

will consider any particular application. The Director of the Office of Global Health Affairs, Office of the Secretary, is an ex officio member of the Board and serves as its Chairman. The Director may designate a staff member of the Office of the Secretary to serve as member and Chairman of the Board in the Director's absence. The Assistant Secretary for Health appoints two regularly assigned members and two alternates to consider applications concerning health, biomedical research, and related fields. The Chairman may request the heads of operating divisions of the Department to appoint additional members to consider applications in other fields of interest to the Department. The Board may obtain expert advisory opinions from other sources. The Board may establish a workgroup from the operating divisions of the Department to consider applications for waivers based on the need for the delivery of health care services to underserved populations.

[49 FR 9900, Mar. 16, 1984, as amended at 67 FR 77695, Dec. 19, 2002]

§ 50.3 Policy.

(a) *Policy for waivers.* The Department of Health and Human Services endorses the philosophy that Exchange Visitors are committed to return home for at least two years after completing their program. This requirement was imposed to prevent the Program from becoming a stepping stone to immigration and to ensure that Exchange Visitors make available to their home countries their new knowledge and skills obtained in the United States. The Department will request waivers for the delivery of health care service to carry out the Department's mission to increase access to care for the nation's most medically underserved individuals. However, in keeping with the philosophy of the Program, the Exchange Visitor Waiver Review Board may determine the appropriate numbers and geographic areas for waivers for the delivery of health care service.

(b) *Criteria for waivers.* The Exchange Visitor Waiver Review Board carefully applies stringent and restrictive criteria to its consideration of requests that it support waivers for Exchange Visitors. Each application is evaluated

individually based on the facts available.

(c) *Waiver for members of Exchange Visitor's family.* Where a decision is made to request a waiver for an Exchange Visitor, a waiver will also be requested for the spouse and children, if any, if they have J-2 visa status. When both members of a married couple are Exchange Visitors in their own right (i.e., each has J-1 visa status), separate applications must be submitted for each of them.

[67 FR 77696, Dec. 19, 2002]

§ 50.4 Waivers for research.

In determining whether to request a waiver for an Exchange Visitor engaged in the conduct of research, the Board considers the following key factors:

(a) The program or activity at the applicant institution or organization in which the Exchange Visitor is employed must be of high priority and of national or international significance in an area of interest to the Department.

(b) The Exchange Visitor must be needed as an integral part of the program or activity, or of an essential component thereof, so that loss of his/her services would necessitate discontinuance of the program, or a major phase of it. Specific evidence must be provided on how the loss or unavailability of the individual's services would adversely affect the initiation, continuance, completion, or success of the program or activity. The applicant organization/institution must clearly demonstrate that a suitable replacement for the Exchange Visitor cannot be found through recruitment or any other means. The Board will not request a waiver when the principal problem appears to be one of administrative, budgetary, or program inconvenience to the institution or other employer.

(c) The Exchange Visitor must possess outstanding qualifications, training and experience well beyond the usually expected accomplishments at the graduate, postgraduate, and residency levels, and must clearly demonstrate the capability to make original and significant contributions to the program. The Board will not request a

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waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university, hospital, or other institution.

[67 FR 77696, Dec. 19, 2002]

§ 50.5 Waivers for the delivery of health care service.

In determining whether to request a waiver for an Exchange Visitor to deliver health care service, the Board will consider information from and coordinate with State Departments of Public Health (or the equivalent), other "interested government agencies" which request waivers, and other relevant agencies. The Board requires the following criteria for requests for waivers for the delivery of health care service:

(a) The Exchange Visitor must submit a statement that he or she does not have pending and will not submit any other "interested government agency" waiver request while HHS processes the waiver request being submitted.

(b) Waivers are limited to primary care physicians and general psychiatrists who have completed their primary care or psychiatric residency training programs no more than 12 months before the date of commencement of employment under the contract described in subparagraph (d). This 12-month eligibility limitation is to ensure that the physicians' primary care training is current and they are not engaged in subspecialty training. This HHS eligibility requirement relates only to eligibility for an HHS waiver request and does not relieve physicians of the responsibility to maintain lawful status. Alien physicians are strongly encouraged to begin the waiver process as early as they possibly can while still in the residency training program. Early filing of the waiver request by the alien physician, coupled with timely processing of the request by the relevant government agencies, will facilitate the timely completion of the waiver process before the authorized J-1 admission expires, and the physician's subsequent application for change of nonimmigrant status from J-1 to H-1B.

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(c) Primary care physicians are defined as: physicians practicing general internal medicine, pediatrics, family practice or obstetrics/gynecology willing to work in a primary care Health Professional Shortage Area (HPSA) or Medically Underserved Area or Population (MUA/P); and general psychiatrists who are willing to work in a Mental Health HPSA. Note: these HHS eligibility criteria for waivers are in addition to and independent of the existing waiver and visa criteria established by the Immigration and Naturalization Service (INS), the Department of State, and the Department of Labor.

(d) The Exchange Visitor must have entered a contract with the applicant employer. This contract must:

(1) Require the Exchange Visitor to provide primary medical care in a facility physically located in an HHS-designated primary care HPSA or MUA/P, or general psychiatric care in a Mental Health HPSA.

(2) Require the Exchange Visitor to complete a term of employment of not less than three years providing primary care health services for not less than 40 hours per week.

(3) Require the Exchange Visitor to:

(i) Be licensed by the State where he or she will practice;

(ii) Have completed a residency in one of the following specialties: family practice, general pediatrics, obstetrics/gynecology, general internal medicine, or general psychiatry; and

(iii) Be either board certified or board eligible in the relevant primary care discipline.

(4) Be terminable only for cause until completion of the three-year commitment, except that, with the agreement of the alien physician, the employer may assign the contract to another eligible employer with the prior approval of HHS and compliance with all applicable INS and Department of Labor requirements. Prior to approving an assignment of the contract, HHS will review and consider the health care needs of the alien physician's current and proposed new locations, as well as the reasons for the request.

(5) Not contain a restrictive covenant or non-compete clause which prevents