"pledged his comit"
(Shalala)

Kevin Smith

NAMI

didn't sound like her

783-5588

Susan Williams – TWD – Dec 1?

Wed – GC ? (margin, vertical)

Wed – Greg pledged spt

Health Care - President's Congress Congressional Speech

F : J-1

LIFE FAMILY PRACTICE CENTER

8985 N.E. 134th Avenue * Lady Lake, FL 32159 * Phone: (352) 750-4333 * Fax: (352) 750-2023

NELSON KRAUCAK, M.D.
DIPLOMATE, AMERICAN BOARD
OF FAMILY PRACTICE

ASHRAF DIAB, M.D.
DIPLOMATE, AMERICAN BOARD
OF INTERNAL MEDICINE

Sergio Balingit
DIPLOMATE, AMERICAN BOARD
OF INTERNAL MEDICINE

MARIVIC VILLA, M.D.
DIPLOMATE, AMERICAN BOARD
OF INTERNAL MEDICINE

December 15, 1997

Ms. Diana Fortuna
Chief of Staff for Domestic Policy
Office of Domestic Policy
The White House
Old Executive Office Building
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Ms. Fortuna:

Thank you sincerely for your assistance in supporting the J-1 Physician Waiver Programs. The Life Family Practice Center in Lady Lake, Florida serves an area designated as a health professional shortage area. Through your efforts the medically underserved United States citizens in this area of Florida will be able to benefit

I will strive to encourage other physicians in this area to hire through your program.

Sincerely,

NELSON KRAUCAK, M.D.

1 Copy 2
each

Karen Kizer

~~USDA~~?

~~Mellon~~?

ARKANSAS DELTA COUNCIL

cc Bob Litan, OMB
From Diana Fortuna, FYI

MEMORANDUM

DATE: 10/27/95
TO: Carol Rasco, Deputy Chief of Staff for Domestic Policy
FR: Kevin Smith, Executive Director
RE: Visit by Delta Council Board of Directors

My Board of Directors would like to visit with you during our trip to Washington November 14th and 15th. The purpose of our visit is to brief you on matters important to the Delta Region and to thank you for what you have already done.

Specifically, we would like to discuss the possibility of establishing a Lower Mississippi Valley Delta health care profession recruitment program modeled after a similar program at the Appalachian Regional Commission, which uses J-1 visas to recruit immigrant doctors to Appalachia. It would require no Federal funds, and would involve an administrative directive of some kind establishing a pilot project based on the ARC model. We would also like to brief Greg Simon, Rodney Slator and someone with the Immigration and Naturalization Service on this issue as well. We can send whatever advance information on this issue before a November meeting.

I have attached a tentative agenda, which can be altered in whatever way necessary for such a meeting. I have also attached a copy of the directors that will be attending. One idea I had, to conserve on time, would be to have a meeting with both you and the others at the same time. Of course, that is just a suggestion, but whatever you say will be fine with me! Also, my board also asked me to request a meeting with the President at the same time, and I have submitted that request to Nancy Hernreich.

Thank you for your consideration.

fax: 501-672-1110

501 672-1110

phone h- 501-673-3422

Hwy. 130 East • P.O. Box 507 • Stuttgart, Arkansas 72160
Phone: (501) 673-2132 Fax: (501) 673-4315

DELTA COUNCIL -- WASHINGTON AGENDA*

Monday, November 13 -- Arrive Washington National at 3pm

5pm -- Richard J. Anderson, Director, EPSCoR
National Science Foundation
4201 Wilson Blvd. Arlington, VA
703-306-1683

7pm -- Hotel Check-In/Dinner

Tuesday, November 14 Capitol Hill

10:30-11:00am	--	Sen. David Pryor, Senate Russell 267
11:00-12:00pm	--	Sen. Dale Bumpers, Senate Dirksen 229
12:30-1:30pm	--	Lunch with Rep. Blanche Lincoln
2:00-3:00pm	--	Rep. Jay Dickey, Cannon HOB
3:00-4:00pm	--	Rep. Ray Thornton, Longworth HOB
7:00- 9:00pm	--	Dinner at Phillips, Staff Invited

Wednesday, November 15 White House & Administration Officials

-- Meeting with Rodney Slator?

-- Meeting with Carol Rasco and Greg Simon?

-- Meeting with President Clinton?

6pm -- Depart Washington National Airport

*This schedule can be completely rearranged to fit with the President's schedule. For example, we could make Wednesday our Capitol Hill day and Tuesday our Administration day.

Delta Council Board Members on Washington Trip

Keith Ingram
President
West Memphis, AR
735-9580

Charlotte Tillar Schexnayder
State Representative
Dumas, AR
382-4925

Miles Goggans
Board Member
Little Rock, AR
223-4855

Kevin Smith
Executive Director
State Senator
Stuttgart, AR
673-2132

Raymond Abramson
Treasurer/Sect.
Holly Grove, AR
747-3377

Ramona Taylor
City of West Memphis
Board Member
West Memphis, AR
732-7500

Clifton Avant
Board Member
Helena, AR
572-3013

Sen. Jean Edwards
Board Member
Sherrill, AR
766-8024

Mayor Clay Oldner
Board Member
Mayor of Dumas
Dumas, AR
382-2121

Wanda Northcutt
State Representative
Stuttgart, AR
673-3073

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

December 4, 1995

SUBJECT: Meeting on Waivers for J-1 Visas

TO: Jo Boufford, HHS
David Hohman, HHS
Sophia Cox, INS
Don Crocetti, INS
Les Jin, USIA
Patricia Gribben, USIA
Jess White, ARC
James S. Gilliland, USDA
Bob Knouss, HHS
Alex Alienikoff, INS
Janice Podolny, INS
Alex Gisser, INS
Bill Olhausen, USIA
Choco Meza, HUD
Ruth Ann Azerdo, USDA

Assoc comm

FROM: Mary J. Oxner
Secretary, Office of the Under Secretary
Research, Education, and Economics

Mary J. Oxner

Please mark your calendars for December 15, 1995, 1:00 p.m. The meeting will take place in Room 334-A, Jamie L. Whitten Federal Building (previously called the Administration Building), here at USDA. If you have questions, please call me on 720-8885.

We scheduled the meeting so the majority of people involved were available. If you are unable to attend and send a representative, please let us know. Thanks for your prompt responses.

DISCUSSION POINTS

WHETHER THE SERVICE SHOULD BE APPROVING NATIONAL INTEREST WAIVERS FOR PHYSICIANS CLAIMING TO PRACTICE IN MEDICALLY UNDER-SERVED AREAS OF THE UNITED STATES

BACKGROUND

A. THE NATIONAL INTEREST WAIVER

- Aliens who immigrate under the employment-based second category, for aliens of exceptional ability and advanced degree holders, need a labor certification. Section 203(b)(2)(B) of the Act provides a waiver of the job offer requirement for aliens who qualify under this category. The language of the statute is as follows:

  "The Attorney General may, when he deems it to be in the national interest, waive the requirement ... that the alien's services in the sciences, arts, professions, or business be sought by an employer in the United States."

  There is no useful legislative history on how the Service should define national interest.

- The proposed regulation on immigrant petitions after the enactment of IMMACT 90 limited the national interest waiver to self-employed aliens. See 56 FR 30706 (July 5, 1991). In the final regulation, the Service determined that the national interest waiver also waives the labor certification requirement. See 56 FR 60900 (Nov. 29, 1991). The Service declined to define "national interest" and stated that each case should be decided on its own merits.

- Non-precedent AAU decisions issued in 1992 and 1993 interpreted the national interest waiver liberally. Some decisions stated that "the alien's prospective contribution to health care in a medically underserved area of the United States is clearly in the national interest." Those decisions provided no other discussion of the issue.

- The number of national interest waiver requests filed at service centers increased substantially. The lack of standards on how to adjudicate national interest waivers made it very difficult for service centers to adjudicate them. HQADN decided to include guidelines on national interest waivers as part of a regulation on employment-based immigrants. The proposed regulation, which was published in June, 1995, provides that a national interest waiver should not be based solely on a local labor shortage, the alien should have two years of experience in the area in which he or she will benefit the United States, and the alien must play a significant role in an activity which will benefit the United States. See 60 FR 29776-78 (June 6, 1995)(See Exhibit B). A number of commenters objected to the proposed regulation on the ground that it will impact national interest

waivers for physicians who state they will work in medically underserved areas. An initial draft of the final regulation has been prepared and should be ready to begin circulation in November or December.

- The national interest waiver is an issue which has raised with regard to legal immigration reform legislation pending before Congress.

B. IMMIGRATION OF FOREIGN PHYSICIANS

- The primary issue for many alien physicians is the two-year foreign residency requirement under section 212(e) which applies to all aliens who come to the U.S. to receive graduate medical education or training. A number of Federal agencies request 212(e) waivers for physicians based on practice in underserved areas. The Department of Health and Human Services (HHS) is urging agencies to review their waiver policies and recommends that the recently enacted Conrad Amendment, which allows state agencies to request 212(e) waivers and bars the physician from obtaining permanent residence until he or she has practised medicine in the underserved area for a 3-year period, be the only vehicle to waive the two-year foreign residence requirement for primary care physicians (See Exhibit A).

- For a number of years, physicians who intended to be employed in shortage areas, as designated by the HHS were eligible for Schedule A classification under Department of Labor (DOL) regulations. This meant that physicians who intended to be employed in a medically underserved area did not require a labor certification. The HHS conducted a study on physicians who were granted permanent residence through Schedule A. Based on the study, HHS recommended that physicians be removed from Schedule A on the ground that fewer than one-third of the physicians remained in the underserved areas for any significant period of time, there were problems in identifying underserved areas and there was no national shortage of physicians. The DOL, finding that Schedule A designation was not meeting the goal of alleviating shortage of medical services in underserved areas, removed physicians from Schedule A. See 52 FR 20593 (June 2, 1987)(See Exhibit C).

- HHS was contacted for its opinion on the national interest waiver. Dr. Philip Lee, Assistant Secretary for Health, was of the opinion that national interest waivers should not be granted on the basis of local labor shortages and that while shortages exist for primary care physicians in rural and inner-city areas, the national supply of doctors could well exceed the demand for doctors by the year 2000 (See Exhibit D).

- The majority of national interest waiver requests for physicians claiming to practice in medically underserved areas are adjudicated at the Vermont and Nebraska service centers. The Vermont service center is no longer approving these national interest waivers. The Nebraska service center is approving them. Based on a survey for the Senate

subcommittee on employment-based second category petitions, it appears that the Nebraska service center approved about 100 national interest waivers for physicians in a one-month period.

ARGUMENTS FOR AND AGAINST ALLOWING NATIONAL INTEREST WAIVERS FOR PHYSICIANS BASED ON ALLEVIATING LOCAL SHORTAGES OF DOCTORS

A. ARGUMENTS IN FAVOR

- Providing medical services in rural and inner-city areas is certainly a worthy and important national goal.

- Many national interest waiver requests for physicians in underserved areas are supported by letters from Congressmen, Senators, and State officials.

- The labor certification process, depending on the state of employment and the backlogs at DOL Regional Certifying Offices, takes time and adds another step to the immigration process. The process also involves more paperwork.

- By continuing to approve national interest waiver requests for physicians in underserved areas, the Service, except for the recent decisions from the Vermont service center, would be perceived by AILA as being consistent in approving these cases (See Exhibit E).

B. ARGUMENTS OPPOSED

- There is no mechanism to ensure that physicians granted national interest waivers remain in the underserved area. The labor certification process, at least, requires an employer to go some effort to obtain the physician's services. One would presume that an employer would not apply for a labor certification unless the physician has made some commitment to remain with the employer for an appreciable period of time.

- Granting national interest waivers based on practice in underserved areas essentially reinstates physicians on Schedule A. This is contrary to both DOL and HHS' findings that physicians claiming to practice in underserved areas should be removed from Schedule A. HHS, in its recent letter, has not changed its position.

- The determination of local labor shortages should properly be made by the DOL, which has the expertise in such matters. The national interest waiver does not take into account availability of US workers and whether the wages offered to the physicians are the prevailing wages in the area. By granting a large number of national interest waivers, the Service may be contributing to the projected oversupply of physicians in the United States.

- If there is a dire shortage of physicians in a particular area, obtaining a labor certification

should not be difficult, especially if the state employment agency, which initially processes the application, assists the petitioner. DOL regulations allow for a waiver of the recruitment process, if the employer can demonstrate that adequate recruitment measures have already been made. This procedure shortens the process. While the labor certification is being processed, the alien can usually work in a nonimmigrant status, such as H-1B.

oom has been a dramatic rise in the umber of prison guards. Indeed, heir ranks nationwide have in-reased at an even faster rate than he number of prisoners.

In many states, guards are not inionized, or their unions are not vell organized. In New York State, or example, the union was recently laced in receivership by its parent, lthough it had been an active back-r of Gov. Mario M. Cuomo in his insuccessful race last year for re-

Continued on Page A18, Column 1

but President Anwar el-Sadat of Egypt had publicly set foot in the city — so treasured by Islam — since its eastern quarter was conquered by Israel in 1967. But as others gathered here to mourn the assassination of Yitzhak Rabin, neither President Hosni Mubarak nor King Hussein saw reason any longer to stay away.

For Mr. Mubarak, it was his first journey to Jerusalem ever. In the 14 years since he took office after the assassination of Mr. Sadat, Mr. Mubarak had upset Israeli officials by refusing many invitations to follow

own amazement at the spectacle as he stood beside Mr. Rabin's coffin and declared that "never in all my thoughts did it occur to me that my first visit to Jerusalem" would come on such an occasion.

"He had courage, he had vision and he had a commitment to peace," King Hussein declared of Mr. Rabin.

"As long as I live, I'll be proud to have known him, to have worked with him, as a brother and as a friend and as a man, and the relationship of friendship that we had is something unique and I'm proud of that."

The King and the Egyptian President joined their fellow world leaders here with deceptive nonchalance, although their words and demeanor made clear that they remain divided about how fast and far to go now in pursuit of a wider peace. King Hussein spoke with obvious emotion and at some length; Mr. Mubarak spoke more briefly and in guarded diplomatic language.

Still, it was clear that the death of Mr. Rabin had jarred some old

of problems," Mr. Mubarak said eulogy of his own. "These achi ments have undoubtedly establis him as a true hero of peace."

In a pageant that would have t unthinkable when Mr. Rabin office just three years ago, H Hussein and Mr. Mubarak w joined here by white-robed Gov ment ministers from Oman and tar, their presence marking the visit to Israel by any delegation f

Continued on Page A12, Colum

Competition and Cutbacks Hurt Foreign Doctors in U.S.

By ELISABETH ROSENTHAL

At Woodhull Hospital in Greenpoint, Brooklyn, Dr. Yusuf Afacan takes care of poor patients sick with AIDS, drawing their blood, juggling their medications, finding them homes.

After graduating from medical school in his native Turkey, Dr. Afacan did a residency in New Jersey and a fellowship in infectious diseases at the University of Rochester. He landed his job in Brooklyn through a program that allows foreign-born and foreign-trained doctors to remain in the United States if they practice in underserved areas. Four of the five senior doctors at his clinic are also foreign graduates — the others from Belgium, Haiti and Pakistan.

But if legislators have their way, Dr. Afacan and his colleagues, who work where many American doctors refuse to go, may be an endangered species. Facing an oversupply of doctors, the Clinton Administration and Congress, in separate measures, are scaling back the Government programs that have long allowed graduates of overseas medical schools to practice in the United States, providing crucial care in the sickest, poorest neighborhoods.

At the same time, medical groups, which have long officially embraced foreign doctors, are becoming less welcoming toward them as competition for medical jobs increases in an industry that has been thrown into turmoil by budget cuts and the growth of managed care.

Physicians like Dr. Afacan are at the center of a political maelstrom that threatens to topple the fragile infrastructure that provides care in America's AIDS clinics, city hospitals and rural emergency rooms.

Public hospital administrators are in a near panic at the prospect of losing a huge chunk of their work force.

"There is this myth that if we cut off the supply of international graduates, somehow there are going to be American doctors who are going to want these jobs," said Kalman Res-

Continued on Page B4, Column 1

Today's Vote

A variety of local offices and issues are on ballots today in New York, New Jersey and Connecticut. Metropolitan area coverage begins on page B1.

National election coverage appears on page D23.

24 Midshipmen Face Discipline for Drugs

The United States Naval Academy, struggling to repair its reputation after scandals over sexual harassment and cheating on exams, said that two dozen midshipmen had been implicated in the sale or use of drugs.

Five midshipmen suspected of peddling drugs to their classmates in Annapolis, Md., face possible courts-martial, while as many as 19 others could be dismissed for using drugs that include LSD and marijuana.

The accusations by the academy, with its 4,000 students, was a particular blow for Adm. Charles R. Larson, the four-star admiral who was brought in to clean up the Academy.

Article, page D23.

Israelis Hold A As Suspected

By JO

JERUSALEM, Nov. 6 — The lice said today that they were l ing the brother of the confessed er of Yitzhak Rabin as a suspe accomplice in the assassination

At one hearing in the Tel Magistrate Court, Yigal Amir, year-old university student, ac ted the killing and continued to i that he had acted alone.

At a second hearing, his bro Hagai Amir, 27, who was arrest Sunday, admitted that he had h to alter one of the fatal bullets, w the police said had been hollowe to make it more lethal. But he d that he had known of the assas tion plans, and said he had al bullets to make them more accu

Police officials also said they looking into possible links bet the Amirs and radical Jewish gr including Kahane Chai, or Ka Lives, a small group of followe the virulently anti-Arab rabbi Kahane, who was gunned dow New York City in 1990.

The police gave no specific re for these broader inquiries. K Chai has a record of anti-Arab lence, and two of its members convicted of killing a Palestinia grenade attack in the Old Ci Jerusalem three years ago. But yamin Kahane, the group's le and son of the slain rabbi, denie links to the Amirs and said

reign Doctors in U.S. Find the Welcome Is Wearing Out

ontinued From Page A1

a Chicago lawyer who has
d Cook County Hospital find
gn-trained doctors. "And that is
ıot the case."
the 1,261 doctors in training
lispense care full time at New
's public hospitals, nearly 70
ınt are foreign-born graduates
erseas medical schools, and the
ntage is even higher at some
te hospitals in poor neighbor-
. At Bronx Lebanon, it is 71
nt; at North General Hospital
rlem, it is 91 percent.
international medical gradu-
many of whom were recruited
ıspitals in need of their labor,
etrayed.
hen this country needed a lot of
cians to help the health care
m, international graduates
very welcome — wined and
," said Dr. Busharat Ahmad, a
stani-born ophthalmologist,
practices in Monroe, Mich.
now when they don't need so
they are thrown by the way-
and no one cares."

se Snapped Shut Medicare Bill

House Medicare bill that
d last month will cut Federal
lies for doctors in training who
international medical school
ıates and neither citizens nor
anent residents. More than 50
nt of doctors in training fall
ıis category at many inner-city hospitals, where such doctors dispense the bulk of front-line care.

At the same time, the Department of Health and Human Services is seeking to curtail a visa program that has allowed foreign doctors who have finished training to remain in the United States if they practice in poor areas.

Within the profession, graduates of foreign medical schools say they are facing new levels of bias, with groups like the American Association of Medical Colleges lobbying to restrict opportunities for foreign physicians.

And as H.M.O.'s sweep across the nation, foreign-trained physicians say they are being shut out of plans by managed-care companies who promise customers American doctors.

It is the latest phase in this country's ambivalent relationship with foreign medical graduates, who are at once deemed inferior in training but critical to the delivery of health care to the poor. And some immigration critics say the proposals are racist as well since they do no affect U.S. citizens who are graduates of foreign medical schools.

"There is a color line and also an accent line in American medicine," Mr. Resnick said.

Central to the debate about the proper role of foreign-trained doctors are a couple of facts: First, that there are now too many doctors in the United States, particularly specialists, and health economists say this surplus breeds inefficiency and drives up costs. And second, there are 149,000 international medical graduates now practicing in the United States, which amounts to 20 percent of the nation's physicians — a number that has been accelerating fast. Virtually all of these doctors enter the country for medical training but remain for years afterward.

To groups as diverse as the American Association of Medical Colleges, an industry group, and the Center for the Health Professions at the University of California at San Francisco, a research group, the proper course is a matter of simple math.

"We have just got to stop the pipeline of foreign medical graduates," Dr. Ed O'Neil, director of the center, said. "They are a big chunk of physician oversupply. This very quickly gets into racial issues, but I don't think that's it. We're just trying to be rational."

A Promise to Leave, A Reason to Stay

Officially, most foreign doctors who obtain visas to train in this country do so with the explicit understanding that they will leave once that training is finished. But more than 75 percent, and perhaps as many as 90 percent, of these doctors end up practicing here, both because of poor job prospects in their native countries — most are from poor nations — and because the technology-based training they receive here is irrelevant at home. Although they come initially for primary-care training, in the end most specialize.

At the end of 1994, there were 23,499 international medical graduates pursuing medical training in the United States, a number that has doubled in the last five years. Forty-two percent of doctors in training in New York, and 52 percent in New Jersey are international medical graduates. In Illinois, the percentage is 32; in Michigan, 29. Just over 8 percent nationwide are American-born citizens who traveled overseas to attend medical school.

"We take the brightest students in foreign medical schools and give them a set of skills that are not needed in their own country, and so they stay here and add to the physician glut," Dr. O'Neil said.

But a process that sounds so irrational has burgeoned because it makes sense from another perspective: As they travel the circuitous route that begins with medical school in Guadalajara or New Delhi international graduates often spend more than a decade training and working in medically underserved areas, performing a crucial role in American health care.

Virtually all foreign doctors who enter the country on temporary training visas stay on indefinitely through Federal programs that grant them visa waivers in exchange for a commitment to practice for three years in a medically underserved neighborhood.

The Department of Veterans Affairs, the Appalachian Regional Commission and, more recently, the Department of Housing and Urban Development as well as the Department of Agriculture, issued visa waivers to help staff inner-city and rural hospitals.

In many cases, that three-year stopover, even if it is en route to specialties or fancier practices, has been invaluable. "The HUD waiver program has been a real boon for us, and let me tell you there are few boons when you're dealing with an inner-city population with AIDS," said Dr. Victoria Sharp, medical director of the Spellman Center of St. Clare's Hospital, a designated AIDS treatment center in New York City.

But if the Congress and the Department of Health and Human Services have their way, foreign-born graduates of foreign medical schools will be largely barred from this country in the future.

Although the House Medicare bill does not prohibit hospitals from admitting foreign graduates as medical residents, it largely eliminates subsidies to help pay for their training, which would discourage hospitals from hiring them.

boons when you're dealing with an inner-city population with AIDS," said Dr. Victoria Sharp, medical director of the Spellman Center of St. Clare's Hospital, a designated AIDS treatment center in New York City.

But if the Congress and the Department of Health and Human Services have their way, foreign-born graduates of foreign medical schools will be largely barred from this country in the future.

Although the House Medicare bill does not prohibit hospitals from admitting foreign graduates as medical residents, it largely eliminates subsidies to help pay for their training, which would discourage hospitals from hiring them.

Cheap Labor, Where Labor Is Needed

Hospitals now receive about $150,000 a year for each doctor in training, regardless of nationality, to compensate for the costs of medical education. So for better and worse, inner-city hospitals have gotten both cheap labor and extra Federal dollars when they hire foreign graduates.

"This subsidy has fueled the expansion of training programs in the inner cities where the shortage of fully trained doctors is great," said Dr. Jordan Cohen, president of the American Association of Medical Colleges. "But we've ended up with an educational system that's been terribly distorted by service requirement of institutions."

While Congress moves to shut the pipeline for residents, the Department of Health and Human Services under the leadership of Secretary Donna E. Shalala is moving to curtail physician immigration programs. This summer, Ms. Shalala wrote to her counterparts at the Department of Agriculture and Housing and Urban Development to request that they no longer issue immigration waivers to foreign physicians, citing a national surplus of doctors. For the moment, the HUD program is on hold.

But health-care advocates fear that such proposals will leave poor people without doctors.

This week St. Michael's Medical Center in Newark had three waiver requests turned down for experienced foreign medical graduates who were to be full time doctors for patients on Medicaid.

"What are we supposed to do?" said Dominick Calgi, an administrator at the hospital, "We are going to have to try to get other physicians, but there are not many who are willing to commit to the inner city, and never of this quality." In the meantime, the hospital pieces together a staff using residents and doctors who commit to a few hours here and there.

Tension between American medical school graduates and their foreign-trained counterparts is high.

Recently, the American Medical Association recommended that the number of training slots in the United States be limited to 110 percent of the number of graduates of American medical schools each year; It is now 145 percent. The restriction would largely affect foreign doctors, who get the slots that graduates of United States medical schools leave unfilled. The association's medical-student division went further, suggesting that graduates of those schools be awarded preference over international medical graduates.

That proposal was ultimately rejected but set off a ferocious debate in which foreign graduates complained that they were being treated as second-class citizens and Americans fretted about jobs.

A Shoulder Cold And Shrugged

Foreign-trained doctors say their employment prospects have already dimmed. Carlos Roldan, who went to medical school in Colombia and passed the test required of foreign-trained doctors on his first try, assumed he would have no trouble landing a residency slot in New York. He wrote to 90 hospitals and received 45 applications in response. He filled them all out, got only two interviews, and no job. Many hospitals wrote back that foreign-trained doctors need not apply.

Even senior doctors, who are now citizens, say they are being squeezed out of jobs, as H.M.O.'s sweep the country, favoring American-trained doctors in hiring.

When one hospital in suburban Detroit was taken over by a large H.M.O. this year, the new owners promptly dismissed the hospital's anesthesiologists — six foreign-trained doctors and one American graduate, according to a physician who would not identify the H.M.O because he is seeking an affiliation with it. The H.M.O. invited the former doctors to apply for jobs, and all did, but only the United States-trained doctor was hired.

"These people are all in their 40's and 50's, their children were born in the U.S., so this is a big deal for them," Dr. Ahmad said. He said he knew of 16 experienced doctors from abroad who had been forced out of practice because they were not admitted to H.M.O.'s.

Inner-city and rural hospitals are busily devising contingency plans if the role of foreign doctors is restricted, hiring more nurse practitioners and physician's assistants.

In the long run, health-care planners hope that American trained doctors will trickle down into today's inner cities as the job market gets tighter. But many have suggested that the Government needs to resurrect a National Health Service Corps, allowing doctors to practice in underserved areas in exchange for a reduction of medical school loans.

"If the problem is a shortage of primary-care doctors in poor neighborhoods why not face that directly," Dr. O'Neil said, "instead of subsidizing the training of someone we don't need, who is going to stay here become a neurosurgeon and drive up costs?"

City Parking Tickets To Be Redesigned

By The Associated Press

New York City parking tickets are being redesigned to make it harder for parking violators to lose them and make it easier for traffic agents to fill out the tickets, city officials said yesterday.

It is the first time in 25 years that city parking tickets have got a face lift, said Eamon Moynihan, a spokesman for the City Department of Finance. Among the improvements a fluorescent orange envelope that will come attached to the ticket make it easy for violators to drop their check in the mail.

"The main reason for the bright color is so people won't lose it

employer, or a subsidiary or affiliate thereof. To accommodate managers or executives who have been in the United States in nonimmigrant status for over 3 years, 8 CFR 204.5(j)(3)(i)(B) provides that an alien, already working in the Unites States for the same employer or a subsidiary or affiliate of the firm or corporation which employed the alien abroad as a manager or executive during at least one of the 3 years preceding his or her entry as a nonimmigrant, would qualify as a multinational executive or manager. In the case of an alien who is currently outside the United States, he or she must have been employed abroad by an affiliate, branch, or subsidiary of the petitioner as a manager or executive for at least 1 year during the 3-year period immediately preceding the filing of the petition. See 8 CFR 204.5(j)(3)(i)(A). Section 204.5(j)(3) of the regulations inadvertently omitted situations where the alien was in lawful nonimmigrant status while working for an unrelated employer, but worked for a qualifying company abroad in a managerial or executive position during at least 1 of the 3 years preceeding the filing of the petition. The fact that the alien is working in the United States should not preclude him or her from qualifying as a priority worker. Aliens who have worked for an unrelated employer should be treated the same as aliens who are outside the United States for purposes of eligibility. Accordingly, the Service proposes to allow U.S. employers to file petitions on behalf of those aliens for managerial or executive positions.

Advanced Degree Holders and Aliens of Exceptional Ability

The current regulation defines "exceptional ability" as a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. See 8 CFR 204.5(k)(2). The regulation at 8 CFR 204.5(k)(3)(ii) lists evidence which needs to be presented to establish exceptional ability. Since the implementation of IMMACT, there has been some confusion over the role of various types of evidence listed in the regulation. As in the cases of aliens of extraordinary ability and outstanding professors and researchers, the Service intended that this list of evidence be a guideline for the petitioner and the Service to determine exceptional ability. Providing a list of possible types of evidence makes the adjudicative process simpler for both the petitioner and the Service. The fact that an alien may meet three of the listed criteria does not necessarily mean that he or she meets the standard of exceptional ability. The Service adjudicator must still determine whether the alien has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Accordingly, the Service proposes to amend the regulation to state that meeting three of the evidentiary standards is not dispositive of whether the beneficiary is an alien of exceptional ability.

Under section 203(b)(2)(A) of the Act, professionals holding advanced degrees or their equivalent also qualify for classification under the employment-based second category. The Joint Explanatory Statement of the Committee of Conference, made at the time Congress adopted IMMACT, stated that the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." See H.R. Rep. No. 101-955, 101st Cong., 2d Sess. 121 (1990). Accordingly, the current regulation states that the job offer portion of the labor certification application (Form ETA-750) must demonstrate that the job requires a professional holding an advanced degree or equivalent. See 8 CFR 204.5(k)(4)(i). Since the Service began adjudicating petitions under the current regulation, some petitioners have interpreted this regulation to allow job offers which require only a bachelor's degree, plus 5 years of progressive experience, but not an advanced degree. This interpretation does not comport with the language of section 203(b)(2)(A) of the Act which, on its face, states that a job offer must require an advanced degree or equivalent in order to qualify the beneficiary as an advanced degree holder. Requiring a bachelor's degree and 5 years of experience does not equate to a requirement that the beneficiary hold an advanced degree. In order for the beneficiary to qualify as an advanced degree holder, the job offered in the labor certification must also accept an advanced degree as a minimum job requirement. Therefore, the Service proposes that the regulation be amended to state that if the job offer portion of the labor certification requires a person holding a bachelor's degree, followed by at least 5 years of experience in the specialty, it must also accept an advanced degree holder in the same field as meeting the minimum job requirements.

Section 212(a)(5)(C) of the Act states that a petition filed under the employment-based second category requires a labor certification. Section 203(b)(2)(B) of the Act provides that "the Attorney General may, when he deems it to be in the national interest, waive the requirement * * * that an alien's services in the sciences, arts, professions, or business are sought by an employer in the United States." The Service has determined that a waiver of the job offer constitutes a waiver of the labor certification. See 56 FR 60897-60913 dated November 29, 1991. Soon after the promulgation of the final rule on employment-based immigrant petitions in November of 1991, the President signed the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA). The MTINA added professionals to the list of aliens who are eligible to request a national interest waiver of the labor certification. Accordingly, the Service proposes to amend 8 CFR 204.5(k)(4)(ii) to add professionals to the list of aliens whom the service center director can exempt from the labor certification requirement.

After the Service issued a proposed regulation on employment-based immigrant petitions at 56 FR 30703-30714 on July 5, 1991, several commenters suggested that the Service define the term "national interest." The Service decided not to define the term "national interest" in the final regulation. See 56 FR 60897-60913 dated November 29, 1991. At that time, the Service believed that it was appropriate to leave the application of the national interest waiver as flexible as possible and that each case should be judged on its own merits.

Since the promulgation of the final regulation on November 29, 1991, the Service has received numerous petitions filed under the employment-based second category, which request a waiver of the labor certification requirement in the national interest. Since IMMACT became effective in 1991, the Service has been flexible in approving national interest waivers in a variety of situations. The Administrative Appeals Unit (AAU) has issued a number of non-precedent decisions on the national interest waiver. The AAU has listed some factors which relate to national interest. See Matter of , EAC 92 091 50126 (July 21, 1992). They include improving the U.S. economy, improving conditions of U.S. workers, improving education and training of children and under-qualified workers, improving health care, providing affordable housing, improving the environment, and a request from an interested government agency. Although these factors provide a list of national goals or objectives, they do not provide much guidance to the public or to Service adjudicators with respect to which aliens merit a national interest waiver.

Without specific guidelines, the service centers have found it difficult to

determine which aliens should qualify for the waiver. It has proven to be very difficult to determine on a case-by-case basis which petitions deserve a "national interest" waiver. The Service believes that, absent published general guidelines, it is very difficult to adjudicate consistently national interest waivers. Based on the Service's experience in adjudicating national interest waivers since 1991, the Service proposes that the petitioner establish four elements to qualify for a national interest waiver. These elements will allow for greater consistency in adjudication of national interest waivers as well as provide guidance to the public. They do not limit, or attempt to define, which types of activities are in the national interest. The four elements do, however, provide common indicators of whether the alien's admission to the United States would benefit the national interest.

The first element is that the alien must have at least 2 years of experience in the area in which he or she will benefit the United States. The Service believes that requiring some background in the area in which the alien will benefit the national interest is an appropriate measure of whether the alien has the commitment to pursue the activity which will promote a national interest, as stated in the petition. Unlike an alien who immigrates based on a labor certification, an alien who immigrates based on a national interest waiver does not require a specific job offer and a sponsoring employer. It is, therefore, more difficult in such waiver cases for the Service to determine whether the alien has the commitment to engage in the activity which will promote a national interest following his or her admission as an immigrant.

To illustrate this problem, the Service notes that it has received a number of petitions, accompanied by a request for a national interest waiver, from professionals who recently received an advanced degree and claim that they will be engaged in activities which will be in the national interest. One example is an attorney who recently passed the state bar examination and promises to devote some of his practice to representing indigent persons. Another example is someone who has just graduated from medical school and states that he or she will practice in a medically under-served area. Such petitions have been problematic for the Service to adjudicate. The aliens claim they will be engaged in activity in which they do not have a "track record." Under the current regulations, the Service has no means to determine whether the alien is truly committed to performing the activity which promotes the national interest. The Service believes that it is appropriate to require the alien to have 2 years of full-time experience in the field of endeavor which will promote the national interest. The Service does not believe, however, that the required period of experience should include time in which the alien was a full- or part-time student. It is the position of the Service that 2 years of full-time experience is the minimum period of time to measure the alien's commitment to work in an area which will promote the national interest. In addition, this 2-year full-time experience requirement is necessary to determine whether the alien has sufficient qualifying experience in the field to play a significant role in an activity which will prospectively benefit the United States.

The second element is that the national interest waiver not be based purely on the alien's ability to ameliorate a local labor shortage. Although the legislative history of IMMACT and MTINA does not address the meaning of the term "national interest," Congress clearly stated, in section 212(a)(5)(C) of the Act, that all aliens who immigrate under the second and third employment-based categories require a labor certification. Section 203(b)(2)(B) of the Act allows the Attorney General to waive the requirement that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States if it is in the national interest. By enacting the national interest waiver, Congress created an exception to the general labor certification requirement. It would, therefore, be superfluous to allow an alien to be exempted from the labor certification requirement based purely on a shortage of available U.S. workers. Congress has delegated to the Department of Labor the determination of whether local labor shortages exist. See section 212(a)(5)(A) of the Act. This does not mean, however, that the existence of a national labor shortage would not be relevant to whether an alien should be granted a national interest waiver. The fact that the alien has skills which are not available in the overall U.S. labor market may be a relevant consideration in deciding whether to grant a national interest waiver. However, should the Service determine that the basis of the request for a national interest waiver is solely to alleviate a local labor shortage, a labor certification will be the appropriate basis to qualify for an employment-based petition.

The plain language of the term "national interest" supports the Service's position on local labor shortages. The dictionary defines the word "national" as "pertaining to a whole nation" or "concerning or encompassing an entire nation." See The Random House College Dictionary (Rev. Ed. 1975). If the basis of the request for a national interest waiver is merely to solve a labor shortage in a limited area of the country, the impact of the alien's employment cannot be said to pertain directly to the entire Nation. There must be an impact on the Nation as a whole.

In conclusion, the Service has determined that local labor market concerns, standing alone, are not an appropriate basis for a national interest waiver, which exempts the alien from the normal labor certification requirement. Accordingly, the Service proposes to preclude aliens from obtaining a national interest waiver based purely on a local labor shortage.

The third element in determining whether the alien should be given a national interest waiver is that the alien will be involved in an undertaking which will substantially benefit prospectively the United States. This requirement follows the statutory language of section 203(b)(2)(B) of the Act, which makes it clear that the waiver request should be premised on an activity which will further an important national goal. The emphasis of this element is on the particular national goal the alien's proposed undertaking will promote.

The fourth element in determining whether the labor certification and job offer should be waived in the national interest is that the alien play a significant role in that activity which will prospectively benefit the United States. The Service has received a large number of requests for a national interest waiver from aliens who play relatively minor roles in an important project or activity which affects the national interest. One example is an alien who is an entry-level engineer who works for a company which conducts important research into new sources of energy, such as fusion. Another example is a physician who claims that he or she will work in primary-care, which the President's health care proposal emphasizes. In both examples, the alien states that he or she will be working in a field which will promote a national goal or cause. While this may be true, merely working in an area which benefits the national interest is not a sufficient basis to grant a national interest waiver. The alien must also establish that he or she will

play a significant role in advancing the particular national interest. In other words, the alien has the burden of proof that he or she will have a significant impact on an activity which will benefit the national interests of the United States.

This proposed regulation will serve as a guideline for aliens who apply for a national interest waiver. It emphasizes both the manner in which the alien will contribute to the national interest, as well as the activity or employment itself. The Service believes that the alien must show that he or she will play a significant role in an undertaking which will prospectively benefit the United States.

Skilled Workers, Professionals, and Other Workers

The employment-based third category under section 203(b)(3) of the Act has subcategories for professionals, skilled workers, and unskilled workers. Although there are 40,000 immigrant visa numbers allocated annually to the employment-based third category, section 203(b)(3)(B) of the Act limits the annual admissions of unskilled workers to 10,000. In order to qualify as a skilled worker, the job offered must require at least 2 years of training or experience. Under the current regulation, the Service determines whether a job offered is skilled or unskilled based on the minimum experience or training requirements which the prospective employer places on the job, as certified by the Department of Labor on Form ETA 750. See 8 CFR 204.5(l)(4). Block number 14 on Form ETA 750A (Offer of Employment) lists the minimum experience for a worker to satisfactorily perform the job offered. As a matter of practice, the Department of Labor permits the minimum experience required to satisfactorily perform the job offered to be in the job offered or in a related occupation.

The Service has received a number of petitions in which the minimum experience requirement in a related occupation is 2 years or more and the minimum experience requirement in the job offered is less than 2 years. This regulation proposes to place the beneficiary into the unskilled category if the experience requirement on Block 14 on Form ETA 750A for the job offered shows less than 2 years of experience. To do otherwise would mean that a job applicant could meet one of the minimum job offer requirements with less than 2 years of experience in the job itself. The Service has determined that focusing on the experience required for the job offered comports with the language of section 203(b)(3)(A)(i) of the Act which defines skilled workers as qualified immigrants who are capable of performing skilled labor, requiring at least 2 years of experience or training. Accordingly, the Service proposes to add a sentence to emphasize that a worker will be considered unskilled if a job applicant can meet the minimum experience requirements in the job offered with less than 2 years of experience.

Religious Workers

Section 151(a) of IMMACT created a new immigrant category for ministers, religious professionals, and other religious workers. Section 101(a)(27)(C)(iii) of the Act provides that in order to qualify under this category, a minister must have been carrying on the vocation of minister during the previous 2 years. The Act also requires professional and other religious workers to carry on the religious work during the previous 2 years. The regulation currently states that ministers and religious workers must have been performing the vocation of minister or religious work continuously, either abroad or in the United States, for at least the 2-year period immediately preceding the filing of the petition. See 8 CFR 204.5(m)(1). The Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time.

Before Congress enacted IMMACT in 1990, section 101(a)(27)(C) of the Act classified ministers as special immigrants. Under this category, the alien had to establish that he was "an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination." This language is virtually identical with the current statute, except that Congress added a category for religious workers. The legislative history indicates that Congress did not intend to overrule pre-existing case law interpreting the experience requirement under former section 101(a)(27)(C) of the Act. See H. Rep. No. 723, 101st Cong., 2nd Sess. 75 (1990). In Matter of Faith Assembly Church, 19 I&N Dec. 391, 393 (Comm. 1986), the Commissioner determined that the term "solely" applies to both the alien's proposed ministerial activities as well as to the alien's previous experience as a religious minister. Because of the legislative history and the similarity in the statutory language, it is appropriate for the Service to require that the 2 years of experience be full-time. In addition, this interpretation is consistent with the current statutory framework, under which IMMACT also created a nonimmigrant category for religious workers. See section 101(a)(15)(R) of the Act. The 2-year experience requirement is the only difference between the nonimmigrant and immigrant religious worker category. Compare id with section 101(a)(27)(C)(iii) of the Act. Both categories require 2 years of membership in the religious denomination. Since membership in a religious denomination may entail some part-time volunteer work, part-time employment should not suffice to qualify the alien as a special immigrant religious worker. Permitting such part-time employment to count towards meeting the experience requirement for immigrant religious workers would render the distinction between the two categories, and, therefore, the experience requirement itself, superfluous.

Accordingly, the Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time. In order for the qualifying experience to be considered full-time, the alien must have worked in a qualifying religious vocation or occupation for at least 35 hours per week or more, depending on what constitutes "full-time" experience in the particular religious occupation or vocation.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This proposed rule merely modifies existing regulations for employment-based immigration. It will not significantly change the number of persons who immigrate to the United States based on employment-based petitions. Any impact on small business entities will be, at most, indirect and attenuated.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

play a significant role in advancing the particular national interest. In other words, the alien has the burden of proof that he or she will have a significant impact on an activity which will benefit the national interests of the United States.

This proposed regulation will serve as a guideline for aliens who apply for a national interest waiver. It emphasizes both the manner in which the alien will contribute to the national interest, as well as the activity or employment itself. The Service believes that the alien must show that he or she will play a significant role in an undertaking which will prospectively benefit the United States.

Skilled Workers, Professionals, and Other Workers

The employment-based third category under section 203(b)(3) of the Act has subcategories for professionals, skilled workers, and unskilled workers. Although there are 40,000 immigrant visa numbers allocated annually to the employment-based third category, section 203(b)(3)(B) of the Act limits the annual admissions of unskilled workers to 10,000. In order to qualify as a skilled worker, the job offered must require at least 2 years of training or experience. Under the current regulation, the Service determines whether a job offered is skilled or unskilled based on the minimum experience or training requirements which the prospective employer places on the job, as certified by the Department of Labor on Form ETA 750. See 8 CFR 204.5(l)(4). Block number 14 on Form ETA 750A (Offer of Employment) lists the minimum experience for a worker to satisfactorily perform the job offered. As a matter of practice, the Department of Labor permits the minimum experience required to satisfactorily perform the job offered to be in the job offered or in a related occupation.

The Service has received a number of petitions in which the minimum experience requirement in a related occupation is 2 years or more and the minimum experience requirement in the job offered is less than 2 years. This regulation proposes to place the beneficiary into the unskilled category if the experience requirement on Block 14 on Form ETA 750A for the job offered shows less than 2 years of experience. To do otherwise would mean that a job applicant could meet one of the minimum job offer requirements with less than 2 years of experience in the job itself. The Service has determined that focusing on the experience required for the job offered comports with the language of section 203(b)(3)(A)(i) of the Act which defines skilled workers as qualified immigrants who are capable of performing skilled labor, requiring at least 2 years of experience or training. Accordingly, the Service proposes to add a sentence to emphasize that a worker will be considered unskilled if a job applicant can meet the minimum experience requirements in the job offered with less than 2 years of experience.

Religious Workers

Section 151(a) of IMMACT created a new immigrant category for ministers, religious professionals, and other religious workers. Section 101(a)(27)(C)(iii) of the Act provides that in order to qualify under this category, a minister must have been carrying on the vocation of minister during the previous 2 years. The Act also requires professional and other religious workers to carry on the religious work during the previous 2 years. The regulation currently states that ministers and religious workers must have been performing the vocation of minister or religious work continuously, either abroad or in the United States, for at least the 2-year period immediately preceding the filing of the petition. See 8 CFR 204.5(m)(1). The Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time.

Before Congress enacted IMMACT in 1990, section 101(a)(27)(C) of the Act classified ministers as special immigrants. Under this category, the alien had to establish that he was "an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination." This language is virtually identical with the current statute, except that Congress added a category for religious workers. The legislative history indicates that Congress did not intend to overrule pre-existing case law interpreting the experience requirement under former section 101(a)(27)(C) of the Act. See H. Rep. No. 723, 101st Cong., 2nd Sess. 75 (1990). In Matter of Faith Assembly Church, 19 I&N Dec. 391, 393 (Comm. 1986), the Commissioner determined that the term "solely" applies to both the alien's proposed ministerial activities as well as to the alien's previous experience as a religious minister. Because of the legislative history and the similarity in the statutory language, it is appropriate for the Service to require that the 2 years of experience be full-time. In addition, this interpretation is consistent with the statutory framework, under which IMMACT also created a nonimmigrant category for religious workers. See section 101(a)(15)(R) of the Act. The 2-year experience requirement is the only difference between the nonimmigrant and immigrant religious worker category. Compare id with section 101(a)(27)(C)(iii) of the Act. Both categories require 2 years of membership in the religious denomination. Since membership in a religious denomination may entail some part-time volunteer work, part-time employment should not suffice to qualify the alien as a special immigrant religious worker. Permitting such part-time employment to count towards meeting the experience requirement for immigrant religious workers would render the distinction between the two categories, and, therefore, the experience requirement itself, superfluous.

Accordingly, the Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time. In order for the qualifying experience to be considered full-time, the alien must have worked in a qualifying religious vocation or occupation for at least 35 hours per week or more, depending on what constitutes "full-time" experience in the particular religious occupation or vocation.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This proposed rule merely modifies existing regulations for employment-based immigration. It will not significantly change the number of persons who immigrate to the United States based on employment-based petitions. Any impact on small business entities will be, at most, indirect and attenuated.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

determine which aliens should qualify for the waiver. It has proven to be very difficult to determine on a case-by-case basis which petitions deserve a "national interest" waiver. The Service believes that, absent published general guidelines, it is very difficult to adjudicate consistently national interest waivers. Based on the Service's experience in adjudicating national interest waivers since 1991, the Service proposes that the petitioner establish four elements to qualify for a national interest waiver. These elements will allow for greater consistency in adjudication of national interest waivers as well as provide guidance to the public. They do not limit, or attempt to define, which types of activities are in the national interest. The four elements do, however, provide common indicators of whether the alien's admission to the United States would benefit the national interest.

The first element is that the alien must have at least 2 years of experience in the area in which he or she will benefit the United States. The Service believes that requiring some background in the area in which the alien will benefit the national interest is an appropriate measure of whether the alien has the commitment to pursue the activity which will promote a national interest, as stated in the petition. Unlike an alien who immigrates based on a labor certification, an alien who immigrates based on a national interest waiver does not require a specific job offer and a sponsoring employer. It is, therefore, more difficult in such waiver cases for the Service to determine whether the alien has the commitment to engage in the activity which will promote a national interest following his or her admission as an immigrant.

To illustrate this problem, the Service notes that it has received a number of petitions, accompanied by a request for a national interest waiver, from professionals who recently received an advanced degree and claim that they will be engaged in activities which will be in the national interest. One example is an attorney who recently passed the state bar examination and promises to devote some of his practice to representing indigent persons. Another example is someone who has just graduated from medical school and states that he or she will practice in a medically under-served area. Such petitions have been problematic for the Service to adjudicate. The aliens claim they will be engaged in activity in which they do not have a "track record." Under the current regulations, the Service has no means to determine whether the alien is truly committed to performing the activity which promotes the national interest. The Service believes that it is appropriate to require the alien to have 2 years of full-time experience in the field of endeavor which will promote the national interest. The Service does not believe, however, that the required period of experience should include time in which the alien was a full- or part-time student. It is the position of the Service that 2 years of full-time experience is the minimum period of time to measure the alien's commitment to work in an area which will promote the national interest. In addition, this 2-year full-time experience requirement is necessary to determine whether the alien has sufficient qualifying experience in the field to play a significant role in an activity which will prospectively benefit the United States.

The second element is that the national interest waiver not be based purely on the alien's ability to ameliorate a local labor shortage. Although the legislative history of IMMACT and MTINA does not address the meaning of the term "national interest," Congress clearly stated, in section 212(a)(5)(C) of the Act, that all aliens who immigrate under the second and third employment-based categories require a labor certification. Section 203(b)(2)(B) of the Act allows the Attorney General to waive the requirement that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States if it is in the national interest. By enacting the national interest waiver, Congress created an exception to the general labor certification requirement. It would, therefore, be superfluous to allow an alien to be exempted from the labor certification requirement based purely on a shortage of available U.S. workers. Congress has delegated to the Department of Labor the determination of whether local labor shortages exist. See section 212(a)(5)(A) of the Act. This does not mean, however, that the existence of a national labor shortage would not be relevant to whether an alien should be granted a national interest waiver. The fact that the alien has skills which are not available in the overall U.S. labor market may be a relevant consideration in deciding whether to grant a national interest waiver. However, should the Service determine that the basis of the request for a national interest waiver is solely to alleviate a local labor shortage, a labor certification will be the appropriate basis to qualify for an employment-based petition.

The plain language of the term "national interest" supports the Service's position on local labor shortages. The dictionary defines the word "national" as "pertaining to a whole nation" or "concerning or encompassing an entire nation." See The Random House College Dictionary (Rev. Ed. 1975). If the basis of the request for a national interest waiver is merely to solve a labor shortage in a limited area of the country, the impact of the alien's employment cannot be said to pertain directly to the entire Nation. There must be an impact on the Nation as a whole.

In conclusion, the Service has determined that local labor market concerns, standing alone, are not an appropriate basis for a national interest waiver, which exempts the alien from the normal labor certification requirement. Accordingly, the Service proposes to preclude aliens from obtaining a national interest waiver based purely on a local labor shortage.

The third element in determining whether the alien should be given a national interest waiver is that the alien will be involved in an undertaking which will substantially benefit prospectively the United States. This requirement follows the statutory language of section 203(b)(2)(B) of the Act, which makes it clear that the waiver request should be premised on an activity which will further an important national goal. The emphasis of this element is on the particular national goal the alien's proposed undertaking will promote.

The fourth element in determining whether the labor certification and job offer should be waived in the national interest is that the alien play a significant role in that activity which will prospectively benefit the United States. The Service has received a large number of requests for a national interest waiver from aliens who play relatively minor roles in an important project or activity which effects the national interest. One example is an alien who is an entry-level engineer who works for a company which conducts important research into new sources of energy, such as fusion. Another example is a physician who claims that he or she will work in primary-care, which the President's health care proposal emphasizes. In both examples, the alien states that he or she will be working in a field which will promote a national goal or cause. While this may be true, merely working in an area which benefits the national interest is not a sufficient basis to grant a national interest waiver. The alien must also establish that he or she will

(B) A transaction entered into by any investment company (e.g., a mutual fund) of similar pooled investment entity other then one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1% of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;[2]

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;[3]

* * * * *

[2] Attention is directed to section 9(b) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members of employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commissioner or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

[3] Attention is directed to section 9(d) of the Commodity Exchange Act that provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock-index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735-16 of this Part for information regarding interpretative and advisory service by the General Counsel of the Commission.

Issued in Washington, DC on May 28, 1987, by the Commission

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87-12479 Filed 6-1-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 146, and 178

Harbor Maintenance Fee; Extension of Comment Period

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning interim amendments of the Customs Regulations to implement provisions of the Water Resources Development Act of 1986 (the Act) which authorizes the Customs Service to assess a harbor maintenance fee of 0.04 percent (.0004) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port within the definition of the Act. The harbor maintenance fee applies to port uses by commercial vessels which load or unload merchandise or passengers unless specifically exempted from the fee. The proceeds of the fee collected by Customs, together with certain other fees, are deposited in the Harbor Maintenance Trust Fund which is made available, subject to appropriations, to the U.S. Army Corps of Engineers for the improvement and maintenance of U.S. ports and harbors.

The amendments were made on an interim basis by the publication of T.D. 87-44 in the Federal Register of March 30, 1987 (52 FR 10198), due to the limited period of time available to initiate the changes before the law became effective on April 1, 1987. However, written comments were invited for consideration before a final rule is issued. Comments were to have been received on or before May 29, 1987. Customs has received several requests to extend the comment period because additional time is required to prepare reasonably responsive comments. Customs believes the request have merit. Accordingly, the period of time for the submission of comments is being extended 90 days.

DATE: Comments are requested on or before August 28, 1987.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Jean F. Maguire, Director, User Fee Task Force (202-566-5868).

Dated: May 28, 1987.

Harry B. Fox,

Acting Director, Office of Regulations & Rulings.

[FR Doc. 87-12615 Filed 5-29-87; 3:27 pm]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Removal of Physicians From Schedule A

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is amending its regulations relating to the certification of immigrant aliens for permanent employment in the United States. The amendments remove alien graduates of foreign medical schools from the *Schedule A* precertification list.

EFFECTIVE DATE: These amendments apply to applications for permanent alien labor certification received for processing on or after July 2, 1987. However, those alien graduates of foreign medical schools who: (1) Are in possession of a statement signed by the appropriate Regional Health Administrator (RHA), Department of Health and Human Services (HHS), required by 20 CFR 656.22(c)(2)(ii) (1986) of DOL's regulations, as of the effective date of the final rule; and (2) file a visa petition accompanied by the statement of the RHA, HHS, and the documentation required by 20 CFR 656.20(d) (1986) within one year of the date the statement of the RHA, HHS,

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary
for Health
Washington DC 20201

AUG 18 1995

Louis D. Crocetti, Jr.
Associate Commissioner, Examinations
Immigration and Naturalization Service
423 Eye Street, N.W.
Washington, D.C. 20536

Dear Mr. Crocetti:

Thank you for your letter of July 13, 1995, requesting the comments of the Public Health Service on the Immigration and Naturalization Service's proposed rule concerning employment-based immigrant petitions. We have reviewed the entire rule and only have a few comments.

We support the provision that national interest waivers should not be based on the existence of local labor shortages and that labor certification should still be required when the issue is solely alleviation of local labor shortages, as in the case for physicians. It is our position that there is no national shortage of physicians, particularly non-primary care physicians In fact, our Department's Council on Graduate Medical education has estimated that by the year 2000, the national supply of physicians could well exceed the need by more than 100,000 physicians. Shortages exist, particularly for primary care physicians, in very specific locales such as certain rural and inner-city areas. These we have designated by specific criteria and have published in the Federal Register as health professions shortage areas and as medically underserved areas or populations.

If you would like to discuss this issue further, I suggest that you contact Dr. Jo Ivey Boufford, Principal Deputy Assistant Secretary for Health, in this Department. She can be reached at (202) 690-7694.

Sincerely yours,

Philip R. Lee, M.D.
Assistant Secretary for Health

was signed, shall be allowed to complete the *Schedule A* process. Those aliens who have requested but have not received a shortage statement by the effective date of the final rule shall not be allowed to complete the *Schedule A* process.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certification. Telephone: 202-535-0163.

SUPPLEMENTARY INFORMATION: On January 24, 1986, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published in the Federal Register a Notice of Proposed Rulemaking proposing to amend ETA's regulations at 20 CFR Part 656 to remove alien graduates of foreign medical schools from the *Schedule A* precertification list (51 FR 3191). This document adopts final regulations based upon that January 24, 1986, Notice of Proposed Rulemaking. ETA's regulations for the certification of immigrant aliens for permanent employment in the United States are issued pursuant to section 212(a)(14) of the Immigration and Natonality Act (INA), 8 U.S.C. 1182(a)(14). However, those alien physicians (and surgeons) who are of exceptional ability in a science or art will remain on *Schedule A*, Group II.

Permanent Alien Employment Certification Process

Pursuant to the Immigration and Nationality Act (INA), before the Department of State (DOS) and the Immigration and Naturalization Service (INS) issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(14).

Department of Labor Regulations

Pursuant to 8 U.S.C. 1182(a)(14), DOL has promulgated regulations at 20 CFR Part 656 to implement the labor certification process for the permanent employment of immigrant aliens in the United States.

The regulations at 20 CFR Part 656 set forth the fact-finding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States, and the responsibilities of the alien beneficiaries of permanent alien labor certifications.

Schedule A Precertification List

DOL has published, at 20 CFR 656.10, a list of occupations (*Schedule A*) for which the Director, U.S. Employment Service, has determined that there are not sufficient United States workers who are able, willing, qualified, and available, and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of aliens. DOL has delegated to the DOS and the INS the authority to determine if an alien falls within one of the occupational categories on *Schedule A*, and, if so, to issue a permanent alien labor certification for the alien. 20 CFR 656.22. The *Schedule A* determination of the INS or Department of State is not appealable within DOL. 20 CFR 656.22(h)(2).

Alien Graduates of Medical Schools

Regulations at 20 CFR 656.10(a)(2) and 20 CFR 656.22(b) (1986) provide for the precertification of alien graduates of medical schools in specific shortage areas for specific medical specialties as designated by the Department of Health and Human Services (HHS). ETA is amending these regulations by deleting alien graduates of foreign medical schools from the DOL's *Schedule A* precertification list. Physicians (and surgeons) will still, however, be allowed to be the beneficiaries of permanent labor certification applications. No change is made by this rule in DOL's regulations which allow employers to file applications for labor certification under the basic labor certification process at 20 CFR 656.21. Further, alien physicians (and surgeons) of exceptional ability in a science or art will remain on *Schedule A*. 20 CFR 656.10(b).

Under the regulations prior to this revision, a signed statement is required from the appropriate Regional Health Administrator (RHA), Public Health Service (PHS) Regional Office, HHS, as documentation of a physician's (and surgeon's) *Schedule A* eligibility. 20 CFR 656.22(c)(2) (1986). The signed statement from the RHA certifies that the area in which the alien intends to be employed is a geographic area which has been designated by the Secretary of HHS as a Health Manpower Shortage Area (HMSA) for the alien's medical specialty or has been identified otherwise by the Secretary of HHS as having an insufficient number of physicians in the alien's medical specialty (hereinafter referred to as an inadequately served area).

In August 1984, HHS wrote to the Assistant Secretary of Labor for Employment and Training informing him that as a result of an internal HHS study of the current labor certification program, HHS had come to the conclusion that major changes in HHS participation in the program were warranted. HHS proposed discontinuing, beginning with Fiscal Year 1985, making labor shortage certifications through PHS regional offices. The reasons for this proposal were as follows:

- —Less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified;
- —Methodological problems exist in developing and keeping accurate information for inadequately served areas for other than the primary care specialties;
- —Neither the Congress nor HHS recognizes the existence of a national shortage of physicians in the United States;
- —The recent HHS report to the President and the Congress on the Status of Health Personnel in the United States indicated that the aggregate number of physicians in the United States is projected to exceed requirements in 1990 and 2000; and
- —Scarce HHS resources for this activity, given its apparent limited utility.

HHS recommended removal of physicians from *Schedule A*, or, in the alternative, leaving only those physicians on *Schedule A* that are to be employed in the HMSAs. The HMSA lists, which are maintained only for primary care physicians and psychiatrists, according to HHS have a high degree of currency and reliability, are published annually in the Federal Register, and are widely recognized as being accurate and correct. In addition, to date, 90 percent of all positive certifications issued by PHS have been based on the lists of HMSAs and only 10 percent have been based on the lists of inadequately served areas. However, as indicated above, less than one-third of the physicians certified for direct patient care work in the shortage areas or specialities for which they obtained certification for any length of time. Thus, the labor certification program has not had significant effect in alleviating the

shortage of physicians in the HMSAs or in the inadequately served areas. Consequently, DOL proposed to remove physicians (and surgeons) from *Schedule A*.

Comments on Proposed Rule

The Notice of Proposed Rulemaking (NPRM) invited interested parties to submit written comments on the proposed amendments on or before February 24, 1986. Comments on the NPRM were received from six different organizations and individuals, including the American Immigration Lawyers Association (AILA). The following issues were raised by the commenters:

—Insufficient data were provided to support the statement in the preamble to the NPRM that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified. AILA also stated that the data supporting this reason for removing physicians from *Schedule A* should be made public.

—Data with respect to HMSAs for primary care physicians is current and reliable; therefore, only the other areas and specialties should be deleted from *Schedule A*.

—That neither Congress nor HHS recognizes the existence of a national shortage of physicians is irrelevant to the present regulation since Schedule A does not provide for precertification on a national basis, but only for area shortages by specialty.

—Projections that the aggregate number of physicians in the United States is expected to exceed requirements in 1990 and 2000 is irrelevant with respect to specific shortage areas, and, therefore, does not support removing physicians from *Schedule A*.

—Scarcity of HHS resources as a reason for removing physicians from *Schedule A* was questioned since only 103 *Schedule A* certifications on behalf of physicians were issued in Fiscal Year 1984. Further, removing physicians from *Schedule A* merely shifts the administrative burden to the State employment service and Regional Certifying Officers of DOL.

—Two commenters suggested as an alternative to removing physicians from *Schedule A*, that the certification be contingent upon a commitment of the physician to provide medical services in the shortage area for a specified length of time.

—Two commenters inquired as to what effect the proposed rule would have on *Schedule A* applications that were in process as of its effective date.

An analysis of the comments is presented below in the same order they were presented above.

Less Than One-Third of the Physicians Certified Remain in Shortage Areas for any Significant Length of Time

The Bureau of Health Professions, Health Resources and Service Administration, HHS, has recently issued a report entitled *Labor Certification of Foreign Physicians Under Schedule A—An Assessment of Program Impact* which supports the statements made in the preamble that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified.

This statement is documented in the above cited report published in 1986 by HHS's Health Resources and Services Administration, Bureau of Health Professions, Office of Data Analysis and Management. The report describes a study of those physicians certified under the program in 1981 and 1982. The study was carried out in 1984 by the Public Health Service regional office personnel who had done the staff work on shortage/underserved area certifications for *Schedule A* labor certification purposes. The study concluded that:

(1) The 436 shortage/underserved area certifications issued in 1981 and 1982 represented, at most, 382 different physicians. (Some physicians requested multiple certifications for different areas.)

(2) Of these 382 physicians, at least 145 were seeking residency of other training positions, rather than positions in direct patient care. (To remedy this, beginning in 1983 HHS required verification that the positions sought were not training positions before issuing area certifications.)

(3) Of the remaining 237 physicians, 227 were identified as having sought positions in direct patient care; whether the positions sought by the other 10 were for training or direct patient care could not be determined.

(4) Of the 227 physicians who sought positions in direct patient care, it was determined that 141 (or 63 percent) actually served for some period of time in a shortage/underserved area for which he/she had obtained a certification.

(5) Of these 141 physicians, 66 were still practicing at the certified location in 1984. This represents 29 percent (or less than one-third) of the 227 who originally requested certification for positions in direct patient care (and 17 percent of the total 382 physicians certified).

Copies of the report can be obtained by writing to the Director, Office of Data Analysis and Management, BHPR, HRSA, Parklawn Building Room 8-41, 5600 Fishers Lane, Rockville, Md. 20857.

Reliability of Data on HMSAs and Inadequately Served Areas

The possibility of deleting only those physicians from *Schedule A* that would be employed in inadequately served areas was discussed and rejected in the preamble to the proposed rule. As indicated above, the distribution of physicians has improved significantly over the past few years and can be expected to continue to improve as the number of physicians in the United States is expected to exceed requirements in 1990 and 2000. Further, as indicated above, less than one-third of the physicians certified remain for direct patient care work in the shortage areas and specialties for which they were certified for any length of time. Thus, the labor certification program has not had significant effect in alleviating the shortage of physicians in the HMSAs or in the inadequately served areas.

Absence of National Shortage

The distribution of physicians has improved substantially since Congress in section 906 of the Health Professions Educational Assistance Act (HPEAA, Pub. L. 94-484) directed DOL and then Health, Education and Welfare (renamed Health and Human Services) to work together so that DOL could make equitable determinations with regard to applications for permanent labor certification by alien graduates of medical schools. The improved distribution has been reflected in a significant number of areas being deleted from the list of HMSAs published by HHS in the Federal Register. The distribution of physicians now such that the inclusion of shortage area physicians in the *Schedule A* labor certification program can no longer be justified. This is especially so in light of the fact that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified. It should also be noted, that the National Health Service Corps which is provided for by section 331 of the HPEAA continues to exist. Under section 331 of the HPEAA, medical school graduates, in return for scholarship aid to complete medical school, agreed to provide medical services in shortage areas for a specified length of time.

Further, as noted above, the basic labor certification process at 20 CFR 656.21 is not affected by these amendments. Employers can, as for any other occupation, file an individual labor certification on behalf of a physician (or surgeon). The reduction in recruitment provisions of the basic process at 20 CFR 656.21(i) of course, would, be available to employers desiring to employ physicians in shortage areas, if the employer satisfactorily documents that it has adequately tested the labor market with no success at least at the prevailing working conditions.

There are a number of occupations which are probably in short supply for one or more areas, although the national supply/demand factors are in approximate balance. However, physicians are the only occupational group on *Schedule A* which provides for certification by shortage area rather than on a national basis. It is preferable that employers meet the needs of shortage areas under the basic process rather than under *Schedule A*.

Projections That The Aggregate Number of Physicians Is Expected To Exceed Requirements

Discussed above under "Absence of National Labor Shortage."

Scarcity of Resources

The amount of work HHS has to do to administer its part of the *Schedule A* labor certification program is considerably larger than was expected at the time physicians were added to *Schedule A*. The HHS Has to respond to a large volume of general information requests received each year, and respond in writing to all written requests for shortage statements. This includes cases where the alien's intended area of employment is not a shortage area, as well as those cases where the alien's area of employment is a shortage area. This workload will no longer exist after physicians are removed from *Schedule A*.

On the other hand, DOL will probably experience some increase in its workload as it is expected that those employers who previously filed under *Schedule A* for physicians will in the future use the basic labor certification process. However, DOL will readily be able to accommodate any expected increase in applications within its current labor certification structure in its 10 regional offices, including existing staffing and procedures.

Issuance of Certification Contingent Upon Commitment of Alien Physician To Provide Medical Services in Shortage Area for a Specified Length of Time

Issuing contingent certifications was considered and rejected at the time DOL developed the regulations prior to this revision which placed physicians on *Schedule A*. DOL had serious reservations concerning its authority to issue certifications contingent upon conditions being fulfilled after the alien began the certified employment. Further, DOL does not have the resources to enforce such a contingency provision at this time even if questions regarding the authority of DOL to issue such a regulation were answered affirmatively.

Effect of Final Rule on Alien Medical Graduates Who Have Begun Schedule A Process

Those alien graduates of foreign medical schools who: (1) Are in possession of a statement signed by the appropriate RHA, HHS, required by 20 CFR 656.22(c)(2)(ii) (1986) of DOL's regulations as of the effective date of the final rule; and (2) file a visa petition accompanied by the statement of the RHA, HHS, and the documentation required by 20 CFR 656.20(d) (1986) within one year of the date the statement of the RHA, HHS, was signed shall be allowed to complete the *Schedule A* process. Those aliens who have requested but have not received a shortage statement by the effective date of the final rule shall not be allowed to complete the *Schedule A* process.

Regulatory Impact

The economic and other impact of this proposed rule is not so great as to make it a major rule requiring the development of a regulatory impact analysis. See Executive Order No. 12291, 3 CFR, 1981 comp., p. 127 (February 17, 1981).

The rule would not have a significant impact on a substantial number of small entities. It would only affect those few employers who petition for foreign medical graduates pursuant to DOL's *Schedule A* precertification list. For that reason at the time of publication of the proposed rule, the Department of Labor had certified to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act, that the rule would not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.203, "Certification for Immigration Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Unemployment, Wages.

Final Rule

Accordingly, Part 656 of Chapter V of Title 20, Code of Federal Regulations, is amended as follows:

PART 656—[AMENDED]

1. The authority citation for Part 656 is revised to read as follows, and the separate authority citations following the sections in Part 656 are removed:

Authority: 8 U.S.C. 1182(a)(14); 29 U.S.C. 49 *et seq.*

§ 656.10 [Amended]

2. Section 656.10 is amended by removing paragraphs (a)(2) and (a)(4)(ii) from *Schedule A*, and by redesignating the remaining paragraphs in § 656.10(a) as set forth in the following redesignation table:

Old section	New section
656.10(a)(3)	656.10(a)(2)
656.10(a)(4) introductory text	656.10(a)(3) introductory text
656.10(a)(4)(i)	656.10(a)(3)(i)
656.10(a)(4)(iii)	656.10(a)(3)(ii)

§ 656.22 [Amended]

3. Section 656.22 is amended by removing paragraph (c)(2) and redesignating paragraph (c)(3) as paragraph (c)(2).

§ 656.50 [Amended]

4. Section 656.50 is amended by removing the definitions for "Regional Health Administrator" and "Secretary of Health and Human Services (HHS)".

§ 656.61 [Removed]

5. Section 656.61 is removed.

Signed at Washington, DC, this 27th day of May, 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-12446 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-30-M

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Please Reply To: Steven M. Ladik
Gardere & Wynne
1601 Elm Street
Dallas, Texas 75201
(214) 999-4211

October 19, 1995

VIA FEDERAL EXPRESS
Mr. T. Alexander Aleinikoff
Executive Associate Commissioner for Programs
Immigration and Naturalization Service
425 Eye Street, NW, Room 7309
Washington, DC 20536

RE: Employment-Based Second Preference National Interest Petitions for Primary Care Physicians Working in Designated Health Shortage Areas

Dear Mr. Aleinikoff:

I am writing in response to the request of your office for more information regarding AILA's concerns about a growing trend in at least one Service Center (Vermont) to issue "kick backs" questioning whether the services of a primary care physician working in a health professional shortage area fall within the "national interest." After several years and hundreds of approvals of national interest waiver applications for these physicians, this Service Center has completely changed its policy in adjucating such petitions without any explanation for reversing longstanding precedent, both at the Service Centers and at the AAU. See two representative AAU decisions attached hereto at tab "1".

The common thread running through these returned or denied applications is language from the proposed national interest waiver regulations which indicate that filling a local labor shortage is not in the national interest. Attached at tab "2" are representative samples of these returns. When this approach is applied to the review of national interest waiver applications affecting our country's ability to provide doctors to American citizens in remote, rural locations, this is akin to saying that the border situation in Texas is a local law enforcement problem instead of a national immigration problem.

We would emphasize that prior to the submission of a national interest petition, generally at least three government agencies, including the INS itself, have determined the physician's work is in the public and/or national interest: the interested government agency (e.g. USDA, HUD, VA or ARC); the USIA; and the INS through the 212(e) waiver process. The Vermont Service Center is ignoring well-established precedent as well as INS direction to adjudicate these petitions under current decisional law and policy, which is to approve them.

Experts in AILA who specialize in this area of practice state that these decisions are being made without reliance on the most recent research data. Attached at tab "3" is a copy of a study conducted by the Sheps Center for Health Services Research which was issued in June 1995. To the best of our knowledge this is the most current and most authoritative statement on the subject and I would inquire whether the supervisory decision-makers at the Vermont Service Center reviewed this study before their unannounced departure from well-established policy.

Please also find enclosed at tab "4", a Fact Sheet on Rural Primary Care Providers issued on August 29, 1995 and a position statement prepared by AILA Board member and Co-Chairman the AILA Alien Physicians Task Force, George Newman, addressing the national implications of this phenomenon.

This change in policy is already having an adverse impact on the ability of health care providers to obtain qualified primary care physicians to serve in shortage areas. For this reason, your prompt review of the matter is appreciated so that the Service Center personnel can be made aware of the national scope of the problem and correct their current course which is in direct contradiction to the research data and INS written policy and decisions.

I look forward to hearing from you soon.

Sincerely yours,

Steven M. Ladik, Chairman
AILA-INS Liaison Committee

SML:dact
Enclosure
178859/2

J-1 Visa Waiver Meeting
December 15, 1995

I. Opening
Goal of meeting
Introductions

II. Questions to be answered

III. Perspectives on program by each agency

IV. Next steps

* Ark Delta → CCARC
→ asked if Boblitan/OMB-Att'd 12/15/95

Wash Jin / Patricia Gribben —

292/324 → 1423/1550

Basic data there

USIA
HNS
HHS
VSDA
HUD
ARC

local shortages ≠ national interest (waivers repeated in Senate version)

-holding reg →

Mike — open to legis ideas for next yr.

ARC — 13 states, 65; Fed/State, ec dev
- ltd to family practice - 1 ft employee
- Gov of state letter
- ratio

95 - 268; 94 217 95 - 156 to date; 350 now

Survey - 93% in right place

Need prog

Now a replacement visa

Stauber — 400 - 1st yr; 648 - 2nd yr - Under Sec Research, Ec, Economics
- Don't do ARC area
- Don't feel comfortable running prog

USIA says EC FMG good
USDA - finance rural hc facils

Choco - started by accident; also nervous - met w/ ARC
Attorneys persistent + high fees - fees pd by hosp
Would like to continue -
Declined a few; no enforcement, no survey; once asked USIA to revoke

Jo — Maldistribution; J-1 is a tool; have other progs

*

(INS - Serves immig goals?)
Choco — today

J-1 VISA WAIVER PROGRAM
DRAFT QUESTIONS

1. How well is J-1 visa program meeting the needs of underserved areas? What is the magnitude of the need for physicians in underserved areas? How many waivers are granted from the various sources, and how has the number of waivers changed over the past few years? What about "national interest visas" granted by INS?

Is it intern program?

2. Do physicians fulfill their requirements to serve in underserved areas? When that commitment is fulfilled, do they continue to work in underserved areas?

3. What kinds of providers do these physicians work for?

4. What other methods are there of ensuring an adequate supply of physicians to underserved areas (National Health Service Corps), and what role do they play? What is the larger physician market forces at work?

5. What proportion of physicians who enter on a J-1 visa ultimately get waivers? What proportion ever return to their country of origin? What proportion of waiver applications are rejected?

6. How should the new state-based waivers affect our policies? How do the 1,000 waivers potentially to be granted by that program compare to what is granted under the current agency waiver process?

7. What techniques do the various agencies use to ensure that our goals are met (i.e., area is underserved, physician is qualified, physician fulfills commitment)? Conditions include criteria for evaluating waiver application, features of contract, follow-up enforcement.

8. How do we assure that the various agencies use consistent and appropriate standards in granting waivers?

9. Is there adequate enforcement in this program? What would we recommend?

10. less paperwork

11. Has increase in visas helped ~~[illegible]~~ prob?

12. Attorneys' role

13. ~~waiver off~~ Limit to HUD-funded progs or EC's?
(How do you limit, if at all?)

1/31/96

J-1 Enforcement/Conrad renewal USIA – Colvin

Conrad – waiver revoked – Les Jin

Conf: 2 yrs till back
Visa expired

MM: 2 wks
– status conditional – not lifted till demonstrate that left status

Min wk reqs – 3 yrs., shortage area – HPSA's? – not VA
– annual contacts? certify
(– No objection sent? – for foreign)

make # FMGs count → VA can only do 1

HHS – Proportional – 1000 → 2000

HPSA's change →

71 year 2 – Conrad

* Jordan commission – what are they saying? turn off spigot – timing

Conrad – internally contradictory – FMG's don't count

AMA – opposes

* Send Q's to
Les Jin

(Regs nat'l int waivers – toughen)

~~Seattle project~~ – WA – Wash

J-1 Waiver Mtg
12/15/95

Choco Meza	- HUD	708-0030
[illegible]	- HHS	690-7694
→ BOB KNOUSS	- HHS/PHS	"
DAVID HOHMAN	- HHS	690-6174
[illegible]	HHS	690-6174
CHARLES HOWARD	ARC	884-7785
Jess White	ARC	884-7679
Guy Land	ARC	884-7674
Ruth Ann Azeredo	USDA	690-1978
Sophia Cox	INS	616 7437
alex GISSER	INS	514 2895
Michael Straus	INS	616 0745
DON CROCETTI	INS	514-2982
Tracey THORNTON	WHITE HOUSE	456-6493
MICHAEL MYERS	Sen. Kennedy (Immigration)	224-7878
Karl Stauber	USDA	720-5923
Irene Bueno	HHS	690-6786
Les JIN	USIA	619-4979
[illegible]	USIA	401-9805
STANLEY Colvin	USIA	619-6531
JAMES S GILLILAND - GC	USDA	720-3351
DONNA FORTUNA		

Need
Waivers over time - by type

~~USDA~~ Analyses - Dick Soper
Policy - Barbara Meister ↙

HHS - Jo, or Knouss/Hohman, Irene
USDA - Gilliland or Stauber or Meister
HUD - Choco
INS - Straus
USIA - Jin + Colvin

(ARC - Chas Howard)
(Tracey?)

Regs template

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 INDEPENDENCE AVE., SW
WASHINGTON, D.C. 20201

PHONE: (202) 690-6786 **FAX: (202) 690-6351**

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION

CONGRESSIONAL LIAISON OFFICE
ROOM 406G HUMPHREY BUILDING

TO: Diana Fortuna, WH, DPC 456-7028
Tracey Thornton, WH, Legislation 456-2664
Joyce Chaing, INS 514-1117
Les Jin, USIA 619-4573
Lyman Van Nostrand, HHS/HRSA 301-443-9270

FROM: Irene B. Bueno

DATE: 4/15/96

FAX NO: _____

TOTAL PAGES
INCLUDING COVER): 7

Attached is the latest draft of the Conrad (J-1) amendment. Senator Conrad plans to offer this to S. 1664, the Illegal Immigration bill.

Please call me if you have any questions 202-690-6786. Thank you.

Senator Kent Conrad

724 Hart
Washington, DC 20510
202-224-7966
Fax: 202-224-7776

FAX TRANSMISSION COVER SHEET

Date: April 15, 1996

To: Irene Bueno

Fax: 690-6351

Re: Conrad 20 program

Sender: Steve Super

YOU SHOULD RECEIVE 6 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 202-224-7966.

Here's the revised amendment. Give me a call with any questions or comments at 4-7966.

O:\RYN\RYN96.304 S.L.C.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To extend State requested waivers of the foreign country residence requirement with respect to international medical graduates, and for other purposes.

IN THE SENATE OF THE UNITED STATES—104th Cong., 2d Sess.

S. 1664

To amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CONRAD

Viz:

At the appropriate place in the bill, insert the following:

SEC. ___. WAIVER OF FOREIGN COUNTRY RESIDENCE REQUIREMENT WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) EXTENSION OF WAIVER PROGRAM.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) is amended by striking "June 1, 1996" and inserting "June 1, 2002".

(b) CONDITIONS ON FEDERALLY REQUESTED WAIVERS.—Section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1184(e)) is amended by inserting after "except that in the case of a waiver requested by a State Department of Public Health or its equivalent" the following: "or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii)".

(c) RESTRICTIONS ON FEDERALLY REQUESTED WAIVERS.—Section 214(k) (8 U.S.C. 1184(k)) is amended to read as follows:

"(k)(1) In the case of a request by an interested State agency or by an interested United States Government agency for a waiver of the two-year foreign residence requirement under section 212(e) with respect to an alien described in clause (iii) of that section, the Attorney General shall not grant such waiver unless—

"(A) in the case of an alien who is otherwise contractually obligated to return to a foreign coun-

try, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver; and

"(B)(i) in the case of a request by an interested State agency—

"(I) the alien demonstrates a bona fide offer of full-time employment, agrees to begin employment with the health facility or organization named in the waiver application within 90 days of receiving such waiver, and agrees to work for a total of not less than three years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien would justify a lesser period of time); and

"(II) the alien's employment continues to benefit the public interest; or

"(ii) in the case of a request by an interested United States Government agency—

"(I) the alien demonstrates a bona fide offer of full-time employment that has been found to be in the public interest, agrees to begin employment with the health facility or organization named in the waiver application

within 90 days of receiving such waiver, and agrees to work for a total of not less than three years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien would justify a lesser period of time); and

"(II) the alien's employment continues to benefit the public interest;

"(C) in the case of a request by an interested State agency, the alien agrees to practice medicine in accordance with paragraph (2) for a total of not less than three years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

"(D) in the case of a request by an interested State agency, the grant of such a waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 20.

"(2)(A) Notwithstanding section 248(2) the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b).

"(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the

○

terms of the contract with the health facility or organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States.

"(3) Notwithstanding any other provisions of this subsection, the two-year foreign residence requirement under section 212(e) shall apply with respect to an alien in clause (iii) of that section who has not otherwise been accorded status under section 101(a)(27)(H)—

"(A) in the case of a request by an interested State agency, if at any time the alien practices medicine in an area other than an area described in paragraph (1)(C); and

"(B) in the case of a request by an interested United States Government agency, if at any time the alien engages in employment for a health facility or organization not named in the waiver application.".

Bracy Williams & Co

601 13th Street NW Suite 510-South
Washington, DC 20005
202 783-5588
Fax: 202 783-5595

FAX TRANSMISSION COVER SHEET

Date: August 27, 1996

To: Ms. Diana Fatua

Re:

Sender: Susan Williams

YOU SHOULD RECEIVE [3] PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 202 783-5588.

thank you for your help

Bracy Williams & Company

August 27, 1996

TO: Ms. Diana Fortuna,
Senior Policy Analyst, Domestic Policy Council

FR: Susan J. Williams

RE: Moratorium on HUD's J-1 waiver policy

Attached please find a notice that has been sent to attorney's applying for J-1 visa waivers from HUD. You will note that only a four day notice was given, prior to HUD implementing a moratorium on the waiver process.

As you know, the goal of the inter-agency task force was to develop and recommend guidelines to establish uniformity among the agencies. Based on the task force recommendations the United States Information Agency (USIA) has promulgated a rule to be published within the next two days. The comment period will be 60 days and shortly after a final rule will be published.

It would appear with the recent action of HUD, that a decision has been made to ignore the recommendations of the inter-agency task force and disregard the final rule of USIA. It would be helpful if HUD would delay all activity and continue issuance of the waivers until final recommendations can be implemented.

In advance, thank you for your help with this matter.

CC: Mr. Greg Simon
Chief Domestic Policy Adviser for the Vice President

Government and Public Affairs Consultants

601 Thirteenth Street, N.W. Suite 510 South Washington, DC 20005 (202) 783-5588 FAX (202) 783-5595

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

OFFICE OF THE ASSISTANT SECRETARY FOR
CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

MEMORANDUM TO: J-1 Waiver Interested Parties

FROM: Paulette Porter, Deputy Assistant Secretary
Office of Intergovernmental Relations

DATE: August 26, 1996

SUBJECT: Moratorium on HUD's J-1 Waiver Policy

This is to inform you that the Department's J-1 waiver request policy is currently under review and that previous memoranda on this policy is no longer in force. Please be advised that any J-1 waiver applications received after August 30, 1996 will be returned without action.

In this regard, we recognize that your client's J-1 waiver application request was submitted prior to the above date, therefore, your client's application will be reviewed and you will be notified of the determination.

It is anticipated that this policy review will continue through the end of the year. Upon completion of this review, this Office will advise you of the future status of the policy.

Steve - FYI, return this to me. Diana

Bracy Williams & Co

601 13th Street NW Suite 510-South
Washington, DC 20005
202 783-5588
Fax: 202 783-5595

FAX TRANSMISSION COVER SHEET

Date: ~~Sept~~ 4, 1996

To: Ms. Dana Fatua

Re:

Sender: Susan Williams

YOU SHOULD RECEIVE [14] PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 202 783-5588.

Diana,

As follow-up to our previous correspondence and conversations. A copy of the USTA proposed rule. Speak with you soon.

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would amend existing regulations governing the Agency's internal Exchange Visitor Waiver Review Board and requests for waiver of the two-year home-country physical presence requirement made by interested United States Government agencies on behalf of an exchange visitor. Changes in the regulations providing for the Agency's Waiver Review Board are proposed to reconcile them with Agency policy and to control the number of cases mandatorily referred to the Board. The Agency expects that the number of cases afforded Board review will be reduced. Changes to the regulations governing waiver requests by interested United States Government agencies are believed necessary to provide for uniform administration of such requests. The Agency anticipates that the proposed changes will increase administrative efficiency and speed of response and also ensure that multiple interested U.S. Government agency (or state) waiver requests on behalf of an individual exchange visitor are not processed.

DATES: Comments regarding this proposed rule will be accepted until (insert date 60 days after date of publication.)

ADDRESSES: Comments may be mailed to Rulemaking Clerk, Room 700, Office of General Counsel, United States Information Agency, 301

4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; Telephone, (202) 619-6829.

SUPPLEMENTARY INFORMATION: Under the aegis of the Exchange Visitor Program, some 175,000 foreign nationals come to this country to work, study, or train in the United States annually. As part of the public diplomacy efforts of the United States Government, these foreign nationals enter the United States as participants in the Exchange Visitor Program which seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Accordingly, many exchange visitors entering the United States are subject to a statutory provision, set forth at 8 U.S.C. 1182(e) (§212(e) of the Immigration and Nationality Act), which requires that they return to their home country for a period of two years to share with their countrymen the knowledge, experience and impressions gained during their sojourn in the United States.

Foreign nationals entering the United States as Exchange Visitor Program participants are subject to the return home requirement if they: (i) received U.S. or foreign government financing for any part of their studies or training in the U.S.; (ii) studied or trained in a field deemed of importance to their home government and such field is on the "skills list" maintained by the Agency in consultation with foreign governments; or,

(iii) entered the U.S. to pursue graduate medical education or training. An exchange visitor subject to this requirement is not eligible for an H or L visa, or legal permanent resident status until the return-home requirement is fulfilled or waived.

If subject to the two-year return-home requirement, an exchange visitor may seek a waiver of such requirement. The bases upon which a waiver may be granted are: (i) a no objection statement from the visitor's home government; (ii) exceptional hardship to the visitor's U.S. citizen (or legal permanent resident) spouse or child; (iii) a request, on the visitor's behalf, by an interested United States Government agency; (iv) a reasonable fear of persecution if the visitor were to return to his or her home country; and, (v) a request by a state on behalf of an exchange visitor who has pursued graduate medical education or training in the U.S.

INTERESTED U.S. GOVERNMENT AGENCY WAIVER REQUESTS

The Agency's Exchange Visitor Program Services, Waiver Review Branch, is responsible for processing waiver applications. Last year, this branch received approximately 6,000 waiver applications, approximately 95 percent of which were based upon either a no objection statement from the visitor's home government or a request from an interested government agency. Over the past four years, the number of interested government agency requests submitted to the Agency has increased approximately five-fold to some 1700 annually for calendar year 1995.

The vast majority of interested government agency requests processed by the Agency involve foreign medical graduates who entered the United States to pursue graduate medical education or training. At present, the Department of Veterans Affairs, the Department of Housing and Urban Development, the Department of Agriculture, and the Appalachian Regional Commission will act as an interested government agency on behalf of a foreign medical graduate seeking a waiver of his or her two-year home-country physical presence requirement. In return for an agency request, the foreign medical graduate must agree to practice patient care in a geographic area designated by the Secretary of Health and Human Services as either a Primary Care Health Professional Shortage Area ("HPSA"), or Medically Underserved Area ("MUA"), or psychiatric care in a Mental Health Professional Shortage Area or to work at a facility operated by the Department of Veterans Affairs.

For years, the Department of Veterans Affairs and the Appalachian Regional Commission were the only agencies making requests for waivers on behalf of these foreign medical graduates, but in the past three years the Department of Agriculture and the Department of Housing and Urban Development also have begun to act on their behalf. With the entry into the waiver process of these two additional agencies, inconsistency in the administration of waiver requests among the different agencies has created a degree of confusion in the administrative process. Further, foreign medical graduates have also pursued

concurrent waiver requests with multiple agencies. These concurrent requests reflect conflicting commitments or are duplicative and are therefore inappropriate, waste limited administrative staff resources, and do not further the requesting agency's mission and policy objectives. Further, such concurrent requests are unfair to the communities named in the unapproved applications given the considerable expenditure of resources that local communities devote to the waiver process. Accordingly, the Agency proposes to amend §514.44(c) to both provide uniformity to this process and prevent the filing of concurrent waiver requests.

WAIVER REVIEW BOARD

An increase in the number of interested government agency and "no objection" waiver requests has also placed an increased burden on the Agency's internal Waiver Review Board. Many of these waiver requests involve exchange visitors who have received government funding for part or all of their exchange activities. Current regulations require that such cases be referred to the Waiver Review Board if the government sponsor that has provided funding objects to the exchange visitor's receiving a waiver. Other circumstances that require automatic referral to the Waiver Review Board are set forth in 22 CFR 514.44(g).

Given the increased number of waiver requests and the questionable value to program goals added by the Waiver Review Board process in certain types of mandatorily-referred cases, the Agency has identified a need to streamline the waiver review

process and to reduce significantly the number of waiver applications routinely or mandatorily referred to the Waiver Review Board for decision. Further, organizational and staffing changes within the Agency's Exchange Visitor Program Services unit have resulted in the abolishment of the position of Director, Exchange Visitor Program Services and an alteration of the duties of the Waiver Branch Chief. The loss of the Director position has, in turn, rendered certain procedures set forth in §514.44(g)&(h) no longer germane. Accordingly, the Agency proposes new provisions to reflect the administrative changes in the Waiver Review Branch and to adjust the existing requirement of automatic referral to the Board of certain cases.

COMMENT

The Agency invites comments regarding this proposed rule notwithstanding the fact that it is under no legal requirement to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedures Act, 5 U.S.C. §553(a)(1), (1989) specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

The Agency extends a 60-day public comment period. In response to suggestions and requests from immigration practioners, the Agency is also requesting public comment on certain matters related to this proposed rule but not set forth therein. Specifically, the Agency welcomes comment regarding the need for and merits of non-compete and punitive damages clauses

that are set forth in contracts between local health facilities and foreign medical graduates receiving a waiver in order to work at such facility. These contractual clauses impose limitations upon the geographical area in which waiver recipients may practice medicine at the end of the employment contract and also penalize waiver recipients who fail to complete their contractual obligations by providing the health care facility the opportunity to pursue significant monetary damages against the waiver recipient. It is the Agency's belief that some, but not all, of these contracts contain such provisions and the Agency is accordingly interested in learning whether such provisions should be uniformly mandated. Further, based upon suggestions from the private bar, the Agency is interested in comment that discusses the need for and merits of an internal audit procedure for use by federal agencies or departments making interested government agency waiver requests. The Agency believes that such internal audit procedures could safeguard the integrity of the waiver request process.

In accordance with 5 U.S.C. § 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of Section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: 8/29/96

R. Wallace Stuart

Acting General Counsel

Accordingly, 22 CFR Part 514 is amended as follows:

Part 514--EXCHANGE VISITOR PROGRAM

1. The authority citation for Part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431-1442, 2451-2460: Reorganization Plan No 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048 43 FR 13361, 3 CFR, 1978 Comp. p 168; USIA Delegation Order No, 85-5 (50 FR 27393).

2. Part 514 is amended by removing paragraph 514.44(h) and revising paragraphs 514.44(c) and 514.44(g) to read as follows:

§ 514.44 Two-year home-country physical presence requirement.

* * * * *

(c) Requests for waiver made by an interested United States Government Agency.

(1) A United States Government agency may request a waiver of the two-year home-country physical presence requirement on behalf of an exchange visitor if such exchange visitor is actively and substantially involved in a program or activity

sponsored by or of interest to such agency.

(2) A United States Government agency requesting a waiver shall submit its request in writing and fully explain why the grant of such waiver request would be in the public interest and the detrimental effect that would result to the program or activity of interest to the requesting agency if the exchange visitor is unable to continue his or her involvement with the program or activity.

(3) A request by a United States Government agency shall be signed by the head of the agency, or his or her designee, and shall include copies of all IAP-66 forms issued to the exchange visitor, his or her current address, and his or her country of nationality or last legal permanent residence.

(4) A request by a United States Government agency, excepting the Department of Veterans Affairs, on behalf of an exchange visitor who is a foreign medical graduate who entered the United States to pursue graduate medical education or training, and who is willing to provide primary patient care in a designated Primary Medical Care Health Professional Shortage Area, or a Medically Underserved Area, or psychiatric care in a Mental Health Professional Shortage Area, shall, in addition to the requirements set forth in §514.44 (c)(2)&(3), include:

(i) A copy of the employment contract between the foreign medical graduate and the health care facility at which he or she will be employed. Such contract shall specify a term of employment of not less than three years and that the foreign

medical graduate is to be employed by the facility for the purpose of providing primary medical care in a designated Primary Medical Care Health Professional Shortage Area or designated Medically Underserved Area ("MUA") or psychiatric care in a designated Mental Health Professional Shortage Area.

(ii) A statement, signed and dated by the head of the health care facility at which the foreign medical graduate will be employed, that the facility is located in an area designated by the Secretary of Health and Human services as a Medically Underserved Area or Primary Medical Care Health Professional Shortage Area or Mental Health Professional Shortage Area. The statement shall also list the Health Professional Shortage Area or Medically Underserved Area identifier number assigned to the area by the Secretary of Health and Human Services.

(iii) A statement, signed and dated by the foreign medical graduate exchange visitor that shall read as follows:
I, _____ (name of exchange visitor) hereby declare and certify, under penalty of the provisions of 18 U.S.C. §1101, that: 1) I have sought or obtained the cooperation of _____ (enter name of United States Government agency which will submit/is submitting an IGA request on behalf of the Exchange Visitor to obtain a waiver of the 2-year home residence requirement); and 2) I do not now have pending nor will I submit during the pendency of this request, another request to any United States Government department or agency or any State Department of Public Health, or equivalent, to act on my behalf

in any matter relating to a waiver of my two-year home-country physical presence requirement.

(iv) Evidence that unsuccessful efforts have been made to recruit an American physician for the position to be filled by the exchange visitor.

(5) Except as set forth in §514.44(g)(4), infra, the recommendation of the Waiver Review Branch shall constitute the recommendation of the Agency and such recommendation shall be forwarded to the Commissioner.

* * * * *

(g) The Exchange Visitor Waiver Review Board.

(1) The Exchange Visitor Waiver Review Board ("Board") shall consist of the following Agency officers:

(i) The Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee;

(ii) The Director of the geographic area office responsible for the geographical area of the waiver applicant, or his or her designee;

(iii) The Director of the Office of Congressional and Intergovernmental Affairs, or his or her designee;

(iv) The Director of the Office of Academic Exchange, or his or her designee; and

(v) The Director of the Office of Research, or his or her designee.

(2) A person who has had substantial prior involvement in a particular case referred to the Board may not be appointed to

serve on the Board for that particular case unless the General Counsel determines that the individual's inclusion on the Board is otherwise necessary or practicably unavoidable.

(3) The Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, shall serve as Board Chairman. No designee under this sub-section (3) shall serve for more than 2 years..

(4) Cases will be referred to the Board at the discretion of the Branch Chief, Waiver Review Branch, of the Agency's office of Exchange Visitor Program Services. The Waiver Review Branch shall prepare a summary of the particular case referred and forward it along with a copy of the relevant file to the Board Chairman. The Chief, Waiver Review Branch, or his or her designee, may, at the Chairman's discretion, appear and present facts related to the case but shall not participate in Board deliberations.

(5) The Chairman of the Board shall be responsible for convening the Board and distributing all necessary information to its members. Upon being convened, the Board shall review the case file and weigh the request against the program, policy, and foreign relations aspects of the case.

(6) At the conclusion of its review of the case, the Board shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Board shall constitute the recommendation of the Board. Such recommendation shall be promptly transmitted by the Chairman

to the Branch Chief, Waiver Review Branch.

(7) The recommendation of the Board in any case reviewed by it shall constitute the recommendation of the Agency and such recommendation shall be forwarded to the Commissioner by the Branch Chief, Waiver Review Branch.

Bracy Williams & Co

601 13th Street NW Suite 510-South
Washington, DC 20005
202 783-5588
Fax: 202 783-5595

FAX TRANSMISSION COVER SHEET

Date: 5/13

To: Ms. Diane Fortuna

Fax:

Re:

Sender: Brian Williams

YOU SHOULD RECEIVE [4] PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 202 783-5588.

Bracy Williams & Company

May 13, 1996

Ms. Diane Fortuna, Senior Policy Analyst
Domestic Policy Council, Office of Policy Development
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Diane:

The U.S. Department of Housing and Urban Development (HUD) is in the process of reviewing eligibility criteria for "Medically underserved areas" (MUA's) located in the Appalachian Regional Commission (ARC). HUD is expected to issue a memorandum of understanding within the next few weeks.

The goal of the Federal Agencies recommending J-1 waivers should be to implement uniform rules. Implementing a separate eligibility criteria for facilities located in the ARC region, within the same agency, is not consistent with this goal and will create additional confusion.

I have enclosed for your information suggested changes to the current statute and an analysis of the effect that the amendment introduced by Senator Conrad (D-ND) will have on the program. I look forward to discussing this issue with you.

Sincerely,

Susan J. Williams

Government and Public Affairs Consultants
601 Thirteenth Street, N.W. Suite 510 South Washington, DC 20005 (202) 783-5588 FAX (202) 783-5595

BracyWilliams & Company

A. Proposed Uniform rules for Federal Agencies Recommending J-1 Waivers

1. The doctor must commit to a minimum of three years of service.

2. Providers which wish to employ J-1 doctors must demonstrate the unavailability of qualified U.S. doctors by recruiting for the latter within six months of an application for a J-1 waiver.

3. The J-1 doctor must perform full-time primary medical care in a facility located in a Health Professional Shortage Area (HPSA), a medically underserved area (MUA) or a state-designated shortage area; for a medically underserved population; or in a facility, the majority of whose patients reside in a HPSA, MUA or state-designated shortage area.

4. To ensure compliance with the agency's rules:

a. Annual reporting by the provider and J-1 doctor to the recommending agency should be required.

b. Unless extenuating circumstances are established (as Conrad permits), INS shall revoke the waivers of doctors who fail to carry out their commitments.

c. Where the doctors are approved for permanent residence (green cards) during the three year period of service, that approval shall be conditioned upon the carrying out of the commitments. Such conditional green cards would become permanent only upon a showing that the commitments have been fulfilled. This powerful safeguard, which is already found in the Immigration and Nationality Act where U.S. citizen spouses sponsor spouses for green cards shortly after the marriage and in one million dollar immigrant investor cases, would require a statutory change.

d. The Department of Housing and Urban Development (HUD) and the Appalachian Regional Commission (ARC) require that the contract between the doctor and provider contain a $250,000 liquidated damages clause enforceable against the J-1 doctor who reneges upon the three year commitment, except that the doctor may finish the three year commitment with another provider in a HPSA, MUA or other shortage area. You should be aware that some commentators believe that this clause is unenforceable.

B. Proposed Changes for a Renewal of Conrad

The Conrad 20 law (§220 of the Immigration and Nationality Technical Corrections Act of 1994) only applies to aliens who entered the U.S. on J visas prior to June 1, 1996. A renewal of Conrad is already included in the Kennedy-Kassebaum bill recently passed by the Senate (Cong. Rec. S3597-3598 (April 18, 1996)). The existing law and this proposed renewal both contain a number of significant defects which should be modified:

1. The requirement that the J-1 doctor work on the temporary professional H-1B visa for the entire three years before the doctor can apply for permanent residence is a major reason for the gross under-utilization of the program; far better ways of inducing compliance with the three year commitment are described above at A4a-d. Moreover, precluding the doctor from being sponsored by the provider for a permanent position during the three year period is counterproductive to the goal of persuading the doctor to remain in the shortage area permanently.

2. The rule that the doctor must commence employment with the provider within 90 days of receiving the waiver should be changed to 180 days--the standard requirement for the federal agencies recommending J-1 waivers. The shorter period is unworkable because the resident who wisely commences the process during the last year of residency cannot anticipate with precision the length of time needed to secure both the J-1 waiver and the visa authorizing work; if the approvals occur too quickly, the doctor could be required to leave the residency program prematurely; if they take too long, the doctor may be forced to go out of legal status.

3. The cap of 20 waivers per state can be far too low for a large state. The number 20 should be raised or, at the least, unused waivers in year one in one state should be available for use by other states in year two.

4. Proposed new section 214(k)(3)(B) (see S3597, April 18, 1996) seems to nullify the J-1 waivers secured through federal agency recommendations where the doctor does not work in the same shortage facility for the entire three year period. Instead of this wooden rule, the doctor should be penalized only if the termination of employment is within the doctor's control, and the doctor should be permitted to complete the three year obligation at an alternative location as long as the new facility services a HPSA, MUA or other shortage area--as ARC and HUD already permit the doctor to do.

Bracy Williams & Co

601 13th Street NW Suite 510-South
Washington, DC 20005
202 783-5588
Fax: 202 783-5595

FAX TRANSMISSION COVER SHEET

Date: 6/25/96

To: DIANE FONTUNA

Re:

Sender: SUSAN WILLIAMS

YOU SHOULD RECEIVE [6] PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 202 783-5588.

BracyWilliams & Company

June 24, 1996

TO: Ms. Diane Fortuna

FR: Ms. Susan J. Williams

RE: Comments inter-agency task force draft

After careful study of the draft recommendations proposed by the inter-agency task force, we would like the following comments to be taken into consideration before a final rule is written. If I can provide additional information, please do not hesitate to contact me.

Government and Public Affairs Consultants

601 Thirteenth Street, N.W. Suite 510 South Washington, DC 20005 (202) 783-5588 FAX (202) 783-5595

1221 Nicollet Mall
Suite 225
Minneapolis, MN 55403

Phone: 612.339.0517
Fax 1 612.349.6059

June 24, 1996

Rule Making Clerk
Office of General Counsel
Room 700
United States Information Agency
301 4th Street SW
Washington, DC 20547

COMMENT ON PROPOSED INTERIM RULE

This letter is written as a comment to the Interim Rule as proposed by the United States Information Agency (USIA) which would amend 22 CFR Part 514, dealing with 212(e) waivers based upon recommendations issued by interested U.S. government agencies.

This comment is written on behalf of the National Health Care Access Coalition, which is an informal association of health care providers and other parties interested in initiatives intended to expand access to physician services, particularly for patients living in designated medically underserved communities. It is our general opinion that the J-1 waiver program is one useful component to achieving this objective.

At the outset, we are supportive of the underlying values expressed by this Interim Rule, which are:

1) A general desire to create a sense of uniformity within Interested Government Agencies (IGAs) in facilitating the relocation of International Medical Graduates (IMGs) to medically underserved areas; and

2) A recognition that there continues to be the high measure of geographic and functional (i.e., primary care) maldistribution within the physician workforce which has left many communities medically underserved, thereby undercutting community stability, local economic development, and essential healthcare coverage.

We recognize that there is a growing body of literature which has identified an emerging over-supply of physicians on a macro level. However, there is an unquestioned serious national concern with the maldistribution patterns of physicians which have resulted in a high level of medical underservice to many communities, particularly in rural and inner-city practice areas. In addition, there has been traditional emphasis within the Graduate Medical Education (GME) system in the training of medical specialists, which has resulted in a nationwide short-fall of primary care physicians able to offer essential, broad-based medical services. Certainly, the emergence of managed care has opened up substantially new practice opportunities to primary care physicians in urban and suburban practice settings, which in turn has resulted in increased difficulties experienced in many designated medically underserved communities in the recruitment and retention of primary healthcare providers.

According to studies conducted by the Office of Shortage Designation of the Department of Health and Human Services, at present, nearly 50 million individuals - or 17% of the U.S. population - live in geographic areas which have been designated as medically underserved, and this figure continues to rise rather than fall. Currently, over 44% of the rural population of the United States - a figure of roughly 23 million individuals - live in federally designated physician shortage areas. Within metropolitan areas, roughly 11.5% of the population - or just over 26 million individuals - live in federally designated physician shortage areas. At present, 149 counties lack entirely even a single primary care physician to serve its residents. While estimates vary, it is estimated that the U.S. will need an annual infusion of up to 20,000 primary care physicians over the next few years in order to reach both a balance in the primary/specialty care mix and a greater level of physician coverage in medically underserved areas.

We believe that federal efforts to promote the relocation and retention of IMGs to medically underserved areas could be one useful initiative which would be consistent with other federal efforts to rectify this national problem of the geographic maldistribution of physicians. There is, in fact, a growing body of literature which has identified that IMGs tend to fulfill certain "gap-filling" functions in that they tend to populate practice settings which would otherwise go unfilled by U.S. physicians. In particular, IMGs appear to exhibit the following characteristics:

1) a greater tendency to settle in designated medically underserved communities;

2) a steadily growing tendency to practice in the primary care medical disciplines;

3) a higher tendency to be employed in hospital-based medical service which provides the greatest level of coverage to the community as opposed to group practice which can be more restrictive in practice coverage; and

4) a disproportionately higher level of service to Medicare/Medicaid patients than U.S. Medical School graduates.

Although the explanation of this phenomena is certainly open to question, it appears as though IMGs do not have a broad range of factors in making employment choices, but must instead accept open employment positions, as are available within designated medically underserved areas. In this sense, the J-1 waiver program has been an important instrument in promoting physician placement and retention patterns which are consistent with overall national objectives of expanded access to physicians, by quality of physician services and cost containment.

The proposed Interim Rule would require that the health care facility by physically located in either a designated Health Professional Shortage Area (HPSA) or a designated Medically Underserved Area (MUA), or its equivalent for psychiatric care facilities.

We believe this reliance upon the HPSA - MUA designation is, in general, appropriate, in that these are the two primary federal schemes for identifying medically underserved communities for a broad range of physician assistance programs. In addition, this physical location standard creates a "bright line" test which appears to be a major objective of the Agency and promoting a sense of predictability, administrative streamlining, and internal discipline into the IGA waiver programs.

However, this sole reliance upon the physical location of the facility does not in reality achieve the true objectives of the waiver program, which are to expand access to physicians by the most vulnerable elements of society - i.e., the indigent and those living in medically underserved areas. For example, under the standard appearing in the Interim Rule, neither of the principal hospitals providing service to the indigent, medically underserved in New York City or Washington, D.C., would qualify for J-1 waiver consideration, not because they have not exhibited a high level of demonstrated commitment to the urban

poor and disadvantaged, but simply owing to the fortuity that they are not physically located in a HPSA or MUA. We strongly believe that such a policy would not be in furtherance of valid federal concerns.

Accordingly, we would like to suggest that the Interim Rule be amended to provide health care facilities with standing to successfully request J-1 waivers in the following instances:

1. if at least 30% of the patients provided with primary care services by the requesting facility live in geographic areas which have received designation as a HPSA or MUA;

2. if at least 30% of the primary care patients are covered under the Medicare or Medicaid programs, or another federally underwritten public aid program for precisely those healthcare services which have been provided by the requesting facility;

3. pursuant to a letter from the Governor or his/her designee which highlights the presence of special, local circumstances which would justify the issuance of a waiver as a matter of national interest in rectifying the unavailability of primary care physicians to an underserved community. It is envisioned that the designated representative would be an official within the State's Department of Health.

4. in the event that the facility's service area has submitted and has pending before the Office of Primary Shortage Designation of the Department of Health and Human Services an application for designation under either Section 330 or Section 332 of the Public Health Service Act. In such instances, the facility would need to show that the application for shortage designation had been filed and is under review and that there is a high likelihood of a favorable outcome to the deliberations. Given the fact that an application for shortage designation requires state clearance, we believe that the eligibility of a facility in this situation would be justified and would simply eliminate an admittedly small number of circumstances in which there is a legitimate shortage situation which are under federal administrative review.

We believe that the above-cited enlargements of waiver eligibility are wholly consistent with the J-1 waiver program and will afford USIA and the relevant government agencies a bright-line, administratively convenient standard in which to review waiver applications in a prompt, consistent, and efficient manner.

There is one other issue within the Interim Rule which should be amended in order to more effectively serve legitimate federal interests. The Interim Rule would require a beneficiary to declare that he/she has not requested a waiver recommendation from any other U.S. Government Agency.

We recognize the Agency's desire to safeguard against multiple, simultaneously filed, and pending waiver requests in order to avoid inconsistent results, conserve administrative resources, and to maximize an IGA's expectation that a physician will indeed take up the underlying practice opportunity.

However, the Interim Rule as now written would disqualify a physician who has either been denied an IGA waiver or who has experienced markedly different circumstances from later seeking a waiver recommendation from a different agency. We believe that such a policy would create an unfair penalty to physicians in a situation such as: the originally requested agency ceases its waiver program; the specific employment opportunity does not fall within the interests of the originally requested IGA; the healthcare facility ceases operation so as to require the physician to seek another IGA for J-1 waiver purposes; etc.

Therefore, we would respectfully suggest that the language of the statement now appearing at Section 514.44 (c)(4)(iii) be amended as follows:

I, _____ (name of exchange visitor) hereby declare and certify, under penalty of the provisions of 18 U.S.C. 1101, that there is no pending waiver application which is currently under review by any United States Government department or agency, or any State Department of Public health, or equivalent, other than _____ (insert name of United States Government Agency) to act on my behalf in any matter relating to a waiver of my two-year home-country physical presence requirement.

In the event that I, _____ (name of prospective waiver beneficiary) have previously received an approved waiver based upon a recommendation from an interested government agency, I understand that a second such waiver recommendation can only be obtained in the event that I have ceased working at the facility which originally requested my waiver for justifiable reasons beyond my control, as outlined fully in supplementary written material which is provided under penalty of the provisions of 18 U.S.C. 1101.

We appreciate your review of these comments. Again, we believe that these comments are fully consistent with the underlying interests of the Agency in the J-1 waiver program and will enhance administrative efficiency and predictability. Please let me know if you have any further questions on matters raised in this comment.

Cordially,

ROBERT D. ARONSON

Bracy Williams & Co

601 13th Street NW Suite 510-South
Washington, DC 20005
202 783-5588
Fax: 202 783-5595

FAX TRANSMISSION COVER SHEET

Date: July 11, 1996

To:

Re:

Sender:

YOU SHOULD RECEIVE [2] PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 202 783-5588.

Please replace with first letter sent. thank you

Bracy Williams & Company

July 11, 1996

Ms. Diana Fortuna, Senior Policy Analyst
Domestic Policy Council, Office of Policy Development
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Diana,

We have scheduled an appointment with Ms. Choco Meza, Deputy Assistant Secretary for Intergovernmental Relations at HUD, for July 16, 1996. The purpose of the appointment is to discuss recent actions at HUD with regard to J-1 visa waivers. I have enclosed a fact sheet that outlines the impact that HUD's action are having on health care facilities and the recruitment of Doctors.

As you know, we remain concerned that the agencies will mandate that the health care facility be physically located in an MUA or HPSA designated area and are hopeful that the inter-agency task force report will clarify this point.

Thank you for all your help. Please call if I can provide additional information.

Sincerely,

Susan J. Williams

Government and Public Affairs Consultants

601 Thirteenth Street, N.W. Suite 510 South Washington, DC 20005 (202) 783-5588 FAX (202) 783-5595

DIFFICULTIES EXPERIENCED IN THE HUD WAIVER PROGRAM

In general, the HUD waiver program has been quite successful and useful. However, we have experienced some difficulties, particularly with one examiner. What follows is a list of the problem areas which we have encountered.

1. Recruitment Efforts

This is the single biggest problem experienced thus far. We have had several cases in which the examiner has required that the employer have recruited/advertised over a six month period prior to the filing of the waiver application + that ads must have been placed at least 120 days prior to the date on which the contract was signed.

There are several problems here: 1) while I am not taking issue with the need to recruit in order to show the unavailability of U.S. candidates, there is no sense or justification for this 6 month/120 rule (example: the DOL has recognizes that a 30 day period on the basis of an ad in a nationally circulated journal is sufficient for a professional position); 2) the six month requirement as interpreted by one adjudicator does not recognize recruitment efforts other than printed advertisements; 3) there is no basis for the requirement that recruitment occur more than 120 days prior to the conclusion of the contract; In fact, the HUD Guidelines specifically refer only to a six month period prior to the submission of the waiver.

2. Contractual Language

The policy objective of the HUD program is clear - i.e., to enhance access to physicians within medically underserved communities. The physician's requirements are stipulated in the contract and in the affidavit. We have had several recent requests to amend the contract in order to specify points already included in the affidavit. This seems to be an unnecessary inconvenience since the physician has already stated his/her responsibilities in the affidavit.

3. Recommendation Letters

In one recent case, we were required to update the physician's reference letters, which had been written about one year ago by his residency advisors. These letters, by the way, were rather detailed and complete regarding the physician's medical skills. The HUD Guidelines do not disqualify reference letters written in the past, and such letters in many instances form the best contemporary evidence regarding a physician's medical competence.

4. Time to Cure

We have recurrently been granted by one adjudicator a 48 hour period in order to cure alleged defects in waiver application. Again, there is no such provision in the HUD Guidelines. This 48 hour requirement is particularly burdensome since we have to communicate over long distances and it may require some effort to provide the requested information. While I can understand a desire to keep the process moving along, this 48 hour rule seems particularly mean spirited.

5. Medical Practice Area

While I realize that the emphasis of the HUD program is on primary care, there are certain instances in

an AIDS physician. Given the fact that the HIV/AIDS epidemic is particularly prevalent in inner cities, I consulted with the waiver office and was encouraged to submit this application to HUD. I should also add that I have received approvals in the past for AIDS physicians. In this recent instance, the case was denied.

6. Application Organization

We have in the past been complemented on the thoroughness and clarity of our HUD waiver applications. Recently, one adjudicator has complained that our submissions are confusing and not put in the proper order. If there is a desired order to a HUD waiver submission, could this be clarified.

7. Attitude

The HUD program has been immeasurably useful in achieving its stated purpose of rectifying an unacceptable physician shortage situation in inner city communities. I strongly believe that any GAO or other audit will endorse the success of this program. At the beginning of the program, the waiver officers seemed enthusiastic regarding the social benefits of this program; more recently, there seems to be growing working level hostility to this program. It might be wise to discuss this attitudinal change in your meeting.