Unfavorable Treatment of Foreign Doctors

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The unfavorable if not discriminatory treatment of doctors started with the Health Professional Educational Assistance Act of 1976. This Act imposed, among other restrictions, an across-the-board two-year home residence requirement on all J-1 clinical physicians. This is of course detrimental for U.S. employers and communities with health care needs.

The obligation to return to their home country after the expiration of the J-1 visa holder's authorized stay in the U.S., however, may be waived. There are three ways by which this waiver may be obtained, namely: (1) alien's claim of exceptional hardship on his U.S. citizen or permanent resident spouse or child upon his departure from the U.S., (2) alien's claim of persecution upon his return to his home country, and (3) the recommendation by the U.S. Information Agency (USIA) of a waiver of the two-year residence requirement pursuant to a request from an interested government agency or IGA.

Before last fall, IGAs were restricted to federal government agencies. They only have to establish that the employment of the international medical graduate (IMG) is beneficial to the government agency and will serve the public interest. Traditionally, only three government agencies sponsored waivers. These are the (1) Department of Health and Human Services (HHS), the Department of Veterans Affairs (VA), and (3) the Appalachian Regional Commission (ARC). Recently however, the U.S. Department of Agriculture (USDA) and the Department of Housing and Urban Development (HUD) have been actively sponsoring waivers for clinical physicians in medically underserved rural and urban communities. Also, this was extended last October by legislation, to certain state agencies. And more recently, under the "Conrad State 20" program, each state is authorized to recommend waivers for up to 20 physicians per year through fiscal year (FY) 1996.

Three standards have evolved from the above-mentioned programs, as regards IGA waivers. They involve (1) academic research in a field perceived as high priority or significant to the U.S. (such as AIDS, cancer, cardiovascular diseases, and women's health issues); (2) existence of an employer/employee relationship with a federal government agency; and (3) community-based medical service to an underserved area.

The HHS is the primary IGA which has sponsored waivers for academic physicians doing research, and not clinical service. The HHS Review Board makes the final waiver decision after an HHS waiver application has passed through the Executive Secretary of the Exchange Visitor Waiver Review Board and the National Institutes of Health (NIH). Regulations (45 CFR, Sec.50.1 *et seq.*) to implement this program require the following: (1) an outstanding academic IMG strongly committed to "bench" or laboratory research (as opposed to clinical investigations); (2) the employing institution's proven commitment to support and create a sustaining environment for the research and a showing that it has achieved or will achieve a distinguished level of research excellence; (3) a showing that the IMG's research is focused on an area of high national priority; and (4) proof of unavailability of fully qualified U.S. applicants, despite competitive search.

The Department of Veterans Affairs (VA) has been the principal federal employer of J-1 physicians to implement its mandate to provide veterans of military service with sufficient health care services. The particular facility of the VA initiates the waiver process by showing the unavailability of U.S. trained physicians despite aggressive recruitment efforts within the preceding year, after which the waiver packet is sent to the VA Central Office. The latter then sends the waiver request to the USIA.

The Appalachian Regional Commission (ARC) has been the primary agency which initiates waiver sponsors of J-1 physicians employed in medically underserved communities in the Appalachian region. Various federal agencies however, have actively facilitated the relocation of IMGs to other medically underserved communities. The USDA instituted in February 1994 a J-1 waiver program for underserved rural communities while the HUD organized its waiver process in December 1994 for inner city urban communities.

Some similar features of both waiver programs are as follows: (1) concentration on primary care disciplines such as internal medicine, pediatrics, obstetrics/gynecology, psychiatry, and family practice, and emergency medicine; (2) a requirement that the sponsoring institution show the unavailability of qualified U.S. workers; (3) the location of the employing medical facility within a "Health Professional Shortage Area" (HPSA) which refers to an HHS designation of certain areas with a shortfall of primary care physicians; and (4) the IMG's commitment to be employed for three years (USDA requirement) or two years (HUD and ARC requirement).

The designation as HPSA is based on the inadequacy of primary care physicians serving an area's population or a physician/patient ratio of 1:3500 or above. The HHS also considers other factors like poverty rates, age of population, infant mortality rates and physician supply in deciding the community's need for a primary care physician in its two programs known as "Medically Underserved Areas" (MUAs) and "Medically Underserved Populations" (MUPs). These programs are also recognized by other government agencies.

Under the "Conrad State 20" Program, each state may designate a specific agency, usually, the State Department of Public Health, to recommend to the USIA up to 20 waivers per fiscal year. IMGs who are eligible are those who (1) secured J-1 status on or before June 1, 1996 and (2) worked in programs of "graduate medical education or training." Upon INS approval of the waiver, the alien can change his status directly to H-1B status. A three-year term in H-1B status is required of physicians with Conrad State 20 waivers in the sponsoring medical facility in the designated shortage area. After three years, the IMG may apply for permanent resident status.