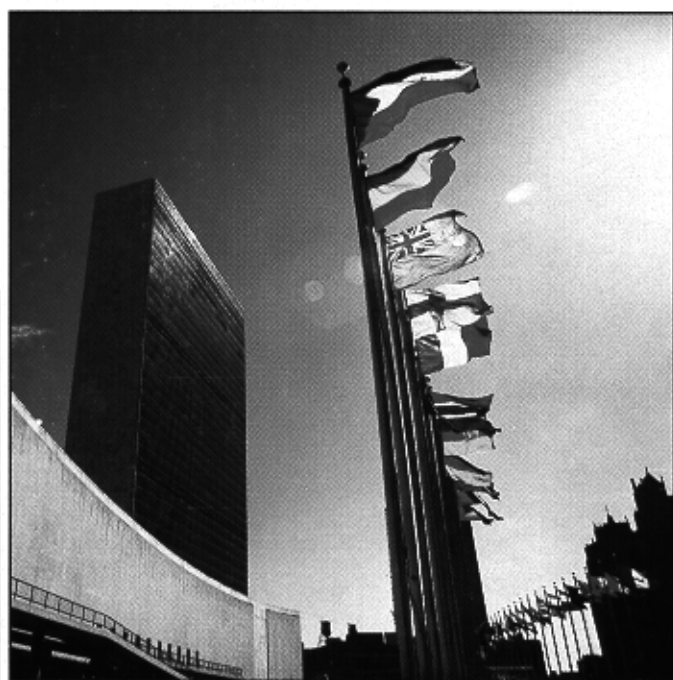


CMAJ • JAMC

October 15, 1995, Vol. 153, No. 8 • Le 15 octobre 1995, Vol. 153, N° 8



1059 THE UNITED NATIONS TURNS 50

1097 PRACTICE PATTERNS OF MALE AND FEMALE PHYSICIANS
IN FIVE FIELDS OF MEDICINE

1143 IS MEDICINE MOVING TO THE RIGHT?

1155 HEALTH CARE REFORM FORGES AHEAD IN PEI



Canadian
Medical
Association

Association
médicale
canadienne

CANADIAN PHYSICIANS CONSIDERING A MOVE TO US CAN FACE COMPLICATED IMMIGRATION PROCESS

Henry J. Chang

In Brief • En bref

American recruiters are busily trying to coax Canadian physicians to move south of the border to practise, but Canadians must remember that the immigration process can be both lengthy and complicated. In this article, immigration lawyer Henry Chang looks at the requirements that must be met before permanent-resident status is granted by the US.

Des recruteurs américains essaient très activement d'inciter des médecins canadiens à déménager outre-frontière pour y pratiquer, mais les Canadiens ne doivent pas oublier que le processus d'immigration peut être à la fois long et compliqué. Dans cet article, Henry Chang, avocat spécialisé en immigration, examine les conditions auxquelles il faut satisfaire pour obtenir le statut de résident permanent des États-Unis.

Faced with high income taxes, tighter government funding for health care or limited career prospects, many Canadian physicians are considering relocation to the United States. As American demand for qualified medical professionals continues to grow, considerable opportunities exist for Canadian doctors willing to move south.

However, physicians considering such a move must remember that the US is another country with its own immigration requirements and Canadians who seek permanent residence as members of the US medical profession must meet specific requirements. This article will examine those requirements.

Henry Chang is a member of the State Bar of California, the Law Society of Upper Canada and the American Immigration Lawyers' Association. His law practice is based in Toronto.

THE QUALIFYING EXAM

Under the Immigration and Nationality Act [Paragraph 212(a)(5)(B)], graduates of foreign medical schools (FMGs) had to pass Parts I and II of the National Board of Medical Examiners Examination (NBME) or its equivalent to qualify for an immigrant visa. (The NBME has since been discontinued.) Today FMGs must show equivalency by passing either the Foreign Medical Graduates Examination in Medical Sciences (or its predecessor, the Visa Qualifying Examination), which is administered by the Educational Commission for Foreign Medical Graduates (ECFMG), or steps 1 and 2 of the United States Medical Licensing Examination. All FMGs, including Canadians, must also prove their competence in oral and written English by passing the ECFMG Eng-

lish test, unless they have graduated from a medical school accredited by the Liaison Committee for Medical Education (LCME).

There are several exemptions from these requirements. One is that Canadians who have graduated from an American medical school are not subject to the examination requirements. The phrase "graduate of a medical school" is defined as an alien who has graduated from a medical school or has qualified to practise medicine in a foreign state, and does not appear to include foreigners who graduate from US medical schools.

Aliens of "national or international renown" are also excluded from that statutory definition. Although "national or international renown" is not defined in the Immigration and Nationality Act, the candidate generally would have to show a degree of excellence comparable to that which would normally result in national renown in the US; such candidates are exempt both from the examination and language-competency requirement.

Graduates of medical schools accredited by the LCME — which limits itself to evaluating and accrediting US and Canadian medical schools — are also exempt from the requirement to pass the NBME Parts I and II or its equivalent. Not all Canadian medical schools have LCME accreditation, however.

Exemptions are also available for FMGs who want to enter the US "principally to perform services as members of the medical profession"; these services could include teaching or research, but the doctor's activities would not involve patient care. In addition, FMGs who were permanently licensed to practise medicine in a US state on Jan. 9, 1978, and who were practising on that date are exempt from the requirements — although they must still establish proficiency in written and oral English.

Compliance with or exemption from Paragraph 212(a)(5)(B) is only the first step. FMGs still must qualify under employment-based permanent-residence categories, which are based on particular occupations and skills. The three most frequently used categories are discussed below. (It should be mentioned that proposed amendments to the Immigration and Nationality Act are presently making their way through Congress. These amendments may be enacted as early as the end of this year.)

FIRST PREFERENCE

The first-preference category requires no job offer or labour certification as a condition of issuing a visa — applicants are not required to establish that they have been offered employment and are not taking jobs from qualified US citizens. There are three subgroups, two of which are relevant to Canadian physicians: aliens of extraordinary ability, and outstanding professors and researchers.

Given the extremely high standard that is applied, only the most well-known physicians will be approved under the first-preference category. FMGs applying under the first subgroup are not required to have a job offer but they must have extraordinary ability in the sciences that has been demonstrated and documented by sustained national or international acclaim. Professors and

researchers must be internationally recognized as outstanding in their specific academic area, have a minimum of 3 years' teaching or research experience, and be entering the US in a tenure or tenure-track teaching/research position. The proposed legislation that is before Congress will eliminate outstanding professors and researchers from the first-preference category.

SECOND PREFERENCE

The second-preference employment-based category includes members of a profession who hold advanced degrees (generally a US master's degree or the foreign equivalent), or aliens of exceptional ability — meaning the person has a degree of expertise significantly above that ordinarily encountered. In the US, a medical degree is generally considered an advanced degree because a bachelor's degree is usually a prerequisite, and the master's is the next higher degree. However, some Canadian medical schools do not require a bachelor's degree, and a Canadian graduate of such a school will not be considered to have an advanced degree. Degrees from Canadian medical schools that do require a bachelor's degree probably will qualify. A bachelor's degree with at least 5 years of progressive experience is currently considered the equivalent of a master's degree. However, proposed legislation will eliminate this method of establishing equivalency to a master's degree.

Under the second preference, the FMG must normally have a job offer and obtain a labour certification for the proposed position. This can sometimes be avoided by obtaining a "national-interest waiver"; the person would have to establish that his or her admission would be in the national interest, perhaps by improving health care. For instance, a foreign physician who intends to provide medical services in a rural community may qualify for such a waiver.

However, the legislation before Congress will eliminate the national-interest waiver.

THIRD PREFERENCE

The third-preference category involves skilled workers, professionals and "other workers." Canadian physicians who cannot demonstrate an advanced degree or equivalent will fall into this employment-based category. Physicians are specifically included in the subgroup "professionals," meaning they possess a US bachelor's degree or foreign equivalent in the field, and have established that the bachelor's degree is the normal requirement for entry into the profession. Third-preference workers must have a job offer prior to acquiring permanent residence, and no waiver of that requirement is available. The proposed legislation will impose a requirement of 5 years' experience in a specialty, in addition to a bachelor's degree.

In all three employment-based permanent-residence categories, there is no requirement for a member of a profession to establish that he or she is licensed to practise in the US at the time the petition for permanent residence is filed. Accordingly, it is not required to submit such evidence with the petition.

Acquiring permanent residence is a time-consuming process and the length of time often varies depending on the complexity of each case; processing the petition for permanent residence could take up to a year or more. Many FMGs obtain a temporary work visa while their petition for permanent residence is pending.

The costs associated with permanent-residence petitions also vary greatly according to the circumstances of each case. However, it is common for a US employer to pay the immigration costs associated with the relocation of physicians and their families. ■