

**REQUESTS TO PETITION THE UNITED STATES DEPARTMENT OF STATE FOR A
WAIVER OF THE TWO-YEAR HOME RESIDENCY REQUIREMENT ON BEHALF
OF AN EXCHANGE VISITOR**

1. REASON FOR ISSUE: This Veterans Health Administration (VHA) Handbook revises policies related to facility requests for VHA Central Office to petition the Department of State (DOS) for waiver of the 2-year home residency requirement on behalf of Exchange Visitors (J-1 visa holders). This related Handbook serves as a supplement to VA Handbook 5005, Part II, Appendix J, "Requests for Approval to Petition the United States Department of State for Support of a Waiver of the 2-year Home Residence Requirement of the United States Exchange Visitor Program."

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This issuance:

- a. Specifies new DOS application requirements and procedures.
- b. Incorporates a 3-year employment commitment for Exchange Visitors and other statutory and regulatory changes.
- c. Provides that VHA will not act on behalf of aliens who have overstayed their official visa status.
- d. Changes the minimum Department of Veterans Affairs (VA) employment requirement from 4/8ths to 5/8ths time for joint appointments.
- e. Requires national journal advertising be conducted within 6 months of waiver submission for all positions.
- f. Requires facilities to seek recruitment assistance from the Health Care Staff Development and Retention Office (10A2D) prior to requesting a waiver.
- g. Instructs Veterans Integrated Service Network (VISN) offices to submit requests to the Office of Patient Care Services (11F) through the VA Health Revenue Center (HRC) (05S), Topeka, KS.
- h. Requires the review and certification of the adequacy of facility waiver requests by VISN Directors prior to submission to the HRC.
- i. Specifies that the alien must be available for employment within 6 months of the time the waiver request is received in HRC.
- j. Rescinds the requirement to submit certain credentialing and privileging information.
- k. Contains new guidance related to O-1, Temporary Worker of Extraordinary Ability in the Sciences, Education or Business, visa holders.

l. Provides information and instructions on actions required after waivers are approved.

m. Specifies that waiver requests will only be considered if the position is primarily a patient care position.

3. RELATED ISSUE: VA Handbook 5005, Part II, Appendix J, “Requests to Petition the United States Department of State for Program Support of a Waiver of the Two-year Home Residency Requirement on Behalf of the United States Exchange Visitor.”

4. RESPONSIBLE OFFICE: The Office of Patient Care Services (11) is responsible for the contents of this Directive. Questions may be directed to 202-273-6277.

5. RESCISSIONS: None.

6. RECERTIFICATION: This VHA Handbook is scheduled for recertification on/before the last working day of January 2010.

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Acting Under Secretary for Health

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REQUESTS TO PETITION THE UNITED STATES DEPARTMENT OF STATE FOR A WAIVER OF THE TWO-YEAR HOME RESIDENCY REQUIREMENT ON BEHALF OF AN EXCHANGE VISITOR

1. PURPOSE

This Handbook establishes criteria for requesting the approval of the Under Secretary for Health, or designee, to petition the United States Department of State (DOS) for support of a waiver of the 2-year home residence requirement by United States Citizenship and Immigration Services (USCIS), formerly the Immigration and Naturalization Service, on behalf of an individual on a J-1, Exchange Visitor, visa.

2. BACKGROUND

a. 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 U.S. program and in the public interest (See Title 22, Code of Federal regulations (CFR), Part 62, and the Immigration and Nationality Act, Section 212(e), as amended).

b. The Department of Veterans Affairs (VA) supports the Exchange Visitor Program and the 2-year home residence requirement and seeks waivers only when it is clearly in the interest of the Department and its programs. For the Veterans Health Administration (VHA), the Secretary has delegated to the Under Secretary for Health, or designee, the authority to determine when facility requests for waivers are appropriate and to petition DOS for such waivers.

c. VHA will request waivers only in cases of overwhelming need. Facilities should request waivers only as a last resort, when comprehensive efforts to attract applications from citizens and permanent residents of the U.S. have failed to produce a qualified candidate.

3. DEFINITIONS

a. **DOS.** The Department of State (DOS) is the Federal department that administers the Exchange Visitor Program and recommends to USCIS approval or disapproval of petitions for waiver of the 2-year home residence for Exchange Visitors.

NOTE: Information regarding J-1 visas and waivers of the 2-year home residency requirement is available at the DOS web site <http://travel.state.gov/jvw.html>.

b. **Exchange Visitor.** An exchange visitor is a foreign national who is a participant in the Exchange Visitor Program (e.g., foreign medical school graduates admitted to the U.S. for residency training).

c. **Exchange Visitor Program.** The Exchange Visitor Program, administered by DOS, is intended to promote an interchange of persons, knowledge, 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.

d. **USCIS.** U.S Citizenship and Immigration Services (USCIS) is a bureau of the U.S. Department of Homeland Security that administers the Immigration and Nationality Act. USCIS is responsible for approving or disapproving waivers of the 2-year home residence requirement for Exchange Visitors, based on recommendations by DOS. Information on USCIS programs, policies and procedures is available at the following web site address:
<http://uscis.gov/graphics/index.htm>

e. **Nonimmigrant.** A nonimmigrant is an alien temporarily admitted to the U.S. for a specific purpose and period of time.

f. **Nonimmigrant Visas**

(1) **H-1B, Temporary Worker in a Specialty Occupation.** A H-1B visa is 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. Non-citizen physician graduates of foreign medical schools may be granted H-1B visas, 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). Aliens who hold J-1 visas may not adjust their status to H-1 until they have either fulfilled the 2-year home residence requirement, or they have been granted a waiver of this requirement.

(2) **J-1.** A J-1 visa is issued to an Exchange Visitor allowing the participant to enter or remain in the U.S. while participating in the Exchange Visitor Program. The maximum stay in the U.S. for an Exchange Visitor is 7 years, although USCIS may grant exceptions to this limitation, under certain circumstances, for short periods of time. J-1 visas are issued to post graduate medical trainees on an annual basis (generally for the academic year).

(3) **J-2, Spouse or Child of Exchange Visitor.** A J-2 visa may be issued to the spouse of an Exchange Visitor allowing the spouse to remain in the U.S. while the Exchange Visitor is participating in the training program.

(4) **O-1, Temporary Worker of Extraordinary Ability in the Sciences, Education or Business.** An O-1 visa is issued to temporary workers of extraordinary ability in the arts and sciences. J-1 aliens who meet the criteria for an O-1 visa may adjust to O-1 status without fulfilling the 2-year home residence requirement, although they still retain the 2-year home residency requirement upon completion of the O-1 visa. O-1 visas are issued for an initial period of up to 3 years, and can be extended on an annual basis with no statutory or regulatory limit.

g. **Permanent Resident Alien.** A Permanent Resident Alien is an alien who has been admitted to the U.S. for permanent residence. An alien admitted for permanent residence is referred to as an immigrant. Effective 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 referred to as the "green card."

h. **USCIS Form I-40, Immigrant Petition for Alien Worker.** USCIS Form I-40 is filed by an employer with USCIS to obtain approval of a permanent visa (permanent resident alien status) for a non-citizen.

i. **USCIS Form I-129, Petition for a Nonimmigrant Worker.** USCIS Form I-129 is filed with USCIS by an employer to obtain approval of an H-1B, O-1, and certain other nonimmigrant visas.

j. **Two-Year Home Residence Requirement.** 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 visa or certain nonimmigrant visas.

4. WAIVER REQUIREMENTS

a. **General Requirements**

(1) Waiver requests are approved only when a facility has undertaken a comprehensive recruitment effort that has failed to produce a qualified citizen or permanent resident candidate for a critical position. Such recruitment must have included advertising in an appropriate national journal. Journal advertisements may not be more than 6 months old at the time of submission of the waiver request to the VA Health Revenue Center (HRC), Topeka, KS. The use of local advertising, announcements at professional meetings, and letters to Deans and/or Chairpersons of selected universities should be considered as adjuncts to recruitment advertisements placed in national journals.

(2) Facilities must also request a list of candidates from the Health Care Staff Development and Retention Office (HCS德罗).

(3) All citizens and permanent residents who submit an application in response to recruitment efforts, or are referred from HCS德罗, must be contacted promptly and pursued actively by the facility. At a minimum, telephone interviews must be conducted with all citizen or permanent resident applicants before a determination is made that such applicants are not qualified for the position being recruited. Citizens and permanent residents can be eliminated from consideration only if they lack the basic qualifications for the position. Reports of contact with the applicant will be submitted, along with a detailed qualification evaluation, in all situations where a citizen or permanent resident is eliminated from consideration.

(4) By law, waivers can only be granted to aliens who have bona-fide offers of full-time employment. For purposes of the VHA waiver program, 100 percent VHA employment is preferred. Consideration will be given to requests for joint appointments with VHA affiliates, provided the combined employment package is full-time and at least 5/8 of such employment is with VHA. However, in such situations, the recruitment advertising and other publicity must

clearly depict the employment opportunity as being full-time, and all applicants must be given genuine consideration for employment by both institutions.

(5) Waiver requests for joint appointments must meet all of the requirements in this Handbook. When joint recruitment is undertaken, applications must be initially directed to the Human Resources Management office servicing the VHA facility where the vacancy exists. Applications are not to be forwarded through, or initially screened by, the affiliate prior to receipt by the facility.

(6) When a position requires appointment to the faculty at an affiliated medical school, and a citizen or permanent resident applicant has been eliminated from consideration on the basis of not meeting such requirements, the waiver request must state the criteria for the faculty appointment. The facility must provide a detailed explanation of why each citizen or permanent resident did not meet the criteria and how the Exchange Visitor meets such requirements.

(7) By law, aliens must agree to begin employment with the facility within 90 days of receiving a waiver and to continue employment with the facility for a period of not less than 3 years.

b. **Waiver Requests Not Considered.** Waiver requests will not be considered if:

(1) The general requirements specified in subparagraph a.4 are not fully met.

(2) There are qualified citizens or permanent resident candidates for the position. Title 38 United States Code (U.S.C.) Section 7407(a), provides that non-citizens may only be employed if it is not possible to recruit qualified citizens for necessary services. It is not enough to demonstrate that an Exchange Visitor is more qualified than citizen or permanent resident applicants. Interested citizen or permanent resident applicants must be found unqualified for the position, i.e., that they do not meet the basic requirements of the position. For example, physicians 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.

(3) The Exchange Visitor for whom the waiver request is submitted has overstayed their official visa status. Aliens are expected to depart the U.S. no later than 30 days after the expiration of their visas. VHA will not act on behalf of an alien whose visa has been expired for more than 30 days at the time the facility's request is received at the HRC.

(4) The Exchange Visitor will not be available for employment within 6 months at the time the request is received at the HRC. Six months is adequate lead-time to complete the waiver process for fully justified and documented requests. If employment will not commence within 6 months of receipt of the waiver request, the facility is expected to continue to recruit for qualified citizens and permanent residents. For example, waiver requests for employment that will commence on or after July 1st in a given year will not be accepted in the HRC prior to January 1st of the same year.

(5) They are not part of an ongoing and comprehensive need based recruitment effort. Recruitment efforts are not to be initiated solely for the purpose of placing Exchange Visitors.

(6) They are for employment that is less than full-time, or for full-time employment that is less than 5/8ths time in VA.

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

(8) They are to facilitate appointments on a without compensation or fee basis.

(9) Another facility has a pending request for a waiver on behalf of the candidate.

(10) They are based solely upon the needs of the affiliated university.

(11) They are based on the personal needs or desires of the Exchange Visitor or members of the Exchange Visitor's family.

(12) The position requires less than 51% of the time in patient care duties. For purposes of this Handbook, research and education/teaching are not considered patient care time.

c. **Waivers for O-1 Visa Holders**

(1) Exchange Visitors who meet the criteria for an O-1 visa may adjust to O-1 status without fulfilling the 2-year home residence requirement. Thus, an O-1 visa can be obtained for qualified Exchange Visitors without first obtaining a waiver of the 2-year home residence requirement.

(2) VHA will not petition DOS for waivers on behalf of aliens who are working for other employers on O-1 visas. These individuals may be hired by VHA facilities without receiving a waiver. Facilities have local authority to apply directly to USCIS for an O-1 visa by filing USCIS Form I-129. O-1 visas can be obtained for an initial period of 3 years.

(3) There are certain circumstances that may require VHA to petition DOS for waivers on behalf of aliens currently working for VHA facilities on O-1 visas. After the initial period of 3 years, extensions of O-1 visas can only be obtained on a year-to-year basis. If a facility has continuing recruitment difficulty for a position occupied by an O-1 visa holder, it may be in the national interest to secure the services of that individual on more than a year-to-year basis. This can be accomplished by adjusting the alien's status from O-1 to H-1B. However, such an adjustment will require that the alien first receive a waiver of the 2-year home residence requirement. A facility that undertakes a comprehensive recruitment effort to fill a position that has been occupied by an O-1 visa holder for 2 years or longer, and is unable to attract a qualified citizen or permanent resident, may request a waiver on behalf of the O-1 visa holder. Such requests must meet all of the requirements in this Handbook.

d. **Post Audit**. Waiver requests may be post audited by VHA Central Office to ensure compliance with the provisions of this Handbook and its related Directive, as well as applicable VHA personnel policies and procedures.

5. SUBMISSION OF REQUESTS

a. Action by Exchange Visitor

(1) The first step required by DOS in the waiver application process is for the Exchange Visitor to submit a DOS Waiver Review Application Data Sheet. The DOS Waiver Review Application Data Sheet is available via the Internet at:
<http://www.state.gov/documents/organization/9768.pdf>

(2) The completed data sheet, two self-addressed, stamped, legal-size envelopes and a check or money order for 230 U.S. dollars, payable to the U.S. Department of State, are to be sent to one of the following addresses, as appropriate:

<u>Via Postal Service</u>	<u>Via Courier Service</u>
U.S. Department of State Waiver Review Division P.O. Box 952137 St. Louis, MO 63195-2137	U.S. Department of State Waiver Review Division (Box 952137) 1005 Convention Plaza St. Louis, MO 63101-1200

(3) The Exchange Visitor's full name, date of birth and Social Security Number (if any) must be written on the check or money order. Remittances must be drawn on a bank or other institution located in the U.S. and made payable in U.S. currency to DOS. If the Exchange visitor resides outside the U.S. at the time the data sheet is submitted, remittance may be made by bank international money order or foreign draft drawn on an institution in the U.S. and made payable to the U.S. Department of State in U.S. currency.

(4) Once the Waiver Review Division receives the data sheet, DOS sends the Exchange Visitor a case number and instructions on the documents that must be submitted with a waiver application. This case number must be written on every page of all facility submissions to the HRC. Waiver requests received in the HRC without case numbers will be returned to facilities without action.

NOTE: All correspondence addressed to DOS regarding a waiver request must have a case number displayed on the envelope and the correspondence itself, or it will be returned to the sender.

b. Action by Facility

(1) Requests are forwarded from facility Directors to Veterans Integrated Service Network (VISN) Directors. Appendix D of this Handbook, VA Form 10-0422, VA Medical Facility Checklist for Waiver Requests, is provided as a guide for facility use.

(2) Facilities are to retain copies of material submitted with their request.

(3) Approved requests are forwarded directly to DOS by VHA Central Office.

NOTE: All DOS mail is electronically scanned upon receipt. Due to this requirement, all waiver requests must be free of two-sided documents, staples, clips, binders, prong fasteners,

small odd-size paper and/or cards, tabs, and index sheets/cards. Only 8-1/2" by 11" paper is to be used. DOS will return waiver packages that are not "scan ready" to the originating facility.

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

1. A complete description of the proposed assignment, including the percentage of time spent in patient care, research, or educational activities and the responsibilities at the affiliated university, where appropriate. The description must indicate whether the position is full-time VA or a joint appointment. For joint appointments, the proportion of time for each institution must be stated (i.e., 5/8ths VA, 3/8ths medical school).

NOTE: At least 51 percent of time must be in patient care duties.

2. The proposed appointment date.

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. These needs must be primarily patient care related, but may include research studies of benefit to veterans. The description is to also include any patient care or research problem, an explanation of how the failure to secure the Exchange Visitor's services would affect facility programs and, where applicable, information on additional expenditures associated with alternative methods of patient care (fee for service, contracting, etc.) or research.

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.

5. The letter is to provide the name, title, telephone number, and fax number of a facility employee who can answer technical questions about the request and provide additional information that may be required by the VISN, HRC, VHA Central Office, DOS, or USCIS.

(b) Documentation of Recruitment Efforts

1. Advertisements.

a. Provide photocopies of ads placed in professional journals (dated within the last 6 months). Ads must be placed in nationally recognized journals or periodicals which are appropriate to the specialty and have nationwide circulation. The primary focus of the ads is to be VHA employment; they must indicate that VHA is an equal opportunity employer; and contain any special requirements of the position (e.g., special professional skills, board certification, etc.). If the position involves a joint appointment (i.e., part-time VA and part-time at an affiliated university), the ad must clearly depict the employment opportunity as being full-time and include information about associated employment at the affiliated university. Any special qualification requirements for employment at the affiliate must be stated in the ad. 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. Any inquiries from potential applicants concerning the position are to be documented by a report of contact, a copy of which will be kept by the contacted VA official.

- b. Copies of advertisements placed in local newspapers or other publications.
2. Copy of request to HCSDRO for list of candidates and/or recruitment assistance.
3. Copies of letters to medical schools, specialty boards, professional organizations, and any other efforts made by the facility to attract applications for the position.

(c) Interested Individuals (other than the Exchange Visitor for whom the waiver is requested and other applicants on J-1 visas). For each individual filing an application, expressing interest in the position, requesting information about the position, or referred by HCSDRO, provide:

1. Name, address, and telephone number.
2. A copy of any employment application and/or curricula vitae submitted.
3. Source of application (i.e., responded to ad, referred by HCSDRO, etc.).
4. Citizenship status.

NOTE: For non-citizens, provide immigration status (permanent resident, H-1B, O-1, etc.).

5. Whether the position was offered.
6. Copies of reports of contact discussing the position with all citizen and permanent resident applicants.
7. A narrative explanation as to why each citizen and permanent resident applicant was not qualified, and, therefore, not selected, or they declined further consideration.

(d) Exchange Visitor's Qualifications

1. Application. VA Form 10-2850, Application for Physicians, Dentists, Podiatrists, Optometrists, and Chiropractors, must be complete. All periods following graduation from professional school must be accounted for, where appropriate. The Chief of Staff must make appropriate certifications in Section III. The employment application must be signed and dated by the applicant.

2. Curriculum Vitae.

3. Form DOS Form DS-2019 (former IAP-66), Certificate of Eligibility for Exchange Visitors (J-1) Status. Provide photocopies of all DOS Form DS-2019 or IAP-66 forms issued to the Exchange Visitor while in the U.S. on a J-1 visa.

NOTE: DOS will not process a waiver petition that does not include DOS Form DS-2019 and IAP-66 forms covering all periods of an Exchange Visitor's J-1 status.

4. Entry and Departure Records. Provide photocopies of any USCIS Form I-94, Arrival Departure Record (front and back).

5. Written Agreement. Submit a signed and dated Exchange Visitor Agreement from the alien that employment will begin at the facility within 90 days of receiving a waiver, and the alien will remain employed at the facility for a period of not less than 3 years.

NOTE: A sample agreement is provided as Appendix B.

6. Provide originals of the following DOS required documentation: DOS Explanation for Periods Outside U.S. While in J-1 Status; DOS 18 USC 1101 Statement; and DOS Personal Statement.

7. Exchange Visitor's Address. Provide an address and telephone number where the Exchange Visitor can be reached while the waiver request is in process.

8. Documentation of a current full, unrestricted license to practice medicine in State or Territory of the United States.

9. Copies of results of searches under the Exchange Visitor's name of the U.S Department of Health and Human Services, Office of the Inspector General List of Excluded Individuals/Entities (LEIE) and the National Practitioner Data Bank/Healthcare Integrity and Protection Data Bank (NPDB/HIPDB).

10. Copies of the Exchange Visitor's Educational Commission for Foreign Medical Graduates (ECFMG) certificate and copies of the exchange visitor's United States Medical Licensing Examination (USMLE) Score Reports for Steps 1, 2, and 3.

c. Action by Network Offices

(1) VISNs are responsible for reviewing facility waiver requests prior to submission to the HRC to ensure that a waiver is fully justified, adequately documented, and that all requirements in this Handbook have been met. The Clinical Manager and the VISN Director must complete VA Form 10-0422 (see App. A), and submit it with the waiver request to:

VA Health Revenue Center (05S)
3401 SW 21st Street, Bldg. 9
Topeka, KS 66604

(2) VISN Directors may request that the Under Secretary for Health (11) petition DOS for a waiver 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 a program, of official interest to VA.

(3) Requests approved by VISN Directors are to be submitted through the HRC to the Chief Patient Care Services Officer, Forensic Medicine Strategic Health Care Group (11F), in VHA Central Office. The HRC performs initial reviews of the requests for compliance with rules, regulations, and submission requirements. The Forensic Medicine Strategic Health Care Group performs a final review and recommendation for the Under Secretary for Health or designee to approve the waiver request for forwarding to DOS.

6. ACTION ON APPROVED REQUESTS

a. **Action Taken After Requests are Approved by Under Secretary for Health, or Designee.** VHA Central Office must submit the approved request to DOS. A copy of the letter to DOS is provided to the facility. 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 needs to:

- (1) 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.).
- (2) Ask the Exchange Visitor to keep the facility advised of any changes in their address or telephone number.
- (3) Advise the Exchange Visitor of their responsibility to contact the facility within 15 days of being notified by USCIS of approval or disapproval of the waiver. The Exchange Visitor will be advised that if they do not report for duty, or fail to complete 3 years or more of service, the facility will report the alien to USCIS for appropriate action.

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

- (1) **DOS.** DOS reviews requests for potential effect on U.S. policy, programs, and foreign relations. DOS forwards a recommendation to approve or disapprove the waiver to BCIS for final adjudication. DOS provides a copy of their recommendation to the alien, to the requesting facility, and to the Chief Patient Care Services Officer (11) .
- (2) **USCIS.** USCIS makes the final determination concerning the Exchange Visitor's request for a waiver of the 2-year home residence requirement. USCIS notifies the alien by letter that the waiver has been granted.

c. **Action Required Prior to Appointment**

- (1) A waiver of the 2-year home residency requirement does not give the alien the authorization to accept employment. An appropriate visa is also required. In most circumstances, the appropriate visa for employment of physicians for whom a waiver has been requested is the H-1B visa. The H-1B fully meets a facility's needs, in that it can be requested for an initial period of 3 years, which corresponds to VHA's authority to appoint non-citizens under Title 38 (temporary, Not to Exceed (NTE) 3 years). H-1B visas can also be extended for an additional 3-year period, as can the temporary appointment of a non-citizen (when it is still not possible to recruit qualified citizens).
- (2) It is VHA policy to use the H-1B visa for the initial appointment of aliens for whom waivers are obtained, when such visas are available. However, there is a statutory limit to the number of H-1B visas that can be issued in a fiscal year. Facilities need to ensure that visas are available before filing an H-1B petition. If H-1B visas are not available, and the alien is to work full-time for VA, facilities may file an immigrant petition using the national interest waiver provisions described in following subparagraphs 6c(7) through 6c(10).

(3) Facilities should initiate the H-1B application process when they receive a copy of the VHA Central Office petition to DOS for a waiver. Facilities are not to file an H-1B petition prior to receiving VHA Central Office approval. To obtain an H-1B visa, facilities must first file Department of Labor (DOL) Form Employment and Training Administration (ETA)-9035, Labor Condition Application for H-1B Non-immigrants, with DOL. As part of this process, the facility Director must certify that the alien will be paid the DOL market rate for their position. If the Director cannot so certify, the facility may not pursue hiring a H-1B visa employee.

NOTE: Regulations regarding the labor condition application process are contained in Title 20, CFR, Section 655.730. DOL Form ETA-9035 is available and can be filed on-line at the following address: <http://workforcesecurity.doleta.gov/foreign.asp>

(4) When DOL returns the approved DOL Form ETA-9035 to the facility, the facility must file the DOL Form ETA-9035 and a USCIS Form I-129 with the USCIS Service Center having jurisdiction over the area where the alien will work. In Part II, Item 4 of USCIS Form I-129, the requested action should be "Change the person's status"

NOTE: Facilities can receive the I-129 and accompanying instructions at the following address <http://uscis.gov/graphics/formsfee/forms/index.htm> or by contacting their local USCIS field office, or by calling the USCIS Forms Request Line at 1-800-870-3676.

(5) The completed USCIS Form I-129 must be accompanied by a single check or money order covering the total filing fee. The standard filing fee is \$130.

(6) When USCIS issues a Notice of Action showing that a change in status has been granted, the alien may be appointed by the facility. In certain circumstances, the Notice of Action will indicate that the USCIS has approved the I-129 petition, but has not granted a change in status. In such cases, aliens are not eligible for employment until they file a separate request for an adjustment of status to H-1B and it is approved by USCIS.

(7) If H-1B visas are not available when USCIS grants the alien a waiver of the 2-year home residency requirement, and the alien is to work full-time for VA, a facility may file a petition for the Exchange Visitor to become a permanent resident alien under the national interest waiver provisions of 8 CFR, Parts 204 and 245. A national interest waiver of the job offer requirements for employment-based immigrant petitions may be granted to physicians who agree to work full-time in an area designated by the Department of Health and Human Services (DHHS) as having a shortage of health care professionals, or in a VA health care facility, for a period of 5 years. Since USCIS regulations require full-time VA employment for a national interest waiver, this option is not available for joint appointments between VA and an affiliated medical school.

(8) To obtain a national interest waiver for an alien, the facility must file the following documents with the appropriate USCIS Service Center:

(a) USCIS Form I-140, Immigrant Petition for Alien Worker.

(b) A copy of an employment commitment letter, issued to the alien within 6 months prior to the date the petition is filed, which describes the position offered, the terms and conditions of employment and states that the employment will be full-time with VA.

NOTE: A facility may not make an employment commitment beyond a 3-year period because non-citizens may only be appointed on a temporary basis, not to exceed 3 years. However, an employment commitment of 3 years or less satisfies the documentation requirement established for VA.

(c) A letter from the facility Director to the USCIS Service Center dated within 6 months prior to the petition submission, attesting to the fact that the alien's work is or will be in the public interest. Typically, this fact can be established by stating that USCIS has granted the alien a waiver of the 2-year home residency based on a petition from VHA Central Office. This letter should also describe the services to be performed by the alien, the alien's qualifications to provide such services and the difficulties the facility has experienced in filling the job.

(d) A copy of the USCIS Notice of Approval of the 2-year home residency waiver.

(9) Once the facility's immigrant petition and national interest waiver request are approved, the alien may file an application for an adjustment of status to permanent resident alien, along with an application for employment authorization. USCIS must grant the employment authorization, which relieves the alien of having to maintain any type of valid non-immigrant status prior to final adjudication of the adjustment of status application. The adjustment of status application is held in abeyance by USCIS until the alien provides documentation that said alien has worked in a medically underserved area and/or in VA facilities for a total of 5 years in a 6-year period. When the service requirements have been fulfilled, the alien becomes a permanent resident alien.

(10) It is important to note that the national interest waiver regulations do not require that aliens fulfill their 5-year employment commitment with one employer. They may work for several employers in fulfilling the requirement, provided each employer is either a VA facility or in a medically underserved area. Thus, when a facility files an immigrant petition and national interest waiver on behalf of an alien, it does not obligate the alien to any particular length of employment, beyond the 3-year obligation resulting from being granted a waiver of the 2-year home residency requirement.

d. **Representation by Private Attorneys**

(1) In some instances, an attorney hired by the alien may prepare petitions and other documents required to obtain visas as part of their representational services, and present them to the facility for signature. In such situations, it is important for the facility to verify the accuracy of all information contained in such documents prior to signature. The facility Director is fully-accountable for the accuracy of all forms filed with DOL and USCIS.

(2) Under no circumstances are facilities to complete USCIS Form G-28, Notice of Entry of Appearance as Attorney or Representative, or other document assigning to a private attorney the authority to represent VA before another Federal agency, or any other entity.

e. **Failure to Fulfill Obligations.** If an Exchange Visitor for whom a waiver was obtained does not report for duty, or fails to complete the required 3 years of service, the facility Director must immediately notify the USCIS office that granted the waiver. An information copy of such USCIS notification is to be forwarded to the Under Secretary for Health (10N/11F).

NOTE: Sample letters are provided in Appendix C.



SECTION A: Waiver Information

FACILITY

EXCHANGE VISITOR NAME

MEDICAL SPECIALTY

SECTION B: Clinical Manager Certification

I have reviewed this waiver request and certify that the following requirements have been met (all items must be checked):

- The position for which the waiver is sought is critical to the facility's mission.
- Failure to obtain the Exchange Visitor's services would necessitate discontinuance of an important facility program or a major phase of the program
- The facility undertook a comprehensive recruitment effort to fill this position.
- There is full documentation that all citizen and permanent resident applicants received full and genuine consideration for this position.

SIGNATURE

DATE

SECTION C. Network Director Concurrence

I have reviewed this waiver request and concur with the Clinical Manager's assessment that a waiver is necessary, fully justified and critical to the interest of the facility and this Network.

SIGNATURE

DATE

ADDITIONAL COMMENTS

1. I, _____ . hereby agree and certify that I will begin work at the Department of Veterans Affairs (VA) Medical Center, _____ (City and State) within 90 days of being granted a waiver of the 2-year home residence requirement by United States Citizenship and Immigration Services (USCIS).

2. I further agree to remain employed in a full-time capacity in the position for which the waiver was granted for a period of not less than 3 years.

3. I understand that the VA Medical Center will notify USCIS of any failure to fulfill the requirements of preceding paragraphs 1 and 2, and recommend that the waiver be deemed null and void.

4. I do not now have a pending request to another VA facility, or to any other Federal or state department or agency, to act on my behalf in any matter relating to a waiver of my 2-year home residence requirement.

(Signature)

(Date)

SAMPLE LETTERS TO IMMIGRATION AND NATURALIZATION SERVICE

Sample 1. Failure to Report to Duty

District Director
U.S. Citizenship and Immigration Services

(City, (State) (Zip)

Dear Sir:

The Department of Veterans Affairs Medical Center, (city and state), supported waiver of the 2-year home residence requirement for (physician's name and waiver request 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 be deemed null and void.

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

Sincerely yours,

Facility Director

Sample 2. Failure to Complete 3 years of Service

District Director
U.S. Citizenship and Immigration Services

(City, (State) (Zip)

Dear Sir:

The Department of Veterans Affairs Medical Center, (city and state), 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 was based after having served less than 3 years. Since the medical needs upon which the waiver was based are no longer being met, we recommend the waiver granted to (name) be deemed null and void.

Your assistance in this matter is appreciated. Questions and additional information can be obtained by contacting (name) at (telephone number).

Sincerely yours,

Facility Director



WAIVER CANDIDATE NAME	SERVICE	
1. Is the position full time with at least 5/8ths time at VA?	Yes	Go to 2. Note: Shared appointments can only be with an affiliate for a waiver to go forward.
	No	Waiver request will not be processed.
2. Is the appointment for fee basis or WOC?	Yes	Waiver request will not be processed.
	No	Go to 3.
3. Does another facility have a pending request for a waiver?	Yes	Waiver request will not be processed.
	No	Go to 4.
4. Is the candidate presently employed at VAMC on O-1 visa?	Yes	Note: VHA policy requires that aliens in 0-1 status be employed at VAMC for at least 2 years before a waiver request can be considered.
	No	Go to 5.
5. Has an application (VAF 10-2850) and CV been received from the candidate?	Yes	Refer candidate for additional credentialing; go to 6.
	No	Obtain CV and application before proceeding; then go to 6.
6. Are the candidate's qualifications consistent with the requirement of the position as stated in the advertisements?	No	Go to 7.
	Yes	Waiver request will be disapproved..
7. Have ads been placed in nationally-recognized journals or periodicals which are appropriate to the specialty, have nationwide circulation, and: <input type="checkbox"/> a. Are not over 6 months old when submitted to HRC; <input type="checkbox"/> b. List special requirements for the position (do not use statements such as "preferred" or "desirable"); <input type="checkbox"/> c. Are primarily focused on VHA employment; <input type="checkbox"/> d. Indicate that VHA is an equal opportunity employer; <input type="checkbox"/> e. Have applications directed to the VA HRMS office; <input type="checkbox"/> f. Indicate if the position is full-time or part-time [Note: The advertisement must state that the position is full-time ("5/8ths" amount VA__ "x/8ths" amount at affiliate, if appropriate)]; <input type="checkbox"/> g. If part-time VA and part-time at affiliate, indicate that position is full-time, with appointments at each facility.	Yes	Go to 8.
	No	Place ads; go to 8.
8. Has a referral been requested from the HCSDRO, New Orleans, LA?	Yes	Go to 9.
	No	Do request; go to 9.
9. Has a VA-wide announcement and advertisement in a national journal been done?	Yes	Go to 10.
	No	Do announcement; go to 10.
10. Have any other recruitment efforts been initiated such as: <input type="checkbox"/> a. Letters to medical schools; <input type="checkbox"/> b. Letters to specialty boards; <input type="checkbox"/> c. Letters to professional organizations; <input type="checkbox"/> d. Local advertising.	Yes	Go to 11.
	No	Initiate efforts; go to 11.
11. Is there both an application and CV? (Note: Package requires signature of COS in Section III of VAF 10-2850).	Yes	Go to 12.
	No	Obtain; go to 12.
12. Are there copies and documentation of verification of current unrestricted state licensure?	Yes	Go to 13.
	No	Obtain; go to 13.
13. Are results of queries included for the National Practitioner Data Bank/ Healthcare Integrity and Protection Data Bank (NPDB/HIPDB) Link http://www.npdb-hipd.org/hipd.htm and the Department of Health and Human Services (HHS) Office Of Inspector General (OIG), List of Excluded Individuals and Entities (LEIE), link http://exclusions.org.hhs.gov/home.html	Yes	Go to 14.
	No	Obtain; go to 14.
14. Is there a copy of the ECFMG (Educational Commission on Foreign Graduates) certification?	Yes	Go to 15.
	No	Obtain; go to 15.

15. Is there a copy of the USMLE (U.S. Medical Licensing Examination, Steps 1, 2, & 3 score reports required), NBME (National Board of Medical Examiners), or FLEX (Foreign Language Examination) score report?	Yes	Go to 16.
	No	Obtain; go to 16.
16. Is there documentation of board certification or progress towards it?	Yes	Go to 17.
	No	Obtain; go to 17.
17. Are there copies of the DS-2019 and IAP-66 for all periods covered by J-1, if applicable?	Yes	Go to 18.
	No	Obtain; go to 18.
18. Is there a signed "Exchange Visitor Certification?"	Yes	Go to 19.
	No	Obtain; go to 19.
19. Is there verification of the O-1, if applicable?	Yes	Go to 20.
	No	Obtain; go to 20.
20. Is there an address and phone number where candidate can be reached during the waiver request review period?	Yes	Go to 21.
	No	Obtain; go to 21.
21. For each inquiry received, is there documentation as to: <input type="checkbox"/> a. Name, address, and telephone number; <input type="checkbox"/> b. Copy of application and/or CV; <input type="checkbox"/> c. Citizenship status, with immigration status identified for non-citizens; <input type="checkbox"/> d. Whether the position was offered; <input type="checkbox"/> e. Copies of Reports of Contact of discussions with all citizens and permanent residents; <input type="checkbox"/> f. Is there an explanation as to why candidate was not qualified, not selected, or declined?	Yes	Go to 22.
	No	Obtain; go to 22.
22. Is there a letter from the Director requesting the waiver which includes: <input type="checkbox"/> a. Complete description of the assignment, including percentage of time spent in patient care, research or educational activities and responsibilities at affiliate, if appropriate; <input type="checkbox"/> b. Proposed grade and step; <input type="checkbox"/> c. Full-time or part-time; if part-time number of hours/eights; <input type="checkbox"/> d. Proposed appointment date; <input type="checkbox"/> e. Anticipated immigration status of candidate after appointment; <input type="checkbox"/> f. Description of health-care needs candidate would meet; how needs are or are not being met presently, including patient care problems; <input type="checkbox"/> g. Explanation of how loss of candidate would result in discontinuance of a program or a major phase of a program of official interest to the Department; <input type="checkbox"/> h. Additional expenditures associated with alternative methods of patient care; <input type="checkbox"/> i. Complete description of recruitment efforts, including time position has been vacant, areas covered, contacts made, rationale for selecting recruitment methods used, etc.; <input type="checkbox"/> j. Name, title, phone number and fax number of technical contact person at facility.	Yes	Go to 23.
	No	Obtain; go to 23.
23. Has waiver review file request number been received from DOS, and is it documented on each page of the file?	Yes	Send off package. Make sure there are no staples, tabs, two-sided copies, etc.
	No	Obtain, then send the package to VSIN/HRC.