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U.S. Citizenship
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FILE:



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Office: TEXAS SERVICE CENTER Date: JAN 12 2006

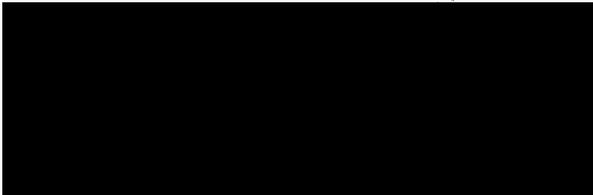
IN RE:

Applicant



PETITION: Application for Adjustment of Status to Permanent Resident Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the application for adjustment of status from H-1B nonimmigrant temporary worker to lawful permanent resident, and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn. The adjustment of status will be approved.

This case concerns the denial of an I-485 application for adjustment to permanent residence status filed by an alien physician. The director approved an I-140 immigrant worker petition for the physician as a member of the professions with an advanced degree who is qualified for a National Interest Waiver.

After his graduate medical training in the United States as an exchange visitor in J-1 temporary nonimmigrant status, the applicant received a waiver of the two-year foreign residence requirement that allowed him to change status from J-1 to H-1B temporary nonimmigrant worker and that required him to work in a designated medically underserved area for a minimum period of three years.¹ The applicant subsequently changed jobs to serve in a different medically underserved area, and Citizenship and Immigration Services (CIS) approved an H-1B visa to reflect his changed employment. The applicant then changed jobs again to work at a Veteran's Administration Hospital, and CIS approved a third H-1B visa reflecting the change of employment. In chronological order, these employers were: the Vernon Area Community Health Center (VACHC); Dr. Bruce U. Timmins; and the Department of Veterans Affairs Medical Center in Louisville, Kentucky (VA Medical Center).

The director found that the adjustment applicant violated the conditions of the J-1 waiver approved by CIS, because the applicant did not have sufficient cause to terminate his contractual obligation with VACHC, the health care facility named in the initial waiver application. The director therefore concluded that section 212(e) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1182(e), precluded approval of the adjustment application.

The cited section of the Act states that, upon expiration of J-1 status, an alien shall not be eligible to apply for an immigrant visa, permanent residence, or an H or L nonimmigrant visa "until it has been established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following his departure from the United States." In conjunction with the restrictions stated at section 214(l)(1) of the Act, 8 U.S.C. § 1184(l)(1), this section provides for a waiver of the two-year foreign residency requirement where the alien physician agrees to practice primary care or specialty medicine for 3 years, in H-1B temporary nonimmigrant worker status, either (1) in a geographic area designated by the Secretary of Health and Human Resources as having a shortage of health care professionals, or (2) for the Department of Veterans Affairs.

The regulation implementing the J-1 waiver sections of the Act relating to alien physicians is 8 C.F.R. § 212.7(c)(9). The regulation at 8 C.F.R. § 212.7(c)(9)(i) allows foreign medical graduates to apply for a

¹ In order to qualify for the national interest waiver, a physician serving in a medically underserved area or a VA hospital, such as the applicant in this case, must have been in clinical practice in such location for an aggregate of five years.

waiver of the two-year foreign residency requirement based on a request by a State Department of Public Health (or equivalent) if they meet the following conditions:

- (A) They were admitted to the United States under section 101(a)(15)(J) of the Act, or acquired nonimmigrant J nonimmigrant status before June 1, 2002, to pursue graduate medical education or training in the United States;
- (B) They have entered into a bona fide, full-time employment contract for 3 years to practice medicine at a health care facility located in an area or areas designated by the Secretary of Health and Human Services as having a shortage of healthcare professionals ("HHS-designated shortage area");
- (C) They agree to commence employment within 90 days of receipt of the waiver under this section and agree to practice medicine for 3 years at the facility named in the waiver application and only in HHS-designated shortage areas. . . .

The regulation also provides that the recipient of the J-1 waiver must fulfill the three-year contract with the healthcare facility named in the J-1 waiver application. 8 C.F.R. § 212.7(c)(9)(iv) provides that an alien who fails to fulfill his or her three-year contractual obligation incurred as a condition of the J-1 waiver "will once again become subject to the 2-year requirement under section 212(e) of the Act."

However, for extenuating circumstances, CIS may excuse early termination of a J-1 waiver recipient's contractual obligation with the health care facility named in a waiver application. Section 214(l)(1)(C)(ii) of the Act, 8 U.S.C. § 1184(l)(C)(ii), and 8 C.F.R. § 212.7(c)(9)(iv).

Upon review of the particular matters that the adjustment applicant submitted into the record, the AAO finds extenuating circumstances sufficient to excuse the applicant from completing his contractual obligations to VACHC and to [REDACTED]. The evidence presented by the adjustment applicant indicates that VACHC released the applicant, an internist, from his employment contract in order to expand its services to pediatrics. The evidence further indicates that the adjustment applicant left his position in [REDACTED] practice because he was suffering financial stress as a result of not being paid his salary. The applicant completed the remainder of his commitment at the VA Medical Center. Accordingly, the director's decision will be overturned, and the application for adjustment will be approved.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The director's December 21, 2005 decision is withdrawn. The application for adjustment is approved.