

**REQUESTS TO PETITION THE UNITED STATES DEPARTMENT OF STATE FOR A  
WAIVER OF THE 2-YEAR HOME RESIDENCY REQUIREMENT ON BEHALF OF AN  
EXCHANGE VISITOR AND SUBSEQUENT EMPLOYMENT REQUIREMENTS**

**1. SUMMARY OF MAJOR CHANGES:** Major changes are as follows:

a. Paragraph 2: Outlines responsibilities of various individuals throughout the J-1 waiver request process.

b. Paragraph 2: Changes the responsibility to submit the J-1 waiver requests documents to the Veterans Integrated Services Network Director rather than Workforce Management and Consulting.

c. Appendix A: Updates the recruitment requirements needed to support J-1 waiver requests.

d. Appendix A: Removes procedural information and templates and places them on a SharePoint site at:

<https://dvagov.sharepoint.com/sites/VHAWMCHRDRP/Policy/CARDSREVIEWS/default.aspx>. **NOTE:** This is an internal Department of Veterans Affairs (VA) website that is not available to the public. Access is restricted to current VA Human Resources employees in the 0201 series.

**2. RELATED ISSUES:** VA Handbook 5005, Staffing, Part II, Appendix II-J, dated July 8, 2005; VHA Directive 5007.01, Determining the Prevailing Wage in the Labor Condition Application Process, dated October 7, 2020.

**3. POLICY OWNER:** The Workforce Management and Consulting Office (106A) is responsible for the content of this directive. Questions may be addressed to [VHA106AWMCCOEJ1Waivers@va.gov](mailto:VHA106AWMCCOEJ1Waivers@va.gov).

**4. RESCISSIONS:** VHA Handbook 5005.01, Requests to Petition the United States Department of State for a Waiver of the 2-Year Home Residency Requirement on Behalf of an Exchange Visitor and Subsequent Employment Requirements, dated February 28, 2011, is rescinded.

**5. RECERTIFICATION:** This Veterans Health Administration (VHA) directive is scheduled for recertification on or before the last working day of November 2027. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

**6. IMPLEMENTATION SCHEDULE:** This directive is effective upon publication.

November 17, 2022

VHA DIRECTIVE 5005.01

**BY DIRECTION OF THE OFFICE OF  
THE UNDER SECRETARY FOR HEALTH:**

/s/ Steven Lieberman, MD, MBA  
Deputy Under Secretary for Health

***NOTE:*** All references herein to VA and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.

**DISTRIBUTION:** Emailed to the VHA Publications Distribution List on November 21, 2022.

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## REQUESTS TO PETITION THE UNITED STATES DEPARTMENT OF STATE FOR A WAIVER OF THE 2-YEAR HOME RESIDENCY REQUIREMENT ON BEHALF OF AN EXCHANGE VISITOR AND SUBSEQUENT EMPLOYMENT REQUIREMENTS

### 1. POLICY

It is Veterans Health Administration (VHA) policy that VHA requests waivers of the two-year home residency requirement for individuals on a J-1 Exchange Visitor visa only in cases of overwhelming need and only when comprehensive efforts to attract applications from United States (U.S.) citizens and permanent residents of the U.S. have failed to produce qualified candidates. **AUTHORITY:** 38 U.S.C. § 7407(a); 8 U.S.C. § 1184(l); 22 C.F.R. § 41.63.

### 2. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for ensuring overall VHA compliance with this directive.

b. **Deputy Under Secretary for Health.** The Deputy Under Secretary for Health is responsible for supporting Workforce Management and Consulting (WMC) with implementation and oversight of this directive.

c. **Assistant Under Secretary for Health for Operations.** The Assistant Under Secretary for Health for Operations is responsible for:

(1) Communicating the contents of this directive to each of the Veterans Integrated Services Networks (VISNs).

(2) Assisting VISN Directors to resolve implementation and compliance challenges in all VA medical facilities within that VISN.

(3) Providing oversight of VISNs to ensure compliance with this directive and its effectiveness.

d. **Chief Officer, Workforce Management and Consulting.** The Chief Officer, WMC is responsible for:

(1) Providing oversight of VISN and Department of Veterans Affairs (VA) medical facility compliance with this directive and ensuring corrective action is taken when non-compliance is identified.

(2) Serving as the designee for the Under Secretary for Health to approve VA medical facility requests for J-1 waivers to petition the Department of State (DOS) for such waivers.

e. **Workforce Management and Consulting, Human Resource Center of Expertise.** The WMC Human Resource (HR) Center of Expertise (CoE) is responsible for:

(1) Reviewing J-1 waiver requests for compliance with submission requirements.

(2) Recommending the Under Secretary for Health or Chief Officer, WMC approve the waiver request for forwarding to DOS.

(3) Providing the VISN with the J-1 waiver request letter to submit to DOS. **NOTE:** See paragraph 5 for additional information.

f. **Veterans Integrated Services Network Director.** The VISN Director is responsible for:

(1) Ensuring all VA medical facilities within the VISN comply with this directive and informing leadership when barriers to compliance are identified.

(2) Reviewing VA medical facility J-1 waiver request documents prior to submission to WMC HR CoE to ensure that a J-1 waiver is fully justified, adequately documented and that all requirements in this directive have been met.

(3) Submitting the J-1 waiver request documents to WMC HR CoE for review and approval and completing VA Form 10-0422b, Network Review and Certification of Facility Waiver Request, and submitting it with the J-1 waiver request.

(4) Submitting the J-1 waiver request documents to DOS upon VHA approval. **NOTE:** See paragraph 5 for additional information.

g. **VA Medical Facility Director.** The VA medical facility Director is responsible for:

(1) Ensuring overall VA medical facility compliance with this directive and that appropriate corrective action is taken if non-compliance is identified.

(2) Ensuring the accuracy of all data on forms provided to United States Citizenship and Immigration Services (USCIS) and DOS.

(3) Signing Form I-129 Petition for a Nonimmigrant Worker, and covering all associated filing and processing fees. See paragraph 7.e. for additional information.

(4) Providing the Director's Request Memo to the VISN Director following the outline provided in the J-1 Visa Waiver Request List located on the VHA WMC, Consult, Assist, Review, Develop, Sustain (CARDS) Non-Citizen Reference Guide, available at: <https://dvagov.sharepoint.com/sites/VHAWMCHRDRP/Policy/CARDSREVIEWS/default.aspx>. **NOTE:** This is an internal VA website that is not available to the public.

(5) Ensuring efforts to recruit a candidate that requires a J-1 visa waiver are not more than 6 months old prior to the submission of the waiver request. **NOTE:** See Appendix A for additional information.

(6) Providing the approved waiver request letter to the exchange visitor. **NOTE:** See paragraph 5 for additional information.

(7) Filing a Labor Condition Application (LCA) with the Department Of Labor (DOL), using the DOL's Foreign Labor Application Gateway (FLAG) process. As part of this process, the VA medical facility Director must certify that the nonimmigrant will be paid the required wage for their position. **NOTE:** See *paragraph 7.c. for additional information.*

(8) Notifying the appropriate individuals if the exchange visitor fails to fulfill their obligations. **NOTE:** See *paragraph 9 for additional information.*

(9) Notifying DOS and USCIS if employment of a foreign national on an H1-B visa is terminated. **NOTE:** See *paragraph 10 for additional information.*

h. **VA Medical Facility Clinical Manager.** The VA medical facility Clinical Manager is responsible for Completing Section B, Clinical Manager Certification, on VA Form 10-0422b.

### 3. WAIVER REQUIREMENTS

#### a. **General Requirements.**

(1) General requirements for a waiver of the 2-year home residency requirement for physicians providing patient care include a 3-year employment commitment as confirmed by an agreement signed by the physician and evidence that the VA medical facility has engaged in a comprehensive recruitment effort and has given genuine consideration to all U.S. citizen, Permanent Resident Alien (PRA) and nonimmigrant applicants. The J-1 waiver process is considered the last available option when no other U.S. citizen or employable non-citizen candidates (e.g., PRA, holders of H-1B or O-1 visas) are available after robust recruitment. Waiver requests are approved only when a comprehensive recruitment effort has failed to produce a qualified candidate for a critical position.

(2) Recruitment efforts must meet the requirements in Appendix A. Additionally, recruitment efforts must not have ended more than 6 months before the submission of the waiver request to WMC HR CoE.

(3) Duties of the position must include 51%, or greater, patient care duties at VHA.

(4) All U.S. citizens and PRAs who submit applications in response to recruitment efforts, or are referred from the National Recruitment Service or the Scholarships and Clinical Education Services office, must be contacted promptly and pursued actively by the VA medical facility. At a minimum, telephone interviews must be conducted with all U.S. citizen or PRA applicants before a determination is made that such applicants are not qualified for the position being recruited. U.S. citizens and PRAs can be eliminated from consideration only if they lack the minimum qualifications for the position. Documentation of reports of contact with each applicant must be submitted, along with a detailed qualification evaluation, in all situations where a citizen or PRA is eliminated from consideration; refer to the J-1 visa Waiver Request List on the VHA WMC, CARDS Non-Citizen Reference Guide available at:

<https://dvagov.sharepoint.com/sites/VHAWMCHRDRP/Policy/CARDSREVIEWS/default.aspx>. **NOTE:** This is an internal VA website that is not available to the public.

(5) By law, waivers can only be granted to nonimmigrants who have bona fide offers of full-time employment. For purposes of the VHA waiver program, full-time VHA employment is preferred.

(6) Consideration is given to requests for joint appointments with VHA affiliates, provided the combined employment package is full-time and at least 5/8ths 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, defining the time at each location and all applicants must be given genuine consideration for employment by both institutions.

(a) Waiver requests for joint appointments must meet all the requirements in this directive. The affiliated institution must also file a concurrent H-1B petition for the portion of the appointment to be performed at that affiliate. When joint recruitment is undertaken, applications must be initially directed to the Human Resources Management office servicing the VA medical facility where the vacancy exists. **NOTE:** *The affiliate may be involved in the application review only after VA processing.*

(b) When a position requires appointment to the faculty at an affiliated medical school and a U.S. citizen or PRA applicant has been eliminated from consideration on the basis of not meeting such requirements, the J-1 waiver request must state the criteria for the faculty appointment. The VA medical facility Director must include in the Director's Request Memo a detailed explanation of why the criteria is required, as well as why each citizen or PRA did not meet the faculty appointment criteria and how the exchange visitor meets such requirements. **NOTE:** *Faculty appointment status may be necessary for certain health professions trainee supervision components of the position but must be defined in advance as a critical need rather than a preference. Recruitment material in this case must be sufficient to allow the widest candidate pool.*

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

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

(1) The general requirements specified in paragraph 3.a. are not fully met.

(2) There are qualified U.S. citizen or PRA candidates for the position. Section 7407(a) of 38 U.S.C. 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 U.S. citizen or PRA applicants. Interested U.S. citizen or PRA applicants must be found unqualified for the position (i.e., they do not meet the minimum requirements of the position). For example, physicians who do not possess specialized skills may still be considered qualified if such requirements are only desirable but not required, or if the recruitment

advertisement fails to specify such requirements. The job opportunity announcement may not list requirements outside of the qualification standards on USAJobs.gov but it must indicate the basic requirements (e.g., licensure and citizenship) are mandatory. However, specialized qualifications for medical specialty areas must be described in the duties of the position. It is expected that specialty medical areas have minimum standards to be met in order to practice in that specialty.

(3) There are similarly qualified nonimmigrant applicants who are immediately available for appointment.

(4) The exchange visitor for whom the waiver request is submitted has overstayed their official visa status. J-1 exchange visitors are expected to depart the U.S. no later than 30 days after the expiration of their J-1 visas. VHA will not act on behalf of a nonimmigrant whose J-1 visa has been expired for more than 30 days at the time the VA medical facility's request is received in WMC.

(5) The exchange visitor is not available for employment for more than 6 months from the time the request is received at WMC. 6 months is adequate lead-time to complete the waiver process for fully justified and documented requests. If employment does not commence within 6 months of receipt of the waiver request, the VA medical facility is expected to continue to recruit for qualified citizens, PRAs and nonimmigrants immediately available for employment. For example, waiver requests for employment that will commence on or after July 1 each year will not be accepted by WMC prior to January 1 of the same calendar year.

(6) The waiver is not part of a valid and comprehensive need-based recruitment effort. Recruitment efforts must not be initiated solely for the purpose of placing exchange visitors.

(7) The waiver is for employment that is less than full-time with VHA (with no affiliate time), or for full-time employment that is less than 5/8ths time in VHA. The DOS requirements for a waiver request from an interested government agency include that an offer of full-time employment is made to the individual.

(8) The position to be filled is as a health professions trainee, resident, fellowship or otherwise time-limited position.

(9) The waiver is to facilitate appointments on a without compensation or fee basis.

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

(11) The waiver is based solely upon the needs of an affiliated university, with no apparent VHA benefit.

(12) The waiver is based on the personal needs or desires of the exchange visitor or members of the exchange visitor's family.

(13) The position requires less than 51% of the time in patient care duties. For purposes of this directive, research, education and teaching are not considered patient care time. **NOTE:** *Supervision time in patient care areas is counted as patient care time.*

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

(1) VHA does not petition DOS for waivers on behalf of nonimmigrants who are working for other employers on O-1 visas. VA medical facilities have local authority to apply directly to USCIS for an O-1 visa by filing USCIS Form I-129.

(2) J-1 exchange visitors who meet the criteria for an O-1 visa may adjust to O-1 status without fulfilling the 2-year home residency requirement. They may be hired by VA medical facilities without receiving a waiver of that requirement.

(3) There are certain circumstances that may require VHA to petition DOS for waivers on behalf of nonimmigrants currently working for VA medical facilities on O-1 visas. After the initial period of 3 years, extensions of O-1 status can only be obtained annually. If a VA medical 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 an annual basis; this can be accomplished by adjusting the nonimmigrant's status from O-1 to H-1B. If a VA medical facility has engaged in a comprehensive recruitment effort and they have not been able to recruit a qualified citizen or PRA, the VA medical facility may seek a waiver on behalf of a physician working for them on an O-1 visa during the last 6 months of the initial 3-year period.

**d. Post Audit.** Waiver requests may be post audited by VHA Central Office (VHACO) Oversight & Effectiveness or WMC CARDS to ensure compliance with the provisions of this directive, as well as applicable VHA personnel policies and procedures.

#### **4. SUBMISSION OF REQUESTS FOR REVIEW AND APPROVAL**

The process for submitting J-1 waiver requests for review by WMC CoE and approval by the Under Secretary of Health (or designee), as well as a list of required documents, may be found at the WMC, CARDS Non-Citizen Reference Guide located at:

<https://dvagov.sharepoint.com/sites/VHAWMCHRDRP/Policy/CARDSREVIEWS/default.aspx>. **NOTE:** *This is an internal VA website that is not available to the public.*

#### **5. ACTION TAKEN AFTER REQUESTS ARE APPROVED BY THE UNDER SECRETARY FOR HEALTH OR DESIGNEE**

Once the waiver request is approved by the Under Secretary for Health or Chief Officer, WMC, the VA medical facility receives a copy of the waiver request letter to send to DOS. The VA medical facility Director or VISN Director must submit the approved J-1 waiver request documents, with original documents, to DOS. The VA medical facility must advise the exchange visitor in writing that VHA is supporting the petition for waiver of the 2-year home residence requirement. This letter to the

exchange visitor must:

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

b. Request that the exchange visitor keep the VA medical facility informed of any changes in their address or telephone number and advise the exchange visitor of their responsibility to contact the VA medical facility within 15 calendar days of being notified by USCIS of approval or disapproval of the waiver.

c. Advise the exchange visitor that if they do not report for duty within 90 days of approval or fail to complete 3 years or more of service, the VA medical facility Director will report the nonimmigrant to USCIS for appropriate action.

## 6. ACTION BY OTHER AGENCIES

The following information is provided so that VA medical facilities have a better understanding of the process that occurs after the waiver request leaves VA.

a. **Department of State.** 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 USCIS for final adjudication. DOS provides a copy of their recommendation to the exchange visitor to the requesting VA medical facility and to WMC.

b. **United States Citizenship and Immigration Services.** USCIS makes the final determination concerning the exchange visitor's request for a waiver of the 2-year home residency requirement. USCIS notifies the exchange visitor and the petitioner by letter that the waiver has been granted.

## 7. ACTION REQUIRED PRIOR TO APPOINTMENT

a. A waiver of the 2-year home residency requirement does not give the nonimmigrant the authorization to accept employment. Final approval by USCIS of an appropriate employment visa/status is also required. In most circumstances, the appropriate visa/status for employment of physicians for whom a waiver has been requested is the H-1B. The H-1B nonimmigrant classification fully meets a VA medical facility's needs as it can be requested for an initial period of 3 years, which corresponds to VHA's authority to employ non-citizens for periods not to exceed 3 years. H-1B status can be extended for an additional 3-year period, as can the temporary appointment of a non-citizen (when a new recruitment effort fails to produce a qualified citizen candidate). The petition can only be submitted once the waiver is approved by USCIS. **NOTE:** *It is possible to start preliminary preparation of the H-1B petition process (e.g., filing LCA, while awaiting approval of the J-1 waiver).*

b. VHA uses the H-1B visa/status for the initial appointment of a nonimmigrant for whom waivers are obtained. A J-1 visa holder who adjusts to H-1B status while residing

in the U.S. after receiving a waiver based upon a request by an interested Federal agency is not subject to the annual numerical limitations on H-1B visas (also known as a “cap”). The cap does not apply to H-1B temporary workers who previously obtained the H-1B subject to the cap (Portability Provisions). If the exchange visitor returns to their country of origin before approval of the J-1 waiver, the exchange visitor is then subject to the H-1B cap.

c. To obtain an H-1B for the J-1 waiver recipient, the VA medical facility Director must first file an LCA with DOL, using DOL’s FLAG process. Each VA medical facility must create a customer account for the use of the FLAG program. **NOTE:** *Regulations regarding the LCA process are contained in 20 C.F.R. § 655.730. DOL’s FLAG portal can be found at <https://flag.dol.gov/>.* VA medical facilities may not create a FLAG account for use by a private attorney. It is the responsibility of the VA medical facility as the petitioner to submit this directly to DOL. As part of this process, the VA medical facility Director must certify that the nonimmigrant will be paid the required wage for their position. If the VA medical facility Director cannot certify the required wage, the VA medical facility may not file an H-1B petition. **NOTE:** *See VHA Directive 5007.01, Determining the Prevailing Wage in the Labor Condition Application Process, dated October 7, 2020, for guidance on determining the prevailing wage in the LCA process.*

d. VA medical facilities must advise H-1B candidates to not travel outside the U.S. while awaiting approval of the petition. It is also recommended that, once the approval notification is received from USCIS, sufficient time be allowed to pass for DOS databases to be updated prior to foreign travel.

e. The completed USCIS Form I-129 must be accompanied by payment of the applicable filing fees. The VA medical facility Director is the delegated authority who is responsible for signing the Form I-129. **NOTE:** *Forms, instructions and fees are available at: [www.uscis.gov](http://www.uscis.gov). Select the immigration forms link from the home page of this website.*

f. Both the VA medical facility and candidate will receive several Notices of Action throughout this process. However, the candidate may only be appointed by the VA medical facility when USCIS issues a Notice of Action showing that a change in visa status has been granted.

## 8. REPRESENTATION BY PRIVATE ATTORNEYS

a. In some instances, an attorney hired by the nonimmigrant (solely at the discretion of the nonimmigrant) may prepare petitions and other documents required to obtain visas as part of their representational services and present them to the VA medical facility Director for signature. In such situations, it is important for the VA medical facility Director to verify the accuracy of all information contained in such documents prior to signature. The VA medical facility Director is fully accountable for the accuracy of all forms filed with DOL and USCIS. Sections in any document that require notice of the party which filled in the information must contain the VA medical facility information, not that of a private attorney.

b. VA medical facilities must not under any circumstances 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. This exclusion prohibits allowing private counsel to be granted access as an account holder of any sort for electronic submission of documents (such as electronic LCA under the FLAG process).

c. VA medical facilities must not enter into any retainer agreement with a non-VA attorney or outside law firm unless the VA Office of General Counsel (OGC) approves such an arrangement. Since OGC is responsible to VA for all legal advice involving the construction or application of laws, it is also privy to the internal VHA written policies, which deal with personnel matters, including recruitment of certain foreign nationals.

## 9. 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 VA medical facility Director must immediately:

a. Notify the USCIS business liaison office, at 1-800-357-2099, requesting a withdrawal of sponsorship,

b. Maintain a copy of any tracking or notification documents, and

c. Send a letter, with a copy of the immigrant's approval notice to: USCIS Vermont Service Center, 75 Lower Weldon St., St. Albans, VT 05479-9400, Attn: I-129 Withdrawal. The letter must request withdrawal of VA sponsorship.

d. Notify DOL at 1-866-487-2365, of this withdrawal of VA sponsorship.

e. A copy of such USCIS notification is to be forwarded to VHACO. See the WMC, HR CoE Noncitizen Hiring Resources SharePoint located at <https://dvagov.sharepoint.com/sites/VHAWMCHRDRP/Policy/CARDSREVIEWS/default.aspx>. **NOTE:** *This is an internal VA website that is not available to the public.*

## 10. TERMINATING EMPLOYMENT OF A NONIMMIGRANT ON AN H-1B VISA

a. Should a situation result in termination of an employee, in addition to notifying the employee, the VA medical facility must notify both USCIS and DOL for the employment to be considered terminated. If this is not done, the VA medical facility may be liable to pay the candidate throughout the term of the sponsorship.

b. The VA medical facility is liable for the reasonable return transportation costs of the foreign national returning to the country of residence. This does not extend to immediate family members or property.

c. The VA medical facility Director is obligated to continue to pay the nonimmigrant's salary until notification of termination to USCIS and DOL has been accomplished.

## 11. TRAINING

There are no formal training requirements associated with this directive.

## 12. RECORDS MANAGEMENT

All records regardless of format (e.g., paper, electronic, electronic systems) created by this directive must be managed as required by the National Archives and Records Administration (NARA) approved records schedules found in VHA Records Control Schedule 10-1. Questions regarding any aspect of records management should be addressed to the appropriate Records Officer.

## 13. BACKGROUND

a. 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. Foreign nationals participating in the program are present in the U.S. on J-1 visas. The Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., requires that certain foreign nationals who hold J-1 visas as participants in the Exchange Visitor Program must return to their home countries for 2 years to apply newly acquired training and skills. This 2-year home residency requirement 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. **NOTE:** See 8 U.S.C. § 1184(l), 22 C.F.R. part 62 and the Immigration and Nationality Act, 8 U.S.C. § 1182(e).

b. VA does not sponsor J-1 visas but supports the Exchange Visitor Program and the 2-year home residency requirement and seeks waivers only when it is clearly in the interest of VA and its programs. For VHA, the Secretary of VA has delegated to the Under Secretary for Health, or the Chief Officer, WMC, the authority to determine when VA medical facility requests for J-1 waivers are appropriate and to petition DOS for such waivers. In VHA, this authority is used primarily to recruit physicians.

## 14. DEFINITIONS

a. **Employer.** For the purposes of this directive, the employer is the VA medical facility, VISN or VHA program office petitioning for a nonimmigrant to be employed.

b. **Exchange Visitor.** An exchange visitor is a foreign national who is a participant in the Exchange Visitor Program (e.g., foreign medical school graduate admitted to the U.S. for medical residency training). Exchange visitors hold a J-1 visa, which has a 2-year home residency requirement prior to adjustment of status, unless otherwise waived. **NOTE:** For further information on categories of J-1 exchange visitors, see 22 C.F.R. § 62.20-62.32.

c. **Nonimmigrant.** A nonimmigrant is a foreign national temporarily admitted to the

U.S. for a specific purpose and period of time.

d. **Nonimmigrant Visas.** Nonimmigrant visas are issued to foreign nationals seeking to enter the U.S. on a temporary basis for tourism, business, medical treatment and certain types of temporary work. A J-1, Exchange Visitor visa allows 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 physician or dental residents and fellows on an annual basis (generally for the academic year). Additional nonimmigrant visa types include H-1B and O-1. **NOTE:** *This list is not all-inclusive; however, it addresses the non-immigrant visas typically seen in VHA:*

(1) **H-1B, Temporary Worker in a Specialty Occupation.** The H-1B nonimmigrant classification allows temporary admission of foreign professionals seeking to work in the U.S. The H-1B permits the admission of professionals and specialists to be employed in the U.S. for a petitioning U.S. employer. H-1B visas are granted for up to 3 years for specific positions and may be extended up to 3 years for a total of 6 years.

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

e. **Permanent Resident Alien.** A PRA 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 a Permanent Resident Card, Form I-551. 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."

## 15. REFERENCES

- a. 8 U.S.C. §§ 1101, 1182(e), 1184.
- b. 38 U.S.C. §§ 311, 7407(a).
- c. 20 C.F.R. § 655.730.
- d. 22 C.F.R. § 41.63
- e. 22 C.F.R. §§ 62.20 – 62.32.
- f. 38 C.F.R. § 14.500, et seq.

g. VHA Directive 5007.01, Determining the Prevailing Wage in the Labor Condition Application Process, dated October 7, 2020.

h. VA Form 10-0422a, Exchange Visitor Certification, dated August 1, 2004.

i. VA Form 10-0422b, Network Review and Certification of Facility Waiver Request, dated January 28, 2005.

j. VA Form 10-2850, Application for Physicians, Dentists, Podiatrists, Optometrists and Chiropractors, dated June 6, 2016.

k. DOL FLAG portal, <https://flag.dol.gov/>.

l. DOS Form DS-2019 (former IAP-66), Certificate of Eligibility for Exchange Visitors (J-1) Status.

m. USCIS Form I-129, Petition for Nonimmigrant Worker, <https://www.uscis.gov/i-129>.

n. VHA Workforce Management and Consulting (WMC), CARDS (Consult, Assist, Review, Develop, Sustain) HR Toolkit and Non-Citizen Reference Guide. <https://dvagov.sharepoint.com/sites/VHAWMCHRDRP/Policy/CARDSREVIEWS/default.aspx>.

## APPENDIX A

**REQUIRED AND RECOMMENDED RECRUITMENT STEPS PRIOR TO SUBMISSION OF A J-1 WAIVER REQUEST**

Authority exists to hire non-United States (U.S.) citizens when comprehensive recruitment efforts yield no qualified U.S. citizens. If no qualified U.S. citizens are found, Permanent Resident Aliens (PRAs) must then be considered, followed by any workers who currently hold a nonimmigrant employment visa with another employer.

**1. MANDATORY RECRUITMENT STEPS**

a. Post a Job Opportunity Announcement at <http://www.USAJobs.gov> for at least 30 days and open it to all U.S. citizens. As noted, the job opportunity announcement may not list requirements outside of the qualification standards on USAJobs.gov but it must indicate the basic requirements (e.g., licensure and citizenship) are mandatory. However, specialized qualifications for medical specialty areas must be described in the duties of the position. It is expected that specialty medical areas have minimum standards to be met in order to practice in that specialty. For joint appointments, the announcement must meet the requirements as specified in paragraph 3.a.(6) of this directive.

b. Contact National Recruitment Service (NRS) for potential lists of candidates at: <mailto:VAPlacementService@va.gov>. NRS will search the Department of Veterans Affairs (VA) Applicant Tracking System for potential qualified citizen and immigrant candidates who have expressed interest in the vacancy's duty location. Any potential candidates will be referred to the servicing human resources office for recruitment.

c. Place an online ad for at least 30 days on a relevant health care job board, such as PracticeLink, HealthCareers or Practicematch.

**2. OTHER MARKETING OPTIONS**

a. Ask the appropriate Clinical Service Chief for that specialty to contact colleagues at other medical schools or through specialty or sub-specialty societies and alert them that there are positions available. Document these contacts if using this option.

b. Work with the appropriate Public Affairs Office to develop a press release for a positive story about VA employees and the Federal employment. Document these efforts if using this option.

c. Offer a referral bonus. Document these efforts if using this option.

d. Request recruitment assistance from NRS at: <https://www.research.net/r/VAREcruitSupport>. **NOTE:** This is an internal VA website that is not available to the public.