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INS RULING CRITICIZED

'No Objection' statement should be liberally granted

By REUBEN S. SEGURITAN

The new law that grants special immigrant status to qualified alien physicians was intended to remedy the plight of those who have been in the United States practicing medicine for several years, but could not obtain permanent resident status because of their inability to comply with the requirements of the visa qualifying examination, in addition to the unavailability of visa numbers. It was clear from the congressional record that, inasmuch as these physicians had been rendering health care services for some time, they deserved to become permanent residents immediately.

There was one provision of the Immigration and Nationality Act, however, that frustrated this new intent of the US Congress. It required them to depart from the United States to reside and be physically present in the country of their nationality or last residence for an aggregate of at least two years. This is known as the two year foreign residence requirement.

Not all of these physicians are subject to the requirement but a great number of those who obtained their J visas after May 25, 1972 are. It was apparently because of this stumbling block that a move was initiated within the Immigration and Naturalization Service for a blanket waiver of the requirement.

I just learned that the US International Communication Agency (USICA) has opposed this move and chances are that there will be no blanket waiver. An officer of the USICA, however, said that if a physician obtains a "no objection statement" from his home government, it will be honored. It should be noted that under the law, "no objection statements" do not guarantee a waiver and it is the USICA that makes the final recommendation to the INS.

(Editor's note: Mr. Seguritan, an attorney, was formerly counsel to the Philippine Medical Association of America, member of the Committee on Foreign Medical Graduates of the Association of Immigration and Nationality Lawyers, Immigration editor of the Common Law Lawyer and Member of the Asian-American Immigratory Advisory Committee to INS Commissioner Castillo, that submitted a position paper on the FMG problem in 1977).

The problem is that not all physicians who request a "no objection statement" are successful. There must be a strong reason, like hardship for the physician's child, who is undergoing medical treatment in the U.S. (not ordinary sickness), or urgent need of his community for his medical services.

It may be a good idea to request the Philippine government to be more relaxed in granting a "no objection statement" in light of the liberal attitude of the US Congress, the INS and the USICA. A similar request was made several years ago to Foreign Minister Carlos P. Romulo by Dr. Roberto Cunanan, then president of the Philippine Medical Association of America. There should be a follow-up to this request. After all, the Philippine government has been known to respond favorably to this kind of need.

I suggest that the mere presence of a US citizen child or continuous residence in the US for at least five years plus an established medical practice should be added to the list of acceptable reasons.

INS interpretation criticized

In a recent conversation with an officer of the Central Office of the Immigration and Naturalization Service, Washington D.C., I learned that proposed regulations on the implementation of PL 97-116 as they refer to alien physicians will be soon published in the Federal Register. One of the regulations will affirm an item in an INS memo to its District Offices, dated Jan. 28, 1982, which limits the applicability of the law to those physicians who actually entered the United States before Jan. 10, 1978 as H or J nonimmigrants.

It should be recalled that one of the requisites for the application by an alien physician as a special immigrant is that he must have "entered" as an H or J nonimmigrant. The word "entered," according to the Immigration Officer, should be construed to mean physical entry —any coming of an alien into the United States, from a foreign port or place, or from an outlying possession. This definition was apparently taken from Section 101 (a)(13) of the Immigration and Nationality Act.

I asked the same officer the reason for the strict interpretation, and I was told that the Judiciary Committee of the United States Congress was consulted. He emphasized that the law was very specific in referring only to H or J nonimmigrants, thus excluding those who came to the United States as tourists.

I argued that this reasoning failed to consider the logic behind the law. What he was actually saying was that if the alien physician entered the United States as a tourist, but later changed his visa to H or J nonimmigrant, said physician would not be qualified. This was where I disagreed.

I did not dispute the contention that the law should apply only to those who came here for graduate medical education or training (the purpose of a J or H nonimmigrant medical graduate). But didn't the alien who entered as a tourist but changed to H or J visa also accomplish the same purpose? I think that the intent of the law excluded only those physicians who did not undergo medical training or study, like tourists, who managed to obtain their medical license. To distinguish between those who physically entered as H or J and those who changed to H or J while in the United States, would be absurd.

As a further illustration, if an alien physician physically entered as a tourist but went back to the Philippines to get a J or H visa with which to enter, he would be qualified. On the other hand, if the said alien physician entered as an H, but changed to a tourist visa one month after, he would also be qualified. Is there a valid basis for distinguishing these two cases from the case of the tourist who changed to H or J status?

Another flaw in the INS interpretation can be gleaned from a reading of Section 212 (a)(32) of the Immigration and Nationality Act. This was the controversial amendment of PL 94-484 which declared foreign medical graduates who have not passed

parts I and II of the National Board of Medical Examiners Examination as ineligible to receive visas and excluded from admission into the United States. Affected under the amendment were not only those physicians who were physically entering the United States, but also those who have been here for many years, and were in fact the beneficiaries of approved third or sixth preference or non preference visa petitions, who were yet to apply for their immigrant visas. Also affected were those who were here as nonimmigrants but were applying to change their status to J-1 visas. While that amendment used the word "coming" instead of "entered" as in the new law, should not their meaning be the same, especially that PL 97-116 was passed to undo the unjust consequences of PL 94-484?

During the congressional debates, there was a [illegible] that the law was intended to correct an oversight. Congressman Lungren said:

"[illegible] we did that and the [illegible] we waived the requirement [illegible] [illegible] [illegible] that prior to that time these people had already come to the United States and had already been adjudged by their particular professional review boards in their States as having the requisite knowledge and skills to practice medicine in those States.

The enforcement of the additional requirements was really not clear until that date. Therefore, we thought it would be patently foolhardy of us to require of those people who have already proved themselves to be valuable contributors in their communities in taking care of their health needs that they had to take some steps that may or may not relate to their ability to provide care to those communities."

Would this congressional intent be served by the strict interpretation of the INS? [illegible]

Anyway, at the end of my conversation with the Immigration Officer, he invited me to send my criticism of the INS's position for study and consideration. Obviously, I will. In the meantime, alien physicians who comply with all the requirements, except that they entered as tourists but changed to H or J visa are afraid to come out and apply. [illegible]