COMPARISON OF MAJOR ISSUES
CONCERNING THE H-1B and J-1 VISAS

Note: All graduates of foreign medical schools must have an ECFMG certificate before beginning training in the United States.

Home Country Rule and Length of Training
♦ There is no obligation for an H-1B visa holder to return to their home country after completion of training; however, an individual can hold an H-1B visa for only six years duration. Therefore, an individual’s visa can run out before training is complete in a program that requires more than six years.
♦ J-1 visa holders can train in the U.S. for seven years, but then must return to their home country for two years before they are permitted to apply for re-entry into the U.S.

USMLE Step 3
♦ In order to petition the U.S. Citizenship and Immigration Services (USCIS) for an H-1B visa, the individual must pass USMLE Step 3 and obtain a permanent license. In order to obtain a permanent license in Indiana, an individual must complete eighteen to twenty-four months of residency training before making application to take USMLE Step 3. However, an individual may travel to another state and take USMLE Step 3 and then apply for a permanent license in Indiana. After obtaining the permanent license, the individual can petition USCIS for the H-1B Visa. Because of the length of time required for these procedures, individuals may not be able to begin training on July 1st.
♦ The J-1 visa holder can receive a temporary medical permit immediately upon showing proof of a training position in an Indiana training institution. Individuals on a J-1 visa must only pass USMLE Step 1, 2 CK, and 2 CS to obtain the necessary temporary medical permit. Usually training is not delayed if paperwork is submitted in a timely fashion.
♦ Foreign citizens who are graduates of U.S. medical schools and are on an F-1 visa as a student may receive a work permit for one year of residency after which application may be made for the H-1B visa. In this case, passing USMLE Step 3 is not a requirement.

Prevailing Wage Requirement
♦ When an H-1B visa holder requests employment as a resident/fellow, IUPUI as the employer must certify that the salary is at the higher of either the actual or the prevailing wage. The Office of International Affairs uses the Midwest stipends as published in the most recent COTH survey as the prevailing wage. The problem with the prevailing wage occurs in PGY levels 3 and above because the stipends for these levels are lower at the School of Medicine than the stipends in the Midwest. Therefore, in order for the individual to be employed by the University, the individual must be given the prevailing wage. This causes, for example, a PGY4 Cardiology fellow on an H-1B visa to be paid more than a PGY4 Cardiology fellow on a J-1 visa or a U.S. citizen.
♦ There is no prevailing wage requirement for an individual on a J-1 visa.
Moonlighting

♦ The H-1B residents and fellows may accept moonlighting employment only if the employer for the moonlighting employment obtains approval for the concurrent employment from USCIS by filing a new H-1B petition for concurrent employment for the house staff member.

♦ J-1 visa holders may not under any circumstances engage in moonlighting in the U.S. The J-1 visa only gives permission to undergo medical training in the U.S.

Ability to Obtain Permanent Residency in the U.S.

♦ H-1B visa holders have the ability to apply for permanent residency while residing in the U.S.

♦ J-1 visa holders are ineligible to apply for permanent residency. However, they can request a waiver of the two-year foreign residency requirement by providing one of the following: 1) a statement from USCIS that the alien’s U.S. citizen or permanent resident spouse would face exceptional hardship if forced to leave the U.S.; 2) a statement from USCIS that the alien would face persecution if he/she returned home; 3) a statement of support from an interested U.S. government agency such as the Department of Veterans Affairs or the Appalachian Regional Commission; or 4) a statement of support from a state department of health or its equivalent. The alien must also submit a letter from the foreign government stating no objection to the waiver, and demonstrate a bona fide job offer from a health care facility in an area designated by the Secretary of Health and Human Services as a health professional shortage area.

♦ J-1 visa holder cannot apply for an H-1B visa; individual must first get a waiver from USCIS as discussed above.

♦ J-1 visa holder may apply for an O-1 visa while residing in the U.S.; individual must leave the country (go to Canada) and return under the O-1 visa.

Non-Accredited Training Programs

♦ H-1B visa holders may enter training in a non-ACGME accredited training program.

♦ The J-1 visa holder may have difficulty receiving approval to train in a non-ACGME accredited program. More documents are required by the ECFMG before a DS2019 will be issued.

Federal Cap Placed on H-1B Visas

♦ Universities are exempt from the federal cap placed on the number of H-1B visas issued during a fiscal year.

♦ No caps apply to the J-1 visas.

Responsibilities of the Department

♦ If a house staff member on an H-1B visa does not meet the academic requirements and/or the professional standards of the program and as a result must be released from the training program, the department has the obligation to pay for the return trip to the home country.

♦ The department has no responsibility in this regard for a J-1 visa holder.
Fees

- The Office of International Affairs charges a $300 processing fee for new H-1B applications, and an annual fee of $125 for continuation processing. USCIS charges a $185 filing fee, a $500 “anti-fraud” fee, and an optional $1000 premium processing fee. All fees must be paid by the department and it is illegal to pass the expense on to the applicant.
- The ECFMG charges $200 for new and continuation applications for the J-1 visa, in addition to the $100 SEVIS fee. These fees are paid by the applicant.

Application Process

- The department must work with the Office of International Affairs to complete all necessary application paperwork for the H-1B visa.
- The J-1 applicant must work with the ECFMG to complete the application. The department is required to provide a description of the program for non-standard applications and must submit all required documentation to Nancy Baxter for her signature as Training Program Liaison.
- For both the H-1B and J-1 visas the department must request a contract from the Office of Graduate Medical Education. The request must allow time for completion of the contract and signature attainment that will not delay the application process.
VERIFYING EMPLOYMENT ELIGIBILITY (COMPLETING FORM I-9)

All persons beginning new jobs in the U.S. (even U.S. citizens and permanent residents) are required to show documents to their employer proving that they are authorized for employment. **Within three days** of a new employee’s hire date, original employment authorization documents must be shown to the employer and a form I-9 must be completed.

*Unfortunately, the Lists of Acceptable Documents on Form I-9 do not identify the documents that persons in F-1, J-1, or H-1B status have as verification of their employment authorization, often making the completion of Form I-9 very confusing for both employer and employee.*

The following guidelines are provided to assist in understanding what documents may be used to complete Form I-9 for persons in F-1, J-1, or H-1B status.

The form has two sections that must be completed:

---

**Section: 1: Employee Information and Verification**

The employee must complete this section with all the relevant information. Special attention should be paid to the following area of Section 1:

---

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen or national of the U.S.
- A Lawful Permanent Resident (Alien # A ________)
- An alien authorized to work until __/__/____
  
(Alien # or Admission # _______________________

---

A person in F-1, J-1, or H-1B status is a “nonimmigrant alien.” Therefore, they should mark the third box “An alien authorized to work until __/__/____” and enter the date their employment authorization expires. The following explains what “end date” must be used:

**F-1:** End date of the Employment Authorization Document (EAD) issued by the INS.

**J-1:** End date of the DS-2019.

**H-1B:** End date of the I-94.

**Alien # or Admission # _______________________

If the person has an Employment Authorization Document (EAD) issued by the INS, the number on the EAD that begins with the letter A is entered in this space. Otherwise, the I-94 number is entered. (The I-94 only shows a “Departure Number,” but this number is also the Admission Number.)
Section 2: Employer Review and Verification

The employer’s representative must complete this section using original documents. The following documents from List A must be presented, according to nonimmigrant status and type of work authorization:

F-1: Employment Authorization Document issued by the INS

J-1: Un-expired passport
   I-94
   DS-2019

H-1B: Un-expired passport
   I-94 showing employer’s name
   If I-94 does not show employer’s name, I-797 Approval Notice with employer listed as “Petitioner”

Note: Many U.S. citizens use a combination of their driver’s licenses and Social Security Cards (SSC) to complete Form I-9. However, SSCs issued to persons in nonimmigrant status with work authorization typically include the notation “Valid for work only with INS authorization.” SSCs with this notation are not considered complete proof of employment authorization and specific work authorization documentation must be presented as well.
Completing electronic documents for H1B Prevailing Wage:

The department is responsible for paying the supplementary stipend, for H1B prevailing wage as defined by the Department of Labor (DOL). The additional pay for all residents whose base stipend is paid from the Office of Graduate Medical Education account 1180700 should be reflected in a separate ‘new hire’ electronic document (e-doc). This will be a secondary position. Complete the required fields in the document, using the following information below for the fields specified.

Department Code for House Staff: IN-(insert department org code)
Business Unit: IUINA
Position Type: Academic
*Position #: insert department position number for residents/fellows
Earn Type: RGR
Pay Group: RES
Salary Grade: RA

NOTE: If the resident/fellow’s regular stipend is paid from a department account then the additional pay for the prevailing wage can be combined; thus, one ‘new hire’ e-doc is necessary.

*If a department position # has not been established, a ‘create position’ electronic document must be completed. Use the ‘Pooled Position Template’ below that applies:

PPT00125 = Resident Appointee
PPT00120 = Clinical Fellowship Appointee

The e-doc will route to the Academic Policies and Procedures Department for approval and creation of the pooled position. Once the pooled position is created, then the ‘new hire’ e-doc can be done.