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INS set to scrap

Move seen as blow to FMGs

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The Immigration and Naturalization Service (INS) has proposed new rules to govern the issuance of non-immigrant visas (H and J-1) to foreign medical graduates (FMGs) seeking work or training in the United States.

The notice of proposed rulemaking was published in the November 26, 1976 issue of the Federal Register. The INS state that the proposed rules were made necessary by the Health Professions Educational Assistance Act of 1976 which will take effect on January 10, 1977.

Under the proposed rules (and under the Act), foreign medical graduates will no longer be issued H-1 visas to perform services in the U.S. as members of the medical profession. An exception is provided only to those coming to the U.S. solely to teach or to do research at a public or non-profit private educational or research institution or agency at the invitation of such institution or agency.

Likewise, H-2 and H-3 visas will not be issued to alien doctors coming to the U.S. to perform services as members of the profession or to receive graduate medical education or training.

It is not yet known what action the INS will take with regard to FMGs who have applied for H visas prior to January 10, 1977 but who will not receive their visas by that date. Nor has there been any decision on whether those who obtained H visas prior to that date will be eligible for extensions.

Regulations were also proposed to implement the changes made in the exchange visitor visa (J-1) provisions. Under the new Act, four requirements must be met by the FMG to obtain a J-1 visa, namely:

¶An accredited school of medicine (and its affiliated hospitals) or one of the health professions must agree in writing to provide or arrange for the

H visas

provision of the graduate medical education or training under the program for which the alien is coming to the U.S.

¶Before making such agreement the school must be satisfied that the alien has passed Parts I and II of the NBME examination (or equivalent), that the alien is competent in oral and written English and is able to adapt to and participate satisfactorily in the program for which he is coming to the U.S.;

¶The alien has made a commitment to return to the country of his nationality or his last residence upon completion of the program and has provided the written assurance of his government, which must be satisfactory to the Secretary of Health, Education and Welfare, that his training will be put to use in his country; and

¶That the duration of the alien's participation in the program for which he is coming to the U.S. is limited to a period of two years (but may be extended for one additional

year provided certain conditions as set forth in the statute are complied with).

It was also provided under the new Act that the above requirements would not apply between January 10, 1977 and December 31, 1980 to any alien who seeks to come to the U.S. to participate in an accredited program of graduate medical education or training if there would be a substantial disruption in the health services provided by such program as a result of the denial of participation to such alien.

Paul Anthony Cook, Director of the Facilitative Service Staff, Bureau of Educational and Cultural Affairs of the U.S. State Department, has stated that no one yet knows how it will be determined that there is "a substantial disruption in the health services provided...". Cook did state that this waiver would not be granted upon applications by individual hospitals. However, he said, the

guidelines and criteria for making this determination had not yet been developed.

In addition, the exception from the above-stated exchange visitor requirements will not be granted whenever the granting of such exception would increase the number of FMGs then participating in the U.S. exchange visitor program to a level greater than that participating on January 10, 1977.

Under the proposed INS regulations, all FMGs admitted as an exchange visitor on or after January 10, 1977 will be subject to the two year foreign residence requirement. This would be a significant revision of the present regulations which subject exchange visitors to the requirement only if their program were financed, directly or indirectly, by the U.S. government or by their home country or if the area of their specialization is included in the Skills List published by the Department of State.