

SECTION EIGHT

Appointment of Nonimmigrant Aliens

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## GENERAL GUIDELINES

### I. Introduction

The immigration and naturalization laws and regulations of the United States severely limit employment opportunities for nonimmigrant aliens in the U.S. **It is the policy of the Medical College to comply with federal regulations and to employ only those individuals who are authorized for employment:**

- A. Citizens or nationals of the United States;
- B. Aliens lawfully admitted for permanent residence; and
- C. Aliens authorized by the United States Citizenship and Immigration Services (USCIS) to work in the U.S., i.e., holding employment authorization or in a nonimmigrant visa status which grants employment authorization, such as J-1 (Exchange Visitor) and H-1B (Temporary Worker) status.

The recommended term of an alien's academic appointment may not exceed the duration of the approved employment authorization. Appointments are contingent upon the individual's obtaining and maintaining a visa status which grants employment authorization.

**It is the responsibility of the alien academic staff member to maintain valid visa status or employment authorization at all times.**

The USCIS District Office nearest the Medical College is located at 26 Federal Plaza, New York, New York 10278 (Tel: 212-206-6500). However, most employment-based petitions and applications are sent to the USCIS regional office, Vermont Service Center, located at 75 Lower Welden Street, St. Albans, Vermont 05479-0001.

While the terms "immigration status" and/or "immigration classification" indicate an alien's legal status and the purpose for being in the U.S., the immigration status or classification does not always indicate the type of visa the person originally used to enter the U.S. For example, an alien could enter the U.S. as a tourist using a B-2 visitor visa and later legally change status to H-1B Temporary Worker. The alien's immigration status or classification is changed, but not the visa itself.

### II. Sponsorship of J-1 and H-1B Visas

Nonimmigrant aliens are sponsored by the Medical College primarily for J-1 or H-1B visa status. Since the procedures are complex, departments should contact the Immigration Office (Tel: 212-746-1033) as early as possible when considering the appointment or employment of a nonimmigrant alien.

In most cases, the Medical College will sponsor a nonimmigrant alien's visa status only after the proper appointment forms and credentials have been submitted to the Office of Faculty Affairs and the appointment has been approved. In general, only those academic staff members who will be employed by Cornell and active at the Weill Cornell Medical Center may be sponsored by the Medical College. Most nonimmigrant aliens who will be employed by or active at an affiliated institution will be sponsored by that institution. For any consideration of Medical College sponsorship of aliens at New York Presbyterian Hospital System (System) institutions, the appointing department should contact the Immigration Office and/or the Office of Affiliations (see below, Appendix I, Guidelines for Weill Medical College sponsorship of J-1 Exchange Visitors at System Institutions).

Except in special circumstances, **foreign medical graduates who will receive hospital appointments on the PGY-track or as Clinical Fellows will not be sponsored by the Medical College.** These individuals must contact the Sponsorship Office of the Educational Commission for Foreign Medical Graduates (ECFMG), located at 3624 Market Street, Philadelphia, Pennsylvania 19104 (Tel: 215-386-5900) for information on J-1 alien physician visa sponsorship and licensing procedures. The Medical College may sponsor clinical fellows who are foreign medical graduates for H-1B visa status if they have passed certain credentialing examinations in the U.S. The appointing department should contact the Immigration Office as early as possible to determine a foreign medical graduate's eligibility for H-1B status well in advance of the expected appointment start date.

An alien physician whose visa status in the U.S. is sponsored by the Medical College must contact the Immigration Office before undertaking any plan to perform clinical services. The situation and the proposed activities must be reviewed, and the physician and the department will be advised whether the physician can participate without violating the terms of his or her legal stay in the U.S. In addition, approval will be contingent upon confirmation that the alien physician has appropriate licensure authorization from the Hospital and malpractice coverage.

### **III. Travel**

For travel outside the U.S., a nonimmigrant alien whose status is sponsored by the Medical College should contact the Immigration Office to determine what documentation may be required for re-entry.

Generally, an individual whose status in the U.S. was changed after arrival must obtain a new visa to re-enter the country in the new status after a visit outside the U.S. For example, a B-2 tourist whose status was changed to H-1B temporary

worker by the Medical College **must** apply for an H-1B visa at a U.S. consulate abroad if he or she wishes to re-enter the U.S. after a trip abroad to continue his or her employment.

#### **IV. Off-Campus Employment, Consulting, or Lecturing**

Exchange Visitors (J-1 visa status) and Temporary Workers (H-1B visa status) are limited by government regulations to the academic employment in their sponsoring department at the Medical College. Occasional outside employment for J-1 Exchange Visitors may be allowed by the U.S. Department of State (DOS) if such activity is in keeping with the original objectives of the exchange visitor's J-1 program. Please contact the Immigration Office with any questions concerning outside employment.

#### **V. Taxes**

Salary paid to alien academic staff may or may not be subject to Social Security and Medicare taxes, depending upon visa status. In addition, earned salary may or may not be subject to federal income taxes depending upon the particular tax treaty, if any, with the individual's home country. A Social Security number is required for all paid alien academic staff, and the paid nonimmigrant alien must file an income tax return with the Internal Revenue Service. The Social Security Administration Office nearest the Medical College is located at 755 2<sup>nd</sup> Avenue, at 41<sup>st</sup> Street, New York, New York 10017 (Tel: 1-800-772-1213).

The Payroll Authorization must indicate that the staff member is an alien in a nonimmigrant visa status, and a copy of confirmation of the visa status **must** be attached to the Payroll Authorization. **Failure to indicate visa status on the Payroll Authorization will automatically result in taxes being withheld.**

**Although it is the responsibility of the alien staff member to determine his or her own tax liability and to inform the payroll officer of any change in visa status that might affect tax status, the Medical College Payroll Department determines whether or not federal, state and city taxes must be withheld from an individual's salary.**

## EXCHANGE VISITOR (J-1) STATUS

### I. Introduction

The J-1 Exchange Visitor category [I.N.A. §101(1)(15)(J)] was developed to implement the Mutual Educational and Cultural Exchange Act (Fulbright-Hayes Act) of 1961 [Public Law 87-256, as amended, 22 U.S.C. §2451, *et seq.*]. The overall purpose of that Act, and the objective of the Exchange Visitor category, is "to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges." [22. C.F.R. § 62.1(a)].

The Weill Medical College of Cornell University Exchange Visitor Program allows the Medical College to sponsor foreign professors and research staff for J-1 visa status for academic purposes. The Medical College has been approved by the U.S. Department of State to serve as a J-1 program sponsor for these individuals. Federal regulations govern the Exchange Visitor as well as the sponsor. The intent of the enabling legislation is exchange; it is assumed that the foreign national will remain temporarily in the U.S. and will return home at the completion of his or her research program. The Responsible Officer (RO) for this program at the Medical College is the Immigration Manager, and the Alternate Responsible Officers (ARO) are the Associate Director of Employment Services and the Immigration Assistant. These program officers are the **only** individuals at the Medical College authorized to issue a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. A prospective Exchange Visitor should not enter the U.S. before obtaining the J-1 visa at a U.S. Embassy or Consulate abroad. It is possible for the Exchange Visitor's immediate family to accompany him or her to the U.S. in J-2 dependent visa status.

### II. Implementation of the Student and Exchange Visitor Information System (SEVIS)

In December 2002, the Department of State and the Department of Homeland Security published new rules governing J-1 exchange visitors. These new regulations require that J-1 visa eligibility documents (Form DS-2019) be produced through a federally mandated database known as SEVIS (Student and Exchange Visitor Information System). In addition, the J-1 program sponsor must report the following "events" to SEVIS throughout the J-1 Exchange Visitor's stay in the U.S.:

**A. Commencement of Program** - New Exchange Visitors will need to report to their program sponsors with their immigration documents within 30-days of arrival in the U.S.;

**B. Address Changes** - Exchange Visitors and dependent family members, must report changes of address to the program sponsors within 10-days of making the change;

**C. Site of Activity Change** - Exchange Visitors must report additions to, or changes in, work site (location at which work will be conducted) to the program sponsors within 10-days of the change;

**D. Changes in Legal Name** - Exchange Visitors and dependent family members, must report changes of legal name to the program sponsors within 10-days of making the change; and

**E. End of Program Participation** - If the Exchange Visitor will be leaving his or her program sponsor more than 30-days before the end date specified on Form DS-2019, the program sponsor must be notified immediately.

### **III. Total Length of Stay**

An Exchange Visitor's eligibility for employment in the U.S. is limited to the dates entered on the Form DS-2019 Certificate of Eligibility. Entry into the U.S. is permitted no more than 30 days before and after the beginning date indicated in the form. **An academic appointment, however, is required for the entire period of an Exchange Visitor's program participation in such status.** The Exchange Visitor may stay in the U.S. for up to 30 days after the completion of his or her work at the Medical College.

The total length of stay in the U.S. for Exchange Visitors entering in Category 4, Professor, or Category 8, Research Scholar, is usually three years. A Short Term Scholar, Category 9, may enter for no longer than six months; a Specialist, Category 10, may stay for up to one year. **While the Form DS-2019 for a Professor or Research Scholar may cover a maximum period of three years, the Medical College is required to verify that the Exchange Visitor possesses adequate financial support and is covered by health insurance for the entire period of J-1 stay. For non-faculty academic staff whose appointments are usually for a term of one year, renewable annually (see above, Section Five, Terms of Appointment), J-1 validity can only be granted for the applicable funding period and renewed accordingly.**

For certain individuals who come to the U.S. with financial support from sources other than the Medical College, J-1 visa status may be the only practical option. In addition, because it is relatively easy to obtain J-1 status extensions of stay and changes of status, initial entry into the U.S. in such status is often the best option.

In exceptional circumstances the J-1 Alternate Responsible Officers may extend J-1 visa status, for a Professor or Research Scholar, for an additional six months beyond the usual three years. Such an extension is granted only to permit the alien to achieve the goals for which he or she came to the U.S. prior to returning to the home country. It is the responsibility of the hosting academic department or division to provide a letter delineating the reasons it requests the unusual extension and to confirm the individual alien's intention to return home upon the completion of his or her program. In extremely rare cases, a Professor or Research Scholar may be approved by the DOS for an extension of stay for up to an additional three years.

According to federal regulations, an Exchange Visitor who has held any J status for all or part of the 12-month period immediately preceding the start date of a new J-1 Research Scholar program may not return to the U.S. to start the new program until he or she has been out of the U.S. for at least six months.

#### **IV. Sponsorship by Other Organizations**

An academic staff member at the Medical College may be sponsored for J-1 visa status by another organization. For example, Fogarty Fellows may be sponsored by the National Institutes of Health. Certain international organizations, e.g., NATO or the World Health Organization, will also sponsor a nonimmigrant alien, who may hold an academic appointment at the Medical College. **It is the responsibility of the academic staff member to be aware of and comply with any requirements and policies set by the sponsoring organization.**

When recruited for a position at the Medical College, a nonimmigrant alien already in the U.S. in J-1 visa status sponsored by another institution should request a transfer of J-1 sponsorship to Cornell as early as possible before the anticipated effective date of the appointment. The total maximum length of stay in the U.S. in a J-1 Research Scholar program remains three years (see above, Total Length of Stay) despite a transfer of program sponsorship.

#### **V. Procedures for Obtaining and Renewing J-1 Visa Status**

Except in special circumstances, the academic appointment of the nonimmigrant alien must be approved before the Immigration Office can issue a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, for initial entry, transfer or extension of J-1 visa status. The host department is responsible for furnishing the Recommendation for Appointment form and other necessary credentials to the Office of Faculty Affairs well in advance of the prospective Exchange Visitor's arrival at the Medical College.

In many cases, the following additional information not normally submitted in support of an appointment must be submitted to the Immigration Office:

**A.** Biographic information of J-1 Exchange Visitor and accompanying dependents (see below, Appendix II, J-1 Exchange Visitor Request Form);

**B.** Signed statement from the host department to verify that the Exchange Visitor possesses adequate financial support and health insurance for the entire period of J-1 stay (See below, Appendix III, Department Appointment Verification Statement for J-1 Exchange Visitor); and

**C.** Official documentation of the funding source(s) and exact amount of support (in U.S. dollars) if the individual is not funded by the Medical College.

Upon approval of the appointment, the Immigration Office will issue a one-page Form DS-2019 (together with one page of instructions for the nonimmigrant and a watermarked version of the DS-2019 Certificate for use by the Immigration Inspector at entry points) and transmit the DS-2019 Certificate to the prospective Exchange Visitor, who will submit the Certificate to the U.S. Embassy or Consulate in the country where he or she is residing, in the event of applying for initial entry. For transfer of a prospective Exchange Visitor's J-1 visa sponsorship, the Exchange Visitor should be instructed to contact the Immigration Office for information concerning documents required to proceed with the J-1 transfer. The Immigration Office must also obtain authorization for the transfer from the Exchange Visitor's current J-1 program sponsor.

If approved by the Consular Officer, the prospective Exchange Visitor is granted a J-1 visa issued in his or her passport. Upon arrival in the U.S., an Immigration Inspector at the entry point will properly annotate both the original Form DS-2019 and the watermarked version. The inspector will return the original Form DS-2019 to the Exchange Visitor and the watermarked version will be forwarded by the inspector to the USCIS data processing center. In addition, the Exchange Visitor will be issued a Form I-94, Arrival-Departure Record, which indicates J-1 status valid for D/S, i.e., duration of status (the dates shown on the Form DS-2019). The Exchange Visitor must keep all documents with his or her passport.

Within 24 hours of commencing employment at the Medical College or extending J-1 visa status, the Exchange Visitor must make an appointment to visit the Immigration Office with his or her passport, Form I-94 and Form DS-2019. In compliance with the Immigration Reform and Control Act (IRCA) of 1986, the Medical College will keep on file a completed Form I-9 - Employment Eligibility Verification - proving that the individual is authorized for employment in the United States.

## **VI. Other Pertinent Information and Regulations**

U.S. government regulations require each Exchange Visitor to have insurance in effect to cover the Exchange Visitor and accompanying spouse and dependents during the period of his or her participation in the Exchange Visitor Program. Willful failure to comply with the federal insurance regulations will result in termination as a participant in an Exchange Visitor Program.

### Minimum Level of Insurance Coverage Required:

**A.** Medical benefits of at least \$50,000 per accident or illness;

**B.** Benefits for repatriation of remains in the amount of \$7,500;

**C.** Benefits for expenses associated with the medical evacuation to the home country in the amount of \$10,000;

**D.** A deductible not to exceed \$500 per accident or illness; and

**E.** The carrier must have an A.M. Best rating of A- or above; an Insurance Solvency International, Ltd. rating of A- or above; a Standard & Poor's Claims-paying Ability rating of A- or above; or a Weiss Research, Inc. rating of B+ or above.

The Immigration Office has brochures available for Exchange Visitors who will need to purchase insurance. Most Exchange Visitors whose support is funded by the Medical College will have WMC employee health insurance coverage, which meets the federal requirements for medical benefits, at no cost to the Visitors. They will, however, be required to pay for any dependent coverage. In addition, all Exchange Visitors will be required to purchase coverage for themselves and their dependents for items B. and C. above, including benefits for repatriation of remains and medical evacuation, which are not covered by the Medical College policies. Exchange Visitors will have the option of comparing costs, and if they wish, when applicable, they may decline the Medical College's health insurance in favor of coverage by another carrier provided that the policy meets the regulatory requirements.

An Exchange Visitor who engages in unauthorized employment shall be deemed to be in violation of his or her program and is subject to termination as a participant in the Exchange Visitor Program.

Under the Exchange Visitor Program regulations, program sponsors must update the current U.S. address information for

participants in the SEVIS within 21 days of being notified by a participant of a change in his or her address. All Exchange Visitors at the Medical College are therefore required to keep the Immigration Office informed of their addresses and telephone numbers during participation in the Exchange Visitor Program.

### **VII. Clinical Hospital Privileges for Alien Physicians**

When an alien physician comes to the Medical College to teach or perform research under the Exchange Visitor Program assigned to Cornell University, the ARO must indicate on the Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, either that the physician will perform no clinical services, or there will be incidental clinical services. If incidental patient contact is involved in the alien physician's duties, the Form DS-2019 must have appended a signed statement from the Dean, or his designee, certifying to five points concerning the circumstances under which such services may be performed (see below, Appendix IV, Dean's Certificate for Weill Medical College Sponsorship of J-1 Exchange Visitors with Clinical Hospital Privileges).

Alien physicians who perform services that are not compatible with the goals of the program for which they came to the U.S. may be in violation of the terms of the visa status. A physician whose visa application did not indicate that there would be incidental clinical services and who applies for temporary privileges at an affiliated hospital may be considered to have committed visa fraud.

If an alien physician in J-1 visa status whose purpose in coming to the U.S. is to perform research in a clinical department wishes to observe clinical care at the New York-Presbyterian Hospital, the request will normally be approved if the Immigration Office is given assurance that the goals of the research program will not be compromised or made secondary to such observation. It might be difficult to document the necessity for incidental clinical services by a physician whose program goals include only performing research in a basic science department, although specific circumstances might prove otherwise.

The Weill Medical College J-1 visa sponsorship form (see below, Appendix II, J-1 Exchange Visitor Request Form) asks for the proposed primary activity. If the individual is a physician, the supervisor must indicate whether or not there will be any patient contact, and if so, the Department must submit the Dean's certification (see below, Appendix IV) with the request for J-1 visa sponsorship. The Department must also provide confirmation that the alien physician will have malpractice coverage.

Please see below Appendix V:

- A.** 22 CFR 514.27, Alien Physicians, pp 199-201; and
- B.** Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars. NAFSA: Association of International Educators, April 2003, pp 4-108, 4-109, 4-110, 4-111, 4-112, 4-113.

## TEMPORARY WORKER (H-1B) STATUS

### I. Introduction

The Medical College will petition the United States Citizenship and Immigration Services (USCIS) to classify an alien as a Temporary Worker (H-1B visa status) if the department believes that the academic staff member should remain in the United States beyond the usual maximum three-year length of stay as a J-1 Exchange Visitor. The procedures for petitioning for H-1B status are complicated, and **it is imperative that the department and the alien academic staff member be in contact with the Immigration Office as soon as it is determined that he or she needs to remain in the United States beyond the usual three-year limit on a stay in J-1 visa status.**

The Medical College usually does not petition for H-1B Temporary Worker status upon initial entry of an alien academic staff member. It may be preferable to sponsor the individual for J-1 visa status for the following reasons:

A. Approval of a petition for an H-1B visa can take up to three months;

B. Significantly more paperwork is involved in H classification petitions;

C. The H-1B employee is subject to social security taxes; and;

D. Dependents in H-4 visa status cannot be granted employment authorization.

**Since October 1, 1991, regulations require the Department of Labor approval of a Labor Condition Application (LCA) for H-1B employment (see below, Appendix VI, Employment of H-1B Temporary Workers).** At the Medical College, only the Dean is authorized to sign an LCA. There are severe penalties for non-compliance with the LCA regulations. Departments should contact the Immigration Office for information and guidance.

### II. Total Length of Stay

The initial H-1B visa petition may be approved for a period of up to three years, and subsequent requests for extensions may be approved for up to a maximum of six years. In the event that an alien academic staff member's appointment is terminated before the approved H-1B expiration date, the Medical College is responsible for notifying the USCIS to withdraw the subject H-1B petition and providing return transportation of the alien academic staff member to his or her last place of foreign residence.

### **III. Transfer of Sponsorship from Other Organizations**

When a nonimmigrant alien who is already in the United States in H-1B visa status is recruited for a position at the Medical College, the Medical College must file a request with the USCIS for change in the petitioner, i.e., the alien's employer, to Weill Medical College of Cornell University prior to the anticipated effective date of the appointment. The total maximum length of stay in the United States in H-1B visa status remains six years.

### **IV. Procedures for Obtaining and Renewing H-1B Visa Status**

Alien academic staff members in J-1 visa status who - 1) received funding from the United States, their home government or certain international organizations, 2) possess certain skills in short supply in the home country, or 3) are receiving clinical medical training - first must be granted a waiver of the two-year home country residence requirement before their immigration status can be changed to that of H-1B temporary worker. Applications for the waiver are obtained at the consulate of the individual's home government and should be filed at least six months in advance of the planned submission of the H-1B petition. (**Please note:** If the J-1 waiver is not granted, it is not possible for the alien staff member's status to be changed to H-1B.)

The Form I-129, Petition for a Nonimmigrant Worker, and H Classification Supplement must be completed and signed by the Immigration Manager. As part of the H-1B visa process, the department and the academic staff member must provide extensive documentation required by the USCIS (see below, Appendix VI, Employment of H-1B Temporary Workers). The LCA, signed by the Dean, must be approved by the Department of Labor before the Medical College can submit a petition for H-1B visa classification to the USCIS.

The Immigration Office cannot issue petitions for H-1B visa classification until appointment or reappointment of the alien academic staff has been approved. The department is responsible for furnishing the Recommendation for Appointment Form and other necessary credentials to the Office of Faculty Affairs well in advance of the expiration date of the current visa status held by the alien academic staff member.

Upon approval of the H-1B visa petition, the Notice of Action (Form I-797B) for the requested status is issued and sent by the USCIS to the Immigration Office and, if applicable, to the United States Consulate abroad where the H-1B visa will be obtained. Upon arrival in the United States, the individual will receive an Arrival/Departure Record (white form I-94) which states the arrival date and final date of H-1B status and the

name of the H-1B petitioner (employer). If the individual is already in the United States, an updated Arrival/Departure Record (I-94) and approval for change of status to H-1B or extension of stay in H-1B status (Form I-797A) will be issued and sent to the Immigration Office.

Within 24 hours of commencing employment at the Medical College in H-1B visa status or being informed of approval for extension of H-1B visa status, the alien academic staff member should visit the Immigration Office with his or her passport. In compliance with the Immigration Reform and Control Act of 1986, the Medical College will keep on file an Employment Eligibility Verification (I-9) form proving that the individual is authorized for employment in the U.S.

**V. Other Pertinent Information and Regulations**

When an alien physician comes to the Medical College in H-1B Temporary Worker status, the individual may perform no clinical services unless the H-1B petition (Form I-129) indicates that such services would be performed, together with proof that the person successfully completed either the Federation Licensing Examination (FLEX) or parts I, II and III of the United States Medical Licensing Examination (USMLE).

## OTHER VISAS

### I. Nonimmigrant Visas

It is possible for nonimmigrant aliens to enter the United States with visas other than J-1 or H-1B visa. For example, they may enter initially with a B-1 (visitor for business) or B-2 (tourist) visa. There are severe restrictions on the activities in which these visitors may participate, especially those in B-2 visa status. A visitor in B-1 status may, in certain circumstances, be given an honorarium or be reimbursed for expenses.

Nonimmigrant aliens may be sponsored for employment in another category, such as "O" visa status, Aliens of Extraordinary Ability in the Sciences, Arts, Education or Business. Departments should contact the Immigration Office for information concerning O visas.

Nonimmigrant aliens in J-2 visa status (dependents of J-1 Exchange Visitors) may apply to the USCIS for employment authorization under certain circumstances.

Students holding F-1 or J-1 visas may also, with the approval of the USCIS, be employed for specified periods before and after completion of their educational programs. A department that is interested in employing a foreign student should contact the Immigration Office well in advance in order that the appropriate school or USCIS documentation be prepared and available, which confirms that the alien has employment authorization.

The U.S. has a Visa Waiver Pilot Program that permits aliens from 27 nations to enter the U.S. for business or pleasure without obtaining a visa. The Immigration Inspector at the port of entry indicates on the person's GREEN form I-94 that the visitor is in WT (Waiver, Tourist) or in WB (Waiver, Business) status. The stay is limited to 90 days; neither employment nor change of status is possible. However, a visitor in WB status may, in certain circumstances, be reimbursed for expenses.

The department should consult with the Immigration Office before offering appointment or employment to a non-immigrant alien or permitting him or her to engage in any observation, consultation or other professional activities at the Medical College.

### II. Immigrant Visas

Permanent residents ("green card" holders) may be employed in the same manner as citizens of the United States.

An alien academic staff member may wish to apply for immigrant status. In such cases, **he or she must notify the Immigration Office of this intent.** The Medical College provides limited guidance to the staff member through the complex application process. It will be advisable for the alien academic staff member to seek independently the advice of an attorney or specialist in immigration matters.

Employees and their outside counsel should be made aware that Cornell University does not authorize outside attorneys to act for the University or the Medical College. Individuals are encouraged to seek outside legal advice in immigration matters, but their attorneys must be informed that they are empowered to act by and for only the alien employee, not the University or the Medical College.

Applications for Alien Employment Certification and immigrant visa (permanent residence) petitions for employees of Weill Medical College of Cornell University **may be signed only by the Dean.** The Department must first confirm its support with a form signed by both the individual's immediate supervisor and the Department Chair (see below, Appendix VII, Confirmation of Departmental Support for Application for Permanent Resident Status) before an Application for Alien Employment Certification or an immigrant visa petition can be submitted for the Dean's signature.

## Appendix I

### Guidelines for Weill Medical College Sponsorship of J-1 Exchange Visitors at System Institutions

#### I. Definitions

**A. J-1 Exchange Visitor** is a foreign national who has been selected by a sponsor to participate in an exchange visitor program and who is seeking to enter or has entered the United States temporarily on a J-1 visa.

**B. A J-1 visa** is issued to the exchange visitor. J-2 visas are issued to the exchange visitor's immediate family (i.e., spouse and/or children under age 21).

**C. Sponsor** is any entity designated by the Director of the United States Information Agency to conduct an exchange visitor program (e.g., Cornell University, ECFMG).

**D. J-1 Exchange Visitors** in System Institutions will fall into one of the following categories of participant eligibility (as defined in Rules and Regulations published in the Federal Register, Vol. 8, no. 52, p. 15198, March 19, 1993):

1. *Professor.* An individual primarily teaching, lecturing, observing or consulting in post-secondary accredited educational institutions, museums, libraries, or similar types of institutions. A professor may also conduct research, unless disallowed by the sponsor.
2. *Research Scholar.* An individual primarily conducting research, observing, or consulting in connection with a research project at a research institution, corporate research facility, museum, library, post-secondary accredited educational institution, or similar type of institution. The research scholar may also teach or lecture, unless disallowed by the sponsor.
3. *Short-Term Scholar.* An individual coming to the United States on a short-term visit of **up to the six-month maximum** for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at a research institution, museum, library, post-secondary accredited educational institution, or similar type of institution. The short-term scholar may also engage in collaborative research.

**E. Supervisor** is a Weill Medical College faculty member who assumes the following responsibilities:

1. monitoring the exchange visitor to ensure that the exchange visitor's activity is consistent with the activity listed on the Form DS-2019;
2. monitoring the progress and welfare of the exchange visitor;
3. keeping the sponsor apprised on the exchange visitor's address and telephone number; and
4. ensuring compliance with all pertinent federal regulations, (e.g., ensuring that all dependent family members have the same insurance coverage as the **J-1 Exchange Visitor**.)

## **II. Procedures**

**A.** The supervisor must nominate the **J-1 Exchange Visitor** for an appropriate Weill Medical College academic appointment.

**B.** The **J-1 Exchange Visitor** must be approved for a Weill Medical College academic appointment according to procedures outlined in the Academic Staff Handbook (i.e., with recommendations from the System Department Chair and the appropriate WMC Department Chair).

**C.** The Supervisor must refer the **J-1 Exchange Visitor** candidate for Weill Medical College sponsorship to the WMC Immigration Office with the following items:

1. Dean's approval of the candidate's WMC academic appointment;
2. Supervisor's letter that includes:
  - a. a description of the proposed project, and expected date of completion (within 3 years); and
  - b. a precise salary commitment with a statement of salary source.
3. Applicant's signed statement confirming that he or she will purchase health insurance which conforms to federal regulations;
4. Completed J-1 Exchange Visitor Request Form, with curriculum vitae attached;

5. If candidate is currently in **J-1 Visa** status with another sponsor, copies of all previous DS-2019 forms, passport identity and visa pages, and front and back of I-94 departure record; and
6. If candidate is currently in another immigration status, copies of all documents concerning such status.

**D.** The System supervisor or sponsoring System department must also pay Weill Medical College an administrative fee of \$200 for initial applications and \$100 for extensions, to compensate for the efforts of the WMC Immigration Office. This should be done by check made out to "Weill Medical College of Cornell University" and sent to the WMC Immigration Office.

## Appendix II

J-1 Exchange Visitor Request Form

# CORNELL UNIVERSITY

Joan and Sanford I. Weill  
Medical College

Telephone (212) 746-1033  
Fax (212) 746-8747  
Department of Human Resources  
Immigration Office  
Olin Hall 226, 445 East 69<sup>th</sup> Street  
New York, NY 10021

## J-1 Exchange Visitor Request Form

Please complete and return to: Immigration Office, Olin Hall 226. THIS IS NOT AN IMMIGRATION DOCUMENT. DO NOT SEND IT TO YOUR VISITOR – it will not enable him/her to obtain a visa. All questions must be answered in full to avoid delays in processing Form DS-2019. Please type or print.

### **Required Information:**

NAME OF INTERNATIONAL VISITOR EXACTLY AS IT APPEARS ON HIS/HER PASSPORT:

\_\_\_\_\_

Family (Last)                      Given (First)                      Middle

DATE OF BIRTH \_\_\_\_\_ PLACE OF BIRTH \_\_\_\_\_

(City)                                      (Country)

COUNTRY OF CITIZENSHIP: \_\_\_\_\_

COUNTRY OF LEGAL  
PERMANENT RESIDENCE: \_\_\_\_\_ GENDER:  MALE     FEMALE

VISITOR'S E-MAIL: \_\_\_\_\_

PROFESSIONAL POSITION IN HOME COUNTRY \_\_\_\_\_

Is the employer  Educational Inst.  Private Bus.  Central Gov't.  State Gov't.  Regional Gov't.  City Gov't.

WMC Position Title: \_\_\_\_\_

Physical Address of WMC campus work  
location: \_\_\_\_\_

Physical Address of any off campus work  
location: \_\_\_\_\_

—



[ ] Personal Funds

\$ \_\_\_\_\_

\*This funding may come from any source including the visitor's personal savings or WMC salary. These amounts represent the bare minimum and do not include the cost of health insurance coverage, which could be range from \$60 to \$400 per month for a family.

\*\*U.S. Government Funding: The Exchange Visitor is considered to be government funded ONLY if s/he received funds directly from a U.S. Government agency. When individuals are supported through government funds paid to a Weill Medical College professor, department, or grant, this is NOT considered to be direct government funding.

**J-2 Dependants:** Dependents who will be accompanying J-1 visitor:

Name (First, Middle, Last)	Date of Birth (mo/day/yr)	Country & City of Birth	Country of Citizenship	Country of Legal Perm. Residence	Gender M or F	Relationship
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**Mailing the Form:** The Immigration Office can send the DS-2019 form to the J-1 visitor by an express courier service, however a Federal Express or DHL account number must be provided by the host department. If the host department prefers to send the DS-2019 form, please pick up the form from the Immigration Office. PLEASE CHECK YOUR PREFERENCE BELOW:

Immigration Office sends form \_\_\_\_\_  
Fedex or DHL Account # to be billed \_\_\_\_\_ (please specify)  
Host Department picks up and sends forms \_\_\_\_\_

**Host Department Contact and Authorizations:**

HOST FACULTY SPONSOR _____
DEPARTMENT _____
DEPARTMENT/DIVISION ADMINISTRATOR _____
PHONE # _____ E-MAIL _____
DATE OF REQUEST _____

Appendix III

**Department Appointment Verification Statement for J-1 Exchange Visitor at Weill Medical College of Cornell University**

J-1 Exchange Visitor: \_\_\_\_\_  
Host Department/Division: \_\_\_\_\_  
Dates of J-1 Appointment: From \_\_\_\_\_ To \_\_\_\_\_  
Month/Day/Year Month/Day/Year

**TERMS OF J-1 APPOINTMENT/DEPARTMENTAL RESPONSIBILITIES**

- The host department understands that the J-1 visa status is of a temporary nature and may **not** be used for tenure-track or tenured faculty appointments, clinical care, or for non-academic administrative or technical positions.
- The host department has verified all sources of the Exchange Visitor's financial support for the entire period of the J-1 appointment and has included documentation in the Exchange Visitor's file.
- The host department has informed the Exchange Visitor of the U.S. government's requirements for health insurance for her/himself and any accompanying J-2 family members.
- The host department understands that a J-1 visitor who wishes to transfer sponsorship to Weill Medical College of Cornell University must be released from the current sponsor prior to beginning employment at the Medical College. The J-1 visitor must maintain her/his original program objective as listed on the original Form DS-2019.
- The Exchange Visitor must be in the correct status and on the Medical College's sponsorship before she/he can commence employment and receive any remuneration.
- The Immigration Office must be promptly notified of arrivals, extension requests, terminations and departures of Exchange Visitors. An Exchange Visitor may NOT change departments without first obtaining the approval of the Immigration Office.

**I AGREE TO THE ABOVE TERMS AND CONDITIONS.**

Signature of Department Faculty Sponsor: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_

**Appendix IV**

Dean's Certificate for Weill Medical College Sponsorship of J-1  
Exchange Visitors with Clinical Hospital Privileges

Re:

Date:

The above captioned foreign physician will participate as a Research Scholar in Program P-1-00043, The Weill Medical College of Cornell University, from \_\_\_\_\_ through \_\_\_\_\_. We confirm the following:

- (1) The program in which Dr. \_\_\_\_\_ will participate is predominantly involved with observation, consultation, teaching or research;
- (2) Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or resident alien who fully licensed to practice medicine in the State of New York;
- (3) The alien physician will not be given final responsibility for the diagnosis and treatment of patients;
- (4) Any activities of the alien physician will conform fully with the State licensing requirements and regulations for medical and health care professionals in the State in which the alien physician is pursuing the program; and
- (5) Any experience gained in the program will not be creditable towards any clinical requirements for medical specialty board certification.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Department

Approved

\_\_\_\_\_  
Antonio M. Gotto, Jr., M.D., Dean

\_\_\_\_\_  
Date

## **Appendix V**

### **Guidelines for Granting Temporary Privileges to J-1 Alien Physicians**

1. 22 CFR 514.27, Alien Physicians, pp 199-201; and
2. Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars. NAFSA: Association of International Educators, April 2003, pp 4-108, 4-109, 4-110, 4-111, 4-112, 4-113.

## United States Information Agency<sup>1</sup>

### §514.27 Alien physicians.

(a) *Purpose.* Pursuant to the Mutual Educational and Cultural Exchange Act, as amended by the Health Care Professions Act, Public Law 94-484, the Agency facilitates exchanges for foreign medical graduates seeking to pursue graduate medical education or training at accredited schools of medicine or scientific institutions. The Agency also facilitates exchanges of foreign medical graduates seeking to pursue programs involving observation, consultation, teaching, or research activities.

(b) *Clinical exchange programs.* The Educational Commission for Foreign Medical Graduates must sponsor alien physicians who wish to pursue programs of graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions. Such Foreign Medical Graduates shall:

(1) Have adequate prior education and training to participate satisfactorily in the program for which they are coming to the United States;

(2) Be able to adapt to the educational and cultural environment in which they will be receiving their education or training;

(3) Have the background, needs, and experiences suitable to the program as required in §514.10(a)(1);

(4) Have competency in oral and written English;

(5) Have passed either Parts I and II of the National Board of Medical Examiners Examination, the Foreign Medical Graduate Examination in the Medical Sciences, the United States Medical Licensing Examination, Step I and Step II, or the Visa Qualifying Examination (VQE) prepared by the National Board of Medical Examiners, administered by the Educational Commission for Foreign Medical Graduates. [NB-Graduates of a school of medicine accredited by the Liaison Committee on Medical Education are exempted by law from the requirement of passing either Parts I and II of the National Board of Medical Examiners Examination or the Visa Qualifying Examination (VQE)]; and

(6) Provide a statement of need from the government of the country of their nationality or last legal permanent residence. Such statement must provide written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien physician seeks to acquire and shall be submitted to the Educational Commission for Foreign Medical Graduates by the participant's

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<sup>1</sup> 22 CFR 514.27, Alien Physicians, pp. 199-201

government. The statement of need must bear the seal of the concerned government and be signed by a duly designated official of the government. The text of such statement of need shall read as follows:

Name of applicant for Visa: \_\_\_\_\_. There currently exists in (Country) a need for qualified medical practitioners in the speciality of \_\_\_\_\_. (Name of applicant for Visa) has filed a written assurance with the government of this country that he/she will return to this country upon completion of training in the United States and intends to enter the practice of medicine in the specialty for which training is being sought. Stamp (or Seal and signature) of issuing official of named country.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Official of Named Country.

(7) Submit an agreement or contract from a U.S. accredited medical school, an affiliated hospital, or a scientific institution to provide the accredited graduate medical education. The agreement or contract must be signed by both the alien physician and the official responsible for the training.

(c) *Non-clinical exchange programs.* (1) A United States university or academic medical center which has been designated an exchange visitor program by the Director of the United States Information Agency is authorized to issue Form IAP-66 to alien physicians to enable them to come to the United States for the purposes of observation, consultation, teaching, or research if:

(i) The responsible officer or duly designated alternate of the exchange visitor program involved signs and appends to the Form IAP-66 a certification which states "this certifies that the program in which (name of physician) is to be engaged is solely for the purpose of observation, consultation, teaching, or research and that no element of patient care is involved" or

(ii) The dean of the involved accredited United States medical school or his or her designee certifies to the following five points and such certification is appended to the Form IAP-66 issued to the perspective exchange visitor alien physician:

(A) The program in which (name of physician) will participate is predominantly involved with observation, consultation, teaching, or research.

(B) Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or resident alien and who is licensed to practice medicine in the State of \_\_\_\_\_.

(C) The alien physician will not be given final responsibility for the diagnosis and treatment of patients.

(D) Any activities of the alien physician will conform fully with the State licensing requirements and regulations for medical and health care professionals in the State in which the alien

physician is pursuing the program.

(E) Any experience gained in this program will not be creditable towards any clinical requirements for medical specialty board certification.

(2) The Educational Commission for Foreign Medical Graduates may also issue Form IAP-66 to alien physicians who are coming to the United States to participate in a program of observation, consultation, teaching, or research provided the required letter of certification as outlined in this paragraph is appended to the Form IAP-66.

(d) *Public health and preventive medicine programs.* A United States university, academic medical center, school of public health, or other public health institution which has been designated as an exchange visitor program sponsor by the Director of the United States Information Agency is authorized to issue Forms IAP-66 to alien physicians to enable them to come to the United States for the purpose of entering into those programs which do not include any clinical activities involving direct patient care. Under these circumstances, the special eligibility requirements listed in paragraphs (b) and (c) of this section need not be met. The responsible officer or alternate responsible officer of the exchange visitor program involved shall append a certification to the Form IAP-66 which states.

This certifies that the program in which (name of physician) is to be engaged does not include any clinical activities involving direct patient care.

(e) *Duration of participation.* (1) The duration of an alien physician's participation in a program of graduate medical education or training as described in paragraph (b) of this section is limited to the time typically required to complete such program. Duration shall be determined by the Director of the United States Information Agency at the time of the alien physician's entry into the United States. Such determination shall be based on criteria established in coordination with the Secretary of Health and Human Services and which take into consideration the requirements of the various medical specialty boards as evidenced in the Director of Medical Specialties published by Marquis Who's Who for the American Board of Medical Specialties.

(2) Duration of participation is limited to seven years unless the alien physician has demonstrated to the satisfaction of the Director that the country to which the alien physician will return at the end of additional specialty education or training has an exceptional need for an individual with such additional qualification.

(3) Subject to the limitations set forth above, duration of participation may, for good cause shown, be extended beyond the

period of actual training or education to include the time necessary to take an examination required for certification by a specialty board.

(4) The Director may include within the duration of participation a period of supervised medical practice in the United States if such practice is an eligibility requirement for certification by a specialty board.

(i) Alien physicians shall be permitted to undertake graduate medical education or training in a specialty or subspecialty program whose board requirements are not published in the Director of Medical Specialists if the Board requirements are certified to the Director and to the Educational Commission for Foreign Medical Graduates by the Executive Secretary of the cognizant component board of the American Board of Medical Specialties.

(ii) The Director may, for good cause shown, grant an extension of the program to permit an alien physician to repeat one year of clinical medical training.

(5) The alien physician must furnish the Attorney General each year with an affidavit (Form I-644) that attests the alien physician:

(i) Is in good standing in the program of graduate medical education or training in which the alien physician is participating; and

(ii) Will return to the country of his nationality or last legal permanent resident upon completion of the education or training for which he came to the United States.

(f) *Change of program.* The alien physician may, once and not later than two years after the date the alien physician enters the United States as an exchange visitor or acquires exchange visitor status, change his designated program of graduate medical education or training if the Director approves the change and if the requirements of paragraphs §514.27(b) and §514.27(e) of this section are met for the newly designated specialty.

(g) *Applicability of section 212(e) of the Immigration and Nationality Act.* (1) Any exchange visitor physician coming to the United States on or after January 10, 1977 for the purpose of receiving graduate medical education or training is automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act, as amended. Such physicians are not eligible to be considered for section 212(e) waivers on the basis of "No Objection" statements issued by their governments.

(2) Alien physicians coming to the United States for the purpose of observation, consultation, teaching, or research are not automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act, as amended, but may be subject to this

requirement if they are governmentally financed or pursuing a field of study set forth on their countries' Exchange Visitor Skills List. Such alien physicians are eligible for consideration of waivers under section 212(e) of the Immigration and Nationality Act, as amended, on the basis of "No Objection" statements submitted by their governments in their behalf through diplomatic channels to the Director of the United States Information Agency.

[58 FR 15196, Mar. 19, 1993; 58 FR 48448, Sept. 16, 1993]

## NAFSA Adviser's Manual

### 4.15 Foreign medical graduates (FMGs) <sup>2</sup>

Congress has shown an exceptional interest in the activities of alien physicians, which makes their activities in any category subject to additional scrutiny, documentation, or limitations. Alien physicians who come to the United States to receive graduate medical education or training are subject to strict examination requirements before being granted J-1 classification, to time limitations on the length of the training permitted, and to the imposition of the 2-year home country physical presence requirement with limited options for waiver.

22 C.F.R. § 62.27

#### **4.15.1 Definitions of "alien physician," "foreign medical graduate," and "graduate medical education or training"**

##### **Alien physician**

DOS regulations and practice appear to use the term *alien physician* in two ways: in a general way, which refers to aliens who have graduated from a medical school, and in a specific way, to refer to an activity category of physicians who are coming to the United States to engage in a clinical program of graduate medical education or training. Whereas students, professors, researcher scholars, short-term scholars, specialists, and trainees are categories of exchange visitors defined in 22 C.F.R. § 62.4, alien physicians are not listed there. Technically, alien physicians could be classified in any of those categories, subject to the specific limitations of 22 C.F.R. § 62.27, which is devoted to the activities that alien physicians can and cannot engage in.

22 C.F.R. § 62.27 distinguishes between two kinds of alien physicians:

1. Physicians who are coming to participate in a **clinical** exchange program, involving patient contact and care, within a program of graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions. The only exchange program sponsor authorized to bring exchange visitors for this purpose is the Educational Commission for Foreign Medical Graduates (ECFMG); and

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<sup>2</sup> Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars. NAFSA: Association of International Educators, April 2003, pp. 4 – 108, 4 – 109, 4 – 110, 4 – 111, 4 – 112, 4 – 113.

22 C.F.R. § 62.27(b)

2. Physicians who are coming to participate in a **non-clinical** exchange program, either with no patient contact or care, or where patient contact is only incidental to the physician's primary activity of teaching, research, consultation, or observation.

22 C.F.R. § 62.27(c)

The "alien physician" participant category can only be used by the ECFMG, for those physicians who are sponsored for training by the ECFMG to pursue graduate medical education or training (usually a residency or clinical fellowship).

**FMG: Foreign medical graduates, alien physicians, or "foreign graduates of a medical school"**

In the use of all of these terms one should be aware of the distinction between foreign nationality and foreign education, since some U.S. citizens study medicine abroad and some foreign nationals obtain U.S. medical degrees.

A *foreign medical graduate* (FMG) is a person who has graduated from a medical school outside the United States and may be either a foreign national or a U.S. citizen. In recent years the term *international medical graduate* has come into use as well.

Congress has defined the term *foreign graduates of a medical school* as "aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine." [I.N.A. § 101(a)(41)] This rather ambiguous definition is intended to include aliens who have graduated from a medical school in a foreign country or who otherwise have earned in a foreign country their qualifications to practice medicine, unless they are of renown.

**Graduate medical education or training**

Graduate medical education or training means participation in a program in which the alien physician will receive graduate medical education or training, which generally consists of a residency or fellowship program involving health care services to patients, but does not include programs involving observation, consultation, teaching or research in which there is no or only incidental patient care. This program may consist of a medical specialty, a directly related medical subspecialty, or both.

#### **4.15.2 Non-clinical exchange programs at academic institutions**

##### *4.15.2.1 Observation, consultation, teaching, or research*

A U.S. university or academic medical center which has been designated an exchange visitor program is authorized to issue Form IAP-66 to alien physicians to enable them to come to the United States for the purposes of observation, consultation, teaching, or research. The activity categories designed for such activities are the professor, research scholar, short-term scholar, and specialist categories.

##### 22 C.F.R. § 62.27(c)

If the primary purpose of the exchange visitor's participation in a program is of a clinical nature, the exchange visitor may not be documented under a university or medical center's exchange visitor program. In such cases, the alien physician must be documented under the program of the ECFMG.

If there is no patient care or if the patient contact is only incidental, the physician is not required to pass special medical or English language exams. Note that for both "no patient care" and "incidental patient contact" written confirmation using prescribed language must accompany the Form IAP-66 (**See AM § 4.15.2.3**, "Documentation provided by the institution" on page 4-111).

##### *4.15.2.2 Levels of patient contact to qualify as non-clinical*

To qualify as non-clinical, an exchange visitor physician's patient contact must be no more than "incidental" to his or her purpose related to observation, consultation, teaching, or research.

###### *4.15.2.2.1 No-patient care (observing)*

Observing indicates that the physician will at most attend or give lectures, go into patient areas as an observer or consultant, or work on research tissue and specimens that have no direct bearing on patient care.

###### *4.15.2.2.2 Incidental patient contact*

In certain cases, an exchange visitor physician participating in

a program of observation, consultation, teaching or research may need to have limited patient contact in order to carry out those objectives. If the patient contact is incidental to those objectives, a physician participating in a non-clinical exchange program can engage in limited patient contact. Such incidental activity is limited, however, to the terms of the special certification discussed in **See AM § 4.15.2.3.2**, "Incidental patient contact" on page 4-112.

**Practice Note: Examples**

Examples of acceptable activities: doing a diagnostic examination in the presence of a senior physician who repeats the examination or ensures at every step that it is done correctly and the proper diagnostic information is obtained; being present during therapies and treatment with opportunities for hands on experience in ways that do not compromise the care of the patient; being present in the operating room and having limited patient contact, but not performing procedures.

**4.15.2.3 Documentation provided by the institution**

The regulations require particular certifications to be attached to Form DS-2019 in order for a foreign physician to participate in a non-clinical program:

*4.15.2.3.1 No patient care*

If no patient care is involved in the alien physician's duties, the RO/ARO must sign a certification and append it to Form DS-2019. The certification must state verbatim:

**Authority cite**

"This certifies that the program in which [name of physician] is to be engaged is solely for the purpose of observation, consultation, teaching, or research and that no element of patient care services is involved." 22 C.F.R. § 62.27(c) (i)

*4.15.2.3.2 Incidental patient contact*

If incidental patient contact is involved in the alien physician's, duties, the RO must append to Form DS-2019 a statement signed by the dean of the medical school or the dean's designee, certifying the following 5 points, *verbatim*:

**Authority cite**

(A) The program in which [name of physician] will participate is predominantly involved with observation, consultation, teaching, or research.

(B) Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or

resident alien and who is licensed to practice medicine in the state of \_\_\_\_\_.

(C) The alien physician will not be given final responsibility for the diagnosis and treatment of patients.

(D) Any activities of the alien physician will conform fully with state licensing requirements and regulations for medical and health care professionals in the state in which the alien physician is pursuing the program.

(E) Any experience gained in this program will not be creditable toward any clinical requirements for medical specialty board certification." 22 C.F.R. § 62.27(c) (ii)

#### 4.15.2.3.3 *Public health and preventive medicine programs*

An alien physician who comes to the United States for the purpose of participating in a public health or preventive medicine program sponsored by a university, medical center, school of public health, or other public-health institution is not required to pass medical or English language exams if his or her duties will not involve any patient care. In such a case, the RO must append to Form DS-2019 a certification stating:

##### **Authority cite**

"This certifies that the program in which [name of physician] is to be engaged does not include any clinical activities involving direct patient care." 22 C.F.R. § 62.27(d)

#### **4.15.3 Non-clinical exchange programs sponsored by other organizations**

22 C.F.R. § 62.27(d)

##### *4.15.3.1 Non-clinical programs sponsored by the ECFMG*

Participants in these programs generally do not have to pass medical science or English language exams and are not required to hold ECFMG certification. These programs include, but are not limited to, the following.

- Programs involving observation, consultation, teaching, and research. ECFMG most often provides this service to hospitals and other institutions that do not have their own exchange visitor programs or whose exchange visitor programs are not designated for those activities. In such cases the host institution must provide the appropriate "no patient care" or "incidental patient contact" letters.

- Grants and sponsorship for faculty exchanges in the basic sciences. This program is designed to provide basic science faculty at foreign medical schools opportunities and experiences in basic science teaching in U.S. medical schools.
- The "Selected Opportunities in Advanced Short Term Training," as the name implies, provides unique exchange opportunities tailored to meet specific needs.

#### *4.15.3.2 Programs sponsored by hospitals and related institutions*

Programs sponsored by hospitals and related institutions are designed to provide participants (other than medical doctors entering internships, residencies, and specialized clinical training) with opportunities for clinical training in graduate nursing, nurse anesthesiology, medical technology, radiologic technology, and allied health fields. These programs may sponsor foreign physicians for nonphysician activities and training as permitted by their program designations. Any question regarding the appropriateness of such sponsorship should be directed to DOS.

## Appendix VI

### Employment of H-1B Temporary Workers

Under U.S. immigration law, an H-1B Temporary Worker performs services in a specialty occupation which requires completion of a specific course of education culminating in at least a baccalaureate degree in a specific occupational specialty. Before the United States Citizenship and Immigration Services (USCIS) will approve the employment of a foreign national in H-1B visa status, the regulations require the approval of the Department of Labor (DOL). There are four conditions of employment to which the employer must attest before gaining approval from the DOL:

**A.** H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

**B.** The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

**C.** On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment.

**D.** As of this date, notice of this application has been provided to workers employed in the occupations in which the H-1B nonimmigrants will be employed: (check one)

1. Notice of this filing has been provided to the bargaining representative of workers in the occupation in which H-1B non-immigrants will be employed; or

2. There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in a conspicuous place where H-1B nonimmigrants will be employed.

The first condition requires an attestation that the employer is paying the actual wage or the prevailing wage, whichever is higher, for the position in the area of intended employment. To meet this condition, the Medical College must have received a determination from the New York State DOL on the prevailing wage or have data on file from an independent authoritative source supporting the position that Weill Medical College of Cornell University is paying the prevailing wage for the position in question.

The second and third conditions do not appear to be obstacles for any employee of the Medical College. To comply with the fourth condition, a notice of intent to hire an H-1B temporary worker must be posted prominently in the department and in Human Resources for at least ten days.

In addition, the USCIS regulations state that the employer is responsible for return transportation costs for any H-1B temporary worker whose employment is terminated prematurely (prior to expiration of the visa status).

The following should be submitted with the recommendation for appointment by a department wishing to employ or extend the stay of an H-1B temporary worker:

**A. A supporting letter from the department chairman or supervising faculty member** addressed to: U.S. Citizenship and Immigration Services, Vermont Service Center, Immigration and Naturalization Service, 75 Lower Welden Street, St. Albans, VT, 05479-0001. The letter typically consists of four paragraphs:

1. **Paragraph 1:** I wish to support [H-1B visa status][extension of H-1B visa status] for [worker's name] in the position of ... . This H-1B appointment will begin on [month, day, year] and end on [month, day, year]. **(Note: The initial H-1B petition may be approved for up to three years, and subsequent requests for extensions may be approved for up to a maximum of six years.)** The position will carry a salary of \$... per annum.

2. **Paragraph 2:** The main duties of this position are **(as detailed as possible.)**

3. **Paragraph 3:** [Worker's name] possesses the necessary qualifications for the above position. His/her qualifications include ... [education, experience, etc.]

4. **Paragraph 4:** The Weill Medical College of Cornell University is aware that employers are required by law to provide the reasonable cost of return transportation for the H-1B worker if the employment is terminated before the end of H-1B authorized stay.

**B. Department Chairman Approval Form** (attached).

**C. Prevailing Wage Determination Form** for submission to the DOL (attached). This form should reflect the minimum requirements for the position, not the candidate's qualifications.

**D. Actual Wage Information Form** (attached) to document salaries of others who are employed in similar occupations.

**E.** If the person's degree is not from a U.S. educational institution, the supervisor arranges for "**credentialing evaluation**" (attached) to be signed by a senior faculty member (associate or full professorial level).

Please contact the Immigration Office at extension 6-1033 as much in advance as possible if you are considering employment or renewal of appointment for an H-1B temporary worker.

DEPARTMENT CHAIRMAN APPROVAL FORM - H-1B TEMPORARY WORKER

Department Chairman Statement:

I am aware of the conditions of employment (including return travel) for H-1B temporary workers. I authorize the Office of Faculty Affairs to seek approval from the Department of Labor and the United States Citizenship and Immigration Services for H-1B visa status on behalf of the following individual:

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Recommended Appointment

From \_\_\_\_\_ To \_\_\_\_\_  
Inclusive dates

\_\_\_\_\_  
Department Name

\_\_\_\_\_  
Chairman's Name (typed)

\_\_\_\_\_  
Chairman's Signature

\_\_\_\_\_  
Date

NEW YORK STATE DEPARTMENT OF LABOR  
DIVISION OF RESEARCH & STATISTICS  
POST OFFICE BOX 669 – MAIL STOP #8D  
NEW YORK, NY 10014-0669  
PHONE: (212) 352-6708 or 6694 – FAX: (212) 352-6714 or 6711

**PREVAILING WAGE REQUEST FORM FOR H-1B PROFESSIONALS**

Company name Weill Medical College of Cornell University  
Name of alien \_\_\_\_\_  
Address where alien will work 1300 York Avenue, New York, NY 10021  
Total # of employees approximately 4,000 Total # alien will supervise \_\_\_\_\_  
Title(s) of alien's subordinates \_\_\_\_\_  
Title of alien's immediate supervisor \_\_\_\_\_  
Alien's job title \_\_\_\_\_  
Hours alien will work (per week) 35 hours/week Salary \_\_\_\_\_ Per \_\_\_\_\_  
Nature of employer's business medical school devoted to education, Nonprofit (Y/N) Y  
research & patient care  
Gross annual revenue/sales not for profit  
Is this a union job? No (If yes, attach cover page & salary schedule from current contract)  
Is this a renewal? \_\_\_\_\_ (If yes, attach previous determination)  
Optional DOT \_\_\_\_\_

Description of Job Duties (stating most important first). (If more space is needed, attach page.)

EDUCATION (MINIMUM REQUIRED FOR JOB) EXPERIENCE  
Degree required \_\_\_\_\_ Major \_\_\_\_\_ Years \_\_\_\_\_ Months \_\_\_\_\_  
Specialty \_\_\_\_\_  
License required \_\_\_\_\_

RETURN FORM TO: \_\_\_\_\_

PHONE \_\_\_\_\_ FAX: \_\_\_\_\_

-----DO NOT WRITE BELOW THIS LINE-----

The prevailing wage is \$ \_\_\_\_\_ Per \_\_\_\_\_ DOT CODE \_\_\_\_\_ AREA \_\_\_\_\_

Source: \_\_\_\_\_ OES Survey \_\_\_\_\_ Service Contract Area Code \_\_\_\_\_ Occupational Code \_\_\_\_\_

Occupation \_\_\_\_\_

This determination is valid for 90 days from \_\_\_\_\_ Wage Analyst \_\_\_\_\_

**Actual Wage Information Form for H-1B Employment**

Employee Name \_\_\_\_\_

Department/Division \_\_\_\_\_

Title \_\_\_\_\_

Dates of H-1B Employment \_\_\_\_\_

Degree(s)/ Date(s) Awarded \_\_\_\_\_

Research Field, Duties, Responsibilities (this information should be similar to that provided on Prevailing Wage Determination Form)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Annual Salary \_\_\_\_\_

Explain the compensation system used to determine the salary, including whether any of the following factors were considered:

Degree (s) \_\_\_\_\_

Previous Experience \_\_\_\_\_

Comparable Salaries Elsewhere \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If aware of any, list below academic staff who perform similar work in the division, laboratory, and/or other divisions and departments:

I hereby certify that the salary stated above reflects the wage level paid to all other individuals with similar responsibilities, position, experience and qualifications working in this Department/Laboratory. If more than one wage is paid I am able to explain the reasons for this differential in wage rates. If required to do so, I am able to provided documentation, which must include names and payroll records of similarly employed individuals to the Department of Labor to verify these statements.

Signature of Department, Division or Laboratory head, or Supervisor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed

\_\_\_\_\_  
Date

**Please return this form to Jeanie Huang, Immigration Office, Olin Hall, Room 226, as soon as possible.**

**CORNELL**  
UNIVERSITY

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**Joan and Sanford I. Weill  
Medical College**

Department of Human Resources  
1300 York Avenue  
New York, NY 10021

Date \_\_\_\_\_

U.S. Citizenship and Immigration Services  
Vermont Service Center  
75 Lower Welden Street  
St. Albans, VT 05479-0001

RE: \_\_\_\_\_

Dear Sir or Madam:

This is to confirm that a senior faculty member at the Weill Medical College of Cornell University has reviewed the credentials of the above-cited individual and finds that the educational degree is the professional equivalent of a similar degree from an accredited educational institution in the United States.

It is our understanding that Operations Instructions 201.4(d) states that a petition filed by a well established organization, college or university of unquestioned good reputation, which intends to employ the beneficiary in a professional capacity, will have its determination of professional qualifications given due weight by the Service if the petitioner customarily hires and employs similar professional personnel. The OI indicated that the filing of the petition, in and of itself, shall be considered as evidence that the petitioner has found the beneficiary qualified for the professional position involved, and the diploma(s) may be accepted as evidence of the scholastic qualifications. We have been advised that this OI is issued in the H-1B context.

Thank you for your consideration in reviewing this petition.

Very truly yours,

Jeanie C. Huang  
Immigration Manager

**Credentials Confirmed**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Title**

**Appendix VII**

Confirmation of Departmental Support for Application for Permanent Resident Status

Department \_\_\_\_\_

Alien's Name \_\_\_\_\_

Academic Appointment \_\_\_\_\_

Effective Dates \_\_\_\_\_

The Department confirms its support for continued WMC employment of this individual.

Supervisor/Laboratory Head \_\_\_\_\_

Signature

Date \_\_\_\_\_

Department Chair \_\_\_\_\_

Signature

Date \_\_\_\_\_