

## **Rules on FMGs Changed**

**By Reuben S. Seguritan**

The rules have changed regarding foreign medical graduates (FMGs). In general, FMGs (with J exchange visitors visa) are required to go back to their home country before they can apply for another nonimmigrant or immigrant status unless there is a waiver of the foreign residence requirement. The basis of the waiver can be any one of the following four bases: (1) the alien's departure from the U.S. will inflict exceptional hardship on his citizen or permanent resident spouse or child; (2) the alien will be persecuted if he returns to the country of nationality; (3) the U.S. Information Agency (USIA) recommends a waiver to the INS pursuant to the request of an "interested U.S. government agency"; or (4) the waiver is requested by a state's department of public health or its equivalent under the "Conrad State 20" program for FMGs wherein each state is limited to 20 such waivers per fiscal year. This program which expired on June 1, 1996 was extended to June 1, 2002 by the new law.

Under the 1996 Act, additional restrictions were placed on waivers requested by U.S. government or state agencies. These are the following: (1) a no-objection to the waiver statement from the alien's home country is required to be furnished to the USIA when the alien has received funding from his home country's government; (2) the FMG shows a *bona fide* offer of full time employment at a health care facility/organization; (3) the employment is in the public interest as ascertained by the Attorney General; (4) the FMG agrees to commence work at the health care facility within 90 days of obtaining the waiver; (5) the FMG commits to work at the health care facility for three years unless there are extenuating circumstances, such as closure of the facility or hardship to the alien caused by unanticipated circumstances beyond his control that would warrant a shorter period of time, in which case the alien has to show another offer of employment at a health care facility located in a designated shortage area for the balance of the three-year period; and (6) the alien is in H-1B status during the three year period of employment in areas designated by the Department of Health and Human Services (HHS) as Health Profession Shortage Areas (HPSAs) or Medically Underserved Areas (MUAs).

The FMGs should be in valid J status when the application for change of status to H-1B category is filed. Otherwise, the alien has to obtain the H-1B visa at a U.S. consulate abroad. Since this process of getting a waiver and change of status takes a very long time, the FMGs usually become out of status. FMGs who overstay have to go back to their home countries unless "extraordinary circumstances" apply. The State Department has signified that this exception applies to FMGs serving in medically underserved areas whose employers have filed for H-1B visas. In such cases, the FMGs do not have to go back to their home country. They can secure the H-1B visa at a consulate outside their home country such as the Canadian consulate. For this extraordinary circumstances exception to apply, both the waiver application and the petition filed by the employer should have been subsequently approved.

A violation of the above conditions and/or breach of the terms of the three year employment contract will make the alien ineligible for an immigrant visa, for adjustment of status, or any other change of status unless the FMG complies with the two year foreign residence requirement.