

# NINGAS - COGON

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## VIEW- POINT

### WAY OUT FOR FMGs ON CAPITOL HILL

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What is needed to achieve a lasting solution to the current exchange visitor's dilemma? The answer lies in a concerted attack on the law itself—a further relaxation of the foreign residence requirement if not a total elimination of the requirement. And the attack should not be directed to the courts. It should be directed to the Congress of the United States.

A review of the historical background of the law is pertinent at this point. The exchange visitor program had its genesis in the Information & Education Exchange Act of 1948. It was only in 1956, however, that the foreign residence requirement was made a part of the program scheme.

The requirement during the early years of its implementation was applied in all cases of exchange visitors with very limited exceptions. The blanket application was so pervasive that it engendered difficulties in administration, produced hardship on numerous individuals, and generated hard feelings toward the U.S. on many occasions. The stringent requirement for waiver forced almost all exchange visitors to leave the U.S.

In 1970, the U.S. Congress, heeding widespread clamor for relaxation of the requirement, passed an amendment to the statute. The amendment which became effective on April 7, 1970 provided that henceforth the order to leave the country to satisfy the 2-year foreign residence requirement would be applicable only to the following two groups:

1. Exchange visitors whose participation in the program was financed in whole or in part, directly or indirectly by the U.S. government or by the home country.
2. Exchange visitors who acquired that status after the Secretary of State has designated the country of their nationality or last residence as clearly requiring their specialized knowledge or skill.

The foreign medical graduates who came under the sponsorship of the Educational Commission for Foreign Medical Graduates were benefited under the first category. This was because participation in the ECFMG program was not in any way financed by the U.S. government or by the home country. Thus, Filipinos who applied for change of status starting April 7, 1970, did not have to go back to their home country before they could apply for a green card. Moreover, the provision was applied retrospectively and therefore, exchange visitors who had acquired that status prior to the 1970 amendment were not required to go home.

The benefit ended, however, with the publication of the countries interested in their knowledge and skills. This was in accordance with the second category laid down in the amendment. It should be recalled that under the amendment the Secretary of State was required to canvass the interested countries and publish the same including the list of skills needed. The publication was on April 25, 1972. The list took effect a month later, on May 25, 1972. Since one of the more than 90 interested countries was the Philippines, the foreign residence requirement was restored in the case of the Filipino doctor.

Is this law in its present form discriminatory? Yes. Is it unfair? Yes. The foreign residence requirement is discriminatory because it excludes certain classes of individuals—the exchange visitors—from adjusting their status while in the U.S. It is also discriminatory because exchange visitors coming from highly industrialized countries are spared while those coming from underdeveloped countries are not. Note that most of the countries listed as interested are under-developed or in the process of developing.

The rule is also unfair because why should the U.S. now repatriate these doctors after it has used their knowledge and skills at a time when this country need them most?

The above moral arguments cannot, however, override the inherent power of sovereignty to control immigration. As Justice Frankfurter emphasized in one case, "The conditions for entry of any alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, the grounds on which such determination shall be based, have been recognized as matters solely as the responsibility of the Congress."

Indeed, the solution to the exchange visitor's dilemma is not judicial but political. It cannot be sought in the sanctuary of the courts but in the halls of the Congress of the United States.