

UPDATE ON PHYSICIAN IMMIGRATION LEGISLATION

by Greg Siskind

Newsletter Editor's Note: This is a follow-up to articles appearing in the Winter newsletter. Much of the information is restated here, but due to the importance of this material, we feel the need to re-share this with our membership.

For the third time in five years, Congress has passed and the President has signed legislation expanding opportunities for foreign-born, American-trained physicians. The latest changes are the most important in years and will open up many more job opportunities for physicians training in residency and fellowship programs on J-1 visas. Foreign-born physicians represent more than 25% of the physicians currently training in the US.

For nearly a half century, doctors training in the US in the J-1 visa have had a home residency requirement that mandates that they return to their home countries for two years before they can get H-1B visas - the main type of work visa for professionals - or permanent residency (known by the nickname "the green card").

Physicians are eligible for a waiver of the home residency requirement if they can demonstrate that their departure would cause an extreme hardship for a US citizen or permanent resident

spouse or child, they would face persecution, or a government agency vouches that the physician's remaining in the US is in the public interest.

It is that last category - the interested government agency waiver (commonly referred to as an "IGA waiver") - that is used by most doctors wishing to stay in the US. And most of those doctors get government agency sponsorship by agreeing to serve in a physician shortage area for a set period of time.

Beginning about ten years ago, Congress started laying down additional rules on when government agencies could sponsor doctors on the basis of working in underserved areas. There are a couple of common requirements:

1. The physician needs to work in a shortage area designated by the US Department of Health and Human Services (generally a Health Professional Shortage Area [HPSA] or a Medically Underserved Area [MUA]).
2. The physician must work at the facility in the shortage area for at least 40 hours per week.



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3. The physician must work for three years on an H-1B visa in the shortage area before changing employers and seeking permanent residency.

Until 1994, only federal agencies could sponsor physicians for waivers. Then Congress created the Conrad program allowing state health departments to sponsor up to 20 doctors per year as well (that number was increased recently to 30 doctors per year). There are now 48 states running Conrad programs as well as federal programs administered by HHS, the Appalachian Regional Commission, The Department of Veterans Affairs and the Delta Regional Authority.

The Conrad program began to sunset in June 2004, and Congress needed to act in order to ensure that the state programs would continue operating in coming years. Advocates for J-1 visas pushed for a program extension as well as various reforms that would make it easier for J-1 physicians to continue working in the US once their training programs were finished. The good news is that nearly every one of the proposed changes was adapted in a bill that was one of the only pro-immigration pieces of legislation passed in the last Congress.

In early December 2004, President Bush signed Public Law 108-441. First and foremost, the bill extends the Conrad program for two more years. The bill also makes several significant changes to other aspects of the state and federal J-1 waiver programs:

- State and Federal agency waiver applicants will be exempt from the H-1B numerical cap. (There is an annual limit on the number of H-1B visas allotted each year, and physicians were finding themselves shut out of visas do to competition with people in other professions.)
- Each state will be able to have the flexibility to use five waivers per year for applicants taking jobs outside of federally designated medical shortage areas IF they can demonstrate that they will actually be serving people who live in shortage areas.
- Both State and Federal agencies can sponsor specialists (only state agencies and the Veterans Administration can do so now).

The bill will pave the way for many more specialists to work around the country. Until now, only the state Conrad programs could sponsor specialists and most states limited specialist sponsorships to just a handful of positions per year due to the maximum number of waiver recommendations available to each state. Because federal agencies have no limits on the number of waivers that can be granted each year, the ability of federal agencies to sponsor specialists could dramatically increase the number of specialist positions filled by foreign-born American-trained doctors.

The Delta Regional Authority has become the first Federal agency to take advantage of the new law, and the agency and is now

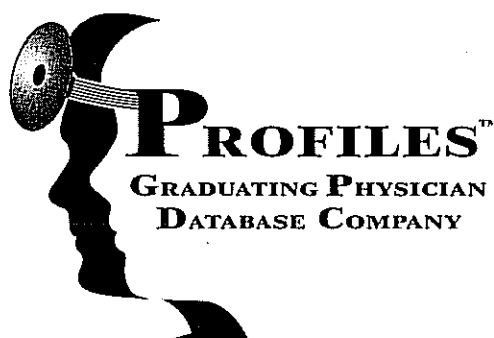
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(Legislation - continued from p.11)

sponsoring specialists to work in the DRA's 240 county jurisdiction across eight states (Alabama, Mississippi, Louisiana, Tennessee, Arkansas, Missouri, Kentucky and Illinois). This effectively means that communities in those eight states, including cities like Memphis and New Orleans, will have as many waivers as they need to ensure that people have adequate access to a physician.

The expansion of the H-1B cap exemption to federal waivers is also important since the H-1B cap has been reached and Federal waiver programs have been hampered by not being able to offer physicians the ability to actually work in their sponsoring communities. Until now, Conrad doctors were exempt from the H-1B cap, but physicians sponsored to work in Veterans Hospitals as well as in shortage areas covered by federal agency waivers were in trouble. On October 1st, 2004, US Citizenship and Immigration Services announced that all non-exempt H-1B visas had been issued for the 2005 fiscal year and no new cases could be approved for start dates prior to October 1, 2005. That could have had the effect of shutting down all the federal waiver programs had Congress not stepped in and permanently solved this problem.

The five flexibility slots available to each state will represent a major opportunity for large regional hospitals that can't qualify for shortage area designation but service populations living in shortage areas. For example, assume a John Doe Children's Hospital in suburban Metropolis cannot qualify for shortage area status because it is located in an area that generally does not lack doctors. But, the hospital is a major regional facility treating

children from across the state including many kids from communities lacking a particular type of specialist. Under the new law, a state Conrad program can now make a waiver slot available to John Doe.

In short, Congress recognized that the shortage of physicians in the US means that we can no longer write off such a large portion of the qualified physician population in the US. The home residency rules for doctors were written at a time when the country's physician shortage was not a problem and when we could view our training programs as a way to help other countries develop their own health care systems. Now we're in a situation where the US has a serious shortage of doctors and a large portion of the foreign physicians training here are from countries not particularly concerned if they come home (India, for example, has an unemployment problem for physicians in many specialties). J-1 physicians are now increasingly seen as one of a number of solutions available to address the American physician shortage. Look for that trend to continue.

* *Greg Siskind (gsiskind@visalaw.com) is a partner in Siskind Susser, P.C. - Immigration Lawyers and is the author of LexisNexis' J-1 Visa Guidebook. He is also the chair of the Foreign Medical Graduate Taskforce, a coalition of immigration law firms and health care employers advocating for physician immigration. Greg assisted in the drafting of Public Law 108-441 as well as the Delta Regional Authority's physician waiver program.* ❖



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