



# The State of Recruiting Foreign Healthcare Workers

*Natalia Gouz*

*Myriam Jaidi*

*William A. Stock*

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**Natalia Gouz**



**Myriam Jaidi**



**William A. Stock**

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## Introduction/Agenda

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- Getting information from candidates & avoiding discrimination
- Physician Recruiting
- Nurse Recruiting
- Other Medical Staff
- Latest Updates/Developments

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## Recruitment Questions

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- Recruiters **NOT** allowed to ask, “Are you a U.S. Citizen?” or “Do you have a Green Card?”
- **NOT** allowed to request specific documents or to require “more or different” documents than the minimum required.
- Recruiters **ARE** allowed to ask:
  - “Are you legally authorized to work in the United States?” followed by
  - “Will you now or in the future require sponsorship for an employment visa status (e.g., H-1B visa status)?”

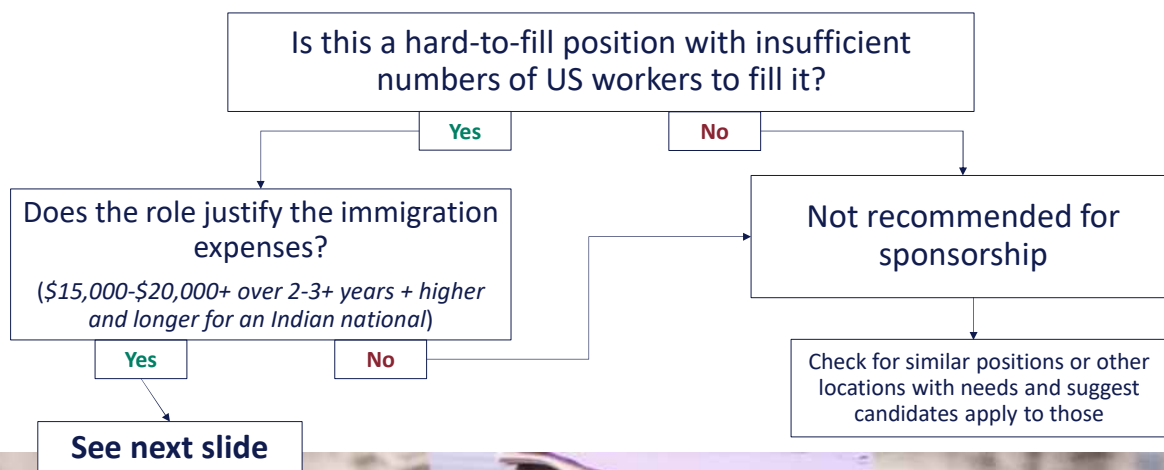
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## Sponsorship

- Sponsorship--Employers MAY elect not to hire candidates needing “Immigration Sponsorship.”
  - **BUT decision must be based SOLELY on the need for sponsorship (not national origin, retaliation, etc.)**
- Sponsorship Policy considerations—e.g. Employees will be sponsored where there is a valid business reason (i.e. unavailability of other qualified candidates)
- Consider costs – both legal fees and requirement to pay prevailing wages

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## Sponsorship Decision Process



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## Sponsorship Decision Process *(cont'd)*

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- A thorough analysis of costs and risks for the hire in the short term and long term is required
- Information should include:
  - Proposed salary offer (or range)
  - Position
  - Location
  - Resume

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## Nonimmigrant Visa Categories

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- Visitors (B)
- Students (F)
- Professional Workers (H-1B, H-1B1, E-3)
- Exchange Visitors (J)
- Extraordinary Ability (O-1)
- Canadian & Mexican Professionals (TN-1)
- Family Members (F-2, J-2, H-4, O-3, TD)

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## What is Permanent Residency?

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- Authorization to live & work indefinitely in the U.S.
- “Immigrant Visa”
- The “green card” or Form I-551
- Not always forever – may be abandoned or taken away

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## Exchange Visitor (J-1) Visas

- Graduate Medical Education (GME)
  - Allows work only as specified by ACGME (scope/duration)
  - Sponsored by ECFMG
  - Always results in 2-year home country residence requirement
- Researcher/Trainee/Student
  - Wide variety of activities
  - Some may be sponsored by a J-1 program
  - May or may not result in 2YHCRR (depending on funding and home country)



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## J-1 Waiver Options

- Employer-sponsored
  - Employment in/near a shortage area: “State 30”
    - Priority given to primary care; specialists may apply
    - 3-year commitment to position
    - Vary based on state
      - Small states tend to be easier
      - Larger states are more competitive and restrictive
  - Research-Based (NIH/HHS)
- Employee-obtained (Hardship/Persecution)



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## H-1B

- Workers in a “Specialty Occupation”
  - May be used for GME or employment
  - 3-year initial approval and 3-year extension
  - 6 year maximum – any combination of employers
  - Extensions beyond 6 years requires green card process to be started but not complete before 6-year limit
  - If candidate holds H-1B status, may begin work for employer upon filing of a new H-1B petition (“portability”)



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## H-1B: Basic Requirements

- Job Offer
  - Part-time or full-time
- Specialty occupation
  - Job requires bachelor’s or higher degree in specific field
- Bachelor’s or higher degree
  - Determine U.S. equivalence of foreign degree
  - Combination of education and experience
- Prevailing wage



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## H-1B: Prevailing Wage

- A requirement to file an H-1B petition with USCIS is to file a Labor Condition Application (LCA) with the Department of Labor
- In order to file an LCA, the prevailing wage for the offered position needs to be paid to the foreign national employee
- The prevailing wage is determined by:
  - The job location;
  - The job duties; and
  - The minimum education/experience/supervisory/travel requirements for position



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## H-1B: Additional Info

- H-1B portability
  - Present or prior H-1B
  - Commence employment upon new employer filing petition
- Spouses
  - H-4 cannot obtain work authorization until the H-1B has progressed in the green card process
- Dual intent
  - Travel/pursue green card
- “Cap Exempt” H-1B Employers



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## Other Visa Options

- **Extraordinary Ability (O-1)**
  - Who is “Extraordinary”
  - Comparing O-1 with other options
- **Canadian & Mexican Professionals (TN-1 & TN-2)**
  - Professionals on negotiated list – Teaching/Research Physicians only
  - Multiple years and promotions
- These two options delay, but do not solve, two-year rule



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## Permanent Resident Options for Physicians

- **Labor Certification (“PERM”)** – Test local labor market and demonstrate no available and interested physicians
- **National Interest Waivers (Shortage Area)** – Five year service in shortage area (can include 3 years of waiver service)
- **EB-1A and B** – “Extraordinary Ability” and “Outstanding Researcher” categories



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## Visa Strategies

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- Few visas specifically designed for nursing work
- Temporary visa strategy is up against categories not designed for permanent employment
- There is a “short cut” to permanent residence (a “green card”) for immigrant nurses, but it’s not short
- Permanent residence strategy generally doesn’t allow nurses to work for U.S. employer during process

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## Temporary (Non-immigrant) Options

- **H-1B**
  - Must require a bachelor's degree in a related field
    - Challenge: all states and most employers still recognize diploma/associate's nurses for RN positions
  - Same Cap-exemption issues as physicians
  
- **H-1C**
  - Only applies to nurses in acute care facilities in extremely "medically underserved" areas
  - Very restrictive requirements limit utility



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## Temporary (Non-immigrant) Options *(cont'd)*

- **TN**
  - Created under NAFTA (now United States-Mexico-Canada Agreement USMCA)
  - Category for nurses
  - Only applies to Canadian and Mexican nationals
    - Canadians can obtain at the port-of-entry
    - Mexicans approved through visa application at consulate



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## Temporary (Non-immigrant) Options *(cont'd)*

- **F-1 (Student Visa)**

- Can work part-time (up to 20 hours per week) while on campus
- Can qualify for “practical training” at other locations
- Nurses can apply to a BSN program to enter the United States and improve their credentials
- Employers may partner with local nursing schools to offer placements to student nurses.



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## Temporary (Non-immigrant) Options *(cont'd)*

- **H-2B**

- Temporary workers in any nonagricultural occupation
- Only for workers coming to fill a “one-time,” “intermittent,” “peak-load” or “seasonal” need
- Generally, less than 10 months
- Stiff competition from seasonal employers for limited visas (and no cap exemption)



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## Permanent Residence Strategy

- Might not be practical for many nursing employers
  - Employer files a petition with USCIS an RN candidate that is overseas
  - Petition adjudicated within four to six months
    - Nurse has been given a “place in the line” to immigrate
  - Due to quotas, it can be 3-5 years from petition approval to visa interview
  - When no quota delays, a nurse could be working within twelve to twenty-four months



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## Permanent Residence Options

- More elaborate procedure
- Strategic planning for longer-term nursing needs
- Recruiting from abroad, bring to the US after permanent residence obtained – may need contractual commitments for retention
- Can be used for students in F-1 status, provided there are no quota delays



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## Additional Considerations License

- Each State Boards of Nursing have their own criteria
- Some require a certificate of educational equivalence from the Commission on Graduates of Foreign Nursing Schools (*see "Credential #2"*) for nurse to take the NCLEX
- Canadian nurses may be eligible for reciprocity
- **Nurses educated abroad:** immigration law also requires they hold a nursing license in the country where they were educated, in addition to U.S. licenses



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## Additional Considerations Credential #1

- Commission on Graduates of Foreign Nursing Schools (**CGFNS**) administers an exam and educational evaluation service
- Applies only to **nurses educated abroad**
- Prerequisite to take the NCLEX exam
- **CGFNS** certificate is one option in order to file the immigrant visa petition on behalf of the nurse



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## Additional Considerations Credential #2

- **VisaScreen®** certificate from the International Commission on Healthcare Professions (**ICHP**) -- a division of **CGFNS**
- Required whether educated in the U.S. or abroad
- Certifies that:
  1. Education, training, and experience are authentic & comparable to a U.S. nurse
  2. Licenses (whether overseas or domestic) are authentic & not restricted
  3. Nurse is fluent in English
    - Passing English fluency test
    - **Or** education was in English in one of 6 countries (Australia, Canada (except Quebec), Ireland, New Zealand, the UK and the US)



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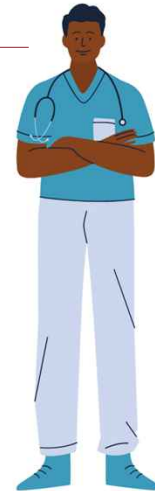


## Other Medical Staff Recruiting

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## Physical Therapists

- F-1s to OPT
- H
- Schedule A
- TN
  
- Health Care Worker Certification required
  - VisaScreen® CGFNS International
  - FCCPT



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## Other Allied Healthcare Providers

- **H-1B eligible** (OTs, RTs, CLS/MTs, SLPs, etc.)
  - F-1 to OPT process
  - PERM process
  - Health Care Worker Certification generally required
    - VisaScreen® CGFNS International
    - NBCOT for OTs
  
- **Ineligible for H-1Bs** (LPNs, Xray techs, Phlebotomists)
  - Direct to PERM process
  - Health Care Worker Certification generally NOT required



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## Latest Updates/Developments

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- New travel policy (air travel) – effective November 8th, 2021
  - No more country-based restrictions
  - Vaccination now required
    - Some exemptions
    - Most exempt travelers are required to vaccinate within 60 days of arrival to US

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## Latest Updates/Developments *(cont'd)*

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- ALL travelers (2+ years, including citizens and green card holders) must receive a negative PCR test
  - Vaccinated: less than 3 days prior to boarding
  - Exempt unvaccinated: less than 1 day prior to boarding
- Land & ferry crossings – Canada/Mexico-US to be lifted in 2 phases (Nov '21 & Jan '22)
  - vaccinated travelers – non-essential travel permitted
  - unvaccinated travelers – essential travel only
  - no testing requirement
  - Jan '22 – vaccination to be required for essential travel

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## Latest Updates/Developments *(cont'd)*

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- Consular operations
  - Most continue with reduced operations
  - Back log of appointments
  - Long wait times for a visa appointment and cancellations
- Improvements in India – more appointments available; dropbox
- Europe – largely unavailable and delayed
- USCIS processing times & delays

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## Latest Updates/Developments *(cont'd)*

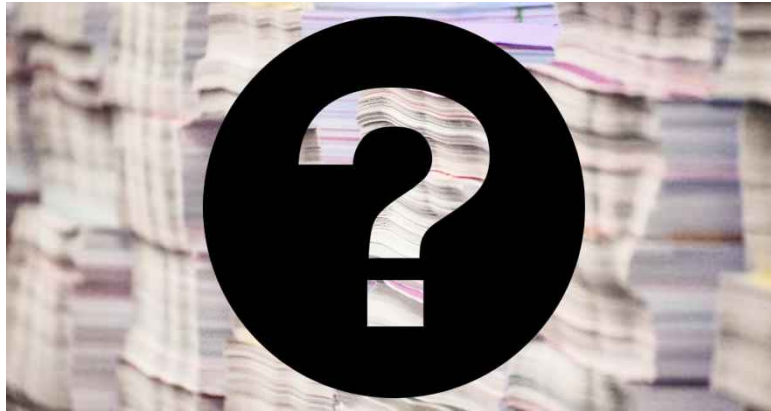
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- Visa Bulletin – Green Card Quotas
  - October 2020 green card filing rush – over 300,000 AOS applications filed, only about 180,000 granted
  - November 2021 retrogression for China & India (EB-3)
  - FY22 - extra visas from 2021 family cap (290,000 EB numbers)
    - Pending AOS cases from FY21 to absorb these
  - Limited potential for movement in FY 2022
    - Backlogs may increase but unlikely to spread to other countries

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# Questions?

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# For Further Information

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Natalia Gouz  
[ngouz@klaskolaw.com](mailto:ngouz@klaskolaw.com)



Myriam Jaidi  
[mjaidi@klaskolaw.com](mailto:mjaidi@klaskolaw.com)



William A. Stock  
[wstock@klaskolaw.com](mailto:wstock@klaskolaw.com)

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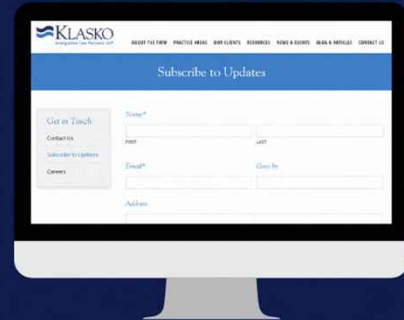
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