyati Kapoor, PhD

The talk by Ms. Amy Powers, immigration policy analyst, was followed by an elaborate round of immigration-related queries from the audience. Most of these were individual cases concerning the visiting fellows and were answered clearly by the panelists from the DIS. The following are the Q&A to help visiting fellows plan their transition away from the J-1 visa.

Q: Can I hold a J-1 visa from the NIH but pursue a postdoc in the industry?

DIS: The J-1 from the NIH is valid only to work at the NIH, although the J-1 from the NIH could be transferred to another J-1 program offered by the new employer. One should note that there must be a continuation in research objectives and there should also be at least one year of validity remaining for it to be transferred to another employer; in other words, the transfer should occur by the end of the fourth year in J-1 status.

Q: Is a J-1 position at another institution considered a job offer in order to get a waiver?

DIS: If you have successfully transferred your J-1 to another institution and you are now pursuing a waiver, NIH waiver policy still applies in that you must show an offer of employment. The J-1 position must be considered an employee position for consideration of NIH favorable sponsor views for your waiver. If you had a J-1 transfer, but you are funding yourself, then it is not considered as an employment offer.

Q: Can a J-1 visa holder transfer to a J-2 dependent status?

DIS: Yes, J-1 visa holders can transfer to a J-2 dependent status. The J-2 visa has to be applied for and stamped in the home country before you return to the US.

Q: I am on a J-1 visa and my spouse is a J-2 dependent studying here in the US. If my visa expires, will she be able to continue her studies and complete her courses?

DIS: The J-2 dependent status expires as soon as the J-1 is terminated. In this case, she can either get her own legal status or will have to discontinue her studies and go back to the home country.

Q: In what order should the paperwork be processed upon receiving a job offer - waiver followed by H1-B process or in parallel? How long does the DIS take to contact the USCIS?

DIS: You should check all your credentials including offer letter and apply for the waiver first.

You should be fairly far in the waiver process before you submit the paperwork for the H1-B visa. Generally, the DIS responds very timely and fairly quickly. For more details, refer to the 2013 VFC Newsletter Summer Edition.

Q: I am on a J-1 visa and I recently got a job offer in a consultant role. I have already processed a No Objection Statement from Austria. Will I have problems in getting a waiver from the NIH since it is not a job with a research role?

DIS: A No Objection Statement is required from the home country of the individual at the start of the waiver process. The waiver from the NIH requires a job offer which utilizes the skills which you have gained during the training at the NIH. The process is fairly flexible but the DIS gives waivers on a case-by-case basis. If the job utilizes the skills learned during your postdoctoral training, there should be no problem in getting a waiver from the NIH.

Q: Will my travel be affected if I initiated the J-1 waiver but then closed the case in the middle of the process? Also, will it affect the J-2 processing if I want to come back as a dependent?

DIS: If the case has been closed and withdrawn, it should not affect either the travel or coming back as a J-2 dependent.

Q: Can I travel for an international scientific meeting while the waiver is already initiated?

DIS: It can be challenging especially if your visa is expired. It totally depends on the visa officer at the embassy (if you go for stamping) or the immigration officer at the airport/port of entry (when you enter the US). The DIS suggests avoiding international travels and advises to err on the side of caution while the waiver is being processed.

Q: Can the waiver be processed in the home country?

DIS: Yes, waivers can be processed in the home country as long as you can coordinate with your employer for the paperwork.

Q: What are my options if there isn't enough time to process H-1B papers? Can I come back on a tourist visa while the papers are being processed?

DIS: There is a thirty-day grace period after the J-1 program ends. If this does not help, you can also try premium processing of your H1-B case. If you come back on a tourist visa and your H1-B case is already under processing, the immigration officer might not approve your case based on the fact that you are coming in as a tourist while your intentions are different. In such a case, the DIS would suggest to enter the US after the H1-B papers are processed and you bear a H1-B visa stamped in your passport.

Q: Is it feasible to apply for a green card while on a J-1 visa?

DIS: You can file an immigrant visa application, which is called the Form I-140, and get an approval from the USCIS. For adjustment of status, also referred to as the Form I-485, you will need a waiver from the 212e rule, for which a job offer is required to obtain NIH favorable sponsor views on the waiver. However, it is suggested that you delay filing for a green card while on a J-1 visa. Filing the Form I-140 while in J-1 status indicates an intent to stay permanently in the US, which is in direct conflict with the J-1 Exchange Visitor program, which is to support an exchange of knowledge by returning home.

Q: I have a J-1 visa and I married a permanent resident. What is the procedure for adjustment of status?

DIS: You would not be able to adjust status since you are subject to return to your home country for a period of 2 years ("212e") before you can adjust. Optionally, you can apply for a waiver of the requirement, but still must meet the NIH criteria for a favorable sponsor view of your waiver (that is, present a full-time job offer).

Q: I have been approved under the G-7 program and now have a job offer outside the NIH. When should I start the waiver process?

DIS: The G-7 program is an exception which NIH makes to the five-year rule for visiting fellows. This is very unusual and is decided under only certain circumstances. Under this rule, a sixth-year extension is allowed as a visiting fellow to finish up the crucial government research. Once you are approved under the G-7 category, you should start the waiver process only after you have received the new valid DS-2019 otherwise there can be complications.

Q: How many years of extension can be obtained under the G-7 program on a J-1 visa?

DIS: The duration of extension is decided very strictly on a case-by-case basis. Generally a one-year extension is provided for the compulsive need of the institute to complete government research. In some cases when the candidates have come to the NIH on a J-1 visa under the Graduate Partnership program (GPP) and then continue into a postdoctoral position, they do not fall under the five-year/eight-year rule of the NIH and a two-year extension might be approved in such cases.

Q: What is the procedure to take up a Full Time Equivalent (FTE) position at the NIH or any other research job after the end of the G-7 program?

DIS: After the conclusion of the G-7 program, the two-year time under the 212e rule should be spent in the home country before you can come back to the NIH. You can apply to positions outside the NIH and can move to another research institute outside the NIH. In this case, a waiver from the 212e rule will be required to continue to work and stay in the US.

Q: If I completed five years of J-1 status at the NIH and then moved out of the NIH on a H1-B status, can I come back to the NIH as a special volunteer?

DIS: You cannot come back to the NIH for a two-year time period. The restriction is very

comprehensive and covers everyone; but there can be exceptions. It is looked into on a case-by-case basis and sometimes people are allowed to come in for one year as a guest researcher.

Q: I am on a H1-B visa and my spouse is my dependent and holds a H4 visa. My contractor renewed my H1-B visa and is filing a Legal Permanent Resident (LPR) application for me, but did not renew my wife's visa. Will there be any problem in her adjustment of status?

DIS: Everyone must maintain legal immigration status during their stay in the US. Even if your spouse is your dependent, she needs a legal status. This should be discussed clearly with the contractor before the LPR processing is initiated so that both of you have a legal status in advance.

Concluding remarks

By Ravikiran 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. Remaining in the US after one's fellowship can be very attractive and, as outlined by the content of this Immigration 101, fulfilling that aspiration can pose some significant challenges that fellows should be prepared to face.

These articles have been reviewed by the DIS and approved for publication.

Contact Information

For further information on immigration and visa related issues, please contact the DIS at dis@mail.nih.gov or at (301-496-6166).

For further information on the VFC-BB Series or for more information on the upcoming sessions/topics, please visit us online at

https://www.training.nih.gov/vfc_brown_bag_series or contact Ravi Yedidi at yedidirs@helix.nih.gov.

Upcoming Event

Immigration seminar – Frederick

The VFC and the DIS will host a seminar on immigration issues on December 17, 2013, 11:30am - 12:30pm at the Frederick-NIH campus, Auditorium, Building 549.

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Looking for Leadership Opportunities?

Be a part of an organization that is:

- dedicated to building community among the NIH's diverse fellow population
- committed to helping bring career advancement resources and events

Be the voice initiating discussions on issues that are of importance to visiting fellows.

Help your career as you help your colleagues.

Contact any of the Visiting Fellows Committee officers below to find out about being a part of the VFC.

National Institutes of Health Visiting Fellows Committee

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