

CHRIS THOMAS, PARTNER SARAH BILETI, OF COUNSEL

HOSPITAL

# First, some housekeeping

This presentation is designed to provide general information on pertinent legal topics. The information is provided for educational purposes only. Statements made or information included do not constitute legal or financial advice, nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author.

This information contained in this presentation is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this presentation might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.



## Topics to be Covered

Screening Candidates in a nondiscriminatory way Basics of Immigrant and Nonimmigrant visas

Physician Recruiting Nurse & Med Tech Recruiting Physical Therapist Recruiting

# Screening Candidates

### Permissible Questions for Recruiters to Ask:

- Are you legally authorized to work in the United States?
- Will you now or in the future require sponsorship for an employment visa status (e.g. H-1B visa status)?
- If yes to second question, can you elaborate?

### Recruiters may NOT ask:

- Are you a U.S. citizen?
- Do you have a Green Card?
- May not ask for specific immigration or status related documents or require more or different documents than the minimum required.



### Screening Candidates - Sponsorship



Employer is not required to offer immigration-related sponsorship



#### Considerations

Valid business reason (e.g., cannot find qualified workers)

Cost considerations

- Legal fees
- Government filing fees
- Prevailing wage requirements



Sponsorship does not require term of employment (still at-will)

Be careful not to make promises (e.g., "we will get you a green card")



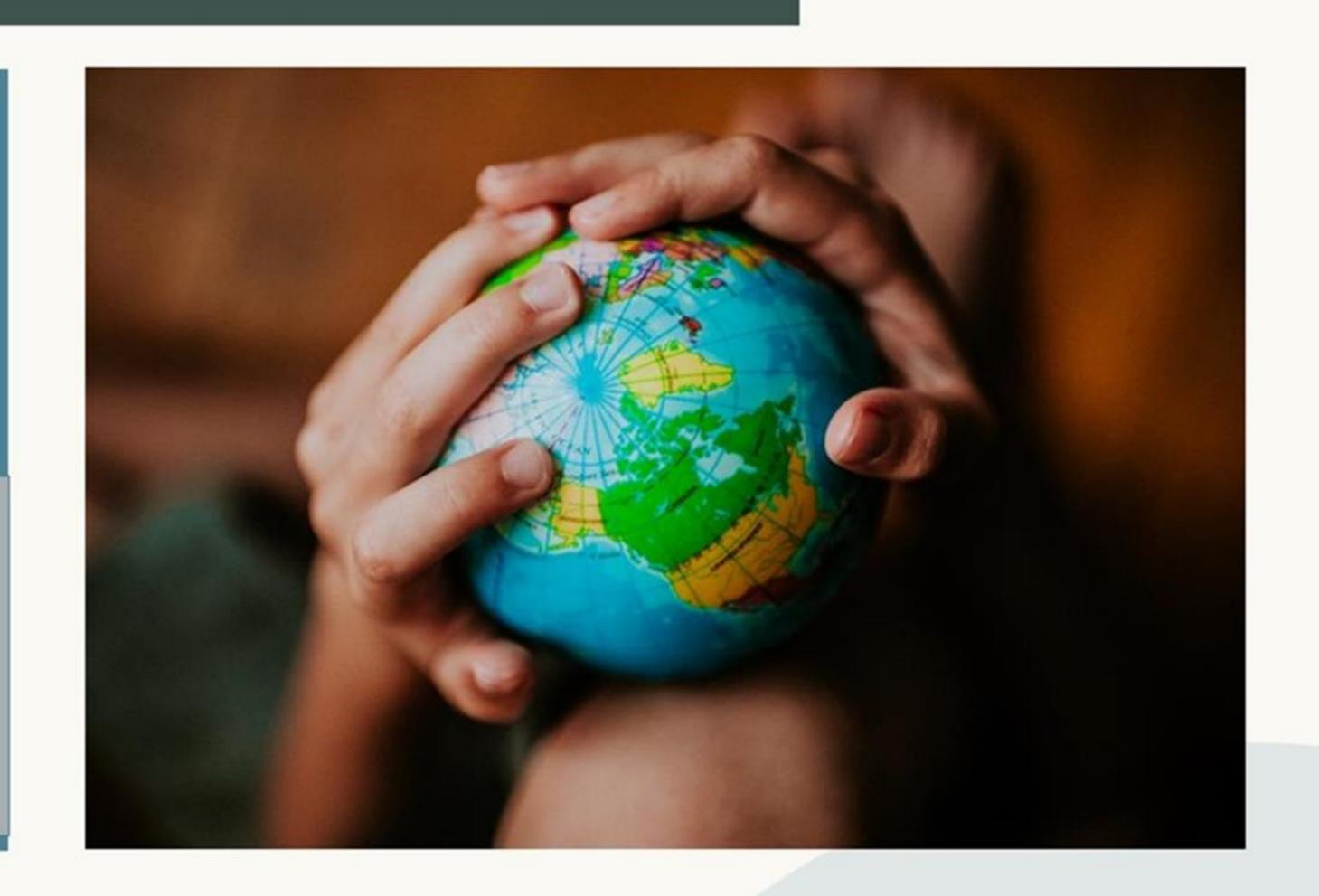
# The Big Picture

### Two types of visas:

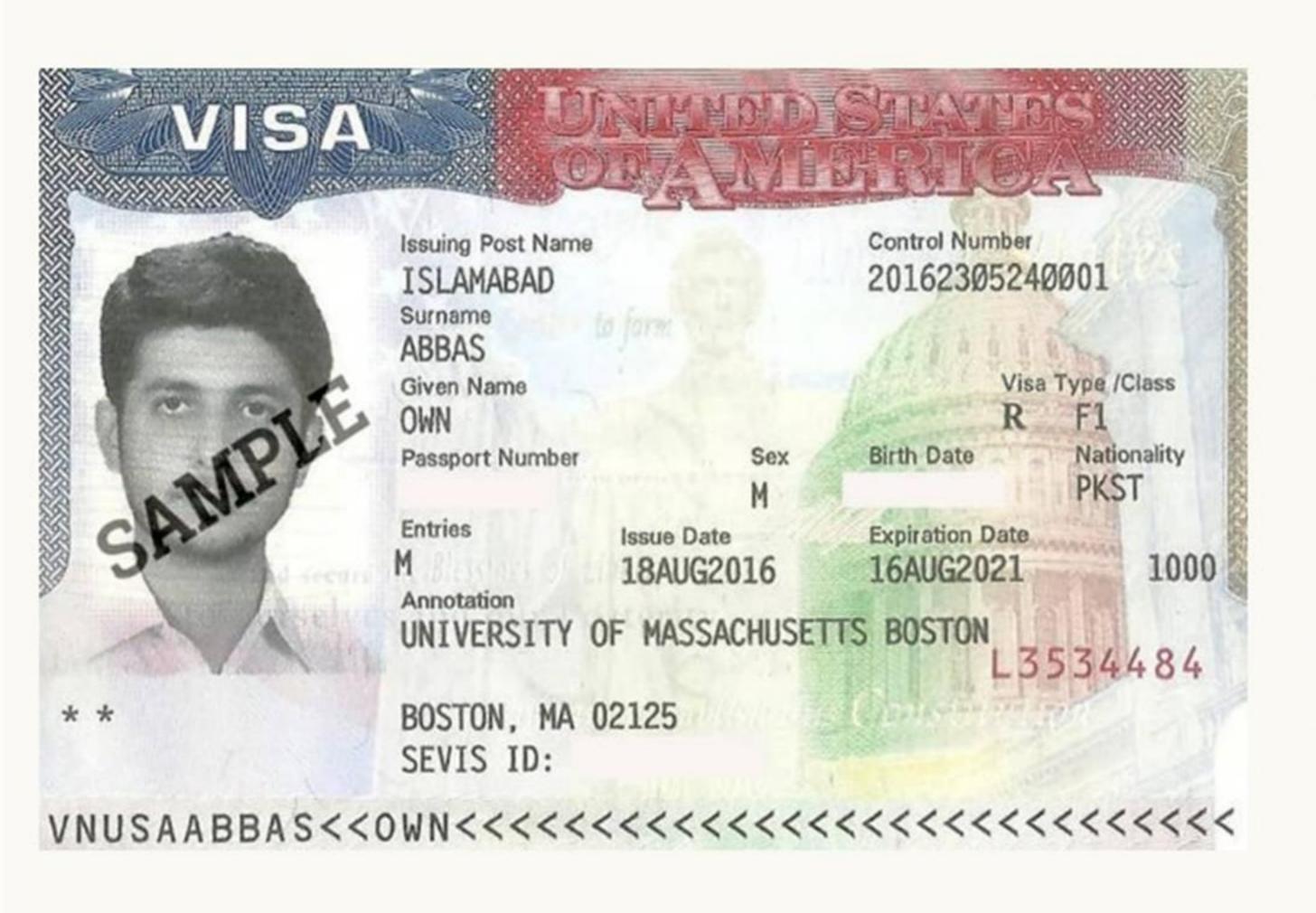
Nonimmigrant visas

Alphabet soup of temporary visas Immigrant visas

Permanent visas (or green cards)



# Overview of Nonimmigrant Visa Categories



- F-1 Students/Optional Practical Training
- J Exchange Visitors
- H-1B, H-1B1 and E-3 Professional Workers
  - Cap Subject/Cap-Exempt
- O-1 Extraordinary Ability
- TN Canadian & Mexican
   Professional Workers



### Overview of Immigrant Visa Categories

- PERM/I-140
- Schedule A
- NIW and PNIW
- Outstanding Researcher
- Alien of Extraordinary Ability







### Physician Recruiting – Visa Types

#### There are 4 main visa categories for physicians:

#### J-1 Exchange Visitors

- Graduate Medical Education (GME)
- Researcher / Trainee / Student

#### H-1B/H-1B1/ E-3

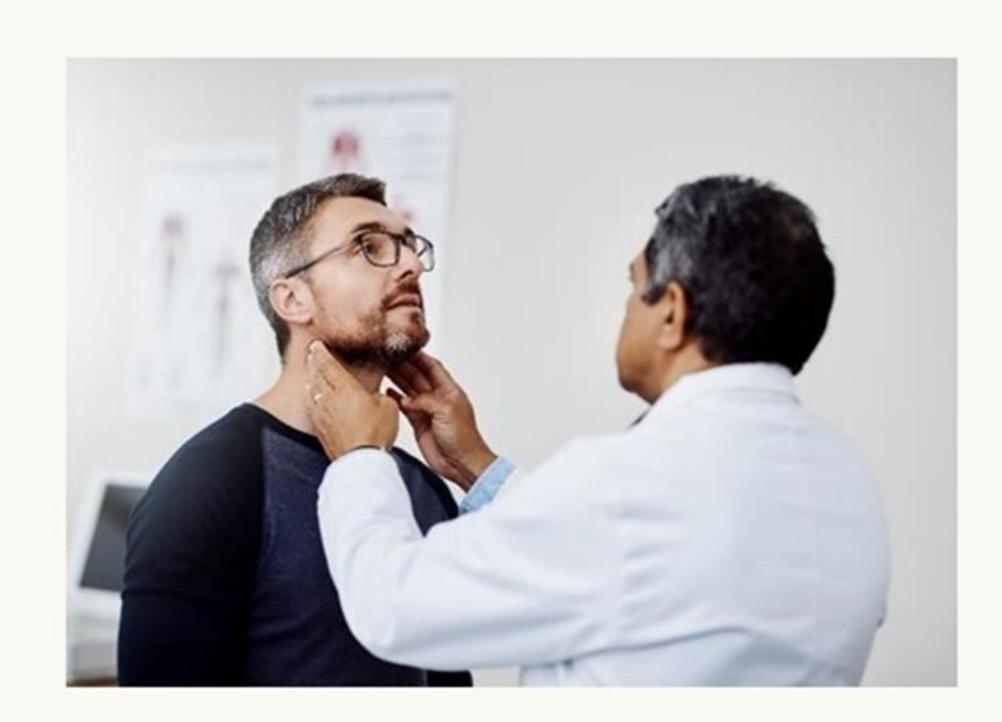
- May be used for GME or Employment
- May have to obtain J waiver before transitioning to H-1B

#### TN

 Teaching/Research Physicians only

#### 0-1

 Criteria to establish who is "extraordinary"



### Physician Recruiting – J-1 Waiver



#### J-1 WAIVER TYPES

#### Conrad 30 - most common

· State run, varying requirements. 30 total per state annually

#### U.S. Department of Health & Human Services (HHS)

- Primary care physicians only (internal, family, psychiatry, pediatrics, obstetrics and gynecology).
- Physician must have completed residency program no more than 12 months prior
- Must be in HPSA with area score of 7 or above
- No cap for waiver approvals

#### Other Options

- Appalachian Regional Commission (ARC), Delta Regional Authority (DRA), Southeast Crescent Regional Commission (SCRC), Veterans Administration
- Individual Applications based on hardship/persecution/no objection



## Physician Recruiting - Conrad 30

#### Stage 1: Gathering Documents & DS-3035

8

Confirm whether the employer's medical facility is in an HPSA/MUA.

-

If the worksite is not in an HPSA/MUA flex spot may be possible if the facility serves patients in HPSA/MUA. Gather data on patient population.



Gather physician documents and personal statement.



Submit DS-3035 online, obtain barcode, submit supporting documents and filing fee to DOS

#### Stage 2:

Obtain Sponsorship of State Health
Dept



Prepare petition requesting waiver recommendation from state department of health.



If the waiver is approved the physician must begin work with the employer within 90 days of approval.



Physician must agree to a 3 -year term of employment (at least 40 hours per week) in the medically underserved location. Must provide an employment contract containing those terms.

#### Stage 3: DOS Recommendation

#

The State Department of Health forwards their recommendation to the Department of State (DOS).



DOS forwards its recommendation to USCIS.



USCIS issues I-612 waiver approval notice.



# Physician Recruiting – Permanent Residence Options

#### Labor Certification (PERM)

 Requires a recruitment effort to test the U.S. labor market and demonstration of no qualified or willing U.S. workers for the role.

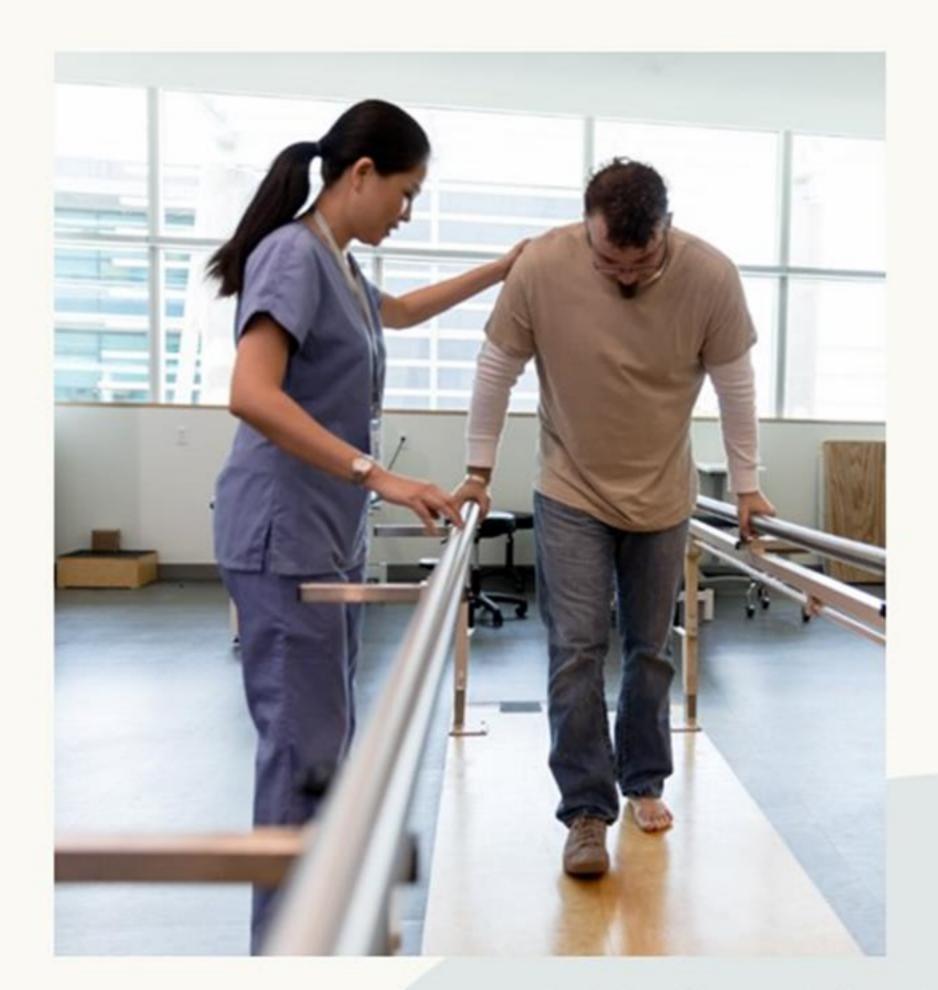
#### Physician National Interest Waivers (PNIW)

- Requires 5 years of service in a shortage area
- Outstanding Researcher
- Extraordinary Ability



# Physical Therapists

- □ F-1 & OPT
- □ H-1B/H-1B1/E-3
- ☐ TN
- □ Schedule A
- ☐ Health Care Worker Certification Required
  - ☐ VisaScreen from CGFNS International
  - ☐ Foreign Credentialing Commission on Physical therapy (FCCPT) — evaluates foreign credentials and issues Health Worker Certificates



/ Holland & Hart

## Nurse Recruiting/Certification

# Finding Nurses

- Domestic recruiting
- International recruiting
- · Hot area from compliance perspective
- Possible options to avoid legal disaster

### Healthcare Certificate

- Comparable to US education
- Commission on Graduates of Foreign Nursing Schools (CGFNS)
- English ability (Educational Testing Service, including TOEFL, TOEIC, and IELTS), unless exempt because they studied in Australia, Barbados, Canada, Ireland, New Zealand, South Africa, UK, Trinidad and Tobago, or the US.



### Nurses Nonimmigrant (Temporary) Options

	F-1	Part-time while studying on campus
Nonimmigrant (Temporary) options		OPT (but not STEM designated)
	H-1B/H-1B1/E-3	Advanced practice nurse positions, e.g., CNM, CNS, CNP, along with addiction, cardiovascular, critical care, emergency room, genetics, neonatology, oncology, pediatrics, perioperative, rehabilitation, etc.
		Cap exempt?
	H-2B	One time, intermittent, peak-load, seasonal need
		Cap problems
	H-3	Requires detailed training program, with classroom instruction, at non-university
	TN	Mexican/Canadian



### Nurse Immigrant (Permanent) Options

# Immigrant Options

### EB-1, 2, or 3

• EB-3, Schedule A (faster than normal, but still six to 12 months)

### Adjustment of Status

 Process for nurses already in US with underlying work nonimmigrant visa status

### Consular Processing

 Process for nurses outside of US with no viable nonimmigrant visa option.

Case study of large hospital network in desperate need of nurses



### Medical Technicians/Technologists

### Nonimmigrant Visa Options

 Strong candidates for all previously discussed visa categories (unlike registered nurses)

### Immigrant Visa Options

 Do not appear on the current Schedule A—longer green card process that requires PERM

### Certifications

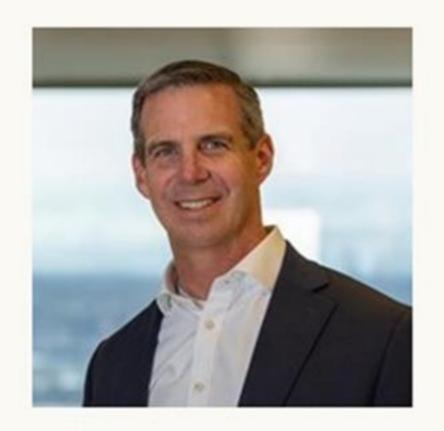
- Comparable to US degree
  - Fields that do not clearly qualify
  - Fields that do qualify
- CGFNS



# Thank You – Any Questions?



**SARAH BILETI** 303.295.8522



303.290.1611