



**APPALACHIAN
REGIONAL
COMMISSION**

*A Proud Past.
A New Vision*

Office of the Federal Co-Chairman

November 9, 1995

The Honorable Donna E. Shalala
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Madam Secretary:

I am responding to your letter of August 31, 1995 requesting me to review the Commission's policy regarding J-1 Visa Waivers. I want to thank you for initiating this government-wide review of current policies and practices relating to recommendations for the waiver of the two-year foreign residence requirement under the Exchange Visitor Program for J-1 doctors. I certainly join you in the hope that a consistent U.S. government J-1 Waiver policy can be developed.

I have attached to this letter a copy of the Commission's current policy on J-1 Visa Waivers. Although it was recently subject to minor revisions, the essential elements of the policy have remained unchanged since the policy was initiated in 1991.

Briefly stated, the policy declares that the Federal Co-Chairman of the Commission, at the request of a governor of an Appalachian state, will recommend under certain conditions a waiver of the foreign residence requirement on behalf of physicians holding J-1 Visas. In exchange for the waiver recommendation, the foreign physician must agree to provide primary medical care in an Appalachian community designated by the U.S. Public Health Service (PHS) as a Health Professional Shortage Area (HPSA). The recent policy revisions changed the time of service in Appalachia required of these doctors from two years to three years, bringing the ARC program in line with the requirements of the state-based J-1 program passed last year by Congress in Public Law 103-416.

Since coming to the Commission in 1994, I have taken a keen interest in both the policy basis for, and the operations of, the ARC J-1 Visa Waiver program. While recognizing that there are countervailing policy considerations, I am convinced that, properly focused and administered, a J-1 Waiver program can provide much needed health care assistance to the residents of some of the most distressed areas of our country. "Proper focus" implies that the program is grounded in a legitimate agency policy goal and "proper administration" requires a thorough review of each J-1 placement to assure that it answers a genuine need of a local community for a doctor.

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The ARC J-1 Visa Waiver program is rooted in the Commission's continuing commitment to help all residents of Appalachia to have access to quality, affordable health care. This commitment to the health care needs of Appalachians, in turn, derives from the original Congressional mandate to the Commission when it was established by the Appalachian Regional Development Act of 1965. Health care assistance had a prominent place, along with assistance in the areas of education, transportation, the environment and economic development, in a coordinated program to assist a region that "lags behind the rest of the Nation in its economic growth and [has] not shared properly in the Nation's prosperity" (40 U.S.C. app. Section 2).

From the beginning the Commission has been committed to providing comprehensive, affordable health care to the people of Appalachia. Commission health programs have been innovative and flexible, responding to a broad range of needs in communities throughout the Region. Significant progress has been made in reducing infant mortality, creating a network of primary care clinics, and bringing dental and emergency medical services to isolated, rural areas. Access, however, continues to be a problem for much of Appalachia. Recent PHS data (February, 1995) show that 127 of our 399 counties are full county health professional shortage areas, and in another 154 counties, parts of the county have received this designation.

The need for a program to address physician recruitment and retention in Appalachia, particularly rural Appalachia, is pronounced. Recruitment is an acute local problem in many of our communities, despite the excess supply of physicians nationally. The Commission encourages the Appalachian states to develop innovative demonstration projects which address practice opportunities or establish incentive programs. These projects are of a limited scope, however, and can not provide the broad and immediate assistance which distinguishes the J-1 program.

In view of this, I believe the ARC J-1 Visa Waiver Program is justified to the extent that it furthers the legitimate ARC health policy goal of providing universal access to primary care in Appalachia. This is the "public interest" that U.S. immigration laws demand to be identified for a waiver of the two year home residence requirement for J-1 physicians (8 U.S.C. 1182(e)). The ARC program is operated solely for the benefit of the people of Appalachia and not for the foreign doctors themselves or the health facilities that sponsor them.

Prior to recommending a waiver for a J-1 physician, therefore, I require a thorough demonstration that the doctor is needed in the community in which he or she will practice. The Commission makes J-1 placements only in HPSAs officially designated by the PHS. Moreover, because J-1 physicians are not currently taken into account by PHS in designating

HPSAs, we also review our own records in each instance to determine whether other J-1 physicians are in fact practicing in the community. By this means, we are able to ensure that multiple J-1 placements will not be made in communities which already enjoy adequate physician to population ratios despite retaining their formal HPSA designation. In doubtful cases, we request the assistance of State rural health officials to ascertain whether a real need exist in a particular community. These state officials have been designated by each of the Appalachian Governors to assist us with the administration of the program and the information they provide us "from the field" is invaluable.

My review of the Commission's J-1 Visa Waiver program in this letter has been confined to what I consider the essential elements of the program. I would be happy to discuss this matter with representatives from any of the other Federal agencies currently involved with the J-1 waiver issue. In addition, I would be happy to make available for more technical discussions ARC staff responsible for administration of the J-1 program here.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse L. White, Jr.", with a large, sweeping initial "J" and a horizontal line across the middle of the signature.

Jesse L. White, Jr.
Federal Co-Chairman

ARC Federal Co-Chairman's J-1 Visa Waiver Policy

The Appalachian Regional Commission (ARC) is committed to assisting all residents of Appalachia to have access to quality, affordable health care. Accordingly, the Federal Co-Chairman (FCC) of the ARC is prepared to consider recommending a waiver of the foreign residence requirement on behalf of physicians holding J-1 Visas under certain conditions.

The FCC's policy is totally discretionary and voluntary and may be modified or terminated at any time without notice. In all instances the FCC reserves the right at the FCC's discretion to recommend or decline to recommend any request for a waiver.

These ARC guidelines are the minimum requirements which must be complied with but each state may impose additional requirements as it deems necessary to support its physician recruitment program.

1. Physician requests must be sponsored by a State within the Appalachian Region and will be considered by the FCC only upon written recommendation of the Governor of the sponsoring State.
2. The physician must agree to provide primary medical care for at least forty (40) hours a week in a **Health Professions Shortage Area**, as designated by the United States Public Health Service, within the legislatively defined Appalachian Regional Commission service area, in a Medicare and Medicaid certified hospital or primary health care clinic which also accepts medically indigent patients. **The physician must agree to provide such service for a minimum of three (3) years (or longer, as a specific State policy may require.)** Travel or on-call time may not be included in the 40 hours required by this paragraph. **However, in appropriate cases the State may make exceptions to allow travel or on-call time for obstetricians and general surgeons.**
3. The hospital or clinic at which the physician will be employed must demonstrate that it has made a reasonable good faith effort to recruit a U.S. doctor for the job opportunity in the same salary range without success during the six months immediately preceding the request for waiver. The hospital or clinic shall demonstrate, with such supporting documentation as the Federal Co-Chairman may require, that it has undertaken such recruitment through a reasonable number of appropriate sources including but not limited to advertisements in newspapers and medical journals of national and statewide circulation most likely to bring responses from able, willing, qualified and available U.S. doctors and job opportunity notices placed in appropriate medical schools including all medical schools in the state in which the hospital or clinic is located.
4. The physician, prior to employment, must be licensed by the State where he or she will practice and must have completed a residency in one of the following specialties: family practice, general pediatrics, obstetrics, general internal medicine, psychiatry or general surgery.

5. The physician must not have been "out of status" (as defined by the Immigration and Naturalization Service of the United States Department of Justice) for more than six (6) months since receiving a visa under 8 USC 1182 (j) of the Immigration and Nationality Act, as amended. The physician shall provide the FCC all copies of his or her Certificates of Eligibility for Exchange Visitor (J-1) Status, forms IAP-66 and every other document needed to verify status.

6. The physician must sign and have notarized the FCC's "J-1 Visa Policy Affidavit and Agreement" prior to consideration by the FCC of the request and must comply with the terms and conditions set forth in that document.

7. All requests approved initially by the FCC and approved subsequently by the Immigration and Naturalization Service of the United States Department of Justice will be subject to review by ARC's Inspector General for compliance with this policy statement and other applicable laws. An employer's failure to comply in good faith with this waiver policy may be considered in the evaluation of other applications involving the same employer.

Revised: 8/25/95

J-1 Visa Waiver Policy Affidavit and Agreement

I, _____, being duly sworn, hereby request the Federal Co-Chairman of the Appalachian Regional Commission to review my application for the purpose of recommending waiver of the foreign residency requirement set forth in my J-1 Visa, pursuant to the terms and conditions as follows:

1. I understand and acknowledge that the review of this request is discretionary and that in the event a decision is made not to grant my request, I hold harmless the Appalachian Regional Commission (ARC), the Federal Co-Chairman, any and all ARC employees, agents and assigns from any action or lack of action made in connection with this request.
2. I further understand and acknowledge that the entire basis for the consideration of my request is the ARC Federal Co-Chairman's voluntary policy and desire to improve the availability of primary medical care in regions designated by the United States Public Health Service (USPHS) as Health Professions Shortage Areas (HPSA) in Appalachia.
3. I understand and agree that in consideration for a waiver, which eventually may or may not be granted, I shall render primary medical care services to patients, including the indigent, for a minimum of forty (40) hours per week within a USPHS designated HPSA located in the ARC jurisdiction. Such service shall commence not later than six (6) months after I receive notification of approval by both the United States Immigration and Naturalization Service (INS) and the United States Department of Labor and shall continue for **at least three (3) years**.
4. I agree to incorporate all the terms of this **J-1 Visa Waiver Affidavit and Agreement** into any and all employment agreements I enter pursuant to paragraph 3 and to include in each such agreement **the ARC liquidated damages clause, of \$250,000 payable to the employer. (A copy of all employment agreements are attached to this request)** This damages clause shall be activated by my termination of employment, initiated by my employer for cause or by me for any reason, only if my termination occurs before fulfilling the **minimum three year service requirement. In the event of a transfer under the ARC liquidated damages clause a transfer notification form must be obtained by ARC. This form must be filled out and returned to ARC with a copy to the State Contact.**
5. I further agree that any employment agreement I enter pursuant to paragraph 3 shall not contain any provision which modifies or amends any of the terms of this **J-1 Visa Waiver Affidavit and Agreement**.
6. I also agree to incorporate all terms of this **J-1 Visa Waiver Affidavit and Agreement** into any employment agreement I enter pursuant to paragraph 3.
7. I understand and agree that my primary medical care services rendered pursuant to paragraph 3 shall be in a Medicare and Medicaid certified hospital or primary health care clinic which has an open, non-discriminatory admissions policy and that will accept medically indigent patients.

8. I have read and fully understand the "ARC Federal Co-Chairman's J-1 Visa Waiver Policy", a copy of which is attached hereto and is specifically incorporated by reference.

9. I expressly understand that this waiver of my foreign service requirement must ultimately be approved by the INS, and I agree to provide written notification of the specific location and nature of my practice to the ARC and the State contact at the time I commence rendering services in the ARC jurisdiction.

10. I understand and acknowledge that if I willfully fail to comply with the terms of this J-1 Visa Waiver Affidavit and Agreement, the Office of the ARC Federal Co-Chairman will notify the INS and recommend deportation proceedings be instituted against me. Additionally, any and all other measures available to the Office of the ARC Federal Co-Chairman will be taken in the event of my non-compliance.

I declare under the penalties of perjury that the foregoing is true and correct.

Subscribed and sworn before me
this ____ day of _____, 19__.

_____(Notary Public)

Revised 8/25/95

J-1 VISA LIQUIDATED DAMAGES CLAUSE

Any breach or non-fulfillment of conditions will be considered a substantial breach of this agreement by you. If there is such a breach (NAME OF EMPLOYER) may, at its option, terminate this agreement immediately. In addition, it is agreed that (NAME OF EMPLOYER) will be substantially damaged by your failure to remain at (NAME OF EMPLOYER) in the practice of medicine for a *period of three years* and that, considering that precise damages are difficult to calculate, you will agree to pay to (NAME OF EMPLOYER) the sum of \$250,000.00 for failure to fulfill your *three-year* contract. In addition to liquidated damages, (NAME OF EMPLOYER) will recover from you any other consequential damages, and reasonable attorney's fees, due to the failure to provide services to (NAME OF EMPLOYER) for a *period of three years*, EXCEPT THAT, the full-time practice of medicine at another licensed medical facility, in a Health Professional Shortage area (as defined by United States Public Health Service) within the Appalachian Region (as defined by ARC) shall be considered the same as full time practice of medicine at (NAME OF EMPLOYER) for purpose of this paragraph. In the event of a dispute under this paragraph, either party may submit this matter to binding arbitration.

RE: ADDITIONAL LIQUIDATED DAMAGE CLAUSES

Any other clause mandating consequential or liquidated damages being paid to the employer must be separate from the ARC clause. ARC takes no position with respect to the inclusion of such an additional contractual agreement.

DATE: 1/19/96

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

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FAX: (202) 690-6351

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION
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ROOM 406G HUMPHREY BUILDING

TO : Diana Fortuna 456-7028 FROM: [X] IRENE BUENO 690-6786
OFFICE : _____ [] LORI DAVIS
ROOM NO : _____ [] GERI GOINS
PHONE NO : _____ [] CYNTHIA JOYCE
FAX NO : _____ [] TIJUANA TRIPPLET
[] STACEYE WHITE
[] BEATRICE BUTLER

TOTAL PAGES
INCLUDING COVER): 4

REMARKS:

Attached is a draft response to Senator Simon's letter to Secretary Shalala concerning J-1 visas.
I would appreciate you reviewing the letter & letting me know of your comments. Thanks!

DRAFT

The Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear ~~Paul~~ Senator Simon:

Thank you for your letter concerning issues related to waivers for foreign physicians who come to the United States under the Exchange Visitor Program and who wish to remain here to work in underserved areas.

For the last few years several agencies of the Executive Branch have taken different approaches to waivers under the J-1 visa program with respect to foreign physicians. In addition, the enactment of the Immigration and Nationality Technical Corrections Act of 1994 permitted States, for the first time, to request waivers as well.

Late last year I wrote to several of my Cabinet colleagues to suggest that we develop a consistent approach to waivers for international medical graduates. That review, in cooperation with White House and OMB staff, is now under way.

Our goal in this review is to continue to support ways to meet the needs of medically underserved areas. This would include not only the J-1 waiver provisions, but also the placement of National Health Service Corps practitioners in underserved areas and an overall policy of supporting health professions training that encourages the production of primary care physicians.

Thank you for your views on this important matter.

Sincerely,

Donna E. Shalala

12-13-95 13:10PM FROM SEN PAUL SIMON D.C. TO 96306561

2002

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December 13, 1995

The Honorable Donna E. Shalala
 Secretary, Department of Health and Human Services
 Attn: Irene Bueno
 Office of the Ass't Secretary for Legislation
 Hubert H. Humphrey Building
 200 Independence Avenue, S.W.
 Washington, D.C. 20201

VIA FAX

Dear Secretary:

It is my understanding that the Administration is in the process of reviewing the manner in which it applies the waiver provisions of the J-1 Visa program as they relate to foreign physicians. I write to inform you of my strong support for this program, and of my hope that any changes made to the administration of this program not adversely affect the many communities that depend on J-1 waivers for health care services.

Through the waiver provisions of the J-1 program, foreign physicians can be exempted from the program's two-year foreign residence requirement if an "interested government agency" requests their services. This program has been used, as you know, to provide physicians to communities designated by HHS as Health Professional Shortage Areas (HPSAs) -- communities that do not attract graduates of American medical schools and therefore would lack sufficient medical professionals in the absence of this program. By last count, over 45 million Americans -- including millions of Illinoisans -- live in HPSAs. Thus, these foreign physicians are an absolutely integral component of our nation's and my state's health care infrastructure.

Currently, several federal agencies, as well as state agencies, are empowered to recommend waivers of the J-1 program's foreign residence requirement. It is my understanding that the Administration is considering consolidating these waiver-recommending functions into one federal agency -- perhaps HHS. While I do not object to such streamlining in principle, it is my strong belief that the agency charged with this important responsibility must administer the waiver process in an efficient and thorough manner, so as to ensure the continued availability of health care services to those communities that have come to rely on the waiver program for physician care.

12-17-86 09:10PM FROM SEN. PAUL SIMON D.C. TO 92306351

1003

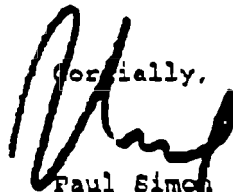
While the law was recently changed to enable both state and federal authorities to recommend waivers under the J-1 visa waiver. I do not understand this change to have been made in order to relieve the federal government of its own obligation to administer the waiver provisions conscientiously. Rather, the so-called Conrad amendment was designed to provide a second, equally accessible, avenue for waivers. It is important that in the course of its deliberations, the Administration not make the availability of waivers through state agencies an excuse for not fulfilling its own role in the J-1 waiver process.

I urge both you to keep these concerns in mind as you continue to consider the J-1 visa program, and I would appreciate any update on your review as it continues. I am sending a similar letter to OMB Director Rivlin.

As always, thank you for your attention to this matter.

My best wishes.

Sincerely,



Paul Simon
United States Senator

PS/cta

cc: Tracey Thornton, White House Legislative Affairs

9512150014



DATE: 2/8/96

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TOTAL PAGES
INCLUDING COVER): 2

REMARKS:

Washington Post Article

Wash. Post: 2-3-96

How Many Doctors?

UNCERTAINTY about the future shape of the health care market has now translated into two reports that urge serious changes in the number of doctors American medical schools should train. The newest, from a National Academy of Sciences committee, urges that medical schools cut down sharply on the training of foreign doctors—whose numbers have risen sharply in the past five years—and recommends more general discouragement of would-be doctors as well, saying young Americans should be told to consider seriously whether a medical education will prove “a poor personal investment” in the coming squeeze. An earlier report by the private Pew Charitable Trust went much further: It predicted dramatic surpluses of both doctors and nurses and urged that a fifth of medical schools close down entirely.

Both these visions start from an assumption that the kind of funding that has supported academic medicine and training till now—principally Medicare and higher reimbursements for teaching hospitals—will either disappear or be much altered, taking whole segments of the market with it. The Pew numbers are based on a prediction that not just medical schools but whole hospitals will fold, throwing large numbers of doctors and nurses on the market.

The reaction of nurses’ groups is a good example of the way predictions of this kind are intertwined with judgments about the choices regulators will make, as well as the way that all such judgments involve side-choosing among existing interest groups. The prediction of a nurse

surplus brought angry responses from groups that want nurses to step into the breach left by cost-cutting, providing more of the care previously done by doctors.

If the balance between doctoring and nursing is a moving target, so is the balance between specialists and generalists coming out of medical schools. Repeated studies over a decade found too many specialists, while basic medical care still was wanting. In response, medical schools have sought to steer graduates into primary care. Much more effective than such pressures, though, have been those imposed by insurers and HMOs that simply decide how many specialists are needed to serve their pool of patients, then steer the entire patient load toward these “in-network” physicians. The rest find themselves scrambling—often for retraining as general practitioners.

Will these galloping market incentives be enough to dictate the “right” number of doctors? Or should medical schools take an active hand? It’s not clear how sensitive the supply of doctors is already to the perceived changes in the field; oddly, medical school applications are up, some think simply because of TV shows like “E.R.” It’s also not clear whether more doctors automatically generate more care by their presence, say by testing for the specialized ailments they are trained to treat. Like the proper level of health care spending overall, the “right” number of doctors is an elusive figure whose calculation depends on forces we are only beginning to see in action.

Summary of Conrad Statute

under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001, 1014, and 31 U.S.C. 3729.

(b) All producers receiving payments under this part will be jointly and severally liable to repay any unearned NAP payments.

§ 404.33 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the designation of an area for which there is no appeal rights because it is determined a rule of general applicability, must be in accordance with part 780 of this title or the regulations promulgated by the National Appeals Division, whichever is applicable.

§ 404.35 Exemption from levy.

Any payment that is due any person under this part will be made without regard to questions of title under state law and without regard to any attachment, levy, garnishment, or any other legal process against the crop, and the proceeds thereof, which may be asserted by any creditor, except statutory liens of the United States.

§ 404.37 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for NAP payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 404.39 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance, of any person who is eligible to receive NAP payments in accordance with this part, such payments will be disbursed in accordance with part 707 of this title.

§ 404.41 OMB control numbers.

The provisions set forth in this interim rule contain information collection that require clearance by the Office of Management and Budget

("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Previous information collection requirements have been approved under OMB control numbers 0560-0004, 0563-0007, 0563-0016, and 0563-0036. The new information collection requirements have been submitted to OMB for approval under OMB control number 0563-0016 and are not effective until approved by OMB.

Done in Washington, DC, on May 15, 1995.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 95-12292 Filed 5-15-95; 4:29 pm]

BILLING CODE 3410-08-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 245, and 248

[INS No. 1688-95]

RIN 1115-AD89

Waiver of the Two-Year Home Country Physical Presence Requirement for Certain Foreign Medical Graduates

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by allowing certain foreign medical graduates who entered the United States in J-1 status, or who acquired J-1 status after arrival in the United States, to obtain a waiver of the 2-year home country residence and physical presence requirement under section 212(e)(iii) of the Immigration and Nationality Act (Act) pursuant to a request by a State Department of Public Health, or its equivalent. The waiver is intended to permit these foreign medical graduates to work at a health care facility in an area designated by the Secretary, Health and Human Services (HHS), as having a shortage of health care professionals ("HHS-designated shortage area"). This interim rule also contains provisions which will permit these foreign medical graduates to change their nonimmigrant status in the United States from J-1 exchange visitor to H-1B specialty occupation worker.

DATES: This interim rule is effective May 18, 1995. Written comments must be received on or before July 17, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions

Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 530 Washington, DC 20536. To ensure proper handling, please reference INS number 1688-95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Sophia Cox, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

Under section 212(e) of the Act, certain J-1 exchange visitors (and the J-2 dependent spouse and children) are subject to a 2-year home country residence and physical presence requirement (the "2-year requirement"). Exchange visitors (and dependents) who are subject to this requirement must reside and be physically present in the country of nationality or last residence abroad ("home" country) for an aggregate of at least 2 years following departure from the United States. J-1 exchange visitors who are subject to the 2-year requirement are not allowed to change their nonimmigrant status or be admitted to the United States under the H (temporary worker or trainee) or L (intracompany transferee) nonimmigrant categories, or acquire lawful permanent resident status, until they have complied with this requirement or have been granted a waiver thereof.

The following categories of exchange visitors (and their accompanying spouse and children in dependent J-2 status) are subject to the 2-year requirement: Those whose J-1 program was financed in whole or in part by an agency of the U.S. Government, or by the government of their "home" country; (b) those whose field of specialized knowledge, skill, as indicated on Form IAP-66 (Certificate of Eligibility), is required in their home country; and (c) those who entered the United States in J-1 status (or who acquired J-1 status subsequent to arrival in the United States) to receive graduate medical education or training.

Under section 212(e) of the Act, a waiver of the 2-year requirement may be granted by the Service upon the favorable recommendation of the Director of the United States Information Agency (USIA). Waivers can be obtained on the basis of: (a) Exceptional hardship to the applicant U.S. citizen or permanent resident

spouse or children; (b) persecution on account of race, religion, or political opinion; (c) a "no objection" statement issued by the applicant's "home" country; or (d) a request made to USIA by an interested U.S. Government agency to recommend a waiver to the Service, because the applicant's work is deemed to serve the public interest. By statute, in the case of foreign medical graduates who entered the United States to receive graduate medical education or training (and accompanying J-2 dependents), a "no objection" statement does not constitute a basis for USIA to recommend a waiver to the Service. Therefore, even if a "no objection" statement on behalf of such a foreign medical graduate has been issued, the Service is statutorily required to deny the waiver application, if such a statement forms the only basis for the waiver request.

A substantial number of foreign medical graduates pursue waivers of the 2-year requirement through requests by an interested U.S. Government agency. Prior to the enactment of section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (1994 Technical Corrections Act), Pub. L. 103-416, 108 Stat. 4310, 4319-4320, dated October 25, 1994, only Federal Government agencies were considered to be an "interested United States Government agency" eligible to submit a waiver request to USIA on behalf of a J-1 exchange visitor. Because State governments were not permitted to act as interested government agencies, they were required to solicit the assistance of an appropriate Federal agency. Section 212(e)(iii) of the Act, as amended by section 220(b) of the 1994 Technical Corrections Act, now permits State Departments of Public Health, or their equivalent, to submit waiver requests for foreign medical graduates directly to USIA, provided that certain conditions have been met, as explained below.

As noted, under section 212(e) of the Act, the Service may not approve the applicant's waiver request unless the Director of the USIA has issued a favorable waiver recommendation. If USIA issues a favorable waiver recommendation, it notifies the Service thereof. Section 212(e) of the Act permits, but does not require, the Attorney General to grant the waiver pursuant to a favorable USIA recommendation. On the other hand, if USIA issues an unfavorable waiver recommendation, the Service must deny the waiver application. The Service's decision to deny the application may not be appealed, if the denial is based on lack of a favorable USIA waiver recommendation. Section 212(e)

waivers are valid only for those exchange programs indicated in the waiver request. Any subsequent J program extension or program transfer may re-subject the exchange visitor (and his or her dependents) to the 2-year requirement.

Under current procedures, an application form is not required when the waiver application is based on an interested U.S. Government agency request or a no objection statement. Similarly, a form will not be required to apply for a waiver based on a request by a State Department of Public Health. The Service is in the process of developing an omnibus form to be used for all waiver applications, including waivers of the 2-year requirement. It should be noted that the burden rests on the applicant to establish eligibility for a waiver of the 2-year requirement. In certain cases, therefore, the Service may require other documentation from the applicant besides the favorable USIA recommendation to fully assess his or her waiver eligibility.

After the Service approves an application for a waiver of the 2-year requirement, the J-1 exchange visitor may seek H nonimmigrant status in order to engage in temporary employment for the organization or entity named in the waiver application. Foreign medical graduates who wish to work temporarily in the United States once a waiver of the 2-year requirement has been granted may seek H-1B classification as a specialty occupation worker. An alien may obtain H-1B status either through the simultaneous filing of an H-1B petition by the prospective employer and a change of status application by the alien, if the alien is in the United States, or through the filing of an H-1B petition alone and the alien subsequently obtaining the visa at a consular post abroad. Change of status applications are governed by section 248 of the Act. To request a change of nonimmigrant status from J-1 to H-1B, a change of status application must be filed simultaneously with the H-1B nonimmigrant visa petition, if the applicant is eligible. Once the H-1B petition and change of status application are approved, the alien will be permitted to remain in the United States and commence temporary employment with the employer or organization named in the approved H-1B petition.

As 8 CFR 248.2(c) currently reads, foreign medical graduates (and their dependents) who entered the United States on J-1 visas (or who acquired J-1 status after admission) to pursue graduate medical education or training

are ineligible to apply for change of status under section 248 of the Act, even if a waiver of the 2-year requirement has been granted. This interim regulation revises 8 CFR 248.2(c) to conform with section 220 of the 1994 Technical Corrections Act. Accordingly, this interim regulation provides that foreign medical graduates who received a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health, or its equivalent, may apply for change of status from J-1 to H-1B, if they otherwise satisfy the change of status criteria found under section 248 of the Act.

Public Law 103-416

Section 220 of the 1994 Technical Corrections Act, enacted on October 25, 1994, permits the Service to grant a waiver of the 2-year requirement to a limited number of foreign medical graduates who have received a bona fide offer of full-time employment and who agree to practice medicine at a health care facility located in an HHS-designated shortage area. Any foreign medical graduate who is subject to the 2-year requirement, and who meets the eligibility criteria, may apply for a waiver under Pub. L. 103-416, regardless of whether he or she is physically present in the United States.

To be eligible for the waiver, the foreign medical graduate must enter into an employment contract to practice medicine full-time for at least 3 years at a health care facility located in the HHS-designated shortage area, and must agree to commence such employment within 90 days of receipt of the waiver. The Service may grant the waiver only if the Department of Public Health, or its equivalent, of the State where the foreign medical graduate will be employed, submits a formal request to USIA for a waiver recommendation, and USIA submits a favorable waiver recommendation to the Service. Although the State Department of Public Health, or its equivalent, must request the waiver on behalf of the foreign medical graduate, the health care facility at which the foreign medical graduate will work need not actually be owned or operated by the State.

The Service notes that section 220 of Pub. L. 103-416 does not expressly waive the 2-year requirement for the accompanying spouse or children of the foreign medical graduate. Longstanding Service policy, however, permits J-1 exchange visitors to include their J-2 dependent spouse and children in the waiver application. Consequently, a foreign medical graduate seeking a waiver of the 2-year requirement under section 220 of Pub. L. 103-416 shall be

permitted to include his or her accompanying J-2 spouse and children in the waiver application.

Foreign Medical Graduate

In the context of this interim rule, a foreign medical graduate refers specifically to a foreign national who has graduated from a medical school outside of the United States, and who acquired J-1 status to pursue graduate medical education or training in the United States. Foreign medical graduates seeking J-1 classification to pursue graduate medical education or training in the United States are subject to strict requirements set forth in section 212(j)(1) of the Act, and are subject to the 2-year requirement.

State Department of Public Health, or its Equivalent

Section 220 of Pub. L. 103-416 amends section 212(e)(iii) of the Act by permitting State Departments of Public Health (or their equivalent), in addition to U.S. Federal Government agencies, to submit requests for waiver recommendations directly to USIA on behalf of foreign medical graduates. Section 101(a)(36) of the Act defines the term "State" to include the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, in addition to the 50 states. The same definition will apply to the term "State" in this rule. Further, it is the opinion of the Service that the statutory term "State Department of Public Health, or its equivalent" means the State agency or department that is responsible for public health issues, regardless of what the actual name of that agency or department is under State law.

Restrictions Imposed on the Waiver and the Change of Status Application

Section 214(k) of the Act, as added by section 220 of Pub. L. 103-416, imposes restrictions on waivers of the 2-year requirement for foreign medical graduates, when the application is based on a request by a State Department of Public Health, or its equivalent. By imposing conditions under section 214(k) of the Act, Congress manifested its intent that waivers of the 2-year requirement be granted only under strictly limited and controlled circumstances.

No objection statements. Section 214(k)(1)(A) of the Act provides that "in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country (must) furnish () the Director of the United States Information Agency with a statement in writing that it has no objection to the waiver." The foreign

medical graduate seeking the waiver is responsible for ensuring that the "no objection" statement is provided directly to USIA. This additional requirement applies only when the foreign medical graduate seeks a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health (or its equivalent). USIA addresses the question of what constitutes a contractual obligation in the preamble to its interim rule amending 22 CFR 514.44(e)(2), which was published in the *Federal Register* on April 3, 1995, at 60 FR 16785-16788.

Employment contracts. Section 214(k)(1)(B) of the Act provides that the Service may grant a waiver of the 2-year requirement based on a request by a State Department of Public Health only if the foreign medical graduate demonstrates a bona fide offer of full-time employment at a health facility and agrees to begin such employment within 90 days of receipt of the waiver. Section 214(k)(1)(B) of the Act also provides that the foreign medical graduate must agree to continue working at the health care facility named in the employment contract for at least 3 years. Such employment must be in accordance with the provisions of section 214(k)(2) of the Act. The USIA's implementing regulations at 22 CFR 514.44(e)(3)(B) therefore provide that the State Department of Public Health is required to submit the actual contract between the alien and the health care facility at the time the request for the favorable recommendation is made.

HHS-designated shortage areas.

Section 214(k)(1)(C) of the Act provides that the foreign medical graduate must agree to practice medicine in accordance with section 214(k)(2) of the Act for at least 3 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." Since the Service is bound by HHS' determination of what constitutes a "geographic area or areas * * * having a shortage of health care professionals," the request of a State Department of Public Health (or its equivalent), standing alone, cannot be deemed sufficient to meet his statutory requirement. The waiver application must be accompanied by evidence establishing that the geographic area or areas in which the foreign medical graduate will practice medicine are in HHS-designated shortage areas.

Numerical limitations on waivers under Pub. L. 103-416. Section 214(k)(1)(D) of the Act limits to 20-per-cent the number of waivers the Service may grant under Pub. L. 103-416 each

fiscal year. Consequently, if the Director of USIA issues a favorable waiver recommendation under Pub. L. 103-416, but the State requesting the waiver already has exhausted its annual waiver allotment, the Service is statutorily required to deny the waiver application. Accordingly, this rule provides that no appeal shall lie where the basis for denial is that the State has already been granted 20 waivers for that fiscal year.

Completion of the required 3-year employment contract as an H-1B nonimmigrant and change of nonimmigrant status from J-1 to H-1B. The restrictions imposed by Congress under section 214(k)(1) and (2) of the Act were intended to ensure that waivers of the 2-year requirement under Pub. L. 103-416 are granted only under strictly limited and controlled circumstances. These restrictions were also intended to ensure that foreign medical graduates who receive such a waiver actually provide health care services to those living HHS-designated shortage areas.

Under section 248(2) of the Act, a foreign medical graduate who came to the United States in J classification or acquired J classification in order to receive graduate medical education or training would normally be prohibited from filing an application for change of status. Section 214(k)(2)(A) of the Act, as added by section 220 of Pub. L. 103-416, however, provides that "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)(i)(b)." Section 214(k)(2) of the Act, as added by section 220 of Pub. L. 103-416 also states that no foreign medical graduate who has been granted a waiver and a change of nonimmigrant status from J-1 to H-1B, and who has failed to complete the 3-year employment contract with the sponsoring health care facility, shall be eligible to apply for an immigrant visa, for permanent residence, or for change of status to any other nonimmigrant category, until it has been established that he or she has resided and been physically present in his or her home country for an aggregate of 2 years following departure from the United States. Thus, section 212(k)(2) of the Act allows the foreign medical graduate to apply for change of nonimmigrant status from J-1, only to H-1B upon approval of the waiver, and also stipulates that a foreign medical graduate who fails to fulfill the required 3-year employment contract again becomes subject to the 2-year requirement. Taken together, these two provisions indicate that Congress

did not intend to permit the foreign medical graduate to proceed from J-1 status directly to lawful permanent resident status upon approval of the waiver.

Based on the above, the Service is of the opinion that, in enacting section 214(k) of the Act, Congress manifested its clear intent to require all foreign medical graduates, including those seeking to adjust their status or immigrate to this country, as well as those immediately changing status from J-1 to H-1B, to fulfill the 3-year employment contract or become subject to the 2-year requirement. To enable the Service to maintain control over the foreign medical graduate's stay in the United States in the manner intended by Congress, this interim rule provides that the foreign medical graduate must actually fulfill the contract with the health care facility named in the waiver application prior to obtaining permanent residence, or any nonimmigrant status other than H-1B. Accordingly, this interim regulation provides that a foreign medical graduate who received a waiver of the 2-year requirement under Pub. L. 103-416 may not apply for a change of status to another nonimmigrant category, for an immigrant visa, or for status as a lawful permanent resident prior to completing the required 3-year employment contract as an H-1B nonimmigrant with the health care facility named in the waiver application.

Eligibility to apply for change of status from J-1 to H-1B. While section 214(k)(2)(A) of the Act allows foreign medical graduates who received a waiver under Pub. L. 103-416 to apply for change of status from J-1 to H-1B (and their dependents from J-2 to H-4), it does not excuse the late filing of the application. Foreign medical graduates who have been granted a waiver of the 2-year requirement under Pub. L. 103-416, must be in valid J status when the change of status application is filed. Service regulations at 8 CFR 214.2(j)(1)(ii) provide that J-1 exchange visitors may be admitted to the United States for the duration of the exchange program, as noted on Form IAP-66, and an additional 30 days for travel. While J-1 exchange visitors are not authorized to work during this 30-day grace period (see § 274a.12(b)(11)), they are considered to be "in status" for purposes of applying for change of status under section 248 of the Act.

To prevent the foreign medical graduate from falling out of lawful nonimmigrant status, the Service encourages the State Department of Public Health to allow ample time for processing the waiver and subsequent

filing and processing of the H-1B petition and change of status application. Foreign medical graduates who received a waiver under section 220 of Pub. L. 103-416 and whose J nonimmigrant stay has expired, or who have engaged in unauthorized employment, are ineligible to apply for change of status under section 248 of the Act. Such persons would not be precluded, however, from procuring an H-1B visa at a U.S. consular post abroad and seeking readmission to the United States in H-1B status to commence employment with the sponsoring health care facility.

Numerical limitations imposed on the issuance of H-1B visas. Although section 214(k)(2)(A) of the Act eases the change of status restrictions under section 248(2) of the Act, it does not ease the annual numerical limitations imposed on the H-1B specialty worker category under section 214(g)(1)(A) of the Act. Consequently, the Service would not be prohibited from granting a waiver of the 2-year requirement under Pub. L. 103-416, but would be statutorily prohibited from according H-1B status to the foreign medical graduate, if the annual numerical limitations imposed on the issuance of H-1B visas under section 214(g)(1)(A) of the Act have been reached.

Control measures to be implemented by the Service. As noted, waivers of the 2-year requirement pursuant to Pub. L. 103-416 are based on the premise that the foreign medical graduate's work at a health care facility will assist States in coping with health care shortages. To ensure compliance with section 214(k) of the Act, and to ensure that the public receives the intended benefit, the Service will implement the following measures.

The Form I-797 (Notice of Action) (including I-797A and I-797B) currently used to notify the alien of the approved waiver and/or change of status from J-1 to H-1B, if applicable, will explicitly state the terms and conditions of the waiver and change of status. To facilitate issuance of the H-1B visa abroad, or admission as an H-1B nonimmigrant at the port-of-entry in cases where the foreign medical graduate is ineligible or chooses not to apply for change of status, the H-1B approval notice shall indicate that he or she has obtained the necessary waiver under Pub. L. 103-416. Such notification serves two purposes. It ensures that the foreign medical graduate is made fully aware of the terms and conditions of his or her waiver and change of status. It also alerts the Service officer or State Health Department that special conditions have

been placed on the alien's nonimmigrant status, thereby enabling the officer to take whatever steps are necessary to ensure that the alien's file is noted accordingly. When the foreign medical graduate's Form I-797 is later presented in support of an application for another benefit, such as an amended H-1B petition, a new H-1B petition for a different employer, or an adjustment of status application, the adjudicating officer will again be alerted to the special conditions that have been placed on the alien's nonimmigrant status. As a result, the Service will be able to verify whether the terms and conditions imposed under section 214(k) of the Act have been satisfied. These control measures are reflected in this interim rule at 8 CFR 212.7(c)(9)(ii).

Inability To Fulfill the Three-Year Employment Contract Due to Extenuating Circumstances

New section 214(k)(1)(B) of the Act grants the Attorney General discretion to excuse early termination of employment upon determining that extenuating circumstances so justify. The statute provides that extenuating circumstances may include the closure of the health care facility or hardship to the alien.

In determining whether to excuse the foreign medical graduate's early termination of employment with the health care facility named in the waiver application, the Service will carefully consider whether, based on all the facts before it, excusing such early termination would be consistent with the purpose of the statute—provision of health care services for at least a 3-year period of time in an HHS-designated shortage area. Closure of the facility, for example, could, under certain circumstances, warrant excusing failure to fulfill the 3-year employment contract, provided that the foreign medical graduate can establish that he or she has procured employment for the balance of the 3-year period with another health care facility in an HHS-designated shortage area. Similarly, an alien who claims that his or her inability to fulfill the 3-year employment contract is due to hardship shall also be required to submit evidence of new employment for another health care facility in an HHS-designated shortage area. A foreign medical graduate who seeks to establish extenuating circumstances on the basis of hardship also must submit evidence that the hardship was caused by unforeseen circumstances beyond his or her control. In short, before the Service will consider excusing the foreign medical graduate's early termination of

the 3-year employment contract with the health care facility named in the waiver application due to extenuating circumstances, the alien must submit an employment contract for the balance of this period with another health care facility in an HHS-designated shortage area. See section 214(k)(3) of the Act (the foreign medical graduate may only work in HHS-designated shortage areas during the required 3-year period of employment following approval of the waiver).

Changes in Employment During the Required Three-Year Period Following Approval of the Waiver

Any material change in the alien's H-1B employment must be reported to the Service by filing either an amended H-1B petition indicating any changes in the terms and conditions of the alien's current H-1B employment, or by filing a new petition if the alien seeks to change H-1B employers, in the manner generally required under current regulations at 8 CFR 214.2(h)(2)(i) (D) and (E), and 8 CFR 214.2(h)(11).

An amended H-1B petition for a foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103-416 shall be accompanied by evidence that he or she will continue practicing medicine in an HHS-designated shortage area for the health care facility named in the waiver application and in the original H-1B petition.

A foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103-416, who has not fulfilled the 3-year employment contract with the health care facility named in the waiver application, and who seeks to change H-1B employers due to extenuating circumstances or hardship is responsible for ensuring that the new health care facility files an H-1B petition. In such cases, the new petition shall be accompanied by a copy of Form I-797 (or I-797A or I-797B, as appropriate) relating to the original H-1B petition and an explanation from the alien, with supporting evidence, establishing that extenuating circumstances or hardship necessitate a change in employment. The new H-1B petition shall also be accompanied by an employment contract showing that the alien will practice medicine at the health care facility for the balance of the required 3-year period, and evidence that the geographic area or areas of intended employment designated in the new H-1B petition are in an HHS-designated shortage area.

The Service may consult with the Secretary of HHS to verify whether the

area of intended employment specified in the new H-1B petition is in fact located in an HHS-designated shortage area. Further, in exercising its statutory discretion to excuse an alien's failure to complete the requisite 3-year employment contract, the Service, if it deems appropriate, may consult with USIA, the State Department of Public Health which initiated the waiver request, and the health care facility named in the original waiver application.

If, in the exercise of its discretion, the Service determines that extenuating circumstances or hardship exist, that employment will continue at a health care facility in an HHS-designated shortage area, and that both the new petitioner and the beneficiary have otherwise satisfied the H-1B eligibility criteria enumerated under 8 CFR 214.2(h), the new petition may be approved, and the foreign medical graduate may be permitted to serve the balance of the 3-year employment period at the health care facility named in the new H-1B petition.

Effect of Failure To Abide by the Terms and Conditions of the Waiver Granted Under Pub. L. 103-416

Section 241(a)(1)(C)(i) of the Act provides for the deportation of any alien admitted as a nonimmigrant who fails to: (a) Maintain the nonimmigrant status under which he or she was admitted; (b) fails to maintain the nonimmigrant status to which he or she was changed under section 248 of the Act; or (c) fails to comply with the conditions of any such nonimmigrant status. J-1 foreign medical graduates who do not fulfill the 3-year employment contract for the health care facility named in the waiver application (unless the Attorney General has determined there are extenuating circumstances or hardship to the alien), who do not work in HHS-designated shortage areas, or who change employment without permission from the Service, will be deemed not to be maintaining their nonimmigrant status or complying with the terms and conditions imposed upon the waiver and change of status application, and will therefore be deportable under section 241(a)(1)(C)(i) of the Act.

Application Period

Section 220(c) of Pub. L. 103-416 states that the statutory amendments to section 212(e) of the Act shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Act, or who acquire J status after admission to the United States before, on, or after the date of enactment, and before June 1, 1996. Consistent with Congress' intent

to relieve health care shortages in HHS-designated shortage areas, the Service interprets this provision to mean that any foreign medical graduate who entered the United States in J nonimmigrant status, or who acquired J status upon arrival to pursue graduate medical education or training, before June 1, 1996, is eligible to apply for a waiver of the 2-year requirement pursuant to section 220 of Pub. L. 103-416, and for subsequent change of nonimmigrant status to H-1B. Further, if the foreign medical graduate acquired J status before June 1, 1996, in order to pursue graduate medical education or training, he or she will be eligible to request a section 220 waiver, even if the training is completed after June 1, 1996.

Foreign medical graduates who acquire J nonimmigrant status to pursue graduate medical education or training on or after June 1, 1996, however, will not be eligible to apply for benefits under Pub. L. 103-416, even if they wish to practice medicine in an HHS-designated shortage area. Those foreign medical graduates may, however, pursue a non-section 220 waiver under section 212(e) of the Act.

Good Cause Exception

This interim rule is effective on publication in the Federal Register although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. The provisions of Pub. L. 103-416, which provide a great public benefit, are already in effect. Adopting this rule without prior notice and comment allows foreign medical graduates whose J status is about to expire to apply for the waiver as soon as possible, thereby avoiding potential interruption of their lawful status during the normal notice and comment period. The rule also enables State Departments of Public Health to seek immediately the assistance of certain foreign medical graduates to ease local medical care shortages. Adopting this rule as an interim rule therefore benefits both foreign medical graduates and those who live in HHS-designated shortage areas.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that this interim rule will not have a significant

economic impact on a substantial number of small entities because of the following factors. This interim rule will have limited or no effect on small entities, because only 20 waivers are authorized per State annually to foreign medical graduates under Pub. L. 103-416.

Executive Order 12866

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

Executive Order 12612

This interim rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 220 of Pub. L. 103-416 merely enables the States, in addition to Federal Government agencies, to submit waiver requests for foreign medical graduates directly to USIA, while preserving the authority of the Federal Government to grant or deny such waiver requests. The ability of Federal Government agencies to continue submitting waiver requests to USIA is not changed or curtailed in any way by this rule. Therefore, in accordance with Executive Order 12612, it has been determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that this interim rule has been assessed in light of the criteria in Executive Order 12606, and has determined that the regulation would enhance family well-being by allowing certain dependent J-2 family members to obtain derivative H-4 status in the United States based on the waiver granted to the principal physician and the principal's change of status from J-1 to H-1B, without the need to travel abroad to procure the nonimmigrant visa and seek re-admission to the United States. Permitting such changes of non-immigrant status allows the principal physician's dependent spouse and children to: (a) Accompany him or her while employed temporarily as an H-1B nonimmigrant; and (b) remain in this country on a permanent basis should he or she subsequently apply for, and be

granted approval of, adjustment of status to that of a lawful permanent resident. This rule also enhances family well-being by allowing families in HHS-designated shortage areas to get much needed medical treatment and care.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been cleared by the Office of Management and Budget Under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 212

Administrative practices and procedure, Aliens, Immigration, passports and visa, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and Recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.7, paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(10) and (c)(11), respectively, and a new paragraph (c)(9) and (c)(11), respectively, and a new paragraph (c)(9) is added to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * *

(c) * * *
(9) *Waivers under Pub. L. 103-416 based on a request by a State Department of Public Health (or equivalent).* In accordance with section 220 of Pub. L. 103-416, an alien admitted to the United States as a nonimmigrant under section 101(a)(15)(J) of the Act, or who acquired status under section 101(a)(15)(J) of the Act after admission to the United States, to participate in an exchange program of graduate medical education or training (as of January 9, 1977), may apply for a

waiver of the 2-year home country residence and physical presence requirement (the "2-year requirement") under section 212(e)(iii) of the Act based on a request by a State Department of Public Health, or its equivalent. To initiate the application for a waiver under Pub. L. 103-416, the Department of Public Health, or its equivalent, or the State in which the foreign medical graduate seeks to practice medicine, must request the Director of USIA to recommend a waiver to the Service. The waiver may be granted only if the Director of USIA provides the Service with a favorable waiver recommendation. Only the Service, however, may grant or deny the waiver application. If granted, such a waiver shall be subject to the terms and conditions imposed under section 214(k) of the Act. Although the alien is not required to submit a separate waiver application to the Service, the burden rests on the alien to establish eligibility for the waiver. If the Service approves a waiver request made under Pub. L. 103-416, the foreign medical graduate (and accompanying dependents) may apply for change of nonimmigrant status, from J-1 to H-1B and, in the case of dependents of such a foreign medical graduate, from J-2 to H-4. Aliens receiving waivers under section 220 of Pub. L. 103-416 are subject, in all cases, to the provisions of section 214(g)(1) of the Act.

(i) *Eligibility criteria.* J-1 foreign medical graduates (with accompanying J-2 dependents) are eligible to apply for a waiver of the 2-year requirement under Pub. L. 103-416 based on a request by a State Department of Public Health (or its equivalent) if:

(A) They were admitted to the United States under section 101(a)(15)(J) of the Act, or acquired J nonimmigrant status before June 1, 1996, to pursue graduate medical education or training in the United States.

(B) They have entered into a bona fide, full-time employment contract for 3 years to practice medicine at a health care facility located in an area or area designated by the Secretary of Health and Human Services as having a shortage of health care professionals ("HHS-designated shortage area");

(C) They agree to commence employment within 90 days of receipt of the waiver under this section and agree to practice medicine for 3 years at the facility named in the waiver application and only in HHS-designated shortage areas. The health care facility named in the waiver application may be operated by:

(1) An agency of the Government of the United States or of the State in which it is located; or

(2) A charitable, educational, or other not-for-profit organization; or

(3) Private medical practitioners.

(D) The Department of Public Health, or its equivalent, in the State where the health care facility is located has requested the Director, USIA, to recommend the waiver, and the Director, USIA, submits a favorable waiver recommendation to the Service; and

(E) Approval of the waiver will not cause the number of waivers granted pursuant to Pub. L. 103-416 and this section to foreign medical graduates who will practice medicine in the same state to exceed 20 during the current fiscal year.

(ii) *Decision on waivers under Pub. L. 103-416 and notification to the alien.*—

(A) *Approval.* If the Director of USIA submits a favorable waiver recommendation on behalf of a foreign medical graduate pursuant to Pub. L. 103-416, and the Service grants the waiver, the alien shall be notified of the approval on Form I-797 (or I-797A or I-797B, as appropriate). The approval notice shall clearly state the terms and conditions imposed on the waiver, and the Service's records shall be noted accordingly.

(B) *Denial.* If the Director of USIA issues a favorable waiver recommendation under Pub. L. 103-416 and the Service denies the waiver, the alien shall be notified of the decision and of the right to appeal under 8 CFR part 103. However, no appeal shall lie where the basis for denial is that the number of waivers granted to the State in which the foreign medical graduate will be employed would exceed 20 for that fiscal year.

(iii) *Conditions.* The foreign medical graduate must agree to commence employment for the health care facility specified in the waiver application within 90 days of receipt of the waiver under Pub. L. 103-416. The foreign medical graduate may only fulfill the requisite 3-year employment contract as an H-1B nonimmigrant. A foreign medical graduate who receives a waiver under Pub. L. 103-416 based on a request by a State Department of Public Health (or equivalent), and changes his or her nonimmigrant classification from J-1 to H-1B, may not apply for permanent residence or for any other change of nonimmigrant classification unless he or she has fulfilled the 3-year employment contract with the health care facility and in the specified HHS-designated shortage area named in the waiver application.

(iv) *Failure to fulfill the three-year employment contract due to extenuating circumstances.* A foreign medical graduate who fails to meet the terms and conditions imposed on the waiver under section 214(k) of the Act and this paragraph will once again become subject to the 2-year requirement under section 212(e) of the Act.

Under section 214(k)(1)(B) of the Act, however, the Service, in the exercise of discretion, may excuse early termination of the foreign medical graduate's 3-year period of employment with the health care facility named in the waiver application due to extenuating circumstances. Extenuating circumstances may include, but are not limited to, closure of the health care facility or hardship to the alien. In determining whether to excuse such early termination of employment, the Service shall base its decision on the specific facts of each case. In all cases, the burden of establishing eligibility for a favorable exercise of discretion rests with the foreign medical graduate. Depending on the circumstances, closure of the health care facility named in the waiver application may, but need not, be considered an extenuating circumstance excusing early termination of employment. Under no circumstances will a foreign medical graduate be eligible to apply for change of status to another nonimmigrant category, for an immigrant visa or for status as a lawful permanent resident prior to completing the requisite 3-year period of employment for a health care facility located in an HHS-designated shortage area.

(v) *Required evidence.* A foreign medical graduate who seeks to have early termination of employment excused due to extenuating circumstances shall submit documentary evidence establishing such a claim. In all cases, the foreign medical graduate shall submit an employment contract with another health care facility located in an HHS-designated shortage area for the balance of the required 3-year period of employment. A foreign medical graduate claiming extenuating circumstances based on hardship shall also submit evidence establishing that such hardship was caused by unforeseen circumstances beyond his or her control. A foreign medical graduate claiming extenuating circumstances based on closure of the health care facility named in the waiver application shall also submit evidence that the facility has closed or is about to be closed.

(vi) *Notification requirements.* A J-1 foreign medical graduate who has been granted a waiver of the 2-year

requirement pursuant to Pub. L. 103-416, is required to comply with the terms and conditions specified in section 214(k) of the Act and the implementing regulations in this section. If the foreign medical graduate subsequently applies for and receives H-1B status, he or she must also comply with the terms and conditions of that nonimmigrant status. Such compliance shall also include notifying the Service of any material change in the terms and conditions of the H-1B employment, by filing either an amended or a new H-1B petition, as required, under §§ 214.2(h)(2)(i)(D), 214.2(h)(2)(i)(E), and 214.2(h)(11) of this chapter.

(A) *Amended H-1B petitions.* The health care facility named in the waiver application and H-1B petition shall file an amended H-1B petition, as required under § 214.2(h)(2)(i)(E) of this chapter if there are any material changes in the terms and conditions of the beneficiary's employment or eligibility as specified in the waiver application filed under Pub. L. 103-416 and in the subsequent H-1B petition. In such a case, an amended H-1B petition shall be accompanied by evidence that the alien will continue practicing medicine with the original employer in an HHS-designated shortage area.

(B) *New H-1B petitions.* A health care facility seeking to employ a foreign medical graduate who has been granted a waiver under Pub. L. 103-416 (prior to the time the alien has completed his or her 3-year contract with the facility named in the waiver application and original H-1B petition), shall file a new H-1B petition with the Service, as required under §§ 214.2(h)(2)(i)(D) and (E) of this chapter. Although a new waiver application need not be filed, a new H-1B petition shall be accompanied by the documentary evidence generally required under § 214.2(h) of this chapter, and the following additional documents:

(1) A copy of Form I-797 (and/or I-797A and I-797B) relating to the waiver and nonimmigrant H status granted under Pub. L. 103-416;

(2) An explanation from the foreign medical graduate, with supporting evidence, establishing that extenuating circumstances necessitate a change in employment;

(3) An employment contract establishing that the foreign medical graduate will practice medicine at the health care facility named in the new H-1B petition for the balance of the required 3-year period; and

(4) Evidence that the geographic area or areas of intended employment indicated in the new H-1B petition is in HHS-designated shortage areas.

(C) *Review of amended and new H-1B petitions for foreign medical graduates granted waivers under Pub. L. 103-416 and who seek to have early termination of employment excused due to extenuating circumstances.*—(1)

Amended H-1B petitions. The waiver granted under Pub. L. 103-416 may be affirmed, and the amended H-1B petition may be approved, if the petitioning health care facility establishes that the foreign medical graduate otherwise remains eligible for H-1B classification and that he or she will continue practicing medicine in an HHS-designated shortage area.

(2) *New H-1B petitions.* The Service shall review a new H-1B petition filed on behalf of a foreign medical graduate who has not yet fulfilled the required 3-year period of employment with the health care facility named in the waiver application and in the original H-1B petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted under Pub. L. 103-416 should be affirmed. In conducting such a review, the Service shall determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H-1B petitioner and the foreign medical graduate have satisfied the remaining H-1B eligibility criteria described under section 101(a)(15)(H) of the Act and § 214.2(h) of this chapter. If these criteria have been satisfied, the waiver granted to the foreign medical graduate under Pub. L. 103-416 may be affirmed, and the new H-1B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H-1B petition.

(D) *Failure to notify the Service of any material changes in employment.*

Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H-1B status under Pub. L. 103-416 but fail to: Properly notify the Service of any material change in the terms and conditions of their H-1B employment, by having their employer file an amended or a new H-1B petition in accordance with this section and § 214.2(h) of this chapter; or establish continued eligibility for the waiver and H-1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H-4 dependents also

become subject to deportation under section 241(a)(1)(C)(i) of the Act.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; and 8 CFR part 2.

§ 245.1 [Amended]

4. In § 245.1, paragraph (c)(2) is amended by removing the “;” at the end of the paragraph and replacing it with a “.”; and by adding a new sentence at the end of paragraph (c)(2) to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * * An alien who has been granted a waiver under section 212(e)(iii) of the Act based on a request by a State Department of Health (or its equivalent) under Pub. L. 103-416 shall be ineligible to apply for adjustment of status under section 245 of the Act if the terms and conditions specified in section 214(k) of the Act and § 212.7(c)(9) of this chapter have not been met;

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

5. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

6. In § 248.2, paragraph (c) is amended by removing the “; and” at the end of the paragraph and replacing it with a “.”; and by adding two new sentences at the end of paragraph (c) to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(c) * * * This restriction shall not apply when the alien is a foreign medical graduate who was granted a waiver under section 212(e)(iii) of the Act pursuant to a request made by a State Department of Public Health (or its equivalent) under Pub. L. 103-416, and the alien complies with the terms and conditions imposed on the waiver under section 214(k) of the Act and the implementing regulations at § 212.7(c)(9) of this chapter. A foreign medical graduate who was granted a waiver under Pub. L. 103-416 and who does not fulfill the requisite 3-year employment contract or otherwise

comply with the terms and conditions imposed on the waiver is ineligible to apply for change of status to any other nonimmigrant classification; and

* * * * *

Dated: April 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95-12272 Filed 5-17-95; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-82-AD; Amendment 39-9234; AD 95-10-17]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L-1011-385 series airplanes. This action requires inspections to detect cracking or severing of the fuselage frames, and an additional inspection or repair, if necessary. This amendment is prompted by reports indicating that fatigue cracking was found on certain fuselage frames on these airplanes. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage shell due to the problems associated with fatigue cracking.

DATES: Effective May 23, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-82-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate,

spouse or children; (b) persecution on account of race, religion, or political opinion; (c) a "no objection" statement issued by the applicant's "home" country; or (d) a request made to USIA by an interested U.S. Government agency to recommend a waiver to the Service, because the applicant's work is deemed to serve the public interest. By statute, in the case of foreign medical graduates who entered the United States to receive graduate medical education or training (and accompanying J-2 dependents), a "no objection" statement does not constitute a basis for USIA to recommend a waiver to the Service. Therefore, even if a "no objection" statement on behalf of such a foreign medical graduate has been issued, the Service is statutorily required to deny the waiver application, if such a statement forms the only basis for the waiver request.

A substantial number of foreign medical graduates pursue waivers of the 2-year requirement through requests by an interested U.S. Government agency. Prior to the enactment of section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (1994 Technical Corrections Act), Pub. L. 103-416, 108 Stat. 4310, 4319-4320, dated October 25, 1994, only Federal Government agencies were considered to be an "interested United States Government agency" eligible to submit a waiver request to USIA on behalf of a J-1 exchange visitor. Because State governments were not permitted to act as interested government agencies, they were required to solicit the assistance of an appropriate Federal agency. Section 212(e)(iii) of the Act, as amended by section 220(b) of the 1994 Technical Corrections Act, now permits State Departments of Public Health, or their equivalent, to submit waiver requests for foreign medical graduates directly to USIA, provided that certain conditions have been met, as explained below.

As noted, under section 212(e) of the Act, the Service may not approve the applicant's waiver request unless the Director of the USIA has issued a favorable waiver recommendation. If USIA issues a favorable waiver recommendation, it notifies the Service thereof. Section 212(e) of the Act permits, but does not require, the Attorney General to grant the waiver pursuant to a favorable USIA recommendation. On the other hand, if USIA issues an unfavorable waiver recommendation, the Service must deny the waiver application. The Service's decision to deny the application may not be appealed, if the denial is based on lack of a favorable USIA waiver recommendation. Section 212(e)

waivers are valid only for those exchange programs indicated in the waiver request. Any subsequent J program extension or program transfer may re-subject the exchange visitor (and his or her dependents) to the 2-year requirement.

Under current procedures, an application form is not required when the waiver application is based on an interested U.S. Government agency request or a no objection statement. Similarly, a form will not be required to apply for a waiver based on a request by a State Department of Public Health. The Service is in the process of developing an omnibus form to be used for all waiver applications, including waivers of the 2-year requirement. It should be noted that the burden rests on the applicant to establish eligibility for a waiver of the 2-year requirement. In certain cases, therefore, the Service may require other documentation from the applicant besides the favorable USIA recommendation to fully assess his or her waiver eligibility.

After the Service approves an application for a waiver of the 2-year requirement, the J-1 exchange visitor may seek H nonimmigrant status in order to engage in temporary employment for the organization or entity named in the waiver application. Foreign medical graduates who wish to work temporarily in the United States once a waiver of the 2-year requirement has been granted may seek H-1B classification as a specialty occupation worker. An alien may obtain H-1B status either through the simultaneous filing of an H-1B petition by the prospective employer and a change of status application by the alien, if the alien is in the United States, or through the filing of an H-1B petition alone and the alien subsequently obtaining the visa at a consular post abroad. Change of status applications are governed by section 248 of the Act. To request a change of nonimmigrant status from J-1 to H-1B, a change of status application must be filed simultaneously with the H-1B nonimmigrant visa petition, if the applicant is eligible. Once the H-1B petition and change of status application are approved, the alien will be permitted to remain in the United States and commence temporary employment with the employer or organization named in the approved H-1B petition.

As 8 CFR 248.2(c) currently reads, foreign medical graduates (and their dependents) who entered the United States on J-1 visas (or who acquired J-1 status after admission) to pursue graduate medical education or training

are ineligible to apply for change of status under section 248 of the Act, even if a waiver of the 2-year requirement has been granted. This interim regulation revises 8 CFR 248.2(c) to conform with section 220 of the 1994 Technical Corrections Act. Accordingly, this interim regulation provides that foreign medical graduates who received a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health, or its equivalent, may apply for change of status from J-1 to H-1B, if they otherwise satisfy the change of status criteria found under section 248 of the Act.

Public Law 103-416

Section 220 of the 1994 Technical Corrections Act, enacted on October 2, 1994, permits the Service to grant a waiver of the 2-year requirement to a limited number of foreign medical graduates who have received a bona fide offer of full-time employment and who agree to practice medicine at a health care facility located in an HHS-designated shortage area. Any foreign medical graduate who is subject to the 2-year requirement, and who meets the eligibility criteria, may apply for a waiver under Pub. L. 103-416, regardless of whether he or she is physically present in the United States.

To be eligible for the waiver, the foreign medical graduate must enter an employment contract to practice medicine full-time for at least 3 years at a health care facility located in the HHS-designated shortage area, and must agree to commence such employment within 90 days of receipt of the waiver. The Service may grant the waiver on if the Department of Public Health, or its equivalent, of the State where the foreign medical graduate will be employed, submits a formal request to USIA for a waiver recommendation. USIA submits a favorable waiver recommendation to the Service. Although the State Department of Public Health, or its equivalent, must request the waiver on behalf of the foreign medical graduate, the health care facility at which the foreign medical graduate will work need not actually be owned or operated by the State.

The Service notes that section 220 of Pub. L. 103-416 does not expressly waive the 2-year requirement for the accompanying spouse or children of a foreign medical graduate. Longstanding Service policy, however, permits J-1 exchange visitors to include their J-1 dependent spouse and children in their waiver application. Consequently, a foreign medical graduate seeking a waiver of the 2-year requirement under section 220 of Pub. L. 103-416 shall

Waivers of: (a) applicant's dependent



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

cc ✓ Steve Wamath
✓ Marion Berry
cc ✓ Nancy Ann Min
(CMB)
✓ Tracey Thornton
(leg. affairs)
From Diana Fortuna

INFORMATIONAL MEMORANDUM FOR THE SECRETARY

FROM: Karl N. Stauber *K. N. Stauber*
Under Secretary
Research, Education, and Economics

DEC 11 1995

SUBJECT: J-1 Visa Waiver Program

ISSUE:

Aliens entering this country to participate in educational exchange programs are issued a J-1 visa. Immigration law requires that, at the end of the program, they return to their country of nationality for two years before they are eligible to apply for an immigrant or non-immigrant visa or for permanent residence. A cabinet level officer can intercede on behalf of the visitor if it is deemed in the interest of the United States that this requirement be waived. This authority was delegated to the Under Secretary for Research, Education, and Economics for foreign scientists and subsequently extended to medical doctors.

DISCUSSION:

Section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), requires certain classes of persons admitted to this country as participants in educational exchange programs return to the country of their nationality for two years before they are eligible to apply for an immigrant or nonimmigrant visa or for permanent residence. This subsection in turn authorizes any interested U.S. Government agency to request that the Director, United States Information Agency, waive the two-year home residency requirement if the agency has determined that granting that such a waiver would be in the public interest and that with the two-year, home-country physical presence requirement would be detrimental to a program or activity of interest to the agency.

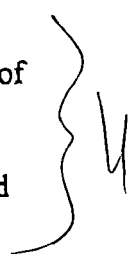
In 1993, Secretary Espy received such a request for a physician wishing to practice in a rural area of Louisiana that had been designated a Health Professional Shortage Area by the Department of Health and Human Services (HHS). The Office of the Secretary requested that the Office of General Counsel (OGC) determine whether the Secretary had authority to recommend a waiver of the residency requirement for a medical doctor. OGC concluded that the Secretary had the authority to recommend such a waiver in that staffing rural hospitals with needed doctors could be deemed to further the Department's mission to improve underdeveloped rural areas. No statute mandates that the Department as "an interested U.S. Government agency".

For years, the Agricultural Research Service (ARS) has processed half-a-dozen J-1 visa waiver requests per year for scientists engaged in agricultural research and development on behalf of the Department. Requests for medical doctors were forwarded to HHS, which has served as the principal agency in requesting waivers for physicians wishing to remain in the United States to conduct research or teach. Until USDA started accepting visa waiver requests, the Appalachian Regional Commission and the Veterans Administration were the only agencies requesting waivers for practicing medical doctors. Since processing the first waiver request for a physician two years ago, ARS has received nearly 1,000 requests. The program is very popular in States with areas which are unable to recruit and retain American physicians, and it has overwhelming support on Capitol Hill.

The Government Accounting Office has recently initiated a study focused on the J-1 waiver program and its impact on access to health care. They are concerned that this program is coordinated among the various U.S. agencies. Similar programs are conducted by the Department of Housing and Urban Development, the Veterans Administration, the Appalachian Regional Commission, and various State Departments of Health.

SUMMARY

In the past, the Department refused to consider waivers for medical doctors based upon the fact that we could not evaluate the circumstances of need for any one request. We considered health maintenance issues to be the purview of the U.S. Public Health Service, and they should be the responsible agency to review requests from doctors seeking J-1 visa waivers. HHS and the State Health Departments are in the position of knowing the health care needs of communities. USDA has no expertise in matters involving health care services. It is our position that the J-1 visa waiver program should be the responsibility of HHS or the States, which have authority to recommend 20 visa waivers per year under the October 1995 Conrad "State 20" amendment to Section 212(e).

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United States
Department of
Agriculture

Agricultural
Research
Service

Office of the
Administrator

Washington, D.C.
20250

Office of International Programs
Building 005, BARC-West
10300 Baltimore Boulevard
Beltsville, MD 20705-2350
Tel. (301) 504-5605
Fax. (301) 504-5298

November 15, 1995

SUBJECT: General Accounting Office Evaluation of the J-1 Visa Program

TO: Karl N. Stauber
Under Secretary
Research, Education, and Economics

THROUGH: Floyd P. Horn *Floyd P. Horn*
Administrator, ARS *NOV 21 1995*

FROM: Richard S. Soper *Richard S. Soper*
Assistant Administrator

Enclosed are the questions forwarded to our office by Timothy L. Clouse, Evaluator, U.S. General Accounting Office (GAO), concerning the administration of the J-1 visa waiver program for rural, medically under-served areas, by this office. It is our understanding that Mr. Clouse will meet with you in the near future. This information is for your reference.

During the course of our meeting on November 14, 1995, the following points were made:

- During the last year, J-1 waiver applications have increased from approximately 400 to over 600.
- Our criteria for processing visa waiver applications are well-defined, i.e., the applicant must have a sponsoring institution willing to offer a 3-year contract, the State Health Department must support the application, and the area served must be rural, medically under-served, as defined by Health and Human Services.
- U.S. Department of Agriculture, Agricultural Research Service (USDA/ARS) does not process applications for areas served by either the Appalachian Regional Commission or the Indian Health Service.

Karl N. Stauber

2

- USDA/ARS does not have any enforcement mechanism to assure compliance with the terms of the waiver application. Violations of the agreement between the applicants and sponsoring institutions are ultimately the responsibility of the Immigration and Naturalization Service.
- USDA/ARS recently completed a survey of compliance by waiver applicants with the terms of their service contracts. When the data are analyzed, we have agreed to release these to GAO. Our preliminary analysis suggests that contract violations are not a major issue.
- We do not plan to change the waiver application process in the near future.
- All policy issues should be addressed to the Under Secretary's office.

Enclosure

cc:

G. Spory, AFM

MEMORA

From: Tim Clouse, GAO

To: Richard Soper, International Research Programs, USDA

Subject: Questions/Issues for the GAO entrance conference on the J-1 visa program
(code 108258)

These are some of the questions and issues we'd like to get started on. We do not need answers to all questions at the time of the meeting. However, we would like you to refer us to the appropriate officials so we can get the data we need. We would also like copies of any policy guidance you have on these issues, sample application forms, and copies of any databases you have on physicians placed. If you have any questions, please give me a call at (206) 287-4771.

Why is the USDA requesting waivers for physicians? How long has the USDA been doing this?

What is the USDA's policy on requesting physician J-1 visa waivers? What conditions does the USDA attach to requesting the waiver? Is the USDA considering changing these policies and conditions?

What sorts of organizations and communities are requesting the USDA's assistance in placing physicians? Has the USDA rejected any of these requests?

Does the USDA limit the number of requests it will process? If it does, how does the USDA determine which requests it will honor?

What is the USDA's policy on placing physicians? Does the USDA coordinate its placements with other agencies or State Health Departments that are using physicians practicing under waivers? Does the USDA have an outreach program for identifying communities that need physicians but are unable to get them?

Are physicians subject to any particular requirements to serve specific populations or communities?

How many physician waivers did the USDA request during fiscal years 1994 and 1995? Does the USDA know where physicians who have been placed under the J-1 visa waiver program go after their contracts end?

Does the USDA have any enforcement mechanisms to ensure that physicians placed will honor their contracts? Did the United States Information Agency (USIA) or the Immigration and Naturalization Service (INS) reject any of the USDA's requests? How often are the enforcement mechanisms used?

Are granted requests broken down by physician specialty or location? If so, please give us a copy of the list.

Does the USDA think that one agency should coordinate all waiver requests and placements? If so, which agency should have that responsibility and how should the coordination be done?

Does the USDA think that the recent changes immigration law that allow state health departments to request J-1 visa waivers for physicians will reduce the USDA's involvement in placing physicians?

Will USDA's use of J-1 visa waiver physicians change for other reasons?

Does USDA have any other comments or suggestions on ways to improve physician access in



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Washington, D.C.
20250

INFORMATIONAL MEMORANDUM FOR THE UNDER SECRETARY, REE

THROUGH: Floyd P. Horn *Floyd P. Horn* 11/22/95
Administrator

FROM: Richard S. Soper *Richard S. Soper* 11/21/95
Assistant Administrator, OIRP

SUBJECT: Medical Doctor J-1 Residency Visa Waiver Program Survey

ISSUE:

The J-1 Visa Waiver Program processes applications for foreign physicians who seek to waive their residency requirements in exchange for providing medical service to rural health shortage areas. The Department of Agriculture (USDA) is concerned about the reliability of J-1 doctors and their compliance with medical employment contracts. This report is in response to the Under Secretary's request for a survey to determine if these doctors were fulfilling their contracts.

DISCUSSION:

The Office of International Research Programs (OIRP) has conducted a follow-up survey to determine the status of foreign physicians employed in rural health shortage areas in the United States under the J-1 Visa Waiver Program. This survey was conducted by telephone interview. The goals of the survey were to: 1) ascertain the efficacy of the USDA portion of the waiver application process; 2) find out the performance levels of J-1 physicians; 3) determine whether these physicians are adhering to their work contracts; and 4) establish the future viability of the waiver program.

The OIRP maintains a current database of all waiver applications with details on the applicants' educational background, experience and credentials, along with statistics about the medical center in question, contact persons and phone numbers. As of late October, OIRP had processed over 600 J-1 Visa Waiver applications. This application database was the source for the attached survey and results.

Out of the total 600 applications, only those granted waivers were considered for statistical analysis. This batch was then narrowed down to those applications granted waivers more than a year ago, as the survey only has relevance when applied to physicians with a solid work history. Of the remaining 200 applications, 20 percent, or 40 health care facilities were randomly selected to comprise the survey group. Because of multiple placement, this represented a total of 54 J-1 doctors. The survey itself consisted of eight questions and two open ended questions. The respondents were all hospital administrators, head doctors, or individuals knowledgeable about the medical facility and the J-1 physician(s) on staff.

INFORMATIONAL MEMORANDUM FOR THE UNDER SECRETARY, REE**2**

The objective survey results indicate that almost all of the J-1 doctors are in fact practicing internal, primary care, family practice or pediatric medicine, as set forth in USDA waiver requirements. The few exceptions are physicians practicing in related areas, like general surgery or urology, which are still basic specialties useful to a large segment of the patient population. Moreover, the average J-1 physician provides medical care to 20 percent of the patient population served by his/her health center, with an overall range of 10 to 50 percent.

Most of the doctors started working between February and October of 1994. Of the 40 surveys, only one physician is no longer with the assigned health center, and then only because the center discovered it did not have the patient load previously anticipated. The doctor was subsequently transferred to a sister facility with a greater medical need. All respondents expected to keep their J-1 physicians and seemed genuinely pleased to have the added assistance in their understaffed facilities. Regarding the hiring of additional J-1 doctors, eight hospitals were already in the process of applying for more J-1 physicians, while the rest either had neither the budget or room for additional staff. However, outside of monetary, legal and bureaucratic restraints, most respondents would gladly hire another J-1 physician.

The open ended questions were naturally more subjective in nature, encouraging the respondent to freely discuss concerns about the flaws in the program itself. Several examples that represent typical responses have been written out in detail.

Most respondents were relatively satisfied with USDA's handling of the program. While all agreed that the process is lengthy, there seemed to be an appreciation for the personal status updates they received from the OIRP waiver office. However, there was an overwhelming appeal for some centralization of the 6 month process within one oversight agency. Attorneys who act as liaisons for the health centers and J-1 applicants were considered a costly, but necessary intermediary in simplifying and handling the application process.

Lastly, while negative comments about individual J-1 physicians were minimal, there was concern about who or what organization was actually insuring physician quality control. Some respondents wondered what legal recourse they might have in the event that the doctor proved unsatisfactory or reneged on the work contract.

SURVEY LIMITATIONS:

This survey was not designed to supply USDA with hardcore statistics and demographics about the J-1 Visa Waiver Program, and should be considered a preliminary overview of the role of J-1 physicians in rural medical health and USDA's handling of the process. However, the data does shed light on the benefit of the program to the health of rural medical shortage areas, while acknowledging USDA's attempts to facilitate the waiver process.

2 Enclosures

Contact Name: _____
Health Facility/State: _____
Telephone Number: _____
Date Contacted: _____

J-1 VISA SURVEY

The J-1 Visa Waiver Office of the U.S. Department of Agriculture is conducting a follow-up survey on foreign doctors employed under the J-1 Program within the last year. Do you have a moment to answer a few questions about J-1 physicians working in your health organization?

1. How many J-1 doctors are employed in your health organization? (If more than one) What are their names and specialties?
2. What is the length of the work contract? Is the doctor(s) still employed at your facility? (If yes, go to question 3)
3. Do you plan to keep your J-1 physician(s)?
4. How many patients are serviced by your health care organization? How many or what percentage of these patients are treated by your J-1 physician(s)?
5. Do you plan to employ more J-1 Visa physicians in the future?
6. Were you involved in the USDA application process to grant a J-1 Visa Waiver to the physician(s) in question. What was your experience with the USDA J-1 Visa application process.
7. What suggestions or comments do you have regarding USDA oversight of the J-1 Visa Program?

J-1 VISA SURVEY RESULTS

<i>No.</i>	<i>State</i>	<i># J-1 Doctors</i>	<i>Specialty</i>	<i>Patients Served</i>	<i>% Served by J-1</i>	<i>Start Date</i>	<i>Currently Employed</i>	<i>Keep J-1</i>	<i>Hire More</i>
1	WV	2	General Surgery Family Practice	60,000	50%	2/94	Yes	Yes	Yes
2	NY	1	Primary Care	15,000	25%	3/94	Yes	Yes	No
3	LA	1	Family Practice	20,000	20%	6/94	Yes	Yes	No
4	NY	1	Internal Medicine	5,000	10%	7/94	Yes	No	No
5	MI	3	Internal Medicine Pediatrics Pediatrics	42,500	20%	7/94 11/94 6/95	Yes	Yes	No
6	MS	1	Primary Care	NA	NA	6/94	Yes	Yes	Yes
7	MS	2	Primary Care	97,000	33%	1994	Yes	Yes	No
8	MI	1	Internal Medicine	10,000	15-20%	6/94	Yes	Yes	No
9	LA	1	General Practice	40,000	25%	7/94	Yes	Yes	Yes
10	AL	1	Family Practice	200/day	50%	5/94	Yes	Yes	No
11	LA	2	Family Practice Pediatrics	NA	NA	6/94	Yes	Yes	No
12	AL	1	Internal Medicine	19,000	10%	8/94	Yes	Yes	Yes
13	TX	1	Primary Care	321,000	12%	7/94	Yes	Yes	No
14	AL	1	Internal Medicine	15,000	25%	8/94	Yes	Yes	No
15	KY	1	Internal Medicine	27,000	20-25%	8/94	Yes	Yes	No

<i>No.</i>	<i>State</i>	<i># J-1 Doctors</i>	<i>Specialty</i>	<i>Patients Served</i>	<i>% Served by J-1</i>	<i>Start Date</i>	<i>Currently Employed</i>	<i>Keep J-1</i>	<i>Hire More</i>
16	LA	2	Primary Care Internal Medicine	36,000	33%	6/94 8/94	Yes	Yes	Yes
17	MO	1	Pediatrics	150/day	25%	8/94	Yes	Yes	No
18	KA	1	Cardiology	10,000	50%	8/94	Yes	Yes	No
19	LA	1	Pediatrics	56,000	50%	7/94	Yes	Yes	Yes
20	LA	3	Internal Medicine Internal Medicine Pediatrics	550/day	33%	6/94 6/94 1/95	Yes	Yes	No
21	ND	1	Primary Care	17,000	40%	7/94	Yes	Yes	No
22	MS	2	Internal Medicine Family Practice	21,000	25%	5/94 8/94	Yes	Yes	Yes
23	LA	1	Internal Medicine	26,000	NA	8/94	Yes	Yes	No
24	CA	1	Internal Medicine	45,000	15%	9/94	Yes	Yes	No
25	IL	1	Internal Medicine	12,000	20%	9/94	Yes	Yes	No
26	LA	1	Pediatrics	30,000	NA	8/94	No	NA	No
27	TX	2	Primary Care Internal Medicine	150,000	30%	8/94 11/94	Yes	Yes	No
28	AZ	1	Pediatrics	6,000	33%	9/94	Yes	Yes	No
29	AZ	1	Family Practice	25,000	15%	9/94	Yes	Yes	No
30	WV	1	Primary Care	40,000	20%	9/94	Yes	Yes	Yes

<i>No.</i>	<i>State</i>	<i># J-1 Doctors</i>	<i>Specialty</i>	<i>Patients Served</i>	<i>% Served by J-1</i>	<i>Start Date</i>	<i>Currently Employed</i>	<i>Keep J-1</i>	<i>Hire More</i>
31	MS	3	Primary Care Internal Medicine Pediatrics	60,000	33%	5/94 6/94 1/95	Yes	Yes	Yes
32	MO	1	Pediatrics	7,000	15%	9/94	Yes	Yes	No
33	AZ	1	Internal Medicine	200/day	25%	8/94	Yes	Yes	No
34	MS	1	Internal Medicine Family Practice	75,000	20%	4/94 9/94	Yes	Yes	Yes
35	TX	1	Pediatrics	15,000	15%	10/94	Yes	Yes	No
36	ND	1	Internal Medicine	75/day	20-30%	9/94	Yes	Yes	No
37	TN	1	Urology	36,000	NA	10/94	Yes	Yes	No
38	LA	2	Internal Medicine Internal Medicine	45,000	15%	2/94 10/94	Yes	Yes	Yes
39	NY	1	Primary Care	18,000	10%	10/94	Yes	Yes	No
40	MS	2	Internal Medicine Primary Care	50,000	35%	8/94 10/94	Yes	Yes	No

Comments and Suggestions on USDA application process and program oversight (OPEN ENDED QUESTIONS)

Have had good experience with the USDA.... USIA, INS and State Department are confusing as to their purpose in the J-1 Visa Waiver process.... Need more explanation or follow-up during the waiting period regarding [applicant's] status. Maybe an ombudsman to oversee the process, possibly someone in the USDA J-1 Waiver office.

Used to work for a Congressman and fully understand the J-1 Waiver process. It's bureaucratic, but the program works.... Working with multiple agencies for 6 months can get confusing. Some centralization would be helpful.

Hospitals need more assistance from the government in terms of predicting J-1 physicians' performance. Doctors are only employed for 2 years and there is a revolving door mentality. These doctors are typically the "C" students in their countries and try to get over in the United States by playing on our ignorance about the quality of their native country's medical school programs. Medical school training is vastly different depending on the country.... Experienced no problems with the USDA. However, something should be done about the cost of attorney's fees which are astronomical at \$18,000 to \$22,000.... Someone should be in charge of quality control and making sure these doctors stay on the job; they [J-1 doctors] are cocky and they know their worth.

Was only minimally involved in doctor's application process. That's why our center hired a lawyer, just to take the paper work off our hands.... Generally USDA seems to be doing a fair job.... Is there any way to shorten the process or locate all these approval check points in one place?

We are the only public health facility in the county and have a hard time getting doctors down here, so this J-1 program was really our only option. I personally worked to get the two J-1 doctors we've got on board, and it was a long process. The USDA people were helpful in keeping us abreast of the status [of waiver applications], but the process is incredibly long and could use some streamlining.

The experience with USDA has been good, although there needs to be more of a connection between the various agencies involved in the application process.... In the future USDA might want to take the lead in terms of being the main information source throughout the application process.... We're concerned that the program may be cut and we really couldn't function without it. The J-1 doctors we have are consistently the top producers, surpassing the American physicians.

J-1 Visa Waiver Requests
January 1 - December 5, 1995

Number received	680
Number physicians processed/pending	648
Number scientists processed/pending	6
Number canceled/ returned	26

Number of Physicians by State

Alabama	9	Texas	80
Arkansas	31	Utah	1
Arizona	9	Vermont	1
California	28	Virginia	2
Colorado	3	Washington	3
Delaware	1	Wisconsin	22
Florida	28	Wyoming	2
Georgia	10		
Iowa	9		
Illinois	57		
Indiana	11		
Kansas	15		
Kentucky	15		
Louisiana	62		
Maryland	2		
Maine	7		
Michigan	35		
Minnesota	9		
Missouri	28		
Mississippi	39		
Montana	2		
North Carolina	16		
North Dakota	7		
Nebraska	4		
New Hampshire	3		
New Jersey	1		
New Mexico	4		
New York	36		
Ohio	5		
Oklahoma	19		
Oregon	1		
South Carolina	14		
South Dakota	4		
Tennessee	11		

Citizenship/Permanent Residence of Physician

Argentina	5	Turkey	13
Bangladesh	6	United Kingdom	6
Belize	1	Uruguay	3
Bolivia	1	Venezuela	3
Bulgaria	1	Zimbabwe	1
Burma	3		
Canada	35		
China	1		
Colombia	3		
Cyprus	1		
Dominican Rep.	2		
Ecuador	2		
Egypt	12		
Germany	1		
Ghana	4		
Greece	2		
Grenada	1		
Guatemala	2		
Guyana	1		
Hungary	2		
Iceland	2		
India	93		
Iran	7		
Israel	3		
Italy	1		
Japan	1		
Jordan	14		
Kenya	1		
Lebanon	21		
Lithuania	3		
Maylasia	2		
Mauritius	1		
Mexico	11		
Nepal	2		
Nicaragua	1		
Nigeria	10		
Pakistan	133		
Panama	1		
Peru	19		
Philippines	129		
Poland	4		
Portugal	1		
Romania	2		
South Africa	2		
Singapore	1		
Slovakia	1		
Spain	1		
Sri Lanka	6		
Surinam	1		
Syria	58		
Trinidad	2		



United States
Department of
Agriculture

Agricultural
Research
Service

Office of the
Administrator

Washington, D.C.
20250

Waiver Review Office
10300 Baltimore Blvd.
Room 4, Building 005, BARC-W
Beltsville, MD 20705-2350
301-504-7121 Fax: 301-504-5298

November 21, 1995

SUBJECT: Waiver of J-1 Visa Residency Requirement
Medical Doctor

TO: Interested Parties

FROM: *Linda L. Seckel*
Linda L. Seckel
Program Coordinator

Our office has been assigned the responsibility to provide recommendations to the Under Secretary of Agriculture for Research, Education and Economics on petitions from Agricultural Scientists and Medical Doctors for a waiver of J-1 visa residency requirements. This memorandum is to provide information on the process and provide answers to questions you might have. Because we cannot possibly return all the telephone messages left each day, you are requested to make further inquiries about the program or the status of your request by mail or FAX or leave your name and address or fax number on our answering machine (301-504-6543). The party submitting the request will be notified when the request has been forwarded to the United States Information Agency (USIA).

Procedure

1. You are responsible for locating and negotiating a contract for a minimum of 3 years to serve as a **primary care physician** in an underserved **rural** area. The listing of Health Professional Shortage Areas can be found at the public library in the Federal Register (October 2, 1995 issue).
2. You must obtain the concurrence of the Department of Health of the State where you have secured a job.
3. Prepare the waiver package as outlined in the enclosed information.
4. Submit the package to our office for processing.

What We Do

1. Review the package to insure all documents are in order.
2. Recommend action to the Under Secretary who has authority to act as the "interested party" for the U. S. Department of Agriculture. It takes 30-60 days from receipt of the waiver request to submission to the Under Secretary.
3. If the request is supported, the case file, along with the necessary cover letter, is sent to the U. S. Information Agency (USIA). USIA checks with the organization that signed the IAP-66 (Certificate of Eligibility for Exchange Visitor J-1 Status) bringing the person into the U.S. If that organization and the home country have no objection to granting a waiver, and the case has all necessary documents, USIA will forward the package to the Immigration and Naturalization Service with a favorable recommendation.

Total processing time can take 6 months.

What We Cannot Do

1. We do not approve the waiver; we only assure the documents are in order and that the waiver request fits our policy.
2. We do not process any application that falls within the Appalachian Regional Commission's jurisdiction or that is for an urban area, which is handled by the U.S. Department of Housing and Urban Development.
3. We cannot provide any information on medical facilities seeking physicians.

Further Information

PLEASE SUBMIT INQUIRIES IN WRITING.

Enclosures

WAIVER PACKAGE FOR PHYSICIANS

1. Letter from State Health Department concurring with request.
2. Letter from medical facility summarizing the situation, the facility's program, the rural character of the area, the critical need, and the effect of a waiver denial.
3. Proof of Health Professional Shortage Area designation or documentation from State health care officials stating need for services.
4. USIA data sheet.
5. Curriculum vitae and bibliography.
6. LAP-66 for each year in J-1 status.
7. Valid offer of employment with health care organization for at least 3 years.
8. Recruitment efforts (copies of advertisements, agreements with placement services, etc.). If these documents are not available, submit a strongly-worded, detailed statement describing recruitment efforts.
9. Qualifications (copies of licenses, etc. Physicians should be qualified to obtain license in state where he/she will practice.
10. Letters from interested parties, letters of support, etc.
11. Letters of recommendation from those who know his/her work and know him/her personally.

Please submit 2 copies of the entire package (one unbound).

USIA DATA SHEET

1. Full name:
2. Date of birth:
3. Country of nationality or last legal permanent residence:
4. Date and place of issuance of original exchange visitor (J-1) visa:
5. Present address: Immigration District:
6. Home phone: Business phone:
7. List of exchange visitor programs in which you have participated. If known, give the program number. also include field of specialization:
8. Alien registration number, if known:
9. If your exchange visitor program includes funding from the U.S. government, your own government, or an international organization, please give full particulars concerning the funding:
10. Is your spouse in J-status? _____ If so, is he/she also applying for a waiver? (Please give full explanation.)
11. Give the reasons for not wishing to fulfill the 2-year home-country residence requirement to which you agreed at the time you accepted exchange visitor status. (Use additional sheet if needed.)
12. Please include copies of all IAP-66's issued you during your stay in this country.

SIGNATURE

DATE

ORRIN G. HATCH, UTAH, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

MARK R. DYLER, Chief Counsel
 MANUS COONEY, Staff Director and Senior Counsel
 CYNTHIA C. HOGAN, Minority Chief Counsel
 KAREN A. ROSS, Minority Staff Director

December 13, 1995

The Honorable Donna E. Shalala
 Secretary, Department of Health and Human Services
 Attn: Irene Bueno
 Office of the Ass't Secretary for Legislation
 Hubert H. Humphrey Building
 200 Independence Avenue, S.W.
 Washington, D.C. 20201

VIA FAX

Dear Secretary Shalala:

It is my understanding that the Administration is in the process of reviewing the manner in which it applies the waiver provisions of the J-1 Visa program as they relate to foreign physicians. I write to inform you of my strong support for this program, and of my hope that any changes made to the administration of this program not adversely affect the many communities that depend on J-1 waivers for health care services.

Through the waiver provisions of the J-1 program, foreign physicians can be exempted from the program's two-year foreign residence requirement if an "interested government agency" requests their services. This program has been used, as you know, to provide physicians to communities designated by HHS as Health Professional Shortage Areas (HPSAs) -- communities that do not attract graduates of American medical schools and therefore would lack sufficient medical professionals in the absence of this program. By last count, over 45 million Americans -- including millions of Illinoisans -- live in HPSAs. Thus, these foreign physicians are an absolutely integral component of our nation's and my state's health care infrastructure.

Currently, several federal agencies, as well as state agencies, are empowered to recommend waivers of the J-1 program's foreign residence requirement. It is my understanding that the Administration is considering consolidating these waiver-recommending functions into one federal agency -- perhaps HHS. While I do not object to such streamlining in principle, it is my strong belief that the agency charged with this important responsibility must administer the waiver process in an efficient and thorough manner, so as to ensure the continued availability of health care services to those communities that have come to rely on the waiver program for physician care.

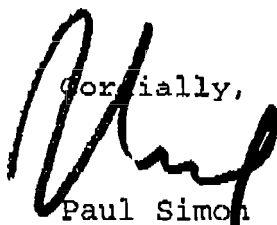
While the law was recently changed to enable both state and federal authorities to recommend waivers under the J-1 visa waiver, I do not understand this change to have been made in order to relieve the federal government of its own obligation to administer the waiver provisions conscientiously. Rather, the so-called Conrad amendment was designed to provide a second, equally accessible, avenue for waivers. It is important that in the course of its deliberations, the Administration not make the availability of waivers through state agencies an excuse for not fulfilling its own role in the J-1 waiver process.

I urge both you to keep these concerns in mind as you continue to consider the J-1 visa program, and I would appreciate any update on your review as it continues. I am sending a similar letter to OMB Director Rivlin.

As always, thank you for your attention to this matter.

My best wishes.

Cordially,



Paul Simon
United States Senator

PS/cta

cc: Tracey Thornton, White House Legislative Affairs

ORRIN G. HATCH, UTAH, CHAIRMAN

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 MANUE COONEY, *Staff Director and Senior Counsel*
 CYNTHIA C. HOGAN, *Minority Chief Counsel*
 KAREN A. ROOS, *Minority Staff Director*

December 13, 1995

Alice B. Rivlin
 Director, Office of Management and Budget
 Attn: Nancy-Ann Min
 Associate Director, Health/Personnel
 Old Executive Office Building
 Washington, D.C. 20503

VIA FAX

Dear Director:

It is my understanding that the Administration is in the process of reviewing the manner in which it applies the waiver provisions of the J-1 Visa program as they relate to foreign physicians. I write to inform you of my strong support for this program, and of my hope that any changes made to the administration of this program not adversely affect the many communities that depend on J-1 waivers for health care services.

As you are well aware, through the waiver provisions of the J-1 program, foreign physicians can be exempted from the program's two-year foreign residence requirement if an "interested government agency" requests their services. This program has been used, as you know, to provide physicians to communities designated by HHS as Health Professional Shortage Areas (HPSAs) -- communities that do not attract graduates of American medical schools and therefore would lack sufficient medical professionals in the absence of this program. By last count, over 45 million Americans -- including millions of Illinoisans -- live in HPSAs. Thus, these foreign physicians are an absolutely integral component of our nation's and my state's health care infrastructure.

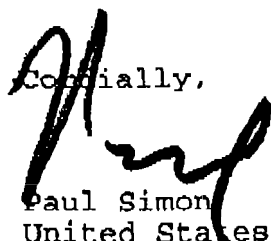
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I urge you to keep these concerns in mind as you continue to consider the J-1 visa program, and I would appreciate any update on your review as it continues. I am sending a similar letter to HHS Secretary Shalala.

As always, thank you for your attention to this matter.

My best wishes.

Confidentially,


Paul Simon
United States Senator

PS/cta

cc: Tracey Thornton, White House Legislative Affairs

Jan Pederson 785-1960

Attorney in private practice representing Sisters of Charity:
Dumas, Arkansas: 2 clinics

Met with Dr. Stauber, Secy; 9 providers from different states;
tell Glickman how important program is

Glickman supportive; But had concerns: Stauber had bad experience
in early 70's; are criminal checks; are tons of checks today;
didn't know credentialling, which is more intense than US cred.

No expertise, but no one has more; "trying to get/almost
convinced HHS to do it;

She's the grandmother of it all; USDA only did for last 2 years;
HUD started July 94; ARC since 1984

\$250,000 fine contract between employer and doc; HUD, ARC does;
money goes to employer; USDA could/should do [USDA requires
letter from state] [USDA gen'l counsel said non-enforceable]

ARC follows up on whether person hits the road;

She told Stauber USIA leadership role; didn't know if they'll
exist; USIA not in meeting? found strange

Applicant/provider asks USDA; USDA recs USIA that they recommend
waiver to INS; make sure medically underserved; then INS does,
pretty much automatically

USIA: Stanley Covin, Gen. Counsel

PEDERSON & FREEDMAN, L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP OF PROFESSIONAL CORPORATIONS
LION BUILDING SUITE 401
1233 TWENTIETH STREET, N.W.
WASHINGTON, D.C. 20036-2304
TELEPHONE (202) 785-1960
FACSIMILE (202) 785-3815

FAX TRANSMITTAL SHEET

RECIPIENT: MS. DIANA FORTUNA

FIRM OR COMPANY:

FAX NUMBER: 202-456-7028

DATE: DECEMBER 14, 1995

NUMBER OF PAGES: 3
(including this Transmittal Sheet)

FROM: JAN PEDERSON

RE:

COMMENTS:

Dear Ms Fortuna:

I will be forwarding summary sheets to you shortly. Please do not hesitate contact me if you should have any questions or comments regarding the attached letter.

Sincerely yours,

Jan Pederson

This fax document contains information which is Confidential, may be subject to the Attorney/Client Privilege, and is intended solely for the recipient designated below. If you are not the intended recipient, or the employee or agent responsible for delivering this document to the intended recipient, any dissemination or copying of this fax document or any part thereof is Strictly Prohibited. If you receive this fax document by error, please immediately notify us by telephone and return the original fax document to us at the above address by mail. We will reimburse you for any postage and telephone charges incurred for same. Thank you for your cooperation.

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LION BUILDING, SUITE 401

1233 TWENTIETH STREET, N.W.

WASHINGTON, D.C. 20036-2304

TELEPHONE (202) 785-1960

FACSIMILE (202) 785-3815

December 14, 1995

VIA FAX--202-456-7028

Ms. Diana Fortuna
Deputy Assistant to the President
for Domestic Policy
Executive Office of the President
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Ms. Fortuna:

Thank you for taking time to speak with me about issues of great concern to rural health care providers and their patients relating to the J-1 Physician waiver programs.

As we discussed, the issues of concern to USDA appear to be quality control in terms of medical credentials and licensure and criminal background checks on the physicians. In addition, you indicated concern about monitoring compliance by J-1 physicians with commitments to serve in medically underserved areas.

I have attached ^{WJ} informational summaries on each issue which, I trust, will clarify that current procedures ensure that extensive background investigations into academic credentials and criminal background checks are completed on J-1 physicians before they reach the point of applying for a J-1 waiver. These thorough prior agency checks can be relied on by agencies subsequently concerned with such issues.

Briefly, a physician's foreign academic credentials are verified by at least three agencies; the Educational Council for Foreign Medical Graduates (ECFMG), the state licensing authorities and malpractice insurance carriers. Each of these entities has the highest interest in insuring the authenticity of credentials.

Criminal background checks are conducted by the Department of State in their comprehensive data base *prior to the issuance of an American visa to the physician and thus prior to entry into the United States*. These procedures have been made even more secure than previously in the wake of the tragic World Trade Center and CIA incidents. Then, upon arrival at a port of entry into the United States, a name check is made in the powerful TECHS computer data base and system, which

December 14, 1995

Page 2

includes information from INTERPOL, local, state and federal law enforcement agencies as well as the INS itself. Subsequent to initial entry, another Department of State criminal and security background check is conducted prior to the physician commencing the waiver employment when he/she obtains an H-1B temporary working visa, which, by law, can only be obtained by the physician leaving America, applying for the visa at an American consular post abroad and re-entering. These checks would reveal criminal and other excludable conduct between the time of first entry into the United States and the time when the physician intends to commence employment. The final criminal record check is done by the FBI prior to the physician being granted permanent residence and this requirement cannot be waived. Is it possible to slip through this system? The answer is yes, but the possibility today, particularly in light of new controls implemented by this administration, is remote.

It is important to note that the "J-1 waiver", when granted, is only one piece of the complex procedure involved in a physician obtaining the right to work and/or live in the United States. It merely excuses the requirement that the physician return to his/her home country for two years before working and/or living in the United States. The physician must separately qualify for and obtain a temporary work visa (H-1B visa) and/or permanent residence.

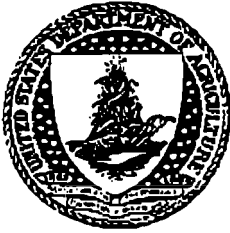
Again, on behalf of the hundreds of urban and rural health care providers and hundreds of thousands of medically underserved, often very poor, American citizens who have benefitted from the outstanding J-1 waiver programs implemented by HUD and USDA during the past few years, it is requested that all waiver programs continue as they are now, with some fine tuning along the lines we discussed. We also thank you for the outstanding work by the agencies who have been so diligently processing waivers.

With warmest regards, I remain

Sincerely yours.

Jan M. Pederson

cc: Susan Williams
Senator Kevin Smith, Delta Council
Sister Seraphine Ferrero



U.S. DEPARTMENT OF AGRICULTURE
OFFICE OF THE UNDER SECRETARY
RESEARCH, EDUCATION, AND ECONOMICS

Telephone (202) 720-8885 Fax (202) 690-2842

FAX COVERSHEET

DATE: 12-14-95

NUMBER OF PAGES 19, INCLUDING COVER SHEET

PLEASE DELIVER TO: Diana Fortuna
White House

FAX NUMBER: () 456-4731 1414
7431

FROM: ☒ KARL N. STAUBER, UNDER SECRETARY
☐ DEPUTY UNDER SECRETARY
☐ BARBARA A. MEISTER, CONFIDENTIAL ASSISTANT
☐ VERONICA DE LA GARZA, CONFIDENTIAL ASSISTANT
☐ MAUREEN KELLY, DIRECTOR OF LEGISLATIVE AFFAIRS
☐ KRISTIE D. KELM, SECRETARY
☐ MARY J. OXNER, SECRETARY
☐ THERESA E. NEAL, SECRETARY

MESSAGE: RE: J1 VISA information

OPTIONAL FORM NO. 10-80

FAX TRANSMITTAL

of Pages: 1

To: <u>Dr. J. Bueno</u>	From: <u>Dana H.</u>
Department: _____	Phone: _____
FAX: _____	Fax: _____

NEN 3540-01 311-7360

2000 10

GENERAL SERVICES ADMINISTRATION

GAO Entrance Conference, November 15, 1995

Topics of Discussion

1. What is HHS' policy on requesting J-1 visa waivers for physicians? Does HHS consider the J-1 visa waiver program to be an appropriate tool to address medical underservice?
2. A recent article referred to a letter from Secretary Shalala to the heads of other agencies, urging them to make states solely responsible for granting a limited number of J-1 visa waivers. If this is accurate, how did HHS arrive at this policy?
3. What is HHS' role in overseeing or coordinating the requests for J-1 visa waivers for physicians? Does HHS believe that one agency should be responsible for coordinating J-1 visa waiver requests?
4. According to a recent Federal Register announcement, HRSA intends to survey physicians who entered the U.S. on a J-1 visa for graduate medical education who have been granted waivers to the return home requirement. Who is going to conduct this survey? How will the physicians be surveyed? When does HRSA expect the survey to be completed?

Documents GAO Would Like to Obtain at the Entrance Conference

Copies of any HHS policies regarding requesting and granting J-1 visa waivers for physicians

Copy of the letter from Secretary Shalala to the heads of other agencies, urging them to make states responsible for granting a limited number of J-1 visa waivers

Copies of any other documents outlining HHS' position regarding physicians who entered the U.S. on a J-1 visa for graduate medical education who have been granted waivers to the return home requirement

Any data HHS has on the number and location of physicians practicing in the U.S. after receiving J-1 visa waivers

cc Warnath, Maibon Berry, Molly B
From Diana — see HUD memo!

PEDERSON & FREEDMAN, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP OF PROFESSIONAL CORPORATIONS

LION BUILDING • SUITE 401

1233 TWENTIETH STREET, N.W.

WASHINGTON, D.C. 20036-2304

TELEPHONE (202) 785-1960

FAX (202) 785-3815

~~Greg -~~
Does this
require action
by HUD?
all go to
P. Fortuna

FAX TRANSMITTAL SHEET

RECIPIENT: MR. GREG SIMON
CHIEF DOMESTIC POLICY ADVISOR TO THE
VICE PRESIDENT
FIRM OR COMPANY: OFFICE OF THE VICE PRESIDENT
FAX NUMBER: 202-456-6231
DATE: November 17, 1995
NUMBER OF PAGES: 3
(including this Transmittal Sheet)
FROM: JAN PEDERSON

COMMENTS:

Dear Mr. Simon:

Thank you so much for taking time to meet with us on Wednesday and for your interest in assisting medically underserved Americans in obtaining the services of physicians.

Susan Williams asked that I provide you with a few more details so that you can communicate to Secretaries Shalala, Cisneros and Glickman precisely what the health care providers need in the short term.

With respect to HUD, the urban health care providers need for HUD to resume accepting and adjudicating waiver applications effective immediately. They should also not change any policies or procedures until further review. As Susan discussed with you, HUD has indicated it will publish policy and procedural changes on December 1, 1995. Attached is a copy of the relevant HUD memo. To the best of our knowledge, HUD has not sought input from urban health care providers or other concerned parties on this issue.

As Senators Smith and Edwards with the Arkansas Delta Council articulated to you,

USDA should continue providing J-1 physicians to rural, medically underserved areas, such as the Arkansas Delta, in accordance with current policies and procedures and should make a commitment to continue the program. One the concerns expressed to you by the Council members was the uncertainty of the continued existence of the program, placing them in a position of not knowing they will obtain the services of a J-1 physician even after recruiting and contracting with them.

Basically, the message the Council wanted communicated is to keep the programs intact, and with respect to HUD, resume the program as it was.

Thank you. Please call me if you have any questions.

Sincerely yours,

Jan Pederson

cc: Senator Kevin Smith
Senator Jean Edwards
Susan Williams

Changes coming - HHS months ago

Rec'd Shalala's letter

New criteria

INS/

Many other

GAO investig - delayed till after

out of hand, huge

Disagreed w/ DS letter

(Attorneys rip off)

Medical facility must apply to HUD



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

OFFICE OF THE ASSISTANT SECRETARY FOR
CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

Now

Memorandum To: J-1 Interested Parties

From: Choco Gonzalez Meza, Deputy Assistant Secretary
Office of Intergovernmental Relations *cg*

408-
0030

Date: October 30, 1995

Re: Status of J-1 Waiver applications

On September 1, 1995 we advised all callers through a recorded message of the following:

- .We would no longer be managing the J-1 Waiver program,
- .That our current guidelines were under review and therefore
- .We would not accept applications until we finalized our J-1 policy.

Subsequent to the recorded message, our office was requested to manage the backlogged cases until a new policy was instituted. We accepted the assignment of over 200 request and all Intergovernmental staff, on a daily basis, began advising all interested parties not to submit applications.

Despite that request, some continued to submit applications. Please do not submit any applications to our office. Advise your clients of our status and inform them that the only applications being processing involve backlogged applications postmarked before or on August 31, 1995. All applications received after that date will be discarded.

This memorandum is intended to reinforce our previous efforts and to advise you that a formal decision on the future of this project will be made public on December 1, 1995.

delayed to Dec 15

Hearing Wed - broader immigration bill
THE WHITE HOUSE
WASHINGTON

11. VISAS

Tracey - Kennedy
Shalala → Clickman

Miz → Klepner - ^{trene Bueno} - no
Had to cancel 2x

Klepner + Miz met
Carolyn Osling - ^{maria, Brown, Platt} stirring up - lobby
Spt current law - Conrad
(States never hit 1,000 cap)
400 - 500

Maldestad.

Depts hv consistent

Ag, HUD? - HHS too tough

Ag?
Policy? → wrong

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

30-Oct-1995 04:55pm

TO: Diana M. Fortuna

FROM: Carol H. Rasco
 Domestic Policy Council

CC: Patricia E. Romani

SUBJECT: Nov. meeting with Delta Council

There is a group in Ark. that is working on the initiatives for the portion of Delta in Ark. (Delta region actually spans a number of states). The Council is bringing a group of Board members to DC to lobby, learn, etc. They asked to meet with me to talk in particular about a specific health initiative they want to start. I am booked the two days they will be in town and they have asked for a DPC member to meet with them. I would like to have Pat send you the letter and see if you could meet with them sometime on the date in Nov. they ask about....you may think in reading it you should have someone from HHS be here also. It can be in 211. If you can meet with them then please let Pat know what times work best for you and she can call them back to tell them with whom they will meet, time, process and then support center needs to get them cleared, etc. 30 minutes is plenty and Pat, we do not need to offer nor agree to have a massive briefing that includes the other administrative people they mention. 30 minutes with DPC is all we are obligated to do on this. The director, Kevin Smith, is in the state legislature (reps my home town district) and is thinking about running for Sen. Pryor's seat (which would be awful in my opinion). FYI, he is not my idea of a star but he is sure sold on himself. There are a number of fine board members on this Council, however.

Steve - page 4, FYI.

-Diana

7755

Call MTToday

MEETING REQUEST/TRACKING FORM

CAROL H. RASCO

DOMESTIC POLICY

Name of Requestor: Kevin Smith Date: 10/27/95

Affiliation: Arkansas Delta Council

Nature of Request: Meeting / Visit

Contact Person: Kevin Smith Phone Number: (501) 678-2122

Meeting Data: A. Date: Nov. 15, 1995

B. Time: _____

C. Place: Carol's Office

D. Purpose: To brief Carol on matters of importance to the Delta Region and to thank her for what she has already done.

E. Conflicts: _____

?
(designee)

DECISION

____ Accept

✓ Regret

____ Forward To:

____ Pending

Comments:

→ Called and
regretted
on Mon.
Oct 30
(PR)

Tell him I'm
sorry, I'm booked
in all day
conferences both days.



OCT 27 1995

P.O. Box 351 • Stuttgart, Arkansas 72160 • (501) 673-2661

College of Agriculture and Home Economics
Arkansas Agricultural Experiment Station
Rice Research and Extension Center

FACSIMILE (FAX) MESSAGE

PLEASE DELIVER THE FOLLOWING PAGES

TO: NAME Carol Rasco
ADDRESS Att: Pat

FAX NO. 202-456-2878

FROM: NAME _____

ADDRESS: RICE RESEARCH & EXTENSION CENTER
P.O. BOX 351
STUTTGART AR 72160

PHONE 501-673-2661

FAX NO. 501-673-4315

SUBJECT/COMMENTS _____

DATE 10-27-95 TIME 11:21 PAGES FOLLOWING 3

FAX TRANSMITTAL

of pages 2

To: Choco MEZA	From: TIM CLOUSE, GAO
Date/Agency: HUD 16R	Phone: (206) 287-4771
Fax: (202) 401-3991	Fax: (206) 287-4872
NSN 7540-01-317-7360	5089-101
GENERAL SERVICES ADMINISTRATION	

MEMORA

Date: November 8, 1995
From: Tim Clouse, GAO
To: Choco Meza, Office of Intergovernmental Relations, HUD
Subject: Questions/Issues for the GAO entrance conference on the J-1 visa program (code 108258)

These are some of the questions and issues we'd like to get started on. We do not need answers to all questions at the time of the meeting. However, we would like you to refer us to the appropriate officials so we can get the data we need. We would also like copies of any policy guidance you have on these issues, sample application forms, and copies of any databases you have on physicians placed. If you have any questions, please give me a call at (206) 287-4771.

Why is HUD requesting waivers for physicians? How long has the HUD been doing this?

What is HUD's policy on requesting physician J-1 visa waivers? What conditions does the HUD attach to requesting the waiver? Is the HUD considering changing these policies and conditions?

What sorts of organizations and communities are requesting HUD's assistance in placing physicians? Has HUD rejected any of these requests?

Does HUD limit the number of requests it will process? If it does, how does the HUD determine which requests it will honor?

What is HUD's policy on placing physicians? Does HUD coordinate its placements with other agencies or State Health Departments that are using physicians practicing under waivers? Does HUD have an outreach program for identifying communities that need physicians but are unable to get them?

Are physicians subject to any particular requirements to serve specific populations or communities?

How many physician waivers did HUD request during fiscal years 1994 and 1995? Did the United States Information Agency (USIA) or the Immigration and Naturalization Service (INS) reject any of HUD's requests?

Does HUD know where physicians who have been placed under the J-1 visa waiver program go after their contracts end?

11/09/1995

17:13

US GAO Seattle Region

Does HUD have any enforcement mechanisms to ensure that physicians placed will honor their contracts? How often are the enforcement mechanisms used?

Are granted requests broken down by physician specialty or location? If so, please give us a copy of the list.

Does HUD think that one agency should coordinate all waiver requests and placements? If so, which agency should have that responsibility and how should the coordination be done?

Does HUD think that the recent changes immigration law that allow state health departments to request J-1 visa waivers for physicians will reduce the HUD's involvement in placing physicians?

Will HUD's use of J-1 visa waiver physicians change for other reasons?

Does HUD have any other comments or suggestions on ways to improve physician access in medically needy communities?

—
OFFICE OF THE VICE PRESIDENT
WASHINGTON

TO: *Carol Rasco*

FROM: Gregory C. Simon
Chief Domestic Policy Advisor

☐ FYI

☐ Comment

☒ Action

*Carol— This is the material from
Kevin Smith on rural health care.
Let me know how I can help.*

P.S. —

*I hear Sec. Shalala will take
some adverse action on this by Dec 1st,
so time is of the essence.]*

Greg

THE J-1 VISA WAIVER PROGRAM - A PUBLIC HEALTH NECESSITY¹

Introduction

A staggering number of Americans live in medically-underserved areas - places with too few doctors, or sometimes, no doctors at all. Efforts to attract U.S. doctors to these areas have been ineffective. The chronic shortage of doctors in these rural communities and inner cities has been alleviated somewhat through assignment of foreign doctors who have completed graduate training in the U.S. and obtain a waiver of the requirement that they return to their home country for two years. These foreign doctors help fill a critical public health need - indeed, waivers are granted only upon recommendation of a state or a federal agency "in the public interest." The Administration is reexamining the so-called J-1 visa waiver program. As discussed more fully below, the program is an essential component of access to health care for those who need it most. It should be continued and strengthened.

I. THE CURRENT HEALTH CARE SHORTAGE CRISIS

The Numbers

Over 45 million Americans live in areas - most commonly rural communities and inner cities - designated by the Department of Health and Human Services (HHS) as Health Professional Shortage Areas (HPSAs).¹ Sadly, that figure represents a steady increase over the past several years in the number of Americans who do not have proper access to medical care; the number of American counties designated either in whole or in part as HPSAs rose from 1,209 in 1978 to 1,993 in 1994.² Indeed, the crisis in some areas is so severe that approximately 200 American counties now must make due without any physicians at all.³

The Causes and Consequences of the Health Care Professional Shortage

HHS estimates that over 11,000 primary care physicians are needed to alleviate these nationwide shortages.⁴ Unfortunately, despite the creation of the National Health Service Corps and other efforts to attract U.S. doctors to underserved areas, U.S. physicians have proven unwilling to relocate to HPSAs in necessary numbers, leaving many areas chronically underserved. The Council on Graduate Medical Education, which has recently predicted an

¹ Taylor, et al., *The Measurement of Underservice and Provider Shortage in the United States: A Policy Analysis*, North Carolina Rural Health Research Program (December 1994) page 19 Table IV.3.

² Taylor, et al. at 5.

³ *Id.* at 18 Table IV.2 (reporting 1992 statistics).

⁴ *Id.* at 20 Table IV. 4.

oversupply of physicians by the year 2000, has determined that all of its projected oversupply will be non-primary care physicians. Thus, there is nothing to indicate that the chronic undersupply of primary care physicians in HPSAs will be alleviated by American medical graduates. A number of factors account for the difficulties in attracting U.S. doctors to HPSAs, including the higher pay, greater opportunities and superior level of hospital and technical support available in non-HPSAs.

The chronic shortage of health care professionals in HPSAs has severe consequences for the residents of those areas. Most obviously, the difficulty in locating a provider close to home forces residents to seriously daily or forego medical care until they develop serious, acute illnesses, often requiring expensive emergency room care. As a result, countless lives are placed at risk and our health care system is drained by the need for more costly medical care. Furthermore, millions of Americans, especially children and the elderly, have little or no access to preventative medical care and lack community education about the importance of preventative health care practice. This situation exacerbates our nation's chronic health care problems.

II. THE ROLE OF FOREIGN PHYSICIANS IN SOLVING THE SHORTAGES

Background on the J-1 Program

Congress created the J-1 visa program in 1948 as a means to create better international relationships by bringing residents of other countries to the U.S. to study temporarily and sending Americans abroad for the same purpose.⁵ Subsequently, Congress has amended the program to require some J-1 visa recipients, including foreign medical graduates, to reside abroad for at least two years prior to seeking more permanent residence in the U.S. and provided limited opportunities to seek a waiver of the two-year foreign residency requirement under special circumstances.⁶

Federal Agency Waiver Authority

Most relevant here is the Congressional authorization for U.S. government agencies to request, through the U.S. Information Agency (USIA) and the Immigration and Naturalization Service (INS), waivers of the two-year home-country residency requirement where such waivers are "in the public interest."⁷ Several federal agencies, including the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA), the Veterans Administration (VA), and the Appalachian Regional Commission (ARC), have successfully used this authority to place foreign physicians in areas that desperately need primary care physicians

⁵ United States Information and Educational Exchange Act of 1948 (Smith-Mundt Act), Pub. L. No. 80-402, 62 Stat. 6.

⁶ Pub. L. No. 84-555, 69 Stat. 494 (1956); Mutual Education and Cultural Exchange Act of 1961 (Fulbright-Hays Act), Pub. L. no. 87-256, 75 Stat. 527, § 109.

⁷ 8 U.S.C. § 1182(e).

but have not been able to recruit U.S. doctors. For example, in the period between May 1992 and December 1993, ARC placed approximately 350 J-1 waiver doctors in HPSAs, of which almost 95 % remained in HPSA's as required by the waiver.⁸

Federal Agency J-1 Waiver Policies

The following offers a brief description of the policies of those federal agencies that have determined that waiving the home residency requirement is in the national and public interest when foreign medical graduates (FMGs) are willing to serve in areas suffering from a shortage of health care providers. Note that all of these agencies require proof that the facility seeking to employ the FMG has unsuccessfully attempted to recruit U.S. citizens or permanent residents for the position to be filled by the FMG.

Department of Agriculture

Types of Waiver Requests Accepted: USDA considers waiver requests on behalf of physicians seeking to practice in medically-underserved, rural areas. Note that USDA will not consider applications originating from facilities within the jurisdiction of the Appalachian Regional Commission, which has its own process for considering waiver requests.

Who May Request Waiver: USDA does not accept waiver applications from individual FMGs. Instead, a health care provider, must submit the application on behalf of a physician which must include a letter from the state health department supporting the request.

Minimum Time Commitment: The FMG must contractually commit to work full time as a physician in the rural medically underserved area for at least three years.

Veterans Administration

Types of Waiver Requests Accepted: The VA accepts waiver applications where the loss of the FMG's services would necessitate discontinuance of a VA program or a major phase of a VA program.

Minimum Time Commitment: If an FMG fails to complete one year of service, the VA facility will ask the INS to reconsider the waiver request.

Housing and Urban Development

Types of Waiver Requests Accepted: HUD's official policy has been to accept waiver requests on behalf of FMGs seeking to provide primary medical care at a Medicare and Medicaid certified hospital or primary health care clinic in a medically-underserved urban community.

⁸ Appalachian Regional Commission Survey

Minimum Time Commitment: The FMG must contractually commit to work for the facility for at least two years. An FMG who breaks that commitment faces a deportation recommendation by HUD and must pay the facility to which he or she is contractually bound, the sum of \$250,000 as a penalty.

Suspension of New Waiver Requests: HUD has stopped accepting new waiver requests. HUD is apparently reviewing its policy to determine whether and how to continue processing J-1 waiver requests.

Appalachian Regional Commission

Types of Waiver Requests Accepted: The ARC accepts waiver requests on behalf of physicians seeking to provide primary medical care in a HPSA within the jurisdiction of the ARC. (The ARC has jurisdiction over Appalachian counties in 13 states.)

Who May Request Waiver: FMG requests must be supported by the Governor of the state. Because Maryland, North Carolina and Tennessee apparently are not currently accepting applications, the ARC will not process waiver requests in those states.

Minimum Time Commitment: An FMG must contractually commit to work full time at the relevant facility from two to four years. An FMG who breaks that commitment faces a deportation recommendation by the ARC and must pay the facility to which he or she committed \$250,000 in damages.

The 1994 Amendments and State-Requested Waivers ("State 20")

In 1994, Congress adopted a proposal by Senator Conrad to provide an additional means to match foreign physicians holding J-1 visas with medically-underserved areas of America. Senator Conrad felt that states needed a vehicle, in addition to federal agency waiver requests, to ensure access of medically-underserved areas to foreign doctors willing to serve where US doctors are not.⁹ He therefore introduced a bill, later incorporated as an amendment to the Immigration and Nationality Technical Corrections Act of 1994, that authorizes each state Department of Health to request up to twenty home-country residency requirement waivers per state each year.¹⁰ As with federal agencies, states must submit their requests through USIA to the INS for approval. However, foreign physicians seeking waivers through state agencies must commit to work in a health care professional shortage area for at least three years, and they face deportation if they do not meet that commitment. Unless extended by Congress, this provision will expire on September 30, 1996.

⁹ 140 Cong. Record S 6747-48 (June 9, 1994).

¹⁰ 2 Pub. L. No. 103-416 § 220, 108 Stat. 4305, 4319. The Conrad Amendment is codified at 8 U.S.C. § 1184(k).

Although Congress intended the state waiver request program to supplement, not supplant the federal agencies' waiver-requesting authority, the Clinton Administration recently has undertaken a review of the federal agency waiver program in light of the state waiver program.

III. THE FEDERAL AGENCY J-1 VISA PROGRAM WAIVER REMAINS NECESSARY

The J-1 visa waiver program is a relatively small but extremely significant tool to alleviate the chronic shortage of primary care physicians in mostly poor, rural and urban communities. In conducting its review of the federal agency waiver program, the Administration should be mindful of the following facts:

- 45 million Americans, many of them children or older Americans, live in designated medically-underserved areas.
- Nearly 200 American counties have no physician at all (1992 study)
- J-1 waiver programs provide a substantial benefit to American at no cost to the taxpayers.
- The human impact of inadequate or nonexistent access to medical care is felt acutely by those who live in underserved areas, and the financial impact affects us all by burdening our entire health care system with higher health care costs for illnesses and conditions that are not treated in a timely manner.
- Foreign medical graduates are essential to increasing the number of primary care physicians in chronically, medically-underserved areas as American physicians do not want to work in these areas.
- Federal agencies recommend J-1 visa waivers only for designated shortage areas and only where American doctors are demonstrably unavailable.
- J-1 visa waiver doctors primarily are primary care physicians. Projections of eventual oversupply of U.S. doctors are in non-primary care specialties.
- Should there come a time in the future when American doctors meet the needs of medically-underserved areas, foreign graduates would be ineligible for visa waivers under the existing program.
- The record indicates that doctors who obtain a J-1 visa waiver fulfill their commitment to serve in medically-underserved areas.
- The federal government should not abdicate its role in alleviating health care shortages by attempting to limit J-1 visa waivers to those initiated by states under the Conrad amendment. Almost 25% of states have indicated they will not participate in the Conrad program. Moreover, the state-requested waiver

program is not well-suited to play the primary role in placing foreign doctors in medically-underserved areas. After all, because Congress never intended it to supplant the role of federal agencies, Congress provided for only a small number of waivers per-State and did not attempt to match those numbers of each State's varied needs.

For all of these reasons, the Administration should reaffirm its commitment to the federal agency J-1 visa waiver program, and assure that requests are processed expeditiously.

Prepared by: Bracy Williams
601 Thirteenth Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 783-5588

QUESTIONS AND ANSWERS ON WAIVER OF TWO-YEAR HOME-COUNTRY RESIDENCY REQUIREMENT FOR FOREIGN PHYSICIANS

QUESTION: Are foreign physicians really needed to solve the problems of medically-underserved U.S. areas?

ANSWER: Yes. Over 45 million Americans live in areas - most commonly rural communities and inner cities - designated by the Department of Health and Human Services (HHS) as Health Professional Shortage Areas (HPSAs). HHS estimates that approximately 11,000 primary care physicians are needed to alleviate these shortages nationwide. Unfortunately, despite the creation of the National Health Service Corps and other efforts to attract U.S. doctors to underserved areas, U.S. physicians have proven unwilling to relocate to HPSAs in necessary numbers, leaving many of those areas chronically underserved by physicians. Foreign physicians are providing one of the only steady and certain sources of doctors willing to serve in those areas.

QUESTION: Do the foreign physicians who receive waivers actually fulfill their commitments to serve in HPSAs?

ANSWER: Yes. Each of the federal agencies that requests waivers under this program mandates that foreign physicians seeking J-1 waivers commit to work in an underserved areas for a specified period between two and four years. For example, of the approximately 350 foreign physicians granted waivers by the Appalachian Regional Commission in the period between May 1992 - December 1993, almost 95% stayed in an underserved area. Also, several agencies fine physicians who violate their commitment \$250,000.00, a powerful incentive.

QUESTION: Won't admission of many foreign physicians now exacerbate America's impending physician surplus problem?

ANSWER: No. Although the J-1 waiver program provides a tremendous help to those living in underserved areas, the number of foreign physicians involved in the program is not all that small. Moreover, those who project a physician oversupply predict that the expected surplus will be in doctors specializing in field other than primary care - the focus of those foreign doctors serving in HPSAs. The foreign doctors serving in HPSAs simply are not the type of doctors we need to worry about having too many of.

QUESTION: Are the foreign physicians granted waivers under this program as qualified and competent as American-trained doctors?

ANSWER: Yes. These doctors complete residency training in the U.S. and are board eligible/board certified in their fields. They also pass rigorous credentialing exams before being admitted to residency training.

Page 2 - The Honorable Daniel R. Glickman

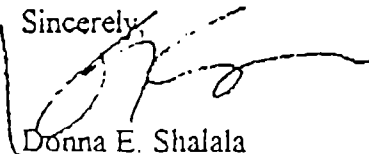
The Department of Health and Human Services endorses the philosophy of the Exchange Visitor Program in which participants are committed to return home for at least two years after completing their educational program. This requirement was imposed to prevent the program from becoming a stepping stone to immigration and to insure that exchange visitors make their new knowledge and skills available in their home countries. In summary, this Department has viewed the J-1 visa to be a means of sharing advanced medical knowledge and allowing the benefits of training to accrue to the home country. The Department does not view waivers as a mechanism to help resolve the problems of shortage areas.

On occasion, some departments and agencies have taken a different approach; viewing the granting of a waiver as a means of finding and placing physicians in underserved areas. This objective may now be met under the authority provided to States to request waivers for shortage area service under P.L. 103-416. Therefore, one option we would like to explore with you is whether the State-based program could be the sole mechanism for placing exchange visitor physicians in shortage areas. We might consider requesting both extension of the authorization of the State-based program and increasing flexibility with respect to the numbers of physicians that can be placed, thus eliminating the need for other types of service-based waivers.

Given these considerations, I request that your Department review its policy in regard to exchange visitor waivers for physicians. I would appreciate hearing the results of your review so that we can facilitate the development of a consistent approach with regard to waivers for international medical graduates. I have designated staff in the U.S. Public Health Service to help coordinate our efforts to develop a consistent government-wide approach. Dr. Jo Ivey Boufford, the Principal Deputy Assistant Secretary for Health, is available to work with your staff on this matter. She may be reached at 202/690-7694.

I am also writing to Secretaries Brown and Cisneros and the Federal Co-Chairman of the Appalachian Regional Commission and am sharing copies with Attorney General Reno and the Director of the United States Information Agency. I hope that together we can make progress in developing a consistent U.S. Government policy.

Sincerely,

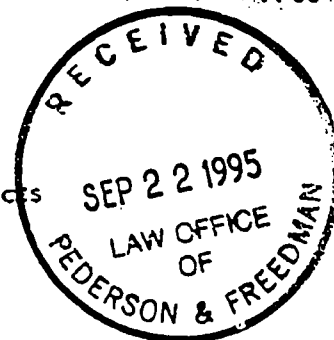


Donna E. Shalala



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

AUG 31 1995



The Honorable Daniel R. Glickman
Secretary of Agriculture
Washington, D.C. 20250

Dear Dan:

I am writing to request that your Department undertake a review of its policies related to waivers of the two-year foreign residence requirement under the Exchange Visitor Program for foreign national international medical graduates.

For many years, the United States has been addressing problems related to the geographic and specialty distribution of physicians. Federal and State government programs have dramatically increased the capacity of medical schools, expanded primary care residency programs, and provided a variety of financial incentives for service in rural and inner-city shortage areas. At the same time international medical graduates have entered the United States in large numbers; over 100,000 physicians who are practicing here today were foreign nationals at the time they entered our country as exchange visitors, temporary workers, or for some other purpose.

Now, as new managed-care arrangements are rapidly replacing the traditional fee-for-service system, our national requirements for physicians are also changing. In fact, the Council on Graduate Medical Education has recently determined that by the year 2000, the national supply could well exceed the need by more than 100,000 physicians; all of the excess supply will be for non-primary care physicians. Even with this impending surplus, in 1993 we increased the number of international medical graduates entering residencies in the United States to 6,700 compared to 18,500 graduates of US schools.

Last year, the President signed the Immigration and Nationality Technical Corrections Act of 1994, P.L. 103-416, enacted on October 25. Section 220 of the Act authorizes each State's department of public health or its equivalent to request the Director of USIA to recommend that INS grant waivers for up to 20 physicians per year. The physician must have a bona fide offer of full employment and must agree to work for a total of not less than three years in a health care facility in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals. Even though the foreign residence requirement may now be waived by INS based on a request from an interested US government agency and recommended by USIA, the new law provides a much stronger means for requiring service in areas where physicians are most needed and for enforcing their service agreements, i.e., requiring they leave the United States if they do not fulfill their agreements.

Explanation

As currently drafted, S. 1394 specifies that a fee will be collected for processing the J visa. USIA opposes such a fee because it would adversely affect a group of J visitors that can least afford an additional fee: students who are studying in the United States on government funded programs. These students -- unlike those who come to study in the U.S. with private funds -- often are only able to come because of financial support provided by the United States and foreign governments. If the fee envisioned by section 409 were imposed, government sponsored exchange programs would be required, in all likelihood, to absorb this fee, rather than passing it on to the visiting students. This would increase programming costs which, for USIA, would require additional appropriations.

USIA's primary concern is the need to avoid burdening those state-sponsored exchange programs which directly promote the foreign policy interests of the United States. To this end, the suggested changes exempt from the new fee requirements J visa holders whose presence in the United States is supported by the United States government or by a foreign government.

Note that these changes do not entirely exclude J visa holders from the new section 409. Covered colleges and universities are still required to collect information about these nonimmigrant aliens. The only change is to exempt from the fee requirement that subset of J visa holders whose presence in the United States is supported by the United States government or by a foreign government.

USTA

S. 1394

Discussion Draft

AMENDMENT TO THE COMMITTEE DRAFT

OFFERED BY _____

Page IV-20, add to the new section 281(b)(1) the following
(insert after the period on line 21 of the discussion draft):

"With respect to visas issued under the provisions of
section 101(a)(15)(J), this subsection shall not apply to
those J visa holders whose presence in the United States is
supported by the United States government or by a foreign
government."

Page IV-20, add to the new section 281(b)(1) (insert after
the period on line 24 of the discussion draft):

"This subsection shall not apply to those J visa holders
whose presence in the United States is supported by the
United States government or by a foreign government."

Page IV-22, replace the period at the end of section 401(h)
with a comma and add the following language on line 19 of the
discussion draft:

"or as a condition of their continued designation as an
exchange visitor program by the Director of the U.S.
Information Agency under section 101(a)(15)(J) of such Act."

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-Dec-1995 03:34pm

TO: Diana M. Fortuna
TO: Nancy-Ann E. Min

FROM: Tracey E. Thornton
 Office of Legislative Affairs

SUBJECT: immigration

The full judiciary committee will take up the Simpson immigration bills (legal and illegal) at its first executive session after the congress returns. Even though our J-1 visa program review may not be finished, we should try to have Kennedy and/or Simon raise the matter and say that it may be necessary to offer amendments on the floor. Justice is the lead agency on these bills and I do have a legislative working group that includes all the agencies that attended the meeting at AG except ARC and USIA. I have not scheduled a conference call for next year yet but will probably get with the group late next week--many of them are furloughed. I will bring this matter to their attention (Irene is part of the group) but, at some point, we should figure out how this should be worked in the context of the overall bill. It would be better if we could get this done in committee because I think the bill will start looking like a X-mas tree as it moves on the Senate floor.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-Dec-1995 01:10pm

TO: Diana M. Fortuna
TO: Gregory C. Simon

FROM: Robert E. Litan
 Office of Mgmt and Budget, GGF

CC: Kimberly A. Newman
CC: Louisa Koch
CC: Kenneth L. Schwartz

SUBJECT: Arkansas Commissions and J-1 Waivers

My staff has looked into this and read the Arkansas proposal. In brief, they told me what you already know (most likely). The Arkansas Delta Council is not a federal entity and therefore not endowed with the same authority as the ARC to grant the J-1 waivers for foreign docs. They tell me that additional research is required to determine whether the Arkansas Commission can do this anyhow. I suspect you have HHS looking at this.

OIA



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

FEB 23 1996

The Honorable Paul Simon
United States Senator
Washington, D.C. 20510

Dear Paul:

Thank you for your letter concerning issues related to waivers for foreign physicians who come to the United States under the Exchange Visitor Program and who wish to remain here to work in underserved areas.

For the last few years several agencies of the Executive Branch have taken different approaches to waivers under the J-1 visa program with respect to foreign physicians. In addition, the enactment of the Immigration and Nationality Technical Corrections Act of 1994 permitted States, for the first time, to request waivers as well.

Last year I wrote to several of my Cabinet colleagues to suggest that we develop a consistent approach to waivers for international medical graduates. That review, in cooperation with White House and OMB staff, is now under way.

Our goal in this review is to continue to support ways to meet the needs of medically underserved areas. This would include not only the J-1 waiver provisions, but also the placement of National Health Service Corps practitioners in underserved areas and an overall policy of supporting health professions training that encourages the production of primary care physicians.

Thank you for your views on this important matter.

Sincerely,

A handwritten signature in cursive script, reading "Donna E. Shalala", is written above the printed name.

Donna E. Shalala

**United States
Information
Agency**

Washington, D.C. 20547

Office of the General Counsel

FAX COVER LETTERUNITED STATES INFORMATION AGENCY
OFFICE OF THE GENERAL COUNSEL (GC)301 Fourth Street, S.W., Room 700
Washington, D.C. 20547

Phone: (202) 619-4979

FAX: (202) 619-4573

Check applicable boxes:

- Urgent? ☐ YES ☐ NO
- Call to confirm receipt of this FAX? ☐ YES ☐ NO
- This ☐ IS / ☐ IS NOT a privileged communication (attorney-client and/or attorney work-product) for ADDRESSEE ONLY.

TO:Ms. Diana Fortuna
Senior Policy Analyst
Office of Policy Development
Domestic Policy Council
The White HouseAt FAX Number: 456-7431FROM:Les JinGeneral CounselPhone Number: 619-4979NUMBER OF PAGES: 4 including this FAX Cover Letter.SUBJECT: Use of J VisaMESSAGE/COMMENTS:

TIME SENT: _____

DATE SENT: 3 / 20 / 96

**United States
Information
Agency**

Washington, D.C. 20547

Office of the General Counsel



March 19, 1996

MEMORANDUM FOR: Mr. Steve Warnath
Senior Policy Analyst
Domestic Policy Analyst
Office of Policy Development
The White House

Ms. Diana Fortuna
Senior Policy Analyst
Office of Policy Development
Domestic Policy Council
The White House

Ms. Irene Bueno
Deputy Assistant Secretary
for Congressional Liaison
Health and Human Services

FROM: Les Jin *[Signature]*
General Counsel

SUBJECT: Use of J Visa

Attached is the memorandum that we sent to the U.S. Commission on Immigration Reform. The recommendations of Health and Human Services have been adopted in full. *[Handwritten mark]*

**United States
Information
Agency**

Washington, D.C. 20547

Office of the Director



March 18, 1996

MEMORANDUM FOR: Susan Martin, Executive Director
U.S. Commission on Immigration Reform

FROM: Joseph Duffey
Director

SUBJECT: USIA Recommendations To Commission
On Immigration Reform

The U.S. Commission on Immigration Reform is examining, among other things, the labor-based entry of non-immigrant aliens into the United States. USIA has been asked to suggest to the Commission which activities the Agency deems to be appropriate use of the nonimmigrant exchange visitor visa (J visa). We submit the following in response to that request.

YOUTH PROGRAMS

The Commission has specifically questioned the appropriateness of utilizing the J visa for the au pair, summer work/travel, and camp counselor exchange programs. In the aggregate, those three programs involve the annual entry of some 40,000 aliens.

USIA believes that those programs, even though subject to some questions, are generally consistent with our exchange mission as mandated by the Fulbright-Hays Act. We have supported those programs for the following reasons: (i) they are short-term programs which provide an opportunity for persons who are otherwise financially unable to visit the United States to do so; and (ii) the programs are essential components of an exchange matrix that has provided a broad range of participation opportunities for youth for decades.

Objections to the au pair program have been fully examined and are believed to be moot in light of legislation and regulations adopted in 1995. USIA believes that objections to the summer work/travel program could readily be resolved from both a legal and programmatic perspective if a pre-placement requirement were adopted for this activity. In the absence of this requirement we believe this activity continues to be problematic. USIA has examined the objections to the camp counselor program and we believe them to be unfounded. We continue to believe that the program has merit as a cultural exchange which benefits both the camp counselor and the camper.

ACADEMIC EXCHANGES

Last year, USIA-designated sponsors facilitated the entry into the United States of approximately 50,000 foreign researchers. This activity is now subject to Commission, Department of Labor, and Congressional scrutiny in light of a 1993 court decision that requires the payment of prevailing wages to researchers employed in academe. While USIA has no direct role in resolving this issue, we note that it is already being addressed in pending legislation (S. 1394 - The Immigration Reform Act of 1995.)

TRAINING

Although specifically enumerated as an exchange category in the Fulbright-Hays Act, the legitimacy of training programs overseen by the Agency has historically been questioned. Specifically, the criticism of these programs has always arisen from the suggestion that the training activity is in reality a cheap labor program. While we adopted stringent regulations governing the operation of exchange visitor training programs, we lack the resources to conduct meaningful oversight of the programs.

To this end, we believe that specific legislative direction regarding the future of training-based exchange activities should be sought. We are not presently in a position to state that this would fit in with the Administration's legislative program. In the alternative, we would consider proposing that training be limited to government funded programs which do not present monitoring problems. Other training opportunities are currently available through the F, M and H visas.

Regardless, recurring problems that arise from the "umbrella" training organizations must be addressed either through legislation or regulation.

ALIEN PHYSICIANS

For the last few years, several agencies of the Executive Branch have taken different approaches to waivers under the J-1 visa program with respect to foreign physicians. In addition, the enactment of the Immigration and Nationality Technical Corrections Act of 1994 permits states to request waivers as well.

In cooperation with the White House, OMB, and other agencies, we are developing a consistent approach to waivers for international medical graduates.

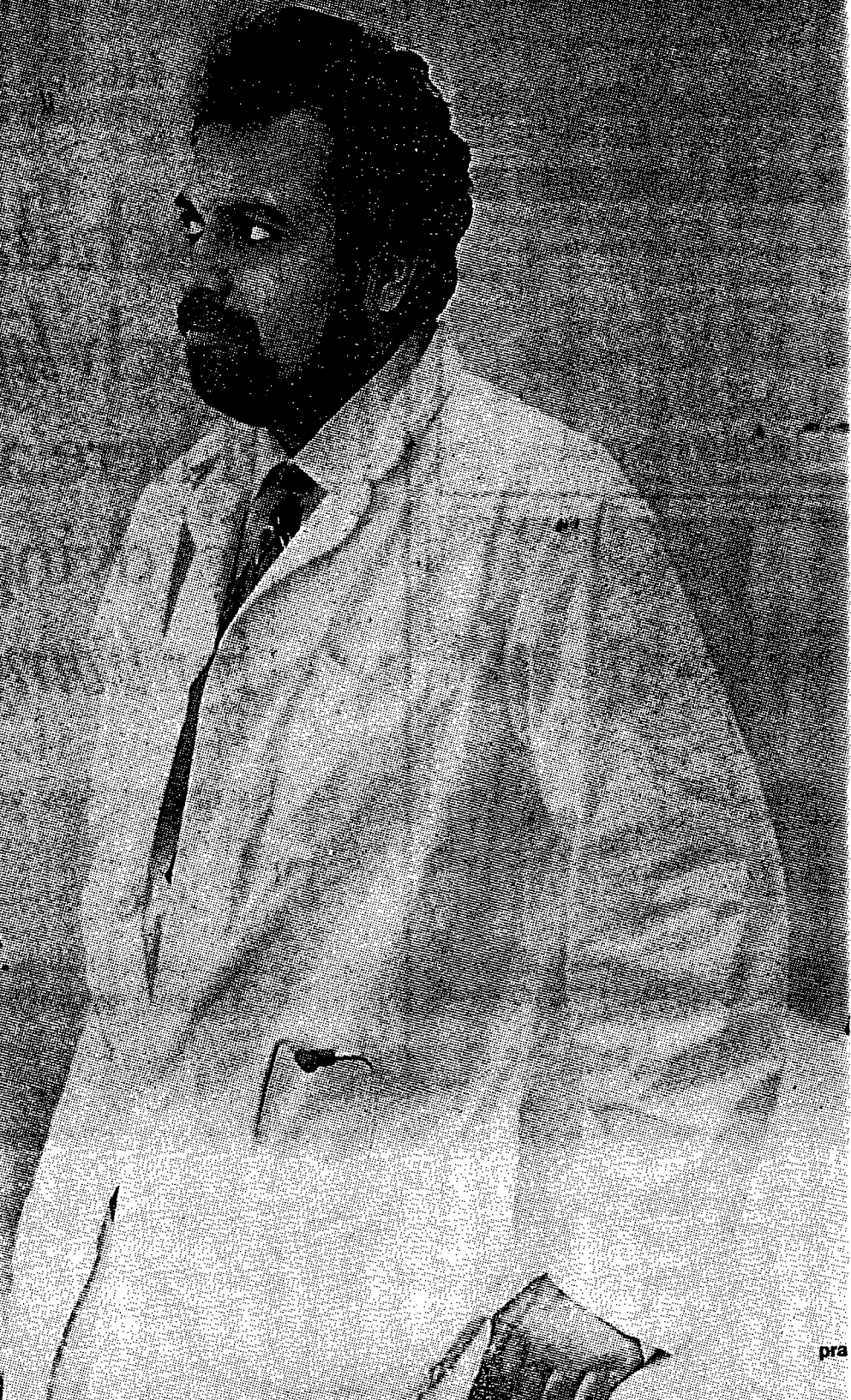
Our goal in this review is to continue to support ways to meet the needs of medically underserved areas which would include the J-1 waiver process.

HEALTH

Caught In the Middle

FOREIGN-BORN
DOCTORS
ARE RECRUITED
FOR JOBS THAT
OTHERS DON'T WANT.

BUT AMERICAN
PHYSICIANS WORRY
THAT TOO MANY
ARE COMING HERE.





BY KEITH JENNINGS—THE WASHINGTON POST

Physician Shukdeo Sankar should have returned to Guyana two years ago, but because he agreed to practice in one of Washington's poorest communities he was allowed to stay.

Caught in the Middle

BY LENA H. SUN

**FOREIGN-BORN DOCTORS
ARE RECRUITED FOR JOBS
THAT OTHERS DON'T WANT.
BUT AMERICAN
PHYSICIANS WORRY
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COMING HERE.**

At the Max Robinson AIDS clinic in Anacostia, the patients are mostly poor, mostly uninsured and often very ill.

The clinic's only doctor, Shukdeo Sankar, sees between six and eight patients a day, taking care of a variety of their needs—from making sure they see a dentist or eye doctor to helping them deal with the inevitability of death. It's a demanding job, Sankar said after examining one man, who at age 22 already had an advanced stage of AIDS. "It's supposed to take 10 years to get to this stage . . .," he said. "It's very, very sad and upsetting and . . . when I go home, I take this home with me at night."

Under immigration law, Sankar should have returned to his native Guyana two years ago, but because he agreed to practice medicine in one of Washington's poorest communi-

ties—one that most American doctors shun—he was allowed to stay.

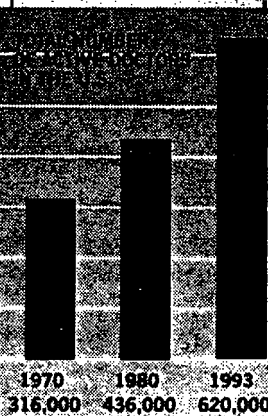
Foreign-born doctors, he said, take jobs "where Americans won't go without a bulletproof vest."

Now, some influential health experts say physicians like Sankar are a big part of the reason why the United States may soon have too many doctors. As a result, foreign-born, foreign-trained doctors are caught in a politically charged debate that involves not only immigration laws but also fundamental health care issues, such as the shift toward managed care and the unequal distribution of specialists and primary care doctors.

Some professionals have argued that because managed care has changed the way doctors practice by keeping patients under the care of primary care doctors, limiting patients' access to specialists and often closely scrutinizing what services patients receive, the country faces an oversupply of doctors. Several panels of health experts have said in recent months that graduates of foreign medical schools, like Sankar, are adding to an impending national surplus of doc-

PHYSICIANS IN THE UNITED STATES

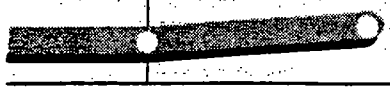
PERCENT OF DOCTORS WHO ARE GRADUATES OF U.S. MEDICAL SCHOOLS



PERCENT OF FOREIGN-BORN DOCTORS WHO GRADUATED FROM INTERNATIONAL MEDICAL SCHOOLS*



PERCENT OF U.S.-BORN DOCTORS WHO GRADUATED FROM INTERNATIONAL MEDICAL SCHOOLS



alized U.S. citizens and permanent U.S. residents.
SOURCE: Journal of the American Medical Association

tors because too many are coming to the United States for federally subsidized residency training in hospitals and then staying to practice medicine.

Foreign-educated, foreign-born doctors make up about 20 percent of the country's 620,000 practicing physicians, according to the American Medical Association. Some come from schools in countries that experts say are on a par with U.S. medical training, such as Great Britain and other European countries. But the majority come from less prestigious schools.

Critics say these doctors—as well as the more than 10,000 Americans who go overseas for medical school each year—often have a basic education less rigorous than that of U.S. medical graduates and the foreigners must overcome cultural and language differences in treating patients here.

Foreign-born doctors and some U.S. officials say these characterizations are wrong and stem from fear of competition and rising xenophobia.

Contrary to claims by health experts that most foreign-born doctors stay in the country to practice medicine, statistics from the State Department show most foreign-born doctors return home after their training. Last year, more than 9,000 foreign-born doctors were in residencies here, but only 1,550 were allowed to stay after their training was over. Virtually all who stay, U.S. officials who run the program for foreign doctors say, do like Sankar: agree to work in communities that desperately need doctors.

Steve Reiner, a hospital administrator in rural Kearny County, in southwestern Kansas's beef-packing belt, tried for eight years to keep two doctors on staff at the 20-bed hospital and clinic that serve the county's 4,000 residents.

"We don't have a movie theater. We don't have shopping malls. We don't have department stores..." he said. "We're four hours drive from Colorado Springs, a seven-hour drive from the University of Kansas Medical Center. We're out there."

Now he has two full-time internists and a part-time pediatrician, all from the Philippines. He doesn't know if they will stay after their two- and three-year contracts are completed.

"But getting a three-year commitment is better than not having a physician at all," he said.

'As Good as Anybody Else'

On a chilly winter morning, Sankar, 32, a tall bearded man who speaks with a West Indian accent, chats with patients as they squeeze into a tiny waiting area near the back of the Max Robinson clinic. He barely glances through the pale green medical folders; he sees the patients often, calls them by their first names, knows their case histories.

Sankar chides one woman for not coming sooner. He asks after another patient's supply of medicine. He tells another patient to return the following week to get the results of a blood test to check her T-cells, the key immune cells that are targeted by the HIV virus that causes AIDS.

"Will I want to know what my T-cells are?" asks the woman, 42, anxiety tinged voice. They confer for a few minutes, and the woman looks visibly relieved.

"I hope Dr. Sankar don't ever leave because I don't know what I would do," said the woman. "He listens to me. A lot of doctors, they put on airs, they don't listen to you... I got a lot of other problems, and he knows about that too."

The clinic opened in 1992 to better serve residents on the east side of the Anacostia River. The clinic, now housed in a former police precinct office about two blocks from the Anacostia Metro stop, had medical staff but could not recruit a doctor until Sankar started working in November 1994.

Although patients can see doctors at the main Whitman-Walker Clinic in Northwest, many from the neighborhood are reluctant to cross the river, said clinic administrator Barbara Chinn. Clinic patients tended to rely on hospital emergency rooms for medical care, said Chinn. But in the 15 months

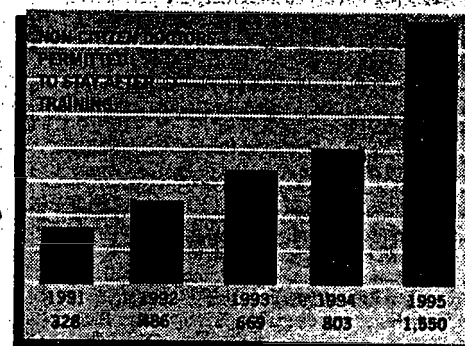
that Sankar has been at the clinic, many patients have come to trust him, according to staff and administrators.

"He doesn't make them feel inferior, he doesn't put them down," said Mercedes Barrett, the clinic coordinator who schedules Sankar's appointments. "They'll wait all day for him."

Sankar is from a small town in Guyana, in South America, where most people grew up to "cut [sugar] cane, drive a taxi or open up a rum shop." He excelled as a student, graduating from medical school at the University of the West Indies in Jamaica at 22.

Seven years ago, he came to the United States on a temporary exchange visa to do his residency in internal medicine at Howard University. His fiancée came with him. Among the top students at Howard, Sankar went on to win a prestigious fellowship in infectious disease at Georgetown University. He passed the same licensing tests as graduates of U.S. medical schools and received his board certification in internal medicine and infectious diseases.

He bristles at the suggestion that because he is foreign-born and went to medical school abroad that he is less competent than his American counterparts. He pointed out that like many foreign doctors he had already completed a residency overseas before coming to Howard. His training at U.S. hospitals, he said, makes him "as good as anybody else."



SOURCES: U.S. Information Agency, Educational Commission for Foreign Medical Graduates

Visas Are Difficult to Obtain

Foreign-educated doctors long have been part of the U.S. work force. In the past, many foreign-born doctors were recruited by U.S. hospitals in need of doctors. Many stayed to work in this country, becoming U.S. citizens and legal, permanent residents. The Chicago-based American Association of Physicians from India, for example, has 26,000 members.

In 1976, however, Congress set new restrictions on non-American medical graduates entering the country for advanced medical training. Under that law, they must enter on temporary exchange visas. After finishing their residencies, they are required to go back to their home countries for two years before attempting to return to the United States.

Only under special circumstances can they waive the return-home requirement to stay in the country. Virtually the only way these physicians have been allowed to stay is by agreeing to work in medically underserved communities, according to the United States Information Agency, which oversees the exchange program. (Even if doctors marry U.S. citizens during their training, they must first obtain a waiver before they can change their immigration status.)

The waivers, which allow doctors to apply for visas to work permanently in this country, are difficult to obtain. Many clinics and hospitals that apply on behalf of doctors fail

See FOREIGN DOCTORS, Page 12

FOREIGN DOCTORS, From Page 11

to qualify during the initial screening at the state level, health officials said.

Until recently, few doctors were allowed to stay after their training—those facilities applying on behalf of doctors had to be run by the Department of Veterans Affairs or under the jurisdiction of the Appalachian Regional Commission.

But three years ago, that began to change because of shortages of primary care doctors. The Department of Agriculture and the Department of Housing and Urban Development began working with the U.S. Information Agency to get foreign doctors to staff rural and inner-city hospitals and clinics. The number of foreign doctors receiving permission to work in those areas has quintupled in the past five years, from 328 in 1991 to 1,550 last year.

Congress also recently gave states the authority to grant up to 20 waivers a year for doctors to practice in underserved areas. But because the program began just last year, only a handful of waivers have been issued.

For many rural hospitals and clinics, foreign doctors have been a critical source of medical care. Places in West Virginia, Kentucky, Alabama—all part of Appalachia—and parts of the Midwest have historically had difficulty recruiting American doctors. Salaries are not competitive. Doctors are on call much more often than their counterparts in the cities.

With foreign-born doctors, there is sometimes an initial period "for the physician to adjust and for the community to adjust," said Linda Hutchens, executive director of the Blue-stone Health Center, in Matoaka, W.Va. The center's two full-time physicians—from Pakistan and the Philippines—serve 12,000 to 15,000 residents in a poor area where coal was once mined.

When Amar Safdar, a physician who was born in Karachi, Pakistan, started working there two years ago, some patients had difficulty understanding him when he spoke quickly, Hutchens said. Now that he is about to leave, many patients are reluctant to see him go. One woman joked that she would have followed him to New York if she could have lived in a trailer park there, he said.

Safdar said he found more resistance from his patients because he urged them to change poor dietary and health habits than because he came from a foreign country. "If you were born in New York, you would have faced the same problems," he said.

'Much Less Choice'

After Sankar finished his medical training at Howard and Georgetown universities, he wanted to remain in the country. He and his fiancée, a nurse at Howard University, had married and had an infant daughter. Through the Department of Housing and Urban Development program for foreign doctors, he agreed to work at the Anacostia branch of the Whitman-Walker Clinic and was allowed to stay in the country.

His two-year contract ends in November. He has since become a legal permanent resident and is not sure what he will do next. He would like to continue at the clinic, he said, but also is interested in earning more money. He will not disclose his salary, but generally doctors with his board qualifications would be better compensated elsewhere.

"Foreign-born doctors have so much less choice than American doctors," he said. "But we are providing service where it's needed, and I think that's a good thing for the country."

Many Foreign Med School Graduates Are Americans

Foreign-born doctors have come under increased scrutiny by several panels of health experts in recent months because of the growing number of foreign medical graduates coming to the United States for advanced medical training.

From 1988 to 1994, the number of foreign-educated physicians in the United States to take part in residencies at American hospitals rose to 23,499, nearly doubling. In 1994, they accounted for 24 percent of the 97,832 medical residents in the country. The rest were graduates of U.S. medical schools.

Who are these doctors? About half of foreign medical graduates are U.S. citizens and permanent legal residents who attended medical school outside the United States and must pass the same licensing exam as U.S. medical graduates to practice medicine here. Most of the remainder are foreign-born physicians who come to the United States on temporary exchange visas.

In 1994, physicians on temporary visas made up 38 percent of all foreign medical graduates in residency programs and accounted for about 9 percent of the total number of residents.

Foreign-educated doctors in training often take positions as residents at U.S. hospitals that graduates of U.S. medical schools do not seek. They often care for the country's poorest, sickest populations, especially at inner-city hospitals.

In a widely publicized report in January, a committee of the National Academy of Science's Institute of Medicine recommended cutting funds for foreign-educated doctors in federally subsidized advanced medical training as a way to head off a looming surplus of practicing physicians.

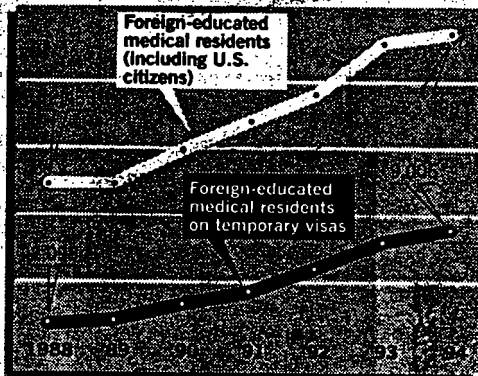
Last fall, the House of Representatives tried unsuccessfully to cut subsidies for foreign medical graduates who are neither U.S. citizens nor permanent, legal residents.

"The continued reliance on a brain drain from abroad is bad social policy for the United States," said Fitzhugh Mullan, a former official of the Department of Health and Human Services whose writings about foreign-educated doctors are widely cited.

He said that the current system pulls bright and talented doctors away from their home countries and also rejects bright Americans who would like to become doctors. "We have an enormous surplus of college students who want to become physicians. . . . We don't have enough places for them [in medical school], and then four years later we import 7,000 students from abroad to go to work in U.S. hospitals," he said.

Others say foreign-born doctors are being singled out because of the fear of competition.

"I believe the profession itself, for the first time, is beginning to get concerned about shrinking opportunities for physicians," said Spencer Foreman, president of Montefiore Medical Center in New York, who served on the academy's committee, but disagreed with its main



COUNTRIES WITH THE MOST DOCTORS TRAINING HERE:

- India
- Pakistan
- Philippines
- Former Soviet Union
- China
- Egypt

SOURCES: U.S. Information Agency, Educational Commission for Foreign Medical Graduates

conclusion that the country may soon have too many doctors.

Foreign medical graduates say they are often recruited by U.S. hospitals eager to fill residency slots—many of which are in internal medicine, pediatrics and family practice.

Because Medicare pays hospitals an average of \$70,000 per resident—regardless of nationality—there is a strong financial incentive for hospitals to keep adding training slots, health experts say. Because the number of U.S. medical graduates has remained unchanged at about 17,000 for the past few years, hospitals turn to foreign medical graduates to fill the added residency slots.

Health experts agree foreign medical graduates play an important role in medical care. But the bottom line is that their numbers are growing too fast, and simply producing more doctors is an inefficient way to remedy a distribution problem that has resulted in too many specialists in some areas and too few primary care doctors in rural and inner-city communities, they say.

"There is this fallacy," said David Kindig, chairman of the Council on Graduate Medical Education, an advisory group, "that in order to provide care to underserved areas, we have to continue to train more foreign doctors."

— Lena H. Sun

Bracy Williams & Company

F:J-FVIsas
Julie Schragg
can we send to
Huo?

cc: Anne McGuire

September 24, 1996

Mr. Thomas McLarty
Counselor to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mack,

The United States Information Agency (USIA) administers a program in which aliens receive J-1 visas under the Mutual Educational and Cultural Exchange Act of 1961. The J-1 visa is issued to doctors who enter the United States for graduate medical education or training. If a doctor agrees to work at critically understaffed hospitals in rural and depressed areas they may qualify for a waiver which enables them to remain in the United States rather than return home for two years. The intent of the program is to enable foreign doctors to practice in areas that would otherwise be without a physician.

Several months ago an inter-agency task force was convened with the mission to develop and recommend guidelines to establish uniformity among the agencies. As a result of the inter-agency task force, the United States Information Agency (USIA) has recently issued a proposed rule to implement uniformity amongst the Federal Agencies when issuing a J-1 visa waiver for foreign doctors. A final rule is expected within the next couple of months.

Greg Simon, Chief Domestic Policy Adviser for the Vice President and Diana Fortuna, Senior Policy Analyst Domestic Policy Council, have been visited by a delegation led by Arkansas State Senator Kevin Smith to discuss the importance of the program. In addition, a meeting was held with Secretary Glickman. During the meetings it was evident that many rural areas would be without a physician if this waiver program did not exist.

Government and Public Affairs Consultants

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

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. Within the next couple of weeks, I anticipate scheduling an appointment for The National Health Care Access Coalition to meet with Secretary Cisneros. This group represents providers and health care facilities that have been devastated by the action of HUD. It would appear that a decision has been made at HUD 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 in this matter.

Sincerely,



Susan J. Williams

It was wonderful to see you at breakfast. Thank you for your gracious praise.

cc: Mr. Stephen Silverman, Deputy Assistant to the President and Deputy Cabinet Secretary



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.

10/7 Greg Simon Diane Fortuna will you respond on mack's behalf (let me & molly know when it's done) Thanks Diane 224 Steve - why not forward to WHO people - Fortuna & Greg Simon - for response? Julie DATE: 9/27 CABINET AFFAIRS ROUTING SLIP ACTION/CONCURRENCE/COMMENT DUE BY: FOR APPROPRIATE ACTION: ☒ FOR YOUR INFORMATION: ☐ FROM: STEPHEN B. SILVERMAN DEPUTY SECRETARY TO THE CABINET DEPUTY ASSISTANT TO THE PRESIDENT SUBJECT: CAN WE SEND THIS TO HUD? COMMENTS:

LEON PANETTA (PALMIERI) _ 1FL WW
HAROLD ICKES (SUTTON) _ 1FL WW
EVELYN LIEBERMAN (KULLMAN) _ 1FL
KITTY HIGGINS _ 2FL WW
JOHN ANGELL _ 178 OEOB
DON BAER _ GFL WW
KRIS BALDERSTON _ 160 OEOB
DAVID BEAUBAIRE _ 160 OEOB
JEREMY BEN-AMI _ 218 OEOB
EMILY BRONBERG _ 106 OEOB
PHIL CAPLAN _ GFL WW
MICHAEL DEICH _ 209 OEOB
JOHN EMERSON _ 106 OEOB
RAHM EMANUEL _ 1FL WW
JANICE ENRIGHT _ 1FL WW
ERIC EVE _ 115 OEOB
T.J. GLAUTHIER _ 246 OEOB
MARY ELLEN GLYNN _ GFL WW
MARCIA HALE _ 2FL WW
KAREN HANCOX _ GFL WW
LARRY HAAS _ 253 OEOB
ANNE HAWLEY _ GFL WW
JAY HEIMBACH _ 107 EW
NANCY HERNREICH _ 1FL WW
ALEXIS HERMAN _ 2FL WW
RONDA JACKSON _ 160 OEOB
JOHN KOSKINEN _ 260 OEOB
MIKE MCCURRY _ 1FL WW

ANNE MCGUIRE
LORRIE MCHUGH
LINDA MOORE
JENNIFER O'CONNOR
TOM O'DONNELL
KEVIN O'KEEFE
JACK QUINN
VICKY RADD
LEE SATTERFIELD
WENDY SMITH
DOUG SOSNIK
GENE SPERLING
GEORGE STEPHANOPOULOS
TODD STERN
STEPHANIE STREETT
GINNY TERZANO
BARRY TOIV
LORRAINE VOLES
MICHAEL WALDMAN
DAN WEXLER
KATHI WHALEN

X 160 OEOB
_ 1 FL WW
_ 115 OEOB
_ 149 OEOB
_ 2FL WW
_ 106 OEOB
_ 2FL WW
_ GFL WW
_ 124 OEOB
_ 115 OEOB
_ GFL WW
_ 2FL WW
_ 1FL WW
_ GFL WW
_ GFL WW
_ 274 OEOB
_ 1FL WW
_ 274 OEOB
_ 196 OEOB
_ 117 OEOB
_ 136 OEOB

JULIE SHRAGER

X 128 OEOB

FEMA
LIEBERMAN 1/WW
HIGGINS 2/WW
ANGELL 178 OEOB
CHOW 107/EW
ENRIGHT 1/WW
GLYNN G/WW
HALE 2/WW
HEIMBACH 107/EW
MURGUIA 112/EW
MCHUGH 1/WW
PALMIERI 1/WW
TERZANO 274 OEOB

DOT
HIGGINS 2/WW
ANGELL 178 OEOB
DEICH 209 OEOB
GLYNN G/WW
HANCOX G/WW
HEIMBACH 107/EW
MCHUGH 1/WW
O'CONNOR 149 OEOB
TERZANO 274 OEOB
TOIV 1 FL WW

ANNOUNCEMENTS
LIEBERMAN 1/WW
HIGGINS 2/WW
BABCOCK 263 OEOB
BAER G/WW
ENRIGHT 1/WW
HALE 2/WW
HANCOX G/WW
HEIMBACH 107/EW
GLYNN G/WW
L. MCHUGH 1/WW
O'KEEFE 106 OEOB
PALMIERI 1/WW
TERZANO 274 OEOB
TOIV 1FL WW
SKELTON 273.5 OEOB
WALDMAN 196 OEOB



TEMPLE UNIVERSITY
A Commonwealth University

School of Medicine
Pulmonary Disease Section

3401 N. Broad Street
Philadelphia, PA 19140
(215) 707-3336
Fax: (215) 707-6867

F: J-1

Tuesday, October 21, 1997

Diana Fortuna
Chief of Staff for Domestic Policy
Office of Domestic Policy
The White house
Old Executive Office Building
1700 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Ms. Fortuna:

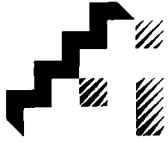
I would sincerely like to thank you for your support in the J-1 Physician Waiver Program. This program has allowed us to provide medical services to the medical underserved in North Philadelphia at Temple University School of Medicine. I had tried for approximately one year to recruit a nighttime ICU attending to fill the needs of our community, but had no success with American graduates. Through our State's J-20 Waiver Program I was able to recruit a competent physician that fills this void.

Once again, many thanks for supporting this important program.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Criner'.

Gerard J. Criner, MD
Professor of Medicine
Director, Pulmonary & Critical Care Medicine



**MARCUM
& WALLACE®**
Memorial Hospital

F: J-T

60 Mercy Court
P.O. Box 928
Irvine, KY 40336 ▪ 0928
606 ▪ 723 ▪ 2115
FAX ▪ 606 ▪ 723 ▪ 2951

November 6, 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

RE: Bassem Adie, M.D.

Dear Ms. Fortuna:

I would like to thank you for supporting the J-1 Physician Waiver Programs and to let you know how our hospital has benefited from this program.

Marcum & Wallace Memorial Hospital is a 26-bed rural facility located in the City of Irvine, Estill County, Kentucky. Estill County had four primary care physicians to serve a population of over 15,000 people before we were able to recruit Dr. Adie and two other J-1 physicians into the community. The City of Irvine is located in a health professional shortage area (HPSA) as determined by the U.S. Public Health Services.

The recruitment of these three physicians has made a significant difference in the community's health care. I believe, without a doubt, that these physicians are invaluable assets to our community.

Thank you again for your continued support of this most valuable program.

Sincerely,

CHRISTOPHER M. GODDARD,
ADMINISTRATOR

CMG/bca

F.J-1

ME
Marymount
MEDICAL CENTER

October 31, 1997

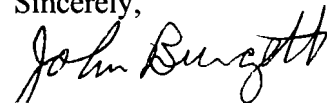
Ms. Diana Fortuna
Chief of Staff for Domestic Policy
Office of Domestic Policy
The White House
Old Executive Office Building
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20500

RE: J-1 Physician Waiver Program

Dear Ms. Fortuna:

I would like to thank you for the support and assistance you provided us with the J-1 Physician Waiver Program. We were able to utilize the program to obtain the services of Dr. Mukul Shah. We have a difficult time securing physicians, as we are in a medically underserved area with a high poverty rate. Dr. Shah's presence will have a great impact on our area and we thank you for helping us employ him and allowing us to provide a valuable service to our residents.

Sincerely,



John Burgett, CFO
Vice President of Finance

cc: Attorney Jan Pederson



Jenkins Community Hospital

F:J-1

P.O. Box 472
Jenkins, Kentucky 41537-0472
Phone: 606-832-2171
Fax: 606-832-2943

September 12, 1997

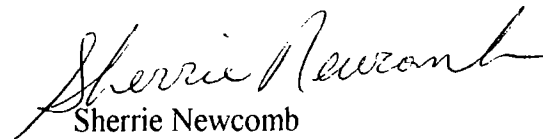
Ms. Diana Fortuna
Chief of Staff for Domestic Policy
Office of Domestic Policy
The White House
Old Executive Office Building
1700 Pennsylvania Avenue, N.W.
Washington, D.C., 20500

Dear Ms. Fortuna:

On behalf of Jenkins Community Hospital and the community it serves, please accept our most sincere thanks for your support of the J-1 Physician Waiver Program. Being located in a rural, medically underserved area, it is very difficult to recruit physicians to our hospital. Without the J-1 Waiver program the quality of medical care in our community would be compromised. The Program has provided us access to physicians that in all probability, we would not have been able to obtain otherwise.

We here at Jenkins Community Hospital feel the J-1 Waiver Program is a vital resource for physician recruitment for hospitals such as ours. Again, thank you for your support.

Sincerely,


Sherrie Newcomb
Administrator