

FACT SHEET



EFFECT OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) HAVING REACHED ITS STATUTORY FISCAL YEAR LIMITATION FOR THE ISSUANCE OF H1-B CLASS WORK VISAS

ISSUE: On Tuesday, February 17, 2004, USCIS issued a press release announcing that it would not accept any further petitions for issuance of H1-B work visas for first-time employment in FY '04, on the basis that it had reached the statutory limitation of 65,000. This limit does not apply to petitions for extensions for aliens already on H-1B visas, or to petitions for H-1B visa holders to change employers.

USCIS further stated that it may begin accepting petitions for FY '05 in April, 2004, but would not consider them until October 1, 2004. Assisting alien physicians in securing H1-B visas has been an effective and useful means for Veterans Affairs Medical Centers (VAMCs) to obtain the services of much-needed clinicians to provide affordable direct patient care to veterans, particularly subspecialty care, when there are no qualified U.S. citizens willing to take the positions.

DISCUSSION: The Office of Patient Care Services, Forensic Medicine Strategic Health Care Group (11F), processes an average of 150-200 requests annually for waiver of the 2-year home residency requirement for alien physicians who have been on J-1 visas. A waiver of the 2-year home residency requirement is a prerequisite for the issuance of an H1-B work visa to such physicians pursuant to the requirements of the Immigration and Nationality Act and its implementing regulations.

Consequently, the inability of VAMCs to hire alien physicians due to the lack of availability of the H1-B visas for the remainder of FY '04, and its possible continued impact in subsequent FYs, could have a significant detrimental impact on Veterans Health Administration's (VHA) ability to provide high-quality care to veterans

However, there is an alternative means by which VAMCs can secure employment authority for alien physicians when H-1B visas are not available. This involves filing an immigrant petition for permanent resident alien status under the national interest waiver provisions of 8 CFR, Parts 204 and 245. By law and regulation, this option is only available if the physician will work full-time for VA. It is not available for use if the alien is going to have a joint appointment, working part-time with the VA and part-time at an affiliated medical school. This alternative also requires that physicians who were on J-1 visa receive a waiver of the 2-year home residency requirement prior to filing a national interest waiver petition.

Set forth below is an excerpt from the draft VHA J-1 Waiver Handbook that is currently in concurrence pertaining to National Interest Waivers and employment-based immigration petitions :

Excerpt

7) If H-1B visas are not available when USCIS grants the alien a waiver of the 2-year home residency requirement, and the alien is to work full-time for VA, a facility may file a petition for the Exchange Visitor to become a permanent resident alien under the national interest waiver provisions of 8 CFR, Parts 204 and 245. A national interest waiver of the job offer requirements for employment-based immigrant petitions may be granted to physicians who agree to work full-time in an area designated by the Department of Health and Human Services (HHS) as having a shortage of health care professionals, or in a VA health care facility, for a period of 5 years. Since USCIS regulations require full-time VA employment for a national interest waiver, this option is not available for joint appointments between VA and an affiliated medical school.

(8) To obtain a national interest waiver for an alien, the facility must file the following documents with the appropriate USCIS Service Center:

(a) Form I-140, Immigrant Petition for Alien Worker.

(b) A copy of an employment commitment letter, issued to the alien within 6 months prior to the date the petition is filed, which describes the position offered, the terms and conditions of employment and states that the employment will be full-time with VA.

NOTE: A facility may not make an employment commitment beyond a 3-year period, because non-citizens may only be appointed on a temporary basis, not to exceed 3 years. However, an employment commitment of 3 years or less satisfies the documentation requirement established for VA.

(c) A letter from the facility Director to the USCIS Service Center, dated within 6 months prior to the petition submission, attesting to the fact that the alien's work is, or will be in the public interest. Typically, this fact can be established by stating that USCIS has granted the alien a waiver of the 2-year home residency based on a petition from VHA Central Office. This letter should also describe the services to be performed by the alien, the alien's qualifications to provide such services and the difficulties the facility has experienced in filling the job.

(d) A copy of the USCIS notice of approval of the 2-year home residency waiver.

(9) Once the facility's immigrant petition and national interest waiver request are approved, the alien may file an application for an adjustment of status to permanent resident alien, along with an application for employment authorization. USCIS will grant

the employment authorization, which relieves the alien of having to maintain any type of valid nonimmigrant status prior to final adjudication of the adjustment of status application. The adjustment of status application will be held in abeyance by USCIS until the alien provides documentation that said alien has worked in a medically underserved area and/or VA facilities for a total of 5 years in a 6 year period. When the service requirements have been fulfilled, the alien will become a permanent resident alien.

(10) It is important to note that the national interest waiver regulations do not require that aliens fulfill their 5-year employment commitment with one employer. They may work for several employers in fulfilling the requirement, provided each employer is either a VA facility or in a medically underserved area. Thus, when a facility files an immigrant petition and national interest waiver on behalf of an alien, it does not obligate the alien to any particular length of employment, beyond the 3-year obligation resulting from being granted a waiver of the 2-year home residency requirement.

SUMMARY; It is VHA policy to use the H-1B visa for the initial appointment of aliens for whom J-1 waivers are obtained, when such visas are available. However, if H-1B visas are not available, and the alien is to work full-time for VA, facilities may file an immigrant petition using the national interest waiver provisions described above. Facilities who plan to utilize national interest waivers in lieu of H-1Bs for physicians for whom they are seeking J-1 waivers must state such in the Directors cover letter in their waiver request package. The cover letter must also state that the physician will be appointed as a full-time VA employee.