

Veterans Administration J-1 Waiver Request Policy
SECTION I. REQUESTS FOR APPROVAL TO PETITION THE UNITED STATES INFORMATION AGENCY (USIA) FOR SUPPORT OF A WAIVER OF THE 2-YEAR HOME RESIDENCE REQUIREMENT OF THE UNITED STATES EXCHANGE VISITOR PROGRAM BY THE IMMIGRATION AND NATURALIZATION SERVICE (INS)

1. This appendix establishes criteria for requesting the [Associate Deputy] Chief Medical Director's approval to petition USIA for support in behalf of an individual on a J-1, Exchange Visitor, visa for a waiver of the 2-year home residence requirement by INS. (See Section II for Definitions.)

2. **Background**. The Immigration and Nationality Act requires that certain foreign nationals, who are in the United States (U.S.) as participants in the Exchange Visitor Program, leave the U.S. for 2 years to apply newly acquired training and skills in their home countries. This 2-year home residence requirement also prevents circumvention of the usual methods of immigration to the U.S. Under unusual circumstances, the head of an interested Federal agency may request a waiver of this requirement when that agency determines that such a waiver is in the interest of a program of the U.S. and in the public interest. (Title 22 CFR [] Part 514[,] and the Immigration and Nationality Act, Section 212(e), as amended.)

3. **Policy**. The Department of Veterans Affairs [(VA)] supports the Exchange Visitor Program and the 2-year home residence requirement and will seek waivers only when it is clearly in the interest of the Department and its programs. For [VHA,] the Secretary has delegated to the [Under Secretary for Health, or designee,] authority to approve such requests and to determine when submission of requests for waiver are appropriate. []

4. **Sections**

a. **Definitions**. Definitions of terms used in this appendix are in Section II.

b. **Submission of Requests**. Requests are to be submitted in accordance with Section III.

c. **Actions Required After Request is Approved**. Instructions and further information for processing approved requests are contained in Sections IV and V.

SECTION II. DEFINITIONS

1. **Adjustment** means changing from a nonimmigrant status to immigrant status while remaining in the U.S. Individuals whose authorized stays have expired are required to leave the U.S. and may not reenter unless they have been granted another visa.

[]

NOTE: *Individuals holding J-1 visas, who were admitted for the purpose of acquiring graduate medical education or training, are barred from [adjusting] to*

another nonimmigrant status, including a change to [H-1B,] whether or not a waiver of the 2-year home residence requirement has been approved. See 8 CFR 248.2(c) This means any holder of such a J-1 visa who wishes to change to [H-1B] must first leave the United States and return on another visa, whether or not they have a waiver of the 2-year home residence requirement.

[2.] **Alien Labor Certification.** Certification by the U.S. Department of Labor (DOL) that:

a. There are sufficient U.S. workers able, willing, qualified, or available at the place where the alien is to be employed when the alien applies for an immigrant visa; and

b. The employment of the alien will not adversely affect the salaries and working conditions of similarly employed U.S. workers.

NOTE: *Alien labor certification is only required when [a facility] plans to petition INS for immigrant status based on their [need for the alien's skills.] Aliens married to or related to U.S. citizens who are petitioning in their behalf are not required to obtain an alien labor certification in conjunction with their petition for immigrant status. This paragraph primarily deals with alien labor certification requirements for physicians. Different alien labor certification requirements may apply for other occupations. For further information about these other occupations, facilities should contact their local State Employment Office.*

[3.] **Exchange Visitor.** A foreign national who is a participant in the Exchange Visitor Program (e.g., foreign medical school graduates admitted to the U.S. for medical training).

[4.] **Exchange Visitor Program.** A program administered by USIA which is intended to promote an interchange of persons; knowledges and skills; and developments in the fields of education, arts, and sciences, which promote a mutual understanding between the people of the U.S. and the people of other countries.

[5.] **Immigrant.** An alien who has been admitted to the U.S. for permanent residence. [By September 20, 1994, all immigrants] are required to have an Alien Registration Receipt Card, Form I-551. [The Form I-151 and all previous forms are no longer valid after September 19, 1994.] The Form [I-551] has the lawful holder's photograph, fingerprint, and signature on a white background; however, it is commonly known as the ``green card.''

[6.] **Immigration and Naturalization Service (INS).** The Agency of the U.S. Department of Justice which administers the Immigration and Nationality Act. INS is responsible for approving or disapproving waivers of the 2-year home residence requirement for Exchange Visitors.

[7.] **Nonimmigrant.** An alien temporarily admitted to the U.S. for specific purposes and periods of time.

[8.] **Nonimmigrant Visas**

a. **J-1.** A nonimmigrant visa issued to an Exchange Visitor which allows the participant to enter or remain in the U.S. while participating in the Exchange Visitor Program.

b. **J-2.** A nonimmigrant visa issued to the spouse of an Exchange Visitor which allows the individual to remain in the U.S. while their spouse is participating in the Exchange Visitor Program.

c. **[H-1B.]** A nonimmigrant visa granted to professionals or those of distinguished [merit and] ability for a period of up to 3-years. [H-1B] visas are granted for specific positions and may be extended [3] years for a total of [6] years. [Noncitizen physician graduates of *foreign* medical schools may be granted H-1B visas for patient care positions if they have passed the United States Medical Licensing Examination (USMLE) or its equivalent *and* the English language proficiency examination given by the Educational Commission on Foreign Medical Graduates (ECFMG).]

NOTE: *Facilities may wish to use the H-1B instead of the permanent resident visa, as the H-1B visa is employer-specific and does not require alien labor certification. A labor condition application must [] be submitted by DOL prior to a submission to INS for an H-1B visa (Title 20, CFR, section 655.730).*

9. **“TN” Classification.** A nonimmigrant classification granted under the provisions of the North American Free Trade Agreement to citizens of Canada and Mexico. The TN classification is available only for certain professional occupations and is issued pursuant to a job offer by a U.S. employer. Aliens are admitted for an initial period of up to 1 year and may be granted extensions in 1 year increments. Physicians may only be admitted on a TN classification to perform teaching or research (no direct patient care). The TN classification is replacing the TC classification for Canadian citizens.

10.] **2-Year Home Residence Requirement.** Certain Exchange Visitors must return to their country of nationality or to their last legal permanent residence after they have completed their education for at least 2 years before they can apply for an immigrant or nonimmigrant visa.

[11.] **United States Information Agency (USIA).** The agency which administers the Exchange Visitor Program and recommends to INS approval or disapproval of petitions for waiver of the 2-year home residence requirement for Exchange Visitors.

SECTION III. SUBMISSION REQUIREMENTS

1. General Policies

a. Facility Directors may request the approval of the [Associate Deputy] Chief Medical Director to petition USIA for support of a waiver by INS of the 2-year home residence requirement *only* if it can be shown that the loss of the Exchange Visitor's services would necessitate discontinuance of a program or a major phase of it, *and* recruitment efforts have failed to produce a qualified citizen or permanent resident applicant for the position.

b. Waiver requests will not be considered if

(1) They are based solely upon the personal desire of the Exchange Visitor to remain in the U.S. or the needs of the affiliated university.

(2) They are not part of an ongoing and comprehensive recruitment effort. Recruitment efforts *shall not* be initiated solely for the purpose of placing Exchange Visitors.

(3) They are to facilitate routine hiring in nonspecialized assignments; for appointments of less than 4/8ths time; or for appointments on a without compensation or fee basis.

(4) Another facility has a pending request for a waiver in behalf of the candidate.

(5) The position to be filled is a trainee, fellowship or otherwise time limited, including medical support appointments under 38 U.S.C. [7405(a)(1)(D)].

(6) There are other qualified citizens or permanent resident applicants for the position. [Title 38 U.S.c. Section 7407(a),] provides that noncitizens may only be employed if it is not possible to recruit citizens for necessary services. It is not enough to demonstrate that a noncitizen is more qualified. Interested citizen or permanent resident applicants must be found *unqualified* for the position, i.e., that they have failed to meet the requirements of the position. For example, physicians who are not board certified or who do not possess specialized skills may not be considered unqualified if such requirements are only desirable or the recruitment advertisement fails to specify such requirements.

c. Post Audit. Requests submitted under this directive may be post audited by VA Central Office to ensure compliance with this Appendix's provisions, as well as applicable [VHA] personnel policies and procedures. Department of Veterans Affairs (VA) officials who fail to comply with provisions of this Appendix may be subject to appropriate administrative or disciplinary action.

2. Submission of Requests. Requests are to be assembled in the following order, with each item tabbed [on a separate piece of paper,] and sent to the appropriate Regional Director's VA Central Office Field Support Office (13_/054D). [Approved requests will be forwarded directly to USIA by VA Central Office. [] Facilities should retain copies of material submitted with their request.]

a. Director's Letter. The request is to contain a letter signed by the facility Director which addresses each of the following items:

(1) A complete description of the proposed assignment, including the percentage of time spent in research or educational activities and the responsibilities at the affiliated university, where appropriate. The description shall include the proposed grade and step rate of the applicant, whether the position is full-time or part-time, and the proportion which part-time employment bears to full-time employment, where appropriate.

(2) The proposed appointment date and the anticipated immigration status of the proposed candidate after appointment (i.e., [TN classification, H-1B visa, or permanent resident alien status]).

(3) A description of the health-care needs the Exchange Visitor would meet and how those needs are or are not being met at the present time. The description should also include any patient care problems, an explanation of how the loss of the Exchange Visitor would result in discontinuance of a program or a major phase of a program of official interest to the Department, and information on additional expenditures associated with alternative methods of patient care (fee for service, contracting, etc.).

(4) A complete description of recruitment efforts, including the time the position has been vacant, areas covered, contacts made, [rationale for selecting recruitment methods used,] etc.

NOTE: *Also see the documentation requirements in subparagraph b.*

[(5)] The letter is to provide the name, title, and telephone number of a facility employee who can answer technical questions about the request and provide additional information which may be required by VA Central Office.

b. Documentation of Recruitment Efforts (tab each item [on a separate piece of paper])

(1) Advertisements

(a) Provide *dated* photocopies of ads placed in professional journals, newspapers, etc. Except as provided in paragraph 2b(1)(b), ads must be placed in nationally recognized journals or periodicals which are appropriate to the specialty and have nationwide circulation. *Ads may not be over 1-year old at the time of submission.* The primary focus of the ads is to be [VHA] employment; they must indicate [VHA] is an equal opportunity employer; and contain any special requirements of the position, e.g., special professional skills, board certification, etc. Applications are to be directed to the appropriate [VHA] facility servicing [human resources management] office. They are not to be forwarded through the affiliated university. Upon receipt, all applications will be forwarded to the appropriate facility program official. Any inquiries concerning the position are to be documented by a report of contact, a copy of which will be kept by the contacted VA official. If the position is less than full-time [at VA,] the ad must include information about [associated] employment at the affiliated university, where appropriate[.]

(b) Facility Directors will not be required to place ads in appropriate national journals if [t]he position is in a scarce medical specialty for special pay purposes or is one for which geographic special pay has been authorized[.] Any exception under [this subparagraph] is to be documented in the facility Director's letter described in paragraph 2a.

NOTE: *An exception under [this subparagraph] does not relieve a facility [from undertaking active recruitment efforts to attract qualified candidates,] meeting*

DOL alien labor certification requirements[, or from taking other recruitment efforts as outlined in following paragraph (2),] where appropriate.

(2) **Other Efforts.** [An active recruitment effort will be demonstrated by a combination of the following: letters to medical schools, specialty boards, professional organizations and local advertising. Facilities shall send a national wide teletype advertising the vacancy and request referrals from the Office of Health Care Staff and Retention (164), Department of Veterans Affairs Medical Center, 1601 Perdido St., New Orleans, LA 70146, or telephone 1-800-949-0002.]

(3) **Interested Individuals.** For *each* individual (other than the Exchange Visitor) expressing interest in the position, requesting information about the position, or filing an application provide:

- (a) Name, address and telephone number;
- (b) A copy of any employment application and/or curricula vitae submitted;
- (c) Citizenship status[. For noncitizens provide immigration status (permanent resident, J-1, etc.);]
- (d) Whether the position was offered;
- (e) [Copies of reports of contact discussing the position with all citizen and permanent resident applicants;] and
- (f) A narrative explanation as to why the individual was not qualified, not selected, or declined further consideration.

c. Exchange Visitor's Qualifications (tab each item [on a separate sheet of paper])

(1) **Application.** The application form must be complete. **(Application forms which refer to the curriculum vitae for further information will be returned as incomplete.)** All periods following graduation from professional school must be accounted for; where appropriate, the Chief of Staff must have certified on the application that licensure, registration, visa status, and any board certification of the applicant have been verified; and the employment application must be signed and dated by the applicant.

(2) **Curriculum Vitae**

(3) **License.** Include copies of each license *and* documentation of the verification of licensure with each state in which the Exchange Visitor claims to have been licensed.

(4) **Clinical Privileges.** Provide a copy of the proposed [VHA clinical privileges], and, if available, a copy of the clinical privileges from the most recent employer.

(5) **Federation of State Medical Boards (FSMB) Screen.** for physicians, include the results of the FSMB screen.

(6) **Deans Committee Recommendation.** Submit a copy of the Deans Committee recommendation, where appropriate.

(7) **References.** As a minimum, a reference will be obtained from the applicant's current or most recent employer. Facilities are, however, encouraged to obtain information from authoritative sources, other than the applicant's references, which contain informed opinions on the applicant's scope and level of performance.

(8) **Certificate from the Educational Commission for Foreign Medical Graduates (ECFMG).**

(9) **[USMLE, National Board of Medical Examiners (NBME) or] Foreign Language Examination (FLEX) Scores.**

(10) **Board Certification.** Documentation concerning board certification or of progress towards obtaining board certification[.]

(11) **Visa.** Submit photocopies of the USIA Certificate of Eligibility for Exchange Visitors (J-1) Status (Form IAP-66) for *all periods covered by the J-1 visa*. **Do not submit copies of the applicant's passport in lieu of these forms.**

(12) **Waiting Period.** Provide the Exchange Visitor's residence and a telephone number where they can be reached during the waiting period between the time the waiver of the 2-year home residence requirement is approved and the applicant's appointment in [VHA. **NOTE:** *Documentation requirements in paragraphs b and c apply to physicians. For other occupations, facilities should contact the Title 38 Employment Division (054D) for further information.*]

SECTION IV. [ACTION ON] APPROVED REQUESTS

1. **Action Taken After Requests Approved by [Associate Deputy] Chief Medical Director** [. VA Central Office] will advise the facility whether the request to petition USIA has been approved [and submit the approved request to USIA.] The facility is to advise the Exchange Visitor in writing that [VHA] is supporting the petition for waiver of the 2-year home residence requirement. This letter should also:

[a.] Outline the terms of the employment (i.e., the title of the position, duties and responsibilities, proposed work schedule, proposed salary, anticipated starting date, etc.).

[b.] Ask the Exchange Visitor to keep the facility advised of any changes in their address or telephone number.

[c.] Advise the Exchange Visitor of their responsibility to contact the facility within 15 days of being notified by INS of approval or disapproval of the waiver. **The Exchange Visitor will be advised that if they fail to report for duty or to complete 1 year of service, the facility will ask INS to reconsider the request for a waiver, as the individual is no longer fulfilling the need upon which the waiver of the home residence requirement had been based.**

2. **Action by Other Agencies.** The following information is provided so facilities will have a better understanding of the processing which occurs after the request leaves VA.

a. USIA reviews requests for potential effect on U.S. policy, programs, and foreign relations. USIA's recommendations are forwarded to INS for final adjudication.

b. Alien Labor Certification

(1) Alien labor certification is required if [a facility] is applying for an immigrant visa [on behalf of the Exchange Visitor.] [] Aliens married to or related to U.S. citizens who are petitioning in their behalf are not required to obtain an alien labor certification in conjunction with their petition for immigrant status. For occupations on DOL's list of the occupations for which there are labor shortages in the U.S. (Schedule A), INS automatically determines eligibility for alien labor certification as part of its adjudication of the preference visa petition. DOL designations for shortage categories are reviewed periodically and subject to change. Currently physicians are *not* included on that list.

(2) State Employment Offices are responsible for administering the DOL Alien Labor Certification Program. It is advisable for facilities wishing to employ an alien to contact their local State Employment Office for guidance. Approval of VA [Central Office] is not required to initiate procedures for obtaining alien labor certification. To expedite the hiring process, a facility should consider filing for the certification with the local State Employment Office concurrently with their request for [] approval to petition USIA. Section VI contains a list of DOL Regional Certifying Officers and Regional Administrators that have jurisdiction over local State Employment Offices. Facility officials are encouraged to contact the appropriate Regional Certifying Officer, or Regional Administrator, in cases where problems arise in connection with the alien labor certification process at the local level.

c. **INS.** INS makes the final determination concerning the Exchange Visitor's request for a waiver of the 2-year home residence requirement.

[NOTE: *Alien labor certification is not required if the facility is petitioning for an H-1B visa on behalf of the Exchange Visitor.*]

3. **Action on Requests Processed by INS:** After being notified that INS has made a decision on a request, the following actions are to be taken:

a. **[Appointment.** Before the Exchange Visitor may be appointed, the facility must comply with the requirements of paragraph 2.19g. This may include petitioning for a permanent resident or H-1B visa or verifying the Exchange Visitor's authorization to accept employment.

b.] If the Exchange Visitor reports for duty, the appropriate Regional Director's VA Central Office Field Support Office (13_/054D) will be advised in writing of the date the Exchange Visitor reported.

[c.] If the Exchange Visitor does not report for duty or reports for duty, but fails to complete 1 year of service, the facility Director shall ask INS to reconsider the waiver. (See par. 1b(3) and Section V.) An information copy of any request and INS response will be forwarded to the appropriate Regional Director's VA Central Field Support Office (13_/054D).

SECTION V. SAMPLE LETTERS TO IMMIGRATION AND NATURALIZATION SERVICE

District Director
United States Department of Justice
Immigration and Naturalization Service

(City), (State) (Zip)

Dear Sir:

The Department of Veterans Affairs Medical Center, (facility), supported waiver of the 2-year home residence requirement for (physician's name and visa number), a participant in the United States Exchange Visitor Program. It is our understanding that a waiver was granted (date); however, (name) failed to report for duty. Since (name) will not be meeting the medical needs upon which the waiver was based, we are recommending the waiver request be reconsidered.

Your assistance in this matter is appreciated. If you have questions or need additional information, contact (name) on (telephone number).

Sincerely yours,
Facility Director

[ALTERNATE SAMPLE LETTER]

District Director
United States Department of Justice
Immigration and Naturalization Service

(City), (State) (Zip)

Dear Sir:

The Department of Veterans Affairs Medical Center, (facility), supported waiver of the 2-year home residence requirement in behalf of (physician's name and visa number), a participant in the United States Exchange Visitor Program. (Name) has voluntarily left the position upon which the waiver has based after

having served less than 1 year. Since the medical needs upon which the waiver was based are no longer being met, we recommend the waiver granted to (name) be reconsidered.

Your assistance in this matter is appreciated. If you have questions or need additional information, contact (name) on (telephone number).

Sincerely yours,

Facility Director

SECTION VI. DEPARTMENT OF LABOR REGIONAL CERTIFYING OFFICERS

<u>[REGION I]</u>	<u>CERTIFYING OFFICER</u>	<u>REGIONAL ADMINISTRATOR</u>
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Connecticut	[Francis Currie	Robert Semler
Maine	One Congress St.	[(617) 565-3630]
Massachusetts	10th Floor	
New Hampshire	Boston, MA 02114-2021	
Rhode Island	(617) 565-2252]	
Vermont		

[REGION II]

New York	[Delores DeHaan]	Thomas E. Hill
New Jersey	201 Varick Street	[(212) 337-2139]
Puerto Rico	Room 755	
Virgin Islands	New York, NY 10014	
	[(212) 337-2183]	

[REGION III]

Delaware	Richard Panati	William J. Haltigan
Maryland	3535 Market Street	[(215) 596-6336]
Pennsylvania	Room 13300	
Virginia	P.O. Box 8796	
West Virginia	Philadelphia, PA [19104-8796	
	(215) 596-6363]	

[REGION IV]

Alabama	[Floyd Goodman]	Daniel L. Lowry
Florida	1371 Peachtree St., N.E.	[(404) 347-4411]
Georgia	[Room 400]	

Kentucky
Mississippi
North Carolina
South Carolina
Tennessee

Atlanta, GA [30367
(404) 347-3938]

[REGION V]

Illinois
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CERTIFYING OFFICER

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	[(206) 553-5297]	